

COMMISSION DECISION (EU) 2015/1586**of 26 February 2015****on measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo airport***(notified under document C(2015) 1281)***(Only the Polish text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

1. PROCEDURE

1.1. Proceedings before the Commission

- (1) By letter dated 7 September 2012, Poland notified the Commission, for reasons of legal certainty, of plans to finance the conversion of a military airfield near Gdynia in the north of Poland into a civil airport. The measure was registered under number SA.35388.
- (2) By letters dated 7 November 2012 and 6 February 2013, the Commission requested further information on the notified measure. On 7 December 2012 and 15 March 2013, Poland submitted additional information. A meeting between the Commission and Poland took place on 17 April 2013. At this meeting Poland confirmed that the notified financing had already been irrevocably granted.
- (3) By letter dated 15 May 2013, the Commission informed Poland that it was transferring the case to the register of non-notified aid because the bulk of the financing notified to the Commission had already been irrevocably granted. By letter dated 16 May 2013, Poland submitted further information.
- (4) By letter dated 2 July 2013, the Commission informed Poland of its decision to initiate the procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) ⁽²⁾ (hereinafter 'the opening decision') in respect of the financing granted to Port Lotniczy Gdynia-Kosakowo sp. z o. o. (hereinafter 'Gdynia-Kosakowo Airport Ltd' or 'the airport operator') by the city of Gdynia (hereinafter 'Gdynia') and the municipality of Kosakowo (hereinafter 'Kosakowo'). Poland provided its comments on the opening decision on 6 August 2013.
- (5) The Commission's decision to initiate the procedure was published in the Official Journal of the European Union ⁽³⁾. The Commission invited interested parties to submit their comments on the measure in question within one month of the publication date.

⁽¹⁾ OJ C 243, 23.8.2013, p. 25.

⁽²⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have respectively become Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU). The two sets of provisions are identical in substance. For the purposes of this Decision references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 of the EC Treaty when appropriate. The TFEU also introduced a number of changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this Decision.

⁽³⁾ The Decision notified to Poland under case number C(2013) 4045 final was published with a summary in OJ C 243, 23.8.2013, p. 25.

- (6) The Commission did not receive any comments from interested parties. Poland was informed of this by letter dated 9 October 2013.
- (7) By letter dated 30 October 2013, the Commission requested further information. Poland provided further information by letters dated 4 and 15 November 2013. A meeting between the Commission and Poland took place on 26 November 2013. Poland provided further information by letters dated 3 December 2013 and 2 January 2014.
- (8) On 11 February 2014 the Commission adopted Decision 2014/883/EU⁽⁴⁾ finding the State aid which Poland had unlawfully granted to Gdynia-Kosakowo Airport Ltd and the State aid which Poland was planning to grant to that airport operator to be incompatible with the internal market. The Decision ordered Poland to recover the aid that had already been granted from Gdynia-Kosakowo Airport Ltd.

1.2. Proceedings before the General Court and the recovery process

- (9) On 9 April 2014 Kosakowo, followed on 16 April 2014 by Gdynia and the airport operator, challenged Decision 2014/883/EU before the General Court, requesting its annulment⁽⁵⁾. The applicants claimed, *inter alia*, that the Commission had wrongly included in the amount to be recovered expenditure on activities falling within the remit of public policy.
- (10) On 8 and 9 April 2014, respectively, Gdynia together with the airport operator and Kosakowo applied for interim measures in these cases.
- (11) On 7 May 2014 Gdańsk-Polnoc District Court issued a decision declaring Gdynia-Kosakowo Airport Ltd bankrupt and ordering its liquidation. All creditors were invited to submit their claims within three months. On 5 June 2014 Kosakowo submitted a claim for PLN 6,28 million (around EUR 1,57 million) plus interest. On 22 August 2014 Gdynia submitted a claim for PLN 85,44 million (around EUR 21,36 million) plus interest.
- (12) The applications for interim relief were rejected by orders of the President of the General Court on 20 August 2014⁽⁶⁾. In particular, the President of the General Court found that Decision 2014/883/EU could not be considered the decisive cause of harm resulting from bankruptcy of Gdynia-Kosakowo Airport Ltd, given that the company had itself filed for bankruptcy long before the Polish authorities adopted binding measures to execute the Commission decision.
- (13) On 15 October 2014 Poland intervened in both main cases, pleading that Decision 2014/883/EU should be annulled as regards the recovery of financial resources allocated to the airport operator and used to finance activities falling within the remit of public policy, as described in point 3.1.1 of the opening decision.
- (14) According to information provided by Poland, under the ongoing bankruptcy procedure involving the liquidation of the company's assets, Gdynia-Kosakowo airport is being managed by a trustee⁽⁷⁾.

1.3. Withdrawal

- (15) During the proceedings before the General Court it became apparent that the aid which Decision 2014/883/EU declares incompatible with the internal market includes certain investments that do not constitute State aid according to the opening decision.

⁽⁴⁾ Commission Decision 2014/883/EU of 11 February 2014 on the measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia Kosakowo Airport (OJ L 357, 12.12.2014, p. 51).

⁽⁵⁾ These applications were respectively registered as Case T-215/14 and Case T-217/14.

⁽⁶⁾ Order of the President of the General Court in case T-215/14 R *Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo v Commission EU*: T-2014:733; Order of the President of the General Court in case T-217/14 R *Gmina Kosakowo v Commission*, unpublished.

⁽⁷⁾ Letters from the President of the Office for Competition and Consumer Protection of 30 June 2014 and 8 January 2015.

- (16) In fact, in recital 25 of the opening decision, the Commission concluded that investment in buildings and equipment for firefighters, customs, airport security guards, police and border guards fell within the remit of public policy and hence did not constitute State aid within the meaning of Article 107(1) TFEU. Consequently, the formal investigation procedure did not relate to this investment.
- (17) In Decision 2014/883/EU, however, the Commission found that Polish law obliged airport operators to finance such investment from their own resources. A private market operator would therefore take these costs into account when deciding whether to invest in the airport (as was done in the studies submitted by Poland), and public funding of this investment would be liable to constitute State aid.
- (18) Given that the opening decision concluded that investment in buildings and equipment for firefighters, customs, airport security guards, police and border guards did not constitute State aid, the Commission considers that it should not call into question that conclusion in the final decision on the measure. Decision 2014/883/EU should therefore be withdrawn and replaced by this Decision. As all the elements necessary for the assessment of the measure are present on the file, there is no need to reopen the formal investigation procedure.

2. DESCRIPTION OF THE MEASURES AND GROUNDS FOR INITIATING THE PROCEDURE

2.1. Background to the investigation

- (19) The case concerns the financing of a new civil airport in Pomerania (Pomorskie province), on the boundary between the city of Gdynia and the municipality of Kosakowo, 25 kilometres away from Gdańsk airport ⁽⁸⁾. The new airport is managed by Gdynia-Kosakowo Airport Ltd. The airport operator is wholly owned by the municipalities of Gdynia and Kosakowo.
- (20) The objective of the investment project is to create a second airport for Pomerania based on the infrastructure of a military airfield located in Kosakowo ⁽⁹⁾. The new airport would mainly handle general aviation traffic (e.g. private jets, gliders/light-sport aircraft), low-cost carriers (hereinafter 'LCC') and charter flights. At the time of notification the airport was expected to start operating at the beginning of 2014. A 2012 report by PricewaterhouseCoopers (hereinafter 'PWC') provided the following forecasts for passenger traffic during the first years of operation: around [...] in 2014, [...] in 2017, [...] in 2020 and at around [...] in 2028.
- (21) The origins of the project date back to April 2005, when various regional authorities, the Ministry of National Defence and representatives of Gdańsk airport ⁽¹⁰⁾ signed a letter of intent to create a new airport for Pomerania based on the infrastructure of the military airfield in Kosakowo.
- (22) Under that letter, the management of the future Gdynia-Kosakowo Airport was to be entrusted to Gdańsk airport. The decision was approved by the Minister for Transport and the Minister for National Defence in August 2006.

⁽⁸⁾ Depending on the route chosen, the distance by car between Gdynia and Gdańsk airports is 26 to 29 kilometres; source: Google maps, Bing maps. Gdańsk airport is owned and operated by Gdańsk Lech Wałęsa Airport Ltd, a company set up by public entities. The company's share capital breaks down as follows: city of Gdańsk (32 %), Pomorskie province (32 %), 'Polish Airports' State Enterprise (31 %), city of Sopot (3 %) and city of Gdynia (2 %). Gdańsk Lech Wałęsa airport (hereinafter 'Gdańsk airport') is the third largest airport in Poland. In 2012 it handled 2,9 million passengers (2,7 million on scheduled air services and 0,2 million on charter flights).

The following eight airlines offer scheduled air services from Gdańsk airport (January 2014): Wizzair (22 destinations), Ryanair (7 destinations), Eurolot (4 destinations), LOT (2 destinations), Lufthansa (2 destinations), SAS (2 destinations), Air Berlin (1 destination), Norwegian (1 destination). Since the opening of a new terminal in May 2012 Gdańsk airport has the capacity to handle 5 million passengers a year. According to information provided by Poland, the extension of the terminal (scheduled for 2013-2015) will increase the airport's capacity to 7 million passengers. The investment at Gdańsk airport was also financed using State aid (see the 2008 Commission decision in State aid case N 153/08 — EUR 1,7 million (OJ C 46, 25.2.2009, p. 7); the 2009 Commission decision in State aid case N 472/08, as a result of which Poland granted about EUR 33 million for Gdańsk Airport (OJ C 79, 2.4.2009, p. 2)).

⁽⁹⁾ The existing Gdynia-Oksywie military airfield is located on the boundary between the city of Gdynia and the municipality of Kosakowo.

⁽¹⁰⁾ The letter was signed by the authorities of Pomorskie province, the cities of Gdańsk, Gdynia and Sopot, the municipality of Kosakowo and representatives of the Polish government (the governor of Pomorskie province, the Ministry of National Defence and the Ministry of Transport) and Gdańsk airport.

- (23) In July 2007 the local authorities in Gdynia and Kosakowo founded a company called Gdynia-Kosakowo Airport Ltd. In December 2009 Gdynia and Kosakowo got the Ministry of Transport to agree that Gdynia-Kosakowo Airport Ltd would henceforth be responsible for the new airport.
- (24) On 10 July 2008 the Polish Parliament adopted an amendment ⁽¹¹⁾ to the Act of 30 May 1996 on the management of certain State Treasury assets and the Military Property Agency (hereinafter 'the Act of 30 May 1996, as amended') that allowed the conversion of military airfields into civil airports.
- (25) On 24 December 2008 the Polish Government adopted an implementing act to the Act of 30 May 1996, as amended (hereinafter 'the implementing act'), containing the list of military airfields or parts thereof which may be used for setting up or expanding civil airports. The implementing act lists Gdynia-Kosakowo military airfield (more specifically, parts thereof) among the military airfields that may, under the Act of 30 May 1996, as amended, be rented to a local authority for a period of at least 30 years for the sole purpose of setting up or expanding a civil airport. The Act of 30 May 1996, as amended, specifies that a local authority may, if it decides not to set up an airport on its own, further lease or rent the rented property for a period of at least 30 years to an entity setting up or managing a civil airport.
- (26) Under the Act of 30 May 1996, as amended, and the implementing act, on 9 September 2010 the governor of Pomorskie province, representing the State Treasury, concluded a 30-year rental agreement (running from 9 September 2010 to 9 September 2040) with Kosakowo for the 253 hectare site on which the military airfield is located. Under the rental agreement, Kosakowo is obliged to transfer 30 % of the rent to the Armed Forces' Modernisation Fund ⁽¹²⁾.
- (27) On 11 March 2011 Kosakowo leased the land for 30 years (until 9 September 2040) to the airport operator Gdynia-Kosakowo Airport Ltd. The lease agreement lays down the rights and obligations of the parties and the amount of rent to be paid by the airport operator to Kosakowo.
- (28) In another agreement signed on 11 March 2011 the shareholders (Gdynia and Kosakowo) laid down the financing conditions for the investment in setting up a civil airport. In this agreement Gdynia pledged to inject a total of PLN 59 million over the period 2011-2013. For its part, Kosakowo pledged to provide a non-cash contribution in the form of a debt-for-equity swap over the period 2011-2040.
- (29) Moreover, on 7 March 2011 an operational agreement was signed with the airport's military user for the purpose of laying down rules on the shared use of the airport and its infrastructure by Gdynia-Kosakowo Airport Ltd and the military user ⁽¹³⁾.

The investment project ⁽¹⁴⁾

- (30) Because the existing Gdynia-Kosakowo (Gdynia-Oksywie) airfield was originally used exclusively for military purposes, the operator of the new airport is able to use the existing infrastructure (such as a runway of 2 500 meters, taxiways, an apron, navigation equipment etc.). The total cost of the investment in the conversion project is estimated at PLN 164,9 million (EUR 41,2 million ⁽¹⁵⁾) in nominal terms and PLN 148,4 million (EUR 37,1 million) in real terms. Table 1 provides an overview of the gradual development of the airport, which is divided into four phases. In Poland's opinion, the total cost of the investment also includes investment relating to the performance of tasks falling within the remit of public policy ⁽¹⁶⁾, which amount to around PLN [...] million (EUR [...] million) in total (for all four phases).

⁽¹¹⁾ Journal of Laws of 2008, No 144, item 901 (Dz. U. Nr 144, poz. 901).

⁽¹²⁾ This clause implements Article 4h(2) of the Act of 30 May 1996, as amended.

⁽¹³⁾ The operational agreement states that the sharing of operating costs will be governed by a separate agreement (paragraph 5(5)), while the sharing of investment and renovation costs will be the subject of separate agreements to be signed by both parties before any new investment or renovation works (paragraph 9(7)).

⁽¹⁴⁾ The investment costs presented in this part reflect the investment project as presented in Poland's notification of 7 September 2012 and the 2012 MEIP study provided with the notification.

⁽¹⁵⁾ The exchange rate used for the purposes of this Decision is EUR 1 = PLN 4, which corresponds to the average weekly exchange rate for 2010. Source: Eurostat.

⁽¹⁶⁾ In Poland's view, the investment falling within the remit of public policy includes buildings and equipment for firefighters, customs officials, airport security guards, police officers and border guards, an airport perimeter fence with video surveillance etc.

Table 1

Total nominal cost of investment at Gdynia-Kosakowo airport in 2007-2030

The investment project	Costs in PLN million	Costs in EUR million
Phase I: 2007-2011	[...]	[...]
Preparatory works (e.g. cleaning of the site, removal of old buildings and trees) and feasibility studies, planning		
Phase II: 2012-2013	[...]	[...]
— Terminal (to be ready in June 2013 and initially used for GA) — Building for the airport administration and the fire brigade — Renovation of the apron, — Energy infrastructure, navigation lights and airport fence — Airport maintenance and security equipment — Adjustment of the navigation equipment — Access roads, petrol station and car park		
Phase III: 2014-2019	[...]	[...]
— Investments necessary to serve bigger airplanes (e.g. Boeing 737 or Airbus A320), such as taxiway extension, apron and airport equipment — Other passenger service oriented investments (e.g. car park extension)		
Phase IV: 2020-2030	[...]	[...]
— Expansion of the Terminal — Extension of the airport administration and fire brigade building — Extension of aprons, taxiways and car parks		
Total investment costs	164,90	41,02

Source: information provided by Poland.

Financing of the investment project

- (31) The investment project is being financed through capital injections by the public shareholders (i.e. Gdynia and Kosakowo). The capital injections are intended to cover both the investment costs and the operating costs of the airport during the initial phase of its operation (i.e. the period to the end of 2019). The public shareholders expect the airport operator to start generating a profit and so be able to finance all its activities from its own revenue in 2020.
- (32) Before the project was notified to the Commission (i.e. before 7 September 2012), the public shareholders in Gdynia-Kosakowo Airport Ltd agreed to contribute a total of about PLN 207,48 million⁽¹⁷⁾ (about EUR 51,87 million) for the purposes of carrying out the investment project and covering the airport's losses in the early years of its operation. Gdynia was to contribute PLN 142,48 million (around EUR 35,62 million) in cash over the years 2007-2019. Kosakowo provided a cash contribution of PLN 0,1 million (EUR 25 000) when the

⁽¹⁷⁾ In nominal terms.

company was founded. In the years 2011-2040 Kosakowo was also to make a non-cash contribution of PLN 64,9 million (around EUR 16,2 million) by swapping part of the annual rent payable by Gdynia airport under the lease for shares in the airport (see Table 2).

