

## **Elettricità Futura's response to the European Commission's Consultation on the procedure for access to justice in environmental matters in relation to State aid decisions**

**March 2025**

Elettricità Futura welcomes the European Commission's decision to launch a public consultation on the proposed amendments to the State aid framework to ensure compliance with the Aarhus Convention.

This public consultation represents an opportunity to suggest modifications to the current drafts, on the one hand, strengthening guarantees to protect and coherently balance all interests at stake, including those of Member States, environmental NGOs, and companies benefiting from State aid; on the other hand, introducing necessary adjustments to the current formulation in the interest of legal certainty, ensuring that aid beneficiaries can effectively proceed with the investments required by the Union, particularly in a period of heightened geopolitical pressures.

First and foremost, **the amendments to the regulatory framework should lead to a precise identification of the environmental norms that could serve as a reference parameter for a potential request for a review of a State aid compatibility decision.**

A generic right to environmental protection would grant NGOs excessive discretion. **In this regard, we appreciate the wording of the first part of paragraph 85(b), which obliges NGOs to specifically list the EU legal provisions allegedly violated. However, the reference to "any characteristic of the aid measure" should be removed, as it is too vague and subject to discretionary interpretations.**

The amendments to the procedural rules on State aid will introduce an additional level of complexity for companies seeking to invest in the EU through projects co-financed by Member States.

In particular, the new review procedure would require the European Commission to assess not only the competitive and internal market impact of aid measures but also their compliance with EU environmental regulations. This could have implications for both the pre-notification and notification phases, starting with the Commission's request for Member States to include environmental impact assessments in the notification forms.

Furthermore, **if paragraph 99 of the draft Communication is interpreted broadly, the introduction of the new mechanism would increase legal uncertainty, expanding the range of entities entitled to challenge the Commission's decisions before EU courts and significantly prolonging the time required for a Commission decision to become final.**

Given the EU's intervention programs aimed at the reconversion of production processes and the promotion of green and digital transitions, there is a risk that any State aid authorization decision could be challenged based on an alleged environmental impact.

**A broad interpretation of this possibility could allow any NGO to request a review, disregarding the criteria set forth in Article 80, which are intended to limit access to the administrative procedure to NGOs genuinely involved in authorization decisions. Such an expansion could lead to increased litigation, delays in implementing Commission decisions, and greater legal uncertainty for economic operators.**

**This risk is closely linked to the interpretation of paragraph 99 of the Communication, which in its current wording—"The non-governmental organization that has submitted the request for internal review in accordance with point 79 may bring an action before the Court of Justice under the TFEU"—appears too broad.**

**It should be explicitly stated that NGOs' standing before the Court of Justice should be limited to contesting the denial of a review request and should never extend to challenging the substance of the State aid decision, the European Commission's technical and discretionary assessments (e.g., proportionality or necessity of the measure), or the balancing of potentially conflicting EU interests.**

The timelines and uncertainties introduced by this measure are incompatible with the need for rapid investments at a crucial moment for ensuring the European Union's development and maintaining its technological leadership, particularly in the current context of significant geopolitical instability.

Moreover, the mere requirement to wait eight weeks from the publication of the State aid decision in the Official Journal—which, as is known, usually occurs months after its adoption—negatively impacts businesses' need for certainty regarding investment outcomes.

Additionally, paragraph 97 of the draft Communication grants the Commission 16 weeks to respond to a review request.

Furthermore, under paragraph 94, Member States have 30 days to submit observations to the Commission, starting from the moment the Commission forwards the NGO's review request. While it is appreciated that these 30 days do not impact the 16-week response deadline for the Commission, this could nonetheless extend the overall timeline. Indeed, according to paragraph 98 of the draft Communication, if the Commission cannot meet the 16-week deadline, it may—upon informing the applicant—extend its response time to 22 weeks.

**These deadlines, combined with the eight weeks available to the applicant to submit the review request, result in an uncertainty period of up to 30 weeks from the publication of the State aid authorization decision—more than seven months after publication. Considering the additional months that typically elapse between the Commission's adoption of a decision and its publication, the uncertainty for investors and Member States would likely persist for at least one year from the decision's**

**adoption. In this scenario, investors would be required to proceed with investments while facing the risk of having to repay the aid.**

These timelines and risks are incompatible with business needs and, more generally, with those of the European Union.

Additionally, the current wording of paragraph 93 appears to overly favor NGOs submitting review requests, as it allows them up to 30 days to supplement their documentation if they fail to sufficiently demonstrate their eligibility or provide adequate evidence of their independence, non-profit status, etc. During this period, the Commission's response deadline would be suspended.

**In this regard, we urge the Commission to amend the Communication by:**

- **Halving the timeframe for NGOs to demonstrate their eligibility. Moreover, the requirement to have been established two years before submitting a request appears disproportionate. Only well-established associations with at least five years of proven activity and credibility should be granted standing.**
- **Reducing the deadline for NGOs to submit a review request to six weeks or one month.**
- **Reducing the Commission's response time to a maximum of 10 weeks.**
- **Limiting the deadline for the Commission's response (currently set at 22 weeks in paragraph 98 of the draft Communication) to a maximum of 16 weeks.**

Furthermore, **not only Member States but also the beneficiaries of aid measures—especially in the case of individual aid—should have their rights safeguarded by ensuring their participation in the review procedure, allowing them to submit observations in response to the objections raised by NGOs.**