

Reply of DG Competition on a request for information from the European Ombudsman
Complaint ref. 2192/2025/MIG

Dear Ms Hickey,

Thank you for your letter of 28 January 2026 setting out a proposal for a solution on how to address the request for public access to documents relating to the recognition of ‘interested parties’ in State aid procedures (reference: EASE 2024/4279).

As you have noted, the Commission has in the meantime adopted a confirmatory decision on the request for public access in question, maintaining that no public access could be granted. The procedural difficulties raised in the complaint have therefore been resolved and the complainant now has received a final decision that can be challenged in court if he so wishes.

Beyond the public access request *strictu sensu*, your letter proposes to consider the complainant’s request as being related to information on the Commission’s approach to dealing with State aid complaints. Indeed, this was the understanding of the Commission when initially replying to the complainant (letter of 26 August 2024). The complainant however, in his request for a confirmatory decision, explicitly rejected this approach, highlighting that he was actually seeking access to documents.

While the access request has been rejected, the complainant might nevertheless find it helpful if he received further information about the handling of State aid complaints by the Commission.

The Commission has already explained in detail the case law on interested parties and the general approach of the Commission to the handling of complaints in the initial reply of 26 August 2024.

As proposed in your letter, the Commission can provide additional explanations to the complainant on a number of sample cases where (i) it recognised as interested parties entities other than beneficiaries or competitors and (ii) where it conducted an investigation based on ‘market information’ during the last five years.

Please find these additional explanations in the annex.

The Commission hopes that the complaint can be closed on this basis.

Yours sincerely,

Annex

The Commission has compiled the following explanations and sample cases from public information, in particular its fully searchable case register, see <https://competition-cases.ec.europa.eu/search?caseInstrument=SA>.

(i) *Entities other than beneficiaries or competitors recognised as interested parties*

Article 1(h) of the Procedural Regulation defines ‘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.*” The Commission assesses this notion in accordance with the case law, as already explained in detail in the initial letter to the complainant of 26 August 2024.

As set out in the definition, the notion of interested party is not limited to beneficiaries or competitors but also includes Member States as well as any person or entity whose interests might be affected by the granting of the aid.

Sample cases from the Commission practice where entities other than beneficiaries or competitors were recognised as interested parties:

- Complaint by a Member State: formal complaints by Member States against measures by other Member States are extremely rare. The most recent example: a 2013 decision to open the formal investigation procedure, which sets out that the investigation into the Gibraltar corporate tax regime was launched based on a complaint by the Spanish authorities, see https://ec.europa.eu/competition/state_aid/cases/250265/250265_1480274_33_2.pdf
- Complaint by customers/users: a 2022 decision regarding alleged illegal state aid related to the management of industrial areas in Greece provides an example of a complaint where the interested parties were users of an industrial area; the alleged measure related i.a. to the management fees charged by the company responsible for developing and operating the industrial area in question, see https://ec.europa.eu/competition/state_aid/cases1/202243/SA_54321_105AF483-0000-C37E-8A3E-3D6C73796A3E_204_1.pdf
- A further example is provided by a 2022 decision to open the formal investigation into modifications related to an approved aid measure to establish an LNG terminal in Lithuania, which was based on complaints by industrial customers (off-takers) of the project affected by the modifications, see https://ec.europa.eu/competition/state_aid/cases1/202302/SA_44678_801CA085-0000-C39E-8B8E-1F355FF728C1_278_1.pdf
- Complaint by undertakings affected by the financing of a measure: the Commission opened a formal investigation into the Lithuanian electricity strategic reserve and public service obligation in 2019, based on complaints by industrial companies that were not competitors to the beneficiaries in the electricity sector but that would be affected by the levy on electricity consumption to finance the measure; see https://ec.europa.eu/competition/state_aid/cases1/201930/263953_2084216_176_2.pdf

(ii) *Examples of investigations opened based on market information*

The term “market information” refers to information coming into the Commission’s possession from any sources other than a notification or a formal complaint. The Commission does not distinguish between sources of market information as – contrary to notifications or formal complaints – there are no specific procedural rights or obligations related to specific sources of market information.

The Commission regularly starts investigations based on market information.

A common occurrence is that the Commission learns about a Member State’s plans to introduce a new measure from political announcements, press articles or information provided by stakeholders before any (pre-)notification contacts are established. The Commission regularly follows up on such information by contacting Member States to discuss whether (or when) they intend to start pre-notification discussions. These exchanges are generally confidential and only exceptionally reflected in any subsequent decision, given there are no procedural consequences attached to such informal exchanges prior to pre-notification.

- A recent example of a published decision mentioning such contacts relates to the case SA.104749 (2022/N) – Germany – Aid scheme for High Power Charging infrastructure for electric vehicles in Germany, see https://ec.europa.eu/competition/state_aid/cases1/202307/SA_104749_A07E5086-0000-CFF5-8039-2447716C3C35_85_1.pdf

The Commission also bases its ex officio investigations on the assessment of market information.

From the outset, it has to be recalled that the Commission has a wide margin of discretion in whether to start investigations on its own initiative; it can notably set priorities for investigations, also in light of its workload. Furthermore, it is common that ex officio investigations can be administratively closed, i.e. without the adoption of any decision, after exchanges with the Member State concerned have clarified the potential State aid concerns derived from market information. These cases are normally not made public.

Generally, the Commission thus only takes decisions in ex officio cases once its investigation have substantiated the existence of serious doubts, which in turn obliges it to open the formal investigation procedure. These decisions are published in the Official Journal together with a meaningful summary in all official languages.

In the past five years (2020-2025), the Commission has not adopted any decision to open a new formal investigation ex officio based on market information. As set out above, this is not an indicator that market information has not been followed up but rather that no investigation gave rise to serious doubts during that period.

The Commission can, however, provide sample cases from previous periods to illustrate the type of sources of market information the Commission relies on in its ex officio investigations:

- The 2017 decision to open a formal investigation procedure into possible State aid in favour of Inter IKEA explains the investigation was triggered by allegations in the

press on the tax practices of IKEA and a report published by the Greens/European Free Alliance group at the European Parliament; see https://ec.europa.eu/competition/state_aid/cases1/202046/272426_1973466_310_2.pdf

- The 2019 decision to open a formal investigation procedure into the Slovak Retail Turnover Tax explains that the Commission became aware of the measure based on market information it received from October 2018 onwards. See: https://ec.europa.eu/competition/state_aid/cases1/201920/279626_2068045_25_2.pdf
- In a 2019 decision to open a formal investigation procedure into potential aid to Nike, the Commission explains that it had requested (on its own initiative) information from the Netherlands regarding its tax ruling practice; this market information triggered the investigation, which is still ongoing today. See https://ec.europa.eu/competition/state_aid/cases1/201927/277937_2079330_55_2.pdf

These sample cases show that the Commission follows up market information irrespective of its source or origine, in line with its enforcement priorities.