Press and Information

Court of Justice of the European Union
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Judgment in Joined Cases C-262/18 P and C-271/18 P
Commission and Slovak Republic v Dôvera zdravotná poisťovňa, a.s.

The Court of Justice upholds the decision of the Commission according to which health insurance bodies operating under Slovak State supervision do not fall within the rules of EU law on State aid

The General Court's judgment upholding an action brought against that decision is set aside

By its judgment in Commission and Slovak Republic v Dôvera zdravotná poisťovňa (C-262/18 P and C-271/18 P), delivered on 11 June 2020, the Grand Chamber of the Court of Justice set aside the judgment of the General Court of 5 February 2018, Dôvera zdravotná poisťovňa v Commission,[1] and, giving final judgment in the case, dismissed the action for annulment brought by the Slovak health insurance body Dôvera zdravotná poisťovňa a.s. ('Dôvera') against the Commission's decision of 15 October 2014 concerning State aid allegedly granted by the Slovak Republic to two other Slovak health insurance bodies ('the decision at issue').[2] The Court thereby confirmed its case-law regarding the inapplicability of the State aid rules to health insurance bodies operating under State supervision in the context of a social security scheme that is pursuing a social objective and applies the principle of solidarity.

In 1994, the Slovak health insurance system changed from a unitary system, with a single State-owned health insurer, to a pluralistic model in which both public and private bodies could operate. Under Slovak legislation which entered into force on 1 January 2005, those bodies, whether State-owned or in private ownership, must have the legal status of a profit-seeking joint stock company governed by private law. During the period from 2005 to 2014, Slovak residents could choose between several health insurance bodies, including Všeobecná zdravotná poisťovňa a.s. ('VšZP') and Spoločná zdravotná poisťovňa a.s. ('SZP'), which merged on 1 January 2010 and whose sole shareholder is the Slovak State, and Dôvera and Union zdravotná poisťovňa a.s., whose shareholders are private sector entities.

Following a complaint lodged by Dôvera on 2 April 2007 concerning State aid allegedly granted by the Slovak Republic to SZP and to VšZP, the Commission initiated the formal investigation procedure. In the decision at issue, the Commission found, however, that the activity carried out by SZP and VšZP was non-economic in nature and that those bodies were consequently not undertakings within the meaning of Article 107(1) TFEU, and therefore the measures to which the complaint related could not constitute State aid. The action for annulment which Dôvera brought against that decision was upheld by the General Court, in particular on the ground that the Commission had not applied the concepts of 'undertaking', within the meaning of Article 107(1) TFEU, and 'economic activity' correctly with respect to VšZP and SZP.

Two appeals against that judgment of the General Court were brought by the Commission and the Slovak Republic before the Court of Justice, which recalled that the prohibition of State aid laid down in Article 107(1) TFEU concerns only the activities of undertakings, the concept of 'undertaking' covering any entity engaged in an economic activity, irrespective of the legal status of that entity and the way in which it is financed. However, by stating that the activity carried out by

[1] Judgment of the General Court of 5 February 2018, Dôvera zdravotná poisťovňa v Commission (T-216/15, not published, EU:T:2018:64)
[2] Commission Decision (EU) 2015/248 of 15 October 2014 on the measures SA.23008 (2013/C) (ex 2013/NN) implemented by Slovak Republic for Spoločná zdravotná poisťovňa, a.s (SZP) and Všeobecná zdravotná poisťovňa, a.s (VZP) (OJ 2015 L 41, p. 25)

VšZP and SZP in the context of the Slovak compulsory health insurance scheme, the characteristics of which reflect those of a social security scheme that is pursuing a social objective and applies the principle of solidarity under State supervision, was economic in nature, the General Court had made several errors of law.

In that regard, the Court of Justice made clear that, for the purposes of assessing whether an activity carried out in the context of a social security scheme is non-economic in nature, it must be ascertained, in particular, whether and to what extent the scheme in question may be considered to be applying the principle of solidarity and whether the activity of the insurance bodies managing such a scheme is subject to State supervision.

On the basis of those considerations, the Court of Justice noted that, contrary to the findings of the General Court, the existence of a certain amount of competition as regards the quality and scope of services provided in the Slovak compulsory health insurance scheme, such as the ability of insurers to offer insured persons additional services on a free of charge basis and the freedom of the insured to choose their insurer and to switch once a year, is not such as to call into question the social and solidarity-based nature of the activity carried out by the insurance bodies in the context of a scheme applying the principle of solidarity under State supervision. As regards the existence of a certain amount of competition between insurance bodies when procuring the relevant services, the Court added that, when determining the nature of the activity of an entity, there is no need to dissociate the activity of purchasing goods or services from the subsequent use to which they are put, the nature of the activity of the entity concerned being determined according to whether or not the subsequent use amounts to an economic activity.

Since the General Court erroneously found that the elements of competition referred to above were such as to affect the social and solidarity character of the activity carried out by VšZP and SZP, the Court of Justice upheld the appeals of the Commission and the Slovak Republic and set aside the judgment under appeal. Finding, moreover, that the state of the proceedings was such that it could give final judgment in the matter and that it should do so, the Court of Justice then itself examined the action for annulment brought by Dôvera against the decision at issue.

In that regard, the Court noted that membership of the Slovak health insurance scheme is compulsory for all Slovak residents, that the amount of contributions is fixed by law in proportion to the income of the insured persons and not to the risk they represent on account of their age or state of health, and that all insured persons have the right to the same level of benefits set by law, so that there is no direct link between the amount of the contributions paid by the insured person and that of the benefits provided. In addition, the insurance bodies are required to ensure that every Slovak resident who requests it has health insurance cover, regardless of the risk resulting from that person's age or state of health, and the scheme also provides for a mechanism for equalisation of the costs and risks. Thus, that health insurance scheme has, according to the Court, all the characteristics of the principle of solidarity.

Having found the Slovak compulsory health insurance scheme also to be subject to State supervision, the Court further noted that the presence of competitive elements in that scheme is secondary, as compared with the scheme's social, solidarity and regulatory aspects, and that the ability of insurance bodies to seek, use and distribute profits is strictly framed by legal obligations the purpose of which is to preserve the viability and continuity of compulsory health insurance.

In the light of all those considerations, the Court held that the Commission was justified in concluding, in the decision at issue, that the Slovak compulsory health insurance scheme pursues a social objective and applies the principle of solidarity under State supervision. The Commission was also entitled, therefore, to find that the activity of VšZP and SZP within that scheme was not of an economic nature and, accordingly, that those bodies could not be classified as undertakings within the meaning of Article 107(1) TFEU.

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.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The full text of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355