



## PRESS RELEASE No 13/25

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Judgment of the General Court in Case T-743/21 | Ryanair v Commission (TAP II; rescue aid; COVID-19)

### **The General Court dismisses Ryanair's action against the European Commission's decision once again approving rescue aid to TAP in the context of the COVID-19 pandemic**

*That decision was adopted in 2021, following a judgment of the General Court annulling the first Commission decision in that regard*

In June 2020, Portugal notified the Commission of an aid measure in favour of Transportes Aéreos Portugueses SGPS (TAP SGPS), the parent company and 100% shareholder of the airline TAP Air Portugal. The notified aid, the maximum budget of which is €1.2 billion, concerns a loan agreement concluded between, inter alia, Portugal as lender, TAP Air Portugal as borrower and TAP SGPS as guarantor. By that measure, Portugal intended to keep the beneficiary in operation for six months, between July and December 2020.

On 10 June 2020, the Commission adopted a decision <sup>1</sup> by which it concluded that the measure at issue constituted State aid. However, it declared the measure compatible with the internal market. <sup>2</sup>

The low-cost airline Ryanair challenged that initial decision before the General Court of the European Union. By judgment of 19 May 2021, <sup>3</sup> the General Court annulled the decision on the ground that the Commission had not indicated whether TAP SGPS belonged to a larger business group, which was necessary in order to determine whether TAP SGPS was eligible for rescue aid. <sup>4</sup> The General Court gave the Commission the possibility to adopt a new decision within two months to remedy those shortcomings. To that end, it suspended the effects of the annulment pending the adoption of the new decision.

On 16 July 2021, the Commission adopted a new decision approving the aid. In particular, it found that TAP SGPS was eligible for rescue aid. <sup>5</sup>

Ryanair challenged the new decision before the General Court.

In its judgment, **the General Court dismisses Ryanair's action.**

The General Court considers that the Commission did not disregard the conditions of eligibility for rescue aid. <sup>6</sup> Furthermore, according to the General Court, the Commission was right to consider that the measure met an objective of common interest, that it was appropriate and proportionate. Nor could the Commission be criticised for having carried out an incomplete examination of the negative effects of the aid measure at issue. <sup>7</sup> The principles of non-discrimination, freedom to provide services and freedom of establishment were also not breached. The General Court also rejects Ryanair's claims that the examination carried out by the Commission was incomplete and insufficient and that the decision was insufficiently reasoned.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that 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.

**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.

Unofficial document for media use, not binding on the General Court.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> [Commission Decision C\(2020\) 3989 of 10 June 2020](#) on State aid SA.57369 (2020/N) – COVID-19 – Portugal – Aid granted to TAP (see the Commission's [press release](#)).

<sup>2</sup> On the basis of [Article 107\(3\)\(c\) TFEU](#), read in conjunction with the [Guidelines](#) on State aid for rescuing and restructuring non-financial undertakings in difficulty ('the R&R Guidelines').

<sup>3</sup> Judgment of the General Court of 19 May 2021, *Ryanair v Commission (TAP; Covid-19)*, [T-465/20](#) (see also press release No [85/21](#)).

<sup>4</sup> Within the meaning of point 22 of the R&R Guidelines.

<sup>5</sup> [Commission Decision C\(2021\) 5302 of 16 July 2021](#) on State aid SA.57369 (2020/N) – Portugal – Rescue aid to TAP SGPS (see the Commission's [press release](#)).

<sup>6</sup> In particular, those set out in points 8 and 22 of the R&R Guidelines. According to the General Court, the Commission was entitled to find that TAP SGPS belonged to a group on the basis of its relationship with Parpública (a public limited company) and AGW. At the time the measure at issue was notified, Parpública and AGW were two direct shareholders of TAP SGPS who held 50% and 45% of its capital, respectively. The General Court emphasises, inter alia, that the Commission rightly found that TAP Air Portugal's difficulties were too serious to be dealt with by the group.

<sup>7</sup> Accordingly, the Commission did not misapply Article 107(3)(c) TFEU and the R&R Guidelines, as argued by Ryanair.