Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

9 December 2015 *

(State aid — Mining sector — Aid granted by the Greek authorities to the mining company Ellinikos Chrysos — Contract for the transfer of a mining operation at a price below the real market value and exemption from taxes on that transaction — Decision declaring the aid measures unlawful and ordering recovery of the aid — Concept of advantage — Private investor test)

In Cases T-233/11 and T-262/11,

Hellenic Republic, represented by P. Mylonopoulos, V. Asimakopoulos, G. Kanellopoulos and A. Iosifidou, acting as Agents,

applicant in Case T-233/11,

Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou, established in Kifissia (Greece), represented initially by K. Adamantopoulos, E. Petritsi, E. Trova and P. Skouris, and subsequently by K. Adamantopoulos, E. Trova, P. Skouris and E. Roussou, lawyers,

applicant in Case T-262/11,

v

European Commission, represented by É. Gippini Fournier and D. Triantafyllou, acting as Agents,

defendant,

ACTION for annulment of Commission Decision 2011/452/EU of 23 February 2011 on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Chrysos AE (OJ 2011 L 193, p. 27),

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka and V. Kreuschitz (Rapporteur), Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 28 January 2015,

gives the following

* Languages of the case: Greek and English.

Judgment

Background to the dispute

1. *Facts*

1 The Cassandra Mines (Greece) are situated in the regional district of Chalkidiki (Greece), part of the Region of Central Macedonia (Greece), in the northern part of the Greek peninsula, and include the mining projects Olympias (lead, zinc and gold), Stratoni (lead and zinc) and Skouries (copper and gold deposits).

2 After the Simvoulio tis Epikratias (Greek Council of State) (judgment No 3615/2002) annulled the permits authorising the existing expansion project for Stratoni on 6 December 2002, on grounds of procedural defects, most notably the lack of joint ministerial decision by the five competent ministers (Ministers for Development, Environment, Agriculture, Culture and Health), there has been no more mining activity there. In order to implement that judgment, the Ministry of Development adopted two decisions, the first prohibiting any mining extraction at Stratoni, and the second ordering the adoption of additional safety measures.

3 On 18 February 2003, the Ministry of Development issued another mining permit for allowing operations to start in Stratoni and annulling its previous acts of 7 and 29 January 2003. However, activities were suspended for all Cassandra Mines throughout 2003.

4 The Cassandra Mines were owned by a Greek company from 1927 until their sale by public tender to TVX Hellas AE, a company controlled by TVX Gold Inc., a Canadian company that in June 2002 had merged with a Canadian group whose parent company is Kinross Gold Corp. ('the Kinross Group').

5 Given the investments already made and the expenditure for environmental restoration required under the administrative and judicial decisions referred to in paragraphs 2 and 3 above, TVX Hellas incurred significant losses. Consequently, the Kinross Group decided to suspend its subsidiary's activities in the Cassandra Mines as from January 2003 and to exit the Greek market.

6 In order to put a permanent end to its activities in Greece, the Kinross Group commenced negotiations with the Greek State which on 12 December 2003 led to an extrajudicial settlement ('the extrajudicial settlement'), which was ratified by Article 51 of Greek Law No 3220/2004.

7 By the extrajudicial settlement, the Hellenic Republic acquired ownership of the assets of TVX Hellas, as described in Part II of that settlement, and paid the company pecuniary damages of EUR 11 million.

8 On the same day, the Hellenic Republic signed a contract for the sale of those assets to Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou ('Ellinikos Chrysos'), a company created to take over those assets, the principal shareholder of which was European Goldfields Ltd, a Canadian company specialising in the acquisition, exploration and development of mineral land in the Balkans. That contract ('the contract at issue') was ratified by Article 52 of Greek Law No 3220/2004.

2. *Relevant contractual provisions*

9 Article 51 of Greek Law No 3220/2004 ratifies the extrajudicial settlement, stating that the parties thereto have accepted that settlement in order to avoid years of costly arbitration and judicial proceedings and disputes, the outcome of which is uncertain. That settlement provides for reciprocal, total and complete settlement of all claims from the Greek State, TVX Hellas and TVX Gold concerning any rights or debts the parties may have against each other.

10 Under the extrajudicial settlement, the Greek State acquires all of the assets of TVX Hellas and undertakes to pay to the latter, by way of reasonable pecuniary compensation, the amount of EUR 11 million and to discharge the company and its Board members from any administrative or criminal liability and all obligations for any offences under general environmental protection legislation, which are deemed to be barred. The settlement further provides that the transfer of the assets is effected by publication in the *Official Journal of the European Union* of the law ratifying that settlement, without transcription and other registrations being required, under the relevant provisions.

11 Article 52 of Greek Law No 3220/2004 ratifies the contract at issue, by which the Greek State transferred to Ellinikos Chrysos all of the assets transferred to it by TVX Hellas under the extrajudicial settlement.

12 Under Article 1 of the contract at issue, the Greek State sells, transfers and delivers to Ellinikos Chrysos all of the assets of TVX Hellas, 'as is', that it acquired under the extrajudicial settlement. That article goes on to list all items of land and provides, inter alia, that 'the following are also transferred by the Greek State to the purchaser and all existing authorisations, administrative and otherwise, and approvals, which have not been annulled or suspended by judicial decision, as found in Annex IV to the present contract, shall be valid, in the purchaser's name and on the purchaser's behalf'.

13 Article 1.3 of the contract at issue states that Ellinikos Chrysos 'shall in no way be held liable for environmental damage or damage caused to third parties which occurred before the publication ratifying the present contract or the causes of which predate said publication'.

14 Under Article 2 of the contract at issue, '[t]he price of all of the assets having belonged to TVX Hellas being sold hereunder, is EUR 11 million' and '[t]his price must be paid — within five working days as from the publication of the ratifying law in the Official Journal — directly to TVX Hellas, in satisfaction of the latter's claim against the Greek State under the extrajudicial settlement'.

15 In addition to the commitments undertaken under Article 1.3 of the contract at issue, Article 3 of that contract, entitled 'Obligations of the purchaser and the Greek State', describes the parties' reciprocal commitments. Under Article 3.1 of the contract, the purchaser undertakes inter alia:

'(a) to carry out all actions and procedures for environmental protection and maintenance … until expiry of the time-limit — referred to in Article 3.3 — allowed for granting the necessary authorisations and approvals;

(b) to set in motion, in each mine or part of a mine for which the relevant operating authorisation and approvals have not been annulled or suspended by judicial decision, all preparatory acts making it possible within a reasonable time not exceeding three months, to commence production. As part of making the Cassandra Mines operational again, the purchaser shall hire the staff necessary at the given time, which shall include former workers of the Cassandra Mines …'.

16 Under Article 3.2 of the contract at issue, the purchaser further undertakes 'to draft, no later than 24 months as from the publication of the law ratifying the present contract, a complete investment project on the development of the Cassandra Mines and on the construction and operation of the gold processing plant, together with all the studies provided for by the relevant legislation which are necessary for obtaining all the afferent authorisations and approvals'.

17 Under Article 3.3 of the contract at issue, the Greek State undertakes 'to examine the investment project submitted, under the terms set out in the preceding paragraph, within two months, and to issue all the necessary authorisations and approvals within no more than 10 months'.

18 Article 3.4 of the contract at issue states that '[t]he investment project, as approved by the competent authorities, is considered an annex to the present contract and an integral part hereof and shall bind the parties under the terms of the approval'.

19 Under Article 3.5 of the contract at issue, the purchaser undertakes 'to implement the approved investment project by setting in motion production activities no later than by the time-limits to be fixed by the administrative authorisations and approvals it receives'.

20 Article 4 of the contract at issue, entitled 'Consequences of non-performance of the parties' contractual obligations', provides that non-performance by any of the contracting parties of their contractual obligations is to constitute grounds for termination of that contract. In the event of termination, the purchaser is bound to return all of the assets to the Greek State, who must reimburse the price paid directly to the purchaser, totalling EUR 11 million, plus reasonable compensation. The Greek State's unilateral amendment of the terms of the contract and the scheme for authorisations and approvals for the investment project, through the enactment of legislative and regulatory provisions and through the adoption of other administrative measures of any kind, is one of the grounds for termination of the contract in question.

21 Under Article 5 of the contract at issue 'any financial obligation relating to the operation of the Cassandra Mines shall not bind the purchaser if it arose before publication of the law ratifying the present contract' and '[t]he transfer to the purchaser of all of the assets having belonged to TVX Hellas and which were acquired by the Greek State shall be exempt from all transfer tax'.

22 Article 53 of Greek Law No 3220/2004 ratifies another contract concluded on 22 December 2003 between TVX Hellas, TVX Gold, Ellinikos Chrysos and the Greek State, laying down the detailed rules for the payment of the price of the transaction, as fixed by Article 2 of the contract at issue. Article 4 of the latter contract provides that, although the legislative ratification cannot take place until 31 January 2004, the Greek State undertakes to reimburse Ellinikos Chrysos the advance sum that Ellinikos Chrysos must pay to TVX Hellas under Article 1 of that same contract.

23 Under Article 56 of Greek Law No 3220/2004, the contract at issue was supposed to enter into effect the day following the publication of the law in the *Official Journal of the Hellenic Republic*. The law was published on 28 January 2004. On 30 January 2004, Ellinikos Chrysos paid EUR 11 million and was discharged from all payment obligations.

3. *Administrative procedure*

24 On 9 July 2007, the Commission of the European Communities received a complaint to the effect that, by virtue of the contract at issue, the Hellenic Republic had granted two aid measures in favour of Ellinikos Chrysos. The Greek authorities submitted their observations on that complaint by letter of 5 November 2007. Subsequently, by letters of 7 April and 25 June 2008 the Commission sent requests for additional information, to which the Greek authorities replied by letters of 13 May and 30 July 2008 respectively.

25 By decision of 10 December 2008, the Commission opened the formal investigation procedure on the measures in question, as provided for in Article 108(2) TFEU, and asked the parties concerned to submit their observations (Decision C(2008) 7853 final (OJ 2009 C 56, p. 45) ('the opening decision)).

26 Ellinikos Chrysos submitted its observations on the opening decision on 10 April 2009. In response to a request for additional information, Ellinikos Chrysos submitted additional observations on 29 July 2009, 15 January 2010 and 4 May 2010. Two meetings were also held between the Commission and Ellinikos Chrysos on 26 June 2009 and 24 June 2010.

27 Three other interested parties submitted their observations, those being European Goldfields, the Cassandra Mines trade unions and Hellenic Mining Watch. Lastly, on 4 January 2011, Ellinikos Chrysos sent the Commission an informal document setting out its concerns about the assessment and understanding of the factual context and assessment method established by the Commission.

4. *The contested decision*

28 On 23 February 2011, the Commission adopted Decision 2011/452/EU on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Chrysos AE (OJ 2011 L 193, p. 27) ('the contested decision'), declaring that aid incompatible with the internal market (Article 1) and ordering the Hellenic Republic to recover that aid (Articles 2 and 3).

29 The operative part of the contested decision reads inter alia as follows:

'*Article 1*

The State aid amounting to EUR 15.34 million unlawfully granted by Greece in breach of Article 108(3) [TFEU], in favour of Ellinikos Chrysos … is incompatible with the internal market.

Article 2

1. [The Hellenic Republic] shall recover the aid referred to in Article 1 from the beneficiary.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

…

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.

2. [The Hellenic Republic] shall ensure that this Decision is implemented within four months following the date of notification of this Decision.'

30 The decision identifies the two aid measures as follows (recitals 15 to 18 of the contested decision):

'II.c. Measure 1: Price of sale below market value

(15) … the Greek State sold the Cassandra Mines to Ellinikos Chrysos for EUR 11 million, without any evaluation of the assets or any open tender. The sale included:

(a) Mines of Stratoni, Skouries and Olympias, together with the relevant mining rights;

(b) land;

(c) the stock of minerals; and

(d) fixed assets (mining-processing equipment, houses for workers and industrial buildings).'

According to the Greek authorities, the measure's objective was to find an owner willing to operate the mines and thus to protect the employment and the environment.

…

II.d. Measure 2: Waiver of tax and reduction of legal fees …

(18) For measures 1 and 2, in the present decision the Commission has arrived at a total aid figure of EUR 15.34 million …'

31 Regarding the first of the aid measures, including the calculation of the value of the Cassandra Mines, the Commission examined each of the three different mines making up those mines (Stratoni, Olympias and Skouries) according to the value of each mine, on the basis of the economic factors existing at the time of the sale and the operational capacity of each mine. In order to appraise that value, it relied on an expert report drawn up by an international consulting firm on behalf of European Goldfields, as part of its plans to increase its capital in the company, which considers 30 June 2004 at midnight to be the actual date for the assessment ('the expert report'). That report, drawn up on the basis of the income approach, considered by the Commission to be applicable to the assessment in question, gave the following net values for the three mines: negative values of USD -28.79 million (EUR – 2 3.7 million) for the Olympias mine, and positive values of USD 10.48 million (EUR 8.6 million) for the Stratoni mine and USD 15.72 million (EUR 12.9 million) for the Skouries mine, giving a net negative value for the three mines of EUR – 2 .59 million (recitals 68 to 74 of the contested decision).

