

# COUNTRY STUDIES CONCERNING STATE AID - SPAIN



**Country Study**  
**Justice and Environment 2023**

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## Background

In March 2021, the Aarhus Convention Compliance Committee (ACCC) found in favor of J&E member organization ÖKOBÜRO and its member, GLOBAL 2000, in the communication they had brought, namely [ACCC/C/2015/128 \(EU\)](#). Specifically, the Committee [found that](#):

- (a) *By failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned fails to comply with article 9 (3) of the Convention;*
- (b) *By failing to provide any procedure under article 9 (3) of the Convention through which members of the public are able to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9 (4) of the Convention.*

Accordingly, the Committee made the following recommendation:

*The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.*

## Questions

### What courts have competence to make a judgment when allegedly unlawful state aid government measures are challenged in court? Administrative? Civil? Constitutional?

According to Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa (Law 29/1998, of 13 July, regulating the administrative judicial review procedure), general administrative provisions, acts and omissions of the administration, which includes the state aid government measures can be challenged before those courts. It is important to note that general administrative provisions are regulations and ministerial decisions mainly. In Spain, legislative acts cannot be challenged by citizens before the constitutional court.

In addition, competitors, legal and natural persons whose economic interests have been affected can file a case before a Commerce Court (these courts are a branch of the civil jurisdiction) according to Art. 33 of Ley 3/1991, de 10 de enero, de Competencia Desleal . (Law on Unfair Competition) against unfair competition.

As to each of the courts identified in reply to answer 1, what requirements must be met in order to show standing? Specifically, could an NGO meet these requirements and initiate/file a case challenging potentially illegal state aid? Could other members of the public meet these requirements (presuming they are neither aid beneficiaries nor (potential) competitors Could

## this NGO join an ongoing case on any side of the legal dispute as an amicus curiae?

According to Article 19(1)(a) of Law 29/1998, of 13 July, regulating the Administrative Judicial Review Procedure , legal and natural persons (individuals) having a right or legitimate interest have standing to appear before the administrative judicial courts and judges. This includes corporations, associations, unions and groups and entities that are affected or are legally authorized to defend legitimate collective rights and interests.

When unfair competition takes place only competitors, legal and natural persons whose economic interests have been affected have legal standing.

Thus, when a state aid is granted by an administrative act or a general administrative provisions NGOs could challenge it.

In Spain the amicus curiae figure is hardly developed. In administrative procedures an NGO could intervene as co-defendant but there is no amicus curiae. In the cases of unfair competition amicus curiae is restricted and not available to NGOs (Art. 15bis, Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil - Law on Civil Judicial Review).

**Has any national court granted legal standing in practice to a party whose competitive position was not affected by a state aid? If yes, how would you categorize this party? An NGO? Another type of member of the public (individuals, citizens initiatives, and other non-incorporated groups)? In what position was this party accepted by the court: plaintiff or amicus curiae (on either side)?**

We did not find any cases in Spain.

## Presuming a national court would grant standing to an NGO to challenge a state aid decision, what criteria would this NGO need to meet in order to be recognized? Are there different criteria for becoming a party vs. an amicus curiae?

Associations and groups which may be affected by the challenged administrative act or regulation or are legally entitled to defend collective rights and legitimate interests have legal standing. Thus, legal recognition is required in order to have legal standing.

Law 27/2006, of 18 July regulating the rights on access to information, public participation and access to justice in environmental matters (the “Aarhus Law”) established an actio popularis in environmental matters to challenge certain acts and omissions. This actio popularis only grants standing to not-for-profit legal persons meeting a set of requirements. These requirements for not-for-profit legal persons provided by Article 23(1) are the following:

- a) Having among their objectives stated in their by-laws the protection of the environment in general or of one of its elements.
- b) Having been legally established at least two years before the initiation of the legal challenge and having been active during that period to accomplish the objectives provided in their by-laws .
- c) According to their by-laws, develop their activity within the territorial scope affected by the administrative act or omission.

## Has an eNGO ever filed a lawsuit against a state aid measure in your Member State? Has an eNGO ever been admitted into a case as amicus curiae? If yes, what was

**the outcome of the case? What was the contribution of the eNGO to the outcome of the case? Please address both admissibility (standing/scope) and merits.**

We did not find such a national case in Spain.

**Can an applicant claim a state aid measure or scheme violated EU or national law relating to the environment? If yes, please provide details, specific examples where this was done, etc. You can quote here cases that were not initiated by eNGOs or members of the public, too.**

We have not found any such examples in Spain. In addition, from the information we have found seems that an illegal aid is considered so when it has not been notified to the EC or granted before the EC gave approval. Thus, it might be understood that state aid not complying with environmental law would not be considered illegal. However, it is my opinion that an NGO could challenge a state aid granted by an administrative act or general provision based in the violation of EU and national environmental law.

**What sort of remedies is available in a judicial procedure started against a state aid measure?**

In Spain the court could order recovery, cease and desist, and potentially award lost profits to the injured party.

**Assuming eNGOs and other members of the public have standing to challenge state aid measures, what potential costs would they face? Would these costs be different if**



## these eNGOs and members of the public are only acting as amicus curiae?

In Spain the “loser party pays” principle applies as follows:

- At first or sole instance, the judicial body, when issuing its judgment or when resolving a procedural appeal, shall charge the cost to the party whose entire request is dismissed or rejected unless the case involved serious doubts on the facts and merits.
- In appeal costs shall be charged to the appellant if the entire appeal is dismissed unless the judicial body considers and reasons that there were circumstances justifying the contrary.

When the petitions of the parties are partially accepted or rejected each party shall pay its own costs and shall share the common costs. Nevertheless, if the judicial body considers that one of the parties sustained the action or filed the case in bad faith or recklessness and reasons so, that party shall bear the costs.

The costs are calculated on the basis of the sum of the object in dispute. In administrative judicial review procedures the costs are not high. In addition, by the Aarhus Law environmental NGOs can apply for legal aid. If legal aid is granted even if they judgment imposes the costs to the environmental NGO, this won't have to pay the costs. This was thanks to a case impelled by IIDMA in 2019.

**How can eNGOs and other members of the public have access to information about any possible planned state aid or an actually granted state aid? Specifically, are there national registers? Please answer not only as to general information “out there”, but specifically indicate**

## whether, in your view, this register is fit for the purposes of mounting a timely legal challenge of any such aid.

In Spain all state aid is published in the National Data Base on Subsidies and Grants which includes state aid, available at: <https://www.pap.hacienda.gob.es/bdnstrans/GE/es/concesiones/ayuda>

Real Decreto 130/2019, de 8 de marzo, por el que se regula la Base de Datos Nacional de Subvenciones y la publicidad de las subvenciones y demás ayudas públicas (Royal Decree regulating the National Database on Subsidies and Grants and the publicity on subsidies and other state aid ) is very detailed on the contents and timelines for publicity. Thus, this register fit for the purposes of mounting a timely legal challenge of any state aid.

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