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WORKING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Competition

Subject: Presentation by the European Commission: Aarhus Convention (agenda item 7.)
Working Party on Competition meeting on 28 November 2025

Delegations will find in annex a presentation (agenda item 7.) given by the European Commission during the Working Party on Competition meeting on 28 November 2025.

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State aid - Aarhus Review Mechanism (Update)

Working Party Competition 28 November 2025

DG Competition, Unit A3

State of Play: Follow-up by the EU on Case ACCC/C/2015/128

- 12/05/2025: **Adoption of amendments** to the [State aid Implementing Regulation \(EC\) No 794/2004](#) ('IR') and the [Best Practices Code](#) ('BPC') accompanied by a [Staff Working Document](#) and [Synopsis Report](#)
 - 13/06/2025: Publication in the OJEU - Entry into force of the BPC rules
 - 3/7/2025: Entry into force of the IR rules
 - 12/11/2025: DG Competition published the 'Practical Guidance' on the notion of 'indissoluble link" on the Aarhus Request Website: [Aarhus review requests - Competition Policy - European Commission](#)
- 20/11/2025: **EU found in [compliance](#) with the Aarhus Convention by the Meeting of the Parties of the Aarhus Convention**, following a finding of compliance by the Aarhus Convention Compliance Committee (August 2025)



Application of the new Aarhus review mechanism - BPC rules (temporal scope)

- Temporal application:
 - **Notified cases: Final** decisions originating in a notification where MS could confirm compliance with EU environmental law (compliance confirmation kicked in on 13 August 2025)
 - **Non-Notified cases: Final** decisions originating in an opening after 13 June 2025
 - **NB:** Cases where the Commission has (already) opened a formal investigation before 13 June 2025 are **NOT** concerned.



Application of the new Aarhus review mechanism - BPC rules (material scope 1)

Request from an **eligible non-governmental organisation** ('NGO') to the Commission to **review a final State aid decision** because of an alleged breach of **EU environmental law** ('intrinsically linked')

1. Which decisions are concerned?

- **Final** (positive and conditional) **State aid decisions closing the formal investigation procedure** initiated under Article 108(2) TFEU, based on **certain legal bases**

2. What do eligible applicants need to demonstrate?

- The aided **activity** or any of the **aspects of the measure** approved by the final decision that are 'indissolubly linked' to the object of the aid **breach EU environmental law**



Application of the new Aarhus review mechanism - BPC rules (material scope 2)

	INCLUDED	EXCLUDED
Decision type	<ul style="list-style-type: none"> • Positive and conditional final decisions • Closing a formal investigation procedure 	<ul style="list-style-type: none"> • Decisions opening formal investigation • No objection decisions adopted after preliminary examination • “No aid” decisions (before or after opening) • Negative decision closing the formal investigation
Legal bases	<ul style="list-style-type: none"> • Article 107(3)(a) TFEU • Article 107(3)(b), first part, TFEU • Article 107(3)(c) TFEU • Article 107(3)(d) TFEU • Article 107(3)(e) TFEU • Article 106(2) TFEU • Article 93 TFEU 	<ul style="list-style-type: none"> • Article 107(2) TFEU (social character aid and compensation for damages) • Article 107(3)(b) TFEU (aid “to remedy a serious disturbance in the economy of a Member State”)

Application of the new Aarhus review mechanism: BPC rules (deadlines and Commission reply)

- **NGOs:** Submit an Aarhus review Request to the Commission within **8 weeks** as of the publication of the final State aid decision in the OJEU
- **Commission:** Maximum of **16 weeks** (can be extended to 22 weeks for justified reasons) from the expiry of the deadline for the applicant, to send the final reply to the applicant
- **Commission reply:** can be **appealed** before the **EU Courts**



Application of the new Aarhus review mechanism - IR rules



NEW for MS: 'Tick the box' in the notification form to confirm that neither the aided activity, nor any aspects of the notified State aid measure indissolubly linked to the object of the aid are breaching EU environmental law



Mandatory form for NGOs to lodge a request (annex V to the IR)

DG Competition's Practical Guidance on the notion of 'Indissoluble Link'

Working document: **Illustrative examples** and **Takeaways** from EU Courts case law

First introduced by EU Courts in [C-74/76 - Iannelli & Volpi](#):

- Preliminary ruling: if a national court may decide on a national measure that allegedly amounted to State aid and may have breached other EU rules having direct effect
- To determine jurisdiction, the notion of 'intrinsically linked' was key: 'Those **aspects of aid** which contravene specific provisions of the Treaty other than Articles 92 and 93 may be so **indissolubly linked** to the **object of the aid** that it is **impossible to evaluate them separately** so that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article 93.'
- A distinction must be drawn between aspects that are inextricably linked to the object of the aid and aspects that are not ('severable').



DG Competition's Practical Guidance on the notion of 'Indissoluble Link' (Takeaways - 1)

Main points to be considered in connection with the 'indissoluble link' test cf. illustrative examples:

1. Determining the **object** of the aid;
2. Checking if the **activity** subject to the aid or the **aspects** of the State aid measure (e.g., conditions, factors or modalities) approved by the State aid decision **are indissolubly linked** to the object of the aid (do they form **part of or are necessary** to achieve its **objective** or for its **proper functioning**?)

E.g., a residence condition in an aid scheme for the refund of dividend tax was found to be 'indissolubly linked' to the object of the aid. This condition is necessary to achieve the objective and functioning of the aid scheme aid (e.g., to advantage national undertakings) ([C-598/17](#) – *A Fonds*)



DG Competition's Practical Guidance on the notion of 'Indissoluble Link' (Takeaways – 2)

- By contrast, **aspects** of the State aid measure which, although forming part of that aid measure, are **not specifically necessary** for achieving its objective or for its proper functioning, are **not indissolubly linked** to the object of the aid.
 - E.g.: Taxation (under Articles 34 TFEU and Article 110 TFEU) and antitrust aspects (Article 101 and 102 TFEU) were found not to be indissolubly linked to the object of aid (providing operating or investment aid) (*Case 74/76 Ianelli & Volpi*, [Case C-225/91 Matra](#))



DG Competition's Practical Guidance on the notion of 'Indissoluble Link' (Takeaways – 3)

- An **infringement** of a provision of EU Law **must arise from the aid** as such, its object or its **indissociable modalities**, and not from other measures taken by that Member State. Measures that are linked de facto but are legally distinct do not constitute indissociable aspects of an aid measure ([C-284/21 P – Commission v Braesch and Others](#), [Case C-59/23 P – PAKS II](#)).
- E.g.: operating licenses and occupancy decisions adopted by a Member State relating to wind farm projects were found not to be indissolubly linked to operating aid for these farms ([Case C-742/21 P - CAPA](#)).



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Thank you



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