



**Response of the Dutch Authorities  
to the Public Consultation on the Draft Amendments to State Aid  
Implementing Regulation and State aid Best Practices Code as regards  
Access to Justice in Environmental Matters, The Hague 20-3-2025**

*This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representation of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs. The Minister of Economic Affairs is responsible for competition policy in the Netherlands.*

This is the response of the Dutch authorities to the Consultation on the draft amendments to Commission Regulation (EG) nr. 794/2004 Implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union and the Code of Best Practices for the conduct of State aid control procedures (hereafter: the Implementing Regulation and the Code of Best Practices).

The amendments can be divided into two parts. First, amendments regarding the set-up of an internal review mechanism to address the findings of the ACCC regarding access to justice in environmental matters in relation to EU State aid decisions. Second, amendments proposed to reflect recent Commission practice concerning the handling of State aid cases.

**General comments**

In a general, the Dutch Authorities are in favor of compliance with the Aarhus Convention and following up on the ACCC's findings.

However, fast and final decisions in state aid procedures are essential for the support of (e.g. green transition) projects. Delay and legal uncertainty as a result of this new procedure seems limited, which is welcomed.

The Dutch authorities consider it important to reduce the administrative burden for both businesses and public authorities. The new internal review procedure entails additional administrative burdens and costs for the State aid granting authority.

However, although the administrative burden as well as legal uncertainty may seem limited, any burden on business and authorities should be reduced to only strictly necessary obligations to prevent unnecessary duplication of procedures.

The Dutch authorities suggest to exclude certain categories of decisions from the scope of review. The Dutch Authorities note that the proposal ensures a targeted application by addressing only decisions to close the formal investigation procedure based on article 107(3), (excluding b last section), TFEU. However, in addition, decisions of the Commission to close the formal investigation procedure for activities that require a national permit should also be excluded from the scope of the internal review procedure, because challenging the assessment of this environmental impact is already possible on the national level, when challenging a national permit granting procedure to a review procedure before a national court of law.

Regarding the proposed amendments, the Dutch authorities would like to bring the following specific comments to the attention of the European Commission as the consequences of the proposal are not entirely clear.

## **Specific Comments**

### **PART I**

#### **Annex I of the Implementing regulation, compatibility of aid, common assessment principles, question 6.8.**

The amendment inserts a question in the general notification form that requires the Member State to confirm that compliance of the aid measure and aided activity EU environmental law.

When a Member State makes a notification under 107(3)(a), (b), first part, (c), (d), and (e) TFEU, it must confirm that neither the activity subject to State aid, nor any aspects of the notified State aid measure that are indissolubly linked to the object of the aid are in conflict with EU environmental law [...].<sup>1</sup>

#### **Internal review and non-directly effective EU environmental law**

The definition of environmental law does not exclude non-directly applicable law and general objectives. According to the answers of the EC during the Advisory Committee, EU environmental law should be interpreted in light of the Aarhus Regulation. In article 2 (1) (f) of the Aarhus Regulation, it is stated that "environmental law" means "Community legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Community policy on the environment as set out in the Treaty [...]".

- 1. Can the EC reflect on the access to justice for NGO's with regard to the compliance of individual aid measures with EU environmental law, even if these concern non-directly applicable norms?*

#### **Preventing duplication**

At the moment of notification, generally, the permitting procedure and environmental assessment of the underlying activity has not been finalized. When a permit or assessment is wrongfully issued or executed, this can be challenged in the national courts by interested parties, including eligible NGO's. If a NGO can challenge permits or assessments on a national level as well as challenge the same non-compliance issue in the internal review procedure, this would create a duplication in procedures, leading to legal uncertainty and delays in the state aid procedure, as well as infringing the *ne bis in idem* principle.

The Dutch authorities consider it important to reduce the administrative burden for both businesses and public authorities. The confirmation could have an effect on the length and complexity of the State aid procedure while verification and confirmation of compliance with EU environmental law provisions is redundant, as this obligation already exists and can be enforced in national procedures.

Adding question 6.8 without specifying its scope leads to duplication of national obligations based on the Aarhus Convention and could lead to complicated coordination between public authorities within a Member State with their own responsibilities, e.g. the granting authority and the public authority responsible for permitting and/ or monitoring compliance with EU environmental law. This would lead to a disproportional impact on the length and complexity of the national procedures. In cases where aid is approved by the Commission and granted by the national granting authority, but the permit is denied, the activity will not take place. That does not make the confirmation by the national authorities that the aid measure does not contravene EU law incorrect. However, in practice no conflict of EU environmental law will arise as a consequence of the aid as the project will not take place.

