



**PKEE's comments on the draft amendments to State aid Implementing Regulation
and State aid Best Practices Code as regards access to justice in environmental matters**

1. Polish Electricity Association (PKEE) welcomes the opportunity given by the European Commission to provide its view in the context of the initiative „*Consultation on the draft amendments to State aid Implementing Regulation and State aid Best Practices Code as regards access to justice in environmental matters*”.
2. The above initiative follows the Aarhus Convention Compliance Committee (the “**ACCC**”) recommendations in compliance case ACCC/C/2015/128 that the Commission take the necessary legislative, regulatory and other measures to ensure access to administrative or judicial procedures to challenge specific decisions on State aid measures that contravene European Union law relating to the environment.
3. Considering that the ACCC found the Union to be in breach of the Aarhus Convention for failing to provide members of the public access to administrative or judicial procedures to challenge decisions on State aid measures taken by the Commission pursuant to Article 108(2) of the Treaty which may contravene Union law relating to the environment, PKEE supports the Commission’s proposal that a newly established internal review mechanism should apply solely to State aid decisions closing the formal investigation procedure under Article 108(2) of the Treaty, adopted by the Commission pursuant to Articles 9(3) (positive decisions) and (4) (conditional decisions) of Council Regulation (EU) 2015/1589, having as legal basis Articles 107(3), points (a), first part of (b) (aid to promote the execution of an important project of common European interest), (c), (d) and (e) of the Treaty. Thus, PKEE takes the view that the internal review mechanism should not be extended to other types of State aid decisions.
4. In order to allow Member States to adapt to the new requirements stemming from the new internal review mechanism, PKEE considers that the amended rules should apply only to cases notified to the Commission as from 1 year following the publication of the amending Regulation in the Official Journal of the European Union.

The new internal review mechanism should not apply to on-going cases (as of the date of publication of the amending Regulation), regardless of the date of adoption of the decision pursuant to Articles 9(3) and (4) of Council Regulation (EU) 2015/1589.

5. Given the current geopolitical situation, appropriate safeguards should be put in place to address the EU's security and competitiveness concerns, so that alleged environmental considerations do not provide a convenient disguise for impeding activities that are important from an EU perspective. In this regard:
 - a. to ensure that internal review requests are filed by well-established non-governmental organisations, PKEE submits that the condition related to the duration of the organisation and active pursuance of an objective consisting in promoting environmental protection in the context of environmental law should require that at the moment of filing internal review request the organisation has been operational and actively pursued its primary objective for over three years;



- b. PKEE encourages the Commission to extend the list of necessary annexes demonstrating the eligibility requirements by including a detailed list of sources of funding of the organisation filing internal review request. This list should complement the annual activity reports of the non-governmental organisation.
6. Given the EU's objectives for the Green Deal as well as the recently announced Clean Industrial Deal to improve the competitiveness of the European economy, it should be noted that state aid will play a significant role in the implementation of investments aimed at achieving the objectives of the adopted policies. Therefore state aid tools must be effective to the extent that they allow rapid implementation of investments and send a clear signal to investors. It is of vital importance to ensure that the new procedure does not unnecessarily prolong State aid clearance. In this regard:
 - a. in principle, the Commission should receive complete and well-structured requests. Thus, the period proposed in paragraph 93 of the draft amendment of the Code of Best Practices should not exceed 10 working days;
 - b. since the State aid procedure has a bilateral nature, where the Member State and the Commission are the principal interlocutors, the request for comments addressed to the Member State in line with paragraph 94 of the draft amendment of the Code of Best Practices should, where necessary, include request for consultation with the relevant national authorities. No separate consultation, as currently proposed in paragraph 95 of the draft amendment of the Code of Best Practices should be envisaged;
 - c. since all internal review requests necessarily follow formal investigation procedures and interested non-governmental organisations are free to provide comments, the period proposed in paragraph 96 of the draft amendment of the Code of Best Practices should not exceed four weeks, as already upon publication of the opening decision (in line with Article 6 of Council Regulation (EU) 2015/1589) interested parties are normally given one month to respond;
 - d. in the same vein, the period proposed in paragraph 97 of the draft amendment of the Code of Best Practices should not exceed 12 weeks and paragraph 98 should be removed.