JUDGMENT OF THE GENERAL COURT

19 May 2021 (*)

(State aid – Portuguese air transport market – Aid provided by Portugal to TAP owing to the COVID-19 pandemic – State loan – Decision not to raise any objections – Point 22 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty – Company belonging to a group – Intrinsic difficulties not resulting from an arbitrary allocation of costs within the group – Difficulties which are too serious to be dealt with by the group itself – Duty to state reasons – Maintenance of the effects of the decision)

In Case T‑465/20,

Ryanair DAC, established in Swords (Ireland), represented by E. Vahida, F.-C. Laprévote, S. Rating, I.-G. Metaxas-Maranghidis and V. Blanc, lawyers,

applicant,

v

European Commission, represented by L. Flynn, V. Bottka and S. Noë, acting as Agents,

defendant,

supported by

French Republic, represented by P. Dodeller and E. de Moustier, acting as Agents,

by

Republic of Poland, represented by B. Majczyna, acting as Agent,

and by

Portuguese Republic, represented by L. Inez Fernandes, P. Barros da Costa and S. Jaulino, acting as Agents, and by N. Mimoso Ruiz, lawyer,

interveners,

APPLICATION under Article 263 TFEU for annulment of Commission Decision C(2020) 3989 final of 10 June 2020 on State aid SA.57369 (2020/N) COVID-19 – Portugal – Aid to TAP,

THE GENERAL COURT (Tenth Chamber, Extended Composition),

composed of M. van der Woude, President, A. Kornezov, E. Buttigieg, K. Kowalik-Bańczyk and G. Hesse (Rapporteur), Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 9 December 2020,

gives the following

Judgment

Background to the dispute

1 On 9 June 2020, the Portuguese Republic notified the European Commission of an aid measure in the form either of a State loan or of a combination of such a loan and a State guarantee, up to a maximum of EUR 1.2 billion ('the measure at issue'), for Transportes Aéreos Portugueses SGPS SA ('the beneficiary'), in accordance with Article 108(3) TFEU.

2 The measure at issue is intended to keep the beneficiary, the parent company and 100% shareholder of Transportes Aéreos Portugueses SA ('TAP Air Portugal'), in operation for six months, between July 2020 and December 2020. At the time when the contested decision was adopted, half of the shares in the beneficiary were held by Participações Públicas SGPS SA ('Parpública'), which managed the holdings of the Portuguese State. Atlantic Gateway SGPS Lda ('AGW') held 45% of the beneficiary's shares while 5% of the shares were owned by other shareholders. The measure at issue concerns a loan agreement concluded between, inter alia, the Portuguese Republic as lender, TAP Air Portugal as borrower and the beneficiary as guarantor. AGW and Parpública may also be part of the loan agreement in their capacity as shareholders of the beneficiary.

3 On 10 June 2020, the Commission adopted Decision C(2020) 3989 final on State aid SA.57369 (2020/N) – COVID-19 – Portugal – Aid to TAP ('the contested decision'), by which, after concluding that the measure at issue constituted State aid within the meaning of Article 107(1) TFEU, it assessed the measure's compatibility with the internal market, more specifically in the light of Article 107(3)(c) TFEU and its Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ 2014 C 249, p. 1) ('the Guidelines'). The Commission declared the measure at issue to be compatible with the internal market.

Procedure and forms of order sought

4 By document lodged at the Court Registry on 22 July 2020, the applicant, Ryanair DAC, brought the present action.

5 By document lodged at the Court Registry on the same day, the applicant requested, in accordance with Articles 151 and 152 of the Rules of Procedure of the General Court, that the present action be adjudicated under an expedited procedure. By decision of 11 August 2020, the General Court (Tenth Chamber) granted the request for an expedited procedure.

6 The Commission lodged the defence at the Court Registry on 26 August 2020.

7 Pursuant to Article 106(2) of the Rules of Procedure, on 31 August 2020, the applicant submitted a reasoned request for a hearing.