Table 2

Financing of the investment project through capital increases

	PLN million	EUR million
Before 18 June 2012		
Cash capital injections of Gdynia	60,73	15,18
Cash capital injection of Kosakowo	0,10	0,03
Dept to equity swap of Kosakowo	3,98	1,00
Total contributions before 18 June 2012	64,81	16,20
Foreseen after 18 June 2012		
Cash capital injections of Gdynia:	81,75	20,44
of which:		
in 2013	29,90	7,48
in 2014	[...]	[...]
in 2015	[...]	[...]
in 2016	[...]	[...]
in 2017	[...]	[...]
in 2018	[...]	[...]
in 2019	[...]	[...]
Dept to equity swap of Kosakowo:	60,92	15,23
of which:		
in 2013-2039 (27*PLN [...])	[...]	[...]
in 2040	[...]	[...]
Total contributions foreseen after 18 June 2012	142,67	35,67
Total foreseen capital of Gdynia-Kosakowo Airport Lt	207,48	51,87

Source: based on information provided by Poland.

2.2. Grounds for initiating the formal investigation procedure and the initial assessment

2.2.1. Conclusion

(33) The opening decision raised the following questions:

- The first is whether the public funding of the investment project is in line with the Market Economy Investor Principle (hereinafter 'MEIP'), in particular with regard to (i) the application of the MEIP in time, the methodology to apply the MEIP and (ii) whether the MEIP analysis carried out by the Polish authorities leading to a positive Net Present Value (hereinafter 'NPV') (¹⁸) is based on realistic and reliable assumptions.

⁽¹⁸⁾ Net Present Value indicates whether the return on a given project exceeds the (opportunity) costs of capital. A project is considered an economically viable investment if it generates a positive NPV. Investments producing a return lower than the (opportunity) costs of capital are not economically viable. The (opportunity) costs of capital are reflected in the discount rate.

- Second, whether the operating and investment aid to Gdynia airport can be considered compatible with the internal market.

2.2.2. Application of the MEIP

- (34) As regards the first question, the Commission expressed doubts as to whether the MEIP study conducted in 2012, i.e. after the irrevocable decision to finance the conversion of the airport was taken by the public shareholders, can be used in order to assess the existence of State aid. The Commission therefore had doubts as to whether the counterfactual scenario, in which the investment is assumed to have ended in 2012, was appropriate.
- (35) Given that Gdynia airport is to pursue a similar business model (focussing on LCC, charter flights and general aviation) to the existing Gdańsk airport, which still has spare capacity and further expansion plans and which is located only 25 km away, the Commission expressed doubts as to whether the revenue forecast for Gdynia airport was based on realistic assumptions, in particular with regard to the level of airport charges and the level of expected passenger traffic. In particular, the Commission noted that the business plan for Gdynia airport envisaged a higher passenger charge than that applied, after the deduction of discounts/rebates, at Gdańsk airport and other comparable regional airports in Poland.
- (36) The Commission also expressed doubts as to whether the business plan took into account all the planned incentives (such as marketing support, rebates, or any other route development incentives etc.) that are to be granted directly by Gdynia airport, its shareholders or other regional authorities to induce airlines to establish new routes from the airport.
- (37) Since the growth rate of an undertaking is not generally higher than that of the economy in which it operates (i.e. in terms of GDP growth), the Commission expressed doubts as to whether the turnover growth rate of [...] used to calculate Terminal Value is appropriate⁽¹⁹⁾. This doubt directly affects the assessment of the investment project's profitability, as the equity value of the new airport becomes positive only in the light of the project's terminal value from 2040 (the cumulative discounted cash flows over the projection period of 2010-2040 are negative).
- (38) The Commission therefore considered that the public funding for the investment project gives rise to selective economic benefits for the operator of Gdynia airport. The public funding was also granted from state resources and is imputable to the State. Moreover, it distorts or threatens to distort competition and trade between Member States. As all the cumulative criteria for the notion of aid were met, the Commission considered that the public funding constituted State aid within the meaning of Article 107(1) TFEU.

2.2.3. Compatibility of the aid

- (39) As regards the second question, the Commission expressed doubts as to whether the investment and operating aid for the airport operator could be considered compatible with the internal market.
- (40) As regards the investment aid, the Commission doubted whether all the compatibility criteria set out in the 2005 Aviation Guidelines for investment aid to airports⁽²⁰⁾ were met. In particular, the Commission doubted whether the investment at issue meets a clearly defined objective of common interest, whether the infrastructure is necessary and proportional and whether it offers satisfactory medium-term prospects for use. Moreover, the Commission doubted whether the impact on the development of trade was compatible with the common interest.

⁽¹⁹⁾ The Terminal Value is the present value of all cash flows generated after the projection period ends. This assumes that the project will last forever and grow at a pre-determined growth rate (in this case, based on the equity value of the airport operator in the last year of the submitted business plan).

⁽²⁰⁾ Communication from the Commission — Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

- (41) As regards the operating aid in the form of financing Gdynia-Kosakowo Airport Ltd's operating losses during its first years of operation, the Commission expressed doubts as to whether such aid qualified for the derogation set out in Article 107(3)(a) TFEU. In particular, the Commission expressed doubts as to whether the operating aid could be considered compatible under the Guidelines on national regional aid for 2007-2013⁽²¹⁾ (hereinafter 'the RAG').

3. POLAND'S COMMENTS

3.1. Application of the MEIP and the existence of aid

- (42) Poland maintains its position that the public funding of the investment in Gdynia airport is in line with the market economy investor principle (MEIP) and does not therefore constitute State aid. In this connection, Poland refers to the MEIP studies conducted for the investment in the years 2010-2012. Poland states that all MEIP studies resulted in a positive net present value and an internal rate of return⁽²²⁾ (hereinafter 'IRR') higher than the costs of capital.

3.1.1. The decision-making process and the methodological soundness of the MEIP study

- (43) Poland explains that discussions and work on converting the Gdynia/Kosakowo military airfield into a civil airport began back in 2005. At the time other partners were involved (such as Gdańsk airport). Poland also explains that in 2007 Gdynia and Kosakowo established the company Gdynia-Kosakowo Airport Ltd, which has been responsible for the investment ever since.
- (44) During the proceedings, Poland submitted three MEIP studies carried out by PWC. The first MEIP study (dated 16 July 2010, hereinafter 'the 2010 MEIP study') was carried out in July 2010. PWC subsequently produced two updates to the MEIP: the first in May 2011 (dated 13 May 2011, hereinafter 'the 2011 MEIP study') and the second in July 2012 (dated 13 July 2012, hereinafter 'the 2012 MEIP study'). These updates incorporate new projections for passenger traffic, changes in the scope of the project, changes in the investment figures and changes in the methodology and the basic inputs into the NPV calculations (such as the beta and the discount rate). In November 2013 Poland provided further information suggesting that new sources of revenue (i.e. the sale of fuel and the provision of navigation services) would enhance the project's NPV. At the date on which the opening decision was adopted Poland had submitted only the 2012 MEIP study.
- (45) Poland also explains the time frame for Gdynia and Kosakowo's project to invest in Gdynia airport. In this respect, Poland stresses that the investment process can be divided into two project implementation stages:

i. *The first stage (2007-2009) covered the preparatory works and feasibility studies for the purpose of setting up the new airport (this relates to Phase 1, as described in Table 1):*

- (46) Poland explains that the first phase saw the company established by Gdynia and Kosakowo carry out preparatory tasks (e.g. preparation of a masterplan for the investment, the documents necessary to obtain the status of airport operator, a report on the environmental impact of the investment, design documentation, etc.).
- (47) Poland maintains that there was no significant capital investment during the first phase and that the public funding granted to the airport operator complied with the *de minimis* aid rules⁽²³⁾. Poland states that capital injections into the company prior to 26 June 2009 totalled PLN 1,691 million (about EUR 423 000).

⁽²¹⁾ Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

⁽²²⁾ The internal rate of return of an investment is the discount rate at which the net present value equals zero. The IRR is usually compared with the cost of capital.

⁽²³⁾ The rules applicable at the time were laid down in Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5).

ii. *The second phase (from 2010 onwards) concerned the actual conversion of the airport (this relates to Phases II to IV, as described in Table 1):*

- (48) Poland goes on to explain that the first, preparatory phase ended in 2010, when both the masterplan ⁽²⁴⁾ and the first 2010 MEIP study for Gdynia airport were finalised. Poland points out that the 2010 MEIP study showed that the investment by the two local authorities would be carried out on market terms (i.e. it would not represent State aid), increasing the company's share capital to PLN 6,05 million (around EUR 1,5 million).
- (49) The 2010 MEIP study calculated the NPV for the investment project using the free cash flow to the firm (FCFF) method ⁽²⁵⁾. This NPV calculation is predicated on the assumption that all the capital injections provided for in the investment plan would be made in order to implement the investment project. This valuation method is used to calculate cash flows to all holders of capital in the firm (both equity holders and bond holders) in the projection period. The cash-flow projections are then discounted by the weighted average cost of capital (WACC) ⁽²⁶⁾ to obtain the firm's discounted cash flow (DCF) in the projection period. Terminal value is then calculated using the perpetuity growth method (which assumes a stable growth path based on the FCFF from the most recent projection period). The NPV is based on the sum of the DCF for the projection period and the terminal value. In this case, the 2010 MEIP study provided cash-flow estimates for the period 2010-2040 using a WACC of [...] % ⁽²⁷⁾. Using these inputs, the study produced a DCF of minus PLN [...] million (EUR [...] million) for the period 2010-2040 and a (discounted) terminal value of about PLN [...] million (EUR [...] million). Hence, the NPV of the overall project is estimated at PLN [...] million (or EUR [...] million), assuming that the airport will generate a stable profit forever, as of 2040, with a growth rate of [...] % per annum.
- (50) Poland adds at the same time that the shareholders, despite the MEIP study showing that the investment did not constitute State aid, started preparing a notification to the Commission that was to be submitted for reasons of legal certainty only.
- (51) Poland goes on to explain that a new MEIP study was carried out in May 2011. Poland states that this MEIP study was an update of the 2010 MEIP study that was carried out in the light of the progress of preparations and the availability of more precise data on the investment plan, its timetable and financing. Poland explains that in the period between the preparation of the 2010 MEIP study and the 2011 MEIP study:
- the shareholders signed an agreement on 11 March 2011 laying down the financing conditions for the investment in the start-up of a civil airport. In this agreement Gdynia pledged to inject a total of PLN 59 million in the period 2011-2013. For its part, Kosakowo pledged to provide a non-cash contribution in the form of a debt-for-equity swap (as described in Table 2) in the period 2011-2040;
 - on the same day, 11 March 2011, the company responsible for setting up Gdynia-Kosakowo airport concluded a lease agreement with Kosakowo for the land (specifying the scope of the land leased, the conditions for lease payments, tax issues, etc.);
 - the investment costs included in the investment plan were specified and updated.
- (52) Poland explains that the 2011 MEIP study also produced a positive NPV. Poland goes on to state that the airport operator's public shareholders made subsequent capital injections on this basis. Poland points out that the company's equity (own capital) was increased to PLN 33,801 million (EUR 8,45 million) in July 2011 and to PLN 64,810 million (EUR 16,20 million) in April 2013.

⁽²⁴⁾ The masterplan for the investment project identified the different measures necessary for the conversion of the airport.

⁽²⁵⁾ The FCFF is used to calculate the firm's earnings before interest and taxes each year (EBIT), adding depreciation and amortisation (as these are non-cash expenses) and subtracting investment needs, changes in working capital and taxes (See Table 5 of the 2010 MEIP study).

⁽²⁶⁾ The weighted average cost of capital is the rate that a company is expected to pay to all its security holders to finance its assets.

⁽²⁷⁾ It is based on a risk-free rate of [...] %, a credit risk premium of [...] %, a corporate tax rate of 19 %, a beta of [...], a market rate premium of [...] % and a capital structure of [...] % debt and [...] % equity (See Section 4.4 on page 21 of the 2010 MEIP study). The Commission notes that the calculations submitted by Poland seem to indicate that a WACC with a downward term structure was used for the MEIP study.

- (53) In the 2011 MEIP study, the DCF was calculated on the basis of the DCF for the 2011-2040 projection period. The updated DCF stood at PLN (– [...]) million (EUR – [...] million), suggesting larger losses, while the terminal value was decreased to PLN [...] million (around EUR [...] million). The NPV was therefore reduced to PLN [...] million (or less than EUR [...] million). The WACC was reduced to [...] % ⁽²⁸⁾ and the stable growth rate for the terminal value was decreased from [...] % to [...] %. These calculations excluded expenditure falling within the remit of public policy, meaning that the projections about the profitability of the investment take no account of the capital necessary to finance the part of the infrastructure claimed to fall within the remit of public policy.
- (54) Poland states that a change in the macroeconomic situation (the financial crisis and the economic slowdown) caused the project to be re-assessed in 2012, which resulted in a new MEIP study (namely the 2012 MEIP study). Poland states that the following changes were made to the assumptions in the previous MEIP studies for the purposes of the 2012 MEIP study:
- The passenger traffic forecast for Gdynia airport was reduced.
 - The scope of the investment was reduced, cutting the investment costs by PLN [...] million (EUR [...] million).
 - The idea of building a main terminal (together with the related development of road infrastructure and car parks) was abandoned. It was decided instead to expand the capacity of the general aviation terminal by [...] % in the second investment phase.
 - After verifying the situation on the market, the investment costs related to security had to be increased by PLN [...] million (EUR [...] million).
 - The reduction in the investment resulted in a shorter payback period for the investment (in nominal terms, by [...] years, from [...] years and [...] months to [...] years and [...] months).
- (55) Poland also states that the methodology used for the previous MEIP studies was modified for the purposes of the 2012 MEIP study:
- To better reflect the structure of financing and the cost of debt servicing, the free cash flow to the firm method was replaced by the free cash flow to equity (hereinafter 'FCFE') method ⁽²⁹⁾.
 - Following changes on the financial (securities) market, the risk-free interest rate and the beta factor were updated. Moreover, companies from outside Europe were eliminated from the comparative analyses. This resulted in a new discount rate.
 - The discount rate for calculating the NPV was set on the basis of an analysis of comparable companies, covering both airport companies and companies providing services at airports (whose financial results are closely correlated to the performance of airport companies) ⁽³⁰⁾.
 - It was assumed that the project would be financed primarily from shareholders' resources and only then from external sources (working capital loans) and operating revenue.
- (56) In the 2012 MEIP study, the DCF was calculated on the basis of the DCF for the 2012-2030 projection period (i.e. the projection period used for the previous study was reduced by 10 years). The updated DCF amounted to

⁽²⁸⁾ The risk-free rate was increased to [...] % and the beta was increased to [...]. The capital structure was modified by increasing the share of debt [...] % and decreasing that of equity [...] %.

⁽²⁹⁾ FCFE = FCFF + credits and loans taken — credits and loans repaid — interest on credits and loans. In comparison to the FCFF, FCFE is discounted by a rate of return on equity that is always higher than the WACC. As the result, the NPV shows what part of the return on investment is available to shareholders (equity investors). The NPV calculated on the basis of the FCFE does not therefore reflect the overall return on investment, i.e. the return for shareholders and the return for the creditors.

⁽³⁰⁾ To reflect the differences in the typical financing structure of airport companies and companies providing airport services, the latter companies' return on equity was increased before calculating averages.

PLN (– [...] million) (around EUR (– [...]) million), while the terminal value underwent a significant increase, rising to PLN [...] million (EUR [...] million). The capitalised value of investments already made (PLN [...] million) was then deducted. As updated in 2012, the NPV amounted to PLN [...] million (or EUR [...] million). In order to calculate the NPV a cost of equity of [...] %⁽³¹⁾ was used and the stable growth rate for the terminal value calculation was further decreased from [...] % to [...] %.

