Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

15 July 2021 *

(Appeal – State aid – Aid for airports and airlines – Decision classifying the measures in favour of Frankfurt Hahn airport as State aid compatible with the internal market and finding no State aid in favour of airlines using that airport – Inadmissibility of an action for annulment – Fourth paragraph of Article 263 TFEU – Natural or legal person not directly and individually concerned by the decision at issue – Effective judicial protection)

In Case C-453/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 13 June 2019,

Deutsche Lufthansa AG, established in Cologne (Germany), represented by A. Martin-Ehlers, Rechtsanwalt,

appellant,

the other parties to the proceedings being:

European Commission, represented by T. Maxian Rusche and S. Noë, acting as Agents,

defendant at first instance,

Land Rheinland-Pfalz, represented by Professor C. Koenig,

Ryanair DAC, established in Swords (Ireland), represented by G. Berrisch, Rechtsanwalt, D. Vasbeck, avocat, and B. Byrne, Solicitor,

interveners at first instance,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra, D. Šváby, S. Rodin (Rapporteur) and K. Jürimäe, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

* Language of the case: German.

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 27 October 2020,

gives the following

Judgment

1 By its appeal, Deutsche Lufthansa AG asks the Court of Justice to set aside the judgment of the General Court of the European Union of 12 April 2019, *Deutsche Lufthansa* v *Commission* (T-492/15, 'the judgment under appeal', EU:T:2019:252), by which the General Court dismissed as inadmissible its action for annulment of Commission Decision (EU) 2016/789 of 1 October 2014 on the State aid SA.21121 (C29/08) (ex NN 54/07) implemented by Germany concerning the financing of Frankfurt Hahn airport and the financial relations between the airport and Ryanair (OJ 2016 L 134, p. 46, 'the decision at issue').

Background to the dispute and the decision at issue

2 The background to the dispute was set out by the General Court in the judgment under appeal as follows:

'1 The [appellant], [Deutsche Lufthansa], is an airline established in Germany, whose main activity is transporting passengers. Its main airport base is that of Frankfurt-am-Main (Germany).

2 Frankfurt Hahn airport is located in Germany, in Land Rheinland-Pfalz ("the *Land*"), approximately 120 km west of the city of Frankfurt-am-Main and 115 km from Frankfurt Main airport. Until 1992, there was a military airbase at the site on which Frankfurt Hahn airport is located. That base was later converted into a civil airport. Holding Unternehmen Hahn GmbH & Co. KG ("Holding Hahn"), a public private partnership in which the *Land* participated, acquired ownership of the infrastructure from the Federal Republic of Germany on 1 April 1995.

3 On 1 January 1998, Flughafen Frankfurt/Main GmbH ("Fraport"), which was operating and managing the international Frankfurt Main airport, purchased 64.90% of the shares in Flughafen Hahn GmbH & Co. KG Lautzenhausen ("Flughafen Hahn"), the company operating Frankfurt Hahn airport.

4 In 1999, Frankfurt Hahn airport attracted its first low-cost carrier, Ryanair Ltd (now Ryanair DAC, "Ryanair"). The first agreement between Flughafen Hahn and Ryanair entered into force on 1 April 1999 ("the 1999 Ryanair agreement"). The 1999 Ryanair agreement had a duration of 5 years and related to the airport charges payable by Ryanair.

5 In August 1999, Fraport acquired 73.37% of the shares of Holding Hahn and 74.90% of the shares of its general partner Holding Unternehmen Hahn Verwaltungs GmbH.

6 On 31 August 1999, the *Land* and Fraport concluded an agreement in accordance with which Fraport undertook to enter into a profit and loss transfer agreement. That agreement was approved on the same date, confirmed by a notarial deed on 24 November 2000 and entered into force on 1 January 2001. Under that agreement, Fraport was entitled to all the profits generated by the operator of Frankfurt Hahn airport and, in return, was required to cover all the latter's losses …

7 Subsequently, Holding Hahn and Flughafen Hahn merged to form Flughafen Hahn GmbH, now Flughafen Frankfurt-Hahn GmbH ("FFHG" …), 26.93% of the capital of which was held by the *Land* and 73.07% by Fraport.

8 Until 11 June 2001, 100% of the shares in Fraport were held by public shareholders. On that date, Fraport was floated on the stock exchange and 29.71% of its shares were sold to private shareholders, with 70.29% of the shares remaining with the public shareholders.

