



The General Court confirms that the aid granted by Austria to Austrian Airlines in order to compensate it for the damage resulting from the cancellation or rescheduling of its flights due to the COVID-19 pandemic is compatible with the internal market

That aid, having been deducted from the subsidies granted, in the same context, by Germany to the Lufthansa group, which also includes Austrian Airlines, does not constitute overcompensation in favour of that group

In June 2020, the Republic of Austria notified the European Commission of an individual aid measure in favour of the company Austrian Airlines AG ('AUA'). The aid notified, in the form of a subordinated loan convertible into a subsidy for €150 million ('the measure at issue'), was intended to compensate AUA for the damage resulting from the cancellation or rescheduling of its flights due to the imposition of travel restrictions and other containment measures amid the COVID-19 pandemic.

AUA is part of the Lufthansa group, headed by the parent company Deutsche Lufthansa AG ('DLH'). Between March and June 2020, the Commission had already approved various aid measures in favour of undertakings in the Lufthansa group, in particular (1) a State guarantee from the Federal Republic of Germany of 80% on a loan of €3 billion in favour of DLH, granted under a German aid scheme designed to support undertakings in all economic sectors in need of liquidity for their activities in Germany ('the German loan'),¹ (2) a State guarantee from the Republic of Austria of 90% on a loan of €300 million granted by a consortium of commercial banks in favour of AUA granted under an Austrian aid scheme intended to support the economy during the current COVID-19 pandemic ('the Austrian loan'),² and (3) individual aid of €6 billion granted by the Federal Republic of Germany in favour of DLH. The latter aid measure had been authorised by Commission Decision of 25 June 2020 ('the Lufthansa decision').³

By decision of 6 July 2020, the Commission found that the measure at issue constituted State aid within the meaning of Article 107(1) TFEU, which is nevertheless compatible with the internal market under Article 107(2)(b) TFEU⁴ ('the contested decision'). Under that provision, aid to make good damage caused by natural disasters or exceptional occurrences is compatible with the internal market.

The airlines Ryanair and Laudamotion brought an action for the annulment of the contested decision, which is, however, dismissed by the Tenth Chamber (Extended Composition) of the General Court. In its judgment, the General Court provides clarification on the application of Article 107(2)(b) TFEU to individual aid adopted with a view to responding to the consequences of

¹ Authorised by decision of 22 March 2020, SA.56714 (2020/N) — Germany — COVID 19 measures.

² Authorised by decision of 17 April 2020, SA.56981 (2020/N) — Austria — Austrian guarantee scheme on bridge loans under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended by Decision of 9 June 2020 SA.57520 (2020/N) Austria — Austrian anti-crisis measures — COVID-19: Guarantees for large undertakings on the basis of the Guarantee Law of 1977 by Austria Wirtschaftsservice GmbH (aws) — Amendment to the scheme SA.56981 (2020/N).

³ Decision of 25 June 2020, SA.57153 (2020/N) — Germany — COVID-19 — Aid to Lufthansa.

⁴ Decision C(2020) 4684 final on State aid SA.57539 (2020/N) — Austria — COVID 19 — Aid to Austrian Airlines.

the COVID-19 pandemic, where that aid forms part of a series of measures adopted in favour of the beneficiary of the aid and the group of undertakings to which it belongs.⁵

Findings of the General Court

In support of their actions for annulment, Ryanair and Laudamotion claimed, inter alia, that the Commission did not examine all the aid measures granted to the airlines in the Lufthansa group, or the relationship between them.

In that regard, the General Court finds, first of all, that the Commission had stated that the measure at issue formed part of a financial envelope in favour of AUA totalling €600 million, which, in addition to the measure at issue, was made up of a contribution of €150 million in equity from the parent company, DLH ('DLH's equity injection'), and the Austrian loan of €300 million. The Commission had also pointed out that, in accordance with its Lufthansa decision, the aid of €6 billion granted by the Federal Republic of Germany to DLH could be used by DLH to support the other airlines in the Lufthansa group which were not in financial difficulties as at 31 December 2019, including AUA.

