

Form of order sought

- annul and set aside in its entirety the decision of the European Commission of 26 February 2015 on measure SA.35388 (2013/C) (ex 2013/NN and ex 2012/N), Poland, ‘Setting up of Gdynia-Kosakowo Airport’;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies inter alia on the following pleas in law.

1. First plea in law:

- Arbitrariness and manifest error in determining the facts taken as the basis for making the contested decision, and consequently exceeding by the Commission of the bounds of its discretion and committing manifest errors in the assessment of the evidence.

2. Second plea in law:

- Failure of the Commission to consider the relevant factors and circumstances for the legal assessment of the investments in Port Lotniczy Gdynia Kosakowo.

3. Third plea in law:

- Exceeding by the Commission of the bounds of its discretion within the meaning of the case-law emphasising the obligations of the institution exercising discretion to explain both why certain items of evidence and facts are taken into consideration and why others are rejected.

4. Fourth plea in law:

- Breach of Article 107(1) TFEU in conjunction with a general principle of European law — the principle of legal certainty and good faith of the institution towards subjects of law, by its erroneous application and interpretation.

5. Fifth plea in law:

- Infringement in the erroneous legal categorisation of facts and evidence, resulting in a breach by the contested decision of Article 107(1) TFEU, in finding that the conditions were not fulfilled in this case for regarding the operations at issue as satisfying the private investor test and that it had not been shown that the investment project would be carried out by a private investor, and consequently finding that the Gdynia Kosakowo investment was unauthorised public aid.

Action brought on 8 May 2015 — Gameart v Commission

(Case T-264/15)

(2015/C 254/21)

Language of the case: Polish

Parties

Applicant: Gameart sp. z o.o. (Bielsko-Biała, Poland) (represented by: P. Hoffman, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the European Commission decision of 18 February 2015 in so far as it confirms the refusal to consider the request sent to the Ministry of Foreign Affairs of the Republic of Poland for access to copies, held by that Ministry, of letters from the Republic of Poland to the Commission concerning the procedure conducted by the Commission in respect of a breach by the Republic of Poland of EU law in connection with the Law of 19 November 2009 on games of chance;
- rule — in the event that it does not share the view, taken by the applicant, that the second paragraph of Article 5 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents cannot be construed as authorising the European Commission to adopt a binding decision on a request for access to documents, submitted by a natural or legal person to an authority of a Member State, which has been forwarded by that State to the Commission — that, by virtue of Article 277 TFEU, the second paragraph of Article 5 of that regulation cannot be applied in the present case on the ground that it is invalid;
- rule that the European Commission is to bear its own costs and to pay the costs incurred by the applicant.

Pleas in law and main arguments

In support of its action, the applicant puts forward four pleas in law.

1. The first plea in law, concerning the lack of competence of the Commission in the light of the second paragraph of Article 5 of Regulation No 1049/2001
 - As the request was sent to an authority of a Member State and related to documents originating in that Member State, Article 5 of the regulation is not applicable. The mere fact that the Member State forwarded that request to the Commission pursuant to the second paragraph of Article 5 of that regulation does not confer competence on the Commission as the request does not concern documents originating with the Commission. Even if Article 5 of the regulation were applicable to the request, the second paragraph of Article 5 of the regulation could not be interpreted as authorising an EU institution to take a binding decision in respect of that request.
2. The second plea in law, concerning a breach of Article 4(4) and 4(5) of Regulation No 1049/2001
 - As it took a decision on access to a document originating in the Republic of Poland, the Commission was under an obligation, pursuant to Article 4(4) of the regulation, to consult that State; this it failed to do. Access to a document originating in the Republic of Poland ought, in the absence of any objection expressed pursuant to Article 4(5) of the regulation, to be refused only in exceptional circumstances, which did not obtain in the present case.
3. The third plea in law, concerning a breach of Article 296 TFEU
 - The Commission has failed in any way to provide grounds for its competence to adopt the decision in its contested part, even though the applicant dedicated by far the greater part of its confirmatory application to the issue of the Commission's lack of competence. The information in that regard was not set out in the grounds of the contested decision, a fact which makes it impossible for the applicant itself to safeguard its rights before the General Court.
4. The fourth plea in law, concerning a claim of invalidity pursuant to Article 277 TFEU
 - In the event that the General Court should find, contrary to the arguments put forward in the context of the first plea in law, that the second paragraph of Article 5 of Regulation (EC) No 1049/2001 has to be interpreted as meaning that the transmission, by a Member State to an institution of the European Union, of a request for access to a document which is held by that Member State empowers that institution to take a binding decision in regard to that request, the applicant submits that Article 5, thus construed, cannot be based on Article 15(3) TFEU or on Article 255 EC as its proper basis and is for that reason invalid. In addition, that provision, thus construed, is incompatible with the grounds of Regulation No 1049/2001, which results in its invalidity in the light of Article 296 TFEU (Article 253 EC).