- (57) Poland points out that the results of the 2012 MEIP study were still positive and led to further capital injections by the shareholders. Poland stated that the capital of the company had been increased to PLN 91,310 million (EUR 22,8 million) by April 2013 and did not change further in 2013, as summarised in Table 3.

Table 3

Increases in Gdynia airport operator's capital by Gdynia and Kosakowo

Date of decision on entry in the National Court Register	Date of resolution on capital increase	Name of share holder	Subject-matter of the resolution	Value of shares	Share capital	Cumulative share in the total capital increases done up to the end of 2013
				(PLN million)	(PLN million)	
28.8.2007	23.7.2007	Gdynia	creation of new shares	0,030	0,030	0,03 %
28.8.2007	23.7.2007	Kosakowo	creation of new shares	0,020	0,050	0,05 %
4.3.2008	6.12.2007	Gdynia	creation of new shares	0,120	0,170	0,19 %
4.3.2008	6.12.2007	Kosakowo	creation of new shares	0,080	0,250	0,27 %
11.9.2008	21.7.2008	Gdynia	creation of new shares	0,500	0,750	0,82 %
28.7.2009	26.6.2009	Gdynia	404 shares owned by Gdynia Municipality were cancelled without consideration to the shareholder	– 0,404	0,346	0,38 %
28.7.2009	26.6.2009	Gdynia	creation of new shares	1,345	1,691	1,85 %
8.12.2010	29.7.2010	Gdynia	creation of new shares	4,361	6,052	6,63 %
8.7.2011	7.6.2011	Gdynia	creation of new shares	25,970	32,022	35,07 %
1.9.2011	26.7.2011	Kosakowo	creation of new shares	1,779	33,801	37,02 %
25.4.2012	5.4.2012	Gdynia	creation of new shares	28,809	62,610	68,57 %
25.4.2012	5.4.2012	Kosakowo	creation of new shares	2,200	64,810	70,98 %
27.5.2013	8.4.2013	Gdynia	creation of new shares	4,269	69,079	75,65 %
27.5.2013	8.4.2013	Kosakowo	creation of new shares	2,200	71,279	78,06 %
17.6.2013	25.4.2013	Gdynia	creation of new shares	20,031	91,310	100,00 %

Source: information provided by Poland.

⁽³¹⁾ The risk-free rate was reduced to [...] % and the beta was reduced to [...].

(58) Summing up, Poland states that while the local authorities took preliminary steps to set up Gdynia airport as long ago as 2005, the project did not acquire its final shape until the preparation of the masterplan and the first MEIP study, i.e. in 2010. Poland explains that the project's initial assumptions were substantially revised as a result of changes in external circumstances. Poland argues that the public shareholders' final decision on the project's implementation and final shape was taken in 2012. Poland also stresses that all three versions of the MEIP study confirmed the project's viability and demonstrated that a market economy investor would have carried out the project.

(59) On the counterfactual scenario, Poland argues that national law entitled Kosakowo to use the land on which Gdynia airport is located only to set up a new civil airport. In this respect, Poland explains that the airport site was leased to Kosakowo for a period of 30 years. Poland states that the rental agreement obliges Kosakowo to lease the land only to an entity responsible for setting up and/or operating a civil airport. According to Poland, the land could have been taken back by the State if Kosakowo had not leased out the land to set up a civil airport within 6 months, if the land had been used for other purposes or if the airport had not started its activities within 3 years. As the scenario in which the land of Gdynia airport is used/leased for other than aviation purposes was not possible, it could not be used to establish a counterfactual scenario.

3.1.2. Reliability of the key assumptions for the 2012 MEIP study

Traffic projections and revenue forecast

(60) Poland explains that the planned airport charges were based on the publicly available tariffs applied by other airports so as not to disrupt the existing market while ensuring an appropriate level of profitability for the project on the basis of the projected volume of passenger traffic. According to Poland, the charges do not differ significantly from the standard charges collected by small airports. In particular, two newly opened regional airports, Warsaw-Modlin and Lublin, apply standard airport charges similar to those projected in the MEIP study for Gdynia airport.

(61) In reply to the Commission's comment that the charges foreseen for Gdynia airport (PLN 25 (EUR 6,25) in the first 2 years and then PLN 40 (EUR 10) per departing passenger) are higher than the discounted charges applied at Gdańsk airport (PLN 24, that is EUR 6) per departing passenger by an aircraft of LCC type if an international route is served at least 2 times per week; for a domestic route the charge would be PLN 12,5 (EUR 3,1), Poland notes that the level of charges in the business plan is averaged for the whole projection period (2014-2030) and takes into account the fact that in the long-period term charges at Gdańsk airport will have to increase following improved standard of service at that airport.

(62) Moreover, Poland points out that the project's profit margin, the revised (slightly higher) air traffic forecast and the sharing of some operational costs by the military mean that Gdynia airport should be able to maintain reduced passenger charges over a longer period (the reduced charges could be applied until the end of 2021) while maintaining a positive NPV for the public shareholders.

(63) Poland also argues that the updated (in March 2013) traffic forecast for Pomerania assumes higher traffic than the 2012 MEIP study. According to the latest figures, Gdynia airport would handle 1 149 978 passengers in 2030, not 1 083 746. For Pomerania as a whole, passenger numbers are forecast to increase from 7,8 to 9 million passengers in 2030.

(64) In Poland's view, these figures confirm that it is viable for Gdańsk airport and Gdynia airport to coexist and operate jointly on the Pomeranian market. They consider that even if Gdańsk airport is expanded to reach the planned capacity of 7 million passengers, there is room on Pomerania's developing aviation market for another small regional airport (with a capacity of 1 million) that would complement the services provided by Gdańsk airport.

Table 4

Comparison of 2012 MEIP study's traffic projections and the updated traffic projections (March 2013) for Gdynia airport

Year	Commercial traffic		Commercial traffic		General aviation	
	Passengers (000)		Aircraft operations		Aircraft operations	
	Based on the 2012 MEIP study	Updated forecast	Based on the 2012 MEIP study	Updated forecast	Based on the 2012 MEIP study	Updated forecast
	Total	Total	Total	Total	Total	Total
2009	[...]	[...]	[...]	[...]	[...]	[...]
2010	[...]	[...]	[...]	[...]	[...]	[...]
2011	[...]	[...]	[...]	[...]	[...]	[...]
2012	[...]	[...]	[...]	[...]	[...]	[...]
2013	[...]	[...]	[...]	[...]	[...]	[...]
2014	[...]	[...]	[...]	[...]	[...]	[...]
2015	[...]	[...]	[...]	[...]	[...]	[...]
2016	[...]	[...]	[...]	[...]	[...]	[...]
2017	[...]	[...]	[...]	[...]	[...]	[...]
2018	[...]	[...]	[...]	[...]	[...]	[...]
2019	[...]	[...]	[...]	[...]	[...]	[...]
2020	[...]	[...]	[...]	[...]	[...]	[...]
2021	[...]	[...]	[...]	[...]	[...]	[...]
2022	[...]	[...]	[...]	[...]	[...]	[...]
2023	[...]	[...]	[...]	[...]	[...]	[...]
2024	[...]	[...]	[...]	[...]	[...]	[...]
2025	[...]	[...]	[...]	[...]	[...]	[...]
2026	[...]	[...]	[...]	[...]	[...]	[...]
2027	[...]	[...]	[...]	[...]	[...]	[...]
2028	[...]	[...]	[...]	[...]	[...]	[...]
2029	[...]	[...]	[...]	[...]	[...]	[...]
2030	1 083 746	1 149 978	[...]	[...]	[...]	[...]

Source: based on information provided by Poland.

Operating costs (incentives to the airlines, costs related to the military operation of the airport)

- (65) Poland explains that the MEIP study takes into account the airport's marketing and promotional measures in estimating:
- i. operating costs, such costs being estimated on the basis of the financial statements available for all Poland's major airports,
 - ii. other costs by type, which are projected for Gdynia Airport at a conservatively high level, also taking into account the corresponding costs in other airports.
- (66) Poland also states that the MEIP study assumed that all operating costs would be borne by the investor, thereby taking no account of any sharing of operating costs by the airport's military user. Poland argues that the division of operating costs for shared infrastructure was assumed to be [...] for the number of civil and military flights. Poland also explains that the costs of renovation and repairs will be [...]. Poland stresses that the adoption of rules on the shared use of the airport (not yet formally agreed with the military user of the airport) will lead to a reduction of at least [...] in the costs related to third-party services and payroll. According to Poland, the inclusion of this factor in the MEIP studies would result in a higher projected profitability of the project.

Long-term growth rate

- (67) Poland explains that the growth rate of [...] % adopted in the MEIP study refers to the terminal value in nominal terms.
- (68) Poland also states that the growth rate of [...] % is equal to the inflation target set for Poland by the Monetary Policy Council (a decision-making body of the National Bank of Poland). Poland notes that according to the latest forecast by the International Monetary Fund of July 2013, Poland's GDP will grow at the rate of 2,2 % in 2014, 3 % in 2015, 3,3 % in 2017 and 3,8 % in 2018.

The November 2013 update

- (69) In November 2013 Poland reported that the airport operator had received the administrative decisions from the Customs Office and the Energy Regulatory Office authorising it to sell fuel to aircraft directly. The sale of fuels by the airport operator would be an additional source of revenue and improve the financial results of the business plan.
- (70) According to Poland, all the MEIP studies conducted to date provided for the sale of fuel via an external operator. The sale of fuel by the airport operator would increase the company's profit margin on this activity from PLN [...] (EUR [...]) per litre (where fuel is sold by an external operator) to PLN [...] (EUR [...]) (where fuel is sold directly by the airport operator).
- (71) In Poland's view, this additional revenue would improve the 2012 MEI update result. Poland points out that the NPV for the project is thereby expected to increase from PLN [...] million (EUR [...] million) to PLN [...] million (EUR [...] million). Poland goes on to explain that the IRR would increase from [...] % to [...] %.
- (72) Poland argues that the additional revenue would, alternatively, allow airport charges to be kept down for airlines in the long term.
- (73) Poland confirmed that a prudential approach had prevented the direct sale of fuel to aircraft operators from being covered by the MEIP studies. At the time when these studies were carried out, the airport operator did not have the required authorisations or any guarantee that it would be able to obtain them.

- (74) In addition, Poland stated that the company intends to provide navigation services to airlines (instead of the Polish Air Navigation Services Agency). Poland points out that this would enable the terminal fee paid by airlines (currently paid to the Agency) to be reduced and thereby make Gdynia airport more attractive to airlines. The airport operator would therefore be able to offer airlines more competitive airport charges than the neighbouring airports.

3.2. Compatibility assessment

3.2.1. Investment aid

- (75) According to Poland, all the compatibility criteria laid down in the 2005 Aviation Guidelines for investment aid to airports are met.

Meeting a clearly defined objective of common interest

- (76) Poland argues that setting up Gdynia airport, as an element of Pomerania's transport system, optimises the use of available infrastructure and will have a positive impact on regional development, notably through an increase in airport jobs, income from the aviation market supply chain and the development of tourism.

- (77) Poland refers to the 'Regional transport development strategy in Pomerania for 2007-2020', which is based on air traffic forecasts for the region and recognises the need to build a hub of airports working in close cooperation to meet the needs of the Tricity area's population ⁽³²⁾.

- (78) According to Poland, the main arguments for the construction of a hub of airports in the Tricity area are: increasing air traffic in Poland, the lack of scope for increasing Gdańsk airport's capacity and the agglomeration's extension over a distance of nearly 60 km (or over 100 km if the cities of Tczew and Wejherowo are included). Poland argues that although Gdańsk airport currently has a capacity of about 5 million passengers, some air traffic forecasts project that potential passenger traffic at that airport may exceed 6 million passengers in 2035. On the one hand, Poland claimed in its comments that environmental restrictions and residential developments in the vicinity of Gdańsk airport limit the prospects for its further expansion. On the other hand, in its comments of 6 December 2012 Poland invoked the Gdańsk airport masterplan to argue that there are no restrictions regarding the expansion of Gdańsk airport.

- (79) Poland states that air safety also warrants the construction of a hub of airports in the Tricity area, with Gdynia airport serving as a back-up, emergency airport (landing at Gdynia airport is possible in about 80 % of cases when the cloud base and visibility do not allow landing at Gdańsk airport).

- (80) Lastly, Poland argues that the development of Gdynia airport corresponds to the objectives of the national and regional strategy documents concerning the development of aviation infrastructure in Poland. Poland explains that the development of Gdynia airport is expected to have a positive impact on the development of Pomerania and the use of existing military infrastructure and that it is complementary to Gdańsk airport.

Necessity and proportionality of infrastructure

- (81) Poland argues that the infrastructure is necessary and proportional to the objective set because of the small scale of the airport's operations (1,55 % share in the Polish aviation market in 2030), forecasts for passenger traffic volumes that exceed Gdańsk airport's expansion capacity, the attractiveness of the region for tourism and the projected high rate of development for Pomerania.

⁽³²⁾ The Tricity is an urban area consisting of three major cities in Pomerania (Gdańsk, Gdynia and Sopot). There are currently three airports in the Tricity area: Lech Wałęsa Airport in Gdańsk, the military airfield in Pruszcz Gdańsk and the military airfield on the boundary between Gdynia and Kosakowo (Gdynia-Oksywie).

- (82) Poland emphasises the Gdynia military airfield's strategic role in the region and notes that the use of existing infrastructure minimises investment costs and maximises the positive impact on regional development.
- (83) Poland also points out that the costs have been kept to a minimum and the effectiveness of the investment has been increased through the implementation of technical solutions such as, for example, building a general aviation terminal for both general aviation and passenger traffic, housing the majority of airport services (border guards, customs offices, the police, firefighters, management) in a single building and adapting other existing buildings to optimise their use. Moreover, the infrastructure's operating costs will be shared with the army.

Satisfactory medium-term prospects for use

- (84) Poland points out that the medium-term prospects for use for Gdynia-Kosakowo airport are satisfactory, owing to GDP growth in Pomerania, which is expected to outstrip the average for Poland and the EU, the region's attractiveness to tourists, its status as a foreign investment hub and the forecast growth in air traffic.
- (85) Poland stresses that the planned collaboration with Gdańsk airport and the complementarity of services offered by the two airports (Gdynia airport will be dedicated mainly to general aviation traffic) further strengthen the medium- and long-term prospects for Gdynia-Kosakowo airport.
- (86) Poland goes on to explain that the airport also plans to develop specialised aviation-related activities within the airport zone, such as the production of simple service parts, the repair of aircraft parts or the production of other components/products supplied on a 'just-in-time' basis.
- (87) Poland points to a letter of intent signed by a commercial bank and expressing the bank's willingness to open talks on financing the investment in Gdynia-Kosakowo airport as further proof of the project's attractiveness.

Impact on the development of trade contrary to the common interest

- (88) Since Gdynia-Kosakowo airport is to be an airport with a small market share (serving fewer than 1 million passengers a year), Poland does not consider the project's impact on trade contrary to the common interest. In the light of the projected growth in air traffic, Poland expects Gdańsk and Gdynia airports to form a cooperative aviation hub serving Pomerania's Tricity area and offering complementary services.
- (89) Poland stresses that Gdynia airport will not be a competitor for Gdańsk airport, as it will focus on providing services for the general aviation sector (maintenance, repair and overhaul services, a flight academy) and cooperating with Gdynia seaport.
- (90) Poland further argues that charter and low-cost traffic at Gdynia-Kosakowo airport will not be at the cost of Gdańsk airport but will result from an overall increase in wealth and mobility. Poland points out that the rate at which Gdańsk airport is growing and the nature of the aircraft operations it handles mean that the number of flights it handles will sooner or later have to be limited. Poland states that these conclusions are presented in the environmental impact assessment report on the project 'Expansion of the Lech Wałęsa Gdańsk Airport'.
- (91) Poland explains that the investment in Gdynia-Kosakowo airport can limit the financial and social costs of any restriction on activity at Gdańsk airport. Poland points out that shifting some air traffic from Gdańsk airport to Gdynia airport will result in better use of capacity at both airports.

