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Danish response to the Commission's call for evidence – consequences of increased public access to justice in environmental matters in Commission decisions on State aid

Introduction

On 30 May 2024, the European Commission's Directorate-General for Competition (DG Competition) initiated a call for evidence to gather input and data from stakeholders across Member States. The focus is on evaluating the potential impact of increased public access to justice regarding Commission decisions on State aid, stemming from the EU's international environmental obligations in the Aarhus Convention.

The Danish Government finds that it is important that the EU and Member States as signatories to the Aarhus Convention comply with the obligations set out in this convention. The Aarhus Convention ensures fundamental access to information, public participation in decision-making, and access to justice in environmental matters.

The EU has implemented the Convention's provisions on access to justice concerning EU institutions and bodies through the Aarhus Regulation (Regulation (EC) No 1367/2006 of 6 September 2006). This regulation was revised in 2021 to enhance opportunities for non-governmental organizations (NGOs) and the public to challenge administrative decisions by EU institutions and bodies that may breach EU environmental law. However, the revised Aarhus Regulation includes exceptions, notably for State aid decisions.

Following the complaint in 2015 to the Aarhus Convention Compliance Committee (ACCC) in case *ACCC/C/2015/128*, and the conclusion of the ACCC that the existing mechanisms for the public to challenge Commission decisions on State aid are insufficient to meet the EU's obligations under the Aarhus Convention, the Danish Government finds that measures must be taken.

Therefore, the Danish Government welcomes the Commission's call for evidence, which aims to collect input and data for an analytical staff-working document on the way forward. We find it highly important – in advance of choosing the right model for compliance with the Aarhus Convention in State aid decisions – to properly assess likely impacts of the proposed models.

Danish position

The Danish Government believes that compliance with EU environmental legislation is an important obligation for both citizens and businesses within the EU and its Member States.

For the Danish Government, it is a high priority to ensure both the effective enforcement of environmental legislation and EU State aid control, which guarantees efficient markets and competition in the internal market.

The Danish Government is fully committed to the compliance with the Aarhus Convention and support the possibilities for the public to challenge State aid decisions where these decisions may contravene EU law relating to the environment.

At the same time, a solution must take into account the need to maintain an efficient and reliable State aid system to provide funding for projects crucial for the transition to sustainable energy and environmentally friendly technologies.

As State aid can play a key role in promoting the EU's goals of green transition and sustainable development, this requires a careful balance between economic and environmental considerations. Given the current global situation, speed is a crucial factor in ensuring the green transition and the EU's competitiveness. It is important to the Danish Government that a solution that is compliant with the Aarhus Convention will take this into account.

The Commission has in its communication of 17 May 2023 (COM(2023) 307) introduced 3 possible solutions in order to comply with the Aarhus Convention;

1. Amending the Aarhus Regulation to include State aid decisions within its scope. Under this option, State aid decisions adopted by the Commission would be subject to the same review procedures as any other administrative act contravening EU environmental law.
2. Amending the Best Practices Code (BPC) for the conduct of State aid control procedures to introduce an internal review mechanism similar to the one applicable under the Aarhus Regulation but adapted to the specificities of State aid control.

3. Amending the Procedural Regulation to introduce an internal review mechanism similar to the one under the Aarhus Regulation

The Danish Government will await the Commission's analysis of the three proposed solutions before taking a final position on the most appropriate model. At this stage, the Danish Government is keeping all three options identified by the Commission open.

It is important for The Danish Government that any adjustment of the existing framework should be designed so as to both preserve the efficiency of State aid control and ensure compliance with the EU's obligations under the Aarhus Convention.