

3. By the third plea in law, the applicant alleges infringement and misapplication of Article 107(1) TFEU in so far as the Commission considers that the measures in favour of Tercas are imputable to the Italian State. It maintains, in that regard, that the IDPF has made a voluntary commitment to such intervention and the argument put forward by the Commission, which describes the Bank of Italy as a body managing (purportedly) public resources, is incorrect and does not convey the true sense of the functions which are ascribed to that central bank under the Italian legal system. The activities of the Bank of Italy are aimed at verifying compliance with the principle of sound and prudent management, on the basis of a simple examination of lawfulness and regularity, without prejudice to the free individual choices of the persons supervised by that Bank. In addition, the specific evidence of intervention by the public authorities referred to by the Commission in connection with the intervention in favour of Tercas is manifestly incapable of supporting the conclusion reached by the Commission.
4. By the fourth plea in law, the applicant claims infringement of Article 107(1) TFEU in connection with the misapplication of the private operator in a market economy test. It argues in that regard that the Commission did not verify whether the IDPF's intervention satisfied the economic rationality test, in the light of the factors meticulously considered by the IDPF in its assessment of the future effects of potential intervention scenarios. In particular, it claims that the Commission did not verify whether, in similar circumstances, a private operator of a size comparable to the IDPF would have carried out economic transactions on a scale similar to those which have been contested by that institution. Lastly, the decision to exclude the costs of reimbursing depositors from the application of the private investor test — as an expression of the obligations which the State assumes as a public authority — is not justified in the present case and is in conflict with the most recent case-law of the Courts of the European Union.
5. By the fifth plea in law, the applicant sets out the reasons why the Commission made a manifest error of assessment in deeming the measures in question incompatible with the internal market. In particular, the Commission erred in finding that the devaluation of the subordinated debt, provided for *ratione temporis* only in its 2013 banking communication, is an essential requirement for any conclusion that the measures are compatible with the internal market. In particular, it did not take account of the legal impossibility of imposing burden-sharing on the part of the persons liable to pay that subordinated debt. In addition, the Commission failed to take into consideration the fact that the costs of intervention had already been substantially reduced by significant burden-sharing measures. The compatibility of the measures is also apparent from the plan for returning Tercas to a state of viability and from the presence of measures to limit the alleged distortion of competition arising following the IDPF's intervention. Therefore, the applicant also argues that there has been a manifest failure to make inquiries.
6. By the sixth plea in law, the applicant alleges that the Commission made a factual error and an incorrect legal classification in deeming the guarantee of EUR 30 000 000 to have been called on and in regarding such a measure as the equivalent of a non-repayable grant to Tercas and, therefore, as equivalent to State aid.
7. Lastly and in the alternative, by the seventh plea in law Tercas complains of infringement of Article 16(1) of Regulation (EU) No 2015/1589, on the ground that the Commission has ordered the Italian State to recover the aid notwithstanding the fact that this is contrary to the general EU principles of legal certainty, protection of legitimate expectations, and proportionality.

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**Action brought on 1 May 2016 — Interbank Deposit Protection Fund v Commission**

**(Case T-198/16)**

(2016/C 222/41)

*Language of the case: Italian*

**Parties**

*Applicant:* Interbank Deposit Protection Fund (Rome, Italy) (represented by: M. Siragusa, G. Scassellati Sforzolini and G. Faella, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul European Commission Decision C(2015) 9526 final of 23 December 2015 on the State aid SA.39451 (2015/C) (ex 2015/NN);
- in the alternative, annul that decision in so far as it concerns the assessment and classification of the aid element inherent in measure 3;
- order the Commission to pay the costs;
- order any other measure, including any measure of inquiry, which it deems appropriate.

**Pleas in law and main arguments**

The decision contested in the present action is the same one contested in Case T-98/16, *Italy v Commission*, and Case T-196/16, *Banca Tercas v Commission*.

The pleas in law and main arguments are similar to those relied on in those two cases.

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**Action brought on 29 April 2016 — Gfi PSF v Commission**

(Case T-200/16)

(2016/C 222/42)

*Language of the case: French*

**Parties**

*Applicant:* Gfi PSF Sàrl (Leudelange, Luxembourg) (represented by: F. Moyses, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul the decision of the Publications Office of the European Union of 2 March 2016, the decision of 16 March 2016 and the decision of 22 April 2016 rejecting the applicant's tender submitted in the context of European public contract No 10573 'Development, maintenance, evolution and support services for Internet sites based on SharePoint technology and drafting services for publication on the Internet', published by notice of 17 December 2015, for Lot No 1 with a total value of EUR 2 005 704 over four years;
- order the Office to pay the applicant compensation for damage suffered in the amount of EUR 415 000;
- order the Office to pay the expenses incurred by the applicant and by the Office.

**Pleas in law and main arguments**

In support of the action, the applicant relies on two pleas in law, alleging an infringement of the obligation to state reasons and an infringement of Article 111(4)(b) of Regulation No 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ 2015 L 286, p. 1).

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