Necessity of aid and incentive effect

- (92) Poland argues that the company would not have carried out the project without public financing. Poland notes that the aid was kept to a minimum and that the project's costs were reduced and optimised by using existing military infrastructure.
- (93) In Poland's view, the capital injections into Gdynia airport are necessary and limited to a minimum, as borne out by:
- i. the project's internal rate of return of [...] %, only slightly higher than the discount rate (cost of equity), which stands at [...] % (based on the 2012 MEIP study);
 - ii. the need, forecast in the financial projections, to borrow working capital loan to finance the airport's operations, as Gdynia-Kosakowo Airport Ltd might otherwise lose liquidity;
 - iii. the fact that the total financing from the equity capital is lower than total capital expenditure (financing from the equity capital accounts for less than [...] of total cash costs in the projection period, including total capital expenditure).
- (94) Poland goes on to explain the proportionality of the aid measure, comparing its public financing (about PLN 148 in real terms) with that of a greenfield investment (Lublin-Świdnik Airport, for which the net construction costs were about PLN 420 million) and an investment based on a military airfield (Warsaw-Modlin Airport, the construction of which has so far cost almost PLN 454 million).

3.2.2. *Operating aid*

- (95) Poland argues that the project meets the compatibility criteria laid down in the RAG for operating aid in a region covered by Article 107(3)(a) TFEU. In Poland's view, the operating aid for the project:
- i. is intended to finance a predefined set of expenditures;
 - ii. is limited to a necessary minimum and granted on a temporary basis (the aid for operating costs is granted to the extent and for the period necessary to bring the airport into operation, i.e. until the end of 2018);
 - iii. is degressive and decreases from [...] % of capital expenditure in 2013 to [...] % in 2018;
 - iv. is designed to meet the project's goals of regional development and alleviation of existing limitations. Taking into account the amount of the aid in relation to its beneficial effects on the development of Pomerania, Poland argues that it has to be considered proportional.
- (96) Poland also stresses that the aid is intended for a small airport with a maximum capacity of 1 million passengers a year, meaning that the risk of its distorting competition and having an effect contrary to the common interest is minimal, especially in view of the planned cooperation between Gdynia and Gdańsk airports and the complementarity of their cooperation.
- (97) Poland also points out that the cooperation currently being negotiated with the airport's military user and the latter's participation in the airport's operating costs will reduce the company's losses and operating costs.

4. OBSERVATIONS BY THIRD PARTIES

- (98) The Commission has received no observations from interested parties following the publication of its decision to initiate the procedure provided for in Article 108(2) of the TFEU in respect to the financing granted to Gdynia-Kosakowo Airport Ltd by Gdynia and Kosakowo.

5. ASSESSMENT

5.1. Existence of State aid

- (99) By virtue of Article 107(1) of the TFEU 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.'
- (100) The criteria set out in Article 107(1) of the TFEU are cumulative. Therefore, in order to determine whether the measure in question constitutes aid within the meaning of Article 107(1) of the TFEU all of the following conditions need to be fulfilled. Namely, the financial support must:
- be granted by the State or through State resources;
 - favour certain undertakings or the production of certain goods;
 - distort or threaten to distort competition; and
 - affect trade between Member States.

5.1.1. Economic activity and notion of undertaking

- (101) According to settled case-law, the Commission must first establish whether the Gdynia-Kosakowo Airport Ltd is an undertaking within the meaning of Article 107(1) of the TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed⁽³³⁾. Any activity consisting in offering goods or services on a given market is an economic activity⁽³⁴⁾.
- (102) In its 'Leipzig-Halle airport' judgment the Court of Justice confirmed that the operation of an airport for commercial purpose and the construction of the airport infrastructure constitute an economic activity⁽³⁵⁾. Once an airport operator engages in economic activities by offering airport services against remuneration, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) of the TFEU, and the Treaty rules on State aid are therefore capable of applying to advantages granted by the State or through State resources to that airport operator⁽³⁶⁾.
- (103) In this regard the Commission notes that the infrastructure which is the subject of the present decision is to be operated on a commercial basis by the airport operator Gdynia-Kosakowo Airport Ltd. Since the airport operator will be charging users for the use of this infrastructure, the latter has to be deemed commercially exploitable. It follows that the entity exploiting this infrastructure constitutes an undertaking for the purposes of Article 107(1) TFEU.
- (104) However, not all the activities of an airport operator are necessarily of an economic nature⁽³⁷⁾. The Court of Justice has held that tasks for which the State is normally responsible on the basis of its sovereign power are not of an economic nature and do not fall within the scope of the rules on State aid. At an airport, activities such as air traffic control, police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform

⁽³³⁾ Case C-35/96 *Commission v Italy* [1998], EU:C:1998:303/[1998] ECR I-3851; C-41/90 *Höfner and Elser* [1991], EU:C:1991:161/[1991] ECR I-1979; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche* [1995], EU:C:1995:392/[1995] ECR I-4013; Case C-55/96 *Job Centre*, EU:C:1997:603/[1997] ECR I-7119.

⁽³⁴⁾ Case C-118/85 *Commission v Italy* [1987], EU:C:1987:283/[1987] ECR 2599; Case C-35/96 *Commission v Italy* [1998], EU:C:1998:303/[1998] ECR I-3851;

⁽³⁵⁾ Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*, EU:T:2011:117/[2011] ECR II-01311, confirmed by the ECJ, Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, EU:C:2012:821; see also Case T-128/98 *Aéroports de Paris v Commission*, EU:T:2000:290/[2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P, EU:C:2002:617/[2002] ECR I-9297, and Case T-196/04 *Ryanair v Commission*, EU:T:2008:585/[2008] ECR II-3643.

⁽³⁶⁾ Cases C-159/91 and C-160/91, *Poucet v AGV and Pistre v Cancave*, EU:C:1993:63/[1993] ECR I-637.

⁽³⁷⁾ Case C-364/92 *SAT Fluggesellschaft v Eurocontrol*, EU:C:1994:7/[1994] ECR I-43.

these activities are considered in general to be of a non-economic nature ⁽³⁸⁾. Although public funding of such non-economic activities does not constitute State aid, it has to be strictly confined to compensating for the costs engendered by these activities and may not be used to cover costs associated with another type of economic activity ⁽³⁹⁾.

- (105) Indeed, it is settled case-law that there is an advantage when public authorities relieve undertakings of the costs inherent to their economic activities ⁽⁴⁰⁾. Therefore if a legal system normally requires airport operators to bear the costs of certain services, then airport operators which do not have to bear those costs may enjoy an advantage, even if those services are in themselves deemed non-economic. It is therefore necessary to analyse the legal framework applicable to an airport operator in order to assess whether under that legal framework airport operators are required to bear the cost of providing some activities that might be non-economic in themselves but are inherent to the deployment of their economic activities.
- (106) The Commission notes that in the opening decision of 2 July 2013, it did not assess whether Polish law requires airport operators to bear the costs of the services that were claimed to be of a non-economic nature. This decision expressly states that investment in buildings and equipment for firefighters, customs, airport security guards, police and border guards fell within the remit of public policy and accordingly did not constitute State aid within the meaning of Article 107(1) TFEU ⁽⁴¹⁾. As explained in recital 18, the Commission considers that, under these particular circumstances, it should not call this conclusion into question in its final decision.
- (107) The amount of PLN [...] million (EUR [...] million) referred to in the opening decision for the investment costs in buildings and equipment falling within the remit of public policy concerns the 2012 MEIP study. Under the 2010 MEIP study, costs falling within the remit of public policy would amount to PLN [...] million (EUR [...] million) ⁽⁴²⁾, and the 2011 MEIP study refers to an amount of PLN [...] million (EUR [...] million) ⁽⁴³⁾.
- (108) Thus, in the light of the above, when assessing the 2010 and 2011 MEIP studies, the Commission will exclude the part of the investment that relates to activities which are claimed to fall within the public policy. And since the funding of this part of the investments is not considered State aid, the Commission will not order its recovery.

5.1.2. State resources and imputability to the State

- (109) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it ⁽⁴⁴⁾. For the purposes of Article 107 TFEU, local authorities' resources are State resources ⁽⁴⁵⁾. In the present case, the capital injected into Gdynia-Kosakowo Airport Ltd comes from the budgets of two local authorities, Gdynia and Kosakowo. The Commission therefore considers that the resources of the two municipalities involved are State resources.
- (110) The Commission considers that it is irrelevant whether the measure takes the form of a direct grant (cash contribution of Gdynia and Kosakowo) or the swapping of part of the airport operator's debt to one of its public shareholders (the rent due to Kosakowo) for equity. Rental income is part of Kosakowo's financial resources and therefore constitutes State resources.

⁽³⁸⁾ See, in particular, Case C-364/92 *SAT Fluggesellschaft v Eurocontrol*/[1994] ECR I-43, paragraph 30 and Case C-113/07 P *Selex Sistemi Integrati v Commission*, EU:C:2009:191/[2009] ECR I-2207, paragraph 71.

⁽³⁹⁾ Case C-343/95 *Cali & Figli v Servizi ecologici porto di Genova*, EU:C:1997:160/[1997] ECR I-1547; Commission Decision N309/2002 of 19 March 2003; Commission Decision N438/2002 of 16 October 2002, Aid in support of the public authority functions in the Belgian port sector.

⁽⁴⁰⁾ See i.a. Case C-172/03 *Wolfgang Heiser v Finanzamt Innsbruck*, EU:C:2005:130/[2005] ECR I-01627, paragraph 36, and case-law cited.

⁽⁴¹⁾ Recital 25 of the opening decision.

⁽⁴²⁾ The 2010 MEIP does not indicate what part of the investments would fall within the remit of public policy. The Commission has therefore used the approach taken in the 2011 MEIP study to determine the amount of the investments that would fall within the remit of public policy. See recital 132.

⁽⁴³⁾ During the proceedings before the General Court, Kosakowo indicated that PLN [...] million (EUR [...] million) had been spent on investments allegedly falling within the remit of public policy.

⁽⁴⁴⁾ Case C-482/99 *France v Commission*, EU:C:2002:294/[2002] ECR I-4397.

⁽⁴⁵⁾ Judgment of 12 May 2011 in Joined Cases T-267/08 and T-279/08, *Nord-Pas-de-Calais*, EU:T:2011:209/[2011] ECR II-01999, paragraph 108.

- (111) Thus, the Commission considers that the capital injected into Gdynia-Kosakowo Airport Ltd is financed through State resources and imputable to the State.

5.1.3. *Economic advantage*

5.1.3.1. Conclusion

- (112) The Commission observes that Poland argues, on the one hand, that the capital injections are in line with the MEIP while, on the other hand, considering the aid to be compatible, as the airport operator would not have made investment without the public funding.
- (113) To determine whether the measure at issue in this case grants Gdynia-Kosakowo Airport Ltd an advantage that it would not have received under normal market conditions, the Commission has to compare the conduct of the airport operator's public shareholders to that of a market economy investor guided by prospects of profitability in the longer term⁽⁴⁶⁾.
- (114) Any positive repercussions on the economy of the region in which the airport is located should be disregarded in the assessment, since the Court has explained that the relevant question when applying the MEIP study is 'whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed the capital in question'⁽⁴⁷⁾.
- (115) Poland argues that the measures at issue do not grant an economic advantage to Gdynia airport because they are in line with the MEIP. As described in section 3.1, in order to support this, Poland submitted the results of MEIP studies carried out by PWC⁽⁴⁸⁾. In November 2013 Poland provided further information suggesting that new sources of revenue (i.e. the sale of fuel and navigation services) would enhance the project's NPV. At the time of the opening decision, Poland had submitted only the 2012 MEIP study.
- (116) Despite the fact that the 2011 shareholder agreement bound Gdynia and Kosakowo to provide cash and non-cash contributions to finance the investment project until 2040, Poland argues that only the 2012 MEIP study and the later information on the additional revenue streams are relevant when assessing whether the capital injections are compatible with the internal market.
- (117) Below, the Commission will first consider the Polish authorities' argument that the question of whether the airport operator received an advantage should be assessed on the basis of the 2012 MEIP study and later information, and not, therefore, on the basis of the 2010 and 2011 MEIP studies (Section 5.1.3.2). The Commission will then assess whether the MEIP is met on the basis of, respectively, the 2010 MEIP study (Section 5.1.3.3), the 2011 MEIP study and the 2012 MEIP study (Section 5.1.3.4).

5.1.3.2. The relevance of the 2010 MEIP study for the assessment of economic advantage

- (118) In Stardust Marine the Court stated that, '[...] in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation'⁽⁴⁹⁾.

⁽⁴⁶⁾ Case C-305/89 *Italy v Commission* ('Alfa Romeo'), EU:C:1991:142/[1991] ECR I-1603; Case T-296/97 *Alitalia v Commission*, EU:T:2000:289/[2000] ECR II-3871.

⁽⁴⁷⁾ Case C-40/85 *Belgium v Commission*, EU:C:1986:305/[1986] ECR I-2321.

⁽⁴⁸⁾ Though the Commission asked the Polish authorities to submit the underlying Excel spreadsheets used for the calculations with the formulas, the Polish authorities submitted the Excel spreadsheets without the formulas.

⁽⁴⁹⁾ Case C-482/99 *France v Commission*, EU:C:2002:294/[2002] ECR I-4397.

- (119) Furthermore, the Court ruled in EDF that, '[...] for the purposes of showing that, before or at the same time as conferring the advantage, the Member State took that decision as a shareholder, it is not enough to rely on economic evaluations made after the advantage was conferred, on a retrospective finding that the investment made by the Member State concerned was actually profitable, or on subsequent justifications of the course of action actually chosen' ⁽⁵⁰⁾.
- (120) In order to be able to apply the MEIP the Commission has to place itself in the context of the period during which the individual decisions concerning the conversion of the former military airfield into a civil airport were taken. The Commission also has to base its assessment on the information and assumptions available to the public shareholders at the time when the decision regarding the financial arrangements of the investment project was taken.
- (121) The Commission considers the 2010 MEIP study the most relevant for the purposes of determining whether the municipalities of Gdynia and Kosakowo acted as a private investor. Indeed, the assessment of whether State intervention is in line with market conditions should be carried out on the basis of an ex-ante analysis, considering information and data available at the time the investment was decided upon.
- (122) The Commission observes that only studies and preparatory works for the investment project in question were carried out prior to 2010. These included the masterplan for the investment project, the environmental report, the design documentation for the general aviation terminal, the design documentation for the administration building and the firefighters' building, specialist aviation documents and other studies. By the end of 2010 the cost of these studies stood at PLN [...] million (EUR [...]) ⁽⁵¹⁾.
- (123) Moreover, as Poland states, in 2010 the public shareholders of the airport operator finalised the preparations for the investment project at issue. In the same year, the public shareholders increased the company's share capital to PLN 6,05 million (around EUR 1,5 million) with a view to implementing the investment project. The main investments in fixed assets (such as the construction of the general aviation terminal) were planned to start in 2011 but actually started in 2012. The Commission believes that any private investor would have assessed the expected profitability of the project at that moment. If the investment plan did not show an acceptable rate of return or if it was based on doubtful assumptions, a private investor would not have started implementing the plan and would not have spent any further money on it, on top of that already spent on the preparatory works mentioned in recital 122. With regard to the capital injections, the Commission notes that the first important capital injection of PLN 4,4 million was decided on 29 July 2010 (almost quadrupling the existing capital of PLN 1,7 million), right after the 2010 MEIP study was finalised on 16 July 2010. In addition, the shareholders' agreement on the further increases of share capital of the company until 2040 (mentioned in recital 28) was signed on 11 March 2011 ⁽⁵²⁾ (i.e. before the finalisation of the second MEIP study on 13 May 2011). Moreover, the operational agreement with the airport's military user of the and the lease agreement for the land (mentioned in recital 27) were concluded at the same time, on 7 and 11 March 2011 respectively. Kosakowo also concluded a rental agreement with the State Treasury for the land on which the military airfield is located on 9 September 2010, a few months after the 2010 MEIP study (see recital 26). That land could only be used to set up a new civil airport (see recitals 25 and 59).
- (124) The Commission also underlines that Poland confirmed ⁽⁵³⁾ that the capital injection decided on 29 July 2010 was based on the economic assessment of the project contained in the 2010 MEIP study. It is therefore clear that at this stage the public shareholders had unequivocally committed themselves to the investment project in question, which was to take 30 years to implement and was subject to a contractual penalty for non-fulfilment of the parties' obligations until its completion in September 2040, as stipulated in the shareholders' agreement (mentioned in recital 28).

