

Feedback on 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, provided by Mundus Omnium (an environmental NGO from Catalonia, Spain)

Introduction

It is beyond unacceptable that Case ACCC/C/2015/128 has been left unresolved for a decade, despite the clear and urgent findings of the Aarhus Compliance Committee. The Committee’s recommendations—calling for changes to Union legislation to ensure that the public can challenge State aid measures that violate EU environmental law—were issued over four years ago. And yet, here we are, still waiting for meaningful action. While the Association acknowledges that the Commission has finally decided to move in this direction, this “progress” is nothing more than a reluctant, face-saving exercise. The complete lack of transparency regarding the rationale, justification, or expected impact of the proposed amendments only reinforces the impression that this is a rushed, superficial, and ultimately ineffective attempt to feign compliance. The fact that stakeholders are expected to assess these Draft Amendments without access to the promised Staff Working Document—a document that should contain the scope, content, and anticipated impacts of the new procedure—only highlights the Commission’s disregard for genuine public engagement. This is not how democratic institutions should function.

1. Minimal reference to the Aarhus Regulation (1367/2006)

The Draft Amendments deliberately sidestep the Aarhus Regulation (1367/2006). The proposed mechanism would actually restrict access to justice by imposing strict eligibility criteria, procedural limitations, and language constraints. Instead of enhancing public rights, it appears to narrow the scope of environmental accountability in State aid decisions. This is both absurd and unacceptable.

The Aarhus Regulation was specifically amended in 2021 to ensure compliance with the Aarhus Convention’s access to justice provisions, in line with ACCC findings (Regulation 2021/1767, Recital 5). Yet, instead of anchoring the proposed internal review mechanism within the existing legal framework, the Commission has chosen to bypass it entirely. This deliberate omission creates unnecessary legal uncertainty and weakens the enforceability of environmental protections. If the Commission were serious about strengthening access to justice, it would have built upon the Aarhus Regulation’s well-established rules rather than setting them aside without justification. By ignoring the Aarhus framework, the Draft Amendments fail to meet the ACCC’s findings and recommendations.

2. Limited scope of the internal review mechanism

The Draft Amendments introduce a review mechanism so narrow that it is practically useless. It applies only to final State aid decisions adopted under Article 108(2) TFEU, excluding the vast majority of State aid decisions that may equally affect environmental law.

Adding insult to injury, the Draft Amendments weaken the Aarhus Regulation’s existing guarantees and introduce additional restrictions on the rights of the public:

- **Access to environmental information is arbitrarily limited to what is already contained in the Commission’s State aid decisions**—blatantly disregarding the Aarhus Regulation’s provisions on access to environmental information (Articles 4-7).
- The introduction of the vague and arbitrarily restrictive criterion requiring environmental law to be **“indissolubly/inextricably linked”** to the aid’s objective is a thinly veiled attempt to block or significantly narrow the scope of potential legitimate legal challenges.
- The **word limit of 5,500 words** for requests (Draft Annex V to Regulation 794/2004, p. 4) contradicts the 10-page limit in the State Aid Code of Best Practices, lacks any legal or practical justification and potentially limits accessibility and fairness.
- The **pressure to waive the right to use an applicant’s working language** is yet another barrier designed to discourage participation (Draft Annex V, p. 5).

- Only recognized NGOs fulfilling specific criteria (such as a **legal interest in environmental protection**) can request a review. These requests for review must be submitted in a **structured format, following predefined guidelines and including clear legal arguments** as to why the State aid decision allegedly violates environmental law.
- There is **no clear requirement for the Commission to conduct a full review of environmental concerns** raised in the request.