8 On a proposal from the Tenth Chamber, the Court decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a Chamber sitting in extended composition.

9 By documents lodged at the Court Registry on 17 September 2020, 21 October 2020 and 22 October 2020 respectively, the Portuguese Republic, the French Republic and the Republic of Poland sought leave to intervene in the present proceedings in support of the form of order sought by the Commission. By decisions of 1 October 2020 and 3 November 2020, the President of the Tenth Chamber of the Court granted them leave to intervene.

10 By way of measures of organisation of procedure of 13 October 2020 and 4 November 2020, the Portuguese Republic, the French Republic and the Republic of Poland were permitted, pursuant to Article 154(3) of the Rules of Procedure, to lodge a statement in intervention.

11 On 28 October 2020, the Portuguese Republic and, on 19 November 2020, the French Republic and the Republic of Poland respectively lodged their statements in intervention at the Court Registry.

12 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

13 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

14 The French Republic contends that the action is inadmissible in so far as it seeks to challenge the merits of the contested decision, and that it should be dismissed on substantive grounds as to the remainder. In the alternative, it contends that the entire action should be dismissed on substantive grounds.

15 The Republic of Poland and the Portuguese Republic, like the Commission, contend that the action should be dismissed as unfounded.

Law

Admissibility

16 The applicant argues, in paragraphs 33 and 34 of the abridged application, that it has standing to bring proceedings as an 'interested party' and maintains a legal interest in bringing an action arising from the protection of the procedural rights available to it, in that same capacity, under Article 108(2) TFEU.

17 The applicant is a 'party concerned' for the purposes of Article 108(2) TFEU and an 'interested party' within the meaning of Article 1(h) 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) because, as a competitor of TAP Air Portugal, its interests are affected by the grant of a State loan to the parent company of TAP Air Portugal. The aid granted to the beneficiary allows TAP Air Portugal to remain on the market as a subsidised competitor to the applicant. Unlike TAP Air Portugal, the applicant, its main competitor in Portugal, is not in receipt of a State loan. It will therefore be penalised in obtaining loans and as regards the terms governing loans, most importantly in relation to their interest rate.

18 On that basis, it is entitled, pursuant to the fourth paragraph of Article 263 TFEU, to bring annulment proceedings against a decision declaring the aid at issue to be compatible with the internal market, taken without initiating the formal investigation procedure, such as the contested decision.

19 The Commission does not dispute the admissibility of the application.

20 It must be held that the admissibility of the present action is not in doubt in so far as, by that action, the applicant seeks to show that the Commission should have initiated a formal investigation procedure under Article 108(2) TFEU.

21 In the context of the review procedure under Article 108 TFEU, two stages must be distinguished. First, the preliminary examination stage established by Article 108(3) TFEU, which enables the Commission to form a prima facie opinion on the conformity of the aid at issue. Second, the formal investigation procedure provided for in Article 108(2) TFEU, which allows the Commission to be fully informed of the facts of the case. It is only in the context of that procedure that the FEU Treaty imposes an obligation on the Commission to give the parties concerned notice to submit their comments (judgments of 19 May 1993, *Cook* v *Commission*, C‑198/91, EU:C:1993:197, paragraph 22; of 15 June 1993, *Matra* v *Commission*, C‑225/91, EU:C:1993:239, paragraph 16; and of 15 October 2018, *Vereniging Gelijkberechtiging Grondbezitters and Others* v *Commission*, T‑79/16, not published, EU:T:2018:680, paragraph 46).

22 When the formal investigation procedure is not initiated, interested parties, who could have submitted comments during that second stage, are deprived of that possibility. In order to remedy this, they are entitled to challenge the Commission's decision not to initiate the formal investigation procedure before the EU judicature. Accordingly, an action for annulment of a decision based on Article 108(3) TFEU brought by a party concerned for the purposes of Article 108(2) TFEU is admissible where that party seeks to safeguard the procedural rights available to it under that latter provision (see judgment of 18 November 2010, *NDSHT* v *Commission*, C‑322/09 P, EU:C:2010:701, paragraph 56 and the case-law cited).