⁽⁵⁰⁾ Case C-124/10P European Commission v *Électricité de France* (EDF), EU:C:2012:318, paragraph 85.

⁽⁵¹⁾ See Section 4.7.5 of the 2012 MEIP study. According to comments received from Poland, at 26 June 2009 capital injections into Gdynia airport totalled PLN 1,691 million (about EUR 423 000). Only PLN [...] million (about EUR [...]) had been used to finance the different studies undertaken in the preparation of the project.

⁽⁵²⁾ The agreement provides for Gdynia to make cash contributions totalling PLN 59,048 million (EUR 14,8 million) over the period 2011-2013 and for Kosakowo to make a non-cash contribution (swapping annual rental fees for shares) in the period 2011-2040.

⁽⁵³⁾ Letter of 6 August 2013.

- (125) By the time the first update of the MEIP was carried out in 2011, the public shareholders had already injected PLN 6,05 million into the company (see Table 3). And by the time the second update of the MEIP study was finalised in July 2012, the public shareholders had injected a total of PLN 64,810 million (i.e. about 70 % of all capital injected).
- (126) In addition to the capital injections into the airport operator described above, the various MEIP studies submitted by the Polish authorities also describe the projected capital expenditures ('capex') (i.e. capital outflows) up to 2030. In particular, and as described in Table 1, the 2012 MEIP study shows the investments in fixed assets to be divided into 4 phases. Significantly, according to the information submitted by Poland, capital expenditure in 2012 amounted to PLN [...] million (of which more than half was spent before the 2012 study update even started). Figure 1 shows the annual (nominal) capex as presented in the 2012 MEIP study (however, expenditure falling within the remit of public policy has been removed).

Figure 1

Annual capex (2012 MEIP study, excluding expenditure falling within the remit of public policy)

[...]

- (127) The 2011 MEIP study and the 2012 MEIP study assessed only the amendments to the initial decision to embark on the investment project that was taken in 2010 on the basis of the 2010 MEIP study. The two subsequent studies show that the shareholders were guided by market developments and were adapting the scope of the project accordingly (either upwards or downwards, depending on the type of investment). These changes were, however, marginal when compared with the overall decision to convert the military base into a civil airport. Figure 2 shows the (nominal) capital expenditure as presented in the 2010, 2011 and 2012 MEIP studies (excluding expenditure falling within the remit of public policy). As can be seen, while the timing and extent of the investments were updated both in 2011 and 2012, these changes were not substantial when compared with the overall size of the project. In 2010, the nominal capex was estimated at about PLN [...] million and this figure was increased to about PLN [...] million in 2011 (mostly due to new investment in road infrastructure).

Figure 2

Capex (PLN '000) as projected in the 2010, 2011 and 2012 MEIP studies (excluding expenditure falling within the remit of public policy)

[...]

- (128) In recitals 122 and 127 the Commission considers that, in order to assess whether Gdynia and Kosakowo behaved like a prudent private investor operating in a market economy, it must primarily base its assessment on the 2010 MEIP study, disregarding any further developments and information that was not at the disposal of those public shareholders at the time when they took their decision to implement the investment project in question.
- (129) It is to be expected that a private investor would adjust an investment plan in the course of its implementation in the light of changing circumstances. However, in this case, the Commission needs to assess whether a private investor would have taken on the project of converting a military airfield into a civil airport. In order to do so, it is necessary to determine exactly when the main decision to carry out the project was actually taken. Based on the evidence available in the file (capital injections, the rental agreement and the lease agreement), the key steps had already been taken before the 2011 MEIP study. Given that any private investor would perform an *ex ante* assessment of a project's financial profitability before committing significant resources or entering into binding contractual arrangements, the 2010 MEIP study is the most relevant analysis for evaluating the market conformity of the investment.

- (130) The 2011 and 2012 MEIP studies make adjustments to the initial investment plan, on the basis of which the initial decision to embark on the project to convert the military airfield was taken. Hence, the capital injections implemented further to these subsequent MEIP studies cannot be examined in isolation.

5.1.3.3. Application of the MEIP on the basis of the 2010 MEIP study

- (131) The 2010 MEIP study is based on a business plan projecting future cash flows for the period 2010-2040. At the time when the MEIP study was carried out, Poland expected the airport to start handling general aviation traffic in 2011, charter flights in 2013 and LCCs in 2015. This would result in a steady increase in the number of passenger served from [...] passengers in 2013 up to almost [...] million in 2024 and 1,753 million in 2040 (as shown in Table 5 below).

Table 5

Traffic projections for Gdynia airport used in the 2010 MEIP study ('000)

Expected passenger development (2010 MEIP study)										
Year	2013	2014	2015	2016	2020	2024	2028	2032	2036	2040
No of passengers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	1 752 835

- (132) The 2010 MEIP study, as submitted by Poland, includes capital necessary to finance costs which are claimed to fall with the remit of public policy but does not quantify those costs. On the other hand, the 2011 MEIP study excludes those capital costs but does quantify them. The scope of the investment project in the 2010 and 2011 MEIP studies is substantially the same. Apart from excluding costs related to the public policy remit, the 2011 MEIP study differs from the 2010 MEIP study only inasmuch as it contains updated data on costs and the discount rate, the verified costs of road infrastructure, the financial result of the lease agreement signed by Kosakowo and the airport operator and the schedule of capital injections agreed by Kosakowo and Gdynia. Hence, in order to remove the alleged costs falling within the remit of public policy from the NPV calculations in the 2010 MEIP study, the Commission applied the same methodology as was applied in the 2011 MEIP study to determine the share of the capital investment accounted for by costs falling within the remit of public policy. In particular, the 2011 MEIP study indicates ⁽⁵⁴⁾ that [...] % of terminal costs (for the passenger and GA terminals) are deemed to fall within the remit of public policy; [...] % costs of the multipurpose building housing the firefighters fall within the remit of public policy as do all costs relating to the fence, monitoring equipment, equipment for baggage screening, equipment for airport security service (in total PLN [...] million; EUR [...] million). By excluding the same capital cost items and using the same share of costs falling within the remit of public policy for the various buildings (as these figures are based on the floor space in those buildings attributed to security functions, which did not change in the interval between the two studies), the Commission calculated the share of investment costs in the 2010 MEIP study that, for the purpose of this Decision, should be excluded from the MEIP as falling within the remit of public policy. These costs amount to PLN [...] million (or EUR [...] million).

- (133) Furthermore, according to the 2010 MEIP study, the company would be profitable at EBITDA level as from 2018. However, on a cumulative basis (i.e. adding each year the cash flows from previous years), the total discounted cash flow (DCF) over the entire period 2010-2040 is expected to be negative (as illustrated in Figure 3). In other words, the positive cash flows expected to be generated from 2018 are not high enough to offset the highly negative cash flows of the early investment periods. As can be seen, the project's cumulative discounted cash flow would remain negative until 2040.

⁽⁵⁴⁾ See page 35 of the 2011 MEIP study.

Figure 3

Cumulative DCF in PLN '000 (2010 MEIP study)

[...]

Source: Based on the 2010 MEIP study and excluding expenditure falling within the remit of public policy.

- (134) After 2040 the value of the airport operator is expected to grow forever, with free cash flow growing at a stable rate of [...] %. Under this assumption, Poland calculated the terminal value of the airport operator in 2040. The discounted terminal value amounts to PLN [...] million. The original 2010 MEIP study resulted in a positive equity value ⁽⁵⁵⁾ of PLN [...] million (that is, around EUR [...] million). This positive equity value is due to the difference with the Terminal Value of PLN [...] million, which is greater in absolute terms than the NPV of the Free Cash Flow to the Firm (FCFF) estimated at PLN [...] million over the period 2010-2040. The IRR for the investment project was estimated at [...] %, which is higher than the assumed cost of capital of the airport operator (... %). When expenditure falling within the remit of public policy is excluded, the NPV of the free cash flow to the firm (FCFF) remains negative at PLN [...] million and the project becomes profitable only due to the calculated terminal value of PLN [...] million. The positive equity value of the project (excluding expenditure falling within the remit of public policy) is therefore PLN [...] million (that is, around EUR [...] million).
- (135) Hence, the project only becomes profitable if it is assumed that, beyond the 30-year lease period, the airport operator continues to operate the airport forever and grows at a stable rate of [...] % per annum (i.e. the terminal value ⁽⁵⁶⁾). However, as mentioned in recitals 25 - 27, the Polish State owns the land on which the airport is built and rented it to Kosakowo for a period of 30 years until September 2040. Kosakowo subsequently leased the land for 30 years to Gdynia-Kosakowo Airport Ltd. Therefore, according to applicable Polish law (Articles 48 and 191 of the Civil Code), all buildings and facilities constructed on the rented property which are permanently attached to the land are owned by the owner of the property (the State Treasury) and not Gdynia-Kosakowo Airport Ltd or Kosakowo. The rental agreement stipulates that the rented property has to be returned to landlord within [...] after the expiry of the rental agreement (§ 4(16)). The rental agreement does not provide for a unilateral right to extend the rent after that period or a right to obtain any compensation for investments in the airport infrastructure. It is also far from clear whether such rights may be claimed under general provisions of Polish civil law. Moreover, the rental agreement (§ 4(11)) and the lease agreement (§ 5(4)) state that in the event that the airport operator ceases its economic activity, the infrastructure is to be handed over to the State without compensation. It therefore seems unreasonable to rely on the exact amount specified in the study, as, under the terms of the rental agreement of 9 September 2010, neither the airport operator nor the shareholders own the airport infrastructure. Hence, the terminal value of the investment relied upon in the MEIP studies is unreliable and very probably significantly overstated.
- (136) The Commission notes, moreover, that the key value driver of the Gdynia airport operator's future cash flows is the expected revenue, which will depend on passenger numbers and the level of airport charges paid by the airlines. In the 2010 MEIP study, revenue from LCC and charter flights (passenger, landing, parking fees) accounts for [80 - 90] % of all revenue in 2040 and for an average of [80 - 90] % of all revenue over the whole period assessed, namely 2010 to 2040. This contradicts Poland's statements to the effect that Gdynia airport's activities would complement those of Gdańsk airport because Gdynia would focus on general aviation activities. In fact, as shown by the data presented above, LCC and charter flights are the main source of revenue in most of the years covered by the forecast. However, as will be explained in greater detail below, the bulk of Gdańsk airport's revenue also comes from LCC and charter flights (see recital 140).
- (137) In the context of demand among passengers and air carriers, the Commission observes that Gdynia airport would have the same catchment area as Gdańsk airport, which is only about 25 km away from Gdynia-Kosakowo airport. Gdańsk airport was extended in 2012 to serve up to 5 million passengers and a further

⁽⁵⁵⁾ This equity value includes the net present value of the cash flows in 2012-2040 plus the discounted terminal value of Gdynia airport as calculated as of 2040.

⁽⁵⁶⁾ Terminal value is calculated on the basis of the projected cash flow for the last year of the detailed forecast, adjusted to take account of the replacement investment needed to ensure the continued operation of the infrastructure.

extension to serve up to 7 million passengers is planned for 2015. This expansion timetable was already publicly known in 2010, i.e. at the time of preparation the 2010 MEIP study (57). Moreover, public funding for the extension of Gdańsk to the capacity of 5 million passengers was also notified to the Commission on 24 September 2008 under State aid case No N 472/08 and was approved by the Commission on 5 February 2009 (58).

- (138) Poland informed the Commission that the masterplan prepared for Gdańsk airport in 2010 (59) provides for the extension of the runway, aprons and other airport infrastructure, as a result of which Gdańsk airport would in future be able to handle over 10 million passengers a year.
- (139) The Commission further observes that in 2010 Gdańsk airport handled 2,2 million passengers (i.e. it used 45 % of its capacity, including the capacity under construction). According to the forecasts provided for Gdańsk airport, only 50 to 60 % of the available capacity will be used by 2020 (60). These forecasts do not take into account the start of operations at Gdynia airport (i.e. it is assumed that all demand in the catchment area will be met by Gdańsk airport). The Commission notes that Gdańsk airport will be able to meet demand in the region for a long period of time, i.e. until at least 2030, even if dynamic growth in passenger traffic is assumed.
- (140) As indicated above, the 2010 MEIP study for Gdynia airport expects the bulk of its revenue ([80 - 90] % on average for the whole period 2012 - 2040) to be generated by LCCs and charter airlines. In this context, the Commission notes that also Gdańsk airport mainly handles LCC and charter traffic. In 2010 LCC and charter flights accounted for 72 % of all passengers handled by Gdańsk airport (61).
- (141) In view of the close proximity to another established and uncongested airport pursuing the same business model with significant spare capacity in the long run, the Commission considers that the ability of the operator of Gdynia airport to attract traffic and passengers will largely depend on the level of airport charges offered to airlines, notably in comparison with those of its closest competitors.
- (142) In this context, the Commission observes that the 2010 MEIP study foresees a passenger charge for charter and LCC flights of PLN 25/PAX (EUR 6,25) until 2014 and PLN 40/PAX (EUR 10) from 2015 (to 2040). The landing charge for such flights was set at PLN 25/tonne (EUR 6,25) for the whole period (the average MTOW (maximum take-off weight) was presumed to be 70 tonnes) while the parking charge was estimated at PLN 4 (EUR 1,0) per 24h/tonne (with an average MTOW of 70 tonnes). According to the 2010 MEIP study, prices were set at levels comparable to those at other regional airports at the time the 2010 MEIP study was conducted. Prices at Gdynia airport were also set on the assumption that there would be no competition from Gdańsk airport.
- (143) The Commission also notes that the schedule of tariffs applied by Gdańsk airport since 31 December 2008 fixes the standard passenger charge at PLN 48/PAX (EUR 12,0), the standard landing charge for aircraft above 2 tonnes (i.e. including all charter and LCC aircraft) at PLN 25/tonne (EUR 6,25) and the parking charge at PLN 4,5/24h/tonne (EUR 1,25).
- (144) The Commission, however, notes that the schedule of tariffs applied at Gdańsk airport also offers various discounts and rebates concerning, *inter alia*, LCC flights. Gdańsk airport applies a reduced passenger charge of

(57) See, for example, Commission decision No C(2009) 4445 of 3 June 2009, granting Community financial aid in the field of trans-European transport networks.

(58) See footnote 9.

(59) The masterplan was commissioned in February 2010 and delivered in November 2010.

(60) Passenger traffic (in '000 passengers a year) at Gdańsk airport.

Actual passengers:

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of passengers	466	672	1 256	1 715	1 954	1 911	2 232	2 463	2 906

Expected passenger growth

Year	2013	2014	2015	2016	2017	2018	2019	2020	
Number of passengers	3 153	3 311	3 477	3 616	3 760	3 911	4 067	4 230	

(61) LCCs 64,5 %, charters 7,5 %. In both 2009 and 2011 this figure was 70 %.

PLN 24/PAX (EUR 6) for all new connections (as of 1 January 2004) and for all increases in frequency involving an aircraft with an MTOW of between 50 and 100 tonnes (e.g. Airbus A320 and Boeing 737 and other aircraft used by LCCs). The landing charge applied for such connections is also reduced by 50 % (i.e. to PLN 12,5/tonne). The parking charge is waived completely if the frequency of a connection is at least 6 times a week. In addition, the standard passenger charge is first reduced by PLN 23 for all departing passengers on scheduled domestic connections. An appropriate discount is then applied. The Commission considers, taking into account the discounts and rebates applied at Gdańsk airport, airport charges at Gdynia airport were on average significantly higher than at the established neighbouring airport. By applying the airport charges in question, Gdynia airport, as a new entrant, will not be able to attract significant traffic when there is an established airport with spare capacity in the same catchment area applying lower net charges for new connections and increases in frequency on existing connections. The Commission also notes that the schedule of airport charges for Gdańsk airport provides for the discounted charges to apply until 31 December 2028. Since the 2010 MEIP study (based on the airport operator's business plan at that point in time) views airport charges as the airport operator's main source of revenue, the Commission considers this solution as proof that the 2010 MEIP study is not solid and credible enough to demonstrate that the investment project in question would have been pursued by a private investor.

