

COMMISSION DECISION**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***(notified under document C(2014) 759)***(Only the Polish text is authentic)****(Text with EEA relevance)**

(2014/883/EU)

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 provision(s) cited above ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) By letter dated 7 September 2012 Poland notified to the Commission, for reasons of legal certainty, the planned financing of the conversion of a military airport into a civil aviation airport near Gdynia in the north of Poland. The measure was registered under the State aid case 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. During this meeting, Poland confirmed that the notified financing was already irrevocably granted.
- (3) By letter dated 15 May 2013, the Commission informed Poland that it will transfer the case in a not notified case register (NN case), because the major part of the financing notified to the Commission was already irrevocably granted. By letter dated 16 May 2013, Poland submitted further information.
- (4) By letter dated 10 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: 'opening decision') in respect to the financing granted to Port Lotniczy Gdynia-Kosakowo sp. z o. o. (hereinafter: Gdynia-Kosakowo Airport Ltd) 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.
- (6) The Commission did not receive any comments from interested parties. Poland was informed about this by letter dated 9 October 2013.

⁽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 become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of Articles are in substance identical. 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 certain 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⁾ See footnote 1.

- (7) By letter dated 30 October 2013, the Commission requested further information. Poland provided additional information by letters dated 4 November 2013 and 15 November 2013. A meeting between the Commission and Poland took place on 26 November 2013. Poland provided further information by letters of 3 December 2013 and 2 January 2014.

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

2.1. BACKGROUND TO THE INVESTIGATION

- (8) The case concerns the financing of a new civil aviation airport located in the Pomeranian Region (Pomorskie Voivodship), on the border of Gdynia and Kosakowo, 25 kilometres away from Gdansk airport ⁽⁴⁾. The new airport is owned and will be operated by Gdynia-Kosakowo Airport Ltd (hereinafter also 'the airport manager' or 'Gdynia airport'). The airport manager is fully publicly owned by Gdynia and Kosakowo.
- (9) The objective of the investment project is to create a second airport for the Pomeranian Region based on the infrastructure of the military airport located in Kosakowo ⁽⁵⁾. The new airport should serve mainly general aviation traffic (e. g. private jets, gliders/light-sport aircrafts), low cost carriers (hereinafter: 'LCC') and charters. At the time of notification it was expected that the airport would start its activities at the beginning of 2014. Based on a PricewaterhouseCoopers' (hereinafter: 'PWC') report of 2012, the passenger traffic during the first years of operations was expected to be as follows: around [...] in 2014, [...] in 2017, [...] in 2020 and at around [...] in 2028.
- (10) The origin of the project can be dated back to April 2005 when various regional authorities, the Ministry of National Defence, the Ministry of Transport and Gdansk airport ⁽⁶⁾ signed a letter of intent to create a new airport for the Pomeranian Region based on the infrastructure of the existing military airport located in Kosakowo. In July 2007, the local authorities of Gdynia and Kosakowo founded a company called 'Gdynia-Kosakowo Airport Ltd'. In December 2009, Gdynia and Kosakowo obtained an agreement from the Ministry of Transport that Gdynia-Kosakowo Airport Ltd would be further responsible for the new airport. Based on this agreement, Poland handed over, by the agreement of 9 September 2010, for a period of 30 years the land of 254 hectare, on which the military airport is located, to Kosakowo, which then leased it for the same period to Gdynia-Kosakowo Airport Ltd.

The investment project

- (11) Because the existing Gdynia-Kosakowo (Gdynia-Oksywie) airfield was initially used exclusively for military purposes, the airport manager of the new airport is to be able to use the existing infrastructure (such as a runway of 2 500 meters, taxiways, an apron, navigation equipment etc.). The total investment costs, which are linked to the conversion project, are estimated at PLN 164,9 million (EUR 41,2 million ⁽⁷⁾) in nominal terms and PLN 148,4 (EUR 37,1 million) in real terms. The table below provides an overview of the gradual development of the airport, which is divided into four phases. According to Poland, the total investment costs include also

⁽⁴⁾ The distance by car between Gdynia and Gdansk airport is between 26-29 kilometres depending on the chosen route, source: Google maps, Bing maps. The Gdansk airport is owned and operated by the Gdansk Lech Walesa Airport Ltd, a company set up by public entities. The funding capital of the company is broken down as follows: city of Gdansk (32 %), Pomeranian Region (32 %), 'Polish airports' State Enterprise (31 %), city of Sopot (3 %), and city of Gdynia (2 %). Gdansk Lech Walesa airport (hereinafter: 'Gdansk airport') is the third largest airport in Poland. In 2012, it served 2,9 million passengers (2,7 million in regular traffic and 0,2 million in charters).

The following eight airlines operate regular routes from Gdansk 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). After the opening of a new terminal in May 2012 Gdansk airport has an annual capacity of 5 million passengers. According to the information provided by Poland, the enlargement of the terminal (scheduled in 2013-2015) will result in an increase of the capacity to 7 million passengers. The investments at Gdansk airport were also financed through 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 and the 2009 Commission decision in State aid case N 472/08, as the result around EUR 33 million granted to Gdansk Airport by the Polish authorities; OJ C 79, 2.4.2009, p. 2).

⁽⁵⁾ The existing military airport is located on the border of the city of Gdynia and the municipality (gmina) of Kosakowo and is called the 'Gdynia-Oksywie' airfield.

⁽⁶⁾ The agreement was signed by the authorities of the Pomeranian Region, the cities of Gdansk, Gdynia and Sopot, the municipality of Kosakowo together with representatives of the Polish government (the voivod of Pomerania Region, Ministry of National Defence, Ministry of Transport) and Gdansk airport.

⁽⁷⁾ The exchange rate used in this decision is 1 EUR equals 4 PLN corresponding to the 2010 annual average based on weekly exchange rates. Source: Eurostat.

investments with regard to tasks falling within public policy remit ⁽⁸⁾, which amount to around PLN [...] million (EUR [...] million) in total (for all four phases).

Table 1

Total nominal investment costs of Gdynia-Kosakowo airport in 2007–2030

The investment project	Costs in PLN	Costs in EUR
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.

The financing of the investment project

- (12) 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 at the beginning of its operation (i.e. until 2019, including). The public shareholders expect that as from 2020 the airport manager will be profitable and able to finance all its activities from its revenues.
- (13) Until the time of notifying the project to the Commission (i.e. 7 September 2012), the public shareholders of Gdynia airport had agreed to contribute to the investment project and the losses of the airport in the first years of its operation, about PLN 207,48 million ⁽⁹⁾ (around EUR 51,87 million) in total. Gdynia would provide cash contributions amounting to PLN 142,48 million (around EUR 35,62 million) in years 2007-2019. Kosakowo provided a cash contribution of PLN 0,1 million (EUR 25 000) when the company was founded. In years 2011 – 2040 Kosakowo would contribute also with non-cash contributions amounting to PLN 64,9 million (around EUR 16,2 million) by converting a part of the annual land rent (being a liability of Gdynia airport towards Kosakowo) into shares of the airport (see Table 2 below).

⁽⁸⁾ According to Poland the investments falling within public policy remit include: building and equipment for fire brigade, customs, airport security guards, police and border guards, airport fence with video surveillance etc.

⁽⁹⁾ In nominal terms.

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 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 Ltd	207,48	51,87

Source: based on information provided by Poland.

2.2. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE AND THE INITIAL ASSESSMENT

(14) The opening decision, raised the following questions:

— First, 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')⁽¹⁰⁾ is based on realistic and reliable assumptions;

⁽¹⁰⁾ Net Present Value indicates whether the income from a given project exceeds the (opportunity) costs of capital. The project is considered as an economically profitable investment when it generates a positive NPV. Investments producing lower income as the (opportunity) costs of capital are not economically profitable. The (opportunity) costs of capital are reflected in the discount rate.

— Second, whether operating and investment aid to Gdynia airport can be found compatible.

Application of the MEIP

- (15) 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. Consequently, the Commission had doubts whether the counterfactual scenario, defined as discontinuing the investment as of 2012, was appropriate.
- (16) Given the fact that Gdynia airport is to pursue a similar business model (with the focus on LCC, charters and general aviation) as the existing Gdansk airport which still has spare capacity and further expansion plans and which is located only 25 kilometers away, the Commission expressed doubts whether the forecasted revenue of 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 foresaw higher passenger charges than applied, after the deduction of discounts/rebates, at Gdansk airport and other comparable regional airports in Poland.
- (17) The Commission also expressed doubts whether the business plan took into account all planned incentives (such as marketing support, rebates, or any other route development incentives etc.) envisaged to be granted directly by Gdynia airport or by its shareholders or other regional authorities to attract airlines to establish new routes from the airport.
- (18) Since the growth rate of an undertaking is generally not higher than that of the economy in which it operates (i.e. in terms of GDP growth), the Commission expressed doubts whether the growth rate of the turnover used for the calculation of the Terminal Value ⁽¹¹⁾, equal to [...], is appropriate. This doubt directly affects the assessment of the profitability of the investment project since the equity value of the new airport turns only positive because of the Terminal Value of the project as of 2040 (indeed, the cumulative discounted cash flow is negative over the projection period of 2010-2040).
- (19) Consequently, the Commission considered that the public funding of the investment project provides a selective economic advantage to the airport manager of Gdynia airport. The public funding is 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 notion of aid were met, the Commission considered that the public funding constituted State aid within the meaning of Article 107(1) of the TFEU.

Compatibility of the aid

- (20) As regards the second question, the Commission expressed doubts whether both the investment and the operating aid to Gdynia airport could be found compatible with the internal market.
- (21) As to the investment aid, the Commission had doubts whether all of the compatibility criteria for the investment aid to airports, set out in the 2005 Aviation Guidelines ⁽¹²⁾, were satisfied. In particular, the Commission had doubts whether the investment at stake meets a clearly defined objective of common interest, the infrastructure is necessary and proportional and has satisfactory medium-term prospects for use. Moreover, the Commission had doubts whether the impact on the development of trade is not contrary to the common interest.
- (22) As to the operating aid in the form of financing operating losses of Gdynia-Kosakowo Airport Ltd during its first years of operation, the Commission expressed doubts whether such aid could qualify for the derogation set out in article 107(3)(a) of the TFEU. In particular, the Commission expressed doubts whether the operating aid at stake could be considered compatible under the Guidelines on national regional aid for 2007-2013 ⁽¹³⁾ (hereinafter: 'RAG').

⁽¹¹⁾ The terminal value is the present value of all subsequent cash flows generated under the stable growth rate forever (i. e. the equity value of the airport operator in the last year of the submitted business plan).

⁽¹²⁾ 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).

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

3. COMMENTS FROM POLAND

3.1. APPLICATION OF THE MEIP AND THE EXISTENCE OF AID

- (23) Poland maintains its position that the public funding of the investments into Gdynia airport is in line with the MEIP, and thus does not constitute State aid. In this connection, Poland refers to the MEIP studies conducted for the investment in years 2010 – 2012. Poland states that all MEIP studies resulted in a positive Net Present Value as well as in an Internal Rate of Return ⁽¹⁴⁾ (hereinafter: 'IRR') higher than the costs of capital.