32 Regarding, in particular, the value of the Olympias mine, in recitals 75 and 76 of the contested decision the Commission nevertheless found that:

'(75) … [I]ndeed the net present value (at near-production level) of Olympias at the time of the sale was negative. Nevertheless, … the negative net present value of Olympias means that, at the time of the sale, the expected profits resulting from operating the mine at the price level observed over the past 11 years would be negative. At such a gold price level, any owner of Olympias would choose not to operate the mine and would seek to avoid the losses to the greatest extent possible. As it turns out, by not operating the mine, the buyer could limit the losses to EUR 5.5 million, costs that the buyer had contractually to bear for environmental protection and maintenance purposes. From this alone, one cannot infer however that therefore the value of Olympias should be evaluated at EUR 5.5 million negative. This is because, in principle, owning a mine also confers an option value: the owner can operate the mine when times are good (gold prices are high enough) and choose not to operate when times are bad (gold prices are not high enough). Accordingly, Ellinikos Chrysos may have chosen to take over the mine as part of the package of Cassandra Mines or in view of later being able to undertake necessary investments into the Olympias mine to profitably restart exploitation in case gold prices were to rise to levels (substantially) above the level observed over the past period of 1993-2003.

(76) Obtaining a reliable estimate of this option value is fairly complicated, however. More importantly, any such value would have to be adjusted for the (possibly high) likelihood that, even though gold prices would be high enough to allow profitable operation, no permit would be obtained for this mine. … [T]he Olympias mining and gold processing permits were annulled for environmental reasons, which are considered as serious. Therefore it would appear appropriate to regard Olympias as having an option value which can conservatively be put to zero. The net value of Olympias would accordingly be estimated at EUR -5.5 million.'

Procedure and forms of order sought

33 By application lodged at the Court Registry on 28 April 2011, the Hellenic Republic brought the action registered under number T-233/11.

34 By application lodged at the Court Registry on 20 May 2011, Ellinikos Chrysos brought the action registered under number T-262/11.

35 By application lodged at the Court Registry on 9 August 2011, European Goldfields sought leave to intervene in Case T-233/11 in support of the forms of order sought by the Hellenic Republic.

36 By order of 7 September 2011, the President of the Fifth Chamber of the General Court rejected the application to intervene referred to in paragraph 35 above, on the basis of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court by virtue of the first paragraph of Article 53 thereof, on the ground that the case involved a Member State and an institution of the European Union, and ordered European Goldfields to bear its own costs.

37 By application lodged at the Court Registry on 9 August 2011, European Goldfields sought leave to intervene in Case T-262/11 in support of the forms of order sought by Ellinikos Chrysos.

38 By order of 27 March 2012, the President of the Fifth Chamber of the General Court rejected the application to intervene referred to in paragraph 37 above, on the basis of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court by virtue of the first paragraph of Article 53 thereof, on the ground that European Goldfields had demonstrated only an indirect, potential interest in the outcome of the dispute, and ordered European Goldfields to bear its own costs.

39 Following the change in the composition of the Chambers of the General Court, on 3 October 2013 the President of the General Court reassigned the cases to another Judge-Rapporteur, assigned to the Fourth Chamber, to which the present cases were consequently allocated.

40 On 7 August 2014, by way of a measure of organisation of procedure under Article 64(3)(a) of its Rules of Procedure of 2 May 1991, the Court put written questions to the parties, to which they replied within the prescribed time-limit.

41 On the same day, the Court questioned the parties about the possibility of joining Cases T-233/11 and T-262/11 for the purposes of the oral procedure and the final judgment.

42 On 2 September 2014, the Commission lodged its observations, stating that it had no objection in principle to the cases being joined.

43 By e-mails of 1 and 2 October 2014, the Hellenic Republic stated that it objected to the joining of Cases T-233/11 and T-262/11. It also stated that, in the event that the cases were joined, certain elements of the case file in Case T-233/11 would have to be considered confidential and introduced a request for confidential treatment of certain parts of the file in respect of the intervener, attaching a non-confidential version of its pleadings.

44 On 29 October 2014, the Court decided not to join Cases T-233/11 and T-262/11 for the purposes of the oral procedure.

45 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.

46 At the hearings held on 28 January 2015 the parties presented their oral arguments and answered the questions asked by the Court. At the hearings the parties were questioned about the possibility of joining Cases T-233/11 and T-262/11 for the purposes of the final decision. In Case T-233/11, the Hellenic Republic reiterated its objection to the cases being joined, whilst the Commission did not object. In Case T-262/11 the parties did not formally object to the cases being joined.

47 The Hellenic Republic and Ellinikos Chrysos ('the applicants') claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

48 The Commission contends that the Court should:

— dismiss the application in Case T-233/11 as unfounded and dismiss the application in Case T-262/11 as partly inadmissible and partly unfounded;

— order the applicants to pay the costs.

Law

49 The cases were joined for the purposes of the judgment under Article 68(1) of the Rules of Procedure of the General Court.

1. *Admissibility*

50 In Case T-262/11, the Commission raises doubts about the admissibility of the application in the light of Article 21 of the Statute of the Court and Article 44(1)(c) of the Rules of Procedure of 2 May 1991 in so far as it is needlessly lengthy and the pleas in law put forward therein are presented in an incoherent manner. Moreover, the reference to the annexes with specific page references lacks precision. Nor have all of those annexes been supplied in the language selected as the language of the case in accordance with Article 35(3) of the Rules of Procedure of 2 May 1991, with the result that the Commission has not examined them. Moreover, in so far as Ellinikos Chrysos alleges that its arguments have been distorted by the Commission, the Commission takes the view that this is due to the considerable lack of clarity of the application.

51 Ellinikos Chrysos disputes the Commission's arguments.

52 It should be borne in mind in that regard that, under Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of 2 May 1991, each application is required to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based.

53 According to the case-law, the information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the General Court to decide the case. The same is true of all claims, which must be accompanied by pleas and arguments enabling both the defendant and the Court to assess their validity (judgment of 7 July 1994 in *Dunlop Slazenger* v *Commission*, T-43/92, ECR, EU:T:1994:79, paragraph 183). Thus, it is necessary, for an action to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the abovementioned provisions, must appear in the application (see judgments of 17 September 2007 in *Microsoft* v *Commission*, T-201/04, ECR, EU:T:2007:289, paragraph 94 and the case-law cited; 7 May 2009 in *NVV and Others* v *Commission*, T-151/05, ECR, EU:T:2009:144, paragraph 61 and the case-law cited; and 5 October 2011 in *Transcatab* v *Commission*, T-39/06, ECR, EU:T:2011:562, paragraph 366 and the case-law cited). Furthermore, it is not for the Court to seek and identify, in the annexes, the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and

instrumental function (see, to that effect, judgments of 11 September 2014 in *MasterCard and Others* v *Commission*, C-382/12 P, ECR, EU:C:2014:2201, paragraph 40; *NVV and Others* v *Commission*, cited above, EU:T:2009:144, paragraph 61; and *Transcatab* v *Commission*, cited above, EU:T:2011:562, paragraph 366).

54 In the present case, although the manner in which pleas in law have been presented and structured may be somewhat lacking in rigour, it is possible to grasp the gist of the complaints directed against the contested decision. The subject-matter of the dispute — an action for annulment of the contested decision — is clearly defined, the pleas in law allege, first of all, an error of application and interpretation of Article 107(1) TFEU and a number of errors of assessment of the facts concerning the existence of State aid, as well as infringement of the rights of the defence, infringement of its procedural rights, misuse of power and infringement of the principle of good administration and the duty to conduct an impartial and diligent examination.

55 Moreover, according to the case-law, whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which must appear in the application (see judgment in *MasterCard and Others* v *Commission*, cited in paragraph 53 above, EU:C:2014:2201, paragraph 40 and the case-law cited).

56 As rightly observed by the Commission, Ellinikos Chrysos refers, in the body of the application, to lengthy annexes, only brief passages of which are relevant to underpin a given argument, which made the examination of the action more complex. As regrettable as that may be, it did not however make it impossible to understand the substance of the arguments forming the basis of the action which are present in the body of the written pleadings and refer to the annexes only by way of additional evidence, since the essential points of those passages taken from the annexes were highlighted in the pleadings.

57 The application thus enabled the Commission to prepare its defence and the Court to understand the basis of the action. It must therefore be held to comply with the formal requirements as laid down in the case-law referred to in paragraph 53 above. The action must therefore be held to be admissible.

2. *Substance*

Summary of the pleas in law put forward to support the action for annulment

58 In support of their action, the Hellenic Republic and Ellinikos Chrysos put forward three pleas in law and two pleas in law respectively. The first plea put forward by each of the applicants is, in essence, identical and alleges misinterpretation and misapplication of Article 107(1) and Article 108(2) TFEU, as well as errors of assessment of the facts concerning the existence of State aid. They argue that the Commission:

— with regard to the first of the aid measures (the sale of the Cassandra Mines at a price below their market value):

  (a) found, incorrectly, that the condition of use of State resources was fulfilled, when the Greek State merely had a role as an intermediary in the transaction;

  (b) in the alternative, incorrectly applied the private investor test;

  (c) in the alternative, found, incorrectly, that the condition that there be an advantage arising from a miscalculation of the value of the assets the subject of the transaction was fulfilled;

(d) with the Hellenic Republic also alleging in Case T-233/11 an incorrect assessment of the condition that there be distortion of competition and an effect on trade between Member States;

— with regard to the second aid measure (exemption from the obligation to pay taxes on the transaction):

(a) incorrectly assessed the condition that there be an advantage;

(b) with the Hellenic Republic also alleging in Case T-233/11 an incorrect assessment of the condition that there be distortion of competition and an effect on trade between Member States.

59 The other pleas put forward by the applicants in the present cases differ. In Case T-233/11, the Hellenic Republic alleges misinterpretation and misapplication of the second sentence of Article 14(1) of Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1), in so far as the requirement that the aid be recovered infringed the principles of proportionality, sincere cooperation, legal certainty and the protection of legitimate expectations (second plea). It further criticises the Commission for having provided an insufficient and contradictory statement of reasons and infringing Article 296 TFEU on a number of points concerning the existence of an advantage and the existence of a distortion of competition (third plea). In Case T-262/11, Ellinikos Chrysos alleges infringement of its rights of defence, infringement of its procedural rights and misuse of power, as well as infringement of the principle of good administration and the duty to conduct an impartial and diligent examination (fourth plea).

Consideration of the first plea: misinterpretation and misapplication of Article 107(1) and Article 108(2) TFEU, and a number of errors of assessment of the facts concerning the existence of aid (Cases T-233/11 and T-262/11)

The first of the aid measures

– Preliminary observations

60 Regarding the first of the aid measures, the sale of the Cassandra Mines at a price lower than the market value ('the disputed sale'), the applicants in essence challenge the Commission's finding that there was an advantage in favour of Ellinikos Chrysos. The applicants' arguments under this plea may be organised in three parts. By the first part, they question the use of the State resources and therefore whether the alleged aid can be attributed to the Greek State. By the second part, they criticise the Commission, firstly, for having failed to take into account a certain number of essential points in its estimation of the market value of the Cassandra Mines; secondly, for having applied, incorrectly, the private investor test; thirdly, for having relied, incorrectly and selectively, on the data from an expert report in order to do so; and, fourthly, for having miscalculated in the assessment of the market value of the assets acquired by Ellinikos Chrysos. By the third part, the Hellenic Republic, in Case T-233/11, also challenges the finding that there was a distortion of competition and an effect on trade between Member States.

61 It is appropriate to begin by examining the second part, relating to whether there was an advantage and the application of the private investor test, followed by the first part, relating to whether the granting of that advantage can be attributed to the State and, lastly, the third part, in Case T-233/11 only, concerning the issue whether there has been a distortion of competition and an effect on trade between Member States.

– The second part: error of assessment as to whether there was an advantage

62 The applicants challenge the Commission's assessment of whether there was an advantage arising from an incorrect assessment of certain factual circumstances (first complaint) and an incorrect and selective application of the expert report (second complaint), a manifest error of assessment in the application of the private investor test (third complaint) and a miscalculation of the value of the goods which are the subject of the transaction (fourth complaint).

63 Regarding the first complaint, from among the factual circumstances which were allegedly assessed incorrectly by the Commission, Ellinikos Chrysos submits, firstly, that the contract at issue does not involve a transfer of real estate property or of the Cassandra Mines as an undertaking in operation, but only the assets of TVX Hellas, a company in bankruptcy. Secondly, it states that the price of EUR 11 million paid for the disputed transfer does not reflect the value of the assets transferred, but only part of the costs of TVX Hellas's disengagement from the investment project in the Cassandra Mines and that, moreover, that amount does not originate from genuine compensation for the claims between the Greek State and TVX Hellas, those claims being neither certain nor liquid.

