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Judgment of the General Court in Case T-142/21 | Wizz Air Hungary v Commission (Blue Air; COVID-19 and rescue aid)

The action against the Commission's decision approving the aid granted by Romania to the airline Blue Air in the context of the Covid-19 pandemic is dismissed in its entirety

On 18 August 2020 Romania notified the European Commission of an aid measure in favour of the airline Blue Air Aviation S.A. ('Blue Air') in the form of a State guaranteed loan of approximately € 62 130 000 together with subsidised interest rates.

The notified measure involved two separate aid measures granted on two different legal bases, each covering a defined aid amount. The first aid consisted of a loan in the amount of € 28 290 000 to make good the damage suffered directly by Blue Air due to the cancellation or rescheduling of its flights following the imposition of travel restrictions linked to the COVID-19 pandemic in the period from 16 March 2020 to 30 June 2020 ('the compensation measure'). The second aid concerned a loan in the amount of € 33 840 000 to partially cover Blue Air's urgent liquidity needs caused by the heavy operating losses which it reported following the COVID-19 pandemic ('the rescue aid').

Without initiating the formal investigation procedure under Article 108(2) TFEU, the Commission found, by decision of 20 August 2020 ¹, that the notified measure constituted State aid, both parts of which were compatible with the internal market. Accordingly, the Commission declared the compensation measure compatible with the internal market under Article 107(2)(b) TFEU ². The rescue aid was, for its part, declared compatible under Article 107(3)(c) TFEU ³, read in conjunction with the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ('the Guidelines') ⁴.

The airline Wizz Air Hungary Zrt. filed an action for annulment of that decision, which was dismissed by the Tenth Chamber (Extended Composition) of the General Court. In its judgment, the General Court confirms the Commission's analysis that the notified measure is compatible with the internal market.

Findings of the Court

¹ Commission Decision C(2020) 5830 final of 20 August 2020 on State Aid SA.57026 (2020/N) – Romania – COVID-19: Aid to Blue Air.

² According to this provision, aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market.

³ Under this provision, aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered compatible with the internal market.

⁴ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ 2014 C 249, p. 1).

The Court rejects, first, the plea for annulment alleging incorrect application of Article 107(2)(b) TFEU. In that regard, the applicant complained, inter alia, that the Commission had erred in its assessment of the damage suffered by Blue Air as a result of the travel restrictions imposed in the context of the COVID-19 pandemic.

On this point, the Court recalls that only economic disadvantages caused directly by natural disasters or exceptional occurrences may be compensated under Article 107(2)(b) TFEU. It follows that aid likely to exceed the losses incurred by its beneficiaries is not covered by Article 107(2)(b) TFEU. The Court also points out that the occurrence giving rise to the damage, as defined in the contested decision, must be the determining cause of the damage which the aid is intended to remedy and must be directly responsible for causing it.

In order to be able to declare the compensation measure compatible with the internal market under Article 107(2)(b) TFEU, it was incumbent on the Commission to examine with particular care whether the travel restrictions imposed in the context of the COVID-19 pandemic were really the decisive cause of the damage that that measure was intended to remedy or whether, on the contrary, some of the damage suffered was due to the Blue Air's pre-existing difficulties.

In the light of those clarifications, the Court rejects, in particular, the applicant's argument that, by not excluding Blue Air's losses resulting from pre-existing difficulties, the Commission overestimated the damage suffered as a result of the Covid-19 pandemic. In that regard, the Court notes that the Commission compared Blue Air's actual financial situation with a counterfactual scenario that would have occurred in the absence of the travel restrictions, based on the projected revenues and costs provided for in the 2020 budget for the period from 16 March to 30 June 2020. For the purposes of that counterfactual scenario, the Commission had taken into account Blue Air's pre-existing difficulties prior to the COVID-19 pandemic. As these difficulties were also reflected in Blue Air's actual results and were therefore included in both scenarios that the Commission compared, the Court finds that their impact was neutralised in the calculation of the damages suffered by Blue Air as a result of the travel restrictions imposed in the context of the COVID-19 pandemic.

Second, the Court rejected the plea for annulment alleging misapplication of Article 107(3)(c) TFEU, read in the light of the Guidelines. In that context, the applicant argued, in particular, that the Commission had erred in stating that the rescue aid pursued an objective of common interest within the meaning of point 43 of the Guidelines.

The Court notes in that context that it is clear 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 its purpose is to avoid social hardship or to address a market failure. This is confirmed by point 44 of the Guidelines, according to which Member States must demonstrate that the failure of the beneficiary would be likely to lead to serious social hardship or severe market failure, in particular by proving that there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for a competitor to take the place of the beneficiary.

With regard to the importance of the service provided by Blue Air, it is apparent from the Commission's decision that the airline ensured the connectivity of Romania by serving domestic and international air routes, while targeting two specific categories of passengers whose travel depended heavily on low-cost air routes, namely small local entrepreneurs and the Romanian community established outside the country. In the Commission's view, Blue Air's air services were, moreover, complicated to replicate, as other low-cost airlines had little or no presence on the majority of Blue Air's routes and Blue Air therefore occupied a niche that was not exploited by other low-cost airlines in the Romanian market.

Since none of the arguments put forward by the applicant is capable of calling those findings into question, the Court concludes that the Commission was right to find that, in the event of Blue Air's exit from the market, there would have been a specific risk of disruption to certain passenger air transport services, which were considered to be important and complicated to replicate in the particular circumstances of the case, so that the notified aid pursued an objective of common interest.

As the other pleas raised by the applicant also proved to be unfounded, the Court dismisses the action in its entirety.

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, 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.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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