



Press and Information

General Court of the European Union

**PRESS RELEASE No 73/22**

Luxembourg, 4 May 2022

Judgment in Case T-718/20

Wizz Air Hungary v Commission (TAROM – Rescue aid)

## **The General Court upholds the Commission’s decision approving rescue aid of €36 660 000 granted by Romania to the airline TAROM**

*That aid is compatible with the internal market as it aims to prevent the social hardship that a disruption of TAROM’s services might cause for the connectivity of regions in Romania*

On 19 February 2020, Romania notified to the European Commission a project to grant rescue aid to TAROM, a Romanian airline mainly active in the domestic and international transport of passengers, cargo and mail. The notified measure consisted of a loan to finance TAROM’s liquidity needs in the amount of approximately €36 660 000, repayable at the end of a six-month period with an option to repay part of the loan early.

Without initiating the formal investigation procedure provided for in Article 108(2) TFEU, the Commission, by decision of 24 February 2020,<sup>1</sup> classified the notified State aid measure as compatible with the internal market under Article 107(3)(c) TFEU and the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.<sup>2</sup>

The airline Wizz Air Hungary Zrt. (‘the applicant’) brought an action for annulment against that decision, **which is dismissed** by the Tenth Chamber (Extended Composition) of the General Court. In its judgment, the General Court provides clarifications on the examination as to whether rescue and restructuring aid is compatible with the internal market in the light of the condition, laid down in the Guidelines, according to which such aid must contribute to an objective of common interest. The General Court also analyses, in an unprecedented manner, the ‘one time, last time’ condition governing aid for rescuing and restructuring undertakings in difficulty, laid down in those guidelines.

### **Findings of the General Court**

The General Court rejects, in the first place, the pleas in law for annulment alleging that the Commission erred in law by deciding not to initiate the formal investigation procedure despite the doubts that it should have harboured during the preliminary assessment as to whether the notified aid was compatible with the internal market.

In that regard, the applicant submitted, inter alia, that the finding that the notified aid was compatible with the internal market was contrary to two of the conditions laid down in the Guidelines in order for rescue aid to an undertaking in difficulty to be regarded as compatible with the internal market, namely: (1) the condition relating to the contribution of the aid measure to an objective of common interest; and (2) the ‘one time, last time’ condition governing rescue and restructuring aid. According to the applicant, failure to comply with those conditions was indicative of the doubts which should have led the Commission to initiate the formal investigation procedure.

First of all, the General Court recalls that, when notified aid raises doubts as to its compatibility with the internal market, the Commission is required to initiate the formal investigation procedure.

<sup>1</sup> Decision C(2020) 1160 final of the Commission of 24 February 2020 concerning State Aid SA.56244 (2020/N) – Romania – Rescue aid to TAROM (OJ 2020 C 310, p. 3).

<sup>2</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ 2014 C 249, p. 1; ‘the Guidelines’).

Next, as regards the first condition applicable to the rescue and restructuring aid, the infringement of which was relied on, namely that relating to the pursuit of an objective of common interest, the General Court notes that it is apparent from point 43 of the Guidelines that, in order to be declared compatible with the internal market on the basis of the Guidelines, the notified aid must pursue an objective of common interest, in that it must aim to prevent social hardship or address market failure. This is confirmed by point 44 of those guidelines, according to which Member States must demonstrate that the failure of the beneficiary would be likely to involve serious social hardship or severe market failure, in particular by showing that there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in.

According to the General Court, it follows from those points of the Guidelines that, although the Member State concerned must demonstrate that the aid aims to prevent social hardship or address market failure, **it is not required to establish that, in the absence of the aid measure, certain negative consequences would necessarily arise, but only that such consequences might arise.**

With regard to whether the Commission should have harboured doubts as to the existence of a risk that, in the absence of the notified aid measure, social hardship or market failure would have arisen, or whether that measure was intended to prevent or address them, the General Court states that, taking into account the poor condition of Romanian road and rail infrastructure, the Commission was entitled to find that **regional connectivity by means of domestic air routes and international connectivity provided by TAROM constituted an important service, the disruption of which could involve serious social hardship** or constitute a market failure within the meaning of point 44(b) of the Guidelines.

In that context, the General Court clarifies, in addition, that, although, when the existence and legality of State aid are being examined, it may be necessary for the Commission, where appropriate, to go beyond a mere examination of the facts and points of law brought to its notice, it cannot be inferred from this that it is for the Commission, on its own initiative and in the absence of any evidence to that effect, to seek all information which might be connected with the case before it, even where such information is in the public domain.

In the light of those clarifications, the General Court, by examining the various arguments put forward by the applicant, concludes that those arguments are not such as to call into question the Commission's analysis confirming TAROM's importance for the connectivity of regions in Romania and the very substantial impact on those regions if TAROM were to fail. It follows that **the Commission was entitled to conclude, without harbouring any doubts, on that basis alone, that the notified aid met the requirements** laid down in points 43 and 44 of the Guidelines.

Lastly, as regards the second condition applicable to the rescue and restructuring aid, the infringement of which was relied on by the applicant, namely the 'one time, last time' condition, the General Court recalls that, according to point 70 of the Guidelines, such aid should be granted to undertakings in difficulty in respect of only one restructuring operation. In that context, point 71 of the Guidelines provides, *inter alia*, that, when an undertaking has already received rescue or restructuring aid, the Commission will only allow further aid if at least 10 years have elapsed (1) since the earlier aid was granted; (2) since the earlier restructuring period came to an end; or (3) since the implementation of the earlier restructuring plan was halted.

In that regard, the General Court observes that, although TAROM had received, up to 2019, the implementation of restructuring aid in the form of a loan and several guarantees in respect of other loans taken out by TAROM, the fact remains that that aid had been granted between 1997 and 2003 and that all the loan guarantees had been called immediately after they had been granted. Since the actual transfer of the resources is not decisive in determining the date on which the aid was granted, the first situation provided for in point 71 of the Guidelines, namely the expiry of a period of at least 10 years from the date on which the earlier restructuring aid was granted, was, consequently, established.

As regards the second and third situations provided for in point 71 of the Guidelines, namely the expiry of a period of at least 10 years after the earlier restructuring period ends or after the implementation of the earlier restructuring plan is halted, the General Court notes that **the concept of a ‘restructuring period’ refers to the period during which the restructuring measures are taken**, which is separate, in principle, from that during which a State aid measure accompanying those measures is implemented. In disregard of the burden of proof that falls on it in that regard, the applicant has not provided any evidence or indication that the earlier restructuring period had ended less than 10 years before the notified aid measure was granted.

With regard to the concept of a ‘restructuring plan’, the General Court clarifies, in addition, that the fact that restructuring aid is linked to a restructuring plan does not mean that that aid, as such, forms part of that restructuring plan, since the existence of the restructuring plan constitutes, on the contrary, an essential condition for such aid to be considered compatible with the internal market. Thus, the General Court also rejects the applicant’s argument according to which the fact that the restructuring aid granted to TAROM between 1997 and 2003 was implemented up to 2019 means that the restructuring plan, which was linked to that aid, also lasted up to 2019.

In the light of the foregoing, the General Court also rejects the applicant’s complaints alleging that the Commission erred in law by deciding not to initiate the formal investigation procedure despite the doubts that it should have harboured during the preliminary assessment of the ‘one time, last time’ condition governing rescue and restructuring aid.

In the second place, the General Court **rejects** the plea in law alleging infringement of the Commission’s obligation to state reasons and, consequently, **dismisses the action in its entirety**.

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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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