Instead of ensuring effective access to justice, these amendments create additional hurdles for those seeking to hold the Commission accountable. **The mechanism does not provide the same legal guarantees as the Aarhus Regulation, potentially weakening public access to environmental justice.**

3. Absence of proper oversight to confirm that State aid measures do not contravene EU environmental law

For State aid decisions based on provisions of law other than the final State aid decisions adopted under Article 108 (2) TFEU (with these former ones representing the majority of all such decisions and equally likely to breach environmental law), the Draft Amendments propose that Member States should solely declare 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”*. **Member States are merely asked to confirm that State aid measures do not breach EU environmental law** when submitting aid notifications (proposed amendment to Annex I of Implementing Regulation 2004/794). The burden of proof is absurdly placed on Member States, who can simply declare that the measure complies with EU environmental law—effectively shielding themselves from scrutiny. This removes most State aid decisions from the scope of Aarhus Article 9(3) and (4), directly contradicting the findings of ACCC/C/2015/128. This is a complete mockery of environmental oversight. How can the Commission possibly justify relying on the word of Member States with vested interests instead of conducting an independent, enforceable review? The Commission, as guardian of the Treaties, should be responsible for verifying compliance, not blindly accepting Member States’ self-assessments.

4. Deeper issues with member states’ compliance with EU environmental law

When it comes to ensuring compliance with EU environmental law, it is the duty of the EU institutions to lay a solid legal foundation to prevent such violations by member states’ governments so that we as citizens are not left at the mercy of our (often corrupted) governments and permitting authorities (or judges when we are forced to file lawsuits). Apart from the State aid Regulation, the whole EU legislation regarding renewables (RED III, Maritime Spatial Planning Directive etc) lacks a solid foundation and therefore endangers nature to benefit corporations. On the one hand, the above-mentioned directives do have provisions regarding the Habitats, Birds, Water Framework, Public Participation and other environmental directives. On the other hand, they do not contain any proof that “renewables” contribute to climate objectives – it is a mere assumption/declaration and yet the premise of all their privileges and state aid (and default status of “overriding public interest”). These privileges even allow siting these industrial power plants inside or close to Natura 2000 areas, albeit after supposedly meeting the strict derogation conditions. Once again, the requirements are there but no one ensures member states’ compliance with those. Furthermore, when we protest against this barbarian destruction of nature, we are simply ignored by the governments at all levels, which is another example of the violation of the Aarhus Convention provisions.

We can’t speak about the other member states, but the Spanish government for one simply did not bother to ensure compliance with EU environmental law in its Strategic Environmental Assessments conducted for its National Energy and Maritime Spatial plans. As a result, dozens of associations all over the country are forced to find resources to sue the local/regional/central government to prevent further damage to fragile ecosystems and socioeconomic collapse of the local communities. Just one example of such violation of the EU law by the Spanish government is its failure to conduct appropriate assessments, study alternative locations and conclusively prove overriding public interest before deciding to site “renewables” power plants close to Natura 2000 areas (possibly due to their failure to correctly understand article 12 of the Habitats Directive). As a result, the plans’ SEAs are a bunch of ungrounded declarations about how industrial power plants close to Natura 2000 areas are perfectly compatible with nature conservation and local economies, with supposedly zero impact on the sites’ conservation objectives, natural heritage and population (despite independent

scientists saying the opposite). Needless to say, in their highly biased EIAs developers always assign low to medium severity even to the worst impacts (if they bother to list them at all).

To sum up, unless the EU legislators lay a solid legal foundation and conduct thorough audits to ensure compliance with environmental legislation by the member states, all these multiple laws and amendments, including the one we are providing feedback to, are **completely worthless when it comes to ensuring environmental protection, public participation and justified state aid expenditure.**

5. Absence of an evaluation of whether the aid contributes to reducing CO2 emissions

The notion of an “indissoluble link” or “inextricable connection,” as currently interpreted by the Court of Justice, should be understood to mean that the future internal review mechanism must encompass an assessment of whether, for aid measures aimed at reducing CO₂ emissions, the Commission has duly considered and verified that the supported activity demonstrably contributes to CO₂ reduction—accounting for both direct and indirect emissions—and to what extent. The criteria fail to explicitly require the Commission to assess the full climate impact of State aid measures. Any meaningful review process must include an evaluation of whether the aid demonstrably contributes to reducing CO₂ emissions—including both direct and indirect emissions. Anything less is yet another loophole that allows polluting projects to masquerade as “green.” In all the EU laws where renewables are mentioned, there is always the premise that these power plants by default contribute to ameliorating the climate crisis. Yet, this has simply never been proven. We have not been able to find a multi-criteria study that assesses every single environmental, socio- and macroeconomic parameter of these energy production systems, with a very thorough estimation of all the direct and indirect emissions of every single component (including storage facilities and/or cogeneration gas plants), the industrial contaminants released into the land and water and their impact on species and human health, as well as socioeconomic impact on the rural communities where they are pushed without any consideration for the local way of life, heritage and economy. We believe that before granting “renewables” any state aid, the EU institutions should first **conduct a comprehensive review of their direct and indirect emissions, impacts and overall contribution to the climate objectives.**