- (145) Given that both Gdynia airport and Gdańsk airport would focus mainly on low-cost and charter carriers, that Gdańsk airport does not use its full capacity, that its actual charges are lower than those assumed in the Gdynia business plan and the close proximity of the two airports, the Commission also considers the assumption that there will be no price competition between the two airports to be mistaken.
- (146) The Commission also notes that at the time of the preparation of the 2010 MEIP study the net charges (standard charges after applicable discounts) applied at Bydgoszcz airport (located 196 kilometres and 2 hours 19 minutes by car from Gdynia airport) and Szczecin airport (located 296 kilometres and 4 hours 24 minutes by car from Gdynia airport), the second and third closest Polish regional airports, were significantly lower ⁽⁶²⁾.
- (147) In view of the above, the Commission considers, given the close proximity of another uncongested airport pursuing the same business model, the airport charges in the 2010 MEIP study, which are higher than those applied in Gdańsk and at other regional airports nearby, to be unrealistic. Taking into account the competitive situation of Gdynia airport, the traffic forecasts included in the 2010 MEIP study were based on unrealistic assumptions.
- (148) It should also be noted that the 2010 MEIP study involved neither a sensitivity analysis nor any assessment of the probability of an outcome (such as a worst-case, best-case and base-case scenario). The Commission therefore concludes that the scenario presented in the 2010 MEIP study appears to rely on overly optimistic assumptions regarding the development of passenger traffic and the level of charges.
- (149) The Commission performed a number of sensitivity calculations and notes that reducing the annual revenue from passenger charges linked to the LCC and charter traffic by [...] % (over the projection period of 2010-2040) suffices to render the project unprofitable despite the significant terminal value, which is itself uncertain, as explained in recital 135. Such a fall in revenue could occur if charges and/or traffic were lower than assumed. In this respect, it is worth noting that the airport charges in the business plan used for the 2010 MEIP study are already [...] % higher than at Gdańsk airport ⁽⁶³⁾. In this context, it is highly unlikely that Gdynia airport would

⁽⁶²⁾ Bydgoszcz Airport: The standard departing passenger charge is PLN 30 (EUR 7,5); the standard landing charge is PLN 45/tonne (EUR 11,25) for the first 2 tonnes of MTOW, PLN 40/tonne (EUR 10) between 2 and 15 tonnes of MTOW, PLN 35/tonne (EUR 8,75) between 15 and 40 tonnes of MTOW, PLN 30/tonne (EUR 7,5) between 40 and 60 tonnes of MTOW, PLN 25/tonne (EUR 6,25) between 60 and 80 tonnes of MTOW and PLN 20/tonne (EUR 5) for every tonne above 80 tonnes of MTOW; a standard parking charge of PLN 8/tonne/24 h (EUR 2; no charge for the first 4 hours). Discounts: Passenger charges may be reduced by from 5 % (if an air carrier has 100-300 passengers departing from Bydgoszcz Airport per month) to 50 % (if an air carrier has more than 8 000 passengers departing from Bydgoszcz Airport per month); landing charge — 50 % discount in the first 12 months of a connection, 50 % for landing between 14.00 and 20.00; landing and parking charges: 10 % for a carrier with 4-10 flights a month, 15 % for 11-30 flights a month, 20 % for more than 31 flights a month. Szczecin airport: The standard departing passenger charge is PLN 35 (EUR 8,75); the standard landing charge is PLN 70/tonne (EUR 17,5); the standard parking charge is PLN 8/tonne/24 h (no charge for the first 2 hours). Discounts: from 20 % (if a carrier offers departing passengers more than 800 seats a week) to 90 % (if more than 1 300 seats are offered).

⁽⁶³⁾ Calculation of passenger charges for LCCs.

be able to attract traffic without providing any significant rebate on the PLN 40 (EUR 10) charge in the business plan. The high sensitivity of the NPV to a seemingly marginal reduction in airport charges (resulting from realistic assumptions) therefore casts significant doubt on the credibility of the initial business plan.

- (150) While the 2010 MEIP study was based on traffic projections available at that time and *ex-post* information should not be used to assess directly the MEIP study, the Commission nevertheless notes the extent to which such projections were over-optimistic. Indeed, a comparison of the 2010 and 2012 traffic projections shows significant differences. Not only was the start of the project delayed, but in addition and over the 'positive EBITDA' period, traffic projections were reduced by [...] to [...] % in each year. Such a significant correction after just two years and without any significant alteration of circumstances constitutes a useful sense check of the initial assumptions. It further bears out the fact that the sensitivity checks performed by the Commission (the scope of which is much narrower in comparison) highlight the unrealistic nature of the assumptions underpinning the conclusion that the project was worthwhile.

Table 6

Comparison of passenger traffic forecasts used in the 2010 MEIP study and the 2012 MEIP study

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total pax in 2010 MEIP Study	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total pax in 2012 MEIP Study	—	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Difference</i>		– 53 %	– 69 %	– 55 %	– 38 %	– 36 %	– 29 %	– 27 %	– 25 %
	2022	2023	2024	2025	2026	2027	2028	2029	2030
Total pax in 2010 MEIP Study	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	1 343 234
Total pax in 2012 MEIP Study	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	1 083 746
<i>Difference</i>	– 23 %	– 21 %	– 19 %	– 17 %	– 17 %	– 18 %	– 18 %	– 19 %	– 19 %

- (151) Further sensitivity tests show that the project would become unprofitable if overall revenue were just [...] % a year lower over the whole projection period or revenue [...] % lower and operating expenditure [...] % higher. The profitability of the investment is therefore highly sensitive to small changes in the basic assumptions. The Commission considers such changes to be marginal in comparison with the changes made in the successive MEIP studies.
- (152) The Commission observes, moreover, that the positive results of the 2010 MEIP study also depend to a great extent on the terminal value of the investment at the end of the period covered by the business plan (i.e. in 2040). Indeed, the discounted cash flow of the company for the period 2010-2040 is negative and amounts to PLN (– [...] million). The discounted terminal value on 30 June 2010 amounts to PLN [...] million.

(153) With respect to the assumptions underlying the calculations, the terminal value was calculated on the basis of assumptions that the annual growth rate for the investment's cash flow after 2040 would forever amount to [...] %. According to standard practice, an undertaking's growth rate should not be higher than that of the economy in which it operates (i.e. in terms of GDP growth). Indeed, the terminal value is calculated at the time when the firm is expected to reach maturity and when the high growth period of the firm is thus over. Given that the economy is expected to comprise undertakings with high growth and others with stable growth, the growth rate of mature firms should therefore be lower than the average growth rate of the overall economy. Poland did not indicate in its comments the basis on which it selected a long-term growth rate of [...] %, but it did explain that the long-term growth rate is a nominal growth rate. Based on information available from the IMF, the Commission found that the forecasts for real GDP growth in Poland available in early 2010 indicated that the nominal growth rate of the Polish economy would range from 5,6 % in 2011 to 6,6 % in 2015. With inflation of the order of 2,5 %, real GDP could be expected to grow by 4 %. Hence, the choice of a [...] % nominal growth rate for Gdynia airport could at first sight be deemed to be in line with the information available at the time and the standard practice of choosing a growth rate lower than the growth of the economy. However, by choosing a long-term growth rate above inflation (which was estimated at 2,5 % in April 2010), the business plan assumes that the airport would continue to grow every year beyond 2040.

Table 7

Data and forecasts concerning GDP and inflation available from the IMF in April 2010

	2009	2010	2011	2012	2013	2014	2015
% growth GDP (constant prices)	1,70	2,70	3,20	3,90	4,00	4,00	4,00
% growth GDP (current prices)	5,50	4,40	5,60	6,20	6,60	6,50	6,60
% inflation	4,20	3,50	2,30	2,40	2,50	2,50	2,50

Source: International Monetary Fund, World Economic Outlook Database, April 2010 (downloaded from <http://www.imf.org/external/data.htm>)

- (154) Moreover, the Commission notes that in this case, in view of the particularly long projection period and the remoteness of the date for which the terminal value was calculated, the task of determining the most appropriate growth rate is all the more complex and the uncertainty all the greater. Indeed, GDP growth forecasts rarely go beyond a five-year horizon, whereas in this case the model had to predict a reasonable growth rate for the airport after it has been operating for 30 years. This fact indicates that a prudent investor would have undertaken a series of sensitivity tests.
- (155) The stable growth rate model used to calculate the terminal value in this case also requires assumptions to be made about the date at which the firm will start growing at a stable rate that it can sustain forever. In the 2010 MEIP study, this date was set at 2040, meaning a projection period of 30 years (2010-2040). In the 2012 MEIP study, the projection period was reduced to 18 years (2012-2030) and the terminal value was therefore calculated in 2030. If the same time horizon is applied to the 2010 MEIP study, the NPV of the project is significantly reduced (PLN [...] million or EUR [...] million).
- (156) The Commission also notes that the 2012 MEIP study specifically mentions that a prudent investor would have taken into consideration the fact that the project entails a particularly long time horizon before reaching profitability (See Section 4.10.1.2 of the 2012 MEIP study, in which it is concluded that 'The positive result of the net present value proves that the investment in the Gdynia-Kosakowo Airport can be an interesting business for potential investors. However, before any decisions are made, investors will have to consider also the long-term investment horizon typical of infrastructure investment projects').

Conclusion

- (157) The project to convert Gdynia-Kosakowo airport entails significant investments and a long-period of negative cash flows. Indeed, the business plan shows that the cumulative discounted cash flow over the 2010-2040 projection period is negative (– [...] million or — EUR [...] million). According to the business plan, the project only achieves positive figures by virtue of the discounted terminal value of PLN [...] million calculated for 2040 and forever after, assuming that the airport grows annually and forever thereafter at a nominal rate of [...] %). However, as explained in recital 135, it appears that neither the airport operator nor its shareholders own the land, as it remains property of the State Treasury, so the terminal value presented for the airport is not reliable. What is more, despite the significant uncertainties inherent in such a long-term project, the business plan contains no sensitivity analysis and thereby differs from the analysis that a prudent investor would have undertaken for such a project.
- (158) Furthermore, the Commission's analysis concluded that the business plan relies on a series of assumptions that are overly optimistic and unrealistic in view of the proximity of Gdańsk airport, which has the same business model, spare capacity and expansion plans. Several sensitivity tests indicate that the NPV of the project becomes negative in the event of minor and realistic modifications to the underlying assumptions.
- (159) In view of the above, the Commission considers that a private investor would not have decided to embark on the investment project in question on the basis of the 2010 MEIP study. Therefore the decision of Gdynia and Kosakowo municipalities to finance the conversion of the airfield into a civil airport confers on the airport operator an economic advantage that it would not have obtained under normal market conditions.

5.1.3.4. Application of the MEIP on the basis of the 2011 MEIP study and the 2012 MEIP study

- Application of the MEIP on the basis of the 2011 MEIP study*
- (160) The first update of the MEIP study was conducted in May 2011. Even though the capital injections made after this MEIP study was carried out were pledged before May 2011 (see recital 51 above), the Commission has also assessed whether, on the basis of the information contained in this economic study, the capital injections can be considered to reflect the behaviour of a private investor operating in a market economy. In the 2011 MEIP study, revenue from the project was kept constant, but the capital expenditure was increased (see Figure 2 showing the cumulative investment expenditures). This study also takes into account the previous capital injections and capital expenditure already made. The WACC was reduced slightly (from [...] % to [...] %) and the long-term growth rate was reduced from [...] % to [...] %. These updates resulted in a significantly lower NPV of PLN [...] million (about EUR [...]). This was due to higher losses (the discounted cash flow over the period 2011-2030 would amount to PLN – [...] million), and the terminal value would decrease slightly, to PLN [...] million.
- (161) With regard to passenger demand and related revenue, the Commission considers that the arguments presented in recitals 136 — 141 concerning Gdynia airport's competition for airlines and passengers with Gdańsk airport are also valid for the assessment of the 2011 MEIP study.
- (162) The Commission observes in particular that the level of airport charges quoted in the 2011 MEIP study was the same as in the 2010 MEIP study.
- (163) Since Gdańsk, Bydgoszcz and Szczecin airports applied the same tariffs in 2011 as in 2010 (including the same discounts), the Commission's assessment of the level of charges in the 2011 MEIP study for Gdynia airport is the same as for the 2010 MEIP studies (see recitals 141 to 147).

- (164) The Commission considers that a market economy investor guided by the prospect of profitability would not base any investment decision in the project in question on charges significantly higher than the net charges applied at other Polish regional airports ⁽⁶⁴⁾, especially Gdańsk airport.
- (165) In this context, the Commission notes that a reduced airport charge comparable to the airport charges paid at other Polish regional airports (e.g. Gdańsk, Bydgoszcz, Szczecin, Lublin) would result in a negative equity value.
- (166) The Commission undertook a number of sensitivity calculations and notes that reducing the annual revenues from passenger charges linked to the LCC and charter traffic by just [...] % (over the projection period of 2010-2040) is enough to render the project unprofitable despite the significant terminal value.
- (167) Further sensitivity tests suggest that the project would become unprofitable if overall revenue were just [...] % a year lower over the whole projection period or if revenue were [...] % lower and operating expenses [...] % higher. The profitability of the investment is therefore highly sensitive to small changes in the basic assumptions.
- (168) The Commission observes, moreover, that the positive results of the 2011 MEIP study also depend to a great extent on the terminal value of the investment at the end of the period covered by the business plan (i.e. in 2040). As explained in recital 135, it is doubtful whether the terminal value of the infrastructure accrues in full or even in part to the airport operator and its shareholders.
- (169) Consequently, the Commission concludes that, just like the 2010 MEIP study, the 2011 MEIP study is based on unrealistic assumptions, in particular concerning traffic projections and airport charges. Hence, on the basis of the 2011 MEIP study too, the decision of Gdynia and Kosakowo municipalities to finance the conversion of Gdynia-Kosakowo (Gdynia-Oksywie) airfield into a civil aviation airport is inconsistent with the MEIP and therefore confers on the airport operator an economic advantage that would not have obtained under normal market conditions.

Application of the MEIP on the basis of the 2012 MEIP study

- (170) Poland considers that the Commission should assess compliance with the MEIP on the basis of the 2012 MEIP study. The Commission notes that the 2012 MEIP study takes into account the previous capital injections and the capital expenditure already made. The 2012 MEIP study shows that the financing provided to Gdynia-Kosakowo Airport Ltd results in a positive equity value of PLN [...] million (around EUR [...] million) for its shareholders. In addition, the investment project's IRR of [...] % is higher than the airport operator's forecast cost of capital [...] % ⁽⁶⁵⁾.
- (171) The 2012 MEIP study compares the equity value of the company with further investments in a situation in which the new airport becomes operational (the 'basic scenario') with the equity value of the company without further investments in a situation in which the investment project was discontinued as of June 2012 (the 'counterfactual scenario') ⁽⁶⁶⁾.

⁽⁶⁴⁾ In addition to Gdańsk, Bydgoszcz and Szczecin airports, the Commission also analysed airport charges at Lublin airport, a regional airport opened in December 2012. The standard departing passenger fee at Lublin airport is PLN 34 (EUR 8,5); the standard landing fee is PLN 36/tonne; the standard parking fee is PLN 15/tonne/24 h (no fee for first 4 hours). Discounts: if an air carrier opens an operating base at Lublin Airport, the departing passenger fee is between PLN 4,21 (EUR 1,05) and PLN 5,76 (EUR 1,44) in the first five seasons (2,5 years); a 99 % discount is applied to parking and landing charges. After 5 seasons discounts are applied for new connections. Discounts on passenger, landing and parking fees range from 95 % in the first year of a connection to 25-65 % in the fifth year (depending on the number of passengers). After the fifth year a discount of 60 % is applied if an air carrier handles more than 250 000 departing passengers from Lublin airport.

⁽⁶⁵⁾ Those calculations include expenditure falling within the remit of public policy.

⁽⁶⁶⁾ As the MEIP study was carried out in June 2012, the analysis is based on this date.