64 The Hellenic Republic submits that the disputed sale should not have been announced through an open tender, as argued by the Commission, since the transaction in question does not come within the scope of the public procurement directives that were in force in 2003. It further relies on point II.2(d) of the Commission Communication on State aid elements in sales of land and buildings by public authorities (OJ 1997 C 209, p. 3), with which the Commission was bound to comply.

65 Regarding the second complaint, the applicants criticise the Commission's assessment as to whether there was an advantage in so far as it was based on the expert report, the reliability per se of which they do not question, but rather only the use and assessment thereof. Firstly, that report was drawn up in the context of plans to increase European Goldfields' shareholdings in Ellinikos Chrysos. Secondly, the assessment was done subsequently to the date on which the contract at issue was concluded. Thirdly, that report did not evaluate all of TVX Hellas's assets at the time they were sold in December 2003, but only the potential and strictly present value, at time of the valuation, of the mines belonging to Ellinikos Chrysos, a new, credible investor, busy preparing an investment plan in the gold sector. Fourthly, the report in question was based on the postulate that the three Cassandra Mines were in the 'near-production' stage, a starting hypothesis which was in reality not applicable to the Cassandra Mines, due to the lack of operating permit.

66 The applicants argue that the Commission made a selective and arbitrary interpretation of the data in the expert report by accepting, in principle, the report's calculation method but failing to draw the inferences therefrom in a coherent manner for the Stratoni and Olympias mining sites. To that end they submit the corrected tables showing the calculations they deem to be correct for each evaluation method proposed in the report. The result is a negative valuation of between EUR -4.20 and -4.80 million.

67 Regarding the third complaint, the applicants criticise the Commission for having applied, incorrectly, the private investor test. The Hellenic Republic argues that it was not necessary to determine whether the Greek State's conduct satisfied 'the informed private investor test', in so far as the compensation fixed under the extrajudicial settlement was no different from the price that would have resulted from a free negotiation for the sale of the Cassandra Mines to a third party other than the Greek State, since the reciprocal claims of the parties to that settlement arose from the use and operation of the mines and were presented as an asset or a liability on the property listing of the vendor of the mines.

68 The applicants go on to criticise the application of 'the informed private investor test' in its 'idealised form'. They consider, in essence, that the Commission ought to have considered the actual private investor, namely the Kinross Group/TVX Hellas, existing at the time at which the determination must

be made as to whether there is aid. The Hellenic Republic adds that a private investor, in the specific context of the sale of mines, will be concerned with ensuring the proper functioning of the mines, one of the necessary conditions of which is the protection of the environment and employment.

69 Regarding the fourth complaint, the applicants criticise the Commission for having made a miscalculation in the evaluation of the Cassandra Mines. They criticise, first, the fact that the Commission made a separate calculation for each of the mines in question, whereas they make up a single mining complex which was sold as a whole and, second, the Commission's calculation for each of the sites, highlighting a certain number of factors which the Commission ought to have taken into account and which, in their submission, would have led to a different valuation.

70 Regarding the Stratoni mine, the applicants submit that the valuation ought to have been revised downwards, as it was not covered by a valid operating permit, as the permit granted on 18 February 2003 was the subject of an action for annulment before the national courts at the time the contract at issue was concluded, meaning that it could not be transferred to Ellinikos Chrysos under that contract. Accordingly, the Stratoni mine ought not to have been considered a mining operation in the 'near-production' stage and the mine resumed operations only two years after the contract was concluded. Nor did the Commission take into account the costs of maintaining the mine in a non-operational state or the environmental costs associated with the mine, whereas it did so for the Olympias mine.

71 Regarding the Skouries mine, the applicants submit that the mine is merely a deposit the mining of which would require substantial investment and authorisation costs. The sale of that mine would cover only the transfer of the appurtenant mining rights and the possibility of obtaining a mining permit would not be without risks of its being annulled, as for the other mines. The Skouries mine has never been in operation and, therefore, its value was necessarily negligible at the time the contract at issue was concluded.

72 Regarding the Olympias mine, the applicants submit that, at the time of the disputed transfer, it had a negative value (EUR - 2 3.7 million, according to the expert report), due to high costs for gold transport and processing, waste management and environmental protection, and low gold price levels. They add that the value of the mine had a significant economic impact on the determination of the overall sale price of the Cassandra Mines, which was also likely to have a negative effect on the value of the Stratoni mine since, in order for an investment in those mines to be profitable, an undertaking would necessarily have to be able to operate the gold mine at the Olympias site. The Commission therefore made a manifest error of assessment in refusing to attribute a negative value to the Olympias mine and in arbitrarily departing from the valuation provided for the Olympias mine in the expert report (recitals 75 and 76 of the contested decision). Lastly, Ellinikos Chrysos submits that, under the contract at issue, the purchaser would have had to make immediate investments in gold extraction and borne the cost thereof.

73 Regarding the value of the land, the applicants argue that the land the subject of the contract at issue could not be considered as an asset distinct from the Cassandra Mines under Greek mining law (Article 65 of Hellenic Legislative Decree No 210/1973), their use being strictly linked to mining activity. They are in fact classified as mining land under a contract concluded in 1995 and classified as industrial zones by Greek Law No 3220/2004, ratifying the contract at issue. Since the mines are not in operation, that land cannot be used for the mining undertaking's requirements and therefore had a lower value than that indicated by the Commission. Moreover, the Commission chose arbitrarily to index the purchase value of that mining land provided for under that contract to the general price index for industrial production, thereby equating that mining land to the products made on that land.

74 Lastly, regarding the value of the mineral stocks, the Hellenic Republic challenges the description of the subject of the disputed sale and the Commission's taking the deposits into account, as described in the expert report, whereas between 2003 and 2004, Ellinikos Chrysos had processed part of the

minerals. It also disputes the Commission's finding that the value of the stock could not be calculated. That value is negative, however, due to the high costs associated with storage and environmental protection in connection with the concentrated gold-bearing minerals found in the mines in question.

75 The Commission disputes the applicants' arguments.

76 Under Article 107(1) 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'.

77 According to the Court's case-law, State aid, as defined in the Treaty, is a legal concept which must be interpreted on the basis of objective factors. For that reason, the EU Courts must in principle and having regard both to the specific features of the case before them and to the technical or complex nature of the Commission's assessments, carry out a comprehensive review as to whether a measure falls within the scope of Article 107(1) TFEU (see judgment of 22 December 2008 in *British Aggregates* v *Commission*, C-487/06 P, ECR, EU:C:2008:757, paragraph 111 and the case-law cited).

78 According to settled case-law, the supply of goods or services on favourable terms may constitute State aid within the meaning of Article 107(1) TFEU (see, to that effect, judgment of 16 September 2004 in *Valmont* v *Commission*, T-274/01, ECR, EU:T:2004:266, paragraph 44 and the case-law cited).

79 In order to determine the value of aid in the form of a sale of land at an allegedly preferential price, it must be ascertained whether the presumed recipient of the aid purchased the land at a price it would not have obtained under normal market conditions (see, to that effect, judgments of 2 September 2010 in *Commission* v *Scott*, C-290/07 P, ECR, EU:C:2010:480, paragraph 68; 16 December 2010 in *Seydaland Vereinigte Agrarbetriebe*, C-239/09, ECR, EU:C:2010:778, paragraph 34 and the case-law cited; and 6 March 2002 in *Diputación Foral de Álava and Others* v *Commission*, T-127/99, T-129/99 and T-148/99, ECR, EU:T:2002:59, paragraph 73). In those circumstances, the value of the aid is equal to the difference between what the recipient actually paid and what it could have paid at the time under normal market conditions to purchase an equivalent plot of land from a private vendor (judgment of 13 December 2011 in *Konsum* v *Commission*, T-244/08, EU:T:2011:732, paragraph 61). In determining the market price, the Commission must take account of the uncertainties surrounding a retrospective determination of market prices (judgment in *Valmont* v *Commission*, cited in paragraph 78 above, EU:T:2004:266, paragraph 45). That case-law is also relevant with respect to other assets, such as the assets of a mining undertaking.

80 In that regard the Commission must carry out complex economic assessments (see, to that effect, judgment in *Commission* v *Scott*, cited in paragraph 79 above, EU:C:2010:480, paragraph 68).

81 When the Commission makes complex economic assessments, the review by the EU Courts is necessarily limited in scope, being limited to ensuring that the procedural rules and requirement to state reasons have been complied with, that the facts are accurate and that there has been no manifest error of assessment or misuse of power (see, to that effect, judgments of 24 January 2013 in *Frucona Košice* v *Commission*, C-73/11 P, ECR, EU:C:2013:32, paragraphs 74 and 75, and 24 October 2013 in *Land Burgenland and Others* v *Commission*, C-214/12 P, C-215/12 P and C-223/12 P, ECR, EU:C:2013:682, paragraphs 77 and 78).

82 In order to establish that the Commission committed a manifest error in assessing the facts such as to justify the annulment of the contested decision, the evidence adduced by the applicants must be sufficient to make the factual assessments used in the decision in question implausible (judgments of 12 December 1996 in *AIUFFASS and AKT* v *Commission*, T-380/94, ECR, EU:T:1996:195, paragraph 59, and 12 February 2008 in *BUPA and Others* v *Commission*, T-289/03, ECR, EU:T:2008:29, paragraph 221).

83 Whilst the Commission has a margin of discretion with regard to economic matters, that does not mean that the EU Courts must refrain from reviewing the Commission's interpretation of information of an economic nature. Not only must they determine, in particular, whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (judgment of 15 February 2005 in *Commission* v *Tetra Laval*, C-12/03 P, ECR, EU:C:2005:87, paragraph 39; see also judgments of 22 November 2007 in *Spain* v *Lenzing*, C-525/04 P, ECR, EU:C:2007:698, paragraphs 56 and 57 and the case-law cited, and *Commission* v *Scott*, cited in paragraph 79 above, EU:C:2010:480, paragraphs 64 and 65 and the case-law cited). However, it is not for that judicature to substitute its own economic assessment for that of the Commission (judgments in *Spain* v *Lenzing*, cited in paragraph 83 above, EU:C:2007:698, paragraph 57; *Commission* v *Scott*, cited in paragraph 79 above, EU:C:2010:480, paragraph 66; and *Frucona Košice* v *Commission*, cited in paragraph 81 above, EU:C:2013:32, paragraph 75).

84 Where an EU institution enjoys broad discretion, the review of observance of certain procedural guarantees is of fundamental importance. Those guarantees include the obligation for the competent institution to examine carefully and impartially all the relevant elements of the individual case and to give an adequate statement of the reasons for its decision (judgments of 21 November 1991 in *Technische Universität München*, C-269/90, ECR, EU:C:1991:438, paragraph 14, and *Spain* v *Lenzing*, cited in paragraph 83 above, EU:C:2007:698, paragraph 58).

85 It is in the light of those principles that the determination must be made as to whether the Commission erred in finding that there was an advantage.

86 In the present case, the Commission found that the disputed sale had taken place without there being held an open tender or evaluation by independent experts (recital 15 of the contested decision).

87 It is stated in point II.4 of the Commission Communication on State aid elements in sales of land and buildings by public authorities that, when the Commission receives a complaint or other submission from third parties alleging that there was a State aid element in an agreement for the sale of land and buildings by public authorities, it will assume that no State aid is involved if the information supplied by the Member State concerned shows that the principles set out in points II.1 and II.2 thereof were observed, that is to say, that the sale was effected through an open tender or after an estimate of the market value has been established by an independent expert.

88 Since the applicants are not challenging the validity of the Commission Communication on State aid elements in sales of land and buildings by public authorities, it is appropriate in the present case to follow the case-law according to which, in the specific area of State aid, the Commission is bound by the guidelines and notices that it issues, inasmuch as they do not depart from the rules in the Treaty and are accepted by the Member States (judgment of 11 September 2008 in *Germany and Others* v *Kronofrance*, C-75/05 P and C-80/05 P, ECR, EU:C:2008:482, paragraph 61). In adopting rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its aforementioned discretion and cannot depart from those rules under pain of being found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations (judgments of 28 June 2005 in *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECR, EU:C:2005:408, paragraph 211, and *Germany and Others* v *Kronofrance*, cited above, EU:C:2008:482, paragraph 60).

89 Under the Commission Communication on State aid elements in sales of land and buildings by public authorities, since the disputed sale was not effected through an open tender procedure or following an evaluation by an independent expert, the Commission was not required to consider that there was no State aid element in that sale.

90 In order to assess itself the value of the property sold, the Commission relied on the expert report. As to the issue whether the Commission may rely on that report, it must be remembered that, where the Commission carries out an examination of the expert reports drawn up after the transaction in question in order to determine whether the sale price of an asset could not have been obtained by the purchaser under normal market conditions, it is bound to compare the sale price actually paid with the price suggested in those reports and to determine whether it deviates sufficiently to justify a finding that there is an advantage. That method makes it possible to take into account the uncertainty of a determination, which is by nature retrospective, of such market prices (see judgment in *Valmont* v *Commission*, cited in paragraph 78 above, EU:T:2004:266, paragraph 45 and the case-law cited).

