



Press and Information

General Court of the European Union

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Luxembourg, 19 May 2020

Judgment in Case T-643/20  
Ryanair DAC v Commission

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## **The General Court annuls the Commission's decision to approve the Netherlands financial aid for the airline KLM amid the COVID-19 pandemic on the grounds of inadequate reasoning**

*However, due to the particularly damaging impact of the pandemic on the Netherlands economy, the General Court suspends the effects of the annulment pending the adoption of a new decision by the Commission*

In June 2020, the Netherlands notified the European Commission of State aid for the airline KLM, a subsidiary of the Air France-KLM holding company. The notified aid, with a total budget of €3.4 billion, consisted, first, of a State guarantee for a loan to be granted by a consortium of banks and, secondly, a State loan. By that measure, the Netherlands intended to provide temporary liquidity needed by KLM to deal with the adverse effects of the COVID-19 pandemic. Bearing in mind KLM's importance for the country's economy and air transport connectivity, the Netherlands considered that the company's failure would have exacerbated the serious disturbance in its economy caused by that pandemic.

On 4 May 2020 the Commission had already declared individual aid granted by France to Air France, another subsidiary of the Air France-KLM holding company, in the form of a State guarantee and a shareholder loan, totalling €7 billion, to be compatible with the internal market.<sup>1</sup> That aid measure was intended to finance Air France's immediate liquidity needs.

Finding that the aid notified in favour of KLM constituted State aid within the meaning of Article 107(1) TFEU, the Commission appraised it 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 13 July 2020, the Commission declared that aid compatible with the internal market, in accordance with Article 107(3)(b) TFEU.<sup>3</sup> Under that provision, aid to remedy a serious disturbance in the economy of a Member State may, under certain circumstances, be considered to be compatible with the internal market.

The airline Ryanair brought an action for annulment of that decision, which is upheld by the Tenth Chamber (Extended Composition) of the General Court of the European Union after an expedited procedure, although it suspends the effects of the annulment pending the adoption of a new decision by the Commission. In its judgment, the General Court provides clarification on the scope of the Commission's duty to state reasons when it declares aid granted to the subsidiary of a holding company to be compatible with the internal market, where another subsidiary of the same holding company has already benefited from similar aid.

### The General Court's assessment

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<sup>1</sup> Commission Decision C(2020) 2983 final of 4 May 2020 on State aid SA.57082 (2020/N) – France – COVID-19: Temporary Framework [Article 107(3)(b) TFEU] – Guarantee and shareholder loan for Air France ('the Air France decision').

<sup>2</sup> Communication from the Commission on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak' (OJ 2020 C 91 I, p. 1), amended on 3 April 2020 (OJ 2020 C 112 I, p. 1), 13 May 2020 (OJ 2020 C 164, p. 3) and 29 June 2020 (OJ 2020 C 218, p.3) ('the Temporary Framework').

<sup>3</sup> Commission Decision C(2020) 4871 final of 13 July 2020 on State Aid SA.57116 (2020/N) – The Netherlands – COVID-19: State loan guarantee and State loan for KLM (OJ 2020 C 355, p. 1; 'the contested decision').

In support of its action for annulment, Ryanair alleged, inter alia, a breach by the Commission of the duty to state reasons, in that the Commission failed to set out the reasons why the aid previously granted to Air France had no impact on the assessment of whether the aid adopted for KLM was compatible with the internal market, even though Air France and KLM are two subsidiaries of the same holding company.

In that regard, the General Court states, first of all, that the previously adopted decision on aid granted to Air France constitutes a contextual factor that has to be taken into consideration for the purpose of examining whether the contested decision's statement of reasons satisfies the requirements of Article 296 TFEU. In addition, where there are grounds to fear the effects on competition of an accumulation of State aid within the same group, the onus is on the Commission to exercise particular vigilance when examining the links between the companies belonging to that group, in order to determine whether those companies can be regarded as forming one economic unit, and, therefore, a sole beneficiary, for the purposes of the application of State aid rules.<sup>4</sup>

In the light of those considerations, the General Court observes that the contested decision does not contain any details as to the shareholder structure of Air France and KLM or any information about the functional, economic and organic links between the Air France-KLM holding company and its subsidiaries, even though it makes it apparent that the holding company is involved in the grant and administration of the aid envisaged for both KLM and Air France. Nor does the contested decision set out the possible existence of any kind of mechanism which would prevent the aid granted to Air France via the Air France-KLM holding company from benefiting KLM, through that same holding company, and vice versa.

In that context, the General Court rejects as inadmissible the explanations put forward for the first time by the Commission at the hearing to demonstrate that the aid granted previously to Air France was not able to benefit KLM. Furthermore, while the Commission has a broad discretion in determining whether companies which form part of a group should be regarded as an economic unit for the purposes of applying the rules governing State aid, it nevertheless failed to set out, in the contested decision, in a sufficiently clear and precise fashion, all the relevant matters of fact and law to be taken into account in order to assess a complex situation, featuring the parallel grant of two State aid measures to two subsidiaries of the same holding company, which is, moreover, involved in the grant and administration of that aid.

In addition, in view of the inadequacy of the statement of reasons vitiating the contested decision, the General Court was not able to verify the necessity and proportionality of the aid or compliance with the conditions for cumulation and the ceilings laid down in paragraph 25(d) and paragraph 27(d) of the Temporary Framework<sup>5</sup>. For the same reasons, the General Court found that it was impossible to review whether the Commission was faced with serious difficulties in assessing the compatibility of the aid in question with the internal market.

Consequently, the General Court rules that the Commission, by merely finding, first, that KLM was the beneficiary of the measure at issue and, secondly, that the Netherlands authorities had confirmed that the financing granted to KLM would not be used by Air France, failed to provide reasons for the contested decision to the requisite legal standard, and that that inadequacy of the statement of reasons requires that it be annulled.

However, given that the cause of that annulment is the inadequacy of the statement of reasons for the contested decision and that the immediate calling into question of the receipt of the sums of

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<sup>4</sup> In accordance with paragraph 11 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ 2016 C 262, p. 1), several separate legal entities may be considered to form one economic unit for the purposes of the application of State aid rules. To that end, it is necessary to take into consideration the existence of a controlling share and the existence of other functional, economic and organic links.

<sup>5</sup> In accordance with paragraph 25(d)(i) of the Temporary Framework, State aid in the form of new public guarantees on loans is considered to be compatible with the internal market on the basis of Article 107(3)(b) TFEU provided that, for loans with a maturity beyond 31 December 2020, the total amount of loans per beneficiary is not more than double the annual wage bill of the beneficiary for 2019, or for the last year available. The same threshold applies to State aid in the form of subsidies to public loans, in accordance with paragraph 27(d)(i) of that framework.

money envisaged by the notified aid measure would have had particularly damaging consequences for the Netherlands economy and air transport connectivity in an economic and social context which is already affected by the serious disturbance in the economy caused by the COVID-19 pandemic, the General Court decides to suspend the effects of the annulment of the contested decision pending the adoption of a new decision by the Commission.

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**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 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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