

## **ANNEX 1**

### **SUMMARY REPORT ON THE CALL FOR EVIDENCE ON EU ENVIRONMENTAL AND STATE AID LAW – ACCESS TO JUSTICE IN RELATION TO STATE AID DECISIONS<sup>1</sup>**

#### **1. Objectives of the Call for Evidence**

As a follow up to the Communication adopted by the Commission on 17 May 2023<sup>2</sup>, the Commission launched a Call for Evidence in view of its objective to analyse the impacts, including costs and benefits, of possible measures to address the findings of the Aarhus Convention Compliance Committee ('ACCC') regarding access to justice in relation to State aid decisions that would allegedly contravene EU law.

In this context, the objective of the Call for Evidence was to seek 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. Stakeholders and the public were invited to give their feedback on the Call for evidence document<sup>3</sup>, which explained the Commission's initiative, the objective to be achieved, its specificities with regard to State aid rules and its likely impacts.

#### **2. Approach to the Call for Evidence**

For this initiative, the Call for Evidence presented the political context, the need to address the findings of the ACCC regarding access to justice within the EU legal landscape, in line with the special characteristics of State aid. The Call for Evidence also focused on the elements the Commission will 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). The Commission indicated it would also reflect on its design (scope of the decisions, applicable deadlines) in order to tackle the issue in compliance with the subsidiarity and the proportionality principles.

The Commission invited stakeholders and the public to comment and come forward with any other relevant views.

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 Call for Evidence was made available in all official EU languages on the 'Have your say' portal. The consultation period ran from 30 May 2024 to 27 June 2024 (4 weeks).

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<sup>1</sup> This document should be regarded solely as a summary of the contributions made by stakeholders to the call for evidence on EU environmental and State aid law – access to justice 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.

<sup>2</sup> [COM\(2023\)307 of 17 May 2023](#)

<sup>3</sup> See feedback: [EU environmental and State aid law – access to justice in relation to State aid decisions \(communication\) \(europa.eu\)](#) and [EU environmental and State aid law – access to justice in relation to State aid decisions \(regulation\) \(europa.eu\)](#).

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### 3. Responses to the Call for Evidence

A total of 25 valid responses were submitted during the consultation period via ‘Have Your Say’. Furthermore, 2 additional contributions have been submitted by business associations separately, by way of email to the Commission’s services. These contributions have been taken into consideration in this Factual Summary.

When analysing and presenting the results, responses were grouped into distinct clusters, which were examined for trends against different stakeholder categories.

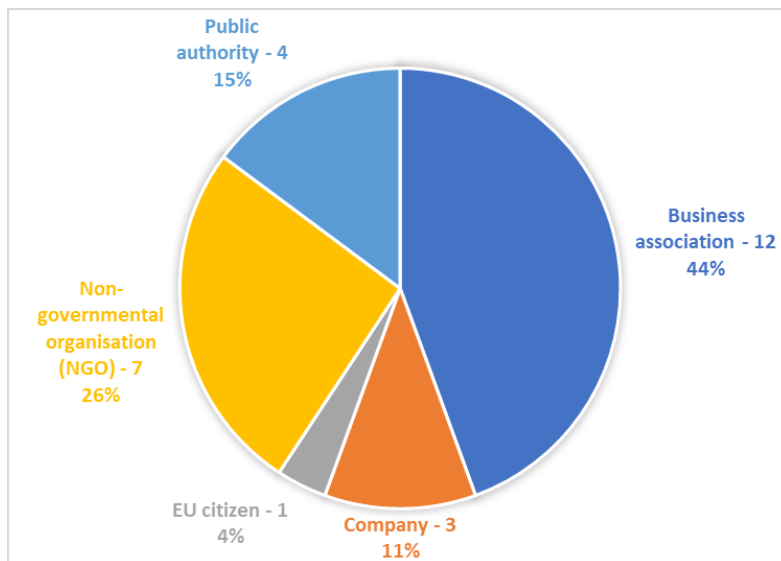
#### 3.1 Respondent profile

As shown in Table 1 below, responses were provided by a variety of stakeholder types, namely business associations (44%, 12/27), NGOs (26%, 7/27), 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 environmental authority.

Table 1: Respondent stakeholder types

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

Graph 1: Categories of participants



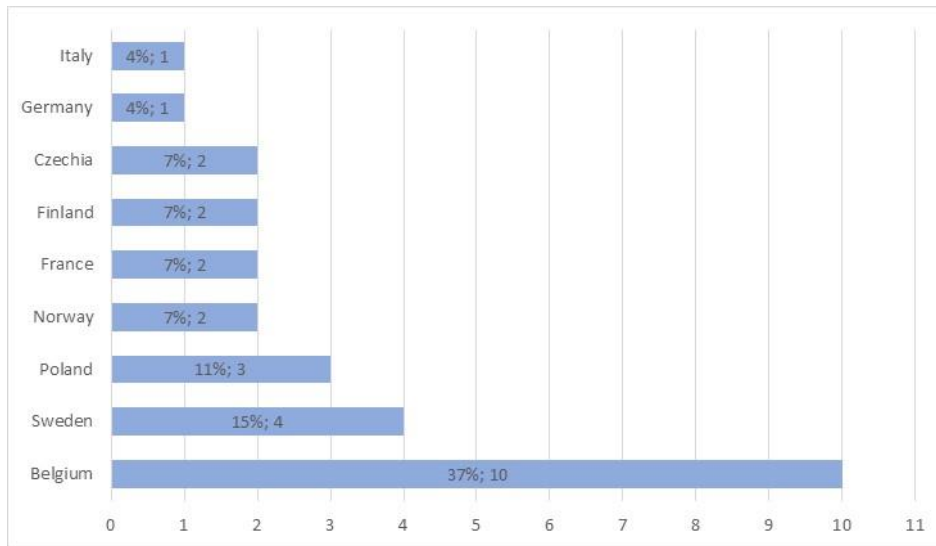
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Table 2 and Graph 2 display responses by country of origin. In total, responses were from 8 (8/27) EU Member States and 2 (2/27) responses from Norway. Most of the responses were received from Belgium (37%, 10/27), followed by Sweden (15%, 4/27) and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

Table 2: Responses by country of origin

<b>Country</b>	<b>Count</b>
Belgium	10
Sweden	4
Poland	3
Norway	2
France	2
Finland	2
Czechia	2
Germany	1
Italy	1
<b>Total</b>	<b>27</b>

Graph 2: Respondents by country of origin



**3.2. 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**.

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Regarding **which type of new procedure should be developed**, 22% (6/27) of the respondents consider that Option 1<sup>4</sup> 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 its view on this point.

### **3.3 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.

### **3.4 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%

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<sup>4</sup> In its Communication of 17 May 2023, the Commission identified three options to follow up on the ACCC findings. Option 1 – amendment of the Aarhus Regulation to include State aid in the scope of its internal review process, Option 2 – amendment of the Code of Best Practices for the conduct of State aid control procedures to provide for an internal review process similar to the one under the Aarhus Regulation combined with amendment of State aid Implementing Regulation and option 3 – amendment of the Council State Aid Procedural Regulation to provide for an internal review process similar to the one under the Aarhus Regulation.

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(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.