

Letter from the European Ombudsman to the European Commission on its procedure for revising the Emissions Trading Scheme (ETS) State aid Guidelines, which no longer include the 'Artificial graphite; colloidal or semi-colloidal graphite' sub-sector

Correspondence - 21/07/2021

Case 1006/2021/SF - **Opened on** 21/07/2021 - **Decision on** 15/07/2022 - **Institution concerned** European Commission (Dealt with by a Court) |

Ms Ursula von der Leyen

President

European Commission

Dear President,

I have received three complaints concerning the European Commission's revision of the Emissions Trading Scheme State aid guidelines ('ETS Guidelines').

All three complaints primarily allege lack of transparency in the Commission's revision process. As each complaint also raises issues concerning the relevant sub-sectors in the context of the revision procedure, I have decided not to join the complaints.

This request for reply concerns the complaint from the European Carbon and Graphite Association (ECGA) against the Commission.

I have decided to open an inquiry into the complainant's concern about lack of transparency and public participation in the revision of its ETS Guidelines.

The complainant considers that the Commission **was not transparent** in its communication with the complainant. The Commission signalled to the complainant that it would consider PRODCOM data. However, in the complainant's view, this was not the case.



The complainant claims that the Commission did not respond to the complainant's questions and grievances about the methodology it used and that the documents published either lacked information or contained contradictory information.

The complainant further claims that the Commission's **methodology is discriminatory** . It discriminates between sectors and sub-sectors when it used different criteria to determine whether they are at risk of carbon leakage. The Commission's methodology also discriminates between sub-sectors when it favours those, which are still able to switch from fuel to electricity in their production. The complainant considers this an inadequate criterion, in particular, where fully electrified industries have no possibilities to spread the rising electricity costs and have therefore an incentive to move production abroad, which is exactly what State Aid is meant to avoid.

The complainant alleges that the Commission's methodology represents an **abuse of power, as it does not have an objective and factual basis but is arbitrary and shows many inconsistencies and ad hoc modifications** .

Finally, the complainant considers that the **Commission's methodology violates the principle of proportionality** , as the criteria the Commission used are neither appropriate nor necessary to achieve the objective of compensating those industries that are at risk of carbon leakage.

I have now concluded that it would be useful to receive a written reply from the Commission to this complaint.

This inquiry does not concern the Commission's policy choices but primarily the transparency of the revision process itself and the steps the Commission took to allow for meaningful participation of the public and the stakeholder concerned. This inquiry will examine, in particular, how the Commission considered the sector specific data provided by the complainant.

Please note that I am likely to send your reply and related enclosures to the complainant for comments. If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them 'Confidential'. [1] I may also decide to publish the non-confidential parts of your reply. The responsible inquiries officer is Ms Silvia Fuller.

I would be grateful to receive the Commission's reply by 16 November 2021.

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 21/07/2021



[1] Encrypted emails can be sent to our dedicated mailbox. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.