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<sup>1</sup> Anelli & Volpi case 74/76, EU:C:1977:51, paragraph 14.

- *The Dutch Authorities propose that activities that require a permission or an assessment on the national level that can be challenged in national courts to be excluded from the scope of internal review.*

#### Standstill

Article 108 (3) TFEU and article 3, of the procedural regulation<sup>2</sup> contain a “Standstill” provision. Aid notifiable under Article 2(1) of the Procedural Regulation may not be implemented until the Commission issues a decision approving that aid.

Paragraphs 84 and 96 of the proposal, states that eligible NGOs may submit a request for an internal review of the final state aid decision of the formal investigation procedure up to eight weeks after its publication. This means that the internal review procedure is initiated after the investigation procedure is completed. Article 3 of the Procedural Regulation does not apply here. Furthermore, there is no standstill provision in the code of best practices.

The EC confirmed at the advisory committee that the internal review procedure, and possible proceedings at the CJEU do not have a suspensive effect on the underlying measure.

- *The Dutch Authorities suggest to make the effect of the internal review procedure on the underlying measure explicit in the CBP. The absence of the suspensive effect should be mentioned.*

According to the EC's presentation during the Competition Council of 17 februari, based on this Code, the EC may decide the following:

- A letter from the Commission on the ineligibility of the NGO.
- A decision of the Competition Executive Vice-president (EPP) with a substantive rejection
- A Commission decision finding a breach of EU environmental law.

Based on the answers of the EC during the Advisory Committee, the Dutch Authorities understand that the legal basis of these decisions is found in the Implementing Regulation and the Code itself.

1. *Can the EC elaborate on the legal basis of these decisions, as the Code itself does not provide a legal basis according to paragraph 9 of the Code?*
2. *Is the interpretation that the internal review procedure finds its legal basis in article 33 (c) of the Procedural Regulation, correct? Does the commission intend to qualify this internal review procedure as a *lex speciales* for the complaint procedure?*
3. *The Dutch Authorities suggest to explicitly mention the legal basis of these decisions in the preamble to the Implementing Regulation or in the text of the Code.*

Paragraph 11.8 is inserted in the Code of Best Practices. This paragraph describes the possibility of instituting procedures before CJEU

- *The Dutch authorities suggest that the EC elaborates on the procedural rights of undertakings during proceedings before the CJEU.*

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<sup>2</sup> Council Regulation (EU) 2015/1589 of 13 July 2015

## **PART II**

Article 4 (1) of the Implementing Regulation is amended as follows:

(b) in the second sentence, 'existing aid scheme' is replaced by 'authorised aid scheme'

This means increases of the budget of authorized aid schemes are not considered as the alteration of existing aid scheme. Other types of existing aid, such as pre-accession aid, might not have an authorized original budget. The Dutch Authorities propose to explicitly include ad hoc aid to the exemption, to decrease the administrative burden for MS and undertakings.

- *Suggestion is to also include ad hoc aid, in line with the amendment of article 5 of the Implementing Regulation.*  
*Article 4, 1. of the Implementing Regulation:*  
*[...] However an increase in the original budget of an existing aid scheme [or in the overall amount of the authorized ad hoc aid awarded to the undertaking] by up to 20 % shall not be considered an alteration to existing aid.*

Article 5(1) of the Implementing Regulation, has the underlined inserted:

'1. [...] Member States shall compile annual reports on existing aid schemes and individual aid in respect of each whole or part calendar year during which the scheme applies, [...]';

- *Suggestion to change "scheme" in the last sentence to "measure" as the sentence now covers both schemes and individual aid.*

Section 3 ('Pre-notification') of the Code of Best Practices extends the duration of the prenotification, following the experience of the EC, from 6 to 12 months. Instead of codifying the practice of lengthy procedures, efforts should be made to find solutions to limit this period.

- *Suggestion to delete this amendment.*

Section 6 ('Streamlined procedure in straightforward cases') of the Code of Best Practices is deleted because MS have never used this procedure. In the current debate on state aid the importance of streamlining of and acceleration in state aid cases is emphasized.

- *The Dutch authorities suggest that an assessment is made how it could be used to shorten procedures and decrease administrative burden, instead of removing the procedure.*

Section 11.1 ('Time limits') of the Code of Best Practices lays down the time limits for the internal review procedure. Since Commission State aid decisions are not final until this period expires, a shorter timeframe would help ensure faster legal certainty while still allowing NGOs and the EC sufficient time to prepare their request and reply.

- *The time limit for requesting an internal review should be shortened to four weeks instead of eight. The time limit for the EC reply should be shortened to 8 weeks instead of 16 weeks.*

*This contribution does not contain any confidential information and will be sent to the Dutch parliament.*