9 On 16 October 2001, the *Land* approved the schedule of airport charges for Frankfurt Hahn airport, which entered into force retroactively on 1 October 2001 …

10 On 14 December 2001 and 9 January 2002, respectively, Fraport and the shareholders of FFHG decided to increase the capital of FFHG to finance the most urgent part of an airport infrastructure improvement programme … [That] capital increase, in the amount of EUR 27 million, was subscribed by Fraport and the *Land*, which, on 9 January 2002, contributed EUR 19.7 million and EUR 7.3 million, respectively.

11 On 14 February 2002, a second agreement was concluded between FFHG and Ryanair … It replaced the 1999 Ryanair agreement.

12 On 27 November 2002, Land Hesse (Germany), Fraport and FFHG concluded an agreement on the development of Frankfurt Hahn airport. That agreement provided for a second capital increase of FFHG, at the time of which Land Hesse would become the third shareholder of FFHG.

13 On 22 March 2004, a shareholders' agreement concerning the shareholdings of Fraport, the *Land* and Land Hesse in the capital of FFHG ("the shareholders' agreement") was prepared. Fraport, the *Land* and Land Hesse signed that agreement on 30 March 2005.

14 For the purpose of executing the shareholders' agreement, a EUR 19.5 million capital increase of FFHG was agreed in order to continue the investment programme referred to in paragraph 10 above. Between 2004 and 2009, Fraport, the *Land* and Land Hesse injected, respectively, EUR 10.21 million, EUR 540 000 and EUR 8.75 million into FFHG in several instalments. In addition, the *Land* and Land Hesse undertook to inject an additional EUR 11.25 million [each] as a capital reserve, in accordance with a payment schedule extending to 2009.

15 Following the capital increase described in paragraph 14 above …, amounting to a total of EUR 42 million, Fraport held 65% of the shares of FFHG, as against 17.5% each for Land Hesse and the *Land*.

16 The shareholders' agreement also provided that any further debt contracted by FFHG should be covered by Fraport, the *Land* and Land Hesse in proportion to their shareholdings in FFHG and that the 2001 profit and loss transfer agreement[, referred to in paragraph 6 above,] should be extended until 2014. In order to comply with those obligations, Fraport and FFHG entered into a new profit and loss transfer agreement on 5 April 2004 ("the 2004 profit and loss transfer agreement"). The 2004 profit and loss transfer agreement entered into force on 2 June 2004, following its approval at the general meeting of Fraport's shareholders by the three-quarters majority required by the shareholders' agreement. Under the terms of the 2004 profit and loss transfer agreement, Fraport undertook to cover all the losses incurred by FFHG between 2004 and 2009.

17 From 1997 to 2004, the *Land* paid direct grants to the operator of Frankfurt Hahn [airport] … The direct grants … paid until 2000 were intended to finance investments in airport infrastructure, whereas those paid from 2001 were intended to finance personnel costs for security checks. The *Land* collects an airport security tax from all departing passengers at Frankfurt Hahn airport, through the airlines using that airport, and transfers the entire revenue from that tax, as well as funds from its general budget, to the operator of Frankfurt Hahn airport as compensation for carrying out security checks …

18 On 4 November 2005, an amendment to the [agreement concluded between FFHG and Ryanair on 14 February 2002, referred to in paragraph 11 above,] was made.

19 Between 2003 and 2006, the Commission of the European Communities received several complaints concerning alleged State aid granted by Fraport, the *Land* and Land Hesse to Ryanair and FFHG. On 22 September 2003 and 1 June 2006, one of the complainants sent additional information to the Commission.

20 On 26 April 2006, a new schedule of airport charges for Frankfurt Hahn was approved by the *Land* … It entered into force on 1 June 2006.

21 By letters of 25 September 2006 and 9 February 2007, the Commission requested information from the Federal Republic of Germany, which complied with that request by letters of 20 December 2006 and 29 June 2007.

22 By letter of 17 June 2008, the Commission notified the Federal Republic of Germany of its decision to initiate the formal investigation procedure provided for in Article 88(2) [EC] …, in connection with State aid concerning the financing of [FFHG] and its relations with Ryanair … The decision inviting interested parties to submit their comments was published in the *Official Journal of the European Union* on 17 January 2009 (OJ 2009 C 12, p. 6).

23 On 31 December 2008, Fraport sold its entire shareholding in FFHG to the *Land*. As a result of that sale, first, the *Land* held a majority shareholding of 82.5% in FFHG, the remaining 17.5% still being held by Land Hesse, and, secondly, the 2004 profit and loss transfer agreement was terminated.

24 In the context of the formal investigation procedure, the Commission received comments from, inter alia, the [appellant] and Ryanair; those comments were communicated to the Federal Republic of Germany.

