

Access to justice in state aid matters at EU level  
Consultation March 2025

**ÖKOBÜRO – Alliance of the Environmental Movement and Justice & Environment: Comments regarding the Consultation on the draft amendments to State aid Implementing Regulation and State Aid Best Practices Code as regards access to justice in environmental matters**

ÖKOBÜRO welcomes the proposal for the implementation of the findings in communication ACCC/C/2015/128 by the Aarhus Convention Compliance Committee. ÖKOBÜRO submitted this communication to the ACCC and therefore takes special interest in the concrete steps the Commission undertakes to implement the findings. We appreciate the opportunity to provide our views on the matter.

We believe that the proposal will generally improve access to justice for state aid decisions and support the Commission’s commitment to adopt new rules later in 2025. We would however like to address that the initial timeline set by the Aarhus Convention Compliance Committee set a limit to October 2024 for implementation of its decision. Therefore, a timely implementation should be strived for.

ÖKOBÜRO would like to propose some points for improvement of the draft amendments to further improve their effect regarding access to justice in environmental matters.

**1. Narrow eligibility conditions**

We welcome the eligibility conditions for environmental NGOs as they are essentially similar to the criteria set out in Regulation (EC) No 1367/2006 and therefore well-known by environmental NGOs and essential for ensuring a wide and effective access to justice as set out in Art 9 (3) and (4) of the Aarhus Convention. However, other members of the public are, according to the draft, not eligible to submit a request for internal review regarding state aid decisions. The ACCC decided in its findings that the EU should “clearly provide **members of the public** with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, **in accordance with article 9 (3) and (4) of the Convention**”<sup>1</sup>. Article 9 (3) and (4) do not merely require access to justice for environmental NGOs, but to the public concerned in general. This can also mean that private persons, subject to certain criteria are a part of the public concerned. **Therefore, we propose to grant access to**

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<sup>1</sup> See also by analogy Advice by the Aarhus Convention Compliance Committee to the European Union concerning the implementation of request ACCC/M/2017/3, 12 February 2021, point 93; Report of the Compliance Committee on compliance by the European Union on request ACCC/M/2017/3, 26 July 2021 (ECE/MP.PP/2021/51), point 117.20 [https://environment.ec.europa.eu/law-and-governance/aarhus/requests-internal-review\\_en](https://environment.ec.europa.eu/law-and-governance/aarhus/requests-internal-review_en)

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**the public concerned, as set out by the ACCC in its findings, to ensure full compliance with the Convention.**

## **2. Types of decisions subject to review**

In the Commission's draft, the scope of review is limited to decisions adopted after a formal investigation (Art 108 (2) TFEU) that are legally based on Art 107 (3), with the exception of Art 107 (3) (b) second part. The exclusion of the possibility of review of aid authorized under Art 107 (3) (b), second part, if not comprehensible for us, as there is no legal reason for excluding decisions under this provision. **Moreover, we propose that the possibility to review decisions is clearly extended to decisions to not raise objections, that constitute the large majority of State aid decisions. At the moment, this is still not clearly guaranteed within the EU and remains a matter of concern as regards access to justice under Art 9 (3) Aarhus Convention.**

## **3. Restriction of Right to remedy**

In the Commission's proposal, the requests for internal review regarding State aid decisions are subject to a limit of 10 pages and the Commission can revert to the applicant in case it needs more information. An internal review under Art 10 Regulation 1367/2006 and applications for annulment to the EU General Court can both be 50 pages long. For ÖKOBÜRO it is not comprehensible why a distinction is made here with regard to requests for internal review concerning state aid. Especially since state aid decisions are a highly complex matter and the development of legal arguments can necessitate lengthy descriptions to be sufficiently clear. We acknowledge and support that there is no limit on the size of annexes but do not believe this would suffice to demonstrate the arguments of applicants fully in all cases. The restriction to 10 pages would risk an undue administrative burden on the Commission and the applicants that is not necessary. Since the time-limit is suspended during a request for additional information this would hinder the effective and speedy processing of the request. It would be more efficient if applicants had the opportunity to provide all necessary information with the initial request. Moreover, following the jurisprudence of the CJEU on Art 12 Regulation 1367/2006, applicants can only challenge decisions on their requests as far as arguments and evidence were already included in the initial requests. This would in turn constitute an undue restriction on the applicants' right to effective judicial review and their right to remedy under Art 9 (3) and (4) Aarhus Convention and Art 47 of the FRC.

ÖKOBÜRO therefore requests the Commission **to consider raising the limit up to 50 pages per review, similarly as under the regime in Regulation 1367/2006.** In any case, the Commission should allow applicants to submit more than 10 pages in particularly complex cases, especially when applicants identify contraventions of provisions of environmental law that were not previously assessed by the Commission, or when the Commission has not assessed compliance on the ground of a missing inextricable link with the activity or object of the State aid.

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#### **4. States' comments should be open to applicants and included in the review decision**

ÖKOBÜRO recommends that applicants are entitled to receive a copy of the Member States' comments and that they are included into the review decisions as part of the decisions' statements of reason. This is also the practice with EFSA and ECHA's comments on requests relating to the approval of active substances under Article 10 Regulation 1367/2006 and necessary for reasons of transparency.

#### **5. Missing access to justice for omissions to act**

The scope of the procedure in the Commissions' proposal is limited to challenging the compliance of decisions with environmental law. It does not explicitly include the right to challenge the Commission's failure to monitor compliance with its decisions, monitor compliance of aid measures with the General Block Exemption Regulation, the Fisheries Block Exemption Regulation or the Agriculture and Forestry Block Exemption Regulation or investigate unlawful aid. **In the view of ÖKOBÜRO there should be opportunities to review these types of omissions to fully comply with the Aarhus Convention.**

Moreover, it is essential to provide for access to the CJEU in case the Commission omits to reply to a request within the prescribed time-limits in Articles 97 and 98 of the code. **We therefore suggest adding a paragraph into the draft that is based on Art 12 (2) Regulation 1376/2006.**

**We thank the Commission for the opportunity to provide our views on this important matter and hope our proposals will be taken into consideration.**

**ÖKOBÜRO – Alliance of the Environmental Movement**

**Justice & Environment**

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