



European Ombudsman

Emily O'Reilly
European Ombudsman

Confidential

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Decision of the European Ombudsman closing complaint 1867/2014/OV against
the European Commission



Moreover, in its further reply of 10 December 2014, the Commission provided some further clarifications concerning your two questions. The Commission's position is correct and in line with Regulation 659/1999 (the 'Procedural Regulation').

I would also like to underline that, contrary to what you have argued, the Commission is **not required** - on the basis of its examination of "*information from whatever source regarding alleged unlawful aid*" -, to **adopt a formal decision** on the basis of Article 4(2) or 4(3) in combination with Article 13 of the Procedural Regulation, and to publish a summary notice of such a decision in the Official Journal on the basis of Article 26 of the Procedural Regulation. Indeed, Article 10(1) of the Procedural Regulation, in its version before the amendment by Regulation 742/2013, stated that the Commission shall examine information from whatever source regarding alleged unlawful aid without delay. However, that Article did not state that the Commission, following its examination, had to adopt a formal decision. In fact, Article 4 of the Procedural Regulation, also in its version before the amendment by Regulation 742/2013, refers to decisions to be taken by the Commission with regard to "*notified measures*" which implies that the Commission will take a decision following a notification by a Member State. Article 4 does not apply with regard to the examination of information from whatever source.

I should also like to underline that the Athinaïki judgment of the Court of Justice (C-521/06 P - *Athinaïki Techniki v Commission*) only provides for a Commission decision to be taken when the Commission intends to reject a complaint. However, in the present case, not being an interested party, you did not submit a complaint according to the Procedural Regulation but information about an alleged State aid measure. Therefore, the above judgment does not apply to your case.

On the basis of the above, the Commission was not under an obligation to adopt a formal decision on the basis of the information which you submitted on 5 February 2013.

On the basis of my inquiry into your complaint, I close it with the following conclusion:

There has been no maladministration by the Commission.

Yours sincerely,

Emily O'Reilly