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COMMISSION STAFF WORKING DOCUMENT

STAKEHOLDER CONSULTATION - SYNOPSIS REPORT

providing an overview of the call for evidence and consultations

Accompanying the document

STAFF WORKING DOCUMENT

accompanying Commission Implementing Regulation (EU) .../... amending Regulation (EC) No 794/2004 as regards an internal review mechanism to follow up on the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2015/128 and other procedural updates
and
Communication from the Commission - Code of Best Practices for the conduct of State aid control procedures
following the findings of the Aarhus Convention Compliance Committee in case ACCC/2015/128

{C(2025) 2822 final} - {SWD(2025) 118 final}

INTRODUCTION

This Synopsis Report (the 'Report') provides an overview of the consultation activities[1] organised by the European Commission on (i) the impacts of a new review procedure in relation to some State aid decisions to address the Aarhus Convention Compliance Committee ('ACCC') findings in case ACCC/C/2015/128[2] (the call for evidence published on 30 May 2024 and of the targeted consultation launched on 1 July 2024) and (ii) the draft amendments to the State aid Implementing Regulation (EC) No 794/2004[3] (the 'IR') and the State aid Best Practices Code[4] (the 'BPC') (the public consultation launched on 7 February 2025).

The Report is structured in two parts: Chapter I provides an overview of the consultation activities carried out in 2024 (the call for evidence and targeted consultation) while Chapter II provides an overview of the public consultation carried out in 2025.

The Report accompanies the Commission Staff Working Document accompanying the Commission Implementing Regulation (EU) .../... of XXX amending Regulation (EC) No 794/2004 and the Communication from the Commission - Code of Best Practices for the conduct of State aid control procedures following the findings of the Aarhus Convention Compliance Committee in case ACCC/2015/128.

CHAPTER I

I.1 CONSULTATION

I.1.1 Consultation objectives

The purpose of the consultations was to gather information on the potential impacts of a new review procedure aiming to address the findings of the ACCC concerning access to justice in relation to State aid relevant decisions that would allegedly contravene EU law in environmental matters.

I.1.1.1 Call for evidence

[1] This report should be regarded solely as a summary of contributions submitted to the call for evidence and the targeted and public consultations on a Procedure for access to justice in environmental matters in relation to State aid decisions. It cannot in any circumstances be regarded as the official position of the Commission or its services. Responses to the consultation activities cannot be considered as a representative sample of the views of the EU population.

[2] ACCC/C/2015/128 European Union | UNECE

[3] Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 140, 30.4.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/794/2016-12-22.

[4] The Best Practices Code is a Commission Communication providing guidance to Member States, aid beneficiaries and other stakeholders on how State aid procedures work in practice. It aims to make State aid procedures as transparent, simple, clear, predictable and timely as possible, while also improving procedures where appropriate. The Best Practices Code is available at: Code of Best Practices for the conduct of State aid control procedures (europa.eu).

The call for evidence[5] sought the views of the stakeholders and the public on an initiative that would aim to introduce a new procedure providing access to justice in environmental matters linked to EU State aid decisions.

In particular, the call for evidence called for views on the elements the Commission should pay attention to when developing this new procedure (the length of the procedure, its impacts on the implementation of EU policies, on investments conditions and administrative burden) and on its design (scope of the decisions, applicable deadlines). The Commission also invited stakeholders and the public to comment and come forward with any other relevant views.

I.1.1.2 Targeted consultation

The targeted consultation sought to collect the views of the business community and the relevant public authorities in order to assess the impact of a new review procedure on several aspects, notably the implementation of EU policies, investment decisions and project implementation by the business community.

Additionally, the consultation aimed to examine the potential administrative burden and cost implications for businesses and Member States of such a review procedure. Particular attention was given to the procedure's compatibility with the specific characteristics of State aid, in order to ensure that any adjustment would preserve the efficiency of State aid control and would be aligned with the goals of economic stability and Green and Competitive Transition.

I.1.2 Description of the consultation process

I.1.2.1 Background of the consultation process

On 12 July 2021, in the context of the revision of the Aarhus Regulation, the Commission committed to addressing the ACCC findings by conducting a comprehensive analysis of the implications and evaluating available options within the framework of Union law concerning State aid[6].

Following extensive stakeholder consultations in 2022, the Commission adopted a Communication on 17 May 2023[7] outlining three options to address the findings of the ACCC[8]. The Communication highlighted stakeholders' differing views on the proposed options, emphasizing the need for further assessment to find an optimal solution. The Commission issued a Synopsis Report[9] alongside the Communication, offering a comprehensive overview of the input received across the consultations.

I.1.2.2 Call for evidence

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[5] The call for evidence is available on the following page : EU environmental and State aid law – access to justice in relation to State aid decisions (regulation)

[6] The Commission statement is available on the following page: https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/ENVI/DV/2021/08-31/Commissionstatement-stateaid_EN.pdf

[7] COM(2023)307 of 17 May 2023

[8] Option 1 involves amending the Aarhus Regulation to include State aid within the scope of its internal review process. Option 2 proposes amending the Code of Best Practices for State aid control procedures to introduce an internal review process similar to the one under the Aarhus Regulation, alongside amendments to the State aid Implementing Regulation. Option 3 suggests amending the Council Regulation on State Aid Procedures to establish an internal review process similar to the one under the Aarhus Regulation.

[9] Synopsis Report SWD(2023) 307 final

On 30 May 2024, the Commission published on the 'Have Your Say" portal, a 'Call for evidence', available in all official EU languages. The consultation period ran from 30 May to 27 June 2024 (4 weeks).

During the consultation period, the Commission received 25 replies. Two additional *ad hoc* contributions were submitted separately via email to the Commission services.

The consultation was open to all interested stakeholders, welcoming feedback from environmental NGOs, Member States, national authorities responsible for environment, national authorities responsible for State aid, other public authorities, companies, trade and businesses or professional associations, individuals and any other stakeholder.

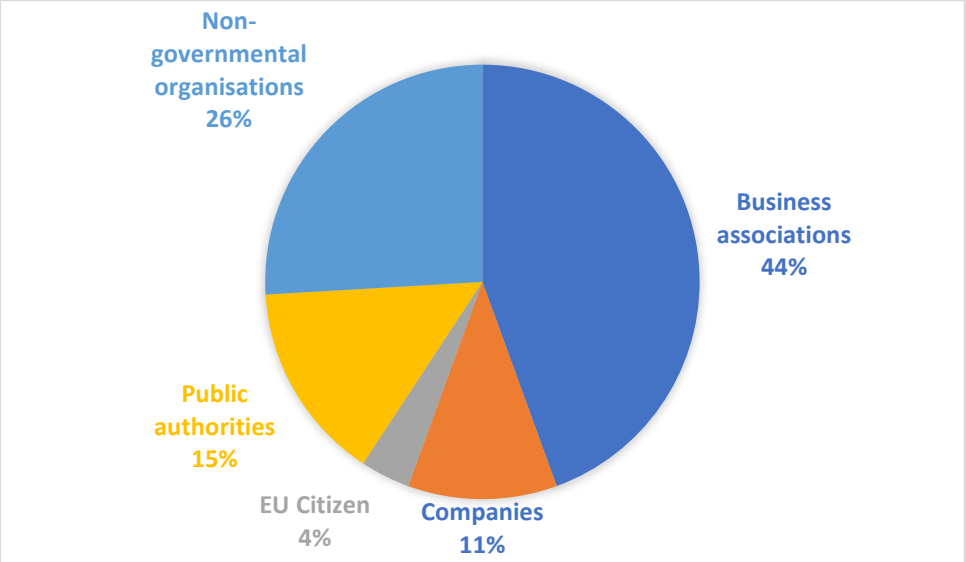
The relevant stakeholder groups that participated in the consultation are outlined below in **Table 1** and **Graph 1**.

As shown in Table 1 below, responses were provided by a variety of stakeholder types, namely business associations (48%, 13/27), NGOs (22%, 6/27), public authorities (15%, 4/27), undertakings (11%, 3/27) and EU citizen (4%, 1/27). As regards the four public authorities that replied to the Call for evidence, three of them represented State aid/investments authorities, while one represented an environmental authority.