91 Moreover, whilst the Commission may — without being bound to do so — retain the help of external experts, it is not thereby exempted from reviewing their work. Subject to review by the EU Courts, ensuring observance of Article 107 TFEU and the implementation of Article 108 TFEU is the central and exclusive responsibility of the Commission and not the experts (see judgment in *Valmont* v *Commission*, cited in paragraph 78 above, EU:T:2004:266, paragraph 72 and the case-law cited).

92 In the present case, it is common ground that the reliability and objectivity of the expert report have not been called into question by either the Hellenic Republic or Ellinikos Chrysos, on whose behalf it was, incidentally, drawn up. The applicants are, however, challenging the Commission's right to rely on that report in so far as it was drawn up six months after the disputed sale and the assumption on which the analysis was based was that the three mines in question were at the 'near-production' stage. They also disagree that those mines fulfilled the conditions of the evaluation method adopted in the report on the date of their transfer.

93 As regards, first, the date on which the expert report was drawn up, the Commission may rely on the help of experts to determine the market price of an asset subsequently to the date of sale of that asset, provided that the information taken into account precedes or is contemporaneous with that date and was available on that date.

94 That was indeed the case here. Of the three evaluation methods proposed in the expert report, the Commission took account only of the first one, namely the income approach. The report uses three value ranges for the prices taken into consideration: firstly, the average of the 1993 to 2003 historic prices; secondly, prices during the first half of 2004; and, thirdly, the average price for the 1993 to 2003 period plus the price for first half of 2004 divided by two. Of those three scenarios, the Commission took account only of the first one, referring to average prices for the 1993 to 2003 period and therefore to prices predating the disputed sale. Nor did the Commission take into consideration the information in that report referring to future assets or speculative mining resources.

95 That conclusion is not called into question by the fact that the expert report used as its actual evaluation date midnight on 30 June 2004, which was more than six months after the disputed sale, as the average prices taken into account predated the sale.

96 Secondly, regarding the challenge to the expert report's initial hypothesis, namely the 'near-production' stage of the mines in question, it must be observed that it is clear from the wording of the introductory part of the report that it considers 'near-production' stage as covering a mine which is operational or the subject of a feasibility study. According to the report, the three Cassandra Mines came within this definition, as the Stratoni and Olympias mines had been operational in the past and their operations had been suspended for social and environmental reasons, as opposed to economic reasons, and the Skouries mine had been the subject of a feasibility study.

97 The expert report also takes account of the fact that operations in the mines in question had been suspended and resumed only in 2006 in the case of the Stratoni mine and 2008 in the case of the Olympias mine, and the fact that the Greek authorities had provided reliable assurances about the grant of the mining permits needed to resume operations in the three mines in question.

98 The latter circumstance is confirmed by Article 1 of the contract at issue, which provides that 'furthermore … the following are also transferred by the Greek State to the purchaser and all existing authorisations, administrative and otherwise, and approvals, which have not been annulled or suspended by judicial decision, as found in Annex IV to the present contract, shall be valid, in the purchaser's name and on the purchaser's behalf'. Moreover, Article 3.3 of the contract provides that 'the Greek State undertakes to examine the investment project submitted, under the terms set out in the preceding paragraph, within two months, and to issue all the necessary authorisations and approvals within no more than 10 months'.

99 It follows from the foregoing that the applicants' arguments challenging the validity of the expert report as a point of reference for the evaluation of the Cassandra Mines, summarised in paragraph 65 above, must be rejected.

100 Thirdly, regarding the evaluation method, the expert report assesses the net value of the expected income from future production of the mines in question, whilst acknowledging that there remains a certain degree of uncertainty about the long-term investment plans. That approach, known as the 'income approach', is defined as the essential component for evaluating mining properties which are 'operational or being developed or for which a feasibility study has been completed'. That approach, including its general suitability for use in evaluating the mines in the conditions described above, is not called into question per se by the applicants. What they do question is whether the mines fulfilled such conditions at the time of the disputed sale.

101 It should be noted, however, that the situation of the Stratoni and Olympias mines did in fact meet the definition given in the expert report of mines which 'had been operational in the past'. As the applicants moreover acknowledge, they were in operation until at least 1992 in the case of the Olympias mine, and until 2002 in the case of the Stratoni mine, whilst the Skouries mine comes within the report's definition of a mine 'for which a feasibility study has been completed' (see paragraph 96 above). That fact, set out as a finding in the report, has not been disputed by the applicants.

102 First of all, the Stratoni mine had an operating permit granted on 18 February 2003 which, although the subject of an action for annulment, was still valid at the time of the disputed sale. Moreover, it is clear from the wording of Article 3.1 of the contract at issue that there was already at least one operating permit. The applicants' arguments based on a lower value due to the lack of valid permits for the mine at the time of the sale and the failure to transfer the permits under the contract must therefore be rejected.

103 Next, regarding the value of the Skouries mine, it is common ground that it was merely a deposit and did not yet have a suitable infrastructure or mining permits and had never been operated. That finding therefore meets the definition given in the expert report of a mine 'for which a feasibility study has been completed'. Such a study was in fact carried out by a company in 1998. According to that report, the Skouries mine could be evaluated according to the income approach, as it would be possible to obtain a mining permit and start to operate the mine. That report also takes into account, for the calculation of the value of the mine, the costs of development, construction and functioning as well as administrative costs for obtaining a permit. Consequently, the Commission did not make any manifest error in recitals 77 and 78 of the contested decision, where it relied on the estimated value for the Skouries mine in the report in question.

104 It follows from the foregoing that the Commission could reasonably consider that the income approach was applicable in the present case for the Stratoni and Skouries mines.

105 Lastly, regarding the Olympias mine, the applicants criticise the Commission for having made selective use of the data in the expert report. It must be borne in mind that the Commission is not obliged to rely blindly on the results tabled in an expert report. It must, however, verify them and appraise the

work of the experts (see, to that effect, judgment in *Valmont* v *Commission*, cited in paragraph 78 above, EU:T:2004:266, paragraph 72). The question is rather whether the Commission, whilst having accepted the expert report as a reference point for the evaluation of the Cassandra Mines, could depart from the results of that report in regards to inter alia the Olympias mine, as evidenced by recitals 74 to 76 of the contested decision.

106 It is clear in that regard that the Commission made no manifest error of assessment in finding, in recital 75 of the contested decision, that it could not take account of the negative net present value of the Olympias mine, as estimated using the income approach in the expert report. That value presupposes that there was a mine in operation. Yet at the time the contested decision was adopted, the Olympias mine was not likely to be operational for a number of years, given the serious environmental problems underlying the annulment of the existing operating permits and the difficulties associated with obtaining other ones, which is why the Commission could, at the time of adoption of the contested decision, legitimately call into question the initial hypothesis of the report to the effect that operations could resume at the Olympias mine in 2008 and that the time-limits for the permits laid down in Article 3.3 of the contract at issue were unrealistic. Moreover, the applicants themselves emphasised repeatedly the uncertainties surrounding the grant of permits for the Olympias mine.

107 Furthermore, the Commission's finding that no private investor would have accepted to pay a positive price to purchase an asset with a negative value is sufficiently plausible. The conduct of a private investor in a market economy is guided by prospects of profitability (see judgment of 12 December 2000 in *Alitalia* v *Commission*, T-296/97, ECR, EU:T:2000:289, paragraph 84 and the case-law cited). As plausibly observed by the Commission, in assessing the prospects of profitability, a private investor would have taken into account the value of intent of the Olympias mine and planned to put it into operation only when gold price levels made it profitable to do so, so as to avoid losses. The applicants have not managed to rebut the plausibility of the Commission's finding that the permits needed to operate the Olympias mine were not likely to be granted, or that even if gold prices made it theoretically profitable, the possibility of putting the mine into operation was so uncertain that the value could not be calculated and was accordingly set at zero.

108 Nor did the Commission commit any manifest errors of assessment in deducting from that value the amount of EUR 5.5 million by way of maintenance costs for the Olympias mine, laid down in the form of a contractual obligation under Article 3 of the contract at issue (see paragraph 75 of the contested decision), according to which those costs were to be borne by Ellinikos Chrysos for a maximum period of three years. As it was not possible to foresee the number of years for which the mine would not be in operation due to the lack of necessary operating permits, the Commission cannot be criticised for having failed to take into account the additional maintenance costs. Moreover, the contract contained a cancellation clause (Article 4), under which, if one of the parties breached its contractual obligations — which included the Greek State's granting of the operating permits — the contract could be repudiated by the other party. Consequently, in the event of the permits not being granted, Ellinikos Chrysos could have been released from its obligation to bear the maintenance costs for the years following the time-limits laid down in Article 3.3 of the contract.

109 In the light of the foregoing, the reasoning set out in recitals 75 and 76 of the contested decision is plausible and coherent and the Commission did not make any manifest error of assessment in the application of the private investor test.

110 That conclusion is unaffected by the various other arguments put forward by the applicants.

111 This holds true, firstly, for the applicants' assertion that the Commission ought to have taken into consideration the specific actual private vendor in the present case, namely the Kinross Group/TVX Hellas, in order to determine whether the price of the assets transferred under the disputed sale corresponded to their market value.

112 It should be noted in that regard that the Kinross Group/TVX Hellas was the former owner of those assets and, having incurred substantial losses in running them, was seeking to end its investment project. Moreover, the price fixed for the transfer of the Cassandra Mines to the Hellenic Republic is clearly not the result of negotiations about the value of the assets sold involving an objective evaluation of those assets. As expressly stated in the wording of the preamble to the extrajudicial settlement, the price of EUR 11 million is referred to as 'reasonable monetary compensation' putting an end to all reciprocal claims between the former owner and the Hellenic Republic. That implies logically that not only the value of the assets as such was taken into account, but also the claims arising from non-compliance with other obligations. Factors such as these are extrinsic to the value of the assets and are contingent on past factual circumstances which are not necessarily relevant for a new purchaser for the future.

113 Also, Ellinikos Chrysos's assertion that the fact that the claims were not expressed in figures and payable at the time of the disputed sale shows that the amount of EUR 11 million was not the result of true compensation for the claims must also be rejected. When the parties to the extrajudicial settlement agreed to settle their reciprocal claims and obligations, they agreed that such an amount could be considered 'reasonable monetary compensation', in order to avoid several years of arbitration and legal proceedings, the outcome of which was uncertain (see point F of the preamble to the settlement). Thus, those claims were expressed in figures and were therefore payable as from the time of publication of the law ratifying that settlement. It should also be noted that, in points D and E of the preamble to the settlement, those claims were identified as being, on the one hand, the claims that the State was putting forward in respect of the non-operation of the mines and the failure to table new studies for the creation and operation of gold metallurgy, and also those relating to infringements (established or otherwise) of environmental protection and, on the other, the claims of TVX Hellas, based on undertakings concerning the guarantee and the grant of all the authorisations and approvals necessary for the proper operation of those mines, in particular those relating to the damage caused by the loss of investment capital.

114 Although it cannot be ruled out on principle that the amount of EUR 11 million also represents the correct market value of the assets subsequently transferred by the Hellenic Republic to Ellinikos Chrysos, it is not possible to assert that that amount was unlinked to the clearing of the claims the Hellenic Republic and TVX Hellas had against each other. In the light of the foregoing, nor did the Commission make an error of fact in finding, in recitals 53 to 55 of the contested decision, that that amount was the result of the clearing of the reciprocal claims of the two parties to the extrajudicial settlement.

115 Thus, in the absence of detailed arguments from the applicants showing that the result of the clearing of the claims could reflect the actual market value of the mines, in so far as the reciprocal claims cleared between the parties are components of the objective value of the assets sold and therefore their price, the Commission cannot be criticised for having found, in recital 54 of the contested decision, that that clearing of claims did not represent the value of the assets sold.

116 In those circumstances, the Commission made no manifest error of assessment in refusing to take account of the conduct of the Kinross Group/TVX Hellas in the application of the principle of the private investor as a reference point to evaluate the assets transferred under the contract at issue.

117 Secondly, the same holds true for the Hellenic Republic's argument that a private investor, in the specific context of the sale of the mines, will focus on ensuring proper operation of the mines and that, consequently, imperatives of environmental protection and employment should be taken into account in the appraisal of the value of those mines. It is not clear from the wording of the contract at issue that the Greek State sought, through the transaction with Ellinikos Chrysos, to control the transfer of environmental and social responsibilities from the former owner to the new owner, or that it had to act rapidly to avoid exacerbation of environmental damage or social problems. On the contrary, the Greek State provided for a clause in the contract holding Ellinikos Chrysos fully free

from all liability for damage to the environment or to third parties occurring before the publication of the law ratifying the contract or the triggering causes of which antedated that publication. A similar discharge is provided for in the event of termination of the contract at issue for liability arising subsequently to signature of the contract (see Article 1.3. of the contract).

