

Pleas in law and main arguments

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

1. First plea in law, raising a plea of illegality inasmuch as the decision taken by the defendant to cap the amount of the reimbursement of education expenses over the statutory ceiling, disputed in the present case, and the note of 15 April 2016 on which that was based and the Guidelines infringe the Staff Regulations of Officials of the European Union and Annex X thereof.
2. Second plea in law, alleging that the individual decision is unlawful on the following grounds:
 - infringement of the principles of precaution, legitimate expectations, legal certainty and sound administration and of their acquired rights;
 - infringement of the right to family and the right to education;
 - infringement of the principles of equal treatment and non-discrimination;
 - failure to weigh up the interests and lack of observance of the principle of proportionality of the measure adopted.

Action brought on 24 October 2017 — Marinvest and Porting v Commission**(Case T-728/17)**

(2018/C 022/62)

*Language of the case: Italian***Parties**

Applicants: Marinvest d.o.o. (Izola-Isola, Slovenia) and Porting d.o.o. (Izola-Isola) (represented by: G. Cecovini Amigoni and L. Daniele, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul European Commission Decision of 27.07.2017, C (2017) 5049 final (State Aid SA.45220 (2016/FC) — Slovenia — Alleged aid in favour of Komunala Izola d.o.o.) notified to Marinvest and Porting on 16 August 2017;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

This action is brought against European Commission Decision of 27.07.2017, C (2017) 5049 final (State Aid SA.45220 (2016/FC) — Slovenia — Alleged aid in favour of Komunala Izola d.o.o.) notified to Marinvest and Porting on 16 August 2017.

1. First plea in law, alleging infringement of the right to be heard resulting from the use, in the contested decision, of entirely new evidence not mentioned by the Commission in its letter of invitation to submit comments, infringement of the fundamental right to good administration provided for in Article 41 of the Charter, infringement of the general principle of the right to be heard, and infringement of Article 24(2) of Regulation 2015/1589
 - As a departure from the original wording of Article 20(2) of Regulation No 659/1999, Article 24(2) of Regulation 2015/1589 recognises the right of the interested parties (which have lodged a complaint) to submit comments as early as during the preliminary investigation phase. Article 24(2) constitutes a special application of the fundamental right to good administration, provided for in Article 41 of the Charter, and of the general principle of the right to be heard.

- In the present case, the rights of Marininvest and Porting guaranteed by Article 24(2) have been severely infringed. It is true that, by its letter of 14 February 2017, the Commission invited the complainants to submit their comments, and that Marininvest and Porting expressed their opinion on the preliminary assessment contained in that letter. However, the Commission then based the final contested decision entirely on evidence that had not even been mentioned in the letter of 14 February 2017 and on which the complainants were not able to adopt a position.
2. Second plea in law, alleging infringement of the right to be heard resulting from denial of access to the file and denial of the opportunity to be heard before the final decision was adopted, infringement of the fundamental right to good administration provided for in Article 41 of the Charter, infringement of the general principle of the right to be heard, infringement of Article 24(2) of Regulation 2015/1589, and existence in the present case of a failure to state reasons
- The complainants had asked to access the documentation sent to the Commission by the Slovenian authorities and to meet the Commission's services in order to provide any clarifications necessary, particularly with regard to the impact that the measures complained of would have on competition and on trade between Member States. The Commission adopted the contested decision without first sending the documents requested and without convening a meeting with the complainants. By acting in this way, the Commission breached Article 24(2) of Regulation 2015/1589, interpreted in accordance with Article 41 of the Charter and with the general principle of the right to be heard.
- The ability of the complainants to submit comments on the Commission's preliminary assessment, in accordance with Article 24(2), necessarily implies the right to access the file and to request a meeting with the Commission. Since they are closely linked, those prerogatives actually represent corollaries of the same fundamental right. There was no justification, in the present case, for the denial of such rights.
3. Third plea in law, alleging misinterpretation of the notion of State aid with regard to the requirement of adverse effect on cross-border trade, infringement of Article 107(1) TFEU, infringement of the Commission Notice on the notion of State aid, infringement of the general principle of the protection of legitimate expectations, and existence in the present case of a failure to state reasons
- According to the case-law of the Court of Justice and to the Commission Notice on the notion of State aid, the relatively modest size of the beneficiary undertaking does not preclude *a priori* the possibility that trade between Member States may be harmed. A public subsidy granted to an undertaking which provides only local or regional services and does not provide any services outside its State of origin may nonetheless have an effect on trade between Member States if such services could be provided by undertakings from other Member States (also through the right of establishment) and that possibility is not merely hypothetical.
- The Commission has entirely overlooked the fact that Marininvest and Porting are 100 % controlled by an undertaking established in Italy, Altan Prefabbricati. The latter undertaking has invested heavily in the construction of the Marina d'Isola, which is now managed, under the right of establishment as provided for in Article 49 TFEU, through its subsidiaries.
4. Fourth plea in law, alleging misinterpretation of the notion of State aid with regard to the requirement for competition to have been distorted and cross-border trade to be affected, incorrect assessment of the facts and distortion of the facts, and existence in the present case of a failure to state reasons
- In the contested decision, the Commission ruled out any adverse effect on trade between Member States, focusing essentially on the consideration that the services offered by Komunala Izola's marina would not be appropriate for attracting potential clients for the services offered by the applicants.
- The Commission's assessment of the facts is wrong. Next to Marininvest and Porting's marina is another marina, managed by an undertaking receiving aid (Komunala Izola), which, with a potential offering of mooring for 505 boats, provides similar services which are promoted, also in the Italian language, to all potential customers via a website.