23 In the present case, the formal investigation procedure was not initiated by the Commission and the applicant, in the fourth plea, alleges infringement of its procedural rights. In the light of Article 1(h) of Regulation 2015/1589, an undertaking in competition with the beneficiary of an aid measure is without doubt an 'interested party' for the purposes of Article 108(2) TFEU (judgments of 18 November 2010, *NDSHT* v *Commission*, C‑322/09 P, EU:C:2010:701, paragraph 59, and of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C‑817/18 P, EU:C:2020:637, paragraph 50).

24 In the present case, it is indisputable that the applicant and TAP Air Portugal are in competition with each other. Accordingly, the applicant submitted, without being contradicted, that it has contributed to Portuguese airline services since 2003 and that, in 2019, it carried 10.9 million passengers on its Portuguese routes. Nor is it disputed by the parties that the applicant was TAP Air Portugal's largest competitor and that the two companies competed directly on 32 routes in 2019. The applicant also stated that its schedule for summer 2020, planned before the health crisis, included 126 routes from five Portuguese airports. The applicant is therefore a party concerned with a legal interest in safeguarding the procedural rights available to it under Article 108(2) TFEU.

25 The action must therefore be declared to be admissible in so far as the applicant claims infringement of its procedural rights.

26 The applicant relies on five pleas in law in support of the action, alleging, first, misapplication of points 8 and 22 of the Guidelines; second, infringement of Article 107(3)(c) TFEU; third, infringement of the principles of non-discrimination, free provision of services and freedom of establishment; fourth, misapplication of Article 108(2) TFEU; and, fifth, breach of the duty to state reasons for the purposes of Article 296 TFEU.

27 Against that background, it must be held that the fourth plea, which seeks expressly to secure respect for the applicant's procedural rights, is admissible, in view of the applicant's status as an interested party. The applicant may, in order to preserve the procedural rights which it enjoys under the formal investigation procedure, rely on pleas which show that the assessment of the information and evidence which the Commission had or could have had at its disposal during the preliminary examination phase of the measure notified ought to have raised doubts as to the compatibility of that measure with the internal market (see, to that effect, judgments of 22 December 2008, *Régie Networks*, C‑333/07, EU:C:2008:764, paragraph 81; of 9 July 2009, *3F* v *Commission*, C‑319/07 P, EU:C:2009:435, paragraph 35; and of 6 May 2019, *Scor* v *Commission*, T‑135/17, not published, EU:T:2019:287, paragraph 73).

28 In that regard, it should be borne in mind that the applicant is entitled, in order to demonstrate the infringement of its procedural rights on account of the doubts that the measure at issue should have raised as to its compatibility with the internal market, to put forward arguments aimed at demonstrating that the Commission's finding as to the compatibility of that measure with the internal market was incorrect, which, a fortiori, is such as to establish that the Commission should have harboured doubts in its assessment of the compatibility of that measure with the internal market. Accordingly, the Court is entitled to examine the substantive arguments made by the applicant in order to determine whether they are such as to support the plea expressly raised by the applicant concerning the existence of doubts justifying the initiation of the procedure under Article 108(2) TFEU (see, to that effect, judgments of 13 June 2013, *Ryanair* v *Commission*, C‑287/12 P, not published, EU:C:2013:395, paragraphs 57 to 60, and of 6 May 2019, *Scor* v *Commission*, T‑135/17, not published, EU:T:2019:287, paragraph 77).

29 As regards the fifth plea in law, alleging that the contested decision was vitiated by a failure to state reasons, it should be noted that a breach of the duty to state reasons goes to an issue of infringement of essential procedural requirements and involves a matter of public policy, which must be raised by the EU judicature of its own motion and does not relate to the substantive legality of the contested decision (see, to that effect, judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C‑367/95 P, EU:C:1998:154, paragraphs 67 to 72).