Furthermore, the State aid Regulation itself is supposed to favor projects that are meant for economic development in disadvantaged regions, environmental protection, heritage conservation, and support for SMEs (among others). However, with increased EU-wide subsidies for renewable energy, a lot of the aid meant for the so-called “green and just energy transition” in reality has massively accelerated the industrialization of natural and agricultural land and resulted in its degradation and impoverishment of rural communities. This means that this aid accomplished the opposite of its stated objectives: it sped up the degradation of healthy ecosystems (even protected areas in many cases in Spain), destroyed our natural heritage that is intrinsically linked to our culture, and exacerbated the socioeconomic issues in the disadvantaged regions accelerating depopulation and hitting the very SMEs in the affected communities that the aid is supposed to help. Biodiversity-destroying energy colonialism is a more appropriate name for the “green and just energy transition” this aid has supported, and below we are going to provide the main points why we think **mass-scale renewable energy projects should not be eligible for any state aid at all.**

6. The one-sided narrative of renewables

For over a decade we’ve been systematically brainwashed by the renewables industry to see them as clean and green, through the careful use of vocabulary (they are called “farms” in English and “parks” in Spanish) and imagery (shiny panels and turbines with the backdrop of green pastures on a sunny day) and, most importantly, cherry-picked and therefore extremely limited picture of the whole story. We have been so drilled that renewables are a “clean energy source” that will save the planet from the climate crisis that most people don’t question that anymore. Legislatively, renewables have been granted such a privileged status and consequently environmental exemptions as if they were tree-planting ventures. But this is simply because the lobby has made sure that we only see one little piece of the whole picture which is when a “renewables” power plant is actually generating some electricity using a renewable source of energy (sun or wind). But this generation does not happen continuously – only when the sun shines (and the panels are not covered in dirt, sand or snow) and the wind blows (quite unpredictably). What the lobby narrative is missing is many “unfavourable” pieces that they don’t want us (and the legislators) to see – which is a very dangerous approach when

intermittent power plants are springing up all over Europe like mushrooms after the NextGeneration rain (billions of our tax money and enormous debt) and devouring more and more of our natural and agricultural land. Below we list just some of the missing pieces carefully hidden from public view by the industry that carefully curates our media space and lobbies all the necessary institutions.

Biodiversity: The Great Greenwashing

First, there is the claim that renewables power plants are compatible with biodiversity conservation. Unlike many other industrial installations, they are even allowed to be sited in Natura 2000 areas (albeit with caution and after conclusively proving the absence of less environmentally harmful alternatives – an important environmental safeguard that some governments simply choose to skip). Yet, independent scientists (and the European Court of Auditors) are warning us they definitely **affect ecosystems**, list quite a number of harmful impacts on species and habitats, as well as advise deploying these power plants outside environmentally sensitive areas. All over Europe hundred-year-old GREEN trees are being chopped down to make room for BLACK panels and WHITE turbines. How is this transition green if it continuously decreases the green color in Europe? And while in theory environmental authorities are supposed to make sure these power plants won't harm endangered species and habitats and are respectful to the local economies, in the rush to fulfill the renewables quotas (or more likely fill their pockets) the governmental officials in charge of permitting are reluctant to acknowledge the impacts that are already heavily downplayed by the developers.

