

# WindEurope'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

The EU currently has 231 GW of installed wind energy capacity. These wind farms have been installed in full respect of and cooperation with people and nature. The wind industry contributes €57.2bn to EU GDP every year. This supports the local economies of many rural and coastal communities. However, Europe is currently not installing sufficient wind energy. While wind energy contributes to Europe's energy independence and is essential for lowering power bills to keep Europe's economy competitive.

Slow permitting remains a big issue for the expansion of wind energy. Within the approval procedure citizens and NGOs have many opportunities to express their dissent towards certain projects. This is important. We need to continue building projects in full collaboration with people and society. Without their support Europe cannot reach the 2030 climate targets. However, in many cases it also delays Governments in handing out permits by years – the slow processing of court cases plays a big role in this.

Europe's communities must continue to benefit from wind energy and have a say in how the expansion on our continent happens. But this all needs to happen without putting unnecessary barriers in place that will slow down the energy transition. Europe needs to carefully balance these interests to limit the impact it could have on the delivery of projects.

This decision will impact onshore and offshore wind farms in different ways. State aid given to most **offshore wind farms** must be notified to the European Commission before Governments organise public tenders because they usually exceed the project size thresholds set by the General Block Exemption Regulation. National Governments will now have to notify the Commission of their compliance with EU environmental law. **Onshore wind farms** sometimes fall under the General Block Exemption Regulation. The current review by the European Commission will give NGOs additional possibilities to raise concerns regarding environmental law for both technologies. The European Commission must ensure that Europe's energy transition is not further delayed by additional court cases against wind projects.

- All around the EU **project developers engage with communities and NGOs from the very start** when drawing up their plans for new wind farms. This includes actions such as early meetings with communities and stakeholders and keeping them updated on dedicated project websites etc.
- Every potential new wind farm also goes through a **rigorous approval process consisting of a detailed Environmental Impact Assessment** which takes place over several years. Despite this granular approach many wind energy projects **get challenged in court**. This slows down the entire permitting procedure and increases project timelines by a couple of years on average in every single EU Member State.

- For a successful energy transition we need to have a **balanced approach between the right of public participation and the ability to deliver projects on time**. Therefore, the Commission should carefully consider the potential additional bureaucratic burden that could stem from adding extra possibilities for NGOs and individuals to challenge new projects. This will make it even **more difficult to get bureaucratic approval** to start building new wind farms.
- It is good that the European Commission has proposed clear deadlines. However, the proposed deadlines could **add an additional 30 weeks of waiting time** for a full project approval. This could add significant extra time to the 24-month deadline for permit approvals set out in the Renewable Energy Directive. We urge the Commission to **shorten the proposed deadlines** and ensure that they stick to these deadlines without creating any additional delays. This could for example be done by reducing the deadline for NGOs to submit a review request to six weeks or one month.
- 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. If investors proceed with investments they face the risk of having to repay the aid.
- The proposed change **should not result in additional burdens** in the granting procedures, while ensuring swift fund disbursement, legal certainty, and the stability of public support for investments.
- To align the approval process with the principle of legitimate expectations, **it is essential to move the internal review stage forward**, rather than leaving it for the final stage of the State aid approval when the State aid scheme is already being finalised. Instead, a **request for internal review should be initiated following the start of the formal investigation procedure**.
- The European environmental regulatory framework lacks specific criteria for determining what constitutes significant environmental impacts, allowing broad interpretations that could lead to increased litigation and legal uncertainty. Introducing **explicit criteria for environmental incompatibility** would ensure a fair and effective review process, balancing environmental protection with efficient implementation of State aid measures
- **The reference to "any characteristic of the aid measure" should be removed.** It is too vague and subject to discretionary interpretation which could lead to additional court cases not linked to potential environmental incompatibility.
- To prevent misuse of the internal review process, **NGOs should meet a minimum membership requirement**. This ensures legitimacy, collective representation, and safeguards against individual exploitation, reinforcing trust in the regulatory framework.
- Moreover, the requirement for NGOs 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.
- The reviewed articles should explicitly state that 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**.