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Sweden's comments on the draft amendments to State aid Implementing Regulation and State aid Best Practices Code as regards access to justice in environmental matters

Sweden welcomes the fact that the Commission is updating the regulatory framework in order to implement the Aarhus Convention in a correct way and updating the provisions based on the proposed technical solutions. Sweden also welcomes the Commission's work towards introducing the amendments in a way that involves minimum necessary interference with the rules.

In the draft of the revised General Notification Form the Commission proposes to add a question by which Member States are asked to confirm that the aid measure and the aided activity comply with EU environmental law. However, this conformation does not seem to have any consequence on the possibility to request a review of the Commission decision. The purpose of this addition is therefore unclear.

The state aid procedure is already very time-consuming so it is of great importance that this process is not prolonged. The proposal for an internal review of Commission decisions on the basis of EU environmental law means that the state aid process may become even more time-consuming than it currently is. The proposal and the subsequent extension of the time it takes to obtain state aid approval may increase uncertainty and can thus act as a disincentive to investment, as well as increase the cost of projects that are subject to appeal. Therefore, there is a risk that longer processes can restrain environmentally friendly measures.

Sweden considers the Commission's proposal to change the indicated time for pre-notification contacts in the Code of Best Practices from six to twelve months to be problematic. Although the proposal is based on the Commission's experience and is not a fixed time limit, it is important that the indicated time is not extended as it could result in a prolongation of the entire state aid procedure.

Given all the ongoing work within the EU in the context of the green transition, which aims to facilitate the conditions for investments by, for example, simplifying the permit granting procedure and facilitating the market access of strategic technology products, it would be particularly unfortunate if the already very time-consuming state aid process would be prolonged and thus negatively affect the impact of these ongoing efforts.

Technical remarks

Annex VI Draft Communication concerning the amendment of the Code of Best Practices

- In paragraph 98 the limit of 22 weeks for the Commission to act should be a fixed time limit. Therefore, the word “should” should be replaced by “shall”.
- It is unclear what type of action a non-governmental organization can bring before the EU Court under paragraph 99, and whether this applies regardless of whether the organization is an interested party and regardless of whether the appeal concerns the review under environmental law or the state aid assessment in general. This should be clarified.
- Remarks regarding the Swedish translation:
 - In paragraph 92 the word “framgår” should be deleted.
 - In the last sentence of paragraph 93 it says “artiklarna 107 och 108” but it should say “punkterna 107 och 108” to be consistent with the rest of the document.
 - In paragraph 98 “docksénast” should be two separate words “dock” and “senast”.