Table 1: Respondent stakeholder types

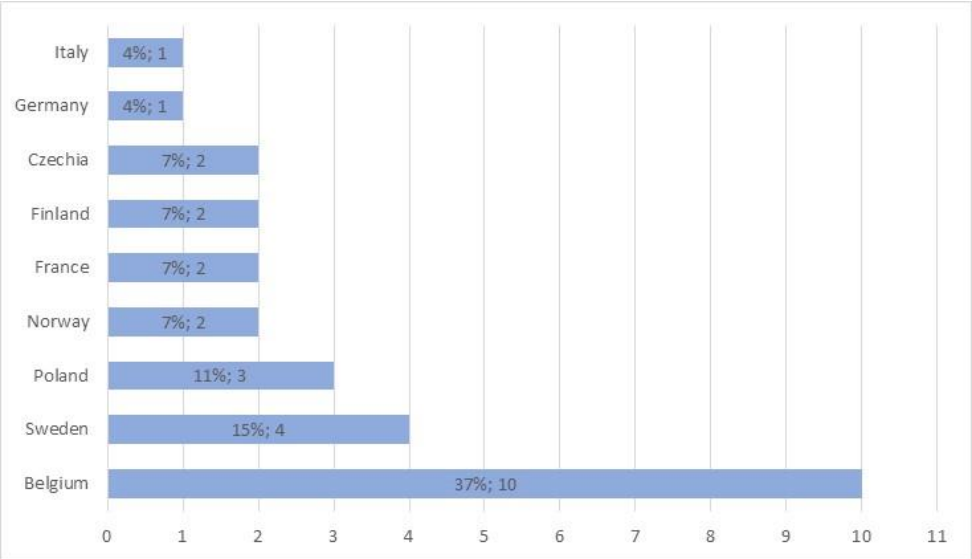
Stakeholder types	**Count**
Business association	12
Company	3
EU citizen	1
Non-governmental organisation (NGO)	7
Public authority	4
Total	**27**

Graph 1: Categories of participants



Graph 2 displays responses by country of origin. In total, responses were from 8 (8/27) EU Member States and 2 (2/27) responses from Norway. Most of the responses were received from Belgium (37%, 10/27), followed by Sweden (15%, 4/27) and Poland (11%, 3/27).

Graph 2: Respondents by country of origin



I.1.2.3 Targeted consultation

On 1 July 2024, the Commission launched the targeted consultation, advertised on its website. The questionnaire in English language was directly sent to the targeted stakeholders. The consultation period was open from 1 July 2024 to 6 September 2024, with some extensions granted by the Commission services until 13 September 2024 upon request.

For the purposes of the targeted consultation, the Commission services developed a questionnaire and sought input from the following stakeholders:

- Undertakings of different sizes and sectors;
- Business associations of different sizes and sectors, including but not limited to those covering the energy, transport, digital and electronic communications and the agricultural sector;
- Public authorities dealing with State aid and environmental matters.

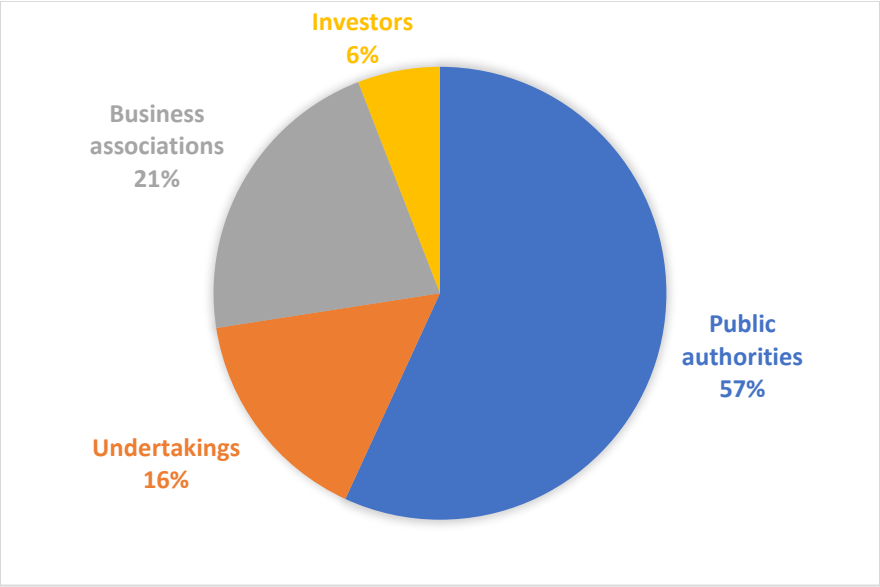
Across the consultation period, the Commission received 51 valid replies via the EU Survey Portal. Four additional *ad hoc* contributions have been submitted separately via email to the Commission services.

As shown in **Table 2** below, responses were provided by a variety of stakeholder types, namely public authorities (56%[10] or 29/51), undertakings (17% or 8/52), business associations (21% or 11/51) and investors (6% or 3/51). As regards public authorities, 69% (20/29) of the respondents represented State aid/investments authorities, while 31% (9/29) represented environmental authorities.

Table 2: Respondents by profile

Stakeholder groups	**Count**
Public authorities	29
Undertakings	8
Business associations	11
Investors	3
Total	51

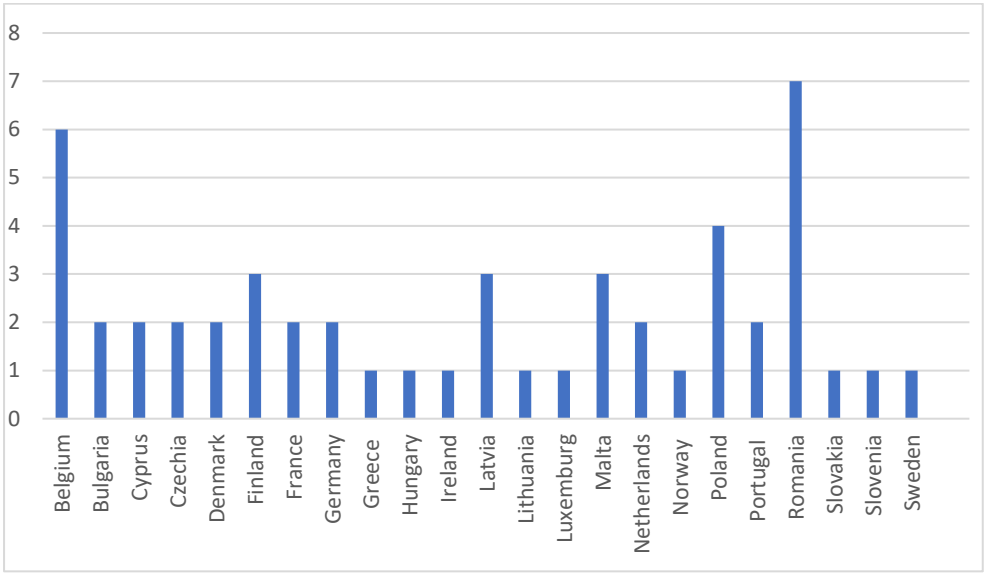
Graph 3: *Respondents by profile*



[10] Throughout the Report, percentages have been rounded, for convenience purposes.

Graph 4 displays responses by country of origin. In total, responses were from 23 EU Member States. Most of the responses were received from Romania (14%, 7/51) Belgium (12%, 6/51), followed by Poland (8%, 4/51).

Graph 4: Respondents by country of origin



I.2 RESPONSES

I.2.1 Short summary of the call for evidence

I.2.1.1 Views on the development of a new procedure providing access to justice in environmental matters linked to EU State aid decisions ('new procedure')

Out of the twenty-seven respondents, twenty-four respondents (89% or 24/27) expressed their **position on the initiative** of the Commission to develop a new procedure to address the findings of the ACCC regarding access to justice within the EU legal landscape, while three respondents (11% or 3/27) remained neutral and did not take a position on the initiative.

More than a half of the respondents (59% or 16/27) indicated that they are **supporting the Commission** on this initiative.

29% (8/27) considered that the **EU legal framework should not be amended**.

In this respect, some respondents questioned the legal basis for the proposed changes, citing a lack of clear support in both the Aarhus Convention and EU law. Moreover, few respondents also mentioned that such procedural extension to State aid decisions could distort the primary objective of the Aarhus Convention.

Regarding **which type of new procedure should be developed**, 22% (6/27) of the respondents consider that Option 1 should be followed, while 15% (4/27) favour Option 2 and 11% (3/27) Option 3. 7% (2/27) consider that none of the options identified by the Commission are suitable.

One third (33% or 9/27 respondents) of the respondents did not provide their view on this point.

I.2.1.2 Identified impacts concerning the development of a new procedure

74% (20/27) of the respondents expressed their views on the **likely impacts of a new procedure**, while 26% (7/27) of the respondents did not take a position on this point.