Unprecedented rate of degradation of high-value natural and agricultural land

The other critical issue is the **use of land**. At first, it looked like renewables were meant for self-consumption and we imagined that solar panels would “adorn” our rooftops thus **making double use of the degraded spaces**. Yet, that picture started changing very quickly as our independence from the grid is highly unprofitable for companies. Soon we were back to centralized electricity generation by enormous power plants, and all of a sudden more and more of our countryside was being claimed. The problem that the lobby omits to mention is that renewables are quite **picky with siting**: what developers want is vast spaces of “homogenous” terrain (to quote the Renewables Directive) which is windy/sunny and as CHEAP as possible (in order to make it as profitable as possible). What it translates into is that they claim our fields, mountains, forests and sea - our highest value natural areas that unfortunately, due to absence of laws that prevent this through some kind of tax, are the cheapest for developers. This has brought about **unprecedented levels of industrialization of the countryside and destruction of our natural heritage**. And most importantly, **“renewables” facilities require many times more land than any other energy-producing technology** (75 for solar and 350 times more for wind than nuclear for instance, that is also among low-carbon sources but infinitely more efficient with the use of resources and, most importantly, dispatchable). In fact, renewables are so land-intensive that a study estimated that [by 2050 in the EU they could occupy land the size of Sweden](#), disproportionately targeting high-value natural and agricultural areas. Based on the land usage alone, renewables should have been discarded as an instrument of choice for the energy transition and not eligible for any state aid, as it is complete nonsense to destroy so much nature in the name of “saving nature”. Not industrializing it through building intermittent power plants and storage facilities would do more for the health of this planet than the unproven claim that “renewables” save CO2.

The "Just" Transition? More Like Energy Colonialism

Furthermore, a more appropriate title for what the lobby calls “just energy transition” would be **“energy colonialism”**, given that energy production does not bring any benefits to the affected territory. The opposite is true: when huge intermittent power plants are pushed into the countryside, they **displace traditional rural economies based on agriculture, fishing and tourism**. Contrary to claims, renewables only generate employment in places where turbines and panels are produced, with **permanent local jobs practically non-existent**. **As to fishing and agriculture, the displacement is quite direct**: solar panels are placed where fruit-bearing trees or crops used to be, and fishermen lose access to fishing sites in addition to the impact of these industrial power plants on fish population. Studies also show a **significant impact on tourism most pronounced in rural settings where the typical customers have a clear preference for natural as opposed to industrialized landscapes**. Moreover, under the absurd claim that renewables are of “overriding public interest,” farmers are being dispossessed of land where their ancestors have been growing crops for centuries through forced expropriation. What this means to us as a society is further depopulation of already sparsely populated rural areas due to job loss and business closure, compromised food security due to decreased supply, a drop in GDP corresponding to these sectors and the loss of our invaluable natural heritage.

The Cost of the "Cheap" Energy Lie

Then there is the issue of extreme costs. The lobby likes to claim that renewables power plants are cheap, and yet when we look at the numbers they are actually the most expensive way to produce electricity and are **completely not viable without enormous multi-billion subsidies to the manufacturers and tax/financing schemes for developers, with real costs having to be shouldered by taxpayers and other industries**. And even then with the **rising cost of critical minerals due to their shortage** (another issue that makes the viability of this model of energy transition very questionable), lots of manufacturers have been reporting huge losses, closing down facilities and developers pulling out of previously negotiated deals or not willing to take on new projects (like the striking case of a recent tender in Denmark that had exactly zero applicants). And adding the currently non-existent storage pretty much doubles the cost, making intermittent "renewable" electricity forbiddingly expensive.

The Pollution Nobody Talks About

The next problem is the whole bouquet of toxic industrial pollutants that **enter our food chain and poison the land, sea and the inhabiting species** (including the human one). To offer a non-exhaustive list of contaminants, turbines and panels produce millions of tons of metals when discarded (claimed to be partially recyclable but without a trace of recycling facilities and proven technologies). And specifically for wind turbines, during operation they produce tons of aluminum and other heavy metals, toxic oil lubricants and microplastics, as well as the light, electromagnetic and noise pollution (this last one including infrasound), all of which are environmental toxins and most are a health hazard. Moreover, utility-scale batteries (that have very limited capacity, require enormous amounts of critical minerals and do not last many years) are also highly toxic.

