



## PRESS RELEASE No 209/22

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Judgment of the General Court in Case T-525/21 | E. Breuninger / Commission

### **The General Court dismisses as inadmissible the action brought by the retail undertaking Breuninger against the Commission's decision approving aid granted by Germany to compensate for losses suffered as a result of lockdown during the COVID-19 crisis**

*Breuninger erred in taking the view that it was excluded from the aid scheme as notified, as a result of which it has no interest in having the Commission decision annulled*

On 21 May 2021, Germany notified the European Commission of an aid scheme in the form of temporary economic support for companies whose activities had been suspended due to the measures taken by the Federal State and the Länder to deal with the outbreak on its territory in the context of the COVID-19 crisis ('the Federal Compensation Scheme').

Under this federal compensation scheme, federal, regional and local administrative authorities may, under certain conditions, award direct grants to companies that suffered losses between 16 March 2020 and 31 December 2021 as a result of the decisions to enter into lockdown.

By decision of 28 May 2021,<sup>1</sup> the Commission declared that scheme compatible with the internal market pursuant to Article 107(2)(b) TFEU. Under that provision, aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market.

The German company E. Breuninger GmbH & Co, which is active, inter alia, in the retail sector, brought an action for annulment of the Commission's decision. However, the action is dismissed as inadmissible by the Second Chamber (Extended Composition) of the Court, which raises of its own motion that company's failure to establish the requisite interest in bringing proceedings before the Court.

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

Since the conditions governing the admissibility of an action relate to the absolute bar to proceeding with an action, which it must determine of its own motion, the Court points out that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure. Such an interest presupposes that the annulment of the measure in question is capable, in itself, of having legal consequences and that the action may thus, if successful, procure an advantage for the party who brought it.

As regards the question whether the applicant has an interest in bringing proceedings for the annulment of the contested decision, the Court notes that the applicant's action is based on the incorrect premiss that it was not eligible for the federal compensation scheme on account of the condition, laid down in Article 2(2) of that scheme,

<sup>1</sup> Commission Decision C (2021) 3999 final of 28 May 2021 on State aid SA.62784 (2021/N) – Germany COVID-19 – Federal Damage Compensation Scheme (OJ 2021 C 223, p. 25) ('the contested decision').

that undertakings pursuing mixed activities, some of which are not at all affected by the lockdown, may benefit from the federal compensation scheme only if the prohibited activities represent at least 80% of their turnover. Since the online trading activities pursued by the applicant were considered to be related to its retail activities, all the activities were required to be affected, within the meaning of that provision, by the lockdown decisions ordered during the COVID-19 pandemic.

On the other hand, it became apparent from the discussions in the course of the judicial proceedings that the fact that it was impossible for the applicant to obtain financial assistance under the federal aid programme was in fact due to the application by the German authorities of an eligibility condition not notified to the Commission, requiring that at least 30% of the applicant's total turnover had been affected by the lockdown decisions.

However, in so far as the action brought by the applicant concerns exclusively the legality of the contested decision, by which the Commission declared the notified federal scheme compatible with Article 107(2)(b) TFEU, that addition by the German authorities of an additional requirement for eligibility which is not expressly or implicitly mentioned in that scheme is irrelevant in the context of the present proceedings.

In the light of the forgoing, and of Article 2(2) of the federal compensation scheme, as declared compatible with Article 107(2)(b) TFEU in the contested decision, the applicant was eligible for aid under that scheme. Thus, the Court finds that the annulment of that decision would not procure any advantage for the applicant. Consequently, it dismisses its action as inadmissible for lack of interest in bringing proceedings.

The General Court adds, however, that it is open to the applicant to bring an action before the German courts, which will have to examine, if necessary after having referred a question to the Court of Justice for a preliminary ruling, whether the addition of an additional eligibility condition by the German authorities is akin to the alteration of existing aid and, therefore, to new aid subject to the notification obligation under Article 108(3) TFEU.

**REMEMBER:** The action for annulment seeks the annulment of acts of the EU institutions which are contrary to EU 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.

**REMEMBER:** An appeal, limited to points of law, may be brought before the Court of Justice against the decision of the General Court within two months and 10 days of notification of the decision.

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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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