

Contribution of the CEZ Group to 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

In accordance with the recommendation of the Aarhus Convention Compliance Committee of 2015 (ACCC/C/2015/128), the State Aid Implementing Regulation (794/2004) is being amended to introduce an internal review procedure of EC decisions granting state aid under Article 107(3) TFEU to check whether these administrative acts are compatible with EU environmental law.

On behalf of CEZ Group, we perceive the following risks associated with the proposal to the amendment of the public aid rules with a new mechanism of internal review procedure, especially in relation to the addition of the State Aid Best Practice Code (BPC):

The request for an internal review of the EC's decision declaring a measure which has the characteristics of State aid compatible with the internal market goes beyond the broad legislative possibilities of EU law and, in particular, the established practice of judicial review of such acts by the General Court/Court of Justice of the EU. This is also confirmed by paragraph 99, which provides that *"An non-governmental organization (NGO) which has submitted an application for internal review in accordance with paragraph 79 may bring an action before the Court of Justice in accordance with the Treaty on the Functioning of the EU."*

It is not clear from paragraph 83 that an NGO represented by a lawyer must also meet the criteria set out in paragraph 80 or submit the documents referred to in paragraph 81.

We do not consider it sufficient if the requirements set out in point 80(c) of the part after the hyphen are demonstrated simply by attaching the annual report for the last two years (point 81(b)). We believe that a clear list of the NGO's activities in the last two years, from which their active involvement in within the EU is clearly evident, should be provided.

In particular, the scope of internal review procedure of EC decisions in the field of state aid is very broad. Paragraph 84 mentions all relevant areas of State aid under Article 107(3)(a) to (e) TFEU. In the light of the EU's ambitious climate policy objectives and its international commitments, it would certainly be appropriate to exempt measures consisting of the granting of State aid that contribute significantly to decarbonizing the EU economy, strengthening its global competitiveness or supporting large-scale cross-border infrastructure projects from possible internal review procedure.

Formally, we welcome the BPC requirements on the content and scope of an request for an internal review. However, paragraph 86, which sets out the maximum extent of the submission, does not indicate the consequences for the applicant of failing to comply with this extent.

The internal review of the challenged State aid decision itself (paragraph 92) lacks any aspect of any administrative discretion by the EC, as well as the consequences associated with a breach of the provisions of EU environmental legislation. If the EC finds that the decision in question has infringed EU environmental law, it should also be able to assess the extent of that infringement, its consequences, as well as the benefits of the State aid under internal review.

From a procedural point of view, the proposal to amend the BPC can be criticized for excessive time limits, both on the part of the NGOs for initiating an internal review procedure (paragraph 96) and on the part of the EC for providing a reply to the NGO's complaint (paragraphs 97 and 98). Such a lengthy time limit of more than six months creates legal uncertainty for the beneficiaries of the aid and also extends the implementation time of the projects implemented with the aid. In addition, some key deadlines (e.g. the deadline for submitting an internal review request in paragraph 96) are very

vaguely formulated and the Code does not specify the consequences in case of non-compliance).
From the point of view of legal certainty, this deadline should be a time expiry.