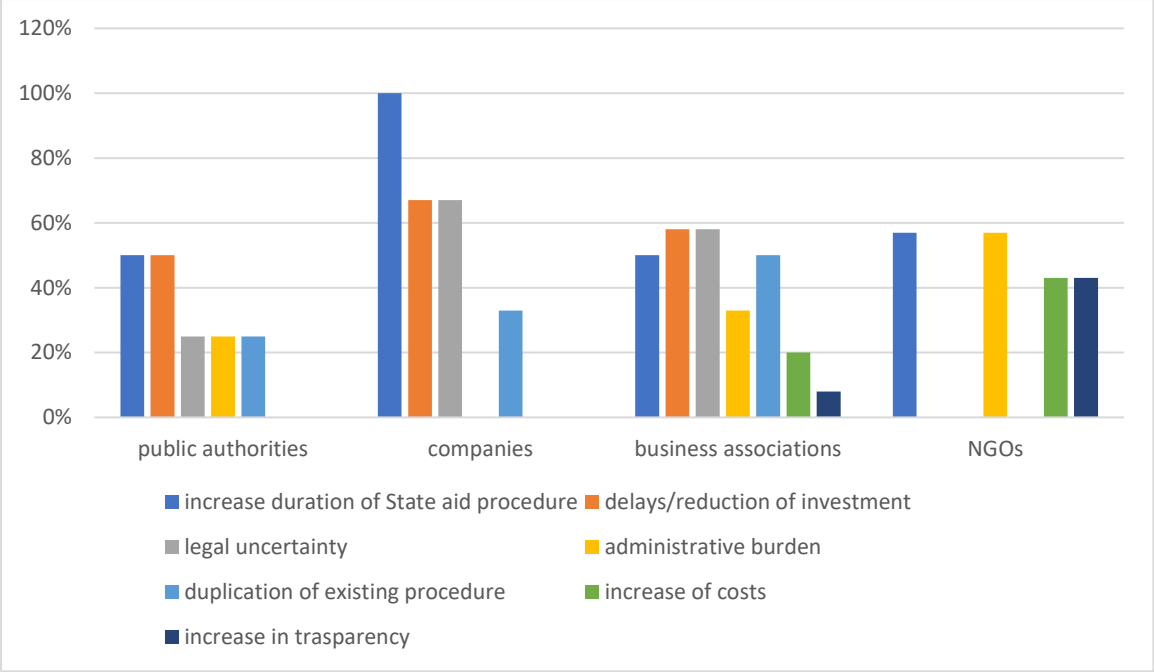
As regards the likely impacts of a new procedure:

- 56% (15/27) of the respondents (half of the public authorities (2/4), all companies (3/3), half of the business associations (6/12) and some NGOs (4/7)) mentioned the **increased duration of the State aid procedure**.
- 41% (11/27) of the respondents (half of the public authorities (2/4), almost all companies (2/3) and almost two-third of the business associations (7/12)) mentioned **possible delays or reduction of investments** and its subsequent negative impact on EU competitiveness and the green transition.
- 37% (10/27) of the respondents (one public authority (1/4), almost all companies (2/3), and almost two-third of the business associations (7/12)) mentioned the **legal uncertainty**.
- 33% (9/27) of the respondents (one public authority (1/4), some business associations (4/12) and some NGOs (4/7)) mentioned **administrative burden**.
- 29% (8/27) of the respondents (one public authority (1/4), one company (1/3) and half of the business associations (6/12)) mentioned the **duplication of existing procedures**.
- 18% (5/27) of the respondents (two business associations (2/12) and some NGOs (3/7)) mentioned an **increase of costs** for stakeholders.

- 15% (4/27) of the respondents (one third of the business associations (4/12)) mentioned a threat to the **property right** guaranteed by the EU Charter of fundamental rights.
- 15% (4/27) of the respondents (some NGOS (3/7) and one business association (1/12) mentioned an increase of **transparency** in State aid control if a new procedure was introduced.
- 11% (3/27) of the respondents (some NGOS (3/7)) mentioned the possibility for NGOs to submit an internal review request of State aid decisions in the public interest.
- 7% (2/27) of the respondents (two NGOs (2/7)) mentioned the **detection of infringements** of EU environmental law at an early stage.

Graph 5 presents the likely impacts identified by each category of stakeholder.

Graph 5: Likely impacts of a new procedure



I.2.1.3 Suggestions regarding the design of a new procedure

Regarding the need to **pay particular attention to the special characteristics of State aid law** in the design of the new procedure, 52% (14/27) of the respondents (almost all public authorities (3/4), all companies (3/3), two-third of the business associations (8/12)) consider that it is necessary, while 18% (5/27) of the respondents (almost all NGOs (5/7)) had the opposite view. 30% (8/27) did not express their view on that point.

Regarding the aim of **ensuring that the new procedure is proportionate and maintaining the efficiency of State aid control**, 67% (18/27) of the respondents (half of the public authorities (2/4), all companies (3/3), almost all business associations (11/12) and some NGOs (2/7)) consider that it is necessary, while 33% (9/27) of the respondents (half of the public authorities (2/4), one business association (1/12), almost all NGOs (5/7) and one citizen) did not express their view on that point.

56% (15/27) of the respondents made **suggestions to reduce the likely impacts** of a new procedure:

- 26% (7/27) of the respondents suggest subjecting the eligibility of internal review requests to the compliance of conditions by the applicant (e.g. legitimate interest in lodging an internal review request).
- 18% (5/27) of the respondents suggest limiting the scope of State aid decisions that would fall within the scope of the new procedure.
- 18% (5/27) of the respondents suggest deferring the application of the new procedure for some months following its adoption and to limit its application to State aid cases notified after the adoption of the new procedure.
- 15% (4/27) of the respondents suggest reducing the period of examination of an internal review request.
- 11% (3/27) of the respondents suggest publishing summaries of State aid notifications to assess compliance at an early stage.
- 11% (3/27) of the respondents suggest accelerating the publication of State aid decisions in the Official Journal of the European Union.

I.2.1.4 Conclusion on the results to the call for evidence

The feedback received revealed that while there is broad support for the initiative, many respondents are concerned by its practical impacts, particularly the risk of lengthening processes and causing delays that could hinder investments, increase administrative burden and legal uncertainty.

It results also from the call for evidence that any new procedure should ensure transparency and effectiveness of State aid control. The majority of the respondents acknowledged in this respect the need to take into account the specific nature of State aid law in the design of the new procedure and made procedural suggestions in that sense.

I.2.2 Short summary of the targeted consultation

The questionnaire was structured in two parts, one addressed to undertakings, businesses associations and investors, and one addressed to public authorities dealing with State aid, investments and environmental matters.

Each question consisted of related sub-questions to encourage stakeholders to provide detailed responses.

I.2.2.1 Responses to the questionnaire addressed to undertakings, business associations and investors

Respondents[11] were asked to describe the **type of investment projects** their organisation was involved in. They flagged investments in, e.g. renewable energy projects and projects to achieve the green transition targets, most of which are aimed at decarbonization, construction of plants or infrastructures, generation and delivery of clean energy. **Most of the respondents** indicated that they **benefited or would like to benefit** of State aid in the future (86% or 19/22).

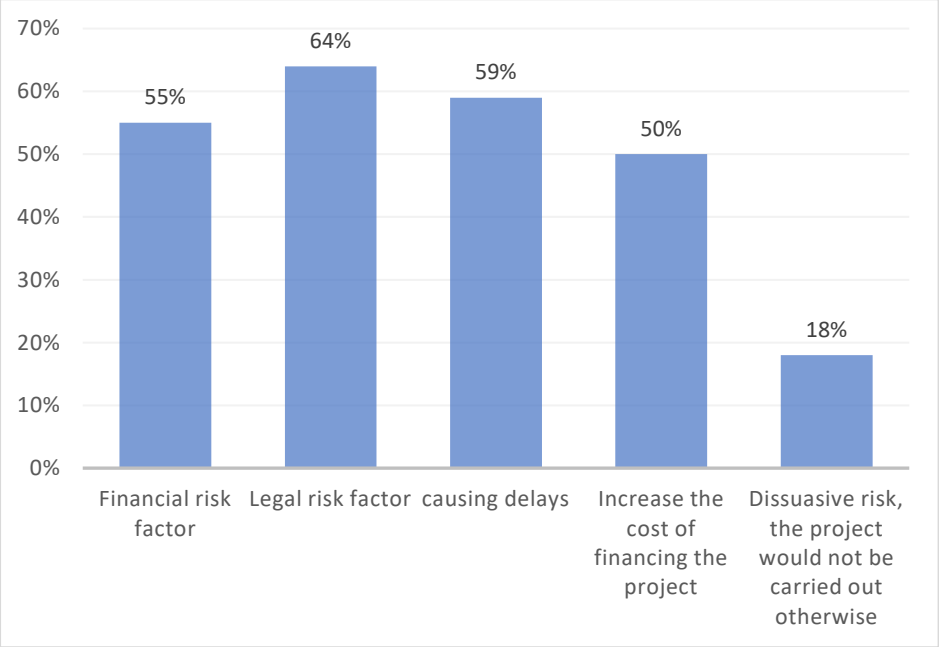
Over half of the respondents flagged that the following factors are **decisive for their investment** projects: **return on investments** and **related uncertainty** (55% or 12/22). **Few** mentioned the risks associated to regulatory framework (14% or 3/22), **half of the respondents**

[11] Not all respondents replied to all questions.

pointed at the current legislation (50% or 11/22), and **some** mentioned the possibility of receiving State aid (23% or 5/22). For **many** of the respondents, the **perspective of receiving State aid** was significant as **without the State aid the project would not go ahead** (41% or 9/22). **Over a third** of the respondents provided specific comments, for instance whether State aid is considered fundamental in some sectors (36% or 8/22), such as energy and mobility transformation or depending on the geographic location.

