



Decision in case 715/2020/EIS on the Commission's alleged failure to deal in a timely manner with a state aid complaint concerning the durum wheat sector in Italy

Decision

Case 715/2020/EIS - Opened on 19/05/2020 - Decision on 18/08/2020 - Institution concerned European Commission (No maladministration found) |

The case concerned the timeliness of the Commission's action in dealing with a state aid complaint concerning the durum wheat sector in Italy. The complainant claimed that, two years after the submission of his complaint, the Commission had not reached a final decision on the case.

The Ombudsman inspected the Commission's file on the case and obtained further clarifications during a meeting.

The Commission explained how it had proceeded based on its internal rules and procedures. It also explained the reasons for the delays it had incurred. The Ombudsman found that there was no evidence that the Commission had neglected the file in any way or that there had been unfounded postponements in its handling of the matter.

The Ombudsman thus closed the inquiry, finding that there was no maladministration in how the Commission has been handling the complainant's state aid complaint.

Background to the complaint

- 1.** The complainant is an Italian citizen who is a producer of durum wheat. On 17 April 2018, he lodged a complaint with the Commission against Italy regarding a state aid scheme concerning agricultural holdings that cultivate durum wheat and which have signed supply chain contracts. He claimed that the relevant Italian Decree, providing for the aid, was in violation of the EU state aid rules [1] .
- 2.** The complainant was of the view that the application of the Decree was unfair because the supply chain contracts left the agricultural holdings dependent on the 'strongest' contractors. In fact, according to the complainant, these contracts created disparity among the actors in the durum wheat sector, breaching competition rules and distorting the market.
- 3.** The complainant listed four reasons in support of his view: (i) the contracts impose the use of specific and limited wheat varieties, thereby disadvantaging imported varieties as well as other national varieties; (ii) they dictate the 'dominant influence' of the flour mill/pasta



manufacturing plant on the farmers, creating a 'single undertaking' [2] ; (iii) they impose an obligation to buy a determinate amount of seeds to fit the density of seeds per hectare of cultivation; and (iv) they lay down the obligation to deliver and sell the whole output to the processing and/or marketing industry.

- 4.** On 8 June 2018, the Commission sent a pre-closure letter to the complainant. It had concluded that the Decree did not provide for a limitation concerning the variety of wheat seeds and therefore it was not in violation of EU state aid rules. Furthermore, the Commission considered that the complainant had failed to prove that there were 'single undertakings'.
- 5.** On 3 July 2018, the complainant contested the findings of the Commission and explained his arguments in more detail. He also provided some additional evidence.
- 6.** On 17 September 2018, the Commission replied to the complainant that it had decided to contact the Italian government to request clarifications. It did so on 27 September 2018, giving the Italian authorities a one-month deadline. After it did not receive a reply, on 10 January 2019, the Commission sent a reminder, giving again a one-month deadline for the reply.
- 7.** On 12 March 2019, the Italian government replied to the Commission. It explained that the Decree provided for a definition of supply chain contracts and stated that there was no obligation on the agricultural producer, eligible for the aid, to award the entire output to a single processing undertaking; nor did the Decree refer to a specific variety of national seeds.
- 8.** On the basis of this information, the Commission sent a second pre-closure letter to the complainant on 10 May 2019, as it could still not find any violation of the state aid rules.
- 9.** On 29 May 2019, the complainant replied to the Commission, reiterating his arguments and providing further elements. On 26 November 2019, as he had not received an update on the status of his state aid complaint, the complainant reminded the Commission of his unanswered letter. He also attached a communication issued by the Italian Competition Authority [3] in the context of an inquiry. This inquiry provided evidence of certain unfair commercial practices in the durum wheat sector, including the stronger commercial power of certain actors, unbalanced supply contracts, and 'dominant influence'.
- 10.** On 27 November 2019, the Commission replied that it would examine the document before finalising its reply to the complainant. On 30 January 2020, the Commission informed the complainant that it had invited the Italian government [4] to provide comments on the communication forwarded to it by the complainant and that it was waiting for a reply. In the absence of a response, the Commission sent a reminder to the Italian government on 2 March 2020.
- 11.** As two years had passed since he had made his state aid complaint, on 23 April 2020, the complainant turned to the Ombudsman, contending that the Commission had failed to deal with it in a timely manner and to provide a final reply to him. He further pointed out that,



after contacting the Italian government and not having received a reply, the Commission delayed in reminding it to provide its views on the complaint on two occasions. The complainant further stressed that his letter of 29 May 2019 had remained unanswered. The inquiry

12. The Ombudsman opened an inquiry into the timeliness of the Commission's actions to deal with the state aid complaint, given that the indicative timeframe of one year provided for in the Commission's Code of Best Practices for the conduct of state aid control procedures ('the Code') had been exceeded [5] .

13. The Ombudsman's inquiry team discussed the case during a meeting with the Commission and inspected the Commission's file.

Information gathered during the inspection meeting

14. Regarding the complainant's unanswered letter of 29 May 2019, the Commission pointed out that it had a heavy workload for state aid assessments in the period from June to November 2019. During this timeframe, the Commission prioritised the work that was subject to stricter deadlines, such as state aid exemption requests and notifications by Member States. In November 2019, while a letter to the complainant was being drafted, the complainant submitted further evidence. The Commission thus decided to invite the Italian government to comment on it, as its views were deemed necessary to evaluate the situation and to provide a full reply to the complainant. Having received no reply to date, the Commission is not in a position to take a decision on the complaint yet.