Substance

30 It is appropriate to examine the fifth plea in law first.

The fifth plea, alleging that a failure to state reasons vitiated the contested decision

31 By its fifth plea, the applicant submits, in essence, that the contested decision is vitiated by a failure to state reasons in several respects.

32 By the first part of the fifth plea, the applicant submits that the Commission did not assess whether the beneficiary's difficulties were too serious to be dealt with by the group itself, within the meaning of point 22 of the Guidelines. Furthermore, the Commission did not establish that the beneficiary's difficulties were intrinsic and were not the result of an arbitrary allocation of costs within the group, within the meaning of that provision. The contested decision refers only to the fact that, first, the beneficiary had negative equity and, secondly, that the credit rating of TAP Air Portugal had deteriorated significantly as a result of the health crisis. However, the contested decision does not state whether an arbitrary allocation of costs within the group had contributed to that outcome. In that regard, the applicant observes that the two shareholders which make up the AGW consortium are also active in the field of transport through their own companies and that it cannot therefore be ruled out that those companies were given preferential treatment to the detriment of TAP Air Portugal's financial position.

33 As regards recital 43 of the contested decision, the applicant submits that the Commission, referring to the eligibility of a beneficiary for rescue aid, simply stated, without providing proof, that 'although the beneficiary is controlled by other shareholders (recital (3)), the difficulties it faces are intrinsic, are too serious to be dealt with by its controlling or other shareholders and are not the result of an arbitrary allocation of costs to the benefit of its shareholders or other subsidiaries, as illustrated in recitals (7) to (9)'.

34 According to the applicant, the Commission entirely failed to provide reasons, even in a succinct manner, for the supposed inability of the shareholders to deal with the beneficiary's difficulties. Similarly, the Commission did not in any way assess the allocation of costs within the group or whether the difficulties were intrinsic to the beneficiary.

35 The Commission, supported by the French Republic, the Republic of Poland and the Portuguese Republic, disputes that line of argument.

36 It should be observed, at the outset, that according to settled case-law, the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure, in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 8 September 2011, *Commission* v *Netherlands*, C‑279/08 P, EU:C:2011:551, paragraph 125 and the case-law cited).

37 In that context, the decision not to initiate the formal investigation procedure laid down by Article 108(2) TFEU must simply 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, and even a succinct statement of reasons for that decision must be regarded as sufficient for the purpose of satisfying the requirement to state adequate reasons laid down in Article 296 TFEU if it nevertheless discloses in a clear and unequivocal fashion the reasons for which the Commission considered that it was not faced with serious difficulties, the question of whether the reasoning is well founded being a separate matter (see, to that effect, judgments of 22 December 2008, *Régie Networks*, C‑333/07, EU:C:2008:764, paragraphs 65, 70 and 71; of 27 October 2011, *Austria* v *Scheucher-Fleisch and Others*, C‑47/10 P, EU:C:2011:698, paragraph 111; and of 12 May 2016, *Hamr – Sport* v *Commission*, T‑693/14, not published, EU:T:2016:292, paragraph 54).

38 As regards the applicant's complaint that the Commission failed to set out the reasons why, first, the difficulties were intrinsic to the beneficiary and were not the result of an arbitrary allocation of costs within the group and why, secondly, the beneficiary's difficulties were too serious to be dealt with by the group to which it belonged, within the meaning of point 22 of the Guidelines, it should be recalled that, according to point 22, 'a company belonging to or being taken over by a larger business group is not normally eligible for aid under these guidelines, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself'.

39 The objective of that prohibition is therefore to prevent a group of undertakings from having the State bear the cost of a rescue operation for one of the undertakings belonging to the group, when that undertaking is in difficulty and the group itself has created those difficulties or has the means to deal with them on its own (see, to that effect, judgment of 13 May 2015, *Niki Luftfahrt* v *Commission*, T‑511/09, EU:T:2015:284, paragraph 159).

