



Press and Information

General Court of the European Union

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Judgment in Case T-628/20

Ryanair DAC v Commission (Spain – Covid-19)

## **The solvency support fund for strategic Spanish undertakings experiencing temporary difficulties due to the impact of the Covid-19 pandemic is compatible with EU law**

*The measure at issue, intended for the adoption of recapitalisation measures with a budget of €10 billion, constitutes a State aid scheme but is proportionate and non-discriminatory*

In July 2020, Spain notified the European Commission of an aid scheme to establish a solvency support fund for strategic Spanish undertakings which are experiencing temporary difficulties due to the impact of the Covid-19 pandemic. That support fund is authorised to adopt various recapitalisation measures in favour of non-financial undertakings that are established in Spain and have their principal places of business there, which are considered systemic or strategic for the Spanish economy.<sup>1</sup> The budget for that aid scheme, financed by the State budget, was fixed at €10 billion until 30 June 2021.

Taking the view that the notified scheme constituted State aid within the meaning of Article 107(1) TFEU, the Commission assessed it in the light of its Communication of 19 March 2020, entitled 'Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak'.<sup>2</sup> By decision of 31 July 2020, the Commission declared the notified scheme compatible with the internal market in accordance with Article 107(3)(b) TFEU.<sup>3</sup> Under that provision, aid to remedy a serious disturbance in the economy of a Member State may, under certain conditions, be considered to be compatible with the internal market.

The airline Ryanair brought an action for annulment of that decision, which is nevertheless dismissed by the Tenth Chamber, Extended Composition, of the General Court of the European Union. In that context, the General Court examines the compatibility with the internal market of the State aid scheme adopted to address the consequences of the Covid-19 pandemic in the light of Article 107(3)(b) TFEU.<sup>4</sup> The General Court also clarifies the relationship between the rules on State aid and the principle of non-discrimination on grounds of nationality laid down in Article 18(1)

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<sup>1</sup> In order to benefit from the aid scheme at issue, the undertakings concerned must, in any event, fulfil a number of cumulative eligibility criteria required by that scheme and, accordingly, must show: (i) that they are at risk of ceasing operations or having serious difficulties remaining in business in the absence of temporary public support, (ii) that a forced cessation of their activities would have a high negative impact on economic activity or employment at national or regional level, (iii) that their medium- to long-term viability is demonstrated in the application by a viability plan to overcome the crisis situation and describing the planned use of the public support, (iv) that they have a planned schedule of reimbursement of the State support through the Fund, (v) that they were not in difficulty on 31 December 2019, (vi) that sources of private funding from banks and financial markets are either not available or are accessible at costs that would prevent them from becoming viable.

<sup>2</sup> Communication C/2020/1863 (OJ 2020 C 91, p. 1), amended on 3 April 2020 (OJ 2020 C 112 I, p. 1), 13 May 2020 (OJ 2020 C 164, p. 3) and 29 June 2020 (OJ 2020 C 218, p. 3).

<sup>3</sup> Decision C(2020) 5414 final on State Aid SA.57659 (2020/N) – Spain COVID-19 – Recapitalisation fund.

<sup>4</sup> In its judgment of 17 February 2021, *Ryanair v Commission*, [T-238/20](#), the General Court carried out a similar assessment of the legality of a State aid scheme adopted by Sweden in order to address the consequences of the Covid-19 pandemic on the Swedish air transport market (see [CP 16/21](#)). In its judgment of 14 April 2021, *Ryanair v Commission* (Finnair I; Covid-19), [T 388/20](#), the General Court also examined, on the basis of Article 107(3)(b) TFEU, an individual aid measure adopted by Finland in the context of the Covid-19 pandemic (see [CP 53/21](#)).

TFEU and the concept of an 'aid scheme' within the meaning of Article 1(d) of Regulation 2015/1589.<sup>5</sup>

Findings of the General Court

**In the first place, the Court reviews the Commission's decision in the light of the principle of non-discrimination**, by ascertaining whether the difference in treatment introduced by the aid scheme at issue, in that it benefits only undertakings that are established in Spain and have their principal places of business there, is justified by a legitimate aim and whether it is necessary, appropriate and proportionate in order to attain it. The General Court also examines the effect of Article 18(1) TFEU which prohibits any discrimination on grounds of nationality within the scope of application of the Treaties, and without prejudice to any special provisions contained therein. Since Article 107(3)(b) TFEU is, according to the General Court, among the special provisions laid down by the Treaties, the General Court examines whether the scheme at issue may be declared compatible with the internal market under that provision.

