

Decision in case 1555/2019/VB on the European Commission's allegedly incorrect handling of a State aid complaint

Decision

Case 1555/2019/VB - Opened on 19/09/2019 - Decision on 19/09/2019 - Institution concerned European Commission (No maladministration found) |

Background

1. The complainant is a Spanish association, whose members are experts in investment funds and people who have been negatively affected by the activities of such funds in Spain.
2. On 16 September 2018, the association complained to the European Commission that one particular investment firm had received unlawful State aid from the Spanish authorities for the purchase of thousands of buildings for social housing.
3. The Commission replied that, in accordance with Council Regulation 2015/1589 [1] , only an interested party could submit a formal State aid complaint. It informed the complainant that it did not qualify as an interested party [2] and noted that it had not used the mandatory State aid complaint form. The Commission concluded that it could not treat the complaint as a formal State aid complaint and informed the complainant that it would register the information received as general market information.
4. In its further contacts with the Commission, the complainant contested the Commission's position arguing that it was an interested party. It said that it, and some of its members, were directly and individually concerned by the anticompetitive practices of investment firms in Spain.
5. The Commission replied to the complainant's arguments and confirmed that it did not qualify as an interested party.
6. On 10 August 2019, dissatisfied with the Commission's replies, the complainant turned to the Ombudsman arguing that the Commission had not handled its complaint correctly and that it had wrongly refused to recognise it as an interested party.



The European Ombudsman's finding

7. The Ombudsman understands the complainant's concerns which relate to a delicate and sensitive matter.

8. However, she notes that, according to EU case-law, “ *under Article 1(h) of [Regulation 2015/1589] ‘interested party’ means inter alia any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, that is to say, in particular competing undertakings of the beneficiary of that aid . In other words, that term covers an indeterminate group of persons* ” [3] (emphasis added).

9. Furthermore, Article 11a paragraph 2 (“Admissibility of complaints”) of the relevant Implementing Regulation [4] refers to a form in Annex IV, which interested parties need to fill in when making a State aid complaint. That form invites complainants to “ *explain why and to what extent the alleged State aid affects [their] competitive position/the competitive position of the person/firm [they] represent .*” It then refers to the definition of interested party under Article 1(h) of Regulation 2015/1589.

10. Therefore, it is clear that in order to be considered an interested party, complainants need to demonstrate that the alleged State aid affects their competitive position or that of the persons or firms they represent.

11. The Ombudsman notes that the complainant did not argue that itself, or its members, compete with the beneficiary of the alleged State aid or that its competitive position would be affected by the granting of such aid.

12. Based on the information provided by the complainant, the Ombudsman concludes that the Commission dealt with the matter appropriately and that there was no maladministration. [5]

Lambros Papadias Head of Inquiries - Unit 3 Strasbourg, 19/09/2019

[1] Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1589> [Link].

[2] The Commission referred to the definition of interested party given in Article 1(h) of Council Regulation (EU) 2015/1589 which reads as follows: ‘ *any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations*’

[3] Judgement of the Court of Justice of 24 May 2011, *Commission v Kronoply GmbH & Co. KG*



and Kronotex GmbH & Co. KG, C-83/09, paragraph 63:

<http://curia.europa.eu/juris/document/document.jsf;jsessionid=C8A5040EFB6B7FE1F1F4D15A90995E60?text=&do>
[Link].

[4] Commission Regulation (EC) 794/2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R0794-20161222> [Link].

[5] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]