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

- (24) Poland clarifies that discussions and works on the conversion of the military airport in Gdynia/Kosakowo into a civil aviation airport commenced already in 2005, at that point in time together with other partners (such as Gdansk airport). Poland clarifies further that in 2007, Gdynia and Kosakowo established the company, Gdynia-Kosakowo Airport Ltd, which is being responsible for the investment from that point in time.
- (25) During the proceedings, Poland submitted three MEIP studies that were undertaken by PWC. The first MEIP study was performed in July 2010 (dated 16 July 2010, hereafter: the '2010 MEIP study'). Two further updates by PWC were undertaken in May 2011 (dated 13 May 2011, hereafter: '2011 MEIP update' or '2011 MEIP study') and in July 2012 (dated 13 July 2012, hereafter, the later study will be referred to as the '2012 MEIP update' or '2012 MEIP study'). These updates incorporate new projections for passenger traffic, modifications of the scope of the project, modifications in the investment figures as well as changes in the methodology and the basic inputs into the NPV calculations (such as the beta and the discount rate). In November 2013, Poland further submitted that new sources of revenue would enhance the NPV of the project (i.e. the sale of fuel and providing navigation services). At the time of adopting the opening decision, Poland had only submitted the 2012 MEIP update.
- (26) Poland also clarifies the time schedule of the investment project of Gdynia and Kosakowo in Gdynia airport. In this respect Poland stresses that the investment process can be divided into two project stages:
- (i) *First stage (2007-2009) related to the preparatory works and feasibility studies to set up the new airport (this relates to Phase I as described in Table 1)*
- (27) Poland clarifies that during the first stage, the company established by Gdynia and Kosakowo was realising preparatory tasks (e.g. preparation of a master plan for the investment, documents necessary to obtain the status of an airport operator, a report on the environmental impact of the investment, project documentations, etc.).
- (28) Poland is of the opinion that in the first stage there were not important capital investments and the public funding granted to the airport manager was in line with the de minimis aid rules ⁽¹⁵⁾. Poland states that until 26 June 2009, the total capital injections into the company amounted to PLN 1, 691 million (about EUR 423 000).
- (ii) *Second stage (from 2010 onwards) concerned the actual conversion of the airport (this relates to Phase II to IV as described in Table 1)*
- (29) Poland clarifies further that the first, preparatory phase was finalised in 2010 when both the Master Plan ⁽¹⁶⁾ as well as the first 2010 MEIP Study for Gdynia airport were finalised. Poland points out that since the 2010 MEIP study showed that the investment of the two local authorities would be carried out at market terms (i.e. it would not represent State aid), the shareholders increased the company's share capital to PLN 6,05 million (around EUR 1,5 million).

⁽¹⁴⁾ IRR measures the return/profit that the investor achieves on its invested capital.

⁽¹⁵⁾ At that time the 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 applied (OJ L 379, 28.12.2006, p. 5).

⁽¹⁶⁾ The Master plan of the investment project has identified the different measures, which were necessary for the conversion of the airport.

- (30) The 2010 MEIP study calculated an NPV of the investment project in question based on the Free Cash Flow to the Firm methodology ('FCFF')⁽¹⁷⁾. This NPV calculation is predicated on the fact that all the capital injections foreseen in the investment plan would be undertaken to implement the investment project⁽¹⁸⁾. This valuation methodology calculates, during a projection period, the cash flow available to all holders of capital in the firm (stockholders as well as bond holders). The cash flow projections are then discounted by the weighted average cost of capital ('WACC')⁽¹⁹⁾ to provide the Discounted Cash Flow (DCF) of the firm during the projection period. Then, a terminal value is calculated using the perpetuity growth method (which assumes a stable growth path based on the FCFF of the last 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 [...] %⁽²⁰⁾. With these inputs, the analysis finds a DCF of minus PLN [...] million (EUR [...] million) for the period 2010-2040 and a (discounted) terminal value of about PLN [...] million (EUR [...] million)⁽²¹⁾. Hence, the NPV of the overall project is estimated at PLN [...] million (or EUR [...] million).
- (31) Figure 1 depicts the expected cumulative discounted cash flow for the projection period of 2010-2040 as calculated in the 2010 MEIP study.

Figure 1

Cumulative (real) DCF (in PLN)

[...]

- (32) Poland explains that on 29 July 2010, the equity (own capital) of the company was increased to PLN 6,052 million (around EUR 1,5 million). Poland explains further that at the same time, despite the MEIP study showing that the investment does not constitute State aid, the shareholders started to prepare a notification to the Commission that was to be submitted for reasons of legal certainty only.
- (33) Poland clarifies further that in May 2011, a new MEIP study was conducted. Poland informs that this MEIP study was an update of the 2010 MEIP study that was conducted due to progressive preparations and more precise data available on the investment plan, its agenda and financing. Poland clarifies that during the period between the preparation of the 2010 MEIP study and the 2011 MEIP study:
- The shareholders signed, on 11 March 2011, an agreement that set up the financing conditions for the investment, concerning the start-up of a civil aviation airport. In this shareholder agreement Gdynia committed to inject in total PLN 59 million between 2011 and 2013. At the same time, Kosakowo committed to provide non-cash contributions by means of a debt-to-equity swap (as described in Table 2) in years 2011 to 2040.
 - Also on 11 March 2011, the land lease contract was concluded by the company responsible for setting up Gdynia airport and Kosakowo (it allowed to precise the scope of property leased, the conditions for payment of the rent, tax issues, etc.)
 - The investment costs included in the investment plan were specified and updated.
- (34) Poland explains that the 2011 MEIP study resulted also in a positive NPV. Poland explains further that the public shareholders of the airport manager conducted on this basis the subsequent capital injections. Poland points out that in July 2011 the equity (own capital) of the company was increased to PLN 33,801 million (EUR 8,45 million) and in April 2013 to PLN 64,810 million (EUR 16,20 million).

⁽¹⁷⁾ The FCFF evaluates in each year the EBIT of the firm to which depreciation and amortization are added (as these are non-cash expenses), less investment needs, changes in working capital and taxes (See Table 5 of the 2010 MEIP Study).

⁽¹⁸⁾ The FCFF calculations are based on the expected cash flows (in and out of the company) for the projection period of 2010-2040. These cash flows are based on a business plan and its underlying assumptions about traffic, charges, operating costs and capital expenditures. Hence, in the FCFF calculation, all the capital expenditures foreseen to convert the airport are taken into account.

⁽¹⁹⁾ The weighted average cost of capital is the rate that a company is expected to pay on average to all its security holders to finance its assets.

⁽²⁰⁾ This 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 at 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 analysis.

⁽²¹⁾ The terminal value was based on a stable growth assumption of [...] %.

- (35) In the 2011 MEIP study, the DCF was calculated on the basis of the DCF for the projection period of 2011-2040. The updated DCF was equal to PLN (-[...]) million (EUR - [...] million), suggesting larger losses while the terminal value was decreased to PLN [...] million (around EUR [...] million). Hence, the NPV was reduced to PLN [...] million (or less than EUR [...] million). The WACC was reduced to [...] % ⁽²²⁾ and the stable growth rate for the terminal value calculation was decreased from [...] % to [...] %.
- (36) Poland informs that in view of a new macroeconomic situation (the financial crisis and the economic slowdown) the project was re-assessed in 2012, this resulted in a new MEIP study (i.e. the 2012 MEIP study). Poland explains that in comparison with the previous MEIP studies, the assumptions for the 2012 MEIP study were modified as follows:
- The forecasted passenger traffic for Gdynia airport was reduced;
 - The scope of the investment was reduced, what led to the reduction of the investment costs by PLN [...] million (EUR [...] million);
 - The idea of building a main terminal (together with related development of road infrastructure and car park) was abandoned, instead it was decided to expand the capacity of the general aviation terminal by [...] in the second investment phase;
 - After market verifications, the investment costs related to the security area had to be increased by PLN [...] million (EUR [...] million),
 - The reduction of the scope of investment resulted in a shorter payback period for the investment (in nominal terms, by [...] years from [...] years to [...] years).
- (37) Poland also clarifies that in comparison to the previous MEIP studies the methodology of the 2012 MEIP study was also modified:
- To better reflect the structure of financing and the cost of debt servicing, the Free Cash Flow to the Firm (hereinafter: 'FCFF') discounted cash flow method was replaced by the Free Cash Flow to Equity (hereinafter: 'FCFE') method ⁽²³⁾.
 - Following the financial (securities) market changes, 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 up based on the analysis of comparable companies, covering both airport companies and companies providing airport services (financial of which results are strongly correlated with the performance of airport companies) ⁽²⁴⁾.
 - It was assumed that the project would be financed first by shareholders' resources and then from external sources (working capital loans) as well as from operating revenues.

⁽²²⁾ The risk-free rate was increased to [...] % and the beta was increased to [...]. The capital structure was modified to a higher share of debt ([...] %) and a lower share of equity ([...] %).

⁽²³⁾ FCFE = FCFF + credits and loans taken – credits and loans repaid – interests on credits and loans. In comparison to the FCFF, FCFE are discounted with the return of equity rate that is always higher than WACC. As the result, NPV shows what part of the return generated by the investment is available to the shareholders (equity investors). The NPV calculated on the basis of the FCFE thus does not reflect the overall return on investment, i. e. return for the shareholders and return for the creditors.

⁽²⁴⁾ To reflect difference in a typical financing structure between airport and airport services companies, the return on equity for the latter had been levered before calculating averages.

- (38) In the 2012 MEIP study, the DCF was calculated on the basis of the DCF for the projection period of 2012-2030 (i.e. compared with the previous study, the projection period was reduced by 10 years). The updated DCF was equal to PLN (-[...] million) (around EUR (-[...] million) while the terminal value was significantly increased to PLN [...] million (EUR [...] million). The capitalised value of investments already made (PLN [...] million) was further deducted. Hence, the 2012 update of the NPV was equal to PLN [...] million (or EUR [...] million). In order to calculate the NPV, the cost of equity of [...] % was used ⁽²⁵⁾ and the stable growth rate for the terminal value calculation was further decreased from [...] % to [...] %.
- (39) Poland points out that the results of the 2012 MEIP study remained still positive and let to further capital injections by the shareholders. Poland clarified that by April 2013, the capital of the company had been increased to PLN 91,310 million (EUR 22,8 million) and did not change further in 2013, as summarised in the Table 3.

Table 3

Overview of the capital increases by Gdynia and Kosakowo into the airport manager of Gdynia airport

Date of decision on entry in the National Court Register	Date of resolution on capital increase	Name of shareholder	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.

⁽²⁵⁾ The risk-free rate was reduced to [...] % and the beta was reduced to [...].

- (40) Poland summarises that while local authorities took preliminary steps to set up Gdynia airport as early as 2005, the project took its shape only with the preparation of the Master plan and the first MEIP study, i.e. in 2010. Poland clarifies further that the project was then substantially revised from its original assumptions as a result of changes in external circumstances. Poland argues that the final decision of public shareholders on the implementation and final shape of the project was made in 2012. Poland also stresses that each of the three versions of the MEIP study confirmed the project's viability and demonstrated that a market economy investor would have carried out the project.
- (41) On the counterfactual scenario, Poland argues that according to the national law, Kosakowo could use the land, on which Gdynia airport is located only to set up a new civil aviation airport. In this respect, Poland clarifies that with this restriction, the land of airport was leased to Kosakowo for a period of 30 years. Poland clarifies further that the rental agreement obliges Kosakowo to lease the land only to an entity responsible for setting up and/or operating a civil aviation airport. According to Poland, the land could have been taken over by the State, if Kosakowo had not leased the land to set up a civil aviation airport within 6 months, or the land was used for other purposes, or the airport had not started its activities within 3 years. The scenario where the land of Gdynia airport is used/leased for other than aviation purposes was not possible and therefore could not be used to establish a counterfactual scenario.

3.1.2. Reliability of the key assumptions for the 2012 MEIP

Traffic projections and revenue forecast

- (42) Poland explains that the planned airport charges were based on publicly available tariffs of other airports in such a manner so as not to disrupt the existing market while ensuring an appropriate level of the project's profitability based on the projected passenger traffic volume. According to Poland, the charges do not differ significantly from standard tariffs charged by small airports. In particular two newly opened regional airports, the Modlin airport and the Lublin airport have standard airport charges that are similar to those projected in the MEIP study for Gdynia airport.
- (43) In reply to the Commission's comment that the charges foreseen for Gdynia airport (PLN 25 (EUR 5,25) in the first 2 years and then PLN 40 (EUR 10) per departing passenger) are higher than applied, discounted charges at Gdansk airport (PLN 24 (EUR 5) 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 forecast period (2014-2030) and takes into account the fact that in the long-period term charges at Gdansk airport will have to increase following improved standard of service at that airport.
- (44) Moreover, Poland points out that due to the project's profit margin, revised (slightly higher) air traffic forecast and possible sharing of some operational costs with the military, 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.
- (45) Poland also argues that the updated (in March 2013) traffic forecast for the Pomeranian Region foresees higher traffic than that applied in the 2012 MEIP study. According to the latest figures, the traffic at Gdynia airport in 2030 would be 1 149 978 instead of 1 083 746. For the whole Pomeranian Region the increase for 2030 is foreseen from 7,8 to 9 million passengers.
- (46) In the view of Poland, these figures confirm that it is viable for Gdansk airport and Gdynia airport to coexist and operate jointly on the Pomeranian market. Even if Gdansk airport is expanded to reach the planned capacity of 7 million passengers, the development of the aviation market in the Pomeranian Region leaves, according to Poland, room for an additional small regional airport (with a capacity of 1 million) whose offer of services would be complementary to that of Gdansk 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 (in thousands)		Aircraft operations		Aircraft operations	
	2012 MEIP study forecast	Updated forecast	2012 MEIP study forecast	Updated forecast	2012 MEIP study forecast	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: information provided by Poland.