In that regard, **the General Court confirms, first, that the objective of the scheme at issue satisfies the conditions laid down in Article 107(3)(b) TFEU in so far as it seeks to remedy the serious disturbance in the Spanish economy caused by the Covid-19 pandemic. Furthermore, the General Court adds that the criterion of the strategic and systemic importance of the beneficiaries of the aid properly reflects the objective of the aid scheme at issue.**

**The General Court also finds that the restriction of the scheme at issue to non-financial undertakings which are of systemic or strategic importance for the Spanish economy, which are established in Spain and have their principal places of business in its territory, is both appropriate and necessary in order to achieve the objective of remedying the serious disturbance in the Spanish economy.** According to the General Court, both the eligibility criteria for the scheme and the conditions for the grant of aid, consisting of the Spanish State temporarily acquiring an interest in the capital of the undertakings concerned, and the ex post restrictions laid down by that scheme vis-à-vis the beneficiaries of the aid,<sup>6</sup> bear witness to Spain's willingness to support undertakings which are genuinely and enduringly linked to the Spanish economy. **That approach is consistent with the objective of the scheme which is to remedy the serious disturbance in the Spanish economy with a view to the medium and long-term development of that economy.**

As regards **the proportionality of the aid scheme**, the General Court finds that, **by laying down conditions for granting the benefit of a general and multisectoral aid scheme without distinction as to the economic sector concerned, Spain could legitimately rely on eligibility criteria designed to identify undertakings which are both systemically or strategically important for its economy and have durable and stable links to it.** A different eligibility criterion, including undertakings operating in Spain as mere service providers, could not have ensured the need for a stable and durable link of the beneficiaries of the aid to the Spanish economy, which underlies the aid scheme at issue.

**Having regard to those findings, the General Court confirms that the objective of the aid scheme at issue satisfies the requirements of the derogation laid down in Article 107(3)(b) TFEU and that the conditions for granting the aid do not go beyond what is necessary to**

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<sup>5</sup> Under Article 1(d) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] (OJ 2015 L 248, p.9), aid scheme means 'any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time [or] for an indefinite amount'.

<sup>6</sup> Those entail, inter alia, transparency and accountability obligations on the national authorities regarding the use of the aid at issue and, as long as they have not repaid the aid obtained, beneficiaries are prohibited from taking excessive risks or pursuing aggressive commercial expansion financed by the aid, from carrying out certain mergers or acquisitions and making dividend payments.

achieve that objective. Thus, that scheme does not infringe the principle of non-discrimination or the first paragraph of Article 18 TFEU.

In the second place, the General Court examines the Commission's decision in the light of the freedom to provide services and the freedom of establishment set out in Article 56 TFEU and Article 58 TFEU respectively. In that regard, the General Court points out that the freedom to provide services does not apply as such to the field of transport, which is governed by a special legal regime, to which Regulation No 1008/2008<sup>7</sup> belongs. The very purpose of that regulation is to define the conditions for the application, in the air transport sector, of the principle of freedom to provide services. That being said, **Ryanair had not, in any event, established how being deprived of access to recapitalisation measures covered by the scheme at issue would deter it from establishing itself in Spain or from providing services to and from Spain.**

In the third place, the General Court rejects the plea according to which the Commission allegedly infringed the obligation to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition. In that regard, the General Court notes that such a balancing exercise is not required by Article 107(3)(b) TFEU, contrary to what is laid down in Article 107(3)(c) TFEU and that, **in the circumstances of the present case, such a balancing exercise would have no *raison d'être* as its result is presumed to be positive.**

In the fourth place, as regards the allegedly incorrect classification of the measure at issue as an 'aid scheme', the General Court rules that the provisions of Spanish law constituting the legal basis of the measure at issue<sup>8</sup> constitute acts of general application which govern all the characteristics of the aid measure at issue. In fact, those provisions enable, in themselves, without further implementing measures being required, both the individual grant of aid to the undertakings which have applied for it and define, in a general and abstract manner, the beneficiaries of the aid. Consequently, **the General Court concludes that Commission was able to classify, without committing an error of law, the aid at issue as an aid scheme**, pursuant to Article 1(d) of Regulation 2015/1589.

Lastly, the General Court rejects as unfounded the pleas alleging an infringement of the obligation to state reasons and finds that there is no need to examine the merits of the plea alleging an infringement of procedural rights under Article 108(2) TFEU.

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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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<sup>7</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p. 3).

<sup>8</sup> In particular, the Real Decreto-ley 25/2020 de medidas urgentes para apoyar la reactivación económica y el empleo, of 3 July (BOE No 185, of 6 July 2020) and the Acuerdo del Consejo de Ministros sobre el funcionamiento del Fondo de Apoyo a la Solvencia de las Empresas Estratégicas (Orden PCM/679/2020 of 23 July 2020) (BOE No 201 of 24 July 2020).