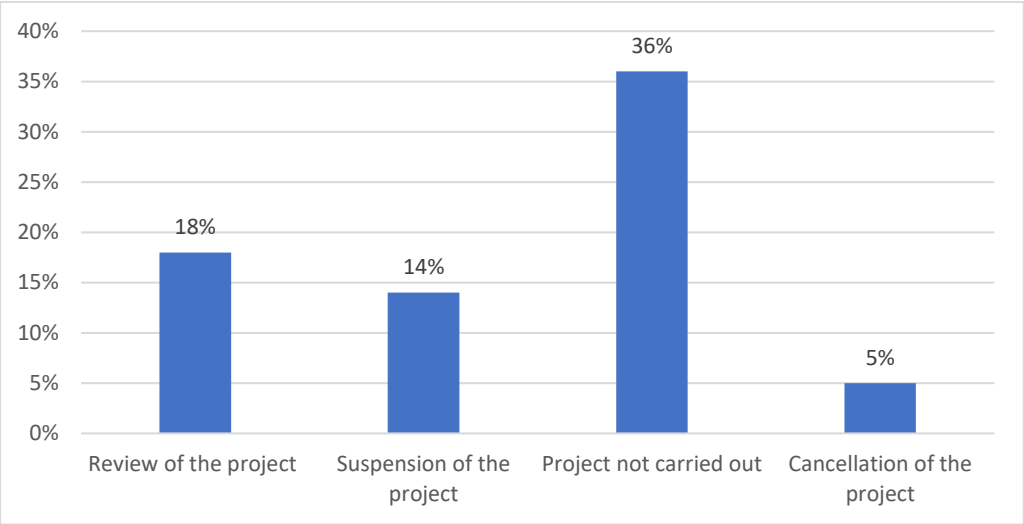
Many of the respondents, as shown in **Graph 6** below, were **concerned with a new procedure being introduced and considered it:** (i) an important financial risk factor (55% or 12/22) as well as an important legal risk factor (64% or 14/22); (ii) causing delays (59% or 13/22). **Half** indicated this would (iii) likely increase the cost of financing the project (50% or 11/22), and **few** mentioned this would (iv) be a dissuasive risk for the project, that would not be carried out otherwise (18% or 4/22). **Further explanations** have been given by some respondents, mainly related to the **uncertain effects** that a new procedure would bring.

Graph 6: Effects of a new review procedure



As shown in **Graph 7** below, **over a third of the respondents would not carry out the project** (36% or 8/22) if an **internal review request were submitted before the Commission. Some** respondents would **suspend** (14% or 3/22), **review** (18% or 4/22), or **cancel the project** (5% or 1/22 of responses) if an **internal review request were submitted before the Commission**. **Some** respondents gave specific explanations: their reaction would depend on the nature of the project (23% or 5/22), while **about a third of the** respondents consider that this may cause delays and decrease competitiveness of the sector (32% or 7/22).

Graph 7: Effects of an internal review request submitted before the Commission on the implementation of the project



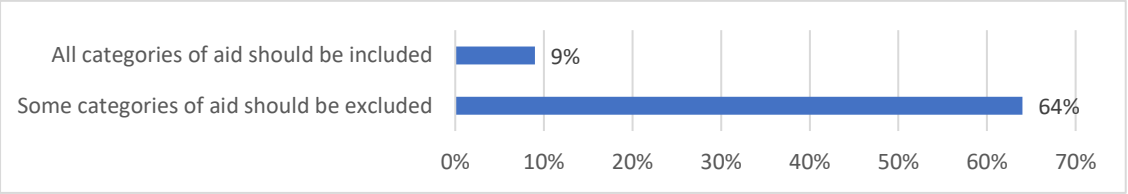
As regards a **possible pending challenge of an internal review reply of the Commission before the EU Courts,** only a **few consider** that such a pending review would lead to the **cancellation of the project** (5% or 1/22), a **review of the original investment** (18% or 4/22), or a **suspension of the investment project** (14% or 3/22).

However, for **over one third of the respondents**, the **finding of an environmental EU Law breach** by the Commission would lead to the **cancellation** of the original investment project (36% or 8/22). **Some** would carry out a review of the investment project (18% or 4/22). **Other** respondents gave **specific explanations**: their reaction would differ depending on the Commission's assessment, whether the decision would be considered invalid or would lead to the introduction of remedies, and on the kind of investment being involved (27% or 6/22).

In terms of **scope of the acts that could be subject to an internal review**, a **majority of the respondents** believe that aid **decisions adopted under Article 107(2)(b) TFEU** (whereby State aid is granted to make good the damage caused by natural disasters or exceptional occurrences) or **decisions adopted under Article 107(3)(b)** (State aid aiming to remedy a serious disturbance in the economy of a Member State) **should not be subject** to the new procedure (64% or 14/22).

Graph 8 shows that the majority of the respondents are in favour of the exclusion of some categories of aid from the scope of a new procedure.

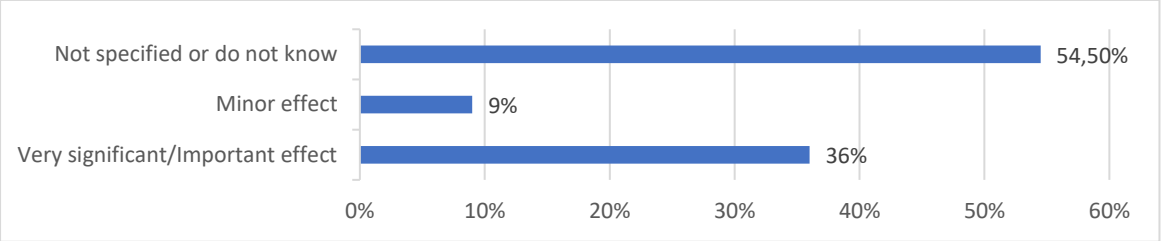
Graph 8: Views of stakeholders on the scope of an internal review



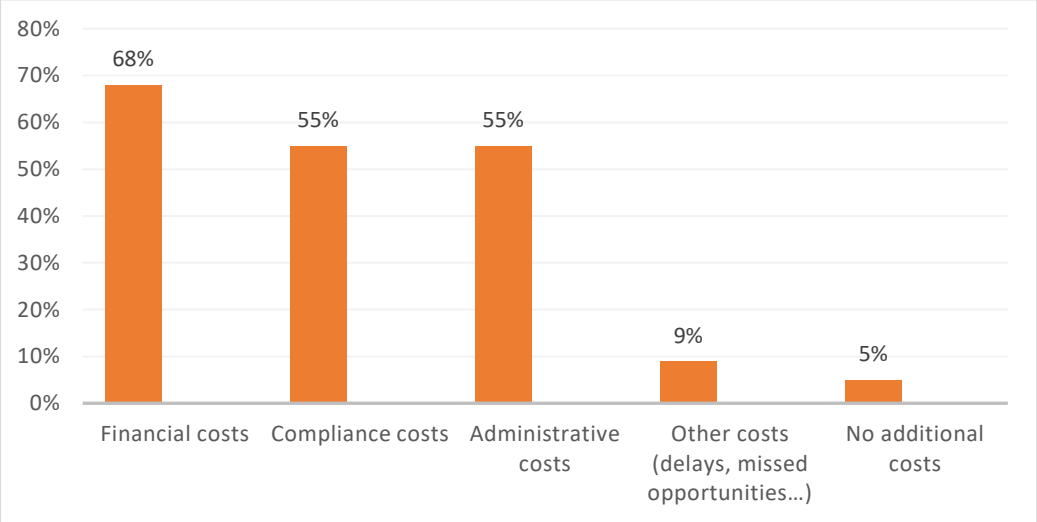
As shown in **Graph 9** below**, over one third** of the respondents said that **costs identified in connection to the new procedure would have a very significant or an important effect** on

their organisation's decision to go ahead with the investment (36% or 8/22). The different types of costs implied by the new procedure are presented under **Graph 10** below.

Graph 9: Effect of costs on the decision to go ahead with the investment project



Graph 10: Types of additional costs implied by the new procedure



Also, a **majority of the respondents** (77% or 17/22), believe that **the new procedure will not strengthen the protection of the environment**, and **will not bring added value for access to justice in view of protecting the environment** (68% or 15/22**). In relation to the possible effects of the new procedure on compliance with EU environmental law (considering also the existing environmental legal requirements), many respondents argue that the existing compliance with environmental regulations** would be already sufficient and opportunities for NGOs and individuals already exist to challenge projects receiving State aid. For instance, they can challenge the Strategic Environmental Assessment or Environmental Impact Assessments, and review or actively contribute to the authorisation procedures of projects impacting the environment.