- (172) This approach is fundamentally flawed for the purpose of assessing whether the conversion of the military airfield into a civil airport involves State aid, since it ignores the substantial amounts of capital already invested in the airport. The correct counterfactual scenario would have been not to start implementing the project at all. The Commission notes that a private investor would not have had invested in the project in the first place if the plans to develop a new civil airport in the area showed no realistic prospect of making a profit on such an investment. Therefore, the counterfactual scenario defined in the 2012 MEIP study is distorted by previous decisions which did not reflect the behaviour of a private investor. Like the previous capital injections, which constitute State aid because a private market operator would not have carried them out, later capital injections in the same project also constitute State aid.
- (173) The Commission observes that the basic scenario in the 2012 MEIP study provided by Poland is based on a business plan providing for future cash flows to the equity investors over the period 2012-2030 (i. e. a period of a high growth) ⁽⁶⁷⁾. The projected future cash flows are based on the assumption that the airport will start its activities in 2013. At the time when the 2012 MEIP study was carried out, Poland expected the airport to serve around [...] passengers in 2014 and gradually expand its activities up to [...] passengers in 2020 and around [...] in 2028 (see passenger development forecast in Table 8).

Table 8

Passenger traffic projections for Gdynia airport (in '000)

Expected growth in passenger numbers										
Year	2013	2014	2015	2017	2018	2019	2020	2023	2026	2030
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	1 083,7

- (174) According to the 2012 MEIP study, it is expected that after 2030 the airport operator will grow forever at a stable growth rate of [...]. Under this assumption, Poland calculated the terminal value of the airport operator in 2030.
- (175) The Commission notes that, as in the 2010 and 2011 MEIP studies, the key value driver of the future cash flows of the operator of Gdynia airport is the expected aviation revenue, which will depend on the number of passengers and the level of airport charges paid by airlines.
- (176) With regard to the expected passenger development, Poland argues that the demand for air passenger services will increase over time and with the expected increase in Poland's GDP and the region's development. Poland is therefore of the opinion that the traffic projections are conservative and that actual traffic might be higher than forecast. In Poland's view, the March 2013 update of the traffic forecast for the region foresees higher traffic than the 2012 MEIP study.
- (177) Poland argues that the business plan forecast that Gdynia airport would handle less than [...] % of the region's passenger traffic. Moreover, in Poland's view, the development of Pomerania's air services market leaves room for an additional small airport complementing the services offered by Gdańsk airport.
- (178) With regard to passenger demand and related revenue, the Commission considers that the arguments presented above for the 2010 and 2011 MEIP studies in recitals 136 - 147 and 161 - 165 are also valid for the assessment of the 2012 MEIP study.

⁽⁶⁷⁾ A widely used method for evaluating equity investment decisions is to consider the equity value of the company. Equity value is the value of a company available to its owners or shareholders. It is calculated by adding up all future cash flows available for equity investors discounted at the appropriate rate of return. The discount rate generally used is the cost of equity, which reflects the risk of the cash flows.

- (179) The Commission considers that a market economy investor would not set its charges at a higher level on the assumption that charges at Gdańsk airport would increase in the long-term. In this respect, the Commission observes that the schedule of charges applied at Gdańsk airport foresees the application of discounts until 2028 (i.e. for a period only two years shorter than that in the business plan for the 2012 MEIP study). On this basis, even if the airport charges at Gdańsk airport were to increase after 2028, the Commission considers that the forecast average airport charges over the period of the business plan (i. e. until 2030) remain higher than the average level at the competing airport.
- (180) Poland confirmed that the 2012 MEIP study takes into account operating costs related to military activity at the airport. These costs are expected to be offset by the State. Poland also confirmed that no formal agreement has yet been reached on the sharing of costs (both operating and investment costs) between Gdynia airport and the military user.
- (181) The Commission considers that a market economy investor would base its assessment only on results foreseeable at the time of the investment decision. The Commission therefore considers that no account should be taken of the possible reduction in costs through the sharing of costs with the airport's military user (and the impact on the airport's overall costs and revenue) when assessing the investment's consistency with the MEIP. Indeed, the 2012 MEIP study does not quantify the cost reductions that the airport operator could obtain in this connection.
- (182) As is the case for the 2010 MEIP study, the overall DCF for the project over the period 2012-2030 is negative, as shown in Figure 4. The airport will first start generating positive cash flows in 2020, but the long investment period means that the cumulative cash flow would, in discounted terms, remain negative for the projection period.

Figure 4

Cumulative DCF (in PLN) 2012 MEIP study (excluding expenditure falling within the remit of public policy)

[...]

- (183) Consequently, the Commission concludes that the 2012 MEIP study cannot be considered the right test for assessing whether the decision of Gdynia and Kosakowo municipalities to finance the conversion of Gdynia airfield into a civil aviation airport is in line with the MEIP. When the 2012 MEIP study was carried out, the investment decisions of the shareholders had already been taken. The Commission also considers that the capital injections executed after the 2012 MEIP study had been carried out cannot be regarded as autonomous investment decisions taken in isolation, since they concern the same investment project, which the public shareholders started carrying out at the latest in 2010, and the 2012 MEIP study only reflects adjustments or amendments to the initial project.

November 2013 update

- (184) The Commission also considers that modifications to the investment plan aimed at generating additional revenue from the sale of fuel by the airport (without an external operator) and offering navigation services should not be taken into account when assessing the investment's consistency with the MEIP. Poland confirmed that these possible additional sources of revenue were included neither in the 2010 MEIP study, the 2011 MEIP study nor the 2012 MEIP study prepared for Gdynia airport, as at the time when these studies were prepared the public shareholders and the company were so unsure about obtaining all necessary permissions and concessions to provide such services that they did not include this revenue in their own projections (not even as an optimistic scenario). As obtaining the requisite authorisations and concessions was unlikely at the time when the MEIP studies were carried out, the Commission cannot take retrospective account of them.

Conclusion

- (185) The public funding provided by Gdynia and Kosakowo to the airport operator is not in line with the MEIP. The Commission therefore considers that the measure at issue confers on Gdynia-Kosakowo Airport Ltd an economic advantage that it would not have obtained under normal market conditions.

5.1.4. Selectivity

- (186) Under Article 107(1) TFEU, for a measure to be defined as State aid, it has to favour 'certain undertakings or the production of certain goods'. In the case at issue, the Commission notes that the capital injections concern the Gdynia-Kosakowo Airport Ltd only. They are therefore, by definition, selective within the meaning of Article 107(1) of the TFEU.

5.1.5. Distortion of competition and effect on trade

- (187) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid⁽⁶⁸⁾. The economic advantage conferred by the measure at issue strengthens the airport operator's economic position, as the airport operator will be able to start up its business without bearing the inherent investment and operating costs.
- (188) As assessed in Section 5.1.1, the operation of an airport is an economic activity. There is competition, on the one hand, between airports to attract airlines and the corresponding air traffic (passengers and freight) and, on the other hand, between airport operators, which may compete between themselves to be entrusted with the management of a given airport. Moreover, the Commission underlines, especially with regard to LCCs, that airports located in different catchment areas and in different Member States may also be in competition with each other to attract those airlines. The Commission notes that Gdynia airport will handle around [...] 000 passengers until 2020 and up to 1 million passengers in 2030.
- (189) As mentioned in paragraph 40 of the 2005 Aviation Guidelines, it is not possible to exclude even small airports from the scope of application of Article 107(1) of the TFEU, given that they compete with other small airports to attract in particular LCC and charter traffic. The Commission considers that competition and trade between Member States are capable of being affected.
- (190) On the basis of the arguments presented in recitals 187 to 189, the economic advantage conferred on the operator of Gdynia airport strengthens its position vis-à-vis its competitors on the Union market of providers of airport services. The public funding under examination therefore distorts or threatens to distort competition and affects trade between the Member States.

5.1.6. Conclusion

- (191) In view of the arguments presented in recitals 101 to 190, the Commission considers that the capital injections granted to Gdynia-Kosakowo Airport Ltd constitute State aid within the meaning of Article 107(1) TFEU. As the financing had already been made available to Gdynia-Kosakowo Airport Ltd, the Commission also considers that Poland has failed to comply with the prohibition in Article 108(3) TFEU⁽⁶⁹⁾.

⁽⁶⁸⁾ Case T-214/95 *Het Vlaamse Gewest v Commission*, EU:T:1998:77/[1998] ECR II-717.

⁽⁶⁹⁾ Case T-109/01 *Fleuren Compost v Commission*, EU:T:2004:4/[2004] ECR II-127.

5.2. Compatibility of the aid

- (192) The Commission has examined whether the aid at issue can be deemed compatible with the internal market. As described above, the aid consists of the financing of the investment costs connected with starting up Gdynia airport and operating losses during the first years of the airport's operation (i.e. until 2019, including, according to both the 2010 MEIP study and the 2012 MEIP study).

5.2.1. Applicability of the 2014 and 2005 Aviation Guidelines

- (193) Article 107(3) TFEU provides for a number of exceptions to the general rule laid down in Article 107(1) TFEU that State aid is not compatible with the internal market. The aid in question can be assessed on the basis of Article 107(3)(c) TFEU, which stipulates that: 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest', may be considered to be compatible with the internal market.
- (194) In this regard, the 2005 Aviation Guidelines and Guidelines on State aid to airports and airlines of 31 March 2014 ('the 2014 Aviation Guidelines')⁽⁷⁰⁾ provide frameworks for assessing whether aid to airports may be declared compatible pursuant to Article 107(3)(c) of the TFEU.
- (195) According to the 2014 Aviation Guidelines, the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid⁽⁷¹⁾ applies to unlawful investment aid to airports. In this respect, if unlawful investment aid was granted before 4 April 2014, the Commission will apply the compatibility rules in force at the time when the unlawful investment aid was granted. Accordingly, the Commission will apply the principles set out in the 2005 Aviation Guidelines to unlawful investment aid to airports granted before 4 April 2014⁽⁷²⁾.
- (196) According to the 2014 Aviation Guidelines, the provisions of the notice on the determination of the applicable rules for the assessment of unlawful State aid should not apply to pending cases of illegal operating aid to airports granted prior to 4 April 2014. Instead, the Commission will apply the principles set out in the 2014 Aviation Guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports, even if the aid was granted before 4 April 2014⁽⁷³⁾.
- (197) The capital injections constitute unlawful State aid to Gdynia-Kosakowo Airport Ltd granted before 4 April 2014 (see recital 191).

5.2.2. Distinction between investment and operating aid

- (198) In view of the provisions of the 2014 Aviation Guidelines referred to in recitals 196 - 197, the Commission has to determine whether the measure in question constitutes unlawful investment or operating aid.
- (199) According to point 25(18) of the 2014 Aviation Guidelines, investment aid is defined as 'aid to finance fixed capital assets, specifically, to cover the capital costs funding gap'.
- (200) Operating aid, on the other hand, means aid covering the shortfall between airport revenues and its operating costs, the latter being defined as 'the underlying costs (...) of the provision of airport services, including categories such as costs of personnel, contracted services, communications, waste, energy, maintenance, rent and

⁽⁷⁰⁾ Communication from the Commission — Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).

⁽⁷¹⁾ OJ C 119, 22.5.2002, p. 22.

⁽⁷²⁾ Point 173 of the 2014 Aviation Guidelines.

⁽⁷³⁾ Point 172 of the 2014 Aviation Guidelines.

administration, but excluding the capital costs, marketing support or any other incentives granted to airlines by the airport, and costs falling within a public policy remit' ⁽⁷⁴⁾.

- (201) In the light of those definitions, the State aid in favour of Gdynia-Kosakowo Airport Ltd must be considered as investment aid in so far as it was destined to finance fixed capital assets. The part of the annual capital injections that covers losses of the airport operator that are not already included in the EBITDA (that is to say, the annual depreciation of assets, costs of financing, etc.), minus costs falling within a public policy remit as established in recitals 102 to 107, also constitutes investment aid.
- (202) In contrast, the part of the annual capital injections that was used to cover annual operating losses ⁽⁷⁵⁾ of Gdynia-Kosakowo Airport Ltd, net of costs included in the EBITDA that are considered to fall within a public policy remit as established in recitals 102 - 107, constitutes operating aid in favour of the airport operator.

5.2.3. *Investment aid*

- (203) State aid for financing airport infrastructure is compatible with Article 107(3)(c) TFEU if it complies with the conditions laid down in paragraph 61 of the 2005 Aviation Guidelines:
 - (i) construction and operation of the infrastructure meets a clearly defined objective of common interest (regional development, accessibility, etc.)
 - (ii) the infrastructure is necessary and proportional to the objective which has been set;
 - (iii) the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure
 - (iv) all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
 - (v) the development of trade is not affected to an extent contrary to the Union interest.
- (204) In addition, to be compatible with the internal market, State aid to airports, like any other State aid measure, should have an incentive effect and be necessary and proportional to the legitimate objective pursued.
- (205) Poland is of the opinion that the public financing of the conversion project at Gdynia airfield complies with all the criteria for investment aid in the 2005 Aviation Guidelines.
 - (i) *Construction and operation of the infrastructure meets a clearly defined objective of common interest (regional development, accessibility, etc.)*
- (206) The Commission notes that Pomerania is already efficiently served by Gdańsk airport, which is only about 25 km away from the planned new airport.
- (207) Gdańsk airport is located next to the Tricity ring road, which is part of the S6 express road that bypasses Gdynia, Sopot and Gdańsk and provides the large majority of Pomerania's inhabitants with easy access to the airport. Even for Gdynia's inhabitants, the construction of a new airport would not in itself lead to a substantial improvement in connectivity, since both Gdynia and Gdańsk airports are about 20-25 minutes by car from the centre of Gdynia.

⁽⁷⁴⁾ Point 25(21), (22) and (23) of the 2014 Aviation Guidelines.

⁽⁷⁵⁾ Expressed in Earnings Before Interest, Taxes, Depreciation and Amortisation ('EBITDA').

- (208) The Commission also observes that the Tricity Metropolitan Rail link currently being built with co-financing from the Union's structural funds will enable residents of both Gdańsk and Gdynia to travel directly from the centre of their town to Gdańsk airport in about 25 minutes. The Tricity Metropolitan Rail will also provide people in other areas of Pomerania with direct or indirect rail links to Gdańsk airport.
- (209) The Commission also observes that Gdańsk airport currently has a capacity of 5 million passengers a year, whereas actual passenger traffic in 2010 to 2013 was as follows: 2010 — 2,2 million, 2011 — 2,5 million, 2012 — 2,9 million, 2013 — 2,8 million. The Commission also notes that Gdańsk airport is currently being expanded to handle 7 million passengers a year. This investment is to be completed in 2015.
- (210) In addition, according to the traffic forecast provided by Poland for Pomerania and used to prepare the 2012 MEIP study, total demand in the region will be [...] million passengers a year [...].

Table 9

Traffic projections for Pomerania (in millions)

2013	2015	2017	2019	2020	2023	2026	2027	2028	2030
2,8	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	7,7

- (211) The Commission also observes that, according to the information provided by Poland, the masterplan for Gdańsk airport provides for further expansion of the airport to handle more than 10 million passengers a year. Depending on the development of traffic, a decision to expand the capacity of the Gdańsk airport above 7 million may therefore be taken in the future.
- (212) According to Poland, the updated forecast (prepared in March 2013) shows that demand in the catchment area is expected to be higher than the traffic projections in 2012. According to the modified projections, demand in the catchment area will be about 9 million passengers in 2030. However, even this forecast shows that Gdańsk airport alone would be sufficient, without further investment, to meet demand in the region until at least 2025 (on the basis of the adjusted traffic forecasts described in recital 63).
- (213) Furthermore, according to the information provided by Poland, current runway capacity at Gdańsk airport is 40-44 operations an hour, while use is currently averaging 4,7 operations an hour.
- (214) On the basis of information provided by Poland (see recitals 209 to 213 above) the Commission observes that Gdańsk airport will be used at only about 50–60 % of its capacity in the coming years. As a result, even with fast growth in passenger numbers in Pomerania, Gdańsk airport will be able to meet demand from airlines and passengers for a long time.
- (215) The Commission further observes that Gdańsk airport offers more than 40 national and international destinations (both point-to-point connections and connections to hub such as Frankfurt, Munich, Warsaw and Copenhagen).
- (216) As mentioned in recital 78, Poland argues, on the one hand, that the scope for expanding capacity at Gdańsk airport is limited for planning and environmental reasons. On the other hand, it also argues that there are no limits on the scope for expanding capacity at Gdańsk airport. As the arguments regarding the capacity expansion restrictions are contradictory and are not substantiated anyway, the Commission considers that it cannot base its assessment on them.

