

Decision in case 1226/2017/CEC on the European Commission's rejection of a State aid complaint due to a lack of interest

Decision

Case 1226/2017/CEC - Opened on 08/08/2017 - Decision on 03/05/2018 - Institution concerned European Commission (No maladministration found) |

The complaint to the European Commission

1. On 2 May 2017, the complainant submitted a complaint to the European Commission concerning an alleged unlawful State aid granted by the Flemish Region in Belgium to a municipal water provider by allowing this provider to use a waterpark basin free of costs.
2. The complainant considered that he was an interested party within the meaning of the applicable State aid rules. First, he stated that his family home (and only his) had been expropriated for the construction of a waterpark basin. He considered that the expropriation only served the private interest of the water provider concerned and that his right to property had been infringed, and that he suffered moral and financial damage. Second, he was concerned about the quality of drinking water provided to him in view of the dependency of his own water provider on the water provider allegedly receiving State aid. Finally, the complainant referred to a risk of drinking water shortage because of the decision by the water provider to change the use of the waterpark basin from "safety" to "production".

The European Commission's response to the complainant

3. On 29 June 2017, the Commission stated that according to Article 24(2) of the Council Regulation 2015/1589 [1] , only interested parties could submit a formal complaint. It explained that these are parties whose own interests might be affected by the granting of aid, for example competitors or trade associations. It stated that the complainant did not qualify as an interested party and that his submission could therefore not be treated as a formal complaint. The Commission thanked the complainant for the information he submitted, which it would register as general market information.



4. Dissatisfied with the Commission's reply, the complainant turned to the European Ombudsman on 14 July 2017.

The European Ombudsman's finding

5. Article 1(h) of Regulation 2015/1589 defines an "interested party" as "*any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations*".

6. According to an established line of case-law "*under Article 1(h) of [Regulation 2015/1589], 'interested party' means among others any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, that is to say, **in particular competing undertakings of the beneficiary of that aid**. In other words, that term covers an indeterminate group of persons*" [2]. (emphasis added)

7. Furthermore, Article 11a ("Admissibility of complaints") of the Implementing Regulation [3] refers under point 2 to a form in Annex IV, which interested parties need to fill in when making a State aid complaint. That form invites complainants to "*explain why and to what extent the alleged State aid affects [their] competitive position/the competitive position of the person/firm [they] represent.*" It then refers to the definition of an interested party under Article 1(h) of Regulation 2015/1589.

8. Therefore, it is clear that in order to be considered an interested party, one needs to demonstrate that the alleged State aid affects one's competitive position or that of the persons or firms one represents.

9. In this case, the complainant does not argue that he competes with the beneficiary of the alleged State aid and/or that his competitive position would be affected by the granting of that aid. Therefore, his arguments are not such as to confer on him the status of an "interested party" within the meaning of the State aid rules.

10. In light of the above, the Commission decision not to treat the complainant as an "interested party" does not constitute maladministration. [4]

Lambros Papadias

Head of Inquiries - Unit 3

Strasbourg, 03/05/2018



[1] 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 2015 L 248, p. 9.

[2] See Judgments of the Court of Justice of 24 May 2011, *Commission v Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG*, C-83/09, ECLI:EU:C:2011:341, paragraph 63 and of 14 November 1984, *SA Intermills v Commission*, 323/82, ECLI:EU:C:1984:345, paragraph 16.

[3] Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ 2015 L 325, p. 1.

[4] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions \[Link\]](#)