



EUROPEAN COMMISSION
DG Competition

State aid: General scrutiny and enforcement
Enforcement and monitoring

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**Permanent Representation of
Estonia to the EU
Rue Guimard 11/13
1040, Brussels**

Subject: State aid – Commission Decision of 25 November 2024 – Aid to AS Tartu Agro (SA.39182.CR-2) – Implementation of recovery

Dear Sir/Madam,

By letter dated 10 June 2025, the Ministry of Regional Affairs and Agriculture (hereafter: the Ministry) informed the Commission services that in order to receive access to the full correspondence between the Commission and the Ministry the beneficiary has initiated a national procedure with the Estonian Data Protection Inspectorate. This Inspectorate has requested the Ministry to assess whether to disclose the correspondence with the Commission and, if it rejects the disclosure of the requested correspondence, to explain why the appellant does not have a right of access to this correspondence.

First we would like to outline the EU legal framework on professional secrecy and the protection of confidential information in State aid procedures in general (I) before explaining the principle that guide the disclosure of documents in the administrative file relating to the procedure for reviewing the implementation of the decision ordering the recovery of State aid (II).

I. EU Legal framework on professional secrecy and the protection of confidential information in State aid procedures

Article 339 of the TFEU refers to the obligation of professional secrecy and reads as follows: *'The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.'* Therefore, according to the Treaty article, the Commission needs to respect its obligation of professional secrecy.

Similarly, in the context of State aid procedures, Article 30 of the [Council Regulation \(EU\) 2015/1589](#) states that *'The Commission and the Member States, their officials and other servants, including independent experts appointed by the Commission, shall not disclose information which they have acquired through the application of this Regulation and which is covered by the obligation of professional secrecy.'*

Thus, information covered by the obligation of professional secrecy may normally not be disclosed. The Procedural Regulation, as well as the case-law of the EU Courts set out clear limits to the powers of investigation of the Commission, as well as to the use of the information.

The [Commission Communication of 1 December 2003 on professional secrecy in State aid decisions](#) (OJ C 297, 9.12.2003, p. 6-9) clarifies the nature of this obligation and the procedure to be followed. It also includes a description of data that can or cannot be considered confidential information. In addition, information other than business secrets is in principle not covered by the Communication, even if it has been subjected to national tax secrecy rules. Only in very exceptional circumstances and if duly motivated, can this be covered by the obligation of professional secrecy (cf. point 17).

Also in the context of Regulation (EC) No 1049/2001, that generally establishes the right to access public documents in the Commission's administrative files, it is established that the Commission shall refuse the access to a document where its disclosure would undermine the protection of the purpose of inspections, investigations, and audits, or where it would seriously undermine the Commission's decision-making process (Article 4(2), third indent, and Article 4(3) of Regulation No 1049/2001).

These exceptions seek to protect the Commission's capacity to ensure that Member States and undertakings comply with their obligations under European Union law. For the effective conduct of investigations, it is of utmost importance that the Commission's investigative strategy, preliminary assessments of the case, and planning of procedural steps remain confidential.

In *TGI*¹, the Court of Justice held that, with regard to the exception related to the protection of the purpose of investigations, there exists a general presumption that disclosure of documents in the administrative file relating to a procedure for reviewing State aid would undermine the purpose of State aid investigations. The Court reasoned that this follows from the fact that, under the State aid procedural rules, interested parties, other than the Member State concerned, have no right to consult the documents in the administrative file. Should such access be granted under Regulation No 1049/2001, the nature of the procedure is likely to be modified, and, thus, the system for review of State aid would be called into question.

II. Documents in the administrative file relating to the procedure for reviewing the implementation of the decision ordering the recovery of State aid

The written correspondence forms part of the case file in a State aid recovery procedure. That investigation constitutes an 'investigation' under Article 4(2) third indent of Regulation No 1049/2001, which is not considered finalised, as the decision adopted by the Commission is still subject to an appeal. This is why the written correspondence between the national authorities and the Commission services relating to the implementation of recovery after the adoption of the Commission decision is covered by the general presumption of confidentiality.

Allowing public access to documents in State aid files would, in principle, jeopardise the balance which the Union legislature wished to ensure in State aid procedures between (i) the obligation on Member States to communicate possibly sensitive information to the

¹ See Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*.

Commission and (ii) the guarantee of increased protection in accordance with the State aid procedural regulations.

This applies to the written correspondence after the adoption of the Commission decision in context of recovery: The General Court, in its *Alzchem* judgment² recognised the existence of a general presumption of confidentiality under Article 4(2), third indent of Regulation No 1049/2001, applicable to documents relating to the procedure for reviewing the implementation of a decision ordering the recovery of State aid.

The General Court held that this procedure is bilateral, since it is between the Commission and the Member State concerned, and, in the context of that procedure, interested parties other than that Member State do not have the right to consult the documents in the Commission's administrative file.

This is because disclosure of such documents relating to the recovery procedure would undermine the dialogue and, therefore, the cooperation between the Commission and the Member State. In the context of the procedure for the recovery of State aid, sincere cooperation and mutual trust between the Commission and the State responsible for granting the aid are essential in order to enable them to express their views freely. If that Member State is required to implement the Commission's decision, and if the Commission must ensure that its decision is implemented, the implementation of the recovery decision requires communication between the Commission and the authorities of the Member State.

A bilateral dialogue between the Commission and the Member State concerned makes it possible for the Member State to cooperate in good faith, while ensuring that it properly implements the decision as quickly as possible.

Disclosure of the documents relating to the procedure for reviewing the implementation of a decision ordering the recovery of State aid would jeopardise the review of that procedure, and the Member States' willingness to provide detailed explanations regarding, *inter alia*, the state of progress of the recovery and potential difficulties encountered during the recovery. It could, thus, prove even more difficult for the Commission to obtain such information and, as the case may be, to begin a process of negotiation or to reach an agreement with the Member State concerned. This would lead to difficulties in implementing Commission decisions, a failure which constitutes an infringement of EU law which may lead to legal proceedings under Article 108(2) TFEU.

The stage of reviewing the implementation of a decision requiring the recovery of State aid is regarded as being comparable to the pre-litigation stage of the procedure laid down in Article 258 TFEU. Disclosure of documents concerning an infringement procedure during its pre-litigation stage may alter the nature of that procedure and change the way it proceeds, such that disclosure could undermine the protection of the purpose of investigations, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001, which protects the Commission's decision-making process.

It would undermine the protection of the objectives of the Commission's investigation activities and the effectiveness of Article 4 of Regulation No 1049/2001, if third parties could use a request for access to documents procedure addressed to the Member States'

² See Case T 569/19, *AlzChem Group AG v Commission*, paragraphs 71-76

authorities to receive access to the documents in the Commission's State aid files, that are protected by Article 4 of Regulation No 1049/2001.

The above considerations are without prejudice to the right of the beneficiary to request access to the documents from the Commission in line with the procedure set out in Regulation No 1049/2001.

Should you have any questions as regards the above please contact the officials in DG Competition handling the case Clara Sädler (phone: + 32.229-57807, E-mail: Clara.SAEDLER1@ec.europa.eu) and Efstathia Pantopoulou (phone: +32.229-88359, Efstathia.PANTOPOULOU@ec.europa.eu).

Yours faithfully,

(e-signed)

Head of Unit