40 It follows that point 22 of the Guidelines sets out three cumulative conditions in order for aid granted to a company belonging to a group to be regarded as compatible with the internal market. Accordingly, it is the task of the Commission to examine, first, whether the beneficiary of the aid belongs to a group and, as the case may be, the composition of that group, secondly, whether the difficulties faced by the beneficiary are intrinsic and are not the result of an arbitrary allocation of costs within the group and, thirdly, whether those difficulties are too serious to be dealt with by that group itself.

41 In recital 43 of the contested decision, the Commission states as follows:

'Although the beneficiary is controlled by other shareholders (recital (3)), the difficulties it faces are intrinsic, are too serious to be dealt with by its controlling or other shareholders and are not the result of an arbitrary allocation of costs to the benefit of its shareholders or other subsidiaries, as illustrated in recitals (7) to (9). In the case of [the beneficiary], it is apparent that the difficulties at issue have been aggravated by the unprecedented public measures taken by Portugal and other countries with respect to air transport.'

42 As regards, first, the question of whether the beneficiary belongs to a group, it must be noted that the Commission neither found nor first specified whether the beneficiary belonged to such a group. Indeed, none of the grounds of the contested decision suggests that the Commission performed such an analysis. Recital 43 of the contested decision may thus be interpreted either as the Commission not having any position on that point, or as suggesting that the Commission probably subscribed to the premiss, without, however, providing an explanation in that regard, that the beneficiary belonged to a group within the meaning of point 22 of the Guidelines. Indeed, if that had not been the case, it would not have been necessary for the Commission to address the other two conditions laid down in point 22 of the Guidelines. In addition, in its examination of those conditions, the Commission noted that the beneficiary was 'controlled by other shareholders' and referred in that respect to recital 3 of the contested decision, which lists the companies which are shareholders in the beneficiary, including AGW.

43 Moreover, even though the Commission employed the same terms as used in point 22 of the Guidelines to describe the two exceptions to the ban on granting an aid measure to a company belonging to a group under the Guidelines, the mere repetition of the wording of point 22 cannot be a substitute for assessing whether a group exists.

44 In that regard, it is apparent from the pleadings of the main parties and from the oral argument presented at the hearing that they disagree as to whether the beneficiary and its shareholders, in particular the AGW consortium, belonged to a group within the meaning of point 22 of the Guidelines. On that point, it must be noted that, on the date of the adoption of the contested decision, Parpública held 50% of the beneficiary's shares, AGW 45% and that the other 5% of the shares belonged to third parties.

45 The applicant claimed in the application and at the hearing that, on the date of the contested decision, the beneficiary formed a group with the AGW consortium, including the latter's two shareholders, namely the companies HPGB SGPS SA and DGN Corporation. It was an established fact that AGW and the latter two companies exercised joint and real control over the beneficiary.

46 The Commission, in the defence and at the hearing, denied the existence of a group involving AGW and the beneficiary, within the meaning of point 22 of the Guidelines. In its view, the contested decision does not show that a group including the beneficiary and AGW is at issue. AGW is a consortium which in actual fact owns the shares of two individuals and does not constitute an undertaking in itself.

47 However, such a finding is not apparent from the contested decision. As stated in paragraph 42 above, neither recital 43 of the contested decision nor any other part of it include a finding or any analysis relating to the existence or otherwise of a group of undertakings, for the purposes of point 22 of the Guidelines, let alone the makeup of such a group of undertakings. It must be stated, moreover, that the Commission, in recital 4 of the contested decision, merely provided information on the companies controlled by the beneficiary. However, the contested decision does not provide any information on the links between the beneficiary and the companies referred to in recital 3 of the contested decision, which hold shares in it, including AGW.

48 More specifically, it should be noted, in that respect, that, as regards the concept of 'a larger business group', point 21(b) of the Guidelines refers to the annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36). Thus, footnote 28 of the Guidelines states that, 'to determine whether a company is independent or forms part of a group, the criteria laid down in Annex I to Recommendation 2003/361/EC will be taken into account'.

