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The present comments are made by the International Society for the Protection of the Environment and Nature Alpe Adria Green (AAG), Prešernova 26, 4270 Jesenice, Slovenija, EU

Activities (not all) 20 years:

AAG has public interest status in the field of environment and nature

We participate in public debates on projects, demand environmental impact assessments, compliance with the Aarhus Convention, and peer review environmental assessments

Respond to residents' reports of environmental pollution by filming in the field and reporting to inspectorates

We work to protect clean drinking water

We protect the health of the population in all our projects

We participate in public debates on laws and regulations concerning the environment, nature and human health (noise, chemicals, PM10, PM2.5 and nano, emissions, measurements, basic water analysis, etc.)

Participate in the government's wildlife group

Participate in the government's chemical safety group

We publish the online newspaper A – Oak (Hrast)

The Commission's consultation on draft amendments to the State aid implementing regulation 794/2004 and to the State aid Code of Best Practices regarding access to justice introducing an "internal review mechanism" (further the "Draft Amendments" and the "internal review mechanism") is made in the context of proceedings before the Aarhus Convention Compliance Committee in Case ACCC/C/2015/128.

The comments are organized as follows:

- (i) Introduction
- (ii) Minimal reference to the Aarhus regulation (1367/2006)
- (iii) Limited scope of the internal review mechanism
- (iv) Envisaged criteria of "indissolubly linked"/ "inextricable link"

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- (i) Introduction

Case ACCC/C/2015/128 has been open for over a decade and the findings and recommendations of the Aarhus Compliance Committee recommending changes to Union rules in order to “*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*”¹ were issued over four years ago.

The Association regrets that it has taken so many years to progress in this direction and welcomes the Commission’s willingness to abide by the above ACCC recommendations.

The Association notes that the Commission does not provide supporting explanation or clarification as to the rationale, justification or impact assessment of the Draft Amendments. More information on the rationale of the Draft Amendments would be useful, especially given the broad options (including the possibility to proceed via the amendment of the Aarhus regulation) included in the initial Commission documents (in particular [COM \(2023\) 307 final](#) and [SWD \(2023\) 307 final](#) both of 17 May 2023). The future Staff Working Document “*assessing the scope, content and likely impacts of the new procedure*” (referred to in the press release of 7 February 2025 (IP/25/440)) would have been helpful to assess the Draft Amendments.

The Association also notes that the absence of relevant Union rules has deprived it from having access to justice in environmental matters with regard to several Commission State aid decisions in the past and that this situation remains until the adoption of such Union rules.

(ii) Minimal reference to the Aarhus regulation (1367/2006)

The Draft Amendments do not concern the Aarhus regulation 1367/2006 (as amended) (further the “Aarhus regulation”) and refer to it for a limited purpose (establishing a prior acknowledgement of admissibility of the applicant for internal review under the Aarhus regulation) (draft annex V to regulation 794/2004, page 5).

Whereas the Aarhus regulation was recently amended by regulation 2021/1767 stating that “*taking into account the provisions of Article 9(3) and (4) of the Aarhus Convention and the findings and advice of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32, Union law should be brought into compliance with the provisions of the Aarhus Convention on access to justice in environmental matters in a way that is compatible with the fundamental principles of Union law and its system of judicial review*” (recital (5)).

The fact that the Draft Amendments do not opt for an amendment of the Aarhus regulation is regrettable and would result in legal uncertainties with regard to the conditions of Article 9 (3) and (4) of the Aarhus convention, which an amendment to the Aarhus regulation could prevent.

Given the existence of the Aarhus regulation and its own implementing rules, the choice not to base the internal review mechanism for Commission State aid decisions on the Aarhus regulation (at least in part) results in setting aside existing rules of internal review without any apparent benefit for the public or the protection of the environment.

¹ [Findings and recommendations with regard to communication ACCC/C/2015/128 concerning compliance by the European Union, 17 March 2021, ECE/MP.PP/C.1/2021/21.](#)

In this respect, the Draft Amendments therefore fail to satisfy the findings and recommendations of the ACCC.

