

- It should also be found that there has been a manifest error of assessment and a failure to state the reasons in applying the rescuing and restructuring guidelines, in so far as the Commission (i) distorted the meaning of the requirement that the company's long-term viability must be restored, (ii) erred in rejecting the compensatory measures offered by SEA in the context of the restructuring of its subsidiary and (iii) failed to have due regard to the fact that the disputed capital injections were at all times carried out strictly on the basis of what was necessary for the restructuring of the company.

#### 6. Sixth plea in law: unlawfulness of the order for recovery.

- The applicant submits that the order for recovery is unlawful in that it infringes the principle of the protection of legitimate expectations and the obligation to state reasons.

### Action brought on 18 March 2013 — Comune di Milano v Commission

(Case T-167/13)

(2013/C 129/54)

*Language of the case: Italian*

#### Parties

*Applicant:* Comune di Milano (Italy) (represented by: S. Grassani and A. Franchi, lawyers)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the Court should:

- annul Commission Decision C(2012) 9448 of 19 December 2012 concerning the capital injections made by SEA S.p.A. to SEA Handling S.p.A.;

- in the alternative, having investigated the existence of specific exceptional circumstances which gave rise to a legitimate expectation on the part of the applicant that the capital injections would not constitute State aid within the meaning of Article 107(1) [TFEU], annul Articles 3, 4 and 5 of the Decision which oblige Italy to recover the aid;
- order the Commission to pay the costs of the present proceedings.

#### Pleas in law and main arguments

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

1. By the first plea in law, alleging infringement and misapplication of Article 107(1) TFEU, the Comune di Milano claims that the Decision is flawed in so far as the Commission found the measures at issue to be attributable to the Comune (and accordingly to the State). According to the Comune, the Commission has not provided any evidence of this, with the result that the measures at issue cannot be categorised as State aid.
2. By the second plea in law, also alleging infringement and misapplication of Article 107(1) TFEU, the Comune di Milano claims that the Decision is incorrect in so far as the Commission found that, in the circumstances, the 'private market-economy investor' test had not been satisfied. On the contrary, that test was fully satisfied, and the beneficiary of the measures did not derive any advantage from those measures, which means that the measures at issue cannot be categorised as State aid.
3. By the third plea in law, the Comune di Milano alleges breach and misapplication of the Guidelines for rescuing and restructuring firms in difficulty and of the Guidelines for the airport sector and, consequently, that the conclusions reached by the Commission concerning the alleged incompatibility of the measures at issue are unlawful.
4. By the fourth plea in law, divided into two limbs, the Comune alleges, with reference to the Commission's conduct during the investigation procedure, breach of (i) the principle of sound administration, the right to be heard and the rights of the defence and (ii) the principle of legitimate expectations — and claims that, in consequence, the recovery order is unlawful.