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

- (47) 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 available financial statements of all major Polish 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.
- (48) Poland also clarifies that the MEIP study assumed that entire operating cost would be borne by the investor and does not take into account any sharing of operating costs with the military user of the airport. Poland states that it is assumed that the operating costs of shared infrastructure will be shared [...] to the number of civil and military flight operations. Poland clarifies further that the costs of renovation and repairs will be [...]. Poland stresses that the adoption of rules on shared use of the airport (not yet formally agreed with the military user of the airport) will lead to a minimum reduction of [...] in costs related to third party services and payroll. According to Poland, inclusion of this factor in the MEIP studies would result in a higher projected profitability of the project.

Long term growth rate

- (49) Poland explains that the growth rate of [...] % adopted in the MEIP study refers to the terminal value in nominal terms.
- (50) Poland clarifies further that the growth rate of [...] % is equal to Poland's inflation target as set by the Monetary Policy Council (a decision-making body of the National Bank of Poland). Poland points out 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

- (51) In November 2013, Poland informed that the airport manager had just received the administrative decisions from the Customs Office and the Energy Regulatory Office allowing it to directly sale fuels to aircrafts. The sale of fuels by the airport manager would be a source of additional revenues improving the financial result of the business plan.
- (52) According to Poland, all MEIP studies conducted until now foresaw that the sale of fuel would be provided via an external operator. The sale of fuel by the airport manager would increase company's profit margin on this activity from PLN [...] (EUR [...]) per litre (in case the fuel is sold by an external operator) to PLN [...] (EUR [...]) per litre (in case of selling the fuel directly by the airport manager).
- (53) In the view of Poland, these additional revenues would improve the 2012 MEI update result. Poland points out that the NPV for the project is thus expected to increase from PLN [...] million (EUR [...] million) to PLN [...] million (EUR [...] million). Poland in addition clarifies that the IRR would increase from [...] % to [...] %.
- (54) Poland argues that the additional revenues would alternatively allow reducing the airport charges for airlines in long-term.
- (55) Poland confirmed that the sale of fuel on its own was not included in the conducted MEIP studies due to a prudential approach. At the time when these studies were conducted, the airport operator did not have the required permissions and it was not guaranteed that it would be in the position to obtain any of them.
- (56) In addition, Poland informed that the company intends to provide the navigation services to airlines (instead of the Polish Air Navigation Services Agency). Poland points out that this would allow reducing the terminal fee paid by airlines (paid now to the Agency) and in this way the attractiveness of Gdynia airport to airlines would increase. Consequently, the airport manager could offer more competitive airport charges to airlines than the neighbouring airports.

3.2. COMPATIBILITY ASSESSMENT

3.2.1. Investment aid

- (57) According to Poland, all of the compatibility criteria for the investment aid to airports, set out in the 2005 Aviation Guidelines, are satisfied.

Meeting a clearly defined objective of common interest

- (58) Poland argues that setting up Gdynia airport, as an element of the Pomeranian Region's transport system, optimizes the use of available infrastructure and will have a positive impact on regional development, notably through an increase in airport jobs, income from the chain of supplies for the aviation market, and tourism development.
- (59) Poland refers to the 'Regional transport development strategy in the Pomeranian Region for 2007–2020', that being based on air traffic forecasts for the region, recognized a need to build a hub of closely collaborating airports that would serve the needs of the Tricity area's population ⁽²⁶⁾.
- (60) 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 exhaustion of Gdansk Airport's capacity for adaptation and stretching the agglomeration over a distance of nearly 60 km (including the cities of Tczew and Wejherowo this distance increases to over 100 km). Poland argues that while, following the expansion of its terminal; Gdansk Airport has currently a capacity of ca. 5 million passengers, some air traffic forecasts project that the potential passenger traffic in that airport will exceed 6 million passengers in 2035. Poland has submitted in its comments on the one hand that in view of the environmental restrictions and the residential developments in the neighbourhood of Gdansk airport, its further expansion prospects are limited. On the other hand, in the submission of 6 December 2012 Poland argued that there are no restrictions regarding the expansion of Gdansk airport and to this effect it referred to the Master plan of Gdansk airport.
- (61) Poland states that the safety of aircraft operations further justifies the construction of a hub of airports in the Tricity area with Gdynia airport serving as a back-up, emergency airport (landing in Gdynia airport is possible in ca. 80 % of cases when cloud base and visibility do not allow landing in Gdansk airport).
- (62) Lastly, Poland argues that the development of Gdynia airport corresponds to the objectives of national and regional strategic documents concerning the development of aviation infrastructure in Poland. Poland clarifies that the development of Gdynia airport has an expected positive impact on the development of the Pomeranian Region and the use of existing military infrastructure, and is complementary to Gdansk Airport.

Necessity and proportionality of infrastructure

- (63) Poland argues that the infrastructure is necessary and proportionate to the objective set because of its small scale of the airport's operations (1,55 % share in the Polish aviation market in 2030), forecasts for passenger traffic volumes that exceed Gdansk airport's expansion capacity, the attractiveness of the region for tourism and the projected high rate of development for the Pomeranian Region.
- (64) Poland emphasizes the strategic role of the military airport of Gdynia in the region and notes that the use of the existing infrastructure minimizes investment costs and maximizes the positive impact on the regional development.
- (65) Poland also points out that the costs have been minimized and the effectiveness of the investment has been increased through the implementation of technical solutions such as, for example, the construction of the general aviation terminal for both general aviation and passenger traffic, the placement of the majority of airport services (border guards, customs offices, the police, fire brigade, management) in a single building and the adaptation of other existing buildings to optimise their use. Moreover, operating costs of the infrastructure will be shared with the army.

⁽²⁶⁾ The Tricity is an urban area consisting of three major cities in the Pomeranian Region (i.e. Gdansk, Gdynia, Sopot). Three airports are currently located in the Tricity area: the Lech Wałęsa Airport in Gdansk, the military airport in Pruszcz Gdanski and the military airport on the boarder of Gdynia and Kosakowo (Gdynia-Oksywie).

Satisfactory medium-term prospects for use

- (66) Poland points out that given the GDP growth in the Pomeranian Region that is expected to be higher than the average growth for Poland and the EU, the region's touristic attractiveness, its status as a hub of foreign investments and increasing air traffic forecasts, the medium-term prospects for use for Gdynia airport are satisfactory.
- (67) Poland stresses that the planned collaboration with Gdansk airport and the complementarity of services offered by the two airports (as such, Gdynia airport will be dedicated mainly to general aviation traffic) further strengthen the medium and long-term prospects for Gdynia airport.
- (68) Poland further explains that the airport has also plans to develop specialised aviation-related activities within the airport zone, such as for example a production of simple service components, refitting of parts in aircrafts or the production of other components/products for which deliveries are handled in the 'just in time' model.
- (69) Poland points out that a letter of intent, signed by a commercial bank that expresses the bank's willingness to open talks on financing the investment into Gdynia airport is another proof of the project's attractiveness.

Impact on the development of trade contrary to the common interest

- (70) Since Gdynia airport is to be an airport with a small market share (and would serve less than 1 million passengers per annum), Poland considers that the impact on trade of the project is not contrary to the common interest. In the light of projected growth in air traffic, Poland foresees that the airports of Gdansk and Gdynia will form a collaborating aviation hub serving the Pomeranian Tricity area offering complementary services.
- (71) Poland stresses that Gdynia airport will not be a competitor for Gdansk airport as it will focus on the provision of services for general aviation sector (maintenance, repair and overhaul services, a flight academy), and collaboration with Gdynia seaport.
- (72) Poland further argues that charter and low-cost traffic at Gdynia airport will not be at the cost of Gdansk airport, but will result from an overall increase in wealth and mobility of the population. Poland points out that taking into account the rate at which Gdansk airport is growing and the nature of the aircraft operations it handles, there is a risk that Gdansk airport will soon have to limit the number of flights or, in the long-term. Poland states that these conclusions are presented in the environmental impact assessment report on the project 'Expansion of the Lech Walesa Gdansk Airport'.
- (73) Poland clarifies that the investment into Gdynia airport may limit financial and social costs that will have to be borne if the operation at Gdansk airport would be restricted. Poland points out that taking over a part of air traffic from Gdansk airport by Gdynia airport will result in a better use of the capacity of both airports.

Necessity of aid and incentive effect

- (74) Poland argues that the company would not have carried out the project without public financing. Poland notes that the aid was limited to a minimum and costs of the project were reduced and optimised through the use of existing military infrastructure.
- (75) In the view of Poland, the capital injections into Gdynia airport are necessary and limited to a minimum, as evidenced by:
- (i) the project's internal rate of return of [...] % that is only slightly higher than the discount rate (cost of equity), equal to [...] % (based on the 2012 MEIP Study);

- (ii) the necessity to use a working capital loan to finance the airport's operations as otherwise the Company might lose liquidity according to financial projections;
 - (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 forecasted period, including total capital expenditure).
- (76) Poland further clarifies the proportionality of the aid measure by comparing its public financing (ca. PLN 148 in real terms) with that of a greenfield investment (Lublin-Świdnik Airport, ca. PLN 420 million net construction costs) and an investment based on a military airport (Warsaw-Modlin Airport, ca. PLN 454 million construction cost to date).

3.2.2. Operating aid

- (77) Poland argues that the compatibility criteria for operating aid that can be applied in a region covered by Article 107(3)(a) of the TFEU, included in the Regional Aid Guidelines, are met by the project. In view of Poland, the operating aid for the project:
- (i) is allocated to finance a part of predetermined expenditure;
 - (ii) is limited to a necessary minimum and granted on a transitory basis (the aid for operating costs is granted to the extent and for the period necessary to put an 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 size of the aid in relation to its beneficial effects on the development of the Pomeranian Region, in view of Poland, it must be stated to be proportional.
- (78) Furthermore, Poland stresses that the aid is intended for a small airport with up to 1 million passengers per annum and, as such, poses a minimum risk to the distortion of competition and the exertion of an effect contrary to the common interest, particularly in the context of planned collaboration between, and complementarity of, Gdynia and Gdansk airports.
- (79) Poland also points out that the currently negotiated cooperation with, and participation in the airport's operating costs by the military user of the airport will reduce company's losses and operating costs.

4. OBSERVATIONS FROM THIRD PARTIES

- (80) The Commission has not received 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

- (81) 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.*'

(82) The criteria provided for 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 should:

- (i) be granted by the State or through State resources;
- (ii) favour certain undertakings or the production of certain goods;
- (iii) distort or threaten to distort competition; and
- (iv) affect trade between Member States.

5.1.1. Economic activity and notion of undertaking

(83) 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⁽²⁷⁾. Any activity consisting in offering goods or services on a given market is an economic activity⁽²⁸⁾.

(84) 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⁽²⁹⁾. 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⁽³⁰⁾.

(85) 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 manager, Gdynia-Kosakowo Airport Ltd. Since the airport manager will charge users for the use of this infrastructure, the latter is commercially exploitable. It follows that the entity exploiting this infrastructure constitutes an undertaking for the purposes of Article 107(1) of the TFEU.