25 On 1 July 2009, the Federal Republic of Germany sent its comments and additional information to the Commission.

26 On 13 July 2011, the Commission decided to initiate a second formal investigation procedure concerning financing measures for FFHG taken between 2009 and 2011. The decision inviting interested parties to submit their comments was published in the *Official Journal of the European Union* on 21 July 2012 (OJ 2012 C 216, p. 1). As a result, there have been two coexisting procedures.

…

29 The Federal Republic of Germany undertook to inject capital into FFHG in order to refinance the loans of FFHG intended to finance the infrastructure measures decided upon by the public authorities between 1997 and 2012, which were not covered by the profit and loss transfer agreements, capital increases or other grants …

30 By letter of 25 February 2014, the Commission informed the Federal Republic of Germany of the adoption, on 20 February 2014, of the Guidelines on State aid to airports and airlines (OJ 2014 C 99, p. 3 …).

31 By letters of 23 March and 4 April 2014, the Commission requested further information from the Federal Republic of Germany. By letters of 17 and 24 April and 9 May 2014, the Federal Republic of Germany complied with that request.

32 On 15 April 2014, a notice was published in the *Official Journal of the European Union* inviting Member States and interested parties to submit comments on the application of the [Guidelines on State aid to airports and airlines] to the present case. The [appellant] submitted comments, which the Commission sent to the Federal Republic of Germany by letter of 26 August 2014. By letter of 3 September 2014, the Federal Republic of Germany informed the Commission that it had no comments to make.

33 On 1 October 2014, the Commission adopted [the decision at issue].

[The decision at issue]

34 In the [decision at issue], the Commission examined, in the first place, whether there was State aid, within the meaning of Article 107(1) TFEU, as regards, first, the measures in favour of Frankfurt Hahn airport (see recitals 292 to 420 of the [decision at issue]), secondly, the measures in favour of Ryanair (see recitals 421 to 456, 464 to 484 and 580 of the [decision at issue]) and, thirdly, the measures in favour of the airlines using Frankfurt Hahn airport, that is to say the 2001 schedule [referred to in paragraph 9 above] and the 2006 schedule [referred to in paragraph 20 above] (see recitals 457 to 463, 485 to 494 and 581 of the [decision at issue]). In the second place, having taken the view that some of the measures in favour of Frankfurt Hahn airport constituted State aid, the Commission examined their compatibility with the internal market (see recitals 497 to 579 of the [decision at issue]).

…

54 The operative part of the [decision at issue] is worded as follows:

"Article 1

1. The State aid, unlawfully put into effect by Germany in breach of Article 108(3) [TFEU] in favour of [FFHG] between 2001 and 2012 by means of capital increases in 2001 amounting to EUR 27 million, capital increases in 2004 amounting to EUR 22 million and direct grants by [the *Land*] … is compatible with the internal market.

2. The [increase in the capital of FFHG granted] in 2004 by Fraport … and the profit and loss transfer agreement of 2004 do not constitute aid within the meaning of Article 107(1) [TFEU].

Article 2

1. The agreement between Ryanair and [FFHG], which entered into force on 1 April 1999, does not constitute aid within the meaning of Article 107(1) [TFEU].

2. The agreement between Ryanair and [FFHG] dated 14 February 2002 does not constitute aid within the meaning of Article 107(1) [TFEU].

3. The 'Agreement Ryanair/[FFHG] – Delivery of aircraft 6 to 18 – year 2005 to year 2012' of 4 November 2005 does not constitute aid within the meaning of the Article 107(1) [TFEU].

Article 3

The schedules of airport charges, which entered into force on 1 October 2001 and on 1 June 2006, do not constitute aid within the meaning of … Article 107(1) [TFEU].

Article 4

This Decision is addressed to the Federal Republic of Germany."'

The proceedings before the General Court and the judgment under appeal

3 By application lodged at the Registry of the General Court on 26 August 2015, the appellant brought an action for annulment of the decision at issue, in support of which it put forward, in essence, seven pleas, the first alleging a procedural error, the second and third alleging errors in the assessment of the facts, the fourth alleging manifest contradictions in the decision at issue, and the fifth to seventh alleging infringements of Article 107 TFEU.

4 The Commission, supported by the interveners at first instance, put forward, inter alia, a plea of inadmissibility, to the effect that the appellant did not have *locus standi*, in the light of the conditions governing admissibility that arise from the fourth paragraph of Article 263 TFEU.

