



Bloom Association's contribution to 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

Bloom Association is delighted to provide its contribution on the draft amendments to the **State aid Implementing Regulations** (EC) No 794/2004 and the **State aid Best Practices Code** ('BCP') and thanks the Commission for this opportunity.

We share elements below that we believe would improve the said draft amendments in achieving its main objective, namely to effectively allow civil society to request a Commission's review of certain State aid decisions with the aim of establishing whether they contravene EU environmental law.

Room for improvement

1. Eligible entities

The eligible criteria for non-governmental organization set out in §79 and §80 of draft BCP are welcomed but we fear that other entities might not be eligible to submit a request for internal review, especially the general public or EU citizens not organized as a non-governmental organization.

We know by experience that not only non-governmental organizations may have a strong and legitimate interest to request for internal review but other entities might have as well.

We would therefore recommend to broaden the eligible entities to the general public.

2. Page limit

§86 of draft BCP introduces a 10 pages limit for the request for internal review. We are very concerned about this limitation which clearly risks to jeopardize the access to justice, and more particularly since the burden of proof of Union environmental law breach lays on the applicant (§92 of draft BCP – see our comments below in this respect), the fact that State aid matters are often complex, and that §93 of the draft BCP suspends the Commission's time-limit to reply to the internal review request in case of request for additional information by the Commission. There is also a risk that such limitation would



increase the administrative burden of the Commission since the Commission would be more likely to request additional information.

These elements render the 10 pages limit inadequate.

We would therefore recommend to remove the 10 pages limit. Should the Commission wish to include a page limit, we would recommend to align it to the existing regulation and bring it to 50 pages and maintain the absence of size limit of the annexes.

3. Burden of proof

We are concerned that the draft seems to place the burden of proof on the applicant non-governmental organization (§92 of draft BCP) and that its precise scope is not entirely clear (e.g. the notion and use of “*indissolubly linked*” is not specifically defined).

We emphasize that there is jurisprudence in this respect that recognizes the access inequality to information and documents between the Commission and civil society. Which is why the CJEU ruled that the applicant only need to raise “*sufficient or serious doubts*” for the Commission to be required to further examine the case raised.

We have witnessed first-hand this difficulty to access documents from civil society in several cases.

We would therefore recommend to align the scope of the burden of proof for applicants to the jurisprudence ruling that the applicant only needs to raise “*sufficient or serious doubts*” for the Commission to be required to further examine the case in question.

4. Time limit suspension

§93 of the draft BCP suspends the time limits laid down in §107 and 108 in case additional information are requested by the Commission but includes a 30 days time limit for the applicant to reply. A similar mechanism is included in case of consultation (§94). This creates a discrimination between parties that is not justified in particular since civil society organizations have less access to information than institutions such as the Commission.

We know from experience that lengthy procedures tend to limit access to justice and discourages citizens to protect their rights, hence going against the objectives of the draft amendments.

We would therefore recommend to remove the suspension mechanism in §93 and 94 of the draft BCP.



General remark

Bloom Association welcomes the initiative of the Commission since the improvement of the EU State aid regime is an important aspect of the right for EU citizens to be informed of how their money is used and for what purpose; transparency being not only a key principle of the EU but also a central element in fostering citizens' trust in their institutions.

We know from experience with State aid that some of them have been a real black box to say the least.

We believe that, in this respect, at least the following elements of the drafts should be maintained:

- The general possibility for applicants to challenge a Commission review decision before the CJEU;
- The scope of the eligibility conditions for environmental NGOs (§79 and §80 of draft BCP) (subject to the above comments);
- The definition of 'environmental law' (§79 of draft BCP);
- Eligibility criteria for non-governmental organization is aligned with the ones in Regulation 1367/2006 (as amended) (§79 of the draft BCP).

Contacts:

- [REDACTED] [@bloomassociation.org](mailto:info@bloomassociation.org)
- [REDACTED] [@bloomassociation.org](mailto:info@bloomassociation.org)