


From: 
To: [COMP A3 HT.6062 CONSULTATION](#)
Cc: [COMP STATE AID GREFFE](#)
Subject: HT.6062_Reply_from_a_company
Date: jeudi 20 mars 2025 15:51:50
Attachments: [image001.png](#)
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Dear Sir or Madam,

BusinessEurope is concerned about the draft amendments to the State aid Implementing Regulation (EC) No 794/2004 and the State aid Best Practices Code (BPC), to create a new mechanism which allows members of the public to request a Commission review of certain State aid decisions to establish whether they contravene EU environmental law.

The consequences of further expanding the current possibilities to review and appeal State aid decisions in cases where the Commission has conducted a formal investigation procedure would lead to increased legal uncertainty, longer procedures and increased administrative burden, which would make investments riskier. This could delay the transition to a more sustainable energy supply, as it is to a large extent investments in different kinds of fossil free energy production which are in scope and have been challenged by environmental organisations. It is important to simplify and speed-up State aid proceedings, especially in these cases, because when cases take a long time, it creates legal uncertainty which discourages investment. Delivering decisions within business-relevant timelines is vital.

BusinessEurope strongly supports effective State aid control to secure fair competition in the internal market. Clear State aid rules are fundamental to ensure a level playing field and ensure that State aid expenditure is kept at reasonable levels, targeting market failures. We also support transparency about aid granted within the EU on an individual basis. There should be updated information about all granted State aid measures (including related individual aid decisions and aid spending) that is easy to use. However, State aid procedures should be streamlined and speeded-up as is also acknowledged by the Commission. The creation of a new mechanism, with the possibility to appeal to the Court of Justice which could add years of uncertainty, would undermine this objective.

The Aarhus Convention has an important function of ensuring the public's access to information, participation in decision-making, and access to justice in environmental matters. There is however good reason why the EU competition rules, including State aid procedures, are excluded in the Aarhus regulation which implements the Convention in the EU. State aid proceedings are of a specific nature, setting up a bilateral relationship between the Commission and the Member State where expedient case handling, legal certainty, and a safe handling of business sensitive information are fundamental. It must be remembered that a State aid decision *per se* is not an approval of a project that could have environmental effects. It is merely a decision regarding the Member State(s) concerned approving the envisaged State financing of a specific project, which should be legal under relevant EU and national legislation. We therefore question the legality of the Compliance Committee's interpretation of the Convention. Moreover, the environmental consequences of an activity will be reviewed in accordance with existing environmental legislation, for example through permit processes in courts. Within these processes, the Aarhus Convention already grants the public an extensive right to access

information, participate in the decision-making process, and access to justice in relation to the activity. State aid at its core is about the Member States fulfilling certain terms and conditions meant to limit the distortion of competition and trade between Member States, and the Commission assessing relevant information. The conditions focus on the form and amount of aid.

We urge the Commission to safeguard the special role that State aid control has within the EU, not least in times when extensive investments and regulations are aimed at bringing about a rapid transition to a net-zero industry and a sustainable society.

SENIOR ADVISER
LEGAL & ECONOMICS DEPARTMENT

BUSINESSEUROPE

168 AVENUE DE CORTENBERGH
1000 BRUSSELS - BELGIUM
Tel : +32 (0) 2 237 65 55

e.berggren@businessseurope.eu

www.businessseurope.eu

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