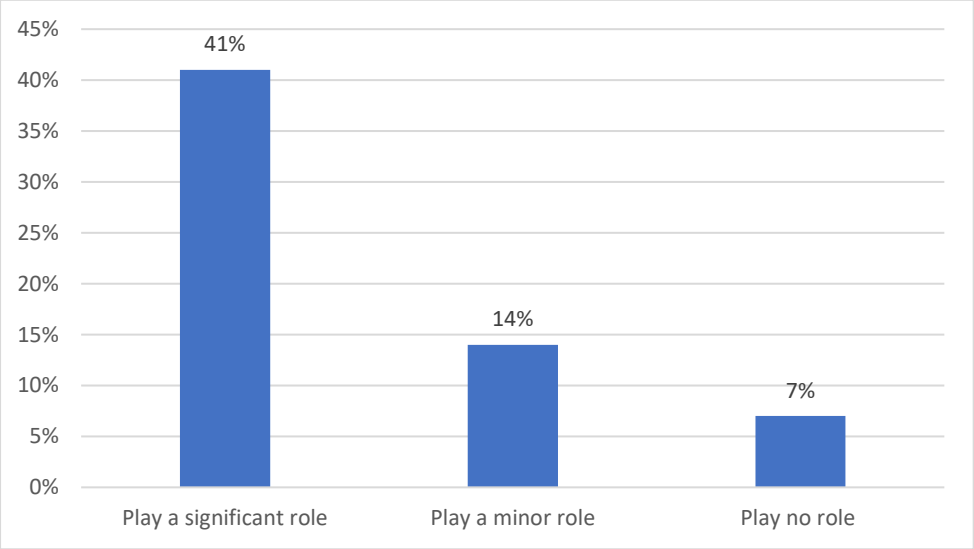
Over half of the respondents (59% or 13/22) identified a possible **overlap with existing procedures**, such as those related to **environmental permitting and possibilities by NGOs and individuals to legally challenge environmental permits.** One respondent considered there would be no duplication. For most of the respondents, it is not clear whether the Commission could be in a position of indirectly reviewing what Member States decided at national level (e.g. issuance of a permit to a company) and, in general, **how the new procedure would interact with the existing ones.**

A majority of the respondents (73% or 16/22) highlighted that their investments **comply with environmental regulations**, both at national and EU level. Many indicated that besides complying with **permitting requirements**, they carry out evaluations, audits, identify risks and have a transparent dialogue with all stakeholders.

I.2.2.2 Responses to the section of the questionnaire addressed to public authorities

Many of the public authorities[12] (41% or 12/29) believe that a new procedure would play a **significant role**, as it would *de facto* **suspend the implementation** of an aid measure in view of legal uncertainty, even if such a challenge does not have a suspensive effect. Only **a few believe** it would play a **minor role** (14% or 4/29) or **no role at all** (7% or 2/29) (see **Graph 11** below). The explanations are mainly related to the fact that a new procedure would lengthen the duration of the whole process and add legal and administrative burden.

Graph 11: Role played by a new procedure according to public authorities



The **sectors** considered by respondents as particularly concerned by the new procedure are, *inter alia*, renewable energy (28% or 8/29), transport and infrastructures (14% of respondents or 4/29), manufacturing, social services, and welfare (14% or 4/29).

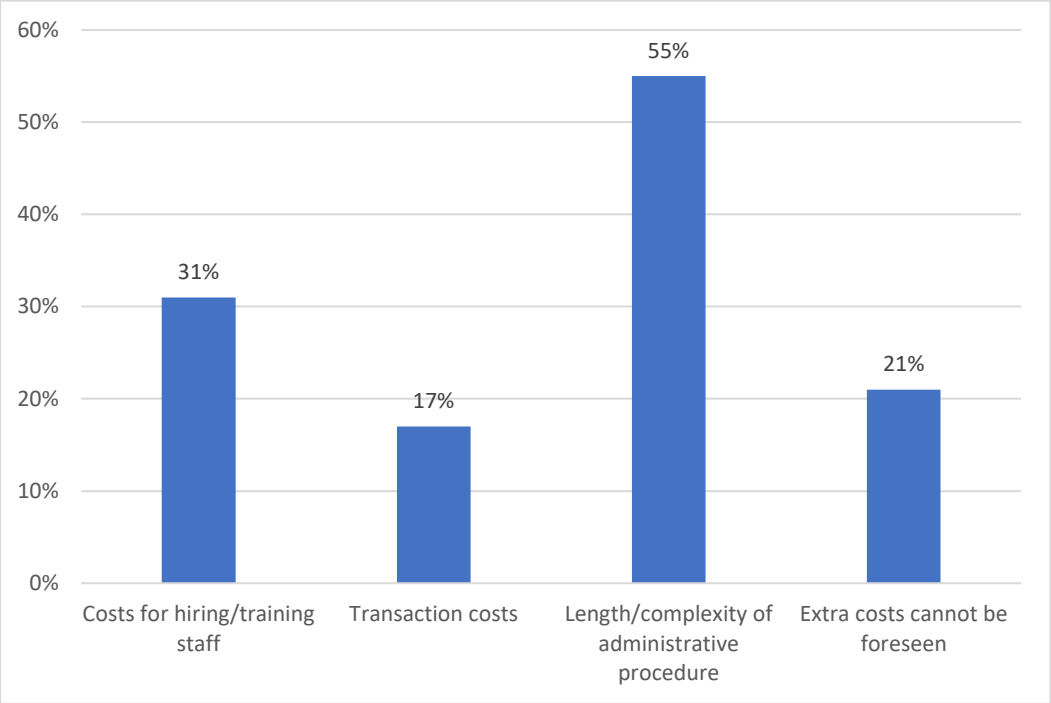
Public authorities are split as to whether a **commitment from the Member State in the State aid notification form** to verify and confirm compliance with environmental law provisions **would lengthen/make administrative procedures more complex** (48% of respondents or 14/29 admitting it would play an important role, while 41% of respondents or 12/29 claim it would play a minor role).

A **majority of the public authorities** (79% or 23/29) flagged an **increased administrative burden and/or cost** for the State aid granting authority. As shown in **Graph 12** below, the types of costs reported are: additional costs for hiring and training staff (9/29 or 31%), increased transaction costs (5/29 or 17%) and increased length and complexity of administrative procedures (16/29 or 55%). Some replies (6/29 or 21%) point out the fact that at the current stage the exact extent of the extra costs/administrative burden cannot be foreseen. **Many public authorities replying are confident that there are ways to reduce the cost** (41% or 12/29) if

[12] Not all respondents replied to all questions.

the new procedure sets reasonable time limits or excludes some types of State aid or State aid decisions.

Graph 12: Types of additional costs and administrative burden linked to the new procedure according to public authorities



Many of the public authorities (41% or 12/29) could **not see a way to shield SMEs or midcaps** from the extra costs related to the new procedure, while **others** (28% or 8/29) disagreed. **Some respondents** are suggesting exemptions from the new procedure based on company size, or the size of the respective investment projects.

Public authorities are **split** as to whether the new procedure would **improve access to justice** (38% or 11/29 say it would, while 41% or 12/29 believe it would not). Those in favour state that the procedure offers structured avenues for scrutiny and transparency, contributes to strengthening the legal framework for environmental protection and promotes accountability and responsiveness to environmental concerns in economic activities. The main argument of the public authorities who gave a negative response is that the procedure would duplicate the already existing procedures.

I.2.2.3 Common (open) questions for undertakings/business associations and public authorities

As regards possible **impact of the new procedure on EU competitiveness**, **a majority of undertakings** and **business associations** (approx. 72% or 16/22) **and some public authorities** (approx. 41% or 12/29) considered that a **new procedure would have an impact on EU competitiveness,** by e.g., increasing the cost of doing business, creating regulatory uncertainty, slowing down procedures, hampering investments, and putting EU firms at a disadvantage. Public administrations mainly flagged the fact that the new procedure **may hamper the agility of businesses, particularly affecting SMEs**, who would not be able to compete globally should there be delays in the approval of State aid.

As regards a possible **impact of the new procedure on the green transition**, **the majority of undertakings/business associations** (approx. 77% or 17/22) **expressed concerns** that a new review procedure might negatively affect investments; **less than a third of public authorities** (approx. 31% or 9/29) considered that the new review procedure **could promote** the green transition **but could equally pose challenges** in terms of **administrative burden** and **increased complexity**. **Few** of the public authorities (approx. 10% or 3/29) considered there would be **no significant impact**, but there can be **possible delays**, and that the possibility for members of the public to submit a review request could lead to the avoidance of environmentally harmful subsidies, which is essential for the green transition.

As regards **increasing compliance with EU environmental law**, **half of business** respondents consider the existing rules (e.g., Taxonomy, or rules related to the Cohesion Fund or the Recovery and Resilience Facility (RRF)) sufficient (50% or 11/22). **Public authorities' views are split** as to whether a new review procedure would increase compliance with EU environmental law, by embedding **environmental considerations** more deeply **into decision-making processes**, fostering a culture of environmental responsibility and proactive compliance (approx. 31% or 9/29), or whether rules and procedures to ensure compliance are already in place (approx. 34% or 10/29).