118 Thirdly, it is also necessary to reject the Hellenic Republic's line of argument to the effect that, by intervening in the transaction in question, it reduced the losses it would have incurred as a result of the total transfer of the operation of the Cassandra Mines. The fact that the operation is reasonable for the public authorities or the public undertaking granting the aid does not dispense with the need to ascertain whether the measures in question confer an economic advantage on the recipient undertaking that it would not have obtained under normal market conditions and accordingly does not by itself cause the measure in question to meet the private investor test (see, to that effect, judgment of 13 September 2010 in *Greece and Others* v *Commission*, T-415/05, T-416/05 and T-423/05, ECR, EU:T:2010:386, paragraphs 213 and 214).

119 Fourthly, as under this plea Ellinikos Chrysos is alleging an error of fact about the loss entry for the investment in the Cassandra Mines in the Kinross Group/TVX Hellas annual report, that argument is also irrelevant.

120 Not only is this plea merged with the plea alleging error in the application of the private investor test in that the Commission ought to have taken into account the conduct of the actual investor, namely the Kinross Group/TVX Hellas, in the appraisal of the market value of the assets transferred, as analysed in paragraphs 110 to 116 above, but also, as observed correctly by the Commission in recital 52 of the contested decision, a company's book value is not always the same thing as its market value in terms of evaluating the assets in order to determine their price at the time of a sale (see, to that effect, judgment in *Greece and Others* v *Commission*, cited in paragraph 118 above, EU:T:2010:386, paragraphs 307 to 309).

121 Therefore, as no evidence has been adduced to demonstrate the connection between the book value of the assets transferred under the disputed sale and its market value, the Commission cannot be criticised for having failed to take that value into account in recital 52 of the contested decision.

122 Fifthly, regarding the applicants' complaint alleging a miscalculation of the value of the mines transferred under the contract at issue, it must be borne in mind, as a preliminary point, that in recital 68 of the contested decision the Commission explains how it examined the value of each of the three mines in question in terms of two aspects: (i) the value of the mine, which must be based on the economic factors existing at the time of the disputed sale and (ii) the mine's ability to be operational, which gives the mine its value.

123 Ellinikos Chrysos disagrees that the Commission had to make a separate calculation for each of the mines in question. To that end, at the hearing it referred to the judgment in Case No 1492/2013 of the Simvoulio tis Epikratias of 17 April 2013, in which it was held that the Cassandra Mines were a single, indivisible entity. The Court does not consider this type of argument to be well founded, as it overlooks the fact that the overall value of the mines is merely the sum of the value of each of them and that the negative value of one of those mines affects the positive value of the others.

124 As regards, firstly, the calculation of the value of each of the mines in question, reference is made to paragraphs 100 to 109 above.

125 As regards, secondly, the value of the land in question, it must be remembered that the contract at issue transfers, along with other assets, a large number of plots of real estate property and land, including building, non-building and agricultural land (see Article 1, part A, of the contract). In recital 81 of the contested decision, the Commission classifies that land as assets of the mining undertaking and not as real estate property in the broad sense of the term, due to the particular

features of mining operations. The applicants submit that, as the Cassandra Mines were not in operation at the time of the disputed sale, the value of that land was reduced because it could not be used.

126 It should be observed that, in recital 81 of the contested decision, the Commission used the expert report as a point of reference for the evaluation of the land in question, considering it to be separate assets from the mines, whilst acknowledging that it could not be used for any purpose other than mining. That assessment must be endorsed, as the land constitutes an additional asset having its own intrinsic, economically measureable value.

127 Moreover, since the expert report was based on data provided by Ellinikos Chrysos for estimating the value of the mines and was not, therefore, a truly independent assessment, the Commission verified the value of the land in question, stated as being EUR 6 million in the report, basing itself in particular on the purchase price paid by TVX Hellas in 1995 and adapting that price according to the general index of industrial production prices for the 1995 to 2003 period (see recitals 84 to 86 of the contested decision).

128 By that approach, the Commission arrived at a value of EUR 3.5 million for the plots of land purchased by TVX Hellas in 1995 and EUR 1.1 million for the 70 additional land plots it purchased after 1995, as presented in the financial statements of TVX Hellas. The Commission considered that acquisition value to be market economy oriented, since it was obtained in the market (see recital 88 of the contested decision). The overall amount of EUR 4.6 million thus obtained was adapted according to the Greek general index of industrial production prices for the 1995 to 2003 and 1998 to 2003 periods, thus giving the result of EUR 5.9 million. The Commission therefore obtained an amount which closely matched that proposed in the expert report and accordingly considered it to be representative of the market value in December 2003 (see recitals 89 and 90 of the contested decision).

129 The Greek authorities themselves acknowledged during the administrative procedure that the value of the land, defined at the time of the open tender in 1995, could be taken into account (see recital 87 of the contested decision).

130 Such an approach is, moreover, in keeping with the case-law, which recognises that the costs incurred in purchasing land may be a secondary or indirect indication of the value of a property (judgment of 10 April 2003 in *Scott* v *Commission*, T-366/00, ECR, EU:T:2003:113, paragraph 106, not appealed on this point). In the present case, the Commission did in fact use the price paid by TVX Hellas at the time of the land purchases in 1995, in order to verify and confirm their value, which had already been estimated in the expert report, as stated in recital 86 of the contested decision.

131 In that regard the criticism of the Commission's application of the general index of industrial production prices in order to adjust the value of the land in question to the inflation present until 2003, in so far as it applies to industrial assets and not to the land on which those assets are produced, is not convincing. It was for the Commission to ascertain the value of that land, not in 1995, but at the time of the disputed sale, in 2003. Moreover, as there was no general index of industrial land, the Commission had to apply either the index of commercial real estate property prices or the general index of industrial production prices, which was used in the present case. It should be observed that that choice was rather favourable for the applicants, as it led to a lower price than the one that would have obtained through the application of the index of commercial real estate property prices. In those circumstances, the Commission made no manifest error of assessment in using the general index of industrial production prices. Accordingly, the conclusion is that, in the present case, it attributed a value to the property in issue which corresponded with sufficient accuracy to the market value in December 2003, as required by the applicable case-law (judgment in *Scott* v *Commission*, cited in paragraph 130 above, EU:T:2003:113, paragraph 100).

132 In the light of the foregoing, the applicants' complaint regarding the calculation of the value of the land in question must be rejected.

133 As regards, thirdly, the value of the stock of mineral in question, it should be noted that, through the contract at issue, the Greek State transferred to Ellinikos Chrysos both the stock of gold-bearing minerals and deposits of other mineral concentrates (lead and zinc).

134 Regarding the stock of gold-bearing minerals, in the contested decision the Commission acknowledges that the value of the gold stock was negative at the time of the disputed sale, due to the relatively low price/cost ratio for gold and the associated transport and processing costs for gold concentrates, calculated in paragraph 92 of that decision. It further observes that the expert report does not assess the value of the gold minerals. It accordingly concludes that that value cannot be calculated (see recital 93 of the contested decision).

135 Regarding the stock of gold-bearing minerals, the Commission considers that an informed investor would not process them so as not to incur losses; their value is therefore not negative but zero. The Hellenic Republic observes, however, that the gold concentrates contain almost 10% arsenic and that, when they cannot be put to commercial use, they are classified as hazardous waste which must be processed and managed under Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries (OJ 2006 L 102, p. 15). The Commission is nevertheless correct in pointing out that the environmental costs had already been taken into account in the calculation of the value of the mines and that it was therefore not necessary to deduct those costs a second time in the evaluation of that stock.

136 As regards the other mineral concentrates found in the deposits transferred, the Commission based itself on the estimate in the expert report of the concentrations existing on 30 June 2004 on the basis of the standard calculation method used for the payment of metals providing the net smelter return (see recitals 95 and 96 of the contested decision). It then multiplied the quantities of minerals (communicated by Ellinikos Chrysos) in December 2003 by the metal prices, as stated in metal exchange ratings, giving a value of EUR 3 million. It further stated that since the deposits were sold by Ellinikos Chrysos in December 2004, thus after the report was drawn up, there was no other sale contemporaneous to the disputed sale which might have been taken into consideration for the purposes of making a comparative analysis. The Commission's calculation is accordingly not vitiated by any manifest error on this point.

137 The Hellenic Republic's argument to the effect, in essence, that at the time of the sale to Ellinikos Chrysos, the quantities of minerals in the deposits transferred were lower than those estimated in the expert report must be rejected, since the Commission did not learn of it during the administrative procedure. It is settled case-law that the legality of a decision concerning State aid is to be assessed in the light of the information available to the Commission when the decision was adopted (see judgment of 20 March 2013 in *Rousse Industry* v *Commission*, T-489/11, EU:T:2013:144, paragraph 33 and the case-law cited) and that an applicant may not, at the stage of judicial proceedings, plead facts which were not put forward during the pre-litigation procedure provided for in Article 108 TFEU. Similarly, it cannot be complained that the Commission failed to take into account matters of fact or of law which could have been submitted to it during the administrative procedure but which were not, since the Commission is under no obligation to consider, of its own motion and on the basis of prediction, what information might have been submitted to it (see, to that effect, judgment of 27 September 2012 in *Wam Industriale* v *Commission*, T-303/10, EU:T:2012:505, paragraph 119 and the case-law cited).

138 This complaint must therefore be rejected in so far as it alleges a miscalculation of the value of the mineral concentrates found in the deposits transferred.

139 In the light of all the foregoing considerations, the second part of the first plea, concerning the first of the aid measures in its entirety must be rejected, as there has been no manifest error of assessment in respect of the application of the private investor test nor any other error in the application of Article 107(1) TFEU or error of fact or calculation.

– The first part: error of assessment of the condition that there be use of State resources

140 The applicants argue, in essence, that the Commission, in stating in recital 106 of the contested decision that the Hellenic Republic played the role of vendor and not merely that of an intermediary acting in the public interest, assessed the facts incorrectly and, consequently, found incorrectly that the State resources criterion had been met. In fact, the operation in reality was made up of 'mirror', 'consecutive' or 'back-to-back' contracts between private undertakings, with the Greek State playing the role of mere intermediary in searching for a purchaser and ensuring continuous operation of the mines coupled with constant environmental protection and safeguarding of employment in the region.

141 Furthermore, the funds used to pay the price of the disputed sale of the Cassandra Mines, which were paid directly to TVX Hellas pursuant to Article 2 of the contract at issue are not a direct loss of State resources that can be attributed to the Greek State, as no transfer of State resources took place directly or indirectly within the meaning of the relevant case-law.

142 Moreover, according to the Hellenic Republic, the role of mere intermediary played in the context of the disputed transaction is confirmed by the position adopted by the Public Procurement Legislation Unit of the Public Procurement Directorate of the Internal Market and Services Directorate-General in a letter sent on 21 September 2009 to the Secretary-General of the Greek Ministry of Development, in response to its question asking whether the contract at issue came within the scope of public procurement law. That position also confirms that European Union law does not impose any obligation to carry out an open tender procedure for the sale of mines.

143 Ellinikos Chrysos adds that the fact that the assets in question or the amount of EUR 11 million were never entered in the Greek State's budget makes it impossible under Greek law to recover the aid, as required by the contested decision. The Greek State must adopt new, specific legislation in order to comply with its recovery obligation.

144 In the Hellenic Republic's submission, it is not sufficient, for the purposes of classifying the sale price of the Cassandra Mines as State aid, that the price is lower than the market value, that the Greek State acquired, for a virtual time period, ownership of the assets of TVX Hellas before transferring them to the purchaser Ellinikos Chrysos and that the Greek State controlled all of those transactions and ratified them through legislation.

145 The Commission disputes the applicants' arguments.

146 Regarding the condition of use of State resources and therefore the issue of attributing the measure in question to the State, it is apparent from the Court's case-law that, for advantages to be capable of being categorised as aid within the meaning of Article [107](1) [TFEU], they must, first, be granted directly or indirectly through State resources (see judgment of 16 May 2002 in *France* v *Commission*, C-482/99, ECR, EU:C:2002:294, paragraph 24 and the case-law cited). The two conditions are distinct and cumulative (judgment of , 5 April 2006 in *Deutsche Bahn* v *Commission*T-351/02, ECR, EU:T:2006:104, paragraph 103).

147 Second, the advantage must result from a transfer of State resources. According to settled case-law, only advantages granted directly or indirectly through State resources or constituting an additional burden on the State are to be regarded as aid within the meaning of Article 107(1) TFEU (see judgment of 19 March 2013 in *Bouygues and Bouygues Télécom* v *Commission and Others* and

Commission v *France and Others*, C-399/10 P and C-401/10 P, ECR, EU:C:2013:175, paragraph 99 and the case-law cited). Those two conditions are separate and cumulative (judgment of 5 April 2006 in *Deutsche Bahn* v *Commission*, T-351/02, ECR, EU:T:2006:104, paragraph 103).