5 In the judgment under appeal, the General Court, after stating that the decision at issue was not addressed to the appellant, examined whether it had *locus standi* in that that decision was of direct and individual concern to it, for the purposes of the second situation provided for in the fourth paragraph of Article 263 TFEU, or was of direct concern to it and constituted a regulatory act which did not entail implementing measures, for the purposes of the third situation provided for in that provision.

6 That examination was carried out, in turn, in paragraphs 119 to 187 of the judgment under appeal, in so far as the decision at issue relates to the measures in favour of FFHG and Ryanair, and in paragraphs 188 to 212 of the judgment under appeal, in so far as that decision relates to the schedules of airport charges.

7 Thus, as regards, in the first place, the measures in favour of FFHG and Ryanair, which are the subject of Articles 1 and 2 of the decision at issue, the General Court decided first, in paragraph 182 of the judgment under appeal, that the action was not admissible on the basis of the second situation provided for in the fourth paragraph of Article 263 TFEU, as the appellant had not proved to the requisite legal standard that it was individually concerned by those measures.

8 The General Court then held, in particular in paragraph 187 of the judgment under appeal, that the measures in favour of Ryanair and FFHG had not been granted on the basis of an aid scheme and were therefore individual in nature. It inferred therefrom that Articles 1 and 2 of the decision at issue consequently could not be classified as 'regulatory acts' within the meaning of the fourth paragraph of Article 263 TFEU.

9 As regards, in the second place, Article 3 of the decision at issue, relating to the schedules of airport charges, the General Court held first, in paragraph 208 of the judgment under appeal, that the appellant had not established, either by virtue of its status as a competitor of Ryanair or in the light of discrimination that affected it, that those measures were of direct concern to it for the purposes of the second situation set out in the fourth paragraph of Article 263 TFEU.

10 Second, the General Court concluded from that finding, in paragraph 212 of the judgment under appeal, that the appellant likewise did not have *locus standi* on the basis of the third situation set out in that provision.

11 Consequently, the General Court dismissed the action as inadmissible in its entirety.

Forms of order sought and the procedure before the Court of Justice

12 The appellant claims that the Court should:

– declare that the action at first instance was admissible and well founded;

– set aside the judgment under appeal;

– grant the form of order sought at first instance and annul the decision at issue;

– in the alternative, refer the case back to the General Court; and

– order the Commission to pay the costs.

13 The Commission, the *Land* and Ryanair contend that the Court should:

– dismiss the appeal; and

– order the appellant to pay the costs.

The appeal

14 The appellant puts forward three grounds of appeal. The first ground of appeal, which is in six parts, alleges infringement of the fourth paragraph of Article 263 TFEU and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') in that the General Court held that the appellant did not have standing to seek the annulment of the decision at issue in so far as it relates to the measures in favour of FFHG and Ryanair. The second ground of appeal alleges infringement of the fourth paragraph of Article 263 TFEU in that the General Court held that the appellant did not have standing to seek the annulment of the decision at issue in so far as it relates to the schedules of airport charges. The third ground of appeal alleges infringement of the fourth paragraph of Article 263 TFEU, Article 108(2) TFEU and the obligation to state reasons in that the General Court held that the appellant did not have standing to seek the annulment of the decision at issue so far as concerns a payment of EUR 121.9 million by the *Land* into FFHG's capital reserve ('Measure No 12').

First ground of appeal: the General Court infringed the fourth paragraph of Article 263 TFEU in holding that the appellant did not have standing to seek the annulment of the decision at issue in so far as it relates to the measures in favour of FFHG and Ryanair

Arguments of the parties

15 By its first ground of appeal, which is in six parts, the appellant complains, in essence, that the General Court infringed the fourth paragraph of Article 263 TFEU and Article 47 of the Charter in holding that it was not individually concerned by the decision at issue in so far as it relates, in Articles 1 and 2, to the measures in favour of FFHG and Ryanair.

16 By the first three parts of this ground of appeal, the appellant submits that the General Court examined whether it was 'individually concerned' by the decision at issue, for the purposes of the second situation set out in the fourth paragraph of Article 263 TFEU, in the light not of what it refers to as the 'first alternative' in the case-law arising from the judgment of 17 September 2015, *Mory and Others* v *Commission* (C-33/14 P, EU:C:2015:609), relating to protection of the procedural rights of a concerned party in the administrative procedure before the Commission, but of the 'second alternative' in that case-law, relating to a substantial adverse effect of the measure at issue on that party's market position.