49 However, as noted in paragraph 47 above, the contested decision does not indicate whether the Commission had examined, taking into account, inter alia, the criteria set out in that annex, whether the beneficiary and the companies which own shares in it could be classified as a group within the meaning of point 22 of the Guidelines. The Court is therefore not in a position to review whether that was the case.

50 It is settled case‑law that the reasons for a decision cannot be explained for the first time *ex post facto* before the Court, save in exceptional circumstances (see judgment of 20 September 2011, *Evropaïki Dynamiki* v *EIB*, T‑461/08, EU:T:2011:494, paragraph 109 and the case-law cited). Consequently, the explanations put forward by the Commission in the defence and at the hearing, that the beneficiary did not belong to a group, cannot supplement the reasoning of the contested decision during the proceedings.

51 Secondly, and assuming that recital 43 of the contested decision was to be interpreted as being based on the implicit premiss that the beneficiary and its shareholders did belong to the same group (see paragraph 42 above), in contrast therefore to the Commission's statements in the defence and at the hearing, it must be stated that the Commission has not provided a sufficient explanation as to why it considered that the second and third conditions laid down by point 22 of the Guidelines and noted in paragraph 38 above had been satisfied. In that regard, the Commission merely asserted, in recital 43 of the contested decision, respectively, that the beneficiary's difficulties were intrinsic and were 'not the result of an arbitrary allocation of costs to the benefit of its shareholders or other subsidiaries' and that those difficulties were 'too serious to be dealt with by its controlling or other shareholders', without, however, substantiating those assertions in any way at all.

52 Whereas the Commission, in recital 43 of the contested decision, referred to recitals 7 to 9 and 11 to 13 of that decision, it must be pointed out that, in recitals 7 to 9 of the contested decision, the Commission merely provided details on the beneficiary's financial situation and the difficulties caused by the COVID-19 pandemic. Similarly, recitals 11 to 13 of the contested decision describe the impact of the disruption caused by the pandemic on TAP Air Portugal's operating results and its liquidity position. Therefore, those recitals do not make it clear in any way whether the difficulties were intrinsic to the beneficiary and were not the result of an arbitrary allocation of costs within the group allegedly constituted by that beneficiary and its shareholders. Nor do they give details about the financial situation of the companies owning shares in the beneficiary, or their potential capacity to deal with its difficulties, albeit only partially. The Court is therefore not in a position to review the merits of the aforementioned assertions.

53 Consequently, it is impossible for the Court to review whether the conditions laid down in point 22 of the Guidelines were satisfied in the present case and whether they prevent the beneficiary from being eligible for the grant of rescue aid. Accordingly, the contested decision does not set out the reasons why the Commission found that it was not faced with serious difficulties in assessing the compatibility of the aid in question with the internal market, for the purposes of the case-law cited in paragraph 37 above.

54 Consequently, the fifth plea is well founded, without there being any need to examine the other parts of that plea.

55 The inadequacy of the statement of reasons which vitiates the contested decision requires the annulment of that decision. Point 22 of the Guidelines sets out the conditions under which aid granted to rescue a company belonging to a group may be considered compatible with the internal market. Without a sufficient statement of reasons in that regard in the contested decision, the Court is not in a position to review whether the Commission rightly took the view that it was not faced with serious difficulties in assessing the compatibility of the aid in question with the internal market. The contested decision must therefore be annulled, without there being any need to examine the other pleas raised by the applicant.

Maintenance of the effects of the annulled decision

56 It is appropriate to recall the case-law by which, where it is justified by overriding considerations of legal certainty, the second paragraph of Article 264 TFEU confers on the EU judicature discretion to decide, in each particular case, which specific effects of the measure concerned must be regarded as definitive (see, by analogy, judgment of 22 December 2008, *Régie Networks*, C‑333/07, EU:C:2008:764, paragraph 121 and the case-law cited).