148 It is not necessary to establish in every case that there has been a transfer of State resources for the advantage granted to one or more undertakings to be capable of being regarded as State aid within the meaning of Article 107(1) TFEU. Thus, measures which, in various forms, mitigate the burdens normally included in the budget of an undertaking, and which therefore, without being subsidies in the strict meaning of the word, are similar in character and have the same effect, are considered to be aid (see judgments in *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, cited in paragraph 147 above, EU:C:2013:175, paragraphs 100 and 101 and the case-law cited).

149 It is settled case-law that Article 107(1) TFEU defines measures of State intervention in relation to their effects (see judgment of 5 June 2012 in *Commission* v *EDF*, C-124/10 P, ECR, EU:C:2012:318, paragraph 77 and the case-law cited, and judgment in *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, cited in paragraph 147 above, EU:C:2013:175, paragraph 102).

150 Thus, State intervention which is capable of both placing the undertakings which it applies to in a more favourable position than others and creating a sufficiently concrete risk of imposing an additional burden on the State in the future may place a burden on the resources of the State (see judgment in *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, cited in paragraph 147 above, EU:C:2013:175, paragraph 106 and the case-law cited).

151 Furthermore, the Court of Justice has had occasion to state that advantages given in the form of a State guarantee can entail an additional burden on the State (judgments of 1 December 1998 in *Ecotrade*, C-200/97, ECR, EU:C:1998:579, paragraph 43; 8 December 2011 in *Residex Capital IV*, C-275/10, ECR, EU:C:2011:814, paragraphs 39 to 42; and *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, cited in paragraph 147 above, EU:C:2013:175, paragraph 107).

152 Furthermore, it has been held in the case-law that, where, in economic terms, the alteration of the market conditions which gives rise to an advantage given indirectly to certain undertakings is the consequence of the public authorities' loss of revenue, even the fact that investors then take independent decisions does not mean that the connection between the loss of revenue and the advantage given to the undertakings in question has been eliminated (judgment in *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, cited in paragraph 147 above, EU:C:2013:175, paragraph 108).

153 Consequently, for the purposes of establishing the existence of State aid, the Commission must establish a sufficiently direct link between, on the one hand, the advantage given to the beneficiary and, on the other, a reduction of the State budget or a sufficiently concrete economic risk of burdens on that budget (judgment in *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, cited in paragraph 147 above, EU:C:2013:175, paragraph 109).

154 In the present case, it is common ground that the contract at issue which gave rise to the advantage in favour of Ellinikos Chrysos was agreed upon by it and the Greek State. Under that contract, the Greek State, as vendor, takes on a certain number of obligations and rights towards the other contracting party, such as those resulting from Articles 1.3, 3.3 and 4 thereof. It is therefore clear that the advantage resulting from that same contract, of which the Greek State was promoter, signatory and guarantor, may be attributed to the Greek State.

155 As regards the fact that the advantage is granted directly or indirectly using State resources, it must be observed, firstly, that the disputed sale, being the resale to Ellinikos Chrysos of the Cassandra Mines at a price lower than the market price implies a reduction of revenues for the Greek State in relation to what it could have obtained and therefore a loss of resources. That in itself entails an advantage for the company that acquires the assets and is liable to place a burden on the resources of the State. Secondly, through the commitments taken on pursuant to Articles 1.3, 3.3 and 4 of the contract at issue, ratified by Articles 52 and 53 of Greek Law No 3220/2004, the Greek State exposed its budget to a risk of burdens linked to possible actions to be undertaken to comply with the applicable legislative provisions instead of the purchaser. These guarantees given by the Greek State give rise to a sufficiently real risk of there being an additional burden for the State budget in future, as referred to in the case-law cited in paragraphs 151 and 153 above.

156 Consequently, the Commission did not err in stating in recitals 105 to 107 of the contested decision that the criterion of a transfer of State resources was met.

157 That conclusion is unaffected by the other arguments put forward by the applicants.

158 In the first place, as regards the applicants' argument that there was a single operation, made up of back-to-back contracts between private parties, it should be noted that the wording of the contract at issue and the extrajudicial settlement refer specifically to an acquisition of the assets in question by the Greek State (see point II(a) and (e) of the extrajudicial settlement and paragraph 3(a) in the preamble to and Article 1 of the contract at issue). The Greek State necessarily acquired those assets in order then to transfer the ownership thereof to Ellinikos Chrysos. Moreover, the lack of entry of those assets in the registry in the name of the Greek State, relied on by Ellinikos Chrysos in order to demonstrate that the ownership thereof had not passed to the Greek State was explicitly provided for, by way of exception to the generally applicable provisions, by Article 51(2)(a) of Law No 3220/2004. That specific legislative provision did not, however, have the effect of preventing ownership from passing to the Greek State. If the Greek State had not been owner of the assets, it could not have transferred ownership of them to Ellinikos Chrysos.

159 In the second place, the Hellenic Republic's argument concerning the lack of direct transfer of State resources must also be rejected in so far as it is based on a partial, incorrect interpretation of the case-law. As observed in paragraphs 147 to 149 above, a direct transfer of resources is not necessary.

160 Lastly, the argument put forward by Ellinikos Chrysos, to the effect that it is not possible to recover the aid since the Greek State would have to adopt new, specific legislation for the purpose, as the assets in question or the amount of EUR 11 million have never been entered in the State budget, must be rejected. It is settled case-law that the only defence available to a State which is the addressee of a decision ordering recovery of aid to justify non-recovery of aid declared to be incompatible with the internal market is to plead that it was absolutely impossible for it properly to implement the decision ordering recovery (see, to that effect, judgment of 12 May 2005 in *Commission* v *Greece*, C-415/03, ECR, EU:C:2005:287, paragraph 35 and the case-law cited). However, the potential need to enact specific legislation for that purpose does not make it absolutely impossible to implement the decision, but rather forms part of the that State's duty to work together in good faith with a view to overcoming difficulties whilst fully observing the Treaty provisions, and in particular the provisions on State aid (see, to that effect, judgment in *Commission* v *Greece*, C-415/03, EU:C:2005:287, paragraph 42).

161 In the light of the foregoing, the first part of the first plea concerning the first of the aid measures must be dismissed as unfounded.

– The third part: error of assessment of the condition that there be a distortion of competition and an effect on trade between Member States (Case T-233/11)

162 Firstly, the Hellenic Republic alleges that there has been an infringement of the rules for defining the relevant market under competition law in that the Commission included the metals contained in the deposits. In its submission, since at the time of the disputed sale the only mine in a state fit to operate from among the mines in question was the Stratoni mine, which produced only lead and zinc minerals, the sale concerned only the market for those minerals.

163 Secondly, the Hellenic Republic disputes the Commission's finding, set out in recital 110 of the contested decision, that the extraction of zinc, copper, lead, gold and silver was carried out in 11 Member States, in addition to Greece, and that those products were traded throughout the European Union. In fact, that finding could refer only to the market for metals, which was not the correct relevant market. By contrast, competing producers of lead and zinc minerals (the correct relevant market) are established in 6 and 5 of the 11 Member States referred to by the Commission, as stated in a report entitled 'Olympias Marketing Study'. Moreover, the influence of Ellinikos Chrysos on competition is negligible since, in the year following the disputed sale, its production accounted for merely 0.2% of mining extraction of zinc and 0.9% of mining extraction of lead on the European market. Lastly, the sale had the effect of increasing production of the aforementioned minerals within the European Union. Those minerals cover only 34% and 54% respectively of the EU's metallurgical potential, with the shortfall being covered by imports from non-member countries. Therefore, the sale favoured — not distorted — the competitiveness of the European industries.

164 The Commission disputes the views of the Hellenic Republic.

165 It should be borne in mind as a preliminary point that, according to settled case-law on State aid, the two conditions of application of Article 107(1) TFEU concerning the effect on trade between Member States and the distortion of competition, are, as a general rule, inextricably linked. In particular, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid (see judgment of 30 April 2009 in *Commission* v *Italy and Wam*, C-494/06 P, EU:C:2009:272, paragraph 52 and the case-law cited).

166 It is also settled case-law that, in its assessment of the conditions of application of Article 107(1) TFEU, the Commission is required, not to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition (judgments of 29 April 2004 in *Italy* v *Commission*, C-372/97, ECR, EU:C:2004:234, paragraph 44, and 15 December 2005 in *Unicredito Italiano*, C-148/04, ECR, EU:C:2005:774, paragraph 54).

167 The result is that aid must be found to be incompatible with the common market if it has or is liable to have an effect on intra-Community trade and to distort competition within such trade (judgment in *Unicredito Italiano*, cited in paragraph 166 above, EU:C:2005:774, paragraph 55).

168 In the present case, the Commission observed, in recital 110 of the contested decision, that the sector in which Ellinikos Chrysos was active, namely the extraction of zinc, copper, lead, gold and silver, concerned products which were in wide circulation in the internal market, that the mining in question was carried on in 11 Member States, that the aid conferred an advantage on Ellinikos Chrysos compared with its competitors and that, in conclusion, there was a risk of distortion of competition and an effect on trade between Member States.

169 The Hellenic Republic's arguments disputing the definition of the relevant market endorsed by the Commission do not refute the soundness of that conclusion. The Commission merely needs to establish that the aid in question is of such a kind as to affect trade between Member States and

distorts or threatens to distort competition. It does not have to define the market in question (see judgment of 15 June 2010 in *Mediaset* v *Commission*, T-177/07, ECR, EU:T:2010:233, paragraph 146 and the case-law cited).

170 The Hellenic Republic's argument concerning the allegedly pro-competitiveness of the first of the aid measures, alleging shortfalls in the European market for raw materials, must be rejected as ineffective. Even if it were true, it does not offset the risk of distortion of competition arising from the strengthening of Ellinikos Chrysos's market position as a result of the adoption of that measure since, as observed in paragraphs 166 and 167 above, the Commission is not required to establish that the aid actually affects trade between Member States and that competition is actually being distorted.

171 Although the European market has shortfalls in the production of minerals, Ellinikos Chrysos in any event enjoys a competitive advantage over other mining undertakings because it competes with other mining undertakings on the internal market without having to resort to imports of those minerals.

172 In the light of the foregoing, the third part of the first plea concerning the first of the aid measures must be rejected.

The second aid measure

– The first part: error of assessment of the condition that there must be an advantage (Cases T-233/11 and T-262/11)

173 The applicants submit that the tax exemption granted for the disputed sale was below the *de minimis* threshold in the field of State aid. In that regard, not only were the transfer taxes calculated on an incorrect basis of the value of the land in question, namely EUR 6 million, which is a figure given arbitrarily by European Goldfields, but also the tax on the transfer of the mining rights was calculated on the incorrect basis of the total value of the Cassandra Mines, instead of only the value of the mining rights, contrary to what is provided for by Article 173(1) of the Greek Mining Code, which excludes the value of the mining operations from the basis for calculation of the tax.

174 Ellinikos Chrysos adds that the transfer taxes were not payable, given that the contract at issue was not final, since Articles 3 and 4 of the contract stipulate that the purchaser must draw up a business plan, which was not presented.

175 The Commission rejects those arguments.

176 It should be borne in mind, as a preliminary point, that a measure by which the public authorities grant certain undertakings favourable tax treatment which, although not involving the transfer of State resources, places the recipients in a more favourable financial position than other taxpayers constitutes State aid within the meaning of Article 107(1) TFEU (judgments of 15 March 1994 in *Banco Exterior de España*, C-387/92, ECR, EU:C:1994:100, paragraph 14; 19 May 1999 in *Italy* v *Commission*, C-6/97, ECR, EU:C:1999:251, paragraph 16; and 22 June 2006 in *Belgium and Forum 187* v *Commission*, C-182/03 and C-217/03, ECR, EU:C:2006:416, paragraph 87).

177 In the present case, the Commission found, in recital 118 of the contested decision, that two different taxes had to be paid at the time of the disputed sale, those being, first, a tax on the transfer of the ownership of the Cassandra Mines which, under the Greek Mining Code, amounted to 5% of the sale price of the mines and, second, a tax on the transfer of the ownership of the land plots in question, which amounted to 7 to 9% of their sale price.

178 Regarding the second tax, as discussed in paragraphs 125 to 132 above, the applicants have not managed to demonstrate that the Commission had made errors in the calculation of the value of the land in question. Therefore, nor is the amount of that tax, which had been calculated on that basis and amounted to EUR 0.54 million (see recital 124 of the contested decision), incorrect. Clearly, that amount exceed the EUR 100 000 ceiling for *de minimis* aid, as provided for in Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ 2001 L 10, p. 30), in force at the time of the disputed sale. It follows that the contested decision is not vitiated by errors as to whether there was aid in terms of the exemption from the obligation to pay the tax for the transfer of the ownership of those plots of land.