17 More specifically, by the first part of the first ground of appeal, the appellant submits, in essence, that the General Court erred in law in holding, in paragraph 141 of the judgment under appeal, that, in accordance with the judgment of 28 January 1986, *Cofaz and Others* v *Commission* (169/84, EU:C:1986:42, paragraph 25), it should have proved that its position on the market was substantially affected by the aid which was the subject of the decision at issue.

18 The appellant observes that the procedure underlying the present case was governed by Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1) and that it should have been classified as an 'interested party', within the meaning of Article 1(h) of that regulation. Consequently, it follows from the judgment of 28 January 1986, *Cofaz and Others* v *Commission* (169/84, EU:C:1986:42, paragraphs 22 and 23), read in conjunction with Article 47 of the Charter, that the appellant had to have the ability to bring an action in order to protect its interests. The appellant adds that the

Commission unquestionably ignored essential facts and thus acted arbitrarily – infringing Article 41 of the Charter – and in a discriminatory manner, circumstances which the General Court did not take into account.

19 By the second part of the first ground of appeal, the appellant essentially criticises the General Court for having, in paragraphs 135 and 143 of the judgment under appeal, examined the admissibility of the action exclusively in the light of the strict conditions relating to decisions adopted after the closure of a formal investigation procedure, instead of examining it in the light of what it refers to as the 'first alternative' arising from the judgment of 17 September 2015, *Mory and Others* v *Commission* (C-33/14 P, EU:C:2015:609), that is to say, from the point of view of infringement of the procedural guarantees enjoyed by it.

20 Whilst it is true that the Commission initiated a formal investigation procedure in the present instance, that procedure was not proper and did not relate to the facts in their entirety, as the appellant contended before the General Court. Since the Commission therefore, in the appellant's submission, acted arbitrarily, the appellant cannot be treated, so far as concerns the admissibility of an action, in the same way as in the context of a properly conducted formal investigation procedure. The General Court should have applied less strict conditions regarding admissibility, under which it would be sufficient for the appellant to be in a specific competitive relationship with the recipient of the aid.

21 Moreover, application of what the appellant refers to as the 'second alternative' in the case-law arising from the judgment of 17 September 2015, *Mory and Others* v *Commission* (C-33/14 P, EU:C:2015:609) was precluded in the present instance on account of facts that had been ignored by the Commission. Furthermore, the appellant can assert the infringement of its procedural rights only by an action for annulment.

22 By the third part of the first ground of appeal, the appellant contends, in essence, that what it refers to as the – stricter – 'second alternative' in the case-law arising from the judgment of 17 September 2015, *Mory and Others* v *Commission* (C-33/14 P, EU:C:2015:609), is inapplicable inter alia because, in the decision at issue, the Commission interpreted German law to a large extent, and it did so in a clearly incorrect and incomplete fashion, a matter which the appellant explained in a substantiated manner before the General Court.

23 By the fourth part of the first ground of appeal, the appellant complains, in the alternative, that in paragraph 177 et seq. of the judgment under appeal the General Court misapplied the substantive conditions of what it refers to as the 'second alternative' in the case-law arising from the judgment of 17 September 2015, *Mory and Others* v *Commission* (C-33/14 P, EU:C:2015:609). That is apparent, first, from a number of facts set out by the appellant which differentiated it from all other competitors and, consequently, distinguished it individually just as in the case of the addressee of the decision at issue. Second, the General Court wrongly criticised the appellant for not having specified its contribution to the financing of FFHG in its capacity as shareholder of Fraport, which legally is unnecessary.

24 By the fifth part of the first ground of appeal, the appellant submits that, even if, instead of the criterion resulting from the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17, p. 107), the criterion of a substantial adverse effect on the appellant's market position had to be applied, the General Court should have granted it, at least, a relaxation of the burden of proof for the purpose of demonstrating that that criterion was met in the present instance. In that regard, it contends that the requirement of proving a substantial adverse effect

on its market position is applicable only if it is 'aid' that is the subject of the decision whose annulment it seeks. The Commission held in the decision at issue, that 'aid', within the meaning of Article 107(1) TFEU, was specifically not involved in the present instance.

25 The appellant states, furthermore, that the Commission did not take account of all the facts and of all the relevant measures. The appellant in fact proved that there was a substantial adverse effect on its market position as a result of the measures covered by the decision at issue.

26 By the sixth part of the first ground of appeal, the appellant essentially calls into question the assessment of that substantial adverse effect on its position on the market concerned that the General Court carried out in paragraphs 150 to 177 et seq. of the judgment under appeal.

27 In that regard, it complains first of all that the General Court departed from the case-law of the Court of Justice by wrongly imposing on it requirements relating to the definition of the market concerned and to the causal link between the measures at issue and the substantial adverse effect on its market position.