(86) However, not all the activities of an airport manager are necessarily of an economic nature⁽³¹⁾.

(87) The Court of Justice⁽³²⁾ has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. Such activities include for example security, air traffic control, police, customs, etc. The financing has to be strictly limited to compensation of the costs to which they give rise and may not be used instead to fund other economic activities⁽³³⁾.

(88) Therefore, the financing of activities falling within the public policy remit or of infrastructure directly related to those activities in general does not constitute State aid⁽³⁴⁾. At an airport, activities such as air traffic control, police,

⁽²⁷⁾ Case C-35/96 *Commission v Italy* [1998] ECR I-3851; Case C-41/90 *Höfner and Elser* [1991] ECR I-1979; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013; Case C-55/96 *Job Centre* [1997] ECR I-7119.

⁽²⁸⁾ Case 118/85 *Commission v Italy* [1987] ECR 2599; Case 35/96 *Commission v Italy* [1998] ECR I-3851.

⁽²⁹⁾ Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt c/Commission* [2011] ECR II-01311, confirmed by the ECJ, Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, [2012], not yet published in the ECR; see also Case T-128/89 *Aéroports de Paris v Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P, ECR 2002 Page I-9297, and Case T-196/04 *Ryanair v Commission* [2008] ECR II-3643.

⁽³⁰⁾ Cases C-159/91 and C-160/91, *Poucet v AGV and Pistre v Cancave* [1993] ECR I-637.

⁽³¹⁾ Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43.

⁽³²⁾ Commission Decision N 309/2002 of 19 March 2003 on Aviation security — compensation for costs incurred following the attacks of 11 September 2001.

⁽³³⁾ Case C-343/95 *Cali & Figli v Servizi ecologici porto di Genova* [1997] ECR I-1547; Commission Decision N 309/2002 of 19 March 2003; Commission Decision N 438/02 of 16 October 2002, Aid in support of the public authority functions in the Belgian port sector.

⁽³⁴⁾ See footnote 32.

customs, fire fighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform these activities are considered in general to be of a non-economic nature⁽³⁵⁾.

- (89) However, public financing of non-economic activities necessarily linked to the carrying out of an economic activity, must not lead to undue discrimination between airlines and airport managers. Indeed, it is established case law that there is an advantage when public authorities relieve undertakings of the costs inherent to their economic activities⁽³⁶⁾. Therefore, if in a given legal system it is normal that airlines or airport managers bear the costs of certain services, whereas some airlines or airport managers providing the same services on behalf of the same public authorities do not have to bear those costs, the latter may enjoy an advantage, even if those services are considered in themselves as non-economic. Therefore, an analysis of the legal framework applicable to the airport operator is necessary in order to assess whether under that legal framework airport managers or airlines are required to bear the cost of the provision of some activities that might be non-economic in themselves but are inherent to the deployment of their economic activities.
- (90) Even though the activities set out in recital 88 may be considered of a non-economic nature, the Commission observes that according to the Polish law⁽³⁷⁾ airports managers are obliged to finance the facilities and equipment necessary to perform these activities from their own resources.
- (91) Therefore, the Commission considers that the public funding provided to the airport manager of Gdynia airport in relation to the above mentioned facilities and equipment relieves it from bearing costs that are inherent to its economic activity (see section 5.1.3). As a consequence, the Commission concludes that in calculating the profitability of the investment at stake it should also include the capital allocated to those facilities and equipment. In doing so the Commission follows the approach correctly followed by Poland in the MEIP studies.

5.1.2. State resources and imputability to the State

- (92) 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⁽³⁸⁾. Resources of local authorities are for the application of Article 107 of the TFEU State resources⁽³⁹⁾. In the present case, the capital injections into Gdynia-Kosakowo Airport Ltd are provided directly from the budgets of the two municipalities, Gdynia and Kosakowo. The Commission therefore considers that the resources of the two municipalities involved are State resources.
- (93) Thus, the Commission considers that they are financed through State resources and are also imputable to the State.

5.1.3. Economic advantage

- (94) The Commission observes that Poland argues on the one hand that the capital injections are in line with the MEIP, on the other hand it considers that the aid is compatible, because without the public funding the investment would not have been undertaken by the operator of the airport.
- (95) In the present case in order to determine whether the measure at stake 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 public shareholders of the airport manager to a market economy investor who is guided by prospects of profitability in the long-term⁽⁴⁰⁾.

⁽³⁵⁾ See, in particular, Case C-364/92 SAT/Eurocontrol [1994] ECR I-43, paragraph 30 and Case C-113/07 P Selex Sistemi Integrati v Commission [2009] ECR I-2207, paragraph 71.

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

⁽³⁷⁾ The Aviation Law Act (Ustawa z dnia 3 lipca 2002 r. – Prawo lotnicze (Dz.U. 2002 r. Nr 130 poz. 1112 as amended), see among others articles 74 and 84.

⁽³⁸⁾ Case C-482/99 *France v Commission* [2002] ECR I-4397.

⁽³⁹⁾ Judgment of 12 May 2011 in Joined Cases T-267/08 and T-279/08, *Nord-Pas-de-Calais* [2011] ECR II-01999, paragraph 108.

⁽⁴⁰⁾ Case C-305/89 *Italy v Commission* ('*ALFA Romeo*') [1991] ECR I-1603; Case T-296/97 *Alitalia v Commission* [2000] ECR II-3871.

- (96) The assessment should leave aside any positive repercussions on the economy of the region in which the airport is located, since the Court has clarified that the relevant question for applying the MEIP study is whether 'in similar circumstances a private shareholder, having regard to the foresee ability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed the capital in question' ⁽⁴¹⁾.
- (97) Poland argues that the measures at stake do not grant an economic advantage to the airport manager of Gdynia airport, because they are in line with the MEIP. As described in section 3.1, in order to support this, Poland submitted three MEIP studies that have been undertaken by PWC ⁽⁴²⁾. In November 2013, Poland further submitted that new sources of revenue would enhance the NPV of the project (i.e. the sale of fuel, navigation services). At the time of the opening decision, Poland had only submitted the 2012 MEIP update.
- (98) Even though according to the 2011 shareholder agreement Gdynia and Kosakowo committed to provide cash and non-cash contributions to finance the investment project until 2040, Poland argues that only the 2012 MEIP update and the later information on the additional revenue streams are relevant for the assessment of the market conformity of the capital injections.
- (99) 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' ⁽⁴³⁾.
- (100) Furthermore, the Court declared in the EDF case 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' ⁽⁴⁴⁾.
- (101) In order to be able to apply the MEIP the Commission has to place itself at the time when each decision to finance the conversion of the former military airport into a civil aviation airport was taken. The Commission must also base its assessment on the information and assumptions, which were at the disposal of the public shareholders at the time, when the decision regarding the financial arrangements of the investment project was taken.
- (102) The Commission considers that in order to determine whether the municipalities of Gdynia and Kosakowo acted as a private investor, the first relevant analysis is the 2010 MEIP study. 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.
- (103) The Commission observes that up to 2010, studies and preparatory works for the investment project in question were carried out. These included the Master Plan of the investment project, the environmental report, the design documentation of the general aviation terminal, the design documentation of the administration building and the fire brigade building, specialist aviation documents and other studies. By the end of 2010, these studies were carried out for a total of PLN [...] million (EUR [...]) ⁽⁴⁵⁾. That shows that the investors took the decision to develop the Gdynia airport before 2010. Gdynia and Kosakowo took several preliminary measures in order to implement the project (see recital 10 above) and specific studies were commissioned with that purpose.

⁽⁴¹⁾ Case 40/85 Belgium v Commission [1986] ECR I-2321.

⁽⁴²⁾ Whilst the Commission had requested from the Polish authorities to submit the underlying Excel spreadsheets used for the calculations with the formulas, the Polish authorities only submitted the Excel spreadsheets without formulas.

⁽⁴³⁾ See footnote 38.

⁽⁴⁴⁾ Case C-124/10P European Commission v Électricité de France (EDF) [2012], not yet published in ECR, paragraph 85.

⁽⁴⁵⁾ See Section 4.7.5 of the 2012 MEIP Study. According to comments of Poland, until 26 June 2009, the total capital injections into Gdynia airport amounted to PLN 1,691 million (about EUR 423 000). Only PLN [...] million (about EUR [...]) were used to finance different studies undertaken in the preparation of the project.

(104) Moreover, as argued by Poland in 2010 the public shareholders of the airport manager had finalised the preparations for the investment project at stake. In the same year, the public shareholders increased the company's share capital to PLN 6,05 million (around EUR 1,5 million) in view of implementing that investment project. The main investments in fixed assets (such as the construction of the general aviation terminal) were expected to start in 2011, but effectively started in 2012. The Commission believes that any private investor would have assessed at that moment the expected profitability of the project. In case the investment plan would not show an acceptable rate of return or if it were 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 those already spent for the preparatory works mentioned in the recital above.

(a) Capital Injections

(105) With respect to 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 of 16 July 2010 was finalized. In addition, the agreement on the further capital injections (until 2040) to finance the conversion project (mentioned above in recital 33) was signed in March 2011 (even before the finalization of the second MEIP study of 13 May 2011). Moreover, at the same time also the operational agreement with the military user of the airport (7 March 2011) and the rental agreement for the land of the company (11 March 2011 (mentioned above in recital 33)) were concluded.

(106) The Commission also underlines that Poland confirmed 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 resolved to engage in the investment project in question to be realised over 30 years. Even though it is possible for a private investor to adjust its investment plan in the course of its implementation in the light of changing circumstances, it is clear that any private investor would have assessed the merits of the investment project at hand already in 2010 before starting to put substantial resources in it.

(107) By the time the first update of the MEIP was conducted in 2011, the public shareholders had already injected PLN 6,05 million into the company (see Table 3). The company had already leased the land of the airport from Kosakowo (the rental agreement between Gdynia-Kosakowo Airport Ltd and Kosakowo was signed on 11 March 2011) and also had signed the operational agreement with the military user of the airport (7 March 2011). In addition, on 11 March 2011, the shareholders signed an agreement on the increases of share capital of the company until 2040⁽⁴⁶⁾. 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). The Commission stresses that it is undisputed that the 2011 and 2012 MEIP studies represent adjustments to the initial investment plan, on the basis of which the initial decision to embark in the project to convert the military airport was taken. Hence, even though the bigger capital injections were implemented further to the first MEIP study of 2010, those injections cannot be seen in isolation.

(b) Capital Expenditures

(108) In the 2012 MEIP study, the investments in fixed assets are divided into 4 phases. The first phase of the investment project concerned the design work but also the site clearing (tree and shrub clearing, demolition of certain hangars and ground levelling). These costs were incurred in 2011 for a total of PLN [...] million (EUR [...]). The second phase of the project, involving the construction of the general aviation terminal, the administration building and the fire brigade building started in 2012 already. The second phase of the project is the most important in terms of capital expenditures with more than [...] % of nominal capital expenditures (hereinafter: 'capex') spent in 2012-2013. According to the information submitted by Poland, the capital expenditures in 2012 amount to PLN [...] million (of which more than half had already been spent by the time the updated 2012 study was undertaken). The graph below (Figure 2) shows the (nominal) capex by investment phase as presented in the 2012 MEIP study.

⁽⁴⁶⁾ The agreement of 11 March 2011, foresees cash contributions of Gdynia in years 2011–2013, amounting in total to PLN 59,048 million (EUR 14,8 million) and non-cash contribution of Kosakowo (swap of annual rental fees into shares) in years 2011-2040.

Figure 2

Capex by Phase (2012 MEIP study)

[...]

