



Press and Information

General Court of the European Union

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Judgment in Case T-665/20

Ryanair DAC v Commission (Condor - Covid-19)

The General Court annuls the Commission decision approving the State aid granted by Germany to the airline Condor Flugdienst on the ground of an inadequate statement of reasons,

However, because of the economic and social context marked by the Covid-19 pandemic, it suspends the effects of the annulment pending the adoption of a new decision by the Commission

In April 2020, Germany notified the Commission of individual aid in favour of the airline Condor Flugdienst GmbH ('Condor'), in the form of two loans in the amount of € 550 million, guaranteed by the State with subsidised interest. The purpose of that measure was to compensate Condor for the damage directly suffered as a result of the cancellation or rescheduling of its flights following the imposition of travel restrictions as a result of the Covid-19 pandemic.

Condor is an airline which was previously owned by Thomas Cook Group plc. After that group was placed into compulsory liquidation, Condor faced financial difficulties and had to file for insolvency in September 2019.¹ Those insolvency proceedings, which should have been closed following the sale of Condor to a potential investor, were extended in April 2020 because the investor withdrew its purchase offer.

By decision of 26 April 2020, the Commission declared the notified aid compatible with the internal market within the meaning of Article 107(2)(b) TFEU.² In accordance with that provision, aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market.

In order to assess the amount of damage suffered by Condor as a result of the cancellation or rescheduling of its flights following the imposition of travel restrictions in the context of the Covid-19 pandemic, the Commission first calculated the difference between the forecasts of profits before taxes for the period from March to December 2020, made before and after the announcement of travel restrictions and lockdown measures. The amount of that difference was then increased by the costs associated with the extension of Condor's insolvency period following its abortive sale to the investor concerned.

The airline Ryanair brought an action for annulment of the Commission's decision, which is upheld by the Tenth Chamber, Extended Composition, of the General Court of the European Union, while suspending the effects of the annulment pending the adoption of a new decision. In its judgment, the General Court clarified the scope of the Commission's obligation to state reasons when it states that there is a direct causal link between the damage which an aid measure seeks to compensate and exceptional occurrences within the meaning of Article 107(2)(b) TFEU.

¹ At the same time as the launch of the insolvency proceedings, Germany granted Condor aid in the form of € 380 million rescue loan to enable it to continue its operations following the compulsory liquidation of the group of which it was a member. By decision of 14 October 2019, C (2019) 7429 final on State aid SA.55394 (2019/N) – Germany – Rescue aid to Condor, the Commission approved that aid.

² Decision C (2020) 2795 final on State aid SA.56867 (2020/N, ex 2020/PN) – Germany – Compensation for the damage caused by the Covid-19 outbreak to Condor, ('the contested decision').

Findings of the General Court

In support of its action for annulment, Ryanair alleged, *inter alia*, an infringement of the obligation to state reasons by the Commission, in that it did not provide any explanation of the reasons which led it to include, in calculating the damage which the aid measure at issue is intended to compensate, the costs associated with the extension of the period of Condor's insolvency following its abortive sale to a potential investor. In that regard, the General Court states that, in accordance with Article 107(2)(b) TFEU, only economic damage directly caused by natural disasters or exceptional occurrences may be compensated for under that provision. There must be a direct link between the damage caused by the exceptional occurrence and the State aid and as precise an assessment as possible must be made of the damage suffered. Thus, the Commission must examine whether or not the aid measures at issue are of a kind as to be useful in the making good of damage caused by exceptional occurrences, given that Article 107(2)(b) TFEU bans general measures that are unconnected with the damage allegedly caused by such occurrences. The Commission must also check that the amount of compensation granted by the Member State concerned is limited to what is necessary to make good the damage suffered by the beneficiaries of the measure at issue.

In the light of those clarifications, the General Court analyses, in the first place, the stated objective of the aid measure and finds that, according to the actual wording of the contested decision, the aid measure sought to compensate Condor only for the direct damage suffered due to the cancellation or rescheduling of its flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic, excluding any other damage more generally linked to that pandemic.

In the second place, the General Court examines the reasons which led the Commission to consider that the additional costs incurred by Condor as a result of the extension of the insolvency proceedings were directly caused by that cancellation and rescheduling of flights. In that regard, the General Court finds that the Commission merely stated that it was 'legitimate' to add the additional costs incurred due to the extension of Condor's insolvency proceedings to the damage claimed, without explaining, in a sufficiently clear and precise manner, the reasons why it found that the decisive cause of those costs was the cancellation and rescheduling of Condor's flights as a result of the Covid-19 pandemic.

In the third place, the General Court notes that there is nothing in the contested decision to indicate that the sale of Condor failed because of the cancellation and rescheduling of those flights. Rather, it is apparent from the contested decision that the insolvency proceedings, initiated before the Covid-19 pandemic, had been opened because of the financial difficulties faced by Condor following the liquidation of its parent company. Accordingly, it was incumbent on the Commission to examine with particular care whether the cancellation and rescheduling of Condor flights as a result of the travel restrictions imposed in the context of the pandemic were in fact the decisive cause of the additional costs incurred by Condor as a result of the extension of the insolvency proceedings, and to set out the reasons for its decision on that point to the requisite legal standard.

In the fourth place, the General Court observes that the Commission failed to explain how the additional costs arising from the extension of the insolvency proceedings were assessed or what type of costs were involved. Nor did the Commission indicate whether all or only a part of those costs were considered to be directly caused by the cancellation and rescheduling of Condor's flights.

Accordingly, the General Court finds that the contested decision contains an inadequate statement of reasons as regards the direct causal link between the costs occasioned by the extension of the insolvency period and the cancellation and rescheduling of Condor's flights as a result of the travel restrictions imposed in the context of the Covid-19 pandemic. Therefore, the General Court annuls the contested decision.

However, in view of the fact that that annulment is the result of an inadequate statement of reasons for the contested decision and that the immediate calling into question of the receipt of the sums of money provided for by the notified aid measure would have harmful consequences for the German economy in an economic and social context already marked by a serious disturbance in the economy as a result of the Covid-19 pandemic, the General Court suspends the effects of the annulment of the contested decision pending the adoption of a new decision by the Commission.

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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