Finally, concerning **possible duplication of existing procedures**, **over half of undertakings / business associations** (approx. 59% or 13/22) and **many public authorities** (45% or 13/29) identified an **overlap with existing procedures. Few public authorities recognized a duplication potential**, that would depend on the **overlap with current regulatory frameworks (approx. 17% or 5/29)**. **Other public authorities** do not think that the new procedure would duplicate existing ones (approx. 14% or 4/29), or just to a minor extent (approx. 7% or 2/29) and explain their answers by stating that a review process at EU level is not available at present for NGOs and the public.

Some public authorities noted that **full compliance with environmental law is already a requirement** (approx. 28% or 8/29) and would therefore be a duplication of existing procedures. **One authority** believes there would be **no duplication** *a priori*, however, further assessment is **needed** to avoid superfluous and costly duplication of effort, with no real positive impact on the green transition**.**

Respondents could make **general comments**. Some mentioned the importance of **having strict deadlines and clear guidelines**, in case of implementation of the amendment, to ensure legal certainty and reassure investors. Other respondents, including both public authorities and business associations, state that, while the **amendment may enhance compliance with environmental laws and access to justice**, **safeguards must be introduced to avoid misuse** of the procedure.

I.2.2.4 Conclusion on the results to the targeted consultation

Overall, the following trends emerge. The business community and public authorities are aligned in expressing concerns that a new review procedure would have a negative impact on EU competitiveness. However, their views differ on the impact on the green transition. While the business community consider that a new review procedure may affect investments and therefore negatively impact the green transition, some public authorities consider that the new review procedure could promote the green transition.

In addition, the consultation revealed that for a significant part of the business community and some public authorities the creation of a new review procedure will duplicate existing procedures already in place at national level or could create a risk of overlap.

However, depending on their field of economic activity and their size, stakeholders do not seem to be equally exposed to the new review procedure: SMEs or companies active in the renewable energy sector could be more exposed than others.

I.3 CONCLUSION

The call for evidence and the targeted consultation generated limited feedback from stakeholders. The consultations revealed that, all non-governmental organisation, many public authorities and some companies are supportive of the Commission's initiative to introduce a review request mechanism.

Albeit the Commission's initiative is supported in order to comply with the ACCC findings, the views on the framework to be established vary depending on the stakeholders and their specific concerns.

The views are split on the impacts of such review mechanism: while the negative impact of a new review procedure on investments, EU competitiveness and the green transition is most prominent for the business community, there is acknowledgment from some public authorities that it may bring some benefits to the green transition. Many of the respondents also consider that it may increase transparency while it will create legal uncertainty and increase costs and administrative burden.

To counterbalance the negative aspects identified by the respondents (increase of complexity, costs and duplicating existing procedures) of a new review procedure, most of the respondents called for maintaining the efficiency of State aid control and opting for a proportionate solution.

CHAPTER II

II. 1 CONSULTATION

II.1.1 Consultation objectives

Following the outcomes of the consultation activities described in Chapter I, the Commission worked on amendments to the IR and the BPC for setting up a new review 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 public consultation was launched by the European Commission on 7 February 2025. The purpose of the consultation was to seek the views of stakeholders on the draft amendments to the IR and the BPC setting up the new review mechanism specific to the State aid system.

In the amended BPC, the Commission proposed the arrangements for this new review procedure, such as who can request the review, which decisions can be subject to the review, and the applicable deadlines. A form for the submission of an internal review

request was also annexed to the draft Regulation amending the IR. Furthermore, the draft amendment of the IR foresees a confirmation of the Member States that the aid measure and the aided activity comply with EU environmental law, according to the case law.

II.1.2 Description of the consultation process

On 7 February 2025, the Commission launched the public consultation[13], advertised on its website. The consultation period was open until 21 March 2025, with some extensions granted by the Commission services until 24 March 2025 upon request.

For the purposes of this consultation, the Commission services published the draft amendments to the IR and to the BPC. The documents were made available in English language.

The Commission sought input from the following stakeholders: Member States and/or public authorities, citizens, companies, business associations and organisations (including environmental non-governmental organisations (NGOs)), lawyers, academics. Contributions were particularly sought from Member States and/or public authorities dealing with State aid, investments and the environment, companies and business associations, as well as environmental NGOs.

Across the consultation period, the Commission received 45 valid replies via e-mail.

As shown in **Table 1** and **Graph 1** below, responses were provided by a variety of stakeholder types, namely public authorities (46% or 21/45), businesses and business associations (26% or 12/45), NGOs (20% or 9/45) and 'others' (6% or 3/45). Twenty authorities of Member States as well as of Norway replied, mostly State aid or investment authorities.

Table 1: Respondent stakeholder types

Stakeholder groups	**Count**
Public authorities	21
Businesses and Business Associations	12
NGOs	9
Other	3
Total	**45**

[13] The consultation is available here.

Graph 1: Categories of participants

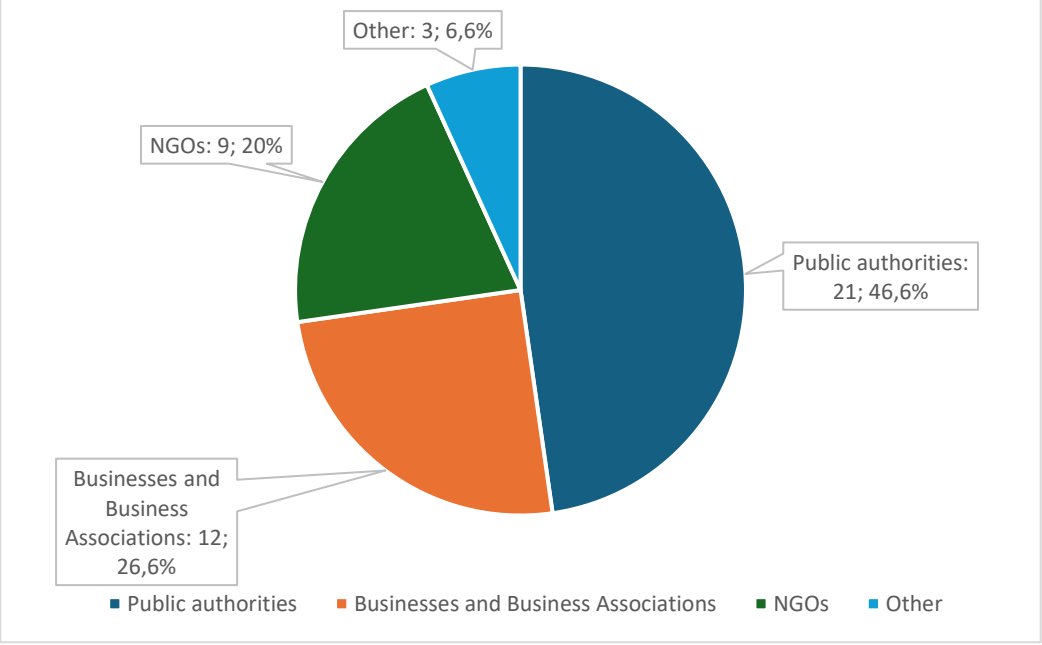


Table 2 below displays responses by country of origin. In total, 42/45 responses were from respondents in EU Member States, one from Norway and one from the United Kingdom.

Table 2: Responses by country of origin

Country of origin	**Count**
Belgium	8
Bulgaria	1
Czech Republic	2
Germany	2
Estonia	1
Ireland	1
Greece	1
Spain	2
France	4
Croatia	1
Latvia	1
Luxembourg	1
Hungary	1
Italy	2
Malta	2
Netherlands	1
Austria	2
Poland	3
Romania	1
Slovenia	1
Slovakia	1

Finland	1
Sweden	3
Norway	1
United Kingdom	1
Total	**45**

II.2 RESPONSES

II.2.1 General remarks on the new procedure providing access to justice in environmental matters linked to EU State aid decisions ('new procedure').

*II.2.1.1 General remarks by **public authorities***

Out of the twenty-one public authorities responding to the consultation, nine respondents (42%) expressed their **general support** for the amendments proposed to address the ACCC's findings. At the same time, a few public authorities (14% or 3/21) considered that the EU **already complies** with the Aarhus Convention, with one **opposing** the Commission's proposal on this basis. On the other hand, two public authorities **expressed doubts** that the proposed amendments will ensure **compliance with the ACCC's findings**. Further remarks have been made by some respondents regarding the need for a continued dialogue with the ACCC.

Several public authorities (23% or 5/21) **expressed concerns** regarding the new internal review mechanism **prolonging administrative procedures** and leading to legal and **investment uncertainty**. A few respondents from the public authorities category expressed the view that the new procedure will lead to **duplication** of the already existing review procedures. These respondents indicated that NGOs can challenge the assessment of the environmental impact also at national level. Regarding the overall scope of the new procedure, a few public authorities asked to restrict the measures to the necessary minimum.

Some public authorities (19% or 4/21) flagged a **contradiction** between introducing the new procedure and the general **aim of streamlining State aid procedures**, emphasizing the need for a balanced approach and for better coordination of the State aid approval procedures to make the granting of aid more efficient.