- (109) In view of the recitals 103 and 108, the Commission considers that neither the 2011 MEIP nor the 2012 MEIP study updates were conducted at the time and on the basis of the information at the disposal of the public shareholders when the main decision to finance the conversion project was taken. Furthermore, the Commission cannot retroactively take into account the expected additional sources of revenues, based on the information provided in November 2013, in order to justify the decisions taken by the public shareholders in 2010 and 2011.
- (110) Hence, in the light of the foregoing, the Commission considers that in order to assess whether Gdynia and Kosakowo adopted the conduct of a private investor operating in a market economy, it must base first of all its assessment on the 2010 MEIP study and disregard any further developments and information that were not at the disposal of those public shareholders at the time when they took their decision to realise the investment project in question.
- (111) On the other hand, the 2011 MEIP study and the 2012 MEIP study assessed only the amendments to the initial decision to embark in the investment project that was taken in 2010 on the basis of the 2010 MEIP study. Indeed, the 2012 MEIP study recognizes that a number of investments (such as the general aviation terminal, administration building, electricity power system) were already in '*advanced stages of implementation*'. The two subsequent studies show that the shareholders were following market developments and were accordingly adapting the scope of the project (either upwards or downwards depending on the investment item). However, those changes were only marginal relative to the overall decision to convert the military base into a civil aviation airport. The graph below (Figure 3) shows the capital expenditures as presented in the 2010, 2011 and 2012 MEIP studies (expressed in 2010 real terms). As can be seen, while the timing and extent of the investments were updated both in 2011 and 2012, these changes were not substantial regarding the overall size of the project. In 2010, the real capex was estimated at about PLN [...] million and this figure was [...] to about PLN [...] million in both 2011 and 2012 (i.e. [...] % over an investment period of almost 20 years).
- (112) In substance, in the present case the Commission has to assess a series of investment decisions taken over a short period of time, which is not characterised by the occurrence of unforeseeable events, by the same public shareholders, for the implementation of essentially the same investment project. Therefore, the 2011 and the 2012 MEIP update cannot transform an investment decision that did not comply with the MEIP at the moment it was taken, into a reasonable investment decision. At best they could demonstrate that the Polish authorities behaved as a private investor, only if they would show that, by investing additional funds, the project was expected to yield a return capable of adequately remunerating the capitals already invested and to be invested (or that would appropriately remunerate those capitals even when taking into account the risk of having to repay any illegal aid received in the past).

Figure 3

Capex (in 1 000 PLN) as projected in MEIP studies of 2010, 2011 and 2012 (in 2010 real terms)

[...]

The application of the MEIP on the basis of the 2010 MEIP study

- (113) The 2010 MEIP study, provided by Poland, is based on a business plan projecting the future cash flows for the equity investors for the period 2010–2040. At the time when the MEIP study was conducted, Poland expected that the airport would start serving 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 (in thousands)

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

- (114) According to the 2010 MEIP study, the company would be profitable at EBITDA level as from 2018. The annual discounted cash flow would become positive as of 2020 as illustrated in the graph below (Figure 4). However, on a cumulative basis (i.e. in each year the cash flows of the previous years), the total DCF over the entire period 2010-2040 is expected to be negative (as illustrated in Figure 1). In other words, the positive cash flows expected to be generated as of 2018 are not high enough to compensate for the highly negative cash flows of the early investment periods.

Figure 4

DCF in 1 000 PLN (2010 MEIP study)

[...]

Source: Based on the 2010 MEIP study.

- (115) After 2040, it was expected that the airport manager would grow forever at a stable growth rate of the free cash flow of [...] %. Under this assumption, Poland calculated the terminal value of the airport operator in 2040. The discounted Terminal Value amounts to PLN [...] million.
- (116) The 2010 MEIP study results in a positive equity value⁽⁴⁷⁾ of PLN [...] million (that is, around EUR [...] million). The IRR for the investment project equals to [...] % and it is higher than the assumed cost of capital of the airport manager ([...] %).
- (117) The Commission notes that key value drivers of the future cash flows of the manager of Gdynia airport are the expected revenues, which will be determined by the number of passengers and the level of airport charges paid by the airlines. The revenues from LCC and charter flights (passenger, landing, parking fees) account, in the 2010 MEIP study for [80 - 90] % of all revenues in 2040 and on the average for [80 - 90] % of all revenues in the whole assessed period 2010 to 2040. The Commission notes that this mere fact contradicts the statements by Poland that the activities of Gdynia airport would be complementary to those of Gdansk airport given that Gdynia would focus on general aviation activities. In fact, as shown by the figures presented above, the main source of revenues in most of the projection years comes from LCC and charter flights. However, as it will be further explained below, also the vast majority of Gdansk airport revenues come from LCC and charter flights (see recital 121).
- (118) In the context of passenger's and air carriers' demand, the Commission observes that Gdynia airport would have the same catchment area as Gdansk airport, located only around 25 kilometres from Gdynia airport. Gdansk airport was extended in 2012 to serve up to 5 million passengers and a further extension to serve up to 7 million passengers is foreseen for 2015. This extension schedule was publicly known already in 2010, i.e. at the time of preparation the 2010 MEIP study⁽⁴⁸⁾. Moreover, the public funding for the extension of Gdansk to the capacity of 5 million passengers was also notified to the Commission on 24 September 2008 under the State aid case no N472/08 and was approved by the Commission on 5 February 2009⁽⁴⁹⁾.
- (119) Poland informed the Commission that the Master Plan for Gdansk airport prepared in 2010⁽⁵⁰⁾ foresees the extension of the runway, aprons and other airport infrastructure that would allow serving more than 10 million passengers per annum at Gdansk airport in the future.

⁽⁴⁷⁾ This equity value includes the net present value of the cash flows in 2012-2040 plus the discounted Terminal Value of the airport operator as calculated as of 2040.

⁽⁴⁸⁾ For example see Commission decision No C(2009) 4445 of 3 June 2009, granting Community financial aid in the field of trans-European transport networks.

⁽⁴⁹⁾ See footnote 4.

⁽⁵⁰⁾ The Master plan was ordered in February 2010 and delivered in November 2010.

- (120) The Commission further observes that in 2010 Gdansk airport served 2,2 million passengers (i.e. used 45 % of its capacity, including the capacity under construction). According to the forecasts provided for Gdansk airport only 50 to 60 % of the available capacity will be used by 2020 ⁽⁵¹⁾. These forecasts do not take into account the start of operations of Gdynia airport (i.e. it is assumed that the whole demand in the catchment area will be served by Gdansk airport). The Commission notes that even under the assumption of a dynamic increase in passenger traffic, the Gdansk airport will be able to meet the demand in the region over a long period of time, i.e. at least until 2030.
- (121) As indicated above, the 2010 MEIP study for Gdynia airport foresees that the main part of the revenue ([80 - 90] % on the average for the whole period 2012–2040) would be generated by LCC's and charter airlines. In this context, the Commission notes that also Gdansk airport serves mainly LCC and charter traffic. In 2010, passengers of LCC and charter flights accounted for 72 % of all passengers served in Gdansk airport ⁽⁵²⁾.
- (122) In view of the close proximity of 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 airport manager at Gdynia airport to attract traffic and passengers will essentially depend on the level of airport charges, which it will offer to airlines, notably in comparison with those of its closest competitors.
- (123) In this context, the Commission observes that the 2010 MEIP study foresees that the passenger fee for charter and LCC flights would amount to PLN 25/PAX (EUR 6,25) until 2014 and PLN 40/PAX (EUR 10) as of 2015 (and up until 2040). The landing fee for the same group of flights was set up at PLN 25/tonne (EUR 6,25) for the whole period (the average MTOW (maximum take-off weight) was presumed at 70 tonnes) while the parking fee was estimated at PLN 4 (EUR 1,0) per 24 h/tonne (the average MTOW amounts to 70 tonnes). According to the 2010 MEIP study, the prices were set at levels comparable to those in other regional airports at the time of the 2010 MEIP study was conducted. The prices for Gdynia airport were also set under the presumption that there will be no competition with Gdansk airport.
- (124) The Commission further notes that according to the schedule of tariffs that has been applied by Gdansk airport as from 31 December 2008, the standard passenger fee amounts to PLN 48/PAX (EUR 12,0), the standard landing fee for aircraft above 2 tonnes (i.e. including all charter and LCC aircraft) to PLN 25/tonne (EUR 6,25) and the parking fee to PLN 4,5/24 h/tonne (EUR 1,25).
- (125) The Commission, however, notes that the schedule of tariffs applied at Gdansk airport foresees also different discounts and rebates focused, among others, on LCC operations. Gdansk airport applies a reduced passenger fee amounting to PLN 24/PAX (EUR 6) to all new connections (starting as from 1 January 2004) and all increases in frequency carried out with an aircraft of MTOW between 50 and 100 tonnes (e.g. Airbus A320 and Boeing 737 and other aircraft used by LCCs). Also the landing fee applied for such connections is reduced by 50 % (i.e. to PLN 12,5/tonne). The parking fee is reduced by 100 %, if the frequency of a connection is at least 6 times/week. In addition, the standard passenger fee is first reduced by PLN 23 for all passengers departing with a regular domestic connection, and then an appropriate discount is applied. The Commission considers that taking into account the discounts and rebates applied at Gdansk airport the airport charges foreseen at Gdynia airport were set on average at a level, which is significantly higher than applied at the neighbouring well established airport.

⁽⁵¹⁾ The passenger traffic (in 1 000 passengers per annum) of Gdansk airport:

Actual Passengers									
Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Passengers	466	672	1 256	1 715	1 954	1 911	2 232	2 463	2 906
Expected passenger development									
Year	2013	2014	2015	2016	2017	2018	2019	2020	
Passengers	3 153	3 311	3 477	3 616	3 760	3 911	4 067	4 230	

⁽⁵²⁾ LCCs 64,5 %, charters 7,5 %. Together, it was 70 % both in 2009 and 2011.

- (126) By applying the airport charges in question, Gdynia airport, being a new entrant, will not be able to attract significant traffic, when a well-established airport with spare capacity in the same catchment area applies lower net charges on new connections and increased frequencies on existing routes. The Commission also notes that the schedule of airport charges for Gdansk airport foresees applying the discounted charges until 31 December 2028. Since airport charges are the main source of revenues for the airport manager contemplated in the 2010 MEIP study (based on the business plan of the airport operator at that point in time), the Commission considers that this analysis shows that the 2010 MEIP study is not sufficiently solid and credible to demonstrate that the investment project in question would have been pursued by a private investor.
- (127) The Commission also considers that taking into account that both Gdynia airport and Gdansk airport would mainly focus on low-cost and charter carriers, the fact that the Gdansk does not use its full capacity, the fact that its actual charges are lower than those assumed in the Gdynia business plan and the close proximity of the two airports, the presumption of a lack of price competition between both airports is not correct.
- (128) 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 (located 196 kilometres and 2 hours 19 minutes travelling time by car from Gdynia airport) and Szczecin airport (located 296 kilometres and 4 hours 24 minutes travelling time by car from Gdynia airport), the second and the third closest Polish regional airports, were significantly lower⁽⁵³⁾.
- (129) In view of the foregoing, the Commission considers that taking into account the close proximity of another uncongested airport pursuing the same business model, the airport charges foreseen in the 2010 MEIP study, which are set at the higher level than applied in Gdansk and at other regional airports located in its proximity, are not realistic. Furthermore, the Commission considers that taking into account the competitive situation of Gdynia airport the traffic forecasts included in the 2010 MEIP study are based on unrealistic assumptions.
- (130) Furthermore, it is worth noting that no sensitivity analysis was undertaken in the 2010 MEIP Study, nor any assessment of the likely probabilities of outcome (such as a worst-case, best-case and base-case scenario). Therefore, the Commission 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.
- (131) The Commission notes that reducing the annual revenues from passenger charges linked to the LCC and charter traffic by a mere [...] % (over the projection period of 2010-2040) results in a negative equity value for the public stakeholders. Such a reduction from revenues could result from either lower charges and/or lower traffic than initially projected. In this respect, it is worth noting that the airport charges foreseen in the business plan used for the 2010 MEIP study are already [...] % higher than those of Gdansk airport⁽⁵⁴⁾. In this context, it is highly unlikely that Gdynia airport would be able to attract traffic without providing any significant rebate to the PLN 40 (EUR 10) charges foreseen in the business plan. Hence, the high sensitivity of the NPV result to a seemingly marginal reduction in airport charges (relative to realistic assumptions) casts significant doubts as to the credibility of the initial business plan.
- (132) Whilst the 2010 MEIP study was based on traffic projections available at that time and any *ex-post* information should be not used to assess directly the MEIP study, the Commission still notes the extent to which such