28 The appellant submits, next, that, contrary to what the General Court decided in that regard, it provided a number of items of evidence concerning, inter alia, European air traffic, the airlines' European networks, Ryanair's exponential growth and its passenger numbers, the opening of a Ryanair base at Frankfurt Main airport and the geographical proximity of the two airports in question. The appellant therefore demonstrated that the aid at issue had had a substantial adverse effect on its position on the market concerned.

29 Finally, the appellant pleads infringement of Article 47 of the Charter.

30 The Commission, the *Land* and Ryanair contest all the arguments put forward in the context of the first ground of appeal and contend that it must be rejected as in part inadmissible and, in any event, unfounded.

Findings of the Court

31 It should be recalled, first of all, that the admissibility of an action brought by natural or legal persons against an act which is not addressed to them, in accordance with the fourth paragraph of Article 263 TFEU, is subject to the condition that they be accorded standing to bring proceedings, which arises in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see, to that effect, inter alia judgments of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraphs 59 and 91, and of 13 March 2018, *Industrias Químicas del Vallés* v *Commission*, C-244/16 P, EU:C:2018:177, paragraph 39).

32 Given that the decision at issue, which was addressed to the Federal Republic of Germany, does not constitute a regulatory act under the fourth paragraph of Article 263 TFEU as it is not an act of general application (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 56), the General Court had the task of determining whether the appellant was directly and individually concerned by that decision, within the meaning of that provision.

33 In that regard, it is clear from the settled case-law of the Court of Justice that persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually just as in the case of the person addressed (see to that effect, inter alia, judgments of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 107; of 28 January 1986, *Cofaz and Others* v *Commission*, 169/84, EU:C:1986:42, paragraph 22; of 22 November 2007, *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 53; and of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 93).

34 By the first three parts of the first ground of appeal, which it is appropriate to examine together, the appellant essentially criticises the General Court for having examined whether it was individually concerned by the decision at issue in the light not of the criterion relating to protection of the procedural rights of a concerned party in the administrative procedure before the Commission, but of the criterion of a substantial adverse effect on its position on the market concerned.

35 In that regard, it should be recalled that, in the context of the procedure for reviewing State aid provided for in Article 108 TFEU, the preliminary stage of the procedure for reviewing aid under Article 108(3) TFEU, which is intended merely to allow the Commission to form a prima facie opinion on the partial or complete conformity of the aid in question, must be distinguished from the stage of the review under Article 108(2) TFEU. It is only at the latter stage, which is designed to enable the Commission to be fully informed of all the facts of the case, that the FEU Treaty imposes an obligation on the Commission to give the parties concerned notice to submit their comments (judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 94 and the case-law cited).

36 It follows that, where, without initiating the formal investigation procedure under Article 108(2) TFEU, the Commission finds, by a decision taken on the basis of Article 108(3) TFEU, that aid is compatible with the internal market, the persons intended to benefit from those procedural guarantees may secure compliance therewith only if they are able to challenge that decision before the EU judicature. For those reasons, an action for the annulment of such a decision brought by a person who is concerned within the meaning of Article 108(2) TFEU is to be declared to be admissible where that person seeks, by instituting proceedings, to safeguard the procedural rights available to him under the latter provision. The Court has stated that such concerned parties are any persons, undertakings or associations whose interests might be affected by the granting of aid, that is to say, in particular, undertakings competing with the recipients of the aid and trade associations (judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraphs 95 and 96 and the case-law cited).

37 On the other hand, if the applicant calls into question the merits of a decision appraising the aid taken on the basis of Article 108(3) TFEU or after the formal investigation procedure, the mere fact that it may be regarded as 'concerned' within the meaning of Article 108(2) TFEU cannot suffice to render the action admissible. It must then demonstrate that it has a particular status, for the purposes of the case-law referred to in paragraph 33 of the present judgment. That applies in particular where the applicant's position on the market concerned is substantially affected by the aid to which the decision at issue relates (judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 97 and the case-law cited).

38 In that regard, as the General Court correctly recalled in paragraph 141 of the judgment under appeal, in addition to the undertaking in receipt of aid, competing undertakings have been recognised as being individually concerned by a Commission decision terminating the formal investigation procedure where they have played an active role in that procedure, provided that their position on the market is substantially affected by the aid which is the subject of the decision at issue (judgments of 22 November 2007, *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 55, and of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 98).

39 In the present instance, the decision at issue was adopted, as the appellant indeed acknowledges, after a formal investigation procedure under Article 108(2) TFEU.

