



Press and Information

General Court of the European Union

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Judgment in Case T-465/20

Ryanair DAC v Commission (TAP;COVID-19)

## **The Commission's decision declaring aid granted by Portugal to the airline TAP to be compatible with the internal market is annulled because of an inadequate statement of reasons**

*However, the effects of the annulment (including recovery of the aid) are suspended pending a new decision*

In June 2020, Portugal notified the Commission of State aid for the airline Transportes Aéreos Portugueses SGPS SA ('the beneficiary'), the parent company and 100% shareholder in TAP Air Portugal. The notified aid, the maximum budget of which is €1.2 billion, concerns a loan agreement concluded between, in particular, Portugal as lender, TAP Air Portugal as borrower and the beneficiary as guarantor. By that measure, Portugal intended to keep the beneficiary in operation for six months, between July 2020 and December 2020.

Finding that the notified scheme constituted State aid within the meaning of Article 107(1) TFEU, the Commission appraised it by reference to Article 107(3)(c) TFEU<sup>1</sup> and its Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.<sup>2</sup> By decision of 10 June 2020, the Commission declared the measure at issue to be compatible with the internal market.<sup>3</sup>

**The General Court (Tenth Chamber, Extended Composition) of the European Union has upheld an action brought by the airline Ryanair for annulment of that decision, while suspending the effects of the annulment pending the adoption of a new decision by the Commission.** In its judgment, the General Court clarifies the scope of the Commission's duty to state reasons where, pursuant to the Guidelines on aid to undertakings in difficulty, it declares aid granted to a company belonging to a group to be compatible with the internal market under Article 107(3)(c) TFEU.

The General Court's assessment

In support of its action for annulment, Ryanair alleged, inter alia, a breach by the Commission of the duty to state reasons, in that it failed to set out the reasons for regarding the notified measure as compatible with the internal market.

In that regard, the General Court states, first of all, that point 22 of the Guidelines on aid to undertakings in difficulty<sup>4</sup> sets out **three cumulative conditions which must be satisfied in order for rescue aid granted to a company belonging to a group to be classified as compatible with the internal market** under Article 107(3)(c) TFEU. In accordance with point 22, it falls to the Commission to examine, first, **whether the beneficiary of the aid belongs to a group,**

<sup>1</sup> Under that provision, aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the internal market.

<sup>2</sup> OJ 2014 C 249, p. 1.

<sup>3</sup> Commission Decision C(2020) 3989 final of 10 June 2020 on State aid SA.57369 (2020/N) – COVID-19 – Portugal – Aid to TAP (OJ 2020 C 228, p. 1; 'the contested decision').

<sup>4</sup> Point 22 of the Guidelines on aid to undertakings in difficulty states: 'A company belonging to or being taken over by a larger business group is not normally eligible for aid under these guidelines, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.'

secondly, **whether the difficulties faced by the beneficiary are intrinsic and are not the result of an arbitrary allocation of costs within the group** and, thirdly, **whether those difficulties are too serious to be dealt with by that group itself**. Those conditions aim at preventing a group of undertakings from being able to have the State bear the cost of a rescue operation for one of the undertakings belonging to the group, when that undertaking is in difficulty and the group itself has created those difficulties or has the means to deal with them.

In the light of those considerations, the General Court observes that, in the contested decision, **the Commission neither found nor specified whether the beneficiary belonged to a group** within the meaning of point 22 of those Guidelines. It failed to carry out any analysis at all in that regard and to specify the relationship between the beneficiary and its shareholder companies<sup>5</sup>.

Furthermore, on the assumption that the beneficiary and its shareholder companies did belong to a group, within the meaning of point 22 of the Guidelines on aid to undertakings in difficulty, the General Court finds that **the Commission had not substantiated in any way its assertions, first, that the beneficiary's difficulties were intrinsic and were not the result of an arbitrary allocation of costs to the benefit of its shareholders or other subsidiaries and, secondly, that those difficulties were too serious to be dealt with by its controlling shareholders or other shareholders. The Commission had, in actual fact, merely provided details on the beneficiary's financial situation and the difficulties caused by the COVID-19 pandemic.**

In view of **those shortcomings in the statement of reasons for the contested decision, the General Court is not in a position to determine whether the conditions** laid down in point 22 of the Guidelines **on aid to undertakings in difficulty were satisfied in the present case, or whether the Commission was entitled to conclude that there were no serious difficulties in assessing the compatibility of the aid in question with the internal market and was right not to initiate the formal investigation procedure** provided for in Article 108(2) TFEU.

Consequently, the General Court rules that **the Commission failed to state the reasons for the contested decision to the requisite legal standard and that that inadequacy of the statement of reasons requires the annulment of the decision.**

The General Court, applying the second paragraph of Article 264 TFEU, considers that **there are overriding considerations of legal certainty which justify limiting the temporal effect of the annulment of the contested decision.** It observes, first, that the **application of the aid measure at issue is part of a process which is still ongoing and which consists of various successive phases**<sup>6</sup> and, secondly, that **the immediate calling into question of the receipt of the sums of money envisaged by the aid measure would have particularly damaging consequences for Portugal's economy and air services, in an economic and social context which has already been affected by the serious disturbance in the economy caused by the COVID-19 pandemic. In those circumstances, 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.** In that regard, the General Court states, however, that if the Commission decides to adopt that new decision without initiating the formal investigation procedure provided for in Article 108(2) TFEU, that suspension of the effects of the annulment may not exceed two months from the date of delivery of the judgment. If, on the other hand, the Commission decides to initiate the formal investigation procedure, the suspension will be maintained for a further reasonable period.

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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.

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<sup>5</sup> On the date the contested decision was adopted, half of the shares in the beneficiary were held by Participações Públicas SGPS SA, which managed the Portuguese State's shareholdings. Atlantic Gateway SGPS Lda held 45% of the beneficiary's shares while 5% of the shares were owned by other shareholders.

<sup>6</sup> The General Court finds, in that regard, that the measure at issue was granted for an initial period of six months, which has already elapsed, after which Portugal was to communicate to the Commission, in accordance with point 55(d) of the Guidelines on aid to undertakings in difficulty, either proof that the loan had been reimbursed in full, a restructuring plan or a liquidation plan.

**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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