⁽⁵³⁾ Bydgoszcz Airport: Standard departing passenger fee is equal to PLN 30 (EUR 7,5); standard landing fee is PLN 45/tonne (EUR 11,25) for first 2 tonnes of MTOW, PLN 40/tonnes (EUR 10) between 2 and 15 tonnes of MTOW, PLN 35/tonne (EUR 8,75) between 15 and 40 t MTOW, PLN 30 (EUR 7,5) between 40 and 60 t MTOW, PLN 25 (EUR 6,25) between 60 and 80 t MTOW and PLN 20 (EUR 5) for tonnes above 80 t MTOW; standard parking fee PLN 8/tonne/24 h (EUR 2; no fee for first 4 hours). Discounts: passenger fee 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 per month Airport); landing fee – 50 % discount in first 12 months of a connection, 50 % if landing between 14,00 and 20,00; For landing and parking fees: 10 % if a carrier has 4-10 operations in a month, 15 % if 11-30 operations in a month, 20 % if more than 31 operations in a month by a carrier. Szczecin airport: standard departing passenger fee is equal to PLN 35 (EUR 8,75); standard landing fee is PLN 70/tonne (EUR 17,5); standard parking fee PLN 8/tonne/24 h (EUR 2; no fee for first 2 hours). Discounts: from 20 % (if more than 800 departing passenger seats offered weekly by a given air carrier) to 90 % (if more than 1 300 seats offered)

⁽⁵⁴⁾ Calculation for passenger charges for LCCs.

projections were over-optimistic. Indeed, comparing the traffic projections in 2010 and 2012 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 illustrates that the sensitivity checks performed by the Commission (which are marginal in comparison) are particularly informative of the unrealistic nature of the assumptions underpinning the conclusion that the project was worthwhile.

Table 6

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

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total pax in 2010 MEIP Study	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total pax in 2012 MEIP Study	—	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Difference (%)		- 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
Difference (%)	- 23	- 21	- 19	- 17	- 17	- 18	- 18	- 19	- 19

- (133) Further sensitivity tests suggest that the project would become unprofitable if the overall revenues were reduced by a mere [...] % on an annual basis over the whole projection period, or if revenues were lower by [...] % and operating expenses higher by [...] %. Hence, the profitability of the investment is highly sensitive to marginal changes in the basic assumptions. The Commission considers such changes to be marginal in comparison with modifications implemented in the subsequent MEIP studies.
- (134) The sensitivity checks undertaken by the Commission seem all the more reasonable, because less than a year after the 2010 MEIP study, the Polish authorities received an updated analysis which led to the conclusion that the NPV of the project would be significantly reduced and amount to just PLN [...] million (about EUR [...]). Hence, in May 2011, the NPV of the project was reduced by [...] % relative to the initial project.
- (135) The Commission further observes that the positive results of the 2010 MEIP study also largely depend on the terminal value of the investment at the end of the business plan's period (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 terminal value discounted to 30 June 2010 amounts to PLN [...] million.
- (136) The terminal value was calculated under the assumptions that the annual growth rate for the investment's cash flow after 2040 would [...] amount to [...] %. According to standard practice the growth rate of the undertaking 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 be composed of both high and stable growth firms, the growth rate of mature firms is thus expected to be lower than the average growth rate of the overall economy. Poland did not indicate in its comments on which basis it selected the long-term growth rate of [...] %, but it did clarify that the long-term growth rate is a nominal growth rate. Based on information available from the IMF, the Commission has 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 an inflation rate around 2,5 %, the real GDP growth could be expected to be equal to 4 %. Hence, the choice of a [...] % nominal growth rate for the 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. Still, 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 on 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>)

- (137) Moreover, the Commission notes that in this case, in view of the particularly long projection period and the distant date at which the terminal value was calculated, the task of determining the most appropriate growth rate is further compounded and the uncertainty is further enhanced. Indeed, forecasts for GDP growth rarely go beyond a five-year horizon while in this case, the model had to predict a reasonable growth rate for the airport after thirty years of operations. This fact indicates that a prudent investor would have undertaken several sensitivity tests.
- (138) In this respect, it is worth noting that in subsequent updates of the original business plan, the stable growth rate was reduced from [...] % to [...] %. Though Poland has not provided any clear explanation as to the reduction. The terminal value is a function of the assumed perpetual stable growth rate but also of the projected returns expected during the period of stable growth. The Commission undertook some sensitivity tests further confirming that the conclusion of the 2010 MEIP study is highly sensitive to minor and realistic modifications in the basic assumptions. First, the stable growth rate at which the 2010 business plan yields a negative NPV is around [...] %. However, if revenues are assumed to be merely [...] % lower than projected, the stable growth rate at which the project becomes unprofitable is [...] %.
- (139) The stable growth rate model used to calculate the terminal value in this case also requires making assumptions about the date at which the firm will grow at a stable rate which it can sustain forever. In the 2010 MEIP study, this date was set in 2040 and the projection period was therefore taken as 30 years (2010-2040). In the 2012 MEIP update, 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 becomes negative.
- (140) 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*).
- (141) The Commission notes that in 2010, when the first MEIP study was conducted, the business plan and the NPV calculations took into account all capital expenditures, including those relating to the public remit obligations (such as fire brigade, security, customs, etc.). The Commission notes that this approach appears correct given that such expenses are intrinsically linked to the construction and operation of the airport (and hence are incremental to the project).

- (142) Nevertheless, the Commission has also assessed the profitability of the project on the basis of the 2010 MEIP study without the capital expenditures for tasks falling within public policy remit.
- (143) The information submitted by Poland does not allow identifying precisely which elements of the capital expenditures and of operating expenses relate to public remit expenses. The Commission notes that in the 2012 MEIP update Poland has disaggregated the investments falling within public policy remit; however this was not the case for the 2010 MEIP study. Nevertheless, the Commission re-calculated the NPV excluding a number of identifiable capital expenditures that are clearly related to public remit activities. In particular, the Commission recalculated the NPV excluding the following capital expenses: 'Car fire fighting and equipment', 'Airport fence and monitoring' and 'Equipment for airport security guard' amounting to PLN [...] million (nominally in total)
- (144) In the 2010 MEIP study, the consequence of removing public remit expenses is that the discounted cash flow increases to about PLN (-[...]) million (or in other words, the expected discounted loss over the period 2010-2040 is reduced by PLN [...] million from PLN (-[...]) million to PLN (-[...]) million). Given that the terminal value is not altered (and equal to PLN [...] million), the NPV of the project increases from PLN [...] million to PLN [...] million (i.e. it increases from EUR [...] million to about EUR [...] million).
- (145) Further sensitivity tests were undertaken and indicate that the NPV becomes negative if the following alterations are implemented: a reduction in total revenues by [...] %, a reduction in revenues from airport charges by [...] % or a reduction in total revenues by [...] % associated with costs that are higher by [...] % (all on an annual basis). In view of the highly unrealistic assumptions regarding airport charges ([...] % higher than Gdansk airport⁽⁵⁵⁾) and the overly optimistic traffic projections (reviewed projections of [...] % to [...] % lower than initially foreseen), such sensitivity tests suggest that slightly more realistic assumptions lead to a conclusion that the project would not be profitable.
- (146) Once the identifiable public remit expenses in the 2010 MEIP study are excluded, sensitivity tests suggest that the NPV would become negative if the expected revenues from LCC airport charges (without any reduction of the airport charges for charters) were to be reduced by [...] % on an annual basis whilst keeping charter revenues, all other revenues, operating costs and capital expenditures as forecasted in the business plan (considering that LCC revenues start being generated in 2017 and progressively increase over time).
- (147) Furthermore, it is worth reminding that the project is only profitable due to the terminal value (i.e. the value of the airport as of 2040 assuming a [...] % perpetual annual growth of cash flow). Up to 2040, the project generates negative cash flow.
- (148) Therefore, even the assessment of the profitability of the project on the basis of the 2010 MEIP study without the capital expenditures for tasks falling within public policy remit does not lead to conclusive evidence that a private investor would have carried out the investment in question.

Summary and Conclusion

- (149) The conversion project of Gdynia airport entails significant investments and a long-period of negative cash flows. Indeed, the business plan shows that over the projection period of 2010-2040, the cumulative discounted cash flow is negative (and equal to minus PLN [...] million or minus EUR [...] million). According to the business plan, the project only becomes positive due to the discounted terminal value of PLN [...] million calculated as of 2040 and forever, assuming that the airport will grow annually and forever thereafter at a nominal growth rate of [...] %. Despite the inherent and significant uncertainties related to a project of such long-term nature, the business plan contains no sensitivity analysis and this is not in line with the type of analysis that a prudent investor would have undertaken for such a project.
- (150) Further, the Commission's analysis concluded that the business plan relies on a series of optimistic and unrealistic assumptions in view of the proximity of the airport to the Gdansk airport which has the same business model, spare capacity and expansion plans. Several sensitivity tests indicated that the NPV of the project becomes negative with minor and realistic modifications to the underlying assumptions.

⁽⁵⁵⁾ See footnote 54.

- (151) In view of the foregoing, the Commission considers that on the basis of the 2010 MEIP study a private investor would not have taken the decision to embark on the investment project in question. Therefore the decision of Gdynia and Kosakowo municipalities confers an economic advantage to the airport manager, which it would not have obtained under normal market conditions.

The application of the MEIP on the basis of the 2011 MEIP study and 2012 MEIP update

- (152) As regards the MEIP studies carried out in 2011 and 2012 (and the funds that according to Poland were injected into the airport manager following those studies), the Commission considers that those capital injections had been already committed in the shareholder agreement signed on 11 March 2011 (see recital (33) further above), i.e. before the 2011 and the 2012 MEIP studies were carried out. Therefore, when the 2011 and 2012 MEIP studies were carried out, the investment decisions of the shareholders were already taken, even though they have been executed at a later point in time. Moreover, the Commission considers that the capital injections executed after the 2011 and 2012 MEIP studies have 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 to execute at the latest in 2010, and they merely reflect adjustments or amendments to the initial project.
- (153) Therefore, as already mentioned, the Commission considers that those studies could demonstrate that Poland behaved as a private investor only if they would show that by investing additional funds, the project would yield a return capable of adequately remunerating the capitals already invested and to be invested (or that would appropriately remunerate those capitals even when taking into account the risk of having to repay any illegal aid received in the past).
- (154) However, far from showing the above, those studies do not appear reliable for the reasons that will be explained below.

The application of the MEIP on the basis of the 2011 MEIP update

- (155) The first update of the MEIP study was conducted in May 2011. Even though the capital injections executed after this MEIP study was carried out were committed before May 2011 (see recital 33 further above), the Commission has also assessed whether on the basis of the information contained in this economic study the capital injections would appear to reflect the behavior of a private investor operating in a market economy. In the 2011 MEIP study, the revenues from the project were kept constant but the capital expenditures were increased (see Figure 3 showing the cumulative investment expenditures expressed in real 2010 terms). This study takes also into account the previous capital injections and the already carried out capital expenditures. The WACC was slightly reduced (from [...] % down to [...] %) and the long-term growth rate was reduced from [...] % to [...] %. Those updates led to the NPV being significantly reduced to PLN [...] million (about EUR [...]). This was due to a higher loss (the discounted cash flow over the period 2011-2030 would be equal to PLN (-[...] million) and the terminal value would be slightly decreased to PLN [...] million).
- (156) Consequently, the Commission concludes that also on the basis of the 2011 MEIP update the decision of Gdynia and Kosakowo municipalities to finance the conversion of Gdynia-Kosakowo (Gdynia-Oksywie) airfield into a civil aviation airport is not in line with the MEIP, and therefore it confers an economic advantage that the airport manager would not have obtained under normal market conditions.