The General Court observes, next, that in the Lufthansa decision, adopted two weeks before the contested decision and which constitutes a contextual factor to be taken into consideration in the present case, the Commission had already taken into account all the aid measures granted to the airlines forming part of the Lufthansa group, including AUA, and the relationship between them. In that regard, the General Court emphasises that, in the Lufthansa decision, all the additional aid measures granted or proposed in favour of the airlines in the Lufthansa group had been considered to be limited to the minimum necessary to restore the capital structure of the Lufthansa group and to ensure its viability.

The General Court also observes that, since the support granted by other States to the airlines in the Lufthansa group was deducted, as the case may be, either from the amount of aid which is the subject of the Lufthansa decision or from the German loan, the Commission had ruled out any risk of overcompensation in that decision. Under a deduction mechanism, applicable to all the measures adopted in favour of that group, the overall aid granted by the Federal Republic of Germany to the entire Lufthansa group was reduced by the aid granted by other States to a particular company in that group, so that the overall amount received by the group remained the same.

Lastly, as regards DLH's equity injection, the General Court confirms that, even if the amount of that injection were to come from the aid which is the subject of the Lufthansa decision, it would, in any event, constitute aid already authorised under that decision.

In the light of all those observations, the General Court confirms that, contrary to what Ryanair and Laudamotion claimed, the Commission not only examined all the aid measures granted to the airlines of the Lufthansa group but also the relationship between them.

In view of the deduction mechanism applicable to all the measures adopted in favour of the Lufthansa group, the General Court further concludes that there is no real risk that the measure at issue, granted to AUA, could also benefit other airlines in the Lufthansa group.

The General Court also rejects the argument that there was a risk that AUA might benefit from DLH's support going beyond the equity injection of €150 million. In that regard, the General Court observes, first, that any hypothetical transfer of additional liquidity from DLH to AUA would in any event originate in an aid measure already approved by the Commission, in particular the aid authorised by the Lufthansa decision. It points out, secondly, that the German loan and the aid

⁵ It should be noted that, in its judgments 14 April 2021, *Ryanair v Commission (SAS, Denmark; Covid-19)* [T-378/20](#), and *Ryanair v Commission (SAS, Sweden; Covid-19)* [T-379/20](#) (see also Press Release No [52/21](#)), and in its judgment of 9 June 2021, *Ryanair v Commission (Condor; Covid-19)* [T-665/20](#) (see also Press Release No [98/21](#)), the General Court examined the application of Article 107(2)(b) TFEU to three separate individual aid measures adopted in order to respond to the consequences of the COVID-19 pandemic.

which is the subject of the Lufthansa decision are based on Article 107(3)(b) TFEU, so that they are not supposed to cover the same eligible costs as those covered by the measure at issue, which, for its part, is based on Article 107(2)(b) TFEU. In any event, the deduction mechanism introduced also makes it possible to avoid the risk of overcompensation in that context.

Next, the General Court states that, in so far as the difference in treatment established by the measure at issue between AUA and the other airlines operating in Austria may amount to discrimination, it was justified in the circumstances of the present case. In particular, in view of the essential role played by AUA for Austria's airline services, the difference in treatment in its favour is appropriate for the purpose of remedying the damage suffered by that company as a result of the travel restrictions and other containment measures amid the COVID-19 pandemic and does not go beyond what is necessary to achieve that objective.

As regards compliance with the principles of freedom to provide services and freedom of establishment, the General Court notes that the freedom to provide services does not apply as such in the field of transport, which is subject to a special legal regime. In that context, the General Court states that, in any event, the applicants have not established how the exclusive nature of the measure at issue is such as to deter them from establishing themselves in Austria or from providing services from and to that country.

Nor, according to the General Court, did the Commission err in its assessment of the proportionality of the aid, in particular in calculating the damage to be compensated and the amount of aid. As regards the calculation of the damage to be made good, the Commission had correctly taken into account damage which occurred in a period before AUA's fleet was immobilised, since that damage had been caused by cancellations and rescheduling required by the Austrian Government. The Commission had, moreover, correctly calculated the avoided costs which had to be excluded from the assessment of the damage caused to AUA by the pandemic. Furthermore, the Commission was not required to take account of the damage suffered by other airlines in its calculation of that damage. Finally, as regards the calculation of the amount of aid, the General Court confirms that the Commission did not fail to take account of all the aid measures likely to benefit the Lufthansa group when assessing the proportionality of the measure at issue.

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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