*II.2.1.2 General remarks by **businesses and business associations***

Almost all respondents in this category (83% or 10/12) **expressed concerns** regarding potential **negative consequences** of the new procedure and did not express support for the new procedure.

Businesses and business associations flagged the following **issues that could negatively affect investment decisions**: permitting and project approval delays (58% or 7/12), legal and financial uncertainty (58% or 7/12), an increase of the administrative burden (58% or 7/12). Some respondents mentioned negative impacts on the achievement of decarbonisation targets and roll-out of renewables, taking a view that the new procedure could delay important investments. A few respondents mentioned the need to avoid

duplication of procedures that already exist at national level regarding verifying compliance with environmental law.

*II.2.1.3 General remarks by **NGOs***

Almost half of NGO respondents (44% or 4/9) generally welcomed the introduction of the new procedure, in particular the judicial review possibility, increasing transparency and alignment with the Aarhus Regulation. On the other hand, many of the NGOs (55% or 5/9) flagged practical difficulties concerning the **burden of proof** due to potential information asymmetries.

Some NGOs were critical of the Commission's proposal, expressing concern regarding the effectiveness of **access to justice** by imposing strict eligibility criteria, procedural limitations and language constraints.

Several NGOs (33% or 3/9) called for the inclusion of an explicit reference to the Aarhus Convention in order to remove **legal uncertainty**.

*II.2.1.4 General remarks by **others***

While respondents in this category **generally welcomed** the introduction of a review mechanism, they considered that the **new procedure should be less restrictive** for NGOs, the scope of the challengeable decisions broader and some aspects, such as the burden of proof or the notion of 'indissoluble/inextricable link', require further clarification.

II.2.2 Feedback received on the draft amendments to the Implementing Regulation

*II.2.2.1 Remarks by **public authorities** on the draft amendments to the IR*

Almost half of the responding public authorities (42% or 9/21) **expressed some concerns** regarding the requirement to **confirm compliance** with EU environmental law foreseen in section 6.8 of the draft Annex I (General notification form) to the IR. In particular, several public authorities (23 % or 5/21) flagged the added administrative burden at national level. Some public authorities (14% or 3/21) expressed the view that the required confirmation amounts to shifting the responsibility to check compliance of the State aid measures from the Commission to the Member States. On the other hand, a few public authorities (9% or 2/21) considered this amendment to be **necessary and proportionate** to address the ACCC's findings and to ensure legal certainty.

Many public authorities asked for the amendments to include a clarification of the **scope of 'EU environmental law'** (38% or 8/21). These respondents considered the notion **too broad** and requested a limitation to direct and concrete environmental damage.

A few public authorities (9% or 2/21) requested further guidance on the **criteria of the 'indissoluble link'** between any aspect of the notified State aid measure with the object of the aid, that would contravene EU environmental law.

Some public authorities (19% or 4/21) also requested clarifications regarding the **consequences** of a **finding of an EU environmental law violation**.

*II.2.2.2 Remarks by **businesses and business associations** on the draft amendments to the IR*

As regards the requirement for Member States to **confirm compliance** with EU environmental law in the State aid notification form, several respondents in this category (33% or 4/12) **expressed concerns**, namely that it would lead to an increased administrative burden. Furthermore, the respondents considered the confirmation would serve no clear purpose and lead to a **duplication of processes**, as projects were already subject to an environmental permitting procedure.

A few respondents in this category (16% or 2/12) also considered that the notion and scope of 'EU environmental law' should be further clarified, in order to avoid broad interpretations that could lead to litigation and legal uncertainty

*II.2.2.3 Remarks by **NGOs** on the draft amendments to the IR*

Generally, comments received from NGOs referred to the design and scope of the new procedure as introduced by the amendments to the BPC (see below).

Several NGOs (33% or 3/9) expressed views specifically regarding the changes to the IR, namely by **supporting the inclusion of a confirmation of compliance with environmental law** in the State aid notification form.

The majority of NGOs (55% or 5/9) called for the Commission to (ultimately) assess the link and compliance with EU environmental law, being its duty as 'Guardian of EU law', not national authorities.

Some NGOs (22% or 2/9) considered the broad notion of 'EU environmental law' to be in line with the Aarhus Convention and the ACCC's findings. Several NGOs (33% or 3/9) expressed the view that the notion of the '**indissoluble link**' is not consistent with current case-law of the Court of Justice of the European Union (CJEU).

*II.2.2.4 Remarks by **others** on the draft amendments to the IR*

Other categories of respondents submitted limited comments on the draft amendments to the IR. One respondent considered the notion of the '**indissoluble link**' as not consistent with current CJEU case-law, opposing references made to it. The respondent called for the Commission to assess the 'indissoluble link', and not the Member States.

II.2.3. Feedback received on the draft amended BPC

*II.2.3.1 Remarks by **public authorities** on the changes proposed to the BPC*

As regards the **entities eligible** to request an internal review, few public authorities (14% or 3/21) called for clarifications of the eligibility criteria. One Member State specifically asked to clarify the classification as '**independent'**.

As regards the **evidence to be provided** to determine whether NGOs are eligible to request an internal review, few Member States (14% or 3/21) reacted on the derogation

offered to NGOs to provide **'evidence in the form of any other equivalent documents',** in case the required documents cannot be provided. Two out of the three public authorities raising that subject called the Commission to provide **examples of** 'equivalent documents'. The remaining public authority called for the deletion of this possibility, considering that it would duplicate the additional flexibility offered by the draft rules to 'submit any other document providing evidence that it meets [one of the required] criterion'. Another public authority invited the Commission to delete that second flexibility, considering that it would dilute eligibility limitations.

As regards the **scope of the decisions** covered by the new procedure, two public authorities (9% or 2/21) called for **additional exclusions**. The first public authority asked for the complete removal of decisions based on Article 107(3), point (b), of the Treaty. The second public authority considers that State aid measures financing an activity already authorised at national level (e.g. permit granted) should be excluded, irrespective of the legal basis for the approval of the State aid, given the possibility to challenge the authorization on a national level.

As regards the **time limits** proposed (for lodging an internal review request and for the Commission to reply), one third of the public authorities (33% or 7/21) invited the Commission to **shorten the deadlines**. A few Member States (23% or 5/21) considered that both the time limit of eight weeks to file the request and the time limit of 16 to 22 weeks for the Commission to reply should be reduced. Two Member States (9% or 2/21) proposed to reduce only the time limit of the Commission to reply. In support of these requests for shortening the deadlines, public authorities pointed out the uncertainty affecting the realisation of the project and the lack of investment security for the beneficiary of the State aid measure.

Few other public authorities (14% or 3/21) requested **clarifications on the time limits**: one Member State required to make the 22 weeks extended deadline of the Commission binding; another one asked to clarify the starting point of the eight-week period; and a last one called for clarifications on cases and time limits concerned by a suspension.

Lastly, as regards the **potential impacts of an internal review request on the State aid Commission's decision**, few Member States (9% or 2/21) called for clarification, in particular on the absence of suspensive effect.

*II.2.3.2 Remarks by **businesses and business associations** on the changes proposed to the BPC*

Half of respondents in this category (50% or 6/12*)* requested limitations to the **eligibility criteria of NGOs** submitting internal review requests**,** fearing a risk of abuse that would undermine the effectiveness of the new procedure. Among the requested limitations to the eligibility conditions, these respondents mentioned a minimum number of years (at least three or five years) of proven activity, removing the possibility for NGOs to remain anonymous, providing concrete evidence of actual and ongoing activities within the EU related to environmental law, demonstrating a direct and legitimate interest in the challenged decision or listing the sources of funding.

Regarding **the scope of the decisions** covered by the new procedure, half of business and business association respondents (50% or 6/12) commented on the categories of decisions covered by the Commission's proposal. Several respondents (41% or 5/12) made suggestions regarding other changes and limitations that could be applied to the scope of decisions covered by the new procedure. For example, respondents asked for the exclusion from the scope of aid measures that contribute significantly to decarbonizing the EU economy, strengthening its global competitiveness or supporting large-scale cross-border infrastructure projects. A risk-based approach was also mentioned, only including aid measures that may have significant environmental impact.

The majority of respondents in this category (58% or 7/12) called for **shorter time limits**. The respondents considered the proposed time limits to be excessive and some were in favour of deadlines of 4 weeks to submit the internal review request, while the Commission should not take more than 12 or 16 weeks to reply. The foreseen time limits were perceived to further add up to 30 weeks to the duration of approval procedures, potentially delaying investment projects.

Businesses and business associations also flagged perceived **risks of introducing a new procedure**. Almost all respondents (83% or 10/12) perceived some kind of risks, fearing that the new procedure will lead to increased administrative burden and costs, as well as a deteriorated investment climate. The possibility of appealing decisions in court was flagged as a delaying or blocking factor for investments, as it is not uncommon for legal processes to take 5–10 years, a time horizon during which few investors could commit to a specific project. Several respondents (33% or 4/12) also mentioned the risk of duplication of procedures, with investments already being rigorously reviewed at the national level within the framework of standard permitting processes.

