

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 - 26/02/2021

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,

I am writing to seek a pragmatic solution to this case, brought to my office by a Danish trade union last year.

My inquiry team met with Commission representatives in December, and submitted additional information to the Commission shortly thereafter. In light of the development in the case, I am optimistic that the Commission can agree to a rapid and pragmatic outcome.

The case concerns, in summary, a request for public access to the correspondence between the European Commission and Denmark in the above-mentioned state aid case that was closed fifteen years ago. The complainant's request for access was routinely rejected through application of the case-law based presumption of confidentiality that applies to state aid files. The complainant - similarly in line with the case law - sought to rebut that presumption with reference to the facts of the circumstances of the specific file here in question: He noted that the state aid file was closed fifteen years ago. He contended that the documents did not contain sensitive commercial information (this was later confirmed). He also pointed out that his request and the documents in question relate to a matter that has received front-cover attention in the Danish media, and which concerns the alleged misuse of a job reinsertion programme that



resulted in systematic state-supported low-paid workforces for a number of companies.

We have examined the documents in question. They total some 177 pages, and effectively appear not to contain any commercial information.

The Commission's services did not examine the documents. This is because they routinely relied on the presumption of confidentiality.

During the inquiry, it came to our attention that the Danish authorities have in fact already granted public access to several of the key documents in question. We received copies of those documents and sent them to the Commission's services following the December meeting [1] .

It therefore appears that the Danish authorities do not have a problem with the content of the correspondence being public.

My proposal to you is therefore that the **Commission now examines the correspondence here concerned with a view to granting the widest possible public access through partial disclosure.**

If the Commission's services continue to have some hesitation regarding disclosure, please consider it a **formal part of my proposal that the Commission consults the Danish authorities in this regard** . When or if it does so, please ensure that the Danish authorities receive the same set of documents that the Commission sent to my office in July last year.

I am aware that some of your services will have concerns regarding the possible repercussions of disclosure. I fully understand any such immediate reaction from an administrative point of view, in particular in light of the often very large size of state aid files and their large content of commercial information.

I trust that you will help guide your services to achieve a proportionate and reasonable outcome to the present case, which concerns a small number of old documents that raise no issues of commercially sensitive information.

At the level of good governance and communication with the public at large, I trust that you will appreciate the opportunity this case provides for demonstrating that the European Commission will come out in favour of transparency when the circumstances of a case so allow.

I would be grateful to receive your reply by 31 March 2021.

In light of the communication that has already taken place in relation to this case, I deem this deadline to be appropriate and realistic.

Yours sincerely,



Emily O'Reilly

European Ombudsman

Strasbourg, 26/02/2021

[1] Communication to the Commission of 18 December 2020.