



Press and Information

General Court of the European Union
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Judgment in Case T-512/11
Ryanair Ltd v European Commission

The Court partially annuls a Commission Decision declaring that the exemption of transfer and transit passengers from payment of the Irish air travel tax did not constitute State aid

The Commission should have initiated the formal examination procedure in order to verify that such an exemption did not constitute State aid

Since 30 March 2009 airline operators must pay in Ireland an excise duty referred to as the 'air travel tax' ('ATT'). It must be paid in respect of 'every departure of a passenger on an aircraft from an airport' located in Ireland.

Under the Irish Finance Act, on which the ATT is based, the definition of 'passenger' exempts transfer¹ and transit² passengers from payment of the tax.

When the ATT was introduced, it was levied on the basis of the distance between the departure airport and the arrival airport, at the rate of €2 in the case of a flight to a destination located no more than 300 km from Dublin (Ireland) airport and €10 in any other case. Following an investigation by the Commission, the Irish authorities altered the applicable rates as of 1 March 2011, creating a single rate of €3 applicable to all departures, regardless of the distance travelled.

In July 2009, Ryanair lodged a complaint with the Commission regarding several aspects of the ATT. Ryanair maintained, in particular, that the non-application of the ATT to transit and transfer passengers constituted illegal State aid for the benefit of the airlines Aer Lingus and Aer Arann: those undertakings had a relatively high proportion of such passengers and flights. Ryanair also referred to the fact that the flat-rate amount of the tax accounted for a higher proportion of the ticket price for low-cost carriers than for traditional airlines. Finally, Ryanair stated that the lower tax rate which applied depending on the distance travelled favoured Aer Arann, given that 50% of its passengers travelled to destinations located less than 300 km from Dublin airport.

By Decision of 13 July 2011 the Commission found in particular that the non-application of the ATT to transfer and transit passengers did not constitute State aid, as that measure was not selective³ (see Commission [press release](#)). Ryanair took the view that the exemption at issue constituted State aid and brought an action before the General Court seeking its partial annulment.

¹ A transfer passenger is 'a passenger who arrives on a flight to an airport and who departs from the airport on a further flight, other than to the airport where the passenger's journey originated, where both flights are part of a single booking and where the length of time between the scheduled time of arrival of the flight to the airport and the scheduled time of departure of the flight from that airport is not more than 6 hours'.

² A transit passenger is 'a passenger who is on board an aircraft which lands at an airport in the course of its journey and who continues his or her journey on that aircraft'.

³ However, it found that the use of a lower domestic rate between 30 March 2009 and 1 March 2011 appeared to constitute State aid raising questions as regards its compatibility with the internal market. The application of such a rate might confer an unlawful advantage on domestic flights over cross-border flights. The Commission therefore opened the formal investigation procedure in respect of that measure, which resulted in the Commission's decision of 25 July 2012 (see Commission [press release](#)). By that decision the Commission held that the measure in question constituted State aid that was incompatible with the internal market. Air Lingus and Ryanair were amongst the beneficiaries of the State aid. Those airlines have brought an action before the General Court to contest that decision (Case [T-473/12 Aer Lingus v Commission](#) and Case [T-500/12 Ryanair v Commission](#)). Judgment in those cases will be delivered in the coming months.

Ryanair claims in particular that the Commission should have had ‘serious doubts’ regarding the compatibility of the ATT exemption for transit and transfer passengers, justifying the initiation of the formal investigation procedure.⁴ It submits that the Commission was wrong to find that the exemption was not selective. Lastly Ryanair submits that the objective of the exemption is extraneous to the nature of the tax system and favours traditional airlines.

By its judgment today, the Court annuls the Commission’s decision in so far as it finds that the non-application of the Irish air travel tax to transit and transfer passengers does not constitute State aid.

If, following the preliminary investigation of a State measure, the Commission encounters serious difficulties which raise doubts as to its compatibility with the internal market, it is required to initiate the formal investigation procedure. **The Court thus examined whether in the present case there was evidence indicating that the Commission had encountered such difficulties.**

In that regard the Court considers, first, that the duration of the preliminary investigation phase was excessive and that there are no circumstances to justify it. The Commission adopted its decision on 13 July 2011 at the end of a preliminary investigation phase which began on 21 July 2009 — the date on which Ryanair’s complaint was received — namely after a period of almost 24 months. **Such a period exceeds what is normally entailed by an initial examination,** the sole aim of which is to enable the Commission to form an initial opinion on the classification of the measures submitted for its assessment and their compatibility with the internal market. That therefore constitutes an indication that the Commission encountered serious difficulties during its examination.

Secondly, the Court considers that the Commission’s examination is incomplete and insufficient. In particular, this is apparent from certain inconsistencies in the Commission’s decision itself and between that decision and the content of the letter from the Irish authorities which prompted the examination of the exemption. Those inconsistencies give grounds for concluding that, when the Commission adopted the decision, **it did not have the information with which to carry out a sufficiently complete analysis of the selectivity of the measure and to conclude that the rules for the application of the exemption did not raise doubts.**

The Court thus concludes that it may be inferred from a **body of objective and consistent evidence that the Commission should have initiated the formal investigation procedure in order to verify that the disputed measure was not selective and possibly to conclude that that measure did not constitute State aid. That would have allowed the applicant and the other parties concerned to present their observations in connection with that procedure.**

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 two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union 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.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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⁴ Ryanair refers to the following indications: (i) the excessive and unreasonable period of the preliminary investigation procedure (almost 24 months) and (ii) the incomplete and insufficient nature of the Commission’s decision. Ryanair alleges in particular that the Commission failed to define, and misapplied, the principles of revenue generation, prevention of double taxation and fiscal neutrality.