

Decision of the European Ombudsman on complaint 1954/2019/MH about how the European Commission is dealing with a State aid complaint concerning investment aid granted to building companies in Sweden

Decision

Case 1954/2019/MH - **Opened on** 26/11/2019 - **Decision on** 26/11/2019 - **Institution concerned** European Commission (No maladministration found) |

Dear Mr X,

You submitted a complaint on the behalf of X to the European Ombudsman against the European Commission. The Ombudsman has asked me to deal with your complaint and reply to you on her behalf.

Your complaint to the Ombudsman raises concerns about delays in the Commission's handling of X's State aid complaint against Sweden. The Commission registered that complaint on 31 August 2018. It concerns possible illegal investment aid granted to building companies under the Swedish Regulation 2016:881. You would like the Commission to take a decision on that complaint.

I am sorry to have to tell you that after a careful analysis of all the information you provided with your complaint, we have decided to close the case with the following conclusion [1] :

Since the Commission has provided reasonable explanations for the time it is taking to examine the State aid complaint, the Ombudsman finds no maladministration in this case.

In your email to the Ombudsman of 30 October 2019, you referred to the Commission's *State Aid Manual of Procedures* [2] . This Manual is obsolete and based on procedural rules that are no longer in force. [3]

Under the new State Aid Procedural Regulation, [4] the Commission must examine complaints “ *without undue delay* ”. According to its *Code of Best Practices*, [5] the Commission tries to investigate a State aid complaint within a **non-binding** time limit of 12 months from when the complaint is registered.



It is now just under 15 months since the Commission registered your complaint.

According to its *Code of Best Practices*, the Commission must systematically keep a complainant informed about a State aid investigation. [6]

On 24 and 29 October 2019, the Commission updated you on the status of the State aid complaint. It told you that it is still investigating, and that it has not respected the non-binding deadline due to the difficulties of the case and the numerous exchanges that it has had with you over the past months (including two meetings in April and May 2019). We also understand that the Commission has had to assess an additional submission that you made on 11 June 2019, that is, towards the end of the 12-month period. The Commission also pointed out that it has been in contact with the Swedish authorities. [7]

Based on the information provided with the complaint, the Commission has given reasonable explanations for the time it is taking to examine your State aid complaint. These explanations are based on the circumstances of the case, in line with its *Code of Best Practices* [8] .

In light of the Commission's explanations, we therefore do not consider the time taken by the Commission to be, at this stage, disproportionate. The Commission has exceeded the indicative deadline by *only 2-3 months* .

For these reasons, we have decided to close the case.

We realise you may be disappointed by this outcome, but we hope that you at least find our explanations helpful.

Thank you for having contacted the European Ombudsman's Office.

Yours sincerely,

Tina Nilsson

Head of Inquiries - Unit 4

Strasbourg, 26/11/2019

[1] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> [Link].



[2] https://ec.europa.eu/competition/state_aid/studies_reports/sa_manproc_en.pdf

[3] See: https://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html [Link].
The rules that are no longer in force are contained in Council Regulation 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:31999R065> [Link].

[4] Article 12(1) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, available at:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.248.01.0009.01.ENG [Link]

[5] Paragraphs 71 and 74 of the *Code of Best Practices for the conduct of State aid control procedures* :
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2018.253.01.0014.01.ENG&toc=OJ:C:2018:253 [Link]

[6] Paragraph 78 of the Code of Best Practices.

[7] A step the Commission normally carries out under Article 12(1) of the State Aid Procedural Regulation

[8] According to paragraph 71 of the *Code of Best Practices*, “ [t]he investigation could be longer based on the circumstances of the case, for example if the Commission services need to ask the complainant, Member State or third parties for further information.”