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## PRESS RELEASE No 85/23

Luxembourg, 24 May 2023

Judgment of the General Court in Case T-268/21 | Ryanair/Commission (Italy - aid scheme - COVID-19)

### **The General Court annuls the Commission's decision to approve an aid measure consisting in subsidies paid by Italy to Italian airlines in the context of the COVID-19 pandemic**

*The Commission failed to provide a statement of reasons for its finding that the measure at issue was not contrary to EU law provisions other than those governing State aid*

In October 2020, the Italian Republic notified the European Commission of an aid measure consisting in subsidies paid out of a € 130 million compensation fund to certain airlines holding an Italian licence ('the measure at issue'). That measure was intended to make good the damage suffered by eligible airlines as a result of travel restrictions and other containment measures taken to limit the spread of the COVID-19 pandemic.

Under one of the conditions of eligibility provided for by the measure at issue, in order to benefit from it, airlines had to apply to their employees whose home base was in Italy and to employees of third-party undertakings taking part in their activities remuneration equal to or higher than the minimum remuneration established by the national collective agreement applicable to the air transport sector, concluded by the employers' organisations and trade unions considered to be the most representative at national level ('the minimum remuneration requirement').

Without opening the formal investigation procedure provided for Article 108(2) TFEU, the Commission decided not to raise objections to the measure at issue, on the ground that it was compatible with the internal market.<sup>1</sup>

An action for annulment was brought by the airline Ryanair before the General Court, who annuls that decision on grounds of failure to provide a statement of reasons, as provided for in Article 296 TFEU.

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

According to settled case-law, a decision not to initiate the formal investigation procedure in respect of notified aid must set out the reasons for which the Commission takes the view that it is not faced with serious difficulties in assessing the compatibility of the aid at issue with the internal market. Although a succinct statement of reasons is sufficient for that purpose, it must disclose in a clear and unequivocal fashion the reasons for which the Commission considered that it was not faced with such difficulties.

The General Court finds that that has not been done here, however.

First of all, it observes that, in the contested decision, the Commission affirmed both that the minimum remuneration requirement was indissolubly linked to the measure at issue and that that requirement was not inherent in the objective of that measure without, however, setting out in a clear and unequivocal manner the

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<sup>1</sup> Commission Decision C(2020) 9625 final of 22 December 2020 on State aid SA.59029 (2020/N) – Italy – COVID-19: Compensation scheme for airlines with an Italian operating licence.

reasoning which led it to make those two statements.

**The General Court further finds that the conclusion in the contested decision, to the effect that the minimum remuneration requirement was not contrary to 'other provisions of Union law' than Articles 107 and 108 TFEU, was also vitiated by a failure to state reasons.**

**On that point, it observes that the only EU law provision, other than Articles 107 and 108 TFEU, in the light of which the Commission examined that requirement was Article 8 of the Rome I Regulation I.**<sup>2</sup> which lays down special conflict-of-law rules relating to individual contracts of employment. However, the Commission still failed to set out, in the contested decision, the reasons substantiating its view that that article was the only relevant provision, other than Articles 107 and 108 TFEU, in the light of which it had to examine the compatibility of the minimum remuneration requirement with EU law. Accordingly, the Commission failed to set out in a clear and transparent manner the reasons why it had found that that requirement did not constitute an infringement of 'other provisions of Union law'.

**That failure to state reasons is illustrated by the fact that, when examining the minimum remuneration requirement, the Commission took account of a complaint filed by the Italian Low Fares Airline Association contesting the compatibility of Italian rules providing for a minimum remuneration requirement similar to that included in the measure at issue with the freedom to provide services under Article 56 TFEU.** In view of that context, the Commission was a fortiori in a situation in which it had to rule on the relevance of Article 56 TFEU for the purposes of its examination of the compatibility of the measure at issue with the internal market.

In the light of the foregoing, the General Court concludes that the Commission infringed the obligation to state reasons imposed on it by Article 296 TFEU and, consequently, annuls the contested 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.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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<sup>2</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).