40 That being so, contrary to the appellant's submissions, its action challenging that decision could not fall within the situation envisaged in paragraph 36 of the present judgment. In so far as the appellant bases its line of argument on paragraphs 22 and 23 of the judgment of 28 January 1986, *Cofaz and Others* v *Commission* (169/84, EU:C:1986:42), it need only be stated that those paragraphs must be read in conjunction with paragraph 25 of that judgment, which confirms that the mere fact that an undertaking has played an active role in the formal investigation procedure is not sufficient for it to be held individually concerned by the decision bringing that procedure to an end.

41 The appellant's line of argument that the formal investigation procedure conducted by the Commission was flawed since the decision at issue is based on facts that are incomplete or were assessed incorrectly, or since the Commission in that decision interpreted German law to a large extent, and it did so incorrectly, cannot lead to a different outcome.

42 The case-law relating to the admissibility of an action challenging a decision taken after the formal investigation procedure applies irrespective of the various pleas that may be relied upon in support of such an action. Furthermore, it must be stated that the appellant, under the cloak of alleged procedural irregularities, in fact criticises the substance of the Commission's findings in the decision at issue, even though argument before the General Court related to the admissibility of the action brought against that decision.

43 The General Court therefore did not err in law in holding that the mere participation of the appellant in the administrative procedure was not sufficient to establish that it was individually concerned by the decision at issue.

44 Consequently, the first three parts of the first ground of appeal must be rejected as in part inadmissible and in part unfounded.

45 By the fourth, fifth and sixth parts of the first ground of appeal, the appellant complains, in the alternative, that the General Court erred in law in applying the condition under which it had to be individually concerned by the decision at issue.

46 As regards the fourth part of the first ground of appeal, relating to paragraph 177 et seq. of the judgment under appeal, it should be recalled that, in accordance with Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court thus has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of the facts and the assessment of the evidence thus do not, save where the facts and evidence have been distorted,

constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (see, to that effect, judgments of 26 January 2017, *Masco and Others* v *Commission*, C-614/13 P, EU:C:2017:63, paragraph 35; of 22 November 2007, *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 35; 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 46).

47 Thus, in so far as the appellant refers to facts already set out by it at first instance, in order to contend that, contrary to what the General Court held in paragraph 177 et seq. of the judgment under appeal, it had proved to the requisite legal standard that it was individually concerned by the measures covered by the decision at issue, that line of argument must be rejected as inadmissible since, in the absence of specific reasons enabling any distortion of the facts to be found, it is in actual fact designed to call into question the appraisal of the facts by the General Court which is a matter for the General Court alone.

48 Furthermore, in so far as the appellant criticises the General Court for having held, in particular in paragraph 178 of the judgment under appeal, that it should have specified how much it contributed to the financing of Frankfurt Hahn airport and the subsidisation of Ryanair, it must be stated that, on the basis of that ground, the General Court properly rejected the argument that the appellant had to be regarded as being individually concerned by the decision at issue on the ground, inter alia, that, as a shareholder of Fraport, it participated in that financing and subsidisation.

49 As the Advocate General has observed, in essence, in point 72 of his Opinion, unless an excessively wide category of entities is to be considered able to claim to be individually concerned by such measures, the General Court was correct in holding, in paragraph 178 of the judgment under appeal, that the appellant should have specified the extent of that participation in order to enable the adverse effect which its competitive position may have suffered as a result to be determined and, if the adverse effect proved to be substantial, to establish that it was individually concerned by those measures.

50 The fourth part of the first ground of appeal must therefore be rejected as in part inadmissible and in part unfounded.

51 So far as concerns the fifth part, it need only be stated that the appellant's line of argument, according to which the General Court should have granted it a relaxation of the burden of proof, has no basis in law.

52 First, in so far as the appellant contends that the requirement of a substantial adverse effect on its market position is applicable only if the measures covered by the Commission's decision are in fact classified as 'aid', within the meaning of Article 107 TFEU, it is clear from the Court's case-law relating to that condition, as the Advocate General has stated in point 76 of his Opinion, that the condition is applicable both where the measure at issue is so classified and where, as in the present instance, it is not (see, to that effect, judgments of 28 January 1986, *Cofaz and Others* v *Commission*, 169/84, EU:C:1986:42, paragraphs 20 and 29; of 22 November 2007, *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraphs 10 and 60; and of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 106).

