

Brussels, 20 March 2025

## Greenpeace Submission to Public Consultation on State Aid Access to Justice

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### Introduction

Greenpeace welcomes the opportunity to contribute to the public consultation on the draft amendments to the State Aid Implementing Regulation (EC) 794/2004 and the State Aid Best Practices Code concerning access to justice in environmental matters. The proposal represents an important step towards compliance with the Aarhus Convention, particularly in light of the Compliance Committee's findings in ACCC/C/2015/128.

While we acknowledge the European Commission's commitment to adopting new rules and procedures, we urge additional improvements to ensure that access to justice is effective, fair, and aligned with EU and international legal obligations.

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### Positive Aspects of the Proposal

Greenpeace supports the following elements of the proposed amendments:

- **Introduction of an Internal Review Mechanism:** The establishment of an internal review process for State aid decisions provides an essential avenue for environmental NGOs and civil society to challenge decisions that fail to comply with environmental law.
  - **Judicial Review at the CJEU:** The ability to challenge negative review decisions before the Court of Justice of the European Union (CJEU) represents a significant improvement in legal remedies available to environmental organizations.
  - **Alignment with Regulation 1367/2006:** The eligibility criteria for environmental NGOs and procedural elements are largely consistent with the Aarhus Regulation, ensuring that well-established access to justice principles are upheld.
  - **Inclusion of a requirement of compliance with Environmental Law in Notification Forms:** The requirement for Member States to confirm that aid measures do not contravene environmental law will facilitate compliance and enhance transparency and accountability.
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### Key Concerns and Areas for Improvement

#### 1. Clarification of the Burden of Proof

The proposed text (paragraph 92 of the Code) appears to place the burden of proof disproportionately on NGOs by requiring them to demonstrate specific breaches of environmental law. This contradicts existing case law that recognizes the asymmetry of information between the Commission and the public. Greenpeace urges the Commission to explicitly acknowledge that NGOs need only raise sufficient doubts about compliance, triggering an obligation for the Commission to investigate further.

## **2. Page Limit Restrictions**

The proposed 10-page limit (para 93 of the Code) for submissions is excessively restrictive compared to the 50-page limit under Regulation 1367/2006. Greenpeace recommends increasing the limit to 50 pages to ensure that NGOs can adequately present legal and factual arguments.

## **3. Suspension of Time Limits**

The suspension of the Commission's response deadlines (paras 93-95 of the Code) when consulting applicants and Member States could lead to undue delays. Greenpeace recommends maintaining firm time limits to ensure legal certainty, timely access to justice and prevent excessive procedural delays.

## **4. Right to Challenge Omissions**

The proposal does not provide a mechanism to challenge the Commission's failure to act (e.g., failure to monitor compliance with aid schemes or investigate unlawful aid). Greenpeace recommends introducing a provision allowing NGOs to seek judicial review of such omissions. In addition Greenpeace also recommends providing access to the CJEU in case the Commission omits to reply to a request within the prescribed time-limits, ensuring full compliance with Article 9(3) of the Aarhus Convention.

## **5. Eligibility Criteria for Applicants**

The proposal restricts access to justice to environmental NGOs, excluding other members of the public who may have legitimate interests in challenging State aid measures that contravene environmental law. Greenpeace calls for a broader scope of eligible applicants, in line with the Compliance Committee's recommendations.

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## **Conclusion**

While Greenpeace acknowledges the Commission's efforts to improve access to justice in State aid matters, we stress the need for additional reforms to ensure that the new framework is truly effective. We urge the Commission to address the identified shortcomings and adopt measures that fully comply with the EU's obligations under the Aarhus Convention. We appreciate the opportunity to contribute to this consultation and remain committed to advocating for stronger environmental governance and accountability within the EU's State aid framework.

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