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Feedback on the draft amendments to state aid rules with respect to access to justice in environmental matters

We appreciate the European Commission's effort to address the findings of the Aarhus Convention Compliance Committee (ACCC) through the proposed amendments to the Code of Best Practices (BPC). While we acknowledge the importance of ensuring compliance with EU environmental law, we have concerns regarding the potential implications of the new internal review mechanism on business investment, competitiveness, and administrative burden.

1. Impact on Investment and Business Competitiveness

The introduction of an internal review mechanism creates legal and financial uncertainty for businesses that rely on State aid for investment projects, particularly those supporting the EU's green and digital transitions. The risk of prolonged reviews and legal disputes could deter investors, leading to project delays or cancellations. This is particularly concerning for industries with high upfront costs and long-term returns, such as renewable energy and infrastructure development. Such delays would also run counter to the EU's objectives of investing in these strategic projects.

2. Administrative and Compliance Burden

The new procedure will likely increase administrative and compliance costs for businesses, requiring additional legal assessments and documentation to mitigate the risk of potential internal reviews. The requirement for Member States to confirm that the aided activity does not contravene EU environmental law adds another layer of bureaucracy, which may slow down the process and burden public authorities.

3. Risk of Procedural Abuse and Delays in Strategic Projects

While we support access to justice and environmental protection, we are concerned that the new procedure could be exploited to delay or block projects through repeated

review requests and legal challenges. The proposed draft regulation amending the State Aid Implementing Regulation does not provide safeguards to prevent misuse of the procedure.

The Green Transition requires significant public and private investment, and State aid is a crucial enabler of this process. The additional review mechanism could slow down the deployment of key environmental projects, such as offshore renewable energy, which (while contributing to sustainability) may themselves have environmental implications. Compliance with EU environmental law should be ensured, but it must be balanced against the need for regulatory certainty and investment security.

Therefore, we call on the European Commission to:

1. Introduce procedural safeguards to prevent abuse of the review process and ensure that only well-substantiated cases are considered.
2. Ensure that review requests do not automatically delay or suspend State aid approvals, particularly for time-sensitive and crisis-related projects.
3. Consider a risk-based approach where only projects with significant environmental impact are subject to review.
4. Monitor the implementation of the new procedure closely to assess its real-world impact on business investment and competitiveness.

For questions or more detailed information please contact EU Affairs Manager [REDACTED] and Head of Projects & Sustainability [REDACTED] on infobrussels@mbb.org.mt

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