57 It is therefore clear from that provision that, if the EU judicature considers it necessary, it may, even of its own motion, limit the annulling effect of its judgment (see, to that effect, judgment of 1 April 2008, *Parliament and Denmark* v *Commission*, C‑14/06 and C‑295/06, EU:C:2008:176, paragraph 85).

58 In accordance with that case-law, the Court has limited the temporal effect of a declaration that an EU measure is invalid where overriding considerations of legal certainty involving all the interests, public as well as private, at stake in the cases concerned precluded the calling into question of the charging or payment of sums of money effected on the basis of that measure in respect of the period prior to the date of the judgment (judgment of 22 December 2008, *Régie Networks*, C‑333/07, EU:C:2008:764, paragraph 122).

59 In the present case, the Court considers that there are overriding considerations of legal certainty which justify the limitation of the temporal effect of the annulment of the contested decision. It must be stated that the measure at issue was granted for an initial period, already elapsed, of six months, after which the Portuguese Republic had to communicate to the Commission, in accordance with point 55(d) of the Guidelines, either proof that the loan had been reimbursed in full, a restructuring plan or a liquidation plan. In addition, in accordance with that provision, if a restructuring plan was submitted, the authorisation of the rescue aid was automatically extended until the Commission reached a final decision on the restructuring plan, unless it decided that such an extension was not justified or had to be limited in time or scope.

60 In this context of the application of the aid measure at issue being part of a process which is still ongoing and which consists of various successive phases, the calling into question of the receipt of the sums of money envisaged by the aid measure at issue at the current stage would have particularly damaging consequences for a range of interests, both public and private. In particular, it is appropriate to take account of the harmful effects of the disruption caused by the COVID-19 pandemic on Portugal's air services and its economy and of TAP Air Portugal's importance for those services and the economy of that Member State. Lastly, it must be observed that the illegality that has been found is a failure to state reasons and not a substantive error. Those circumstances are capable of justifying the limitation of the temporal effects of the annulment of the contested decision.

61 Under Article 266 TFEU, the Commission, whose act has been declared void, is required to take the necessary measures to comply with the present judgment.

62 Consequently, the effects of the annulment of the contested decision must be suspended pending the adoption of a new decision by the Commission. Having regard to the speed with which the Commission acted, from the pre-notification and notification of the measure at issue, those effects will be suspended for a period of no more than two months from the date of delivery of this judgment if the Commission decides to adopt such a new decision under Article 108(3) TFEU, and for a reasonable further period if the Commission decides to initiate the procedure under Article 108(2) TFEU (see, to that effect, judgment of 22 December 2008, *Régie Networks*, C‑333/07, EU:C:2008:764, paragraph 126).

Costs

63 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to bear its own costs and to pay those of the applicant, in accordance with the form of order sought by the applicant.

64 Furthermore, in accordance with Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The French Republic, the Republic of Poland and the Portuguese Republic are therefore to bear their own costs.

On those grounds,

THE GENERAL COURT (Tenth Chamber, Extended Composition)

hereby:

1. **Annuls Commission Decision C(2020) 3989 final of 10 June 2020 on State aid SA.57369 (2020/N) – COVID-19 – Portugal – Aid to TAP;**

2. **Orders the effects of the annulment of that decision to be suspended pending the adoption of a new decision by the European Commission under Article 108 TFEU; those effects are to be suspended for a period not exceeding two months from the date of delivery of this judgment if the Commission decides to adopt such a new decision under Article 108(3) TFEU, and for a reasonable further period if the Commission decides to initiate the procedure under Article 108(2) TFEU;**

3. **Orders the Commission to bear its own costs and to pay those incurred by Ryanair DAC;**

4. **Orders the French Republic, the Republic of Poland and the Portuguese Republic to bear their own respective costs.**

Van der Woude Kornezov Buttigieg

Kowalik-Bańczyk Hesse

Delivered in open court in Luxembourg on 19 May 2021.

E. Coulon S. Papasavvas

Registrar President

* Language of the case: English.