

4. Fourth plea in law, alleging an infringement of Article 266 TFEU:

- the Commission has infringed Article 266 TFEU by not acting in accordance with the 2010 judgment. The Commission's letter demonstrates the Commission's final decision not to adopt a new formal decision specifying the exact amount that the applicant needs to pay, despite its obligation to do so after the 2010 judgment. The letter is therefore a definite and final statement that shows that the Commission will not fulfil its obligations under Article 266 TFEU.

5. Fifth plea in law, alleging an infringement of the principle of proportionality:

- the Commission did not respect the principle of proportionality when ordering the applicant to pay late-payment interest on a fine, the sum of which has never been clear and which had been annulled in its totality, without the Commission taking a new final decision as to the amount of fine to be paid by the applicant. The purposes of the rules that give the Commission the right to claim late payment interest in other cases are not fulfilled in the present case. In the alternative, it is at least disproportionate to impose an interest rate of a punitive character, since the applicant has been prevented from avoiding that cost as a result of the Commission's own conduct.

6. Sixth plea in law, alleging that the Commission erred in law when it refused to release the applicant's bank guarantee subsequent to the 2010 judgment:

- in the said judgment, the General Court annulled the 2005 decision, originally ordering the payment of fines, leaving the Commission without any legal claim against the applicant until the adoption of a new decision. In refusing to release the bank guarantee after the 2010 judgment, the Commission acted contrary to the ruling. This error in law directly caused the applicant further costs for continuing to provide the bank guarantee. In the alternative, the Commission should at least have reduced the amount of the bank guarantee immediately after the judgment to the maximum amount established by the General Court.

Action brought on 22 September 2014 — Italy v Commission

(Case T-673/14)

(2014/C 409/73)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: A. De Stefano, avvocato dello Stato, and G. Palmieri, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order the Commission to pay the costs.

Pleas in law and main arguments

The Italian Government has brought an action before the General Court of the European Union against European Commission Decision C(2014) 4537 final of 9 July 2014, notified on 10 July 2014, concerning the establishment, by the company SEA S.p.A., of the company Airport Handling S.p.A..

By that measure, the European Commission opened a formal investigation with regard to the Italian Republic, holding, by way of preliminary findings, that:

- the establishment, by SEA S.p.A., of the company Airport Handling S.p.A. and the resulting allocation of capital amounting to EUR 25 million constitutes State aid which is incompatible with the internal market;

- the company Airport Handling S.p.A. can be regarded as the successor to the company SEA Handling S.p.A., and thus continues to benefit from the aid received by that company which is the subject-matter of Decision C(2012) 9448 final of 19 December 2012, with the result that Airport Handling S.p.A. has assumed SEA Handling S.p.A.'s obligation to repay that aid.

In support of its action, the applicant relies on seven pleas in law.

1. First plea in law, alleging infringement and misapplication of the principle of sincere cooperation and of Articles 10 and 13 of Regulation (EC) No 659/1999 of 22 March 1999.

- The contested decision was adopted without account being taken of the evidence and assessments provided by the Italian authorities during the pre-investigation stage and was adopted in breach of the principle, repeatedly confirmed by the Court of Justice, that the Commission and the Member States have a duty to cooperate sincerely in order to overcome any difficulties which may arise during the implementation of a decision concerning the recovery of State aid.

2. Second plea in law, alleging infringement and misapplication of the principle of diligence and impartiality of administrative action.

- The Commission did not examine with due diligence the information provided by the Italian authorities during the pre-investigation stage and, accordingly, based the contested decision on an incorrect representation of the facts.

3. Third plea in law, alleging infringement and misapplication of the principle of prudence and proportionality of administrative action.

- The contested decision infringed the above principles, which required the Commission to await at least the outcome at first instance of the actions brought against Decision C(2012) [9448] final of 19 December 2012, and, accordingly, interfered prematurely in a start-up company's activity.

4. Fourth plea in law, alleging infringement and misapplication of Articles 108 TFEU, 120 TFEU, 145 TFEU and 146 TFEU.

- The contested decision, on the basis of a presumed misrepresentation of the facts, has the effect of preventing SEA S.p.A. from operating on the Milan airports handling market and from guaranteeing continuity of service in its capacity as manager of those airports.

5. Fifth plea in law, alleging infringement and misapplication of Article 108 TFEU, with reference to the alleged continuity between the business activities of SEA Handling and Airport Handling.

- The contested decision errs in finding that there is continuity between SEA Handling S.p.A. and Airport Handling S.p.A.

6. Sixth plea in law, alleging infringement and misapplication of Article 108 TFEU, with reference to the alleged imputability to the State of the supposed aid.

- The contested decision errs in finding that SEA S.p.A.'s decision to establish Airport Handling S.p.A. and to provide it with initial capital stock is imputable to the Italian public authorities.

7. Seventh plea in law, alleging infringement and misapplication of Article 108 TFEU, with reference to the supposed lack of economic rationality.

- The contested decision errs in finding that SEA S.p.A.'s decision to establish Airport Handling S.p.A. does not correspond to the conduct of a prudent market-economy economic operator.