179 This conclusion is not called into question by the Hellenic Republic's argument that the land in question cannot be used for any purposes other than mining operations. As set out in paragraph 126 above, those plots of land must be regarded as having their own additional value apart from that of the mines in question and their sale cannot escape the tax obligation in question.

180 As it was held in paragraphs 107 to 109 above that the Commission did not err in its valuation of the value of the Cassandra Mines, the conclusion must also be that nor is the calculation of the amount of tax payable for the transfer of the ownership of the mines, which was not paid by Ellinikos Chrysos, in accordance with Article 5, third paragraph, and Article 9(5) of the contract at issue, vitiated by errors.

181 That exemption, provided for by a legislative provision, namely Article 52 of Greek Law No 3220/2004 ratifying the contract at issue, is a measure which is attributable to the State and entails both an advantage for the purchaser of the assets the subject of the disputed sale and a loss of resources for the State budget.

182 In so far as the Hellenic Republic argues that only the 'transfer of mining rights' could be taxable under Greek mining law (Article 173(1) of the Greek Mining Code), that argument must be held to be inadmissible in accordance with the case-law referred to in paragraph 137 above.

183 Similarly, it is also necessary to reject the argument of Ellinikos Chrysos to the effect that transfer taxes were not payable because the contract at issue was not final. Firstly, there is no provision of the contract indicating that it was provisional or non-definitive in nature. Secondly, the provisions relied on by Ellinikos Chrysos (Articles 3 and 4 of the contract) provide only for contract cancellation clauses which allow for its effects to be brought to an end but do not prevent its formation. Thirdly, the contract provides explicitly in Article 9 that it is to take effect as from the date of publication of the ratifying law in the *Official Journal of the Hellenic Republic*.

184 In the light of the foregoing, the first part of the first plea must be rejected, also in respect of the second aid measure.

– The second part: error of assessment of the condition that there be a distortion of competition and an effect on trade between Member States (Case T-233/11)

185 With respect to the second aid measure, the Hellenic Republic disputes that there is a threat of distortion of competition and refers, in essence, to the arguments put forward under the third part of the first plea concerning the first of the aid measures.

186 Since the second aid measure is auxiliary to the first of the aid measures and since the condition that there be a distortion of competition and an effect on trade between Member States must be regarded as met with respect to the first measure, so must it be regarded as met with respect to the second aid measure, on the same grounds as those put forward in response to the arguments submitted under the third part of the first plea concerning the first of the aid measures, as referred to in paragraphs 165 to 172 above.

The second plea: incorrect interpretation and application of Article 14(1), second sentence, of Regulation No 659/1999 and infringement of the principles of proportionality, sincere cooperation, legal certainty and the protection of legitimate expectations (Case T-233/11)

187 The Hellenic Republic, referring to Article 14(1), second sentence, of Regulation No 659/1999 and the content of the Commission document of 7 June 2005 entitled 'State aid action plan — Less and better targeted State aid: a roadmap for State aid reform 2005-2009' (COM(2005) 107 final) disputes the lawfulness of the Commission's decision ordering recovery of the aid on the ground that the Commission exceeded the limits of its discretion and infringed the principles of proportionality, sincere cooperation and the protection of legitimate expectations. It observes that the requirement to recover EUR 15.34 million risks suspending direct investment in Greece in the amount of EUR 850 million, thereby restricting economic growth and competition instead of strengthening it, in a period of economic crisis for Greece. The Commission thus erred in weighing up the threat of distortion of competition with the beneficial effects of pursuing operations in the mines in question, thereby infringing the abovementioned principles.

188 The Commission disputes those arguments.

189 It should be remembered as a preliminary point that Article 14(1) of Regulation No 659/1999 is worded as follows:

'Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary ... The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.'

190 It should furthermore be remembered that the withdrawal of unlawful aid through its recovery is the logical consequence of the finding that it is unlawful, as the purpose of the recovery of the aid is re-establishing the previously existing situation, by which the recipient loses the advantage which it had enjoyed over its competitors. By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored (see, to that effect, judgment of 29 March 2012 in *Commission* v *Italy*, C-243/10, ECR, EU:C:2012:182, paragraph 35 and the case-law cited).

191 It also follows from that function of repayment of aid that, as a general rule, the Commission will not, save in exceptional circumstances, exceed the bounds of its discretion if it asks the Member State to recover the sums granted by way of unlawful aid, since it is only restoring the previous situation (judgment of 9 September 2009 in *Diputación Foral de Álava and Others* v *Commission*, T-227/01 to T-229/01, T-265/01, T-266/01 and T-270/01, ECR, EU:T:2009:315, paragraph 373).

192 Firstly, regarding the allegation of infringement of the principle of proportionality, it is true that it requires measures adopted by EU institutions not to exceed the limits of what is appropriate and necessary in order for the desired objective to be attained, it being understood that when there is a choice between several appropriate measures, recourse must be had to the least onerous (judgment in *Diputación Foral de Álava and Other*s v *Commission*, cited in paragraph 191 above, EU:T:2009:315, paragraph 374).

193 However, recovery of unlawful aid for the purpose of re-establishing the previously existing situation cannot, in principle, be regarded as disproportionate to the objectives of the Treaty provisions on State aid (see judgment in *Diputación Foral de Álava and Others* v *Commission*, cited in paragraph 191 above, EU:T:2009:315, paragraph 372 and the case-law cited).

194 In the present case it is clear that the Hellenic Republic merely refers to the principle of proportionality without explaining exactly how it was infringed, even though the principles referred to in paragraphs 192 and 193 above call for particularly compelling arguments. This complaint must therefore be dismissed as inadmissible in the light of the case-law according to which Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991 requires a 'summary of the pleas in law', a requirement which also applies to the complaints relied on in support of a plea (see, to that effect, judgment of 25 October 2012 in *Arbos* v *Commission*, T-161/06, EU:T:2012:573, paragraph 22 and the case-law cited); mere reference to a principle of EU law, without an indication of the elements of fact and law on which that allegation is based does not satisfy the requirements of Article 44(1)(c) of the Rules of Procedure (see, to that effect, judgment of 2 September 2009 in *El Morabit* v *Council*, T-37/07 and T-323/07, EU:T:2009:296, paragraph 27).

195 Secondly, regarding the allegation of an infringement of the principle of the protection of legitimate expectations, under settled case-law, the right to rely on that principle extends to any person in a situation in which a European Union institution has caused him to entertain expectations which are justified by precise assurances provided to him (see judgment of 21 July 2011 in *Alcoa Trasformazioni* v *Commission*, C-194/09 P, ECR, EU:C:2011:497, paragraph 71 and the case-law cited). Such assurances, in whatever form they are given, are precise, unconditional and consistent information from authorised and reliable sources. By contrast, a person may not plead breach of that principle unless he has been given precise assurances by the administration (see judgment of 14 February 2006 in *TEA-CEGOS and Others* v *Commission*, T-376/05 and T-383/05, ECR, EU:T:2006:47, paragraph 88 and the case-law cited).

196 It follows from that principle, which is especially applicable in relation to the review of State aid pursuant to Article 14 of Regulation No 659/1999, that the protection of the legitimate expectations of the recipient of the aid can be relied upon, provided that the recipient has sufficiently precise assurances, arising from a positive action taken by the Commission, which leads him to believe that a measure does not constitute State aid for the purposes of Article 107(1) TFEU (judgment of 30 November 2009 in *France* v *Commission*, T-427/04 and T-17/05, ECR, EU:T:2009:474, paragraph 261). On the other hand, if the Commission does not give an express opinion on a measure which has been notified to it, its silence cannot, on the basis of the principle of the protection of the legitimate expectations of the recipient undertaking, preclude recovery of that aid (see, to that effect, judgment of 11 November 2004 in *Demesa and Territorio Histórico de Álava* v *Commission*, C-183/02 P and C-187/02 P, ECR, EU:C:2004:701, paragraph 44).

197 It is true that a recipient of aid which is granted unlawfully is not precluded from relying on exceptional circumstances on the basis of which it legitimately assumed the aid to be lawful and therefore opposed its repayment (see, to that effect, judgments of 15 September 1998 in *BFM and EFIM* v *Commission*, T-126/96 and T-127/96, ECR, EU:T:1998:207, paragraph 70; 5 August 2003 in *P & O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission*, T-116/01 and T-118/01, ECR, EU:T:2003:217, paragraphs 201 and 204; and *France* v *Commission*, cited in paragraph 196 above, EU:T:2009:474, paragraph 263).

198 However, a Member State whose authorities have granted aid contrary to the procedural rules laid down in Article 108 TFEU may not plead the legitimate expectations of recipients in order to justify a failure to comply with the obligation to take the steps necessary to implement a Commission decision instructing it to recover the aid. If it could do so, Articles 107 and 108 TFEU would be deprived of all practical force, since national authorities would thus be able to rely on their own unlawful conduct in order to render decisions taken by the Commission under those provisions of the Treaty ineffectual (judgments of 20 September 1990 in *Commission* v *Germany*, C-5/89, ECR, EU:C:1990:320, paragraph 17, and 1 April 2004 in *Commission* v *Italy*, C-99/02, ECR, EU:C:2004:207, paragraph 20). Nor may the Member State rely on the principle of legal certainty for the same purpose (judgment of 14 September 1994 in *Spain* v *Commission*, C-278/92 to C-280/92, ECR, EU:C:1994:325, paragraph 76).

199 Thus, the Hellenic Republic may not rely on the principle of the protection of legitimate expectations to object to the recovery of the aid, as it granted the aid contrary to the rules of procedure laid down in Article 108 TFEU.

200 Thirdly, regarding the allegation of an infringement of the principle of sincere cooperation, under Article 4(3) TEU that principle requires the European Union and the Member States to offer each other mutual respect and assistance in the accomplishment of the missions under the Treaties.

201 The principle of sincere cooperation has been construed as meaning that the Member State to which a decision requiring recovery of illegal aid is addressed is obliged to take all measures necessary to ensure implementation of that decision (see, to that effect, judgment of 29 March 2012 in *Commission* v *Italy*, C-243/10, EU:C:2012:182, paragraph 35 and the case-law cited). However, that principle may not be relied on in order to relieve a Member State of its obligation to recover aid.

202 As observed in paragraph 190 above, the withdrawal of unlawful aid through its recovery is the logical consequence of the finding that it is unlawful, as the purpose of the recovery of the aid is re-establishing the previously existing situation. Moreover, under Article 14 of Regulation No 659/1999, the Commission is required to order the Member State to take all measures necessary to recover the unlawful aid if it finds it to be incompatible with the internal market, unless the recovery is contrary to a general principle of EU law. Moreover, as part of the duty of sincere cooperation which mutually binds the Commission and the Member States in the implementation of the Treaty rules on State aid, the Member State concerned even has the obligation to calculate the exact amount of aid to be recovered (see, to that effect, judgment of 16 July 2014 in *Greece* v *Commission*, T-52/12, EU:T:2014:677, paragraph 197 and the case-law cited).

203 Accordingly, the Hellenic Republic may not rely on the principle of sincere cooperation to evade the obligation to take all measures necessary to implement a Commission decision ordering it to recover aid.

204 Nor can the Hellenic Republic rely on the Commission document of 7 June 2005 entitled ‘State aid action plan — Less and better targeted State aid: a roadmap for State aid reform 2005-2009’ in support of this plea. As rightly observed by the Commission, that document is merely a road map for it in the development of its State aid policy –which is not binding on it in the application of Article 107 TFEU — and of instruments implementing that policy in specific instances, such as regulations creating exemptions by category, regulations on aid for small and medium-sized enterprises, regional investment aid, employment aid or guidelines and framework plans adopted by it.

205 Moreover, regarding the Hellenic Republic’s argument that recovery of the unlawful aid could lead to a loss of direct investment in the country, suffice it to observe that, even if that were true, it could have been taken into consideration by the Commission in the assessment of the compatibility of the aid with the internal market under Article 107(2) and (3) TFEU or the guidelines on regional aid, environmental protection aid or employment aid. The Hellenic Republic has not alleged that the Commission has in any way infringed those provisions, however.

206 In the light of the foregoing, the second plea put forward by the Hellenic Republic must be rejected.

The third plea: insufficient and contradictory statement of reasons and infringement of Article 296 TFEU (Case T-233/11)

207 The Hellenic Republic criticises the statement of reasons of the contested decision on four essential points.

208 Firstly, the Hellenic Republic considers that the Commission provided an insufficient statement of reasons in recitals 105 to 107 of the contested decision in finding that the first of the aid measures was present, on the ground that it failed to explain how the strictly private funds, paid by Ellinikos Chrysos directly to TVX Hellas, constituted a direct or indirect loss of resources of the Greek State which could be attributable to it.

209 Secondly, the Hellenic Republic submits that the Commission failed to provide a sufficient statement of reasons in recitals 117 and 123 of the contested decision concerning the existence of the second aid measure and the grounds on which it had considered payable both the tax on the transfer of the ownership of the Cassandra Mines and the tax on the transfer of the ownership of the land in question, instead of only the first tax, whilst failing to express its own position on the point.