*II.2.3.3 Remarks by **NGOs** on the changes proposed to the BPC*

As regards the **entities eligible** to request an internal review, many NGOs (55% or 5/9) considered that the new procedure should be also opened to members of the public to comply with the findings of the ACCC.

As regards the **scope of the decisions** covered by the new procedure, more than three quarters of the NGOs (77% or 7/9) considered it as **too narrow**. Many of these NGOs (55% or 5/9) stated that it should cover all State aid decisions, or at least a majority of them, and not limit it to Article 108(2) TFEU.

In addition, some NGOs (44% or 4/9) called the Commission for **enlarging the scope of the new procedure to 'omissions'**, as it is foreseen by Article 10 of the Aarhus Regulation[14].

As regards the **maximum number of pages of a request**, almost all NGOs (88% or 8/9) considered that the limit set at 10 pages is **too short** and raise issues with regard to

[14] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies, OJ L 264 25.9.2006, p. 13.

effective access to justice. One third of these NGOs (33% or 3/9) considered that this restriction is contrary to the Aarhus Regulation. The remaining NGOs (55% or 5/9) recommended to i**ncrease this limit to 50 pages** to allow NGOs to adequately present their legal and factual arguments. In their view, the proposed limit constitutes an **undue restriction** on their right to an effective judicial review and their right to a remedy, in contravention of Article 9(3) and (4) of the Aarhus Convention and Article 47 of the Charter of Fundamental Rights of the European Union.

In addition, some NGOs (44% or 4/9) expressed concerns about the invitation of the Commission to use a **language waiver** which in their view constitutes a restriction of their rights.

Furthermore, many NGOs (44% or 4/9) expressed **concerns with regard to** the **burden of proof** that they consider placed on them. They called for clarifying it in view of the case-law of the CJEU, according to which an applicant only needs to raise 'sufficient or serious doubts' to trigger the obligation of the Commission to investigate further, pointing out an asymmetry of information in State aid cases. In their view, the requirement of an 'indissoluble link' further exacerbates this burden of proof.

On the **notion of 'indissoluble link',** many NGOs (44% or 4/9) considered that this notion is not correctly interpreted by the Commission with regards to the case-law. Three of these NGOs considered that it is not a suitable criteria for the scope of the new procedure. The remaining one considered that this notion significantly narrows the scope of legal challenges.

As regards the **time limits** proposed in the draft BPC, NGOs only reacted on the **suspension of the deadlines** for the Commission to reply, in case of request to the applicant, to the Member State concerned or to any other relevant national authority. One third (33% or 3/9) expressed their **disagreement** with this suspension effect, considering that it would lead to undue delays and limit access to justice by discouraging the applicants.

As regards the **applicability of the new procedure**, one NGO called for an application to **all final decisions adopted after the publication** of the amended BPC and the IR in the Official Journal of the European Union, regardless of the date of notification of the aid measure or the date of an opening decision in case of unlawful aid.

Lastly, one third of the NGOs (33% or 3/9) called for including references similar to those existing under Article 4 to 7 of the Aarhus Regulation concerning their **rights to access to environmental information.**

*II.2.3.4 Remarks by **others** on the changes proposed to the **BPC***

The majority of respondents in this category (66% or 2/3) considered that individuals should also be granted possibilities for review under the new procedures. Clear criteria for the **eligibility of individuals**, such as the requirement of direct concern, could avoid the introduction of an *actio popularis.*

Furthermore, as regards **the scope of the new procedure**, all respondents in this category considered that it should be widened to apply to all or a majority of State aid decisions, in particular by including decisions adopted under Article 107(2) second indent TFEU.

As regards **the deadlines** of the new procedure, the majority of respondents welcomed the Commission's proposal, considering that the time limits seem adequate to ensure that there is sufficient time to file a request for review and for it being dealt with in a timely manner.

All respondents in this category raised concerns regarding the **10-page limitation of requests for review**, considering this too rigid and insufficient. A page limit of at least 30 pages was indicated as appropriate.

The majority of respondents in this category (66% or 2/3) called for an overly high **standard of proof** to be avoided, which would prevent access to justice. This applies in particular to the need to demonstrate an 'indissoluble link' to EU environmental law, which they considered would be impossible in practice. In this context, respondents flagged a hindering **asymmetry of information** due to the presumption of confidentiality for State aid files, complicating the provision of evidence. Citizen respondents asked for the references to access to environmental information to be included in the BPC, considering the lack of access as a restriction of their rights.

II.3 CONCLUSION

II.3.1 General remarks from the respondents

Overall, approximately 33% (or 15/45) of the respondents expressed their **general support** for the amendments proposed. The importance of a continued dialogue with the ACCC was also underlined.

Many respondents were rather **critical** of the proposal, albeit for different reasons.

About 17% (or 8/45) of the respondents considered the proposals to be **insufficient and too restrictive** overall. In particular, the effectively provided **access to justice** was criticised as too restrictive, which is said to arise from a narrow scope of application and eligibility, procedural limitations, language restraints and the allocation of the burden of proof in connection with limited access to information.

Approximately 24% (or 11/45) of the respondents saw the proposals and its effects as **too far-reaching**, calling to restrict measures to the necessary minimum. In particular, 11% (or 5/45) of respondents noted a **contradiction** to current efforts to streamline and increase competitiveness. Some respondents thus called for a more balanced approach.

8% (or 4/45) of the respondents assess the current legal situation as **already in compliance** with the Aarhus Convention. In this context, a few respondents specifically refer to a **duplication of procedures** as regards environmental issues.

Regarding the proposals, the **main points of criticism** expressed included additional **administrative burden** and **legal uncertainties**, which would result in further project

delays, constitute investment barriers and ultimately lead to a negative impact on decarbonisation efforts and particularly the roll-out of renewable energies.

II.3.2. Remarks from the respondents on the draft amendments to the IR

As regards **the confirmation by Member States** regarding compliance with EU environmental law, the respondents' **views were split**.

Almost one third of the respondents (28% or 13/45) expressed some concerns regarding the requirement to confirm compliance with EU environmental law foreseen in section 6.8 of the draft Annex I to the IR. The majority of those who expressed concerns considered that the confirmation would result in additional administrative burden on national level.

On the other hand, a few respondents (11% or 5/45) supported the inclusion of a confirmation of compliance with environmental law in the State aid notification form.

Almost one fourth of the respondents (22% or 10/45) considered that the notion and scope of '**EU environmental law'** should be further clarified, in order to avoid broad interpretations that could lead to litigation and legal uncertainty.

Several respondents (13% or 6/45) expressed views regarding the notion of the '**indissoluble link'**. Some respondents considered that the notion should be further clarified, for example by guidance issued by the Commission, while others considered it inconsistent with current CJEU case-law, opposing references made to it.

II.3.3 Remarks from the respondents on the changes proposed to the BPC

As regards the **entities eligible** and/or the eligibility criteria, the feedback on the Commission's proposal is mixed, with approximately 35% (16/45) of all respondents expressing concerns or suggestions. One third of respondents (33 % or 15/45 (NGOs and 'others') advocate expanding eligibility to include members of the public, suggesting this would align with the findings of the ACCC. However, there's an equally strong call, particularly from the business sector, for limiting and clarifying the eligibility criteria to prevent potential misuse.

As regards **the scope of the new procedure**, 22% of all respondents (10/45, majority of respondents in the NGOs and 'others' categories) considered the scope too narrow and called for its expansion to cover more State aid decisions. Some NGOs (8% or 4/45) also called for widening the scope of the procedure to include 'omissions'. Conversely, 15% of all respondents (from the 'business' and 'public authorities' categories) suggested additional exclusions to the scope of the new procedure (mostly decisions based on Article 107(3), point (b), of the Treaty and State aid measures financing an activity already authorised at national level).

The feedback on the proposed **time limits** revealed an important concern on the delays and their impacts on investments. While the business sector and the public authorities

(31% or 14/45) suggested to shorten the deadlines, the NGOs respondents are concerned about the possible suspensions of the deadlines.

As regards the **content of a request** for internal review, there is a strong consensus across the NGOs and the 'others' categories on requesting a significant increase of the **maximum number of pages**. Respondents from the 'public authorities' and 'business' categories did not raise concern on that point.

Another common concern to NGOs and 'others' categories relates to the **burden of proof**, with a focus on the challenges posed by the **'indissoluble link'** requirement (raised by 13% of respondents or 6/45). Respondents highlight issues of information asymmetry and call for clarity and alignment with case-law to ensure fair access to justice.

Other points were raised only by one category of respondents. Some NGOs (8% or 4/45 all respondents) expressed concerns about the invitation of the Commission to use a **language waiver** which in their view constitutes a restriction of their rights. Few public authorities (approx. 4% or 2/45) called for a clarification on the absence of **suspensive effect** of a review request on the State aid Commission decision. While businesses and business associations (approx. 22% or 10/45) flagged the risk of **deterioration of the investment climate.**