



Press and Information

General Court of the European Union  
**PRESS RELEASE No 16/21**  
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Judgment in Case T-238/20  
Ryanair DAC v Commission

## **The loan guarantee scheme put in place by Sweden to support airlines holding a Swedish operating licence amid the Covid-19 pandemic and intended to remedy the serious disturbance to the economy of that Member State is compatible with EU law**

*The scheme at issue is presumed to have been adopted in the interest of the European Union*

In April 2020, Sweden notified the European Commission of an aid measure in the form of a loan guarantee scheme aimed at supporting airlines holding a Swedish operating licence<sup>1</sup> amid the Covid-19 pandemic ('the loan guarantee scheme'). More particularly, that scheme is aimed at airlines which, on 1 January 2020, held a Swedish licence to conduct commercial activities in aviation, with the exception of airlines operating unscheduled flights. The maximum amount of the loans guaranteed under that scheme is five billion Swedish kronor (SEK), and the guarantee must be granted until 31 December 2020 for a maximum of six years.

After finding that the notified scheme constituted State aid within the meaning of Article 107(1) TFEU, the Commission assessed the aid in the light of its communication of 19 March 2020, entitled 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak'.<sup>2</sup> By decision of 11 April 2020,<sup>3</sup> the Commission declared the notified scheme compatible with the internal market in accordance with Article 107(3)(b) TFEU. Under that provision, aid intended to remedy a serious disturbance in the economy of a Member State may be regarded as compatible with the internal market.

The airline Ryanair brought an action to annul that decision, which is, however, dismissed by the Tenth Chamber (Extended Composition) of the General Court of the European Union. In that context, that Chamber examines for the first time the legality of a State aid scheme adopted in order to address the consequences of the Covid-19 pandemic in the light of Article 107(3)(b) TFEU.<sup>4</sup> The General Court also clarifies the relationship between the rules on State aid and, on the one hand, the principle of non-discrimination on grounds of nationality laid down in the first paragraph of Article 18 TFEU and, on the other, the principle of the free provision of services.

### Assessment of the General Court

In the first place, the General Court carries out a review of the Commission's decision in the light of the first paragraph of Article 18 TFEU, which prohibits any discrimination on grounds of nationality within the scope of application of the Treaties, without prejudice to any special provisions contained therein. However, since Article 107(3)(b) TFEU is, according to the General Court,

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<sup>1</sup> Licence issued in accordance with Article 3 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p. 3).

<sup>2</sup> OJ 2020 C 91 I, p. 1, as amended by the Commission Communication, Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ O 2020 C 112 I, p. 1).

<sup>3</sup> Commission Decision C(2020) 2366 final of 11 April 2020 on State Aid SA.56812 (2020/N) – Sweden – COVID-19: Loan guarantee scheme to airlines.

<sup>4</sup> In its judgment of 17 February 2021, *Ryanair v Commission* (T-259/20), the General Court examines the legality under Article 107(2)(b) TFEU of a State aid scheme adopted by France with a view to addressing the consequences of the Covid-19 pandemic on the French air transport market.

included in those special provisions, it examines whether the loan guarantee scheme could be declared compatible with the internal market under that provision.

In that regard, the General Court confirms, first, that the objective of the loan guarantee scheme satisfies the conditions laid down in Article 107(3)(b) TFEU in so far as **it effectively seeks to remedy a serious disturbance in the Swedish economy caused by the Covid-19 pandemic, more particularly the significant adverse effects of the pandemic on the aviation sector in Sweden** and therefore on the air services in the territory of that Member State.

Secondly, the General Court holds that the limitation of the loan guarantee scheme to airlines in possession of a Swedish licence **is appropriate for achieving the objective of remedying the serious disturbance in Sweden's economy**. In that respect, the General Court notes that, under Regulation No 1008/2008, possession of a Swedish licence in practice means that the principal place of business of the airlines is on Swedish territory and that they are subject to financial and reputational monitoring by the Swedish authorities. In the General Court's view, the provisions of the regulation establish reciprocal obligations between the airlines holding a Swedish licence and the Swedish authorities, and therefore a specific, stable link between them that adequately satisfies the conditions laid down in Article 107(3)(b) TFEU.

With regard to the proportionate nature of the loan guarantee scheme, the General Court states further that the airlines eligible for the aid scheme contribute most to Sweden's regular air service, both as regards freight and passenger transport, which meets the objective of ensuring Sweden's connectivity. The extension of that aid scheme to airlines not established in Sweden, however, would not have made it possible to achieve that objective.

Taking into consideration the different situations at issue, the General Court also confirms that the Commission did not commit any error of assessment in considering that **the aid scheme at issue did not go beyond what was necessary to achieve the stated objective** of the Swedish authorities, which became crucial given that, at the end of March 2020, that State had recorded a drop of around 93% of the passenger air traffic in the three main airports.

In the light of those considerations, the General Court confirms that the objective of the loan guarantee scheme satisfies the requirements of the derogation laid down in Article 107(3)(b) TFEU and that the conditions for granting the aid do not go beyond what is necessary to achieve that objective. Nor therefore does that scheme amount to discrimination prohibited under the first paragraph of Article 18 TFEU.

In the second place, the General Court examines the Commission's decision in the light of the free provision of services under Article 56 TFEU. In that respect, the General Court points out that that fundamental freedom does not apply as such to the air transport sector which is subject to a particular set of legal rules covered by the above mentioned regulation laying down common rules for the operation of air services in the Community. The purpose of that regulation is precisely to define the conditions for applying the principle of the free provision of services within the air transport sector. However, Ryanair did not allege any infringement of that regulation.

In the third place, the General Court rejects the plea that the Commission infringed its obligation to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition. In that regard, the General Court points out that such a balancing exercise is not required under Article 107(3)(b) TFEU, **in that the aid measures adopted to remedy a serious disturbance in the economy of a Member State, such as the loan guarantee scheme at issue, are accordingly presumed to be adopted in the interests of the European Union where they are necessary, appropriate and proportionate**.

Finally, the General Court rejects as unfounded the plea alleging an infringement of the duty to state reasons and finds that it is not necessary to examine the substance of the plea alleging an infringement of the procedural rights under Article 108(2) TFEU.

**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 and ten days 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 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.

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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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