210 Thirdly, the Hellenic Republic submits that the Commission failed to explain in recital 126 of the contested decision why the *de minimis* rule could not apply separately to each of the aid measures it had defined.

211 Fourthly, the Hellenic Republic criticises the Commission for its contradictory and imprecise assessments of the estimate of the value of the mines and its selective approach in taking into account the valuations in the expert report, inter alia in the light of:

— the negative value of the Olympias mine, on the basis of its own assessments, contrary to science and proper practice concerning the possibility for the mine operator to run them or not, depending on whether or not gold prices make it profitable to do so (recital 69 of the contested decision);

— the failure to take account of the costs of protecting employment and the environment and of keeping the Stratoni mine inactive, unlike what it did for the Olympias mine, when both mines were not assets at the time of the disputed sale (recital 77 of the contested decision);

— the fact that the 1995 sale price was taken into account for the calculation of the value of the land and not for the calculation of the overall price of the disputed sale (recitals 54 to 57, 86 and 87 of the contested decision);

— the definition of the relevant market and its geographic scope, given the distinction between the metals and minerals actually produced in the mines.

212 The Commission disputes the arguments put forward by the Hellenic Republic.

213 It must be borne in mind that, according to consistent case-law, the extent of the obligation to state reasons provided for in Article 296 TFEU depends on the nature of the measure in question and on the context in which it was adopted. The statement of reasons must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the European Union judicature to exercise its power of review and to enable the persons concerned to ascertain the reasons for it so that they can defend their rights and ascertain whether or not the measure is well founded. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 2 April 1998 in *Commission* v *Sytraval and Brink's France*, C-367/95 P, ECR, EU:C:1998:154, paragraph 63, and 30 November 2011 in *Sniace* v *Commission*, T-238/09, EU:T:2011:705, paragraph 37). In particular, the Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned in proceedings involving a review of State aid. It is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision (judgments of 1 July

2008 in *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, ECR, EU:C:2008:375, paragraph 96, and 3 March 2010 in *Freistaat Sachsen and Others* v *Commission*, T-102/07 and T-120/07, ECR, EU:T:2010:62, paragraph 180).

214 Furthermore, the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (judgment of 22 March 2001 in *France* v *Commission*, C-17/99, ECR, EU:C:2001:178, paragraph 35). It follows that, in so far as the applicants' complaints challenge the soundness of the contested decision on the points in question, which were moreover examined in the discussion of the first plea of this action, they must be held to be irrelevant for the purposes of this plea (see, to that effect, judgment of 12 December 2006 in *Asociación de Estaciones de Servicio de Madrid and Federación Catalana de Estaciones de Servicio* v *Commission*, T-95/03, ECR, EU:T:2006:385, paragraph 107).

215 Thus, firstly, in arguing that the statement of reasons in recital 106 of the contested decision is insufficient, the Hellenic Republic is in reality challenging the soundness of the Commission's assessment of the condition of public resources and the issue of attributing the aid measure to the State. That argument must therefore be held to be ineffective in the context of the present plea. In any event, as evidenced by paragraph 208 above, the Hellenic Republic was able to ascertain the reasons for the measure so that it could defend its rights and ascertain whether or not the measure was well founded and, as is apparent from paragraphs 146 to 156 above, the Court was able to review the lawfulness of the contested decision on the point. In accordance with the case-law referred to in paragraphs 213 and 214 above, the conclusion is that the contested decision contains a sufficient statement of reasons in this regard.

216 Secondly, regarding the existence of the second aid measure and the grounds on which the Commission considered payable both the tax on the transfer of the ownership of the Cassandra Mines and the tax on the transfer of the ownership of land in question, suffice it to observe that the Commission provided a sufficient explanation of the reasons why the first tax was payable, referring to the positive value of the mines at the time of the disputed sale.

217 Furthermore, in recital 123 of the contested decision, the Commission stated that the Hellenic Republic had acknowledged that 7 to 9% tax was indeed levied in all cases of land sale, irrespective of whether it was a sale of company assets or individual ones. In the same recital, it stated that it had received two different letters, one from the Ministry of Finance (competent in tax matters) and one from the Ministry of the Environment and Climate Change (competent for mining issues), contradicting each other. The Commission drew this contradiction to the attention of the Greek authorities but did not receive any definitive response. It accordingly based itself on the information at its disposal, including the information submitted by the Ministry of Finance, as the competent service for taxation issues, which recognised that such a tax was applicable to the disputed sale.

218 It is apparent from paragraph 217 above that the reasoning which led the Commission to favour one tax rate over the other is clear from the contested decision and is therefore not vitiated by any insufficiency in the statement of reasons.

219 Thirdly, regarding the applicability of the *de minimis* rule to one of the two aid measures, the Hellenic Republic is in reality challenging the soundness of the contested decision on this point, which has already been addressed in paragraph 178 above. The Hellenic Republic's arguments on this point must therefore be dismissed in the context of the present plea.

220 Fourthly, regarding the contradictory and imprecise assessments of the estimate of the value of the mines and its allegedly selective approach in taking into account the valuations in the expert report, in so far as the Hellenic Republic seeks to challenge the soundness of the Commission's assessment its argument must be held to be ineffective in the context of the present plea. Not only was the

Hellenic Republic able to defend itself on the point, the Court was able to conduct its review, as evidenced by paragraphs 105 to 109 above. Therefore, sufficient reasons were given in recitals 75 and 76 of the contested decision.

221 Regarding the alleged failure in the contested decision to take into account of the costs of maintaining the Stratoni mine, the Hellenic Republic's argument is indissociable from its challenge to the soundness of the calculation of the value of the Cassandra Mines, analysed inter alia in paragraphs 100 and 102 above, and must therefore be held to be ineffective in the context of the present plea.

222 Regarding the fact that it was the 1995 sale price that was taken into account in order to calculate the value of the land in question rather than the overall price of the Cassandra Mines, it is clear that such an argument is in reality aimed at challenging the soundness of the Commission's assessment, for which reference is made to paragraphs 90 to 109 and 116 to 130 above, and must therefore be held to be ineffective in the context of the present plea.

223 Lastly, regarding the requirement of effect on competition and on trade between Member States, the Court of Justice has held that, even in cases where it is apparent from the circumstances in which it was granted that the aid is liable to affect trade between Member States and to distort or threaten to distort competition, the Commission had at least to set out those circumstances in the statement of reasons for its decision (judgments of 6 September 2006 in *Portugal* v *Commission*, C-88/03, ECR, EU:C:2006:511, paragraph 89, and *Commission* v *Italy and Wam*, cited in paragraph 165 above, EU:C:2009:272, paragraph 49).

224 However, the Commission is not required to analyse national or European market shares of the recipient undertaking, or the position of competing undertakings, or trade flows of the goods or services in question between Member States, once it has set out how the aid distorts or threatens to distort competition between Member States (see, to that effect, judgments of 30 April 1998 in *Vlaams Gewest* v *Commission*, T-214/95, ECR, EU:T:1998:77, paragraph 67; 15 June 2005 in *Regione autonoma della Sardegna* v *Commission*, T-171/02, ECR, EU:T:2005:219, paragraph 85; and 6 September 2006 in *Italy and Wam* v *Commission*, T-304/04 and T-316/04, EU:T:2006:239, paragraph 64).

225 As stated in paragraph 169 above, the Commission was not required to analyse in detail the metals actually produced or exported at the time of the disputed sale, as it was sufficient, for the purposes of examining this criterion, to show and provide reasons that the aid strengthened the recipient undertaking's market position in the activity it wished to undertake, which the Commission did in recital 110 of the contested decision. Consequently, the contested decision contains a sufficient statement of reasons on this point.

226 In the light of the foregoing considerations, the present plea must be rejected in its entirety.

The fourth plea: infringement of the rights of the defence, infringement of its procedural rights, misuse of power and infringement of the principle of good administration and of the duty to conduct an impartial and diligent examination (Case T-262/11)

227 Under the present plea, Ellinikos Chrysos argues, by a first complaint, that there was an infringement of its rights of defence, including the right of access to the file, the right to be heard and of Article 41 of the Charter of Fundamental Rights of the European Union, arising from the failure to disclose the identity of the complainant, a factor which is important for it to be able to prepare its defence and challenge the credibility and legitimate interest on which such a complainant might rely.

228 By a second complaint, Ellinikos Chrysos challenges the fact that Hellenic Mining Watch was granted leave to participate as an interested party in the administrative procedure, as defined in Article 1(h) of Regulation No 659/1999, and by settled case-law, in the absence of that organisation's having an interest of its own which might be affected by the granting of the aid.

229 By a third complaint, Ellinikos Chrysos alleges misuse of power, infringement of the principle of good administration and of the duty to conduct an impartial and diligent examination by the Commission, which adopted a selective, partial and arbitrary method in examining the parties' arguments by distorting its arguments and disregarding the facts. In support of its argument, it refers to a press release published by the Commission on 23 February 2011, in which it stated that the decision finding that there was State aid was based on the expert report which had estimated the value of the Cassandra Mines to be EUR 25 million, whereas that amount corresponded to its own estimate. The Commission corrected the text of the first press release, without issuing a separate corrigendum. Moreover, the conduct of the administrative procedure was vitiated by irregularities, contrary to the duty to conduct an impartial and diligent examination in that the actual value of the assets transferred was ignored, despite there being sufficient evidence present in the file.

230 The Commission contests those complaints.

231 It should be noted that none of the provisions on the procedure for reviewing State aid reserves a special role, among the interested parties, to the recipient of aid. Furthermore, the State aid procedure is not an action brought 'against' the recipient of the aid, allowing the recipient to rely on rights as extensive as the rights of the defence per se. Nevertheless, although the aid recipient does not have the status of party to the proceedings, the case-law has recognised certain procedural rights for aid recipients allowing them to provide information to the Commission and to put forward their arguments (judgment in *Scott* v *Commission*, cited in paragraph 130 above, EU:T:2003:113, paragraph 54).

232 Under that case-law, the interested parties have in essence the role of information sources for the Commission in the administrative procedure instituted under Article 108(2) TFEU (judgments of 22 October 1996 in *Skibsværftsforeningen and Others* v *Commission*, T-266/94, ECR, EU:T:1996:153, paragraph 256, and 25 June 1998 in *British Airways and Others* v *Commission*, T-371/94 and T-394/94, ECR, EU:T:1998:140, paragraph 59).

233 Ellinikos Chrysos, as the recipient of the measures in question, was invited to submit its observations and was able to put forth its views on the considerations of the Commission and the Member State concerned and to provide information to the Commission, all of which was duly taken into account during the administrative procedure. Its procedural guarantees were thus full respected in the present case by the Commission.

234 Regarding the first complaint, the failure to disclose the identity of the complainant, the Commission points out, correctly, that there is no duty requiring it to reveal the identity of the complainant or of any source of information to interested parties. Ellinikos Chrysos cannot, therefore, criticise the Commission for procedural irregularities on this point.

235 Regarding the second complaint, concerning the fact that Hellenic Mining Watch was allowed to participate as an interested party in the administrative procedure, must be held to be ineffective. In fact, allowing such an organisation to participate as an interested party results directly from Article 108(2) TFEU and has no bearing whatsoever on the procedural status or rights of Ellinikos Chrysos in that procedure.

236 Regarding the third complaint, alleging misuse of power, infringement of the principle of good administration and of the duty to conduct an impartial and diligent examination by the Commission, it is clear, first, that Ellinikos Chrysos, through its insufficiently substantiated arguments, has not

managed to demonstrate that the Commission infringed its duties of diligence and sound administration. In fact, the analysis of the merits of the case shows that the Commission correctly assessed the value of all the property the subject of the disputed sale, applied the principle of the private investor and used all the information at its disposal in order to discharge its task of establishing that value correctly.

237 Second, regarding the Commission's alleged misuse of power, it must be remembered that, according to settled case-law, an act is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see judgment of 4 December 2013 in *Commission* v *Council*, C-121/10, ECR, EU:C:2013:784, paragraph 81 and the case-law cited).

238 The allegations put forward by Ellinikos Chrysos in this regard are very general and unsubstantiated. In essence, it merely refers to the error in the press release published by the Commission on 23 February 2011, which, as it recognises, the Commission corrected at its request. In such circumstances, the conditions laid down by the case-law referred to in paragraph 237 above are manifestly not met in the present case.

239 In conclusion, the fourth plea in law must be rejected as unfounded, as must both actions in their entirety.

Costs

240 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Joins Cases T-233/11 and T-262/11 for the purposes of the judgment;**

2. **Dismisses the actions;**

3. **In Case T-233/11, orders the Hellenic Republic to bear its own costs and to pay those incurred by the European Commission;**

4. **In Case T-262/11, orders Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou to bear its own costs and to pay those incurred by the Commission.**

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 9 December 2015.

[Signatures]

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