The application of the MEIP on the basis of the 2012 MEIP update

- (157) Poland considers that the Commission should assess the compliance with the MEIP on the basis of the 2012 MEIP study. In order to reply to that argument, even though the capital injections executed after this MEIP study was carried out, were committed before (see recital 33 further above), the Commission has also assessed whether on the basis of the information contained in this economic study the capital injections would appear to reflect the behavior of a private investor operating in a market economy.
- (158) The Commission notes that the 2012 MEIP update takes into account the previous capital injections and the already carried out capital expenditures. The 2012 MEIP update 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 IRR of the investment project amounting to [...] % is higher than the assumed cost of capital of the airport manager ([...] %).

- (159) The 2012 MEIP study compares the equity value of the company with further investments, where the new airport becomes operational (the 'basic scenario'), and the equity value of the company without further investments (the 'counterfactual scenario'), where the investment project would be discontinued as of June 2012 ⁽⁵⁶⁾.
- (160) In this context, the Commission has already concluded that the capital injections carried after 2010 cannot be considered in isolation from the initial investment decision that was taken in 2010. The correct counterfactual scenario in 2010 would have been not to start implementing the project. According to Poland the lease agreement allowed Kosakowo only to use the land for a civil aviation airport. The Commission notes that a private investor would not have had entered into such agreement in the first place if the plans to develop a new civil airport in the area would not show a realistic possibility to obtain a positive return from such an investment. Therefore, the counterfactual scenario defined in the 2012 MEIP update is distorted by a previous decision, which itself did not reflect the behaviour of a private investor. In other words, the correct counterfactual in 2010 as well as in 2012 would be that of not implementing the project of developing the civil airport in question, as all the capital injections and MEIP studies carried out by Poland concern the implementation of the same investment project.
- (161) In any case, the Commission observes that the basic scenario of the 2012 MEIP update provided by Poland is based on a business plan projecting the future cash flows for the equity investors for the period 2012–2030 (i. e. a period of a high growth) ⁽⁵⁷⁾. 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 update was conducted, Poland expected that the airport would serve around [...] passengers in 2014 and progressively extend its activities up to [...] passengers in 2020 and around [...] million in 2028 (see passenger development forecast in Table 8 below).

Table 8

Traffic projections for Gdynia airport (in thousands)

Erwarteter Anstieg der Fluggastzahlen										
Jahr	2013	2014	2015	2017	2018	2019	2020	2023	2026	2030
Insgesamt	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	1 083,7

- (162) According to the 2012 MEIP update it is expected that after 2030 the airport operator will grow endlessly at a stable growth rate of [...]. Under this assumption, Poland calculated the terminal value of the airport operator in 2030.
- (163) The Commission notes that like in the 2010 MEIP study the key value drivers of the future cash flows of the manager of Gdynia airport are the expected aeronautical revenues, which will be determined by the number of passengers and level of airport charges paid by airlines.
- (164) With regard to the expected passenger development, Poland argues that the demand for air passenger services will increase over time together with the expected increase of Poland's GDP and the region's development. Poland is therefore of the opinion that the traffic projections are conservative and the actual traffic might be higher than the foreseen. According to Poland, the traffic forecast for the region updated in March 2013 foresees higher traffic than that applied in the 2012 MEIP update.
- (165) Poland argues that the business plan foresees that less than [...] % of the passenger traffic in the region will be served by Gdynia airport. Moreover, according to Poland the aviation market development in the Pomeranian Region leaves a room for an additional small airport with services complementary to that of Gdansk airport.
- (166) With regard to passenger demand, the Commission considers that the arguments presented in recitals 118 and 129 concerning Gdynia's competition for airlines and passengers with Gdansk airport are also valid for the assessment of the 2012 MEIP update.

⁽⁵⁶⁾ As the MEIP study was carried out in June 2012, the analysis is based on this date.

⁽⁵⁷⁾ A commonly used way to evaluate equity investment decisions is considering the equity value of the company. Equity value is the value of a company available to its owners or shareholders. The equity value is calculated by summing all future cash flows available for equity investors discounted at the appropriate return. The discount rate generally used is the cost of equity that reflects the risk of the cash flows.

- (167) The Commission observes in particular that the level of airport charges foreseen in the 2012 MEIP update was set at the same level as in the 2010 MEIP study. According to Poland, the charges used in the 2012 MEIP updated do not differ significantly from the standard tariffs charged by other small airports in Poland. Poland clarifies that the level of charges in the business plan is averaged for the whole business plan period (i.e. 2014 – 2040) and assumes that the long-term charges applied at Gdansk airport will have to increase following improved standard of services at that airport.
- (168) Since Gdansk, Bydgoszcz and Szczecin airports applied the same tariffs in 2012 as in 2010 (including the same discounts), the Commission assessment of the level of charges in the 2012 MEIP study for Gdynia airport is the same as for the 2010 MEIP studies (see recitals 122 to 129).
- (169) 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 a level of charges that is significantly higher than the net charges applied in other Polish regional airports⁽⁵⁸⁾, especially at Gdansk airport.
- (170) The Commission also notes that the stress test conducted by Poland shows that the equity value turns negative, if the passenger charge is reduced to PLN [...]. In this context, the Commission notes that a reduced airport charge, which would be comparable with the level of airport charges paid at other Polish regional airports (e.g. Gdansk, Bydgoszcz, Szczecin, Lublin) would result in a negative equity value.
- (171) The Commission further considers that a market economy investor would not set its charges at a higher level under the assumptions that the charges at Gdansk airport would increase in the long-term. In this respect, the Commission observes that the schedule of charges applied at Gdansk airport foresees the application of discounts until 2028 (i.e. only two years shorter than the period covered in the business plan for the 2012 MEIP update). On this basis, even if the airport charges at Gdansk airport would increase after 2028, the Commission considers that the forecasted airport charges averaged over the period of the business plan (i. e. until 2030) are still above the average level of airport charges at the competing airport.
- (172) Poland confirmed that the 2012 MEIP update takes into account operating costs, which are related to the military operation at the airport. These costs are expected to be compensated by the State. Poland also confirmed that the share of costs (both operating and investment costs) between Gdynia airport and the military user has not yet been formally agreed.
- (173) The Commission considers that a market economy investor would base its assessment only on results foreseeable at the time it takes the investment decision. Therefore, the Commission considers that any possible cost reduction due to the sharing of costs with the military user of the airport (and the impact on the airport's overall costs and revenues) should not be taken into account when assessing the compliance of the investment with the MEIP. Indeed, the 2012 MEIP study does not quantify the costs reductions that the airport manager could obtain in this connection.
- (174) 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 the Figure 5. The airport would only start generating positive cash flows as of 2020, but given the long investment period, in discounted terms, the cumulative cash flow would remain negative over the projection period.

⁽⁵⁸⁾ In addition to Gdansk, Bydgoszcz and Szczecin, the Commission analysed also airport charges at Lublin airport, a regional airport opened in December 2012. The standard departing passenger fee at Lublin airport is equal to PLN 34 (EUR 8,5); standard landing fee is PLN 36/tonne; standard parking fee is PLN 15/tonne/24 h (no fee for first 4 hours). Discounts: if an air carrier opens an operational base in Lublin Airport, 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 year); for parking and landing fees the discount is 99 %. After 5 seasons the discounts for new routes apply. Discount for new routes: for passenger, landing and parking fees discounts 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 equal to 60 % if an air carrier serves more than 250 000 departing passengers from Lublin Airport.

Figure 5

Cumulative (real) DCF (in PLN) 2012 MEIP update

[...]

- (175) Consequently, the Commission concludes that also on the basis of the 2012 MEIP update the decision of Gdynia and Kosakowo municipalities to finance the conversion of Gdynia airfield into a civil aviation airport is not in line with the MEIP, and therefore it confers an economic advantage that the airport manager would not have obtained under normal market conditions.

The November 2013 update

- (176) The Commission further considers that modifications of the investment plan aiming 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 compliance of the investment with the MEIP. Poland confirmed that these possible additional sources of revenue were neither included in the 2010 MEIP study, nor in the 2011 MEIP study and also not in the 2012 MEIP update prepared for Gdynia airport, because at the time of these studies were prepared the public shareholders and also the company could not be sure of obtaining all necessary permissions and concessions to provide such services. As at the time of the MEIP studies were conducted it was not likely that the necessary permissions and concession would be obtained, the Commission notes these developments cannot be taking into account retrospectively.

Conclusion

- (177) The Commission considers that the public funding provided by Gdynia and Kosakowo municipalities to the airport manager is not in line with MEIP. Therefore, the Commission considers that the measure at stake provides an economic advantage to Gdynia-Kosakowo Airport Ltd that it would not have obtained under normal market conditions.

5.1.4. Selectivity

- (178) Article 107(1) TFEU requires that a measure, in order to be defined as State aid, favours '*certain undertakings or the production of certain goods*'. In the case at stake, the Commission notes that the capital injections concern the Gdynia-Kosakowo Airport Ltd only. Thus they are selective by definition within the meaning of Article 107(1) of the TFEU.

5.1.5. Distortion of competition and effect on trade

- (179) 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⁽⁵⁹⁾. The economic advantage granted by the present measure to the airport operator strengthens its economic position, as the airport operator will be able to set up its business without bearing the inherent investment and operating costs.
- (180) As assessed in section 5.1.1, the operation of an airport is an economic activity. Competition takes place on the one hand between airports to attract airlines and the corresponding air traffic (passengers and freight) and on the other hand between airport managers, which may compete between themselves to be entrusted with the management of a given airport. Moreover, the Commission underlines that notably in respect to LCCs also airports that are not located in the same catchment areas and in different Member States can be in competition with each other to attract those airlines. The Commission notes that Gdynia airport will serve around [...] 000 passengers until 2020 and up to 1 million passengers in 2030.
- (181) 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. In view of the forecasted traffic at Gdynia airport and its proximity to Gdansk airport (only around 25 kilometers away) the Commission considers that competition and trade between Member States are capable of being affected.

⁽⁵⁹⁾ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

- (182) On the basis of the arguments presented in recitals 179 to 181, the economic advantage which the manager of Gdynia airport receives strengthens its position vis-à-vis its competitors on the Union market of providers of airport services. Therefore, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

5.1.6. Conclusion

- (183) In view of the arguments presented in the recitals 83 to 182, the Commission considers that the capital injections granted to Gdynia-Kosakowo Airport Ltd constitutes State aid within the meaning of Article 107(1) of the TFEU. As the financing was already put at the disposal of Gdynia-Kosakowo Airport Ltd the Commission also considers that Poland has not respected the prohibition of Article 108(3) of the TFEU ⁽⁶⁰⁾.

5.2. COMPATIBILITY OF THE AID

- (184) The Commission has examined whether the aid at issue can be found compatible with the internal market. As described above the aid consist in financing investment costs for the realisation of Gdynia airport and operating losses during the first years of the operation of that airport (i.e. until 2019, including, according to both the 2010 MEIP study and the 2012 MEIP study).
- (185) Article 107(3) of the TFEU provides for certain exemptions to the general rule set out in Article 107(1) of the TFEU that State aid is not compatible with the internal market. The aid in question can only be assessed on the basis of Article 107(3)(c) of the 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. In this regard, the 2005 Aviation Guidelines provide a framework for assessing whether aid to airport operators may be declared compatible pursuant to Article 107(3)(c) of the TFEU. They mention a number of criteria, which the Commission has to take into account.

5.2.1. Investment aid

- (186) State aid for financing airport infrastructure is compatible with Article 107(3)(c) of the TFEU, if it complies with the conditions laid down in paragraph 61 of the 2005 Aviation Guidelines:
- (i) the 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; and
 - (v) the development of trade is not affected to an extent contrary to the Union interest.
- (187) In addition State aid to airports, as any other State aid measure, should have an incentive effect and should be necessary and proportional in relation to the aimed legitimate objective in order to be compatible.
- (188) Poland is of the opinion that the public financing of the conversion project at Gdynia airfield complies with all criteria for investment aid under the 2005 Aviation Guidelines.

⁽⁶⁰⁾ Case T 109/01 *Fleuren Compost v Commission* [2004] ECR II-127.

