

ANNEX 2

SUMMARY REPORT ON THE TARGETED CONSULTATION ON A PROCEDURE FOR ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS IN RELATION TO STATE AID DECISIONS¹

1. Objectives of the targeted consultation

The consultation was designed to collect information on the impact of a new review procedure, which would give the public access to justice to challenge specific decisions on State aid measures that allegedly contravene EU environmental law. The consultation's objective was to assess the impact on:

- (i) the successful implementation of EU policies, in particular in relation to the EU's global competitiveness and achievement of Green Deal objectives;
- (ii) investment decisions and implementation of projects by the business community;
- (iii) cost implications for stakeholders, including red tape/administrative burden, costs of compliance, costs of financing, costs associated with increased risk of litigation and/or impacts on the speed of the approvals and other social and economic costs.

2. Approach to the targeted consultation

For the purposes of the targeted consultation, the Commission services developed a questionnaire and consulted 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.

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

The questionnaire was made available in English language, and the consultation period ran from 1 July 2024 to 6 September 2024 (some extensions have been requested and given by the Commission services until 13 September 2024).

Participants could respond to the questionnaire on behalf of an organisation/institution and were also invited to provide any further comments.

¹ This document should be regarded solely as a summary of the contributions made by the stakeholders to the Targeted Consultation 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.

3. Responses to the targeted consultation

A total of 51 valid responses were submitted via the EU Survey Portal. 4 replies have been submitted on an *ad-hoc* basis, by email to the Commission services. They have been reported in **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.**

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 public authorities (56%² 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% or (20/29) of the respondents represented State aid/investments authorities, while 31% (9/29) represented environmental authorities.

Table 1 Respondents by profile

| Stakeholders types | Count |
|-----------------------|-------|
| Public authorities | 29 |
| Undertakings | 8 |
| Business associations | 11 |
| Investors | 3 |
| Total | 51 |

Graph 1 Respondents by profile

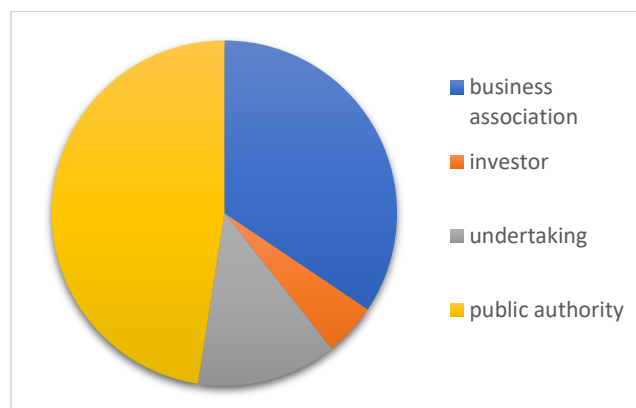


Table 2 Responses by country of origin. Almost all responses came from EU Member States (with one coming from Norway).

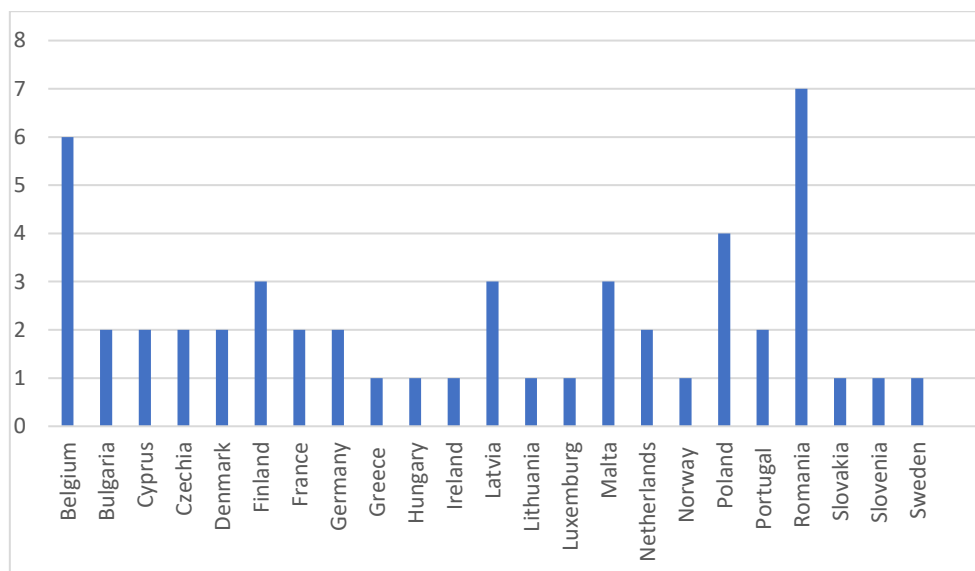
| Country of origin | Count |
|-------------------|-------|
| Belgium | 6 |
| Bulgaria | 2 |

² Throughout the Annex, percentages have been rounded, for convenience purposes.

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| | |
|-------------|----|
| Cyprus | 2 |
| Czechia | 2 |
| Denmark | 2 |
| Finland | 3 |
| France | 2 |
| Germany | 2 |
| Greece | 1 |
| Hungary | 1 |
| Ireland | 1 |
| Latvia | 3 |
| Lithuania | 1 |
| Luxemburg | 1 |
| Malta | 3 |
| Netherlands | 2 |
| Norway | 1 |
| Poland | 4 |
| Portugal | 2 |
| Romania | 7 |
| Slovakia | 1 |
| Slovenia | 1 |
| Sweden | 1 |
| Total | 51 |

Graph 2 Respondents by country of origin



3.2 Responses to the section of the questionnaire addressed to undertakings, business associations

Respondents³ 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** 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 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.

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**. **Other** 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 **over a third of the respondents** consider that this may cause delays and decrease competitiveness of the sector (32% or 7/22).

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).

³ Not all respondents replied to all questions.

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).

Over one third of the respondents said that **costs identified in connection to the new procedure would have an important effect** on their organisation's decision to go ahead with the investment (36%, or 8/22).

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, they identify risks, and have a transparent dialogue with all stakeholders.

3.3 Responses to the section of the questionnaire addressed to public authorities

Many of the public authorities⁴ (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). 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.

⁴ Not all respondents replied to all questions.

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

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.

3.4 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 **many 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; **over a third of public authorities**

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(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 procedure 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 (approx. 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.