

- by a measure of organisation of procedure, order the Commission to submit full versions of the following documents, removing if necessary any confidential data of third parties contained therein:
  - (a) Informal message in reply to the submissions of 22 February and of 4 and 12 March 2013 (Álava), of 26 March 2013;
  - (b) Informal message in reply to the submission of 7 November (Álava), of 4 December 2012;
- annul the decisions of the Commission set out in those documents;
- in the alternative, declare that the Treaties have been infringed, as a result of the Commission's silence and order it to respond to the applicant's request submitted in writing on 31 July 2017, so that the applicant may, as a beneficiary of the aid in question, exercise the procedural rights granted to it by EU law in the context of a formal procedure assessing the compatibility of that aid;
- order the European Commission to pay the costs.

### **Pleas in law and main arguments**

The present action seeks, primarily, the annulment of the Commission's decisions denying the compatibility with EU law of certain tax-related aid received by the applicant in the form of a tax credit of 45 % on particular investment projects, which decisions were notified to the Spanish tax authorities represented by the Diputación Foral de Álava, by letters from the Commission entitled 'informal message' and 'mensaje informal', of 4 December 2012 and 26 March 2013, to which the applicant gained access in the course of national proceedings.

The present action seeks, in the alternative, a declaration that the Commission failed to act, within the meaning of Article 265 TFEU, by its silence as regards the applicant's request of 31 July 2017 asking the Commission to take a position on the binding or non-binding legal nature of the aforementioned 'informal messages' and, if necessary, to grant the applicant the opportunity to express its views on all the relevant issues in the procedure.

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

1. First plea in law, alleging that the contested decisions were adopted without regard to the applicable minimum procedural guarantees
  - The applicant argues in this respect that the Commission disregarded the applicable minimum procedural guarantees, by taking a position in the informal messages concerning the incompatibility of a State aid without having followed the procedure laid down in Article 108(2) TFEU. That failure to observe the procedure entails an infringement of the applicant's fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union.
2. Second plea in law, alleging infringement of Article 107(3) TFEU
  - The applicant argues, in this respect, that the contested decisions err in finding the aid incompatible on the ground that it allegedly lacks an incentive effect.
3. Third plea in law, alleging infringement of Article 265 TFEU
  - The applicant argues, in this respect, that the Commission's failure to respond to the applicant's request that it take a position on the legal nature (binding or non-binding) of the 'informal messages' and, if necessary, grant the applicant the opportunity to express its views in that procedure, gave rise to a breach of the Treaties, to the applicant's detriment.

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### **Action brought on 28 November 2017 — Autostrada Wielkopolska v Commission**

(Case T-778/17)

(2018/C 032/56)

*Language of the case: English*

#### **Parties**

*Applicant:* Autostrada Wielkopolska S.A. (Poznań, Poland) (represented by: O. Geiss and D. Tayar, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the Commission Decision of 25 August 2017 in Case SA.35356 (2013/C) (ex 2013/NN, ex 2012/N) on State aid implemented by Poland for the company Autostrada Wielkopolska S.A.; and
- order the Commission to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Commission infringed the applicant's participation rights, in particular the right to be heard prior to the adoption of the Contested Decision;
  - the Commission failed to provide the applicant with adequate opportunity to comment on the evidence provided by the State;
  - the Commission deprived the applicant of its right to submit observations in respect of key documents and findings on the basis of which the Commission adopted the Contested Decision;
  - the possibility that these omissions affected the outcome of this case cannot be ruled out.
2. Second plea in law, alleging that the Commission erred in law and in fact by applying the wrong test to determine whether the constituent elements of Article 107(1) TFEU were met and applied said (incorrect) test in breach of Article 107(1) TFEU;
  - the Commission's finding that there was an advantage for the purposes of Article 107(1) TFEU relies solely on the 'point-to-point comparison' test;
  - the Commission carried out its private investor test assessment after having already decided that there was an advantage for the purposes of Article 107(1) TFEU;
  - the Commission's 'point-to-point comparison' test is incorrect as a matter of law;
  - the Commission committed manifest errors of assessment when carrying out its 'point-to-point comparison' test assessment, notably by not taking into account relevant information that was available to it at the time it adopted the Contested Decision;
3. Third plea in law, alleging that the Commission manifestly erred in law and in fact by failing to apply the private investor test in line with the relevant case law and by failing to provide adequate reasoning, therefore infringing Article 107 (1) TFEU;
  - the Commission failed to apply the private investor test as an integral part of its assessment under Article 107 (1) TFEU in breach of the relevant case law;
  - the Commission failed to take into account relevant information, which was available at the time of adopting the Contested Decision and which a normally prudent and diligent private owner in a situation as close as possible to that of the State would not a priori have ignored;
4. Fourth plea in law, alleging that the Commission's finding of incompatible aid is based on erroneous findings and is vitiated by internal contradictions;
  - the Commission erred in fact in finding that the State funds only benefited investors.
5. Fifth plea in law, alleging that the Commission manifestly erred in fact and in law when calculating the amount of State aid by failing to carry out its own assessment and to provide adequate reasoning;
  - the Commission's finding of overcompensation for the period between September 2005 and October 2007 is vitiated by fundamental errors of assessment;

- the Commission failed to take into account relevant information that was available at the time of the Contested Decision.

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**Action brought on 4 December 2017 — Strabag Belgium v Parliament**

**(Case T-784/17)**

(2018/C 032/57)

*Language of the case: French*

**Parties**

*Applicant:* Strabag Belgium (Antwerp, Belgium) (represented by: M. Schoups, K. Lemmens and M. Lahbib, lawyers)

*Defendant:* European Parliament

**Form of order sought**

- Declare this application for annulment admissible and well founded;

Consequently,

- Declare that (i) the decision of date unknown of the European Parliament not to accept the bid made by Strabag Belgium for the Framework contract for general contractor works in European Parliament buildings (Call for tenders No 06/D20/2017/M036) in Brussels, which decision was notified by letter of 24 November 2017, and (ii) the decision of date unknown of the European Parliament to award the Framework contract for general contractor works in European Parliament buildings in Brussels (Call for tenders No 06/D20/2017/M036) to five tenderers other than Strabag Belgium, and
- Uphold the request made by Strabag Belgium for the production of the following documents:
  - documents from the procurement file in which contacts between the Parliament and the tenderers concerning abnormal prices were reported in accordance with Article 160(3) of Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union;
  - from the decision awarding the contract to five other tenderers and not selecting the bid made by Strabag Belgium of date unknown;
  - from the tender analysis report;
- Order the European Parliament to pay all the costs, including procedural compensation.

**Pleas in law and main arguments**

In support of the action, the applicant relies on a single plea in law, alleging infringement:

- (i) of Article 110(5) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1) as amended by Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 (OJ 2015 L 286, p. 1), providing that the Commission is to be empowered to adopt delegated acts in accordance with Article 210 concerning details on the award criteria, including the most economically advantageous tender;