

New mechanism to support environmental protection: Public right to challenge state aid decisions 2/25/25



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The European Commission (EC) has amended the rules on state aid to improve public access to legal proceedings on environmental issues¹. These changes allow environmental non-governmental organisations (NGOs) to challenge EC decisions approving state aid where there is a suspicion of breaches of EU environmental law. This is a significant change because, for the first time, environmental NGOs can formally request the European Commission to review such decisions, particularly where there are concerns about compliance with EU environmental rules.

Justification for the changes

The amendments are a direct response to the findings of the Aarhus Convention Compliance Committee (ACCC). The Aarhus Convention² guarantees the public's right to access information, to participate in decision-making on environmental issues and to take legal action if these rights are restricted. The issue came to prominence following the Hinkley Point C nuclear power plant case in the UK³, where the European Commission approved state aid, but environmental NGOs challenged this decision, citing possible breaches of EU environmental law. Until now, there has been no effective mechanism for the public and NGOs to challenge such decisions at the EU level.

In 2021, the ACCC found that the EU was in breach of the Aarhus Convention because it did not allow the public to challenge state aid decisions that could conflict with environmental rights. This finding triggered consultations and a multi-year process of legal reform that led to the amendments recently adopted by the European Commission.

Important changes for recipients of state aid

1. **Review mechanisms for NGOs:** Environmental NGOs that fulfil certain criteria (independence, non-profit status, experience in environmental issues) can submit an official request to the European Commission to review a final decision on state aid. This applies to decisions taken following the formal investigation procedure under Article 108(2) TFEU if the aid is found to be compatible with the internal market or subject to certain conditions.
2. **Scope of the review:** It should be clarified that the EC formal investigation procedure is normally only initiated if there are reasons to doubt the compatibility of an aid with the EU internal market. Accordingly, these amendments do not apply to EC decisions where this procedure has not been carried out and a favourable decision has been taken under the "normal" notification procedure. Furthermore, they do not apply to aid granted for social purposes or to make good the damage caused by natural disasters or other exceptional occurrences, nor do they apply to so-called "crisis aid measures"
3. **Procedures and deadlines:** NGOs must prove that the subsidised activity or the aspect of the

aid measure approved by the European Commission that cannot be separated from the objective of the aid (“inextricably linked”) violates a specific provision of EU environmental law. The European Commission will provide guidance on what is considered “inextricably linked” to the objective of the aid by the end of the year. Until then, this question remains open. The NGO's application must be submitted within 8 weeks of publication of the decision, and the EC must respond within 16 weeks (or up to 22 weeks in complex cases). Both the application and the response will be publicly available.

4. **Member State confirmation:** Under the amendments, when notifying state aid, Member States must now confirm that neither the activity nor the aid measure is in breach of EU environmental law. This introduces a new requirement for verifiability and accountability for both the state and the aid recipient.
5. **No automatic suspension:** A request by an NGO for a review of a decision does not automatically lead to the suspension of the implementation of the aid. The aid measures can be continued during the review, but there is an increased risk of litigation if the decision is contested and is later followed by a legal dispute before the Court of Justice of the European Union. This means that aid recipients must be aware of the possible risks and consequences if the decision is contested.

Conclusion

The European Commission's changes to state aid rules introduce an additional mechanism for challenging the compliance of activities with EU environmental law (even after EU authorisation). Although the review only concerns issues of environmental law and can only be initiated by eligible non-governmental organisations, it creates a new avenue of challenge that can lead to delays or even the recovery of aid if a breach is found. Aid recipients and donors must therefore be particularly vigilant when it comes to verifying their compliance with environmental law and be prepared for an in-depth audit.

These changes will increase transparency and public involvement in the EU state aid system by allowing environmental NGOs to challenge decisions. In this way, the EU is harmonising its practices with international obligations and strengthening mechanisms to protect the environment. Compliance with environmental requirements is crucial for beneficiaries to receive and retain state aid. The aim of the new rules is not to block aid, but to ensure that economic activities are carried out without jeopardising the preservation of the environment. Consequently, careful planning and regular monitoring of compliance with environmental requirements become essential aspects for recipients of state aid, especially if the aid has to be coordinated with the EU.

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1153

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22005A0517%2801%29>

³ https://unece.org/env/pp/cc/accc.c.2015.128_european-union