15. Concerning the alleged delays in reminding the Italian government to reply, the Commission explained that when a deadline for a reply expires, the usual practice is to give some more time to the national authorities before sending a reminder. The Commission holds monthly internal follow-up meetings to assess the status of the deadlines and decide on the next steps. In this case, after the deadline included in the reminder had expired, the Commission did not deem it necessary to proceed to an information injunction [6] . Such a procedure is reserved for very serious and well-substantiated cases [7] , and this case did not meet those criteria. Furthermore, due to the national constraints of the COVID-19 crisis, the Commission said that it allowed more flexibility to the Member States and was refraining from putting undue pressure on them.

16. Finally, the Commission clarified that, in its handling of this case, it has been following its internal rules and procedures for dealing with state aid complaints and setting its priorities among complaints. The state aid complaints that, at first glance, are well-substantiated, obtain priority over others that are less substantiated. According to the Commission, this complaint did not reach the threshold to be considered as a priority case.

The European Ombudsman's findings

17. State aid complaints constitute an essential means of informing the Commission of possible infringements of EU state aid rules. The Commission should therefore seek to adhere to the timelines it has set itself for dealing with such complaints, to the greatest extent possible.

18. The Ombudsman's role in this area extends to the administrative and



procedural handling of state aid cases by the Commission, including as regards the time taken and reasons given for any delays. Generally speaking, the Ombudsman will find maladministration in this context only if there has been

negligence by the Commission or unfounded postponements [8] .

19. The Ombudsman acknowledges that the Commission has discretion in deciding how to prioritise its work both in general and in state aid complaints [9] . In this case, the Commission clarified its criteria for classifying the priority of its work according to urgency and the degree to which the complaint is substantiated. The Ombudsman finds these explanations generally to be reasonable.

20. Regarding specifically the Commission's alleged delays in **reminding the national authorities** to reply, the Commission explained that while it has a monitoring system in place, it applies a flexible approach to its contacts with the national authorities, where necessary. As a result, it may allow additional time before sending a reminder. This does not, however, mean that a missed deadline is overlooked. In this case, it took the Commission about two and a half months to send a reminder once the deadline had expired after the first request for information and about one and a half months after the second request for information. In the circumstances, these timeframes are not excessive. Furthermore, as Member States are currently dealing with national constraints related to the COVID-19 crisis, the Ombudsman understands that the Commission has recently given additional time.

21. Regarding the Commission's inaction related to the **complainant's letter of May 2019** , the Commission explained its heavy workload in the months following to the letter. Although this delay is regrettable, the Ombudsman understands that the Commission had to prioritise certain cases. At the inspection meeting, the Commission also explained that it was drafting a reply when the complainant sent additional evidence. Against this background, the explanations provided by the Commission are reasonable.

22. On the **overall timeliness** of the handling of the complaint, the Ombudsman is aware that the timeframe of 12 months for reaching a decision is indicative. Adhering to it often depends on the timeliness of the replies given by the Member States or third parties to requests for further information [10] . In this case, the Italian authorities delayed twice in replying.

23. On the basis of the above, the Ombudsman finds that there is no evidence that the Commission has neglected this file or that there have been unfounded postponements by the Commission in the handling of the state aid complaint. The Ombudsman trusts that the Commission will inform the complainant as soon as possible about the outcome of the procedure.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There has been no maladministration in how the Commission has been handling the state aid complaint.



The complainant and the Commission will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 18/08/2020

[1] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid OJ L 352, 24.12.2013, p. 1–8, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1407> ; Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector, OJ L 352, 24.12.2013, p. 9–17, <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32013R1408> ; and Articles 107 and 108 of the Treaty on the functioning of the European Union, which cover state aid.

[2] Within the meaning of Article 2(2) of Regulation 1408/2013, which defines 'single undertakings' as: *"all enterprises having at least one of the following relationships with each other: [...] (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association"*. In accordance with this definition, the complainant argued that the state aid in question should be applied to the farmers considering them together with the contractor (flour mill/pasta factory/stocker) as one single undertaking.

[3] This is the 'AGCM' – Autorità Garante della Concorrenza e del Mercato.

[4] The Commission sent the letter to the Italian government on 16 December 2019.

[5] Code of Best Practices for the conduct of State aid control procedures C/2018/4412, OJ 2018 C 253, p. 14, paragraph 71, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2018.253.01.0014.01.ENG .

[6] 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, OJ L 248, 24.9.2015, p. 9–29, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.248.01.0009.01.ENG .

Article 12(3) of that regulation states that: *" [w] here, despite a reminder pursuant to Article 5(2), the Member State concerned does not provide the information requested within the period prescribed by the Commission, or where it provides incomplete information, the Commission shall by decision require the information to be provided ('information injunction'). The decision shall*



specify what information is required and prescribe an appropriate period within which it is to be supplied” .

[7] For example, when there is already an ongoing formal investigation against a Member State and that Member State is not cooperating.

[8] See by analogy also the Ombudsman’s decision in case 369/2018/JAP, available at: <https://www.ombudsman.europa.eu/en/decision/en/119020>.

[9] Set out in paragraph 74 of the Code.

[10] Set out in paragraph 71 of the Code.