

Proposal for solution regarding public access to communications with Denmark in closed State aid file COMP/N 172/033 (year 2005) related to an employment reinsertion scheme

Solution - 20/07/2020

Case 358/2020/PB - Opened on 08/07/2020 - Recommendation on 10/11/2021 - Decision on 08/06/2022 - Institution concerned European Commission (Recommendation agreed by the institution) |

Ms Ursula von der Leyen

President

European Commission

Dear President,

Thank you for the Commission's rapid response to our request for copies of the documents here concerned (GESTDEM 2019/6813).

We have examined all the documents and come to the conclusion that there seems to be scope for granting partial access.

The Commission's decision not to grant access to the documents appears to have been based on a somewhat automatic application of the presumption of non-disclosure of state aid files.

We are acutely aware of the practicality of applying this presumption of non-disclosure, which the Court indeed introduced to allow for some proportionality in the institutions' handling of requests for public access to documents. At the same time, it is good to recall that the application of the presumption of non-disclosure is a possibility, not an obligation as such. With regard to state aid files specifically, an important rationale for its application is that the file commonly contains a wealth of information that is by its nature covered by commercial secrecy.

The information in the documents here concerned, which are more than fifteen years old and for



a state aid file relatively few in number, is overwhelmingly of a non-commercial nature. The documents essentially contain correspondence in which the Commission services ask the Danish authorities for clarifications regarding the nature of the planned employment support scheme in question. The questions and clarifications are factual in nature, and do not indicate any sensitive points of contention. As such, the present case does not appear to raise any general issues of principle related to state aid files, but can be looked at entirely on its own facts. That is how I suggest the matter be approached.

Relatedly, one of the main letters from the Commission, signed by the then Commissioner Mario Monti (11 May 2004, ref. C (2004) 1871)) contains a final paragraph in which the Commission asks the Danish authorities to inform it whether the letter in their view contains confidential information, and that, if not, the Commission would publish the letter on the web-page of the Secretariat-General (a web-page that appears no longer to exist). The letter contains quite extensive information that we find in other documents here concerned. I believe it would be helpful to take this into account too.

I would accordingly be grateful if the Commission could consider the possibility of granting partial access to these documents and to do so by **15 September 2020**

I look forward to your reply and thank you in advance for the good cooperation.

Yours sincerely,

Emily O'Reilly

European Ombudsman

Strasbourg, 20/07/2020