The Climate Hypocrisy

Finally, the lobby claims that renewables are the only way to phase out fossil fuels and pave the way into a green and sustainable future. Now that we have established that renewables are not really clean or green, the question is are they at least able to ameliorate the climate crisis, which is the premise for all their legislative and financial privileges? If you consider only the fact that when they are operating they don't produce much CO₂, it could look like this. But if we take into account the whole lifecycle, even according to manufacturers' (biased) estimation they have a very heavy carbon footprint in all the stages: mining for rare earth metals, producing tons of steel and concrete, transporting these oversized giants from some (often Chinese) factory on ships and trucks to their sites, then all the fossil-fuel powered maintenance during the operation stage, finally removing all trace of them (unlikely to ever be done with the enormous concrete foundations of the fixed turbines and underground cables) and recycling (so far largely theoretical). But **even with all these indirect emissions we are still very far from having the total carbon footprint of these technologies**.

If we look closer at the industry calculations, we see a highly skewed estimation that first and foremost uses **overly optimistic lab-based numbers for the capacity factor and lifespan** (because applying the empirical data makes the CO₂ savings look too bad). Second, the industry numbers do not include a number of very crucial parameters. What is missing is (a) **the extra CO₂ produced by fossil-fuel plants that become less efficient when having to cope with the fluctuating renewables energy** and (b) **the CO₂ that would be produced if the "renewables" power plants finally had the extra power plants to account for their intermittency (about a third of the total capacity according to some studies) and the necessary storage facilities**. The approximate cost of these extra facilities according to most studies effectively doubles the total cost of renewables power plants, which gives us a rough idea of **how much extra CO₂ they would produce - double of what the lobby likes to claim**. Third, the industry calculations also **fail to factor in the carbon not saved by harmed ecosystems** (our best carbon sink). If we correct all the listed inaccuracies and omissions, relying on intermittent energy sources for mass-scale decarbonization is sheer insanity, especially if we consider all the other aspects listed above (environmental and socioeconomic impact, high cost, high-value land-use conflict, pollution and loss of heritage).

The Elephant in the Room

The list above is far from complete, and the only intention was to point out how renewables projects are allowed to benefit from enormous subsidies in the form of state aid simply because a proper analysis of lifecycle direct and indirect emissions of all their components has never been conducted. **While billionaires keep making their billions off**

unsuspecting mere mortals (using our hard-earned money to pollute and destroy our environment and livelihoods) by selling us intermittent, unsustainable and unaffordable electricity that still requires a dispatchable backup, we as a society are getting poorer and putting our nature down this giant “renewables” drain. The sun and wind are indeed renewable, but our destroyed ecosystems, endangered species, critical minerals, materials, natural heritage, livelihoods and lives are not.

Conclusion: A Meaningless, Deceptive Exercise

The Commission’s Draft Amendments **do not fix the problem—they make it worse**. Instead of creating an enforceable, transparent mechanism for ensuring that State aid complies with environmental law, these amendments introduce **deliberate loopholes, unjustified restrictions, and legal uncertainties** that will **only serve to shield polluting projects from scrutiny**.

This is not real reform. This is a **pathetic attempt to appear compliant while ensuring that nothing truly changes**. The Commission cannot claim to be upholding environmental justice while simultaneously making it harder to challenge environmentally harmful State aid.

If the EU is serious about climate action and access to justice, these amendments **must** be revised to:

- ✓ **Anchor the review process in the Aarhus Regulation** to provide legal certainty.
- ✓ **Expand the scope of review** to cover all State aid decisions—not just a select few.
- ✓ **Abolish the "indissolubly linked" restriction**, which is legally baseless and obstructs justice.
- ✓ **Ensure full transparency** by granting access to all relevant environmental information.
- ✓ **Explicitly mandate the assessment of full direct and indirect emissions of State-aided projects.**
- ✓ **Suspend all State aid to industrial-scale renewable energy projects** before an exhaustive evaluation is made of their environmental, socioeconomic, financial and health impacts on society at large and independent (not industry-sponsored) studies are undertaken to assess their full indirect emissions (from mining to full removal and recycling), including those of all their indispensable components such as cogenerating gas plants and extra power plants and storage facilities without which these intermittent energy plants cannot ensure steady supply of electricity.

Until these changes are made, this entire process remains **a blatant charade designed to appease critics while preserving the status quo**. We, the people of the EU, deserve better.


President of Mundus Omnium, an environmental NGO

L’Escala, Spain

March 20, 2025