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FEAD position 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

FEAD, the European Waste Management Association, representing the private waste and resource management industry across Europe, provided feedback in previous steps to this initiative. In such [previous statements, June 2024](#), FEAD welcomed the Commission's initiative to ensure access to justice in environmental matters related to State aid while strongly stressing that the planned procedure must not jeopardise or compromise the anonymity of complainants. In view of the draft amendments to the State aid Implementing Regulation and State aid Best Practices Code, we would like to submit additional comments, mainly aimed at seeking clarification and **strongly advocating for a wide coverage of market actors eligible to the internal review mechanism, which must be any organisation and not only non-governmental organisations**, in line with the spirit of the Aarhus Convention.

The new 'Internal review mechanism following the Aarhus Convention Compliance Committee findings in ACCC/C/2015/128' is limited in the draft to:

- Eligible non-governmental organisations
- Formal investigation procedures initiated under Article 108(2) TFEU

In relation to the first requirement of being a non-governmental organisation, a broad interpretation can also include business groups (e.g. [definition by EEA](#)). However, no definition is provided in the draft. Therefore, we point out that **a clarification of the eligible actors is strongly needed and this must, in any case, ensure a wide coverage of market actors eligible to the internal review mechanism.** In fact, Art. 9(3) of the Aarhus Convention, which was origin of the legal case that led to these amendments (ACCC/C/2015/128), refers to access to justice for members of the public, while 'public' is defined as 'one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups'.

An extension of the scope as indicated above is needed because, as recognised in the legal case that led to the amendments, the current complaint mechanism does not provide access to an administrative or judicial procedure to challenge a decision on state aid measures by the Commission under article 108(2) TFEU since the decision whether to commence a formal investigative procedure rest at the discretion of the Commission. Moreover, access to the current complaint mechanism is also limited, in this case to 'interested parties'. The Commission has interpreted 'interested parties' to cover only those persons whose market position or that of their members can be affected. Even more narrowly, on 3 May 2018, the European Ombudsman held that in order to be considered an

'interested party' 'one needs to demonstrate that the alleged State aid affects one's competitive position or that of the persons or firms one represents'.

Based on the above, FEAD strongly requests to extend the scope of the new internal review mechanism by deleting the word 'non-governmental' from the text, meaning that the scope is extended to 'any organisation'.

The draft is very restrictive and creates a barrier to transparency and fairness in administrative processes, particularly in the field of environmental protection. Therefore, we advocate for expanding the list of eligible entities to ensure broader access to the mechanism and enable greater involvement in oversight activities and the evaluation of administrative decisions, in line with the spirit of the Aarhus Convention.

The Aarhus Convention (Article 9(3)) emphasises the importance of broad access to legal remedies in environmental matters, ensuring that members of the public, not just narrowly defined groups of entities, can seek justice. The current proposal to limit access exclusively to non-governmental organizations appears to contradict the spirit of the Convention, which also includes other entities, such as industry organizations, provided they meet certain criteria.

Justification for expanding access

1. **Broader access to justice** – According to the Compliance Committee's guidelines on the Aarhus Convention (case ACCC/C/2015/128), review mechanisms should not exclude key entities engaged in environmental protection.
2. **Greater transparency and oversight efficiency** – Organizations that are not formally NGOs but operate in the field of environmental protection and sustainable development should be able to verify the compliance of administrative decisions with the law.
3. **Compliance with Article 9(3) of the Convention** – In light of the wording of this provision, as well as its interpretation by the Compliance Committee, access to the mechanism should include all entities that, according to national law or practice, are recognised as having legal standing in environmental matters.

We remain available to further contribute to this process in strong commitment to fair access to justice in environmental matters.

FEAD is the European Waste Management Association, representing the private waste and resource management industry across Europe, including 20 national waste management federations and 3,000 waste management companies. Private waste management companies operate in 60% of municipal waste markets in Europe and in 75% of industrial and commercial waste. This means more than 320,000 local jobs, fuelling €5 billion of investments into the economy every year. For more information, please contact:

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