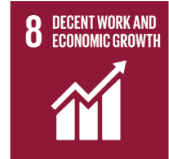




**Chambers
Ireland**
Advancing business together



**European Commission targeted consultation
on procedure for access to justice in
environmental matters in relation to State aid
decisions**

Submission by Chambers Ireland

September 2024

Contents

About Chambers Ireland	3
Key Points	4
Impacts of a new procedure on undertakings, business associations and investors	5
Assuming the Commission would find, upon administrative review, that the State aid decision is in breach of EU environmental law, what would that mean for your project? Please explain your answer.	5
Assuming the Commission’s internal review does not find any breach of EU environmental law, how would a challenge of that finding before the EU Courts affect the implementation of your investment project?	5
The ACCC findings concern final State aid decisions under Article 108(2) TFEU after the Commission opens the formal investigation procedure. The past crises (financial and economic crisis, COVID-19 pandemic, and the energy crisis) have shown that the speed of approvals (including State aid authorizations) is key for both beneficiaries and Member States in the implementation of urgent projects. In certain situations, State aid is granted to make good the damage caused by natural disasters or exceptional occurrences (Article 107(2)(b) TFEU), or to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State (Article 107(3)(b) TFEU). Should in your view Commission decisions authorizing these categories of aid be subject to the new procedure? Please explain your answer.	6
What type of costs, if any, would a new procedure entail for your organization and its investment projects?	7
From your perspective, to what extent would the new procedure impact EU competitiveness? Please explain your answer.	7
The European Green Deal aims to make Europe climate neutral by 2050, boost the economy through green technology, create sustainable industry and transport, protect its natural capital and the health of citizens from environment-related risks, and cut pollution, all while ensuring that the transition is just and inclusive. From your perspective, to what extent would the new procedure impact the Green Transition? Please explain your answer.	8
From your perspective, would the new procedure strengthen the protection of the environment? Please explain your answer.	9
In your view, would the new procedure have added value with respect to access to justice in view of the protection of environment?	9

About Chambers Ireland

Chambers Ireland is an all-island business organisation with a unique geographical reach. Our members are the Chambers of Commerce in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

Key Points

- We are fully supportive of the objective of the Aarhus Convention of ensuring access to justice concerning acts that may contravene environmental law. However, this should be done in a timely and prompt manner that does not jeopardise projects which do not contravene environmental law.
- Companies could face significant financial challenges if state aid is revoked, leading to reduced competitiveness, increased costs, and potential cutbacks on innovation, hiring, or scaling activities.
- Reviews amounting to extensive delays in projects could compound existing problems, leading to increased costs and potential investor withdrawal.
- The new procedure has the potential to hinder the EU's capacity to respond to emergencies, if the flow of capital required to combat crises is stopped.
- Businesses operating in Ireland could face increased compliance and administrative expenses, delays in disbursement, and potential project revisions.
- The new procedure may hinder competitiveness particularly in Ireland, where projects are often delayed due to judicial reviews.
- The proposed changes to the State Aid framework may not strengthen environmental protection if decisions regarding aid are not made promptly.
- The new procedure could delay the development of green investments, which is contrary to the objectives of the European Green Deal.
- We are concerned about the potential for spurious claims to clog up the review system, leading to delays and increased costs for projects that contribute to achieving our climate targets.

Impacts of a new procedure on undertakings, business associations and investors

Assuming the Commission would find, upon administrative review, that the State aid decision is in breach of EU environmental law, what would that mean for your project? Please explain your answer.

In line with our point elsewhere in our submission, for companies this would translate into lost investment in instances where the state aid is revoked. As it is, companies could face significant financial challenges, especially if they rely heavily on government support for their operations, research, or expansion plans. The loss will lead to reduced competitiveness, as the company would have to find alternative funding sources, as it would ultimately lead to an increase in its costs. In the long term, it could also result in cutbacks on innovation, hiring, or scaling activities, ultimately affecting its growth and market position. Additionally, the revocation of state aid could force the company to raise prices, reduce its workforce, or even consider relocating to a more favorable business environment, impacting the broader economy. Ultimately, this would result in a loss of the much-needed finance required for the Green Transition.

Assuming the Commission's internal review does not find any breach of EU environmental law, how would a challenge of that finding before the EU Courts affect the implementation of your investment project?

This would unfairly affect companies in Ireland, compared to those operating in other Member States.

In Ireland we hold the concern that companies are already at the mercy of a planning system that is not fit for purpose and a judicial system that is not adequately resourced in terms of administrative capacity and financial capacity. The result is that projects are frequently delayed, often for years at a time, as the appeals process takes a significant amount of time to reach a conclusion.

Any judicial reviews or further delays to their projects in terms of state aid reviews would compound this problem and unduly affect companies operating here. Even where their projects are eventually found to be compliant after a multitude of appeals, the fact the process often takes years longer than initially planned means that companies have to foot a substantially-increased bill in order to complete the project. This is without considering the effect of inflation on increased operating costs and the likelihood of investors pulling out of the project due to delays. Ergo the final decision during appeals is often irrelevant as by the time a decision is reached, the project is beyond the financial capacity of the company.

The ACCC findings concern final State aid decisions under Article 108(2) TFEU after the Commission opens the formal investigation procedure. The past crises (financial and economic crisis, COVID-19 pandemic, and the energy crisis) have shown that the speed of approvals (including State aid authorizations) is key for both beneficiaries and Member States in the implementation of urgent projects. In certain situations, State aid is granted to make good the damage caused by natural disasters or exceptional occurrences (Article 107(2)(b) TFEU), or to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State (Article 107(3)(b) TFEU). Should in your view Commission decisions authorizing these categories of aid be subject to the new procedure? Please explain your answer.

