



Mrs Margrethe Vestager

Executive Vice-President of the European Commission

Rue de la Loi 200
BE - 1049 Brussels
BELGIUM

29 June 2023

Dear Executive Vice-President,

Aarhus Convention and State Aid Decisions

I write to you regarding current discussions concerning the findings of the Aarhus Convention Compliance Committee that the EU fails to meet the requirements of the Aarhus Convention to provide the public with access to administrative or legal procedures to challenge State aid decisions under Article 108(2) TFEU which contravene EU environmental legislation.

BUSINESSEUROPE strongly supports effective State aid control to secure fair competition in the internal market. Clear State aid rules are fundamental to ensure a level playing field and ensure that State aid expenditure is kept at reasonable levels, targeting market failures. We also support transparency about aid granted within the EU on an individual basis. There should be updated information about all granted State aid measures (including related individual aid decisions and aid spending) that is easy to use.

The Aarhus Convention has an important function of ensuring the public's access to information, participation in decision-making, and access to justice in environmental matters. There is however good reason why the EU competition rules, including State aid procedures, are excluded in the Aarhus regulation which implements the Convention in the EU. State aid proceedings are of a specific nature, setting up a bilateral relationship between the Commission and the Member State where expedient case handling, legal certainty, and a safe handling of business sensitive information are fundamental.

We are concerned about the consequences of further expanding the current possibilities to review and appeal State aid decisions. Such a change would lead to increased legal uncertainty, longer procedures, increased administrative burden, which would make investments riskier. Ultimately, it could delay the transition to a more sustainable energy supply, as it is to a large extent investments in different kinds of fossil free energy production which have been challenged by environmental organisations.



It must be remembered that a State aid decision *per se* is not an approval of a project that could have environmental effects. It is merely a decision regarding the Member State(s) concerned approving the envisaged State financing of a specific project, which should be legal under relevant EU and national legislation. We therefore question the legality of the Compliance Committee's interpretation of the Convention. Moreover, the environmental consequences of an activity will be reviewed in accordance with existing environmental legislation, for example through permit processes in courts. Within these processes, the Aarhus Convention already grants the public an extensive right to access information, participate in the decision-making process, and access to justice in relation to the activity. State aid at its core is about the Member States fulfilling certain terms and conditions meant to limit the distortion of competition and trade between Member States, and the Commission assessing relevant information. The conditions focus on the form and amount of aid. An additional review process at EU level, which would be the case if the scope is expanded, would only duplicate controls and increase legal uncertainty.

Much has been done in recent times to clarify and speed-up State aid proceedings. This is important, because when cases take a long time, it creates legal uncertainty which discourages investment. Delivering decisions within business-relevant timelines is vital.

We trust on the Commission to safeguard the special role that State aid control has within the EU, not least in times when extensive investments and regulations are aimed at bringing about a rapid transition to a net-zero industry and a sustainable society.

We remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

Markus J. Beyrer