- (217) In view of the spare capacity at Gdańsk airport, which will not be fully used in the long-term, and the plan to further expand capacity at that airport if necessary in the longer term, the Commission does not believe that creating another airport in Pomerania would contribute to the region's development. The Commission observes, moreover, that Pomerania is already well connected thanks to Gdańsk airport and that a new airport will not improve links with this region.
- (218) The Commission also notes that the business model for Gdynia airport suggests that it would compete for passengers with Gdańsk airport in the LCC, charter and general aviation markets. Moreover, the creation of a new airport to serve as a back-up, emergency airport cannot justify the scale of investment at Gdynia airport.
- (219) As mentioned in recital 77, Poland refers to the 'Regional transport development strategy in Pomorskie province for 2007 - 2020' that according to Poland recognised a need to build a hub of closely collaborating airports serving Pomerania.
- (220) The Commission notes however that the 'Regional transport development strategy in Pomorskie province for 2007-2020' presents only the possible strategic directions in which the transport in the region can or should be developed. The conclusions on Gdynia airport are of a very general nature. Moreover, the document does not set out any implementing steps ensuring the use of Gdynia airport for civil aviation. Nor does it impose any obligations concerning this objective. On the contrary, the document underlines that 'Plans for the development of commercial activities at airports Gdynia Kosakowo or Słupsk Redzikowo should primarily be directed at capacity that is economically viable and satisfies existing demand and the possibility of handling freight where it is profitable.'
- (221) Similarly, the letter of intent signed on 29 April 2005 by the Ministry of National Defence, the Ministry of Transport, Gdańsk airport and various regional authorities (mentioned in recital 21 of this Decision) is of a very general character, expressing only the intention to introduce civil aviation to the military airfield in Kosakowo.
- (222) The Commission also notes that following the adoption of Decision 2014/883/EU, the governor of Pomorskie province together with the mayors of Gdańsk and Sopot (two out of three biggest cities in the region and shareholders in Gdańsk airport) made a written statement. In this statement, they declared that they had not signed the letter of 29 April 2005 with the intention of starting the construction of a new airport in Gdynia. According to the statement, the letter of intent was signed only to safeguard the infrastructure of the existing military airfield for the future cooperation of this military airfield with Gdańsk airport. In this context, Gdynia airport could serve GA traffic only.
- (223) The local authorities also underlined that the decision to set up Gdynia airport was an independent decision of Gdynia and Kosakowo, which were repeatedly informed that this investment had no economic justification.
- (224) In a letter dated 6 August 2013 Poland announced that the shareholders in Gdańsk airport (including Gdynia) had decided on 30 July 2013 (i.e. after the opening of formal investigation procedure) to set up a working group to analyse the possible scenarios for cooperation of Gdynia and Gdańsk airports. In a letter of 30 October 2013 (provided to the Commission on 4 November 2013), the Mayor of Gdynia reported that the working group had recommended to Gdańsk airport's shareholders that the two Pomeranian airports be merged (by Gdańsk airport taking over Gdynia airport). The Mayor also reported that the details of such a merger were still being analysed.
- (225) In the Commission's view, the setting-up of the working group was dictated solely by the opening of the formal investigation procedure and cannot be seen as proof of the implementation of a regional transport strategy. It should also be underlined that the Commission was not informed about any earlier or later actions concerning cooperation between the two Pomeranian airports. The Commission also notes that cooperation between Gdynia airport with Gdańsk airport in the framework of a hub would not eliminate a duplication of infrastructure with no basis in actual transport needs.

(226) In the light of the above, the Commission considers that the investment in Gdynia airport will lead simply to the duplication of infrastructure in the region, which does not meet a clearly defined objective of common interest.

(ii) *The infrastructure is necessary and proportional to the objective which has been set*

(227) As stated in recitals 206 to 226, the Commission considers that the catchment area of Gdynia airport is and will continue to be efficiently served by Gdańsk airport. In addition, both airports would pursue a similar business model and focus mainly on LCCs and charter flights.

(228) In the absence of a clearly defined objective of common interest the Commission considers that the infrastructure cannot be considered to be necessary and proportional to an objective of common interest (see also recital 226).

(iii) *The infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure*

(229) As stated in point (i), Gdynia airport is only about 25 km away from the existing Gdańsk airport, and the two airports have the same catchment area and a similar business model.

(230) Gdańsk airport is currently used at less than 60 % of its capacity. Taking into account the investments currently being carried out, Gdańsk airport is sufficient to handle demand in the region until at least 2025-2028, depending on the forecasts used, and its further expansion is feasible.

(231) The Commission also notes that the business plan for Gdynia airport indicates that the airport would generate about [80-90] % of its revenue from serving low-cost and charter carriers. This means that it would be focussing on the markets that represent Gdańsk airport's core business.

(232) In this context, the Commission also observes that Poland has provided no proof of possible cooperation between both airports (see also recitals 224 and 225).

(233) The plans to generate revenues from other aviation and non-aviation activities (production and services) would not be sufficient in themselves to cover the high operating costs related to running Gdynia airport either.

(234) The Commission therefore considers that Gdynia airport does not offer satisfactory medium-term prospects for use.

(iv) *All potential users of the infrastructure have access to it in an equal and non-discriminatory manner*

(235) Poland confirmed that all potential users would have access to the airport infrastructure on an equal and non-discriminatory basis without any commercially unjustified discrimination.

(v) *The development of trade is not affected to an extent contrary to the common interest*

(236) The Commission notes that Poland has not provided any proof that Gdynia and Gdańsk airports would form a collaborative aviation hub. Logic suggests that the two airports would actually have to compete for essentially attracting the same passengers.

- (237) The Commission further notes that the business plan of Gdynia airport (in which about [80-90] % of revenue is generated by low-cost and charter flights) and the scale of the investment (e.g. a terminal with a capacity of 0,5 million passengers a year that is to be expanded in the future) do not substantiate the claim that Gdynia airport would focus on general aviation traffic and would provide only or mainly services to the general aviation sector.
- (238) Taking into account the above and the fact that both airports would focus on LCC and charter flights, the Commission considers that the aid is directed to an airport which would be in direct competition with another airport in the same catchment area, without there being any demand for airport services that could not be met by the existing airport.
- (239) The Commission therefore considers that the aid in question would affect trade to an extent contrary to the common interest. This conclusion is reinforced by the absence of a common interest objective that the aid is intended to achieve.

(vi) *Necessity of aid and incentive effect*

- (240) Based on the data provided by Poland, the Commission considers that the investment costs may be lower than for the construction of other comparable regional airports in Poland. This is due mainly to the use of existing infrastructure at the military airfield. Moreover, Poland argues that without the aid the investment would not be undertaken by the airport operator.
- (241) The Commission further observes that the long period necessary to reach the break-even point for this type of investment means that public financing could be necessary to modify the beneficiary behaviour's in such a way that it proceeds with the investment. Moreover, since the expected profitability of the investment project cannot be established (see recital 185) and a market economy investor would not pursue such project, it is indeed likely that the aid is changing the behaviour of the airport operator.
- (242) However, in the absence of a clearly defined objective in the common interest, the Commission concludes that the aid cannot be considered necessary and proportional to that objective.
- (243) The Commission therefore considers that the investment aid by Gdynia and Kosakowo in favour of Gdynia-Kosakowo Airport Ltd does not comply with the requirements of the 2005 Aviation Guidelines and cannot be considered compatible with the internal market.

5.2.4. *Operating aid*

- (244) The Commission based its assessment of the operating aid in recital 227 of Decision 2014/883/EU on the finding that 'granting operating aid in order to ensure the operation of an investment project that benefits of incompatible investment aid is inherently incompatible with the internal market.' Without the incompatible investment aid Gdynia airport would not exist, as it is entirely financed by that aid, and operating aid cannot be granted for non-existent airport infrastructure.
- (245) That conclusion under the 2005 Aviation Guidelines is equally valid under the 2014 Aviation Guidelines and sufficient to find that the operating aid granted to the airport operator is incompatible with the internal market.
- (246) Moreover, the first compatibility condition established by the 2014 Aviation Guidelines, according to which operating aid can be considered compatible if it contributes to a well-defined objective of common interest in the form of increasing the mobility of citizens of the Union and connectivity of the regions or facilitates regional development, is clearly not met if the operating aid at issue is aimed at ensuring the functioning of an airport that has been built exclusively with investment aid that is incompatible with the internal market.

- (247) Accordingly, the Commission considers that recitals 203 et seq. (which demonstrate that the investment aid granted to Gdynia-Kosakowo Airport Ltd, because of the duplication of airport infrastructures, does not meet a clearly defined objective of common interest and is therefore incompatible with the internal market pursuant to the 2005 Aviation Guidelines) also demonstrate that the operating aid granted to Gdynia-Kosakowo Airport Ltd is equally incompatible with the internal market, as already concluded in Decision 2014/883/EU. The operating aid granted to Gdynia-Kosakowo Airport Ltd (just like the investment aid) will lead simply to the duplication of airport infrastructure in a region which appears already well served by a non-congested airport and therefore does not contribute to a well-defined objective of common interest.
- (248) For the sake of completeness, the Commission notes that the same conclusion would be reached if the operating aid were to be assessed in the light of the regional aid rules invoked by Poland. In such a case, the Commission would have to take into account the fact that Gdynia airport is located in an underprivileged region covered by the derogation set out in Article 107(3)(a) of the TFEU, whereby the Commission would have to assess whether the operating aid at stake can be considered compatible under the RAG.
- (249) According to paragraph 76 of the RAG, operating aid in regions covered by the derogation in Article 107(3)(a) TFEU may be granted provided that the following cumulative criteria are met: (i) it is justified in terms of its contribution to regional development and its nature and (ii) its level is proportional to the handicaps it seeks to alleviate.
- (250) Poland is of the opinion that the operating aid is compatible with paragraph 76 of the RAG (see recitals 95 to 97).
- (251) Since Pomerania is already served by Gdańsk airport and the new airport will not improve connections with this region, the Commission would not be able to conclude that the aid would contribute to regional development.
- (252) The Commission considers, therefore, that the operating aid cannot be considered proportional to the handicaps it seeks to alleviate, as Pomerania does not appear to suffer from any connectivity handicap.
- (253) Moreover, the Commission would take the view that the operating aid assessed has been allocated to finance a predefined set of expenditure. However, in view of the Commission's assessment of the business plan for Gdynia airport and its assessment of the level of forecast revenue and costs presented in Section 5.1.3, it cannot be concluded that the aid would be limited to a necessary minimum, granted on a transitional basis and degressive. In particular, with regard to the uncertainties regarding the expected profitability of the airport operator (see section on the existence of aid) the transitional nature and degressivity of the aid cannot be ensured.
- (254) Therefore, the Commission considers that the operating aid in favour of Gdynia-Kosakowo airport Ltd granted by Gdynia and Kosakowo is incompatible with the internal market, as it aims to ensure the operation of an airport which exists only because of incompatible investment aid and (just like that investment aid) leads simply to the duplication of airport infrastructure.

5.2.5. Conclusion on compatibility

- (255) Consequently, the Commission concludes that the State aid granted to Gdynia-Kosakowo Airport Ltd is incompatible with the internal market.
- (256) The Commission has identified no other provision concerning compatibility with the internal market that could provide a basis for considering the aid in question compatible with the Treaty. Nor has Poland invoked any provision concerning compatibility with the internal market or provided any substantial arguments that would permit the Commission to consider this aid compatible.

- (257) The investment and operating aid which Poland has granted or intends to grant in favour of Gdynia-Kosakowo Airport Ltd is incompatible with the internal market. Poland has unlawfully implemented the aid in breach of Article 108(3) TFEU.

6. RECOVERY

- (258) In accordance with the TFEU and the Court of Justice's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid when it has found that it is incompatible with the internal market⁽⁷⁶⁾. The Court has also consistently held that the obligation for a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to restore the previously existing situation⁽⁷⁷⁾. In this context, the Court has stated that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored⁽⁷⁸⁾.
- (259) Following that case-law, Article 14 of Council Regulation (EC) No 659/99⁽⁷⁹⁾ laid down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.'
- (260) Therefore, the State aid mentioned above must be reimbursed to the Polish authorities, insofar as it has been paid out.
- (261) The Commission recalls that it is settled case-law that the fact that undertakings are in difficulties or bankrupt does not affect the Member State's obligation to recover aid⁽⁸⁰⁾. In these cases, the restoration of the previous situation and the elimination of the distortion of competition resulting from the unlawfully paid aid may in principle be achieved through registration of the liability relating to the repayment of such aid in the schedule of liabilities⁽⁸¹⁾. Where the State authorities are unable to recover the full amount of aid, the registration of the liability meets the recovery obligation only if the insolvency proceedings result in the winding up of the undertaking concerned, i.e. the definitive cessation of its activities⁽⁸²⁾,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/883/EU is withdrawn.

Article 2

1. The capital injections in favour of Gdynia-Kosakowo Airport Ltd between 28 August 2007 and 17 June 2013 constitute State aid which has been unlawfully put into effect by Poland in breach of Article 108(3) of the Treaty on the Functioning of the European Union and which is incompatible with the internal market, except in so far as these capital injections were spent on investments necessary to carry out the activities that according to Decision C(2013) 4045 final must be considered as falling within the public policy remit.

⁽⁷⁶⁾ Case C-70/72 *Commission v Germany*, EU:C:1973:87/[1973] ECR 813, paragraph 13.

⁽⁷⁷⁾ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission*, EU:C:1994:325/[1994] ECR I-04103, paragraph 75.

⁽⁷⁸⁾ Case C-75/97 *Belgium v Commission*, EU:C:1999:311/[1999] ECR I-03671, paragraphs 64-65.

⁽⁷⁹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

⁽⁸⁰⁾ Case C-42/93 *Spain v Commission ('Merco')*, EU:C:1994:326/[1994] ECR I-4175, paragraph 33; Case C-496/09 *Commission v Italy*, EU:C:2011:740/[2011] I-11483, paragraph 72.

⁽⁸¹⁾ Case C-277/00 *Germany v Commission ('SMI')*, EU:C:2004:238/[2004] ECR I-4355, paragraph 85; Case 52/84 *Commission v Belgium*, EU:C:1986:3/[1986] 89, paragraph 14; Case C-142/87 *Belgium v Commission ('Tubemuse')*, EU:C:1990:125/[1990] I-959, paragraphs 60-62.

⁽⁸²⁾ Judgment in C-610/10 *Commission v Spain ('Magefesa')*, EU:C:2012:781, paragraph 104 and the case-law cited.

2. The capital injections which Poland is planning to implement in favour of Gdynia-Kosakowo Airport Ltd after 17 June 2013 for the conversion of the Gdynia-Kosakowo military airfield into a civil aviation airport constitute State aid which is incompatible with the internal market. The State aid may accordingly not be implemented.

Article 3

1. Poland shall recover the aid referred to in Article 2(1) from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽⁸³⁾.
3. Poland shall cancel all outstanding payments of the aid referred to in Article 2(2) with effect from the date of notification of this Decision.

Article 4

1. Recovery of the aid referred to in Article 2(1) and the interest referred to in Article 3(2) shall be immediate and effective.
2. Poland shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 5

1. Within two months following notification of this Decision, Poland shall submit the following information to the Commission:
 - a) the total amount (principal and recovery interest) to be recovered from the beneficiary;
 - b) a detailed description of the measures already taken and planned to comply with this Decision;
 - c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. Poland shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 2(1) and the interest referred to in Article 3(2) has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

Article 6

This Decision is addressed to the Republic of Poland.

Done at Brussels, 26 February 2015.

For the Commission
Margrethe VESTAGER
Member of the Commission

⁽⁸³⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

ANNEX

INFORMATION ABOUT THE AMOUNTS OF AID RECEIVED, TO BE RECOVERED AND ALREADY RECOVERED

Identity of the beneficiary	Total amount of aid received (*)	Total amount of aid to be recovered (*) (Principal)	Total amount already reimbursed (*)	
			Principal	Recovery interest

(*) Million of national currency.