(iii) Limited scope of the internal review mechanism

The Draft Amendments would only provide for the internal review of final decisions State aid decisions adopted under Article 108 (2) TFEU.

For State aid decisions based on other provisions of law which, in fact, represent the majority of State aid decisions and may equally affect environmental law, the Draft Amendments propose that Member States would solely declare that the aid measure does not “*contravene Union environmental law*” (proposed amendment to Annex I (general notification form) to implementing regulation 2004/794).

The Commission does not explain on which reasoning the above distinction is based.

Separately, the Draft Amendments by way of modifying regulation 794/2004 and its annex V in fact reduce the provisions and guarantees contained in the Aarhus regulation and its implementing rules.

While the Draft Amendments hold requirements similar to that applicable to the requests for internal review under the Aarhus regulation, they do not contain the same guarantees, in particular the case regarding access to environmental information (Articles 4 to 7 of the Aarhus regulation) and the procedure of internal review (Articles 10 to 12 of the Aarhus regulation). Similarly, no reference is made to Commission decision 2023/748 of 11 April 2023 laying down detailed rules for the application of the Aarhus regulation.

Furthermore, the Draft Amendments include restrictions to the rights of interested parties as provided under both the Aarhus regulation and the Aarhus convention:

- the lack of access to environmental information beyond that contained in the text of State aid decisions (this point is not addressed in the Draft Amendments);
- the envisaged introduction of the criteria of the provisions of Union environmental law being “*indissolubly linked to the objective of the aid and/or the aided activity*” (draft annex V to regulation 794/2004, page 4) whereas the Aarhus regulation’s criteria is that the decision “*contravenes environmental law*” – this point is also addressed separately below;
- the restriction of the “**GROUND OF REQUEST**” to “*maximum 5 500 words*” (idem) is in apparent contradiction of the proposed amendment the State Aid Code of Best Practices (which refers to the limitation of “*10 pages*” (not including annexes) and contrary to any such limitation in the Aarhus regulation or the Aarhus convention;
- the pressure to waive the right of use of the Association’s working language (draft annex V to regulation 794/2004, page 5).

(iv) Envisaged criteria of “*indissolubly linked*”/ “*inextricable link*”

The envisaged criteria that the provisions of Union environmental law being “*indissolubly linked to the objective of the aid and/or the aided activity*” (draft annex V to regulation 794/2004, page 4) are contested as follows.

- The finding of the Court of justice in Case 74/76 (22 mars 1977, *Iannelli & Volpi*, EU:C:1977:51, paragraph 14) proposed by the Commission as the criteria to determine the scope of the internal review mechanism does not seem suitable. Such condition is by essence to be applied case by case and does not provide an objective metric. In other words, instead of facilitating access to justice, the envisaged criteria is bound to constitute an obstacle to it by inducing legal uncertainties and leading to the recurrent litigation of its application.
- The notion of “*indissolubly linked*”/ “*inextricable link*” as outlined in the Draft Amendments is not consistent with the Court of Justice current case-law, as most recently presented in the Opinion of Advocate General of 27 February 2025 in Case *Austria / Commission* (C-59/23 P, EU:C:2025:125, paragraphs 19 to 48).
- The mere declaration by a Member State that neither the activity supported nor any aspect of the measure “*that are indissolubly linked to the object of the aid contravene Union environmental law*” (draft extract of annex I to regulation 794/2004) removes many Commission State aid decisions from the scope of Article 9 (3) and (4) of the Aarhus convention. On the one hand, this would run counter to the findings in Case ACCC/C/2015/128 which should apply to all, or at least a majority, of State aid decisions. On the other hand, it should be for the Commission as guardian of Union law to assess such a link, and to indicate the outcome of such assessment in its State aid decisions.
- In any event, the notion of “*indissolubly linked*” or “*inextricable link*” as currently interpreted by the Court of Justice should be held as meaning that the future internal review mechanism would include, for aid measures aiming to reduce CO2 emissions, the examination of whether the Commission has considered if, and verified that, the activity supported by an aid measure demonstrably contributes to the reduction of CO2 emissions – taking into account both its direct and indirect emissions - and how much so.

President of the Society

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