No. In our opinion, this would severely hinder the capacity of the European Union to respond to emergencies. In such instances, the flow of capital required to combat crises must not be stopped and the severity of the emergency must take precedence. During COVID-19, intra-EU export restrictions and travel limitations, adopted in response to the pandemic, were in many cases poorly designed. Based on this experience, it is pivotal that a framework is in place at EU level to protect our supply chains for critical goods and ensure stability for business during future crises.

We are hence in favour of legislation such as the Single Market Emergency Instrument¹ and similar efforts made by the European Union to safeguard the Single Market against crises.

What type of costs, if any, would a new procedure entail for your organization and its investment projects?

For businesses operating in Ireland it could lead to an array of costs, including compliance and administrative expenses, delays in disbursement, and potential project revisions. A chief concern of ours is that this could in turn result in substantial increased project costs, delayed investments, and missed market opportunities.

Additionally, the added uncertainty and risk will often necessitate fundamental changes in strategic planning and investment decisions. This will consequentially affect their decision-making. Businesses may need to invest in risk management strategies, such as scenario planning or financial hedging, to mitigate the potential impact of unfavourable outcomes such as the aid being revoked.

From your perspective, to what extent would the new procedure impact EU competitiveness? Please explain your answer.

In general terms this will impact competitiveness across the Single Market, however the new procedure will not affect each Member State equally. In Ireland this will undoubtedly hinder competitiveness as projects which are subject to judicial review - often on spurious grounds - may now have the added delay of a review in terms of state aid.

As stated elsewhere, it is often the *process* of the appeal that drives up costs and ultimately stops projects from progressing; not the finding itself. In Ireland, this is a problem experienced by a multitude of infrastructure projects. In the context of investment in projects of national

¹ <https://enterprise.gov.ie/en/consultations/consultations-files/chambers-ireland-submission-to-smei-consultation.pdf>

importance under the National Development Plan,² this is a particular concern as it means that the capital required to progress them will be subject to additional delays. Bearing this in mind, the new procedure may have the knock-on effect of halting progress. For example this can extend to not only regional development or promoting RDI in industry, but also to financing renewable energy projects such as offshore wind projects, or biomethane projects, which will collectively play a crucial role in helping the State meet its climate targets.

The European Green Deal aims to make Europe climate neutral by 2050, boost the economy through green technology, create sustainable industry and transport, protect its natural capital and the health of citizens from environment-related risks, and cut pollution, all while ensuring that the transition is just and inclusive. From your perspective, to what extent would the new procedure impact the Green Transition? Please explain your answer.

The introduction of the revised General Block Exemption Regulation (GBER) and the Climate, Environmental Protection and Energy Aid Guidelines (CEEAG) were positive steps in terms of expanding aid to other categories and supporting green projects. However, while well-intentioned, the new procedure may go further than is necessary to achieve its aims, and have an impact on the gains made by the GBER and the CEEAG.

As described elsewhere, the new procedure will have the effect of bringing further delays to projects, which is the opposite of what needs to be done to facilitate progress. Any future delay will compound the delays already in the state aid rules which are necessitated by the requirement

² Chambers Ireland have consistently highlighted the urgent requirement for extra, adequate resourcing and restructuring of the Irish judicial and planning systems. In its current state, the associated problems have a significant impact in facilitating investment in infrastructure in Ireland: <https://chambers.ie/wp-content/uploads/2023/03/Economic-Evaluation-of-Options-for-the-Control-of-Litigation-Costs-Submission-by-Chambers-Ireland-Nov-2022.pdf>; and <https://chambers.ie/press-releases/judicial-system-needs-significant-extra-resources-to-avoid-costly-infrastructure-delays-says-chambers-ireland/>

that Member States are obliged to publish a response to consultations addressing the inputs they have received. This has the effect of lengthening the process of granting aid. It also discourages Member States from granting state aid, which consequently slows down the development of green investments.

From your perspective, would the new procedure strengthen the protection of the environment? Please explain your answer.

The new procedure will only strengthen the protection of the environment where swift decisions are made. We hold the concern that objections submitted on weak grounds will only serve to clog up the system and not meaningfully protect the environment. Unfortunately, we do not anticipate that decisions will be made promptly in order to provide clarity for projects. For reasons stated above, we particularly hope that clarity will be provided in good time for all projects, but particularly for infrastructure projects which are of national importance.

In your view, would the new procedure have added value with respect to access to justice in view of the protection of environment?

While the protection of the environment is undeniably crucial and a priority, it is important to consider the potential adverse effects of the new procedure. In implementing the new procedure, it must be ensured that while striving for environmental protection, barriers are not inadvertently created that hinder the very progress we aim to achieve. Our chief concern does not concern blocking access to justice; it relates to the potential to delay (and in some cases effectively prevent) new projects which are sustainable and contribute to the attainment of our climate goals from being implemented.

Instead of enhancing environmental protection and providing access to justice, the new procedure may inadvertently invite spurious claims which could significantly prolong the process for granting state aid, thereby delaying essential projects. This does not achieve the policy objective of effective environmental protection.

Delays are not merely an administrative inconvenience and they have real financial implications. Any prolongation will drive up the cost of projects, making them less viable and potentially stifling innovation and progress, particularly in the renewable energy sector.

Moreover, in trying to facilitate the new procedure to facilitate access to justice, the uneven effect it may have within the Single Market needs to be considered. Projects in Member States like Ireland will undoubtedly face greater delays and issues than those in other Member States. This will harm our overall competitiveness and underscores the need for a balanced approach across the EU.