(i) *Construction and operation of the infrastructure meets a clearly defined objective of common interest (regional development, accessibility, etc.)*

- (189) The Commission notes that the Pomeranian Region is already efficiently served by Gdansk airport, which is located only around 25 kilometres away from the planned new airport.
- (190) The Gdansk airport is located next to the Tricity ring road, this road is a part of S6 express road that bypasses the cities of Gdynia, Sopot and Gdansk, and ensures easy access to the airport to the large majority of Pomerania Region's inhabitants. Even for Gdynia's inhabitants, the construction of a new airport would as such not lead to a substantial improvement in their connectivity, because both airports (Gdynia and Gdansk) can be reached from the centre of Gdynia in the same time of approximately 20-25 minutes by car.
- (191) The Commission also observes that the Tricity Metropolitan Rail link, which is co-financed with the Union structural funds and is under construction, will provide a direct rail connection from Gdansk airport both to Gdansk and Gdynia citizens from the centres of their cities in a similar time of around 25 minutes. The Tricity Metropolitan Rail will also provide direct or indirect rail connection to Gdansk airport to the citizens of other parts of the Pomeranian Region.
- (192) The Commission further observes that the current capacity of Gdansk airport is 5 million passengers per annum while the 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 Gdansk airport is being expanded now to the capacity of 7 million passengers per annum. This investment is to be finalised in 2015.
- (193) In addition, according to the traffic forecast for the Pomeranian Region, provided by Poland and used to prepare the 2012 MEIP update, the total demand in the region will [...] passengers per annum [...].

Table 9

Traffic projections for the Pomeranian Region (in millions)

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

- (194) The Commission further observes that according to the information provided by Poland, the Master Plan for Gdansk airport foresees further expansions of the airport to serve more than 10 million passengers per annum. Therefore, the concrete decision to expand the capacity of the Gdansk airport above 7 million can be taken in the future depending on the traffic developments.
- (195) 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 the demand in the catchment area amounts to around 9 million passengers in 2030. However, even this forecast shows that Gdansk airport alone would be sufficient, without a further investment, to serve the demand in the region at least until 2025 (on the basis of the adjusted traffic forecasts as described in recital 45).
- (196) Furthermore, according to the information provided by Poland the current capacity of the runway in Gdansk airport is 40-44 operations per hour and the current use is on average 4,7 operations per hour.
- (197) On the basis of information provided by Poland (see recitals 192–196 above) the Commission observes that Gdansk airport will be only used at around 50–60 % of its capacity in the coming years. Consequently, even in the event of a dynamic passenger growth in the Pomeranian Region, Gdansk airport will be able to meet the demand of airlines and passenger during a long period of time.
- (198) The Commission further observes that Gdansk airport offers more than 40 national and international destinations (both point to point connections and connections to hubs: Frankfurt, Munich, Warsaw and Copenhagen).

- (199) As mentioned in recital 60, Poland argues on the one hand that for land planning and environmental consideration the extension of the capacity of Gdansk airport is limited. On the other hand, Poland argues that there are no limitations to the capacity extensions at Gdansk airport. The Commission considers that the arguments regarding the capacity expansion restrictions are contradictory and in any case they are not substantiated and therefore, the Commission cannot base its assessment on them.
- (200) In view of the spare capacity of Gdansk airport that will not be fully used in the long-term, and the plan to further expand capacity at that airport if necessary in the long term, the Commission considers that the creation of another airports in the Pomeranian region would not contribute to the region's development. The Commission further observes that with Gdansk airport the Pomeranian Region is already well connected and the new airport will not increase the connectivity of this region.
- (201) The Commission also notes that the business model of Gdynia airport suggests that it would compete for passengers with Gdansk airport in the LCC, charter and also 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.
- (202) In the light of the above, the Commission considers that the investment at Gdynia airport will lead to a mere duplication of infrastructures 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*
- (203) As stated in recitals 189 to 202, the Commission considers that the catchment area of Gdynia airport is and will be efficiently served by Gdansk airport. In addition, both airports would pursue a similar business model and focus mainly on LCC's and charters.
- (204) In 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 202 above).
- (iii) *The infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure*
- (205) As stated in point (i), Gdynia airport is located only around 25 kilometres away from the existing Gdansk airport and both airport have the same catchment area and a similar business model.
- (206) The capacity of Gdansk airport is currently used at less than 60 %. Taking into account the investments currently being carried out, Gdansk airport is sufficient to serve, depending on the forecasts used, the demand in the region at least until 2025–2028 and further expansions of Gdansk airport are feasible.
- (207) The Commission also notes that the business plan for Gdynia airport shows that the airport would generate about [80–90] % of revenue from serving low-cost and charter carriers. It means that it would focus on markets that are a core business of Gdansk airport.
- (208) In this context, the Commission also observes that Poland did not provide any proofs of a possible collaboration between both airports.
- (209) Also plans to generate revenues from other aviation and non-aviation activities (production and services) would not alone be sufficient to cover the high operational costs related to running Gdynia airport.
- (210) Consequently, the Commission considers that Gdynia airport does not have satisfactory medium-term prospects for use.

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

- (211) Poland confirmed that all potential users will 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*

- (212) The Commission notes that Poland did not provide any proofs that Gdynia and Gdansk airport would form a collaborative aviation hub. Rather, it would seem logical that the two airports would have to compete for essentially attracting the same passengers.
- (213) The Commission further notes that the business plan of Gdynia airport (around [80 - 90] % of revenue generated by low-cost and charter flights) and the scale of investments (e.g. a terminal with the capacity of 0,5 million passengers per annum that is to be expanded in the future) do not confirm the view that Gdynia airport would focus on general aviation traffic and would provide only or mainly services to the general aviation sector.
- (214) Taking into account the above and the fact that both airports would focus first on LCC and charters, 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 a demand for airport service that could not be served by the existing airport.
- (215) Therefore, the Commission considers that the aid in question would affect trade to an extent contrary to the common interest. The absence of a common interest objective that the aid is intended to achieve, strengthens that conclusion.

(vi) *Necessity of aid and incentive effect*

- (216) Based on the data provided by Poland the Commission considers that the investment costs can be lower than for the construction of other comparable regional airports in Poland. This is mainly due to usage of existing infrastructure of the military airport. Moreover, Poland argues that without the aid the investment would not be undertaken by the airport manager.
- (217) The Commission further observes that due to long period necessary to reach the break-even point for such type of investment the public financing could be necessary to change the behaviour of the beneficiary in such a way that it entered the investment. Moreover, since the expected profitability of the investment project cannot be established (see recital 177) and a market economy investor would not pursue such project, it is indeed likely that the aid changes the behaviour of the airport manager.
- (218) However, in absence of a clearly defined objective of common interest, the Commission concludes that the aid cannot be considered to be necessary and proportional to that objective.
- (219) Consequently, the Commission considers that the investment aid of Gdynia and Kosakowo in favour of Gdynia-Kosakowo Airport Ltd does not comply with the requirements of the 2005 Aviation Guidelines and cannot be found compatible with the internal market.

5.2.2. Operating aid

- (220) The Commission is of the view that the financing of operating losses of Gdynia-Kosakowo Airport Ltd constitutes operating aid, reducing the airport operator's current expenditure. According to the case law of the Court, such operating aid is in principle incompatible with the internal market. According to the 2005 Aviation Guidelines, operating aid granted to airports can only be declared compatible under exceptional circumstances and strict conditions in underprivileged regions.
- (221) The Commission notes that Gdynia airport is located in an underprivileged region covered by the derogation set out in Article 107(3)(a) of the TFEU, and thus, the Commission has to assess whether the operating aid at stake can be considered compatible under the RAG.

- (222) According to paragraph 76 of the RAG, the operating aid in regions eligible under the derogation in Article 107(3)(a) of the TFEU may be granted provided that 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.
- (223) Poland is of the opinion that the operating aid is compatible with the paragraph 76 of the RAG (see recitals 77–79).
- (224) Since the Pomeranian Region is already served by Gdansk airport and the new airport will not increase the connectivity of this region, the Commission cannot conclude that the aid would contribute to regional development.
- (225) The Commission considers that in absence of that, it cannot be concluded that the operating aid is proportional to the handicaps it seeks to alleviate, as the Pomeranian Region does not appear to suffer from any connectivity handicap.
- (226) Moreover, the Commission considers the assessed operating aid is allocated to a part of predetermined expenditure. However in the view of the Commission's assessment of the business plan for Gdynia airport and its assessment of the level of foreseen revenues 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 be 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.
- (227) In any case, the Commission considers 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.
- (228) Therefore, the Commission considers that the operating aid in favour of Gdynia-Kosakowo airport Ltd granted by Gdynia and Kosakowo does not comply with the criteria set out in the RAG.

5.2.3. Conclusion on compatibility

- (229) Consequently, the Commission concludes that the State aid granted to Gdynia-Kosakowo Airport Ltd is incompatible with the internal market.
- (230) The Commission has not identified any other compatibility clause that could potentially be relevant for declaring the present aid compatible with the Treaty. Likewise Poland has invoked neither any compatibility clause nor provided any substantial arguments that would allow the Commission to declare the present aid compatible.
- (231) The investment and operating aid which Poland has granted or intends to grant in favour of Gdynia-Kosakowo Airport Ltd are incompatible with the internal market. Poland has unlawfully implemented the aid in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

6. RECOVERY

- (232) 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 ⁽⁶¹⁾ when it has found that it is incompatible with the internal market. The Court has also consistently held that the obligation on a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ⁽⁶²⁾. 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 ⁽⁶³⁾.

⁽⁶¹⁾ Case C-70/72 *Commission v Germany*, paragraph 13.

⁽⁶²⁾ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission*, paragraph 75.

⁽⁶³⁾ Case C-75/97 *Belgium v Commission*, paragraphs 64-65.

(233) Following that case-law, Article 14 of Council Regulation (EC) No 659/1999⁽⁶⁴⁾ 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.'*

(234) Therefore, the State aid mentioned above must be reimbursed to the Polish authorities, insofar as it has been paid out,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid, unlawfully put into effect by Poland between 28 August 2007 and 17 June 2013 in breach of Article 108(3) of the Treaty on the Functioning of the European Union in favour of Port Lotniczy Gdynia-Kosakowo sp. z o.o. by means of capital injections amounting to PLN 91 714 000 PLN is incompatible with the internal market.

2. The State aid which Poland is planning to implement for Port Lotniczy Gdynia-Kosakowo sp. z o.o. after 17 June 2013 for the conversion of the military airport of Gdynia-Kosakowo into a civil aviation airport is incompatible with the internal market. The State aid may accordingly not be implemented.

Article 2

1. Poland shall recover the aid referred to in Article 1(1) from the beneficiary.

2. The sums to be recovered shall bear interest from the dates listed in the second subparagraph until their actual recovery.

The dates on which the sums to be recovered were put at the disposal of the beneficiary are the following:

(a) 28 August 2007 for the amount of 50 000 PLN;

(b) 4 March 2008 for the amount of 200 000 PLN;

(c) 11 September 2008 for the amount of 500 000 PLN;

(d) 28 July 2009 for the amount of 1 345 000 PLN;

(e) 8 December 2010 for the amount of 4 361 000 PLN;

(f) 8 July 2011 for the amount of 25 970 000 PLN;

(g) 1 September 2011 for the amount of 1 779 000 PLN;

(h) 25 April 2012 for the amount of 31 009 000 PLN;

(i) 27 May 2013 for the amount of 6 469 000 PLN;

(j) 17 June 2013 for the amount of 20 031 000 PLN.

⁽⁶⁴⁾ 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).

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽⁶⁵⁾.

4. Poland shall cancel all outstanding payments of the aid referred to in Article 1(2) with effect from the date of notification of this Decision.

Article 3

1. Recovery of the aid referred to in Article 1(1) 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 4

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 interests) 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 1(1) 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 recovery interest already recovered from the beneficiary.

Article 5

This Decision is addressed to the Republic of Poland.

Done at Brussels, 11 February 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

⁽⁶⁵⁾ 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.