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Judgment of the General Court in Case T-366/22 | Ryanair v Commission (Condor II; COVID-19)

The General Court dismisses Ryanair's action against the Commission's approval of the COVID-19 aid granted by Germany to Condor for 2020

Ryanair has failed to demonstrate that the Commission should have opened the formal investigation procedure because of doubts as to the compatibility of the aid with the internal market

By decision of 26 July 2021, the Commission again ¹ approved an individual aid measure by Germany for the benefit of the German charter airline Condor Flugdienst GmbH ('Condor'), intended to make good the damage suffered by Condor as a result of the travel restrictions linked to the COVID-19 pandemic ² during the period from 17 March to 31 December 2020. ³

The measure consists of two loans, granted by the Kreditanstalt für Wiederaufbau (KfW) (Credit Institution for Reconstruction) and accompanied by a State guarantee, with a total nominal amount of €400 million. The aid element of that measure amounted to €144.1 million. ⁴

Ryanair challenged that approval decision of the Commission before the General Court of the European Union.

By today's judgment, **the General Court dismisses Ryanair's action.**

As regards the admissibility of the action, the General Court finds, first of all, that Ryanair has not demonstrated that it is individually concerned by the Commission's decision, with the result that it cannot challenge the merits of that decision.

The General Court finds, however, that the action is admissible in so far as it seeks to maintain Ryanair's procedural rights. The Commission adopted the contested decision following a preliminary examination, and therefore without initiating the formal investigation procedure, which had the effect of depriving Ryanair, as an interested party, of the possibility of submitting comments during that procedure. Ryanair may therefore claim that the Commission should have had doubts as to the compatibility of the measure at issue with the internal market, so that it should have initiated the formal procedure.

According to the General Court, **Ryanair has not succeeded in demonstrating that the Commission** should have had such doubts, in that it should have **encountered serious difficulties during the preliminary examination of the compatibility of the aid with the internal market.**

In that regard, as a preliminary point, the General Court recalls that the fact that Condor is an undertaking in difficulty which has received rescue aid and restructuring aid does not prevent it from also receiving aid in the context of the COVID-19 pandemic, provided that the conditions for obtaining each of those aid measures are satisfied.

In the first place, the General Court rejects a set of evidence, relied on by Ryanair, relating to the compatibility of the measure at issue with the provision of the FEU Treaty according to which aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market. ⁵

In that context, Ryanair has not demonstrated that the Commission should have had doubts as to the direct causal link between the travel restrictions linked to the COVID-19 pandemic and the damage suffered by Condor.

In particular, the General Court holds that, despite the difficulties faced by Condor, the counterfactual scenario used by the Commission, based on Condor's business plan for 2020, which provided for the purchase of Condor in 2020 by an investor, was a plausible scenario on which the Commission could rely without having any doubts. Taken individually, Condor was a sound and viable undertaking whose difficulties were linked to those of its parent company. The Commission could therefore expect the investors to express an interest in its purchase.

The General Court also rejects Ryanair's arguments seeking to demonstrate that the Commission failed to ensure that the aid at issue compensated only the costs generated by the travel restrictions linked to the COVID-19 pandemic and not the costs associated with Condor's pre-existing difficulties and, in particular, the costs associated with its restructuring. Similarly, Ryanair's arguments alleging that the Commission failed to take into consideration a potential risk of double compensation as a result of the rescue aid from which Condor previously benefited are rejected.

The General Court also rejects Ryanair's arguments that the Commission should have had doubts as to the quantification of the damage suffered by Condor as a result of the travel restrictions linked to the COVID-19 pandemic, alleging, inter alia, the absence of measures to ensure that Condor had reduced its costs.

Lastly, Ryanair has not succeeded in demonstrating that the amount of the aid was underestimated, the General Court finding, inter alia, that, in order to determine that amount, the Commission took account of a body of coherent and consistent evidence capable of indicating that the assumptions envisaged were plausible.

In the second place, Ryanair has also failed to demonstrate that the aid at issue is discriminatory vis-à-vis other airlines operating in Germany (in particular Ryanair itself), that it is disproportionate, or that it is contrary to the freedom of establishment and the freedom to provide services.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within 2 months and 10 days of notification of the decision.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ That decision, relating to aid SA.56867, was taken after the General Court annulled a first approval decision of the Commission dated 26 April 2020. The General Court annulled that first decision owing to a failure to state reasons, while suspending the effects of that annulment pending the adoption of a new decision by the Commission: see judgment of 9 June 2021, *Ryanair v Commission (Condor; COVID-19)*, T-665/20, and press release [No 98/21](#).

² During the period from 2019 to 2021, Condor also benefited from State aid measures for other reasons, namely aid measures intended to resolve its financial difficulties caused by the insolvency of its former parent company, Thomas Cook Group plc. Accordingly, by decision of 14 October 2019

(SA.55394), the Commission approved an aid measure in favour of Condor in the form of a €380 million **rescue loan**, granted by the KfW and accompanied by a State guarantee. Ryanair challenged that decision before the General Court, which dismissed the action by judgment of 18 May 2022, *Ryanair v Commission (Condor; rescue aid)*, [T-577/20](#) (see also press release [No 87/22](#)). Since no appeal was brought against that judgment, it has become final. Furthermore, by another decision dated 26 July 2021 (SA.63203), the Commission approved German **aid for the restructuring** of Condor, consisting in particular of a partial write-off of a €90 million debt and a write-off of interest amounting to €20.2 million. Ryanair challenged that decision before the General Court and the latter annulled that decision (see judgment of 8 May 2024, *Ryanair v Commission (Condor; restructuring aid)*, [T-28/22](#), and press release [No 83/24](#)); Condor has brought an appeal against that judgment of the General Court before the Court of Justice, which is pending ([C-505/24 P](#) – *Condor Flugdienst v Ryanair*).

³ By yet another decision dated 26 July 2021 (SA.63617), the Commission approved **further COVID-19 aid** from Germany to Condor to compensate for damage suffered during **the period from 1 January to 31 May 2021**. That decision has become final as no legal action has been taken against it.

⁴ At the time of the first decision, the two loans amounted to a total of €550 million, with the aid element included amounting to €267.1 million.

⁵ Article 107(2)(b) TFEU.