53 Second, in so far as the appellant pleads that the Commission's examination of the measures covered by the decision at issue was incomplete and incorrect, that fact, assuming it to be established, cannot affect either the relevance of the condition that the decision at issue must be such as to have a substantial effect on its market position or the burden of proof required for the purpose of establishing standing to challenge the decision relating to those measures.

54 Third, in so far as the appellant contends that, since it had to be granted a relaxation of the burden of proof for the purpose of demonstrating a substantial adverse effect on its market position, it did in fact provide that proof, and sets out for that purpose the advantages that Ryanair is said to have obtained from FFGH and the *Land*, that argument is founded on an incorrect premiss since, as is clear from paragraph 51 of the present judgment, the appellant cannot rely on such a relaxation of the burden of proof.

55 Accordingly, the fifth part of the first ground of appeal must be rejected.

56 By the sixth part, the appellant complains, in essence, that, in paragraphs 150 and 155 to 177 et seq. of the judgment under appeal, the General Court examined the condition that the measures covered by the decision at issue had to be such as to have a substantial adverse effect on its market position in the light of incorrect requirements so far as concerns, first, definition of the market and, second, the causal link between the measures at issue and the adverse effect on its competitive position.

57 In that regard, the Court has repeatedly held that demonstration by the applicant of a substantial effect on its market position does not entail a definitive ruling on the competitive relationship between the applicant and the undertakings in receipt of aid, but requires only that the applicant adduce pertinent reasons to show that the Commission's decision may harm its legitimate interests by substantially affecting its position on the market in question (see, to that effect, judgments of 28 January 1986, *Cofaz and Others* v *Commission*, 169/84, EU:C:1986:42, paragraph 28; of 22 November 2007, *Spain* v *Lenzing*, C-525/04 P, EU:C:2007:698, paragraph 41; and of 22 November 2007, *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 60).

58 As the Advocate General has noted in point 47 of his Opinion, it is thus apparent from the Court's case-law that the substantial adverse effect on the applicant's competitive position on the market in question results not from a detailed analysis of the various competitive relationships on that market, allowing the extent of the adverse effect on its competitive position to be established specifically, but, in principle, from a prima facie finding that the grant of the measure covered by the Commission's decision leads to a substantial adverse effect on that position.

59 It follows that that condition may be satisfied where the applicant adduces evidence to show that the measure at issue is liable to have a substantial adverse effect on its position on the market concerned (see, to that effect, judgment of 22 December 2008, *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraph 38).

60 As regards the factors accepted by the case-law for the purpose of establishing a substantial adverse effect of that kind, first, the mere fact that an act may exercise an influence on the competitive relationships existing on the relevant market and that the undertaking concerned is in a competitive relationship with the beneficiary of that act cannot suffice for that undertaking to be regarded as being individually concerned by that act. Therefore, an undertaking cannot rely solely on its status as a competitor of the undertaking in receipt of aid (see, to that effect,

judgments of 22 December 2008, *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraphs 47 and 48, and of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraphs 99 and 100).

61 Second, as the General Court was correct in holding, in paragraph 148 of the judgment under appeal, demonstrating a substantial adverse effect on a competitor's position on the market cannot simply be a matter of the existence of certain factors indicating a decline in the applicant's commercial or financial performance, such as a significant decline in turnover, appreciable financial losses or a significant reduction in market share following the grant of the aid in question. The grant of State aid can also have an adverse effect on the competitive situation of an operator in other ways, in particular by causing the loss of an opportunity to make a profit or a less favourable development than would have been the case without such aid (see, to that effect, judgments of 22 November 2007, *Spain* v *Lenzing*, C-525/04 P, EU:C:2007:698, paragraphs 34 and 35, and of 22 December 2008, *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraph 53).

62 It is in the light of those principles that it should be examined whether the General Court erred in law when assessing the factors put forward by the appellant for the purpose of demonstrating that there was a substantial adverse effect on its position on the market concerned as a result of the measures covered by the decision at issue.

63 In that regard, the General Court held, in essence, as its main finding – in paragraphs 150, 154 and 156 of the judgment under appeal – that the appellant had not defined the markets on which its competitive position was said to be adversely affected, observing that it had provided no information regarding their size and structure and the competitors present on those markets.

64 As the Advocate General has stated in point 87 of his Opinion, in holding that such information was necessary in order to define the market or markets in the light of which the condition regarding a substantial adverse effect on the competitive position had to be assessed, the General Court went beyond the requirements resulting from the case-law recalled in paragraphs 57 to 59 of the present judgment.

65 Therefore, it must be held that the General Court erred in law in rejecting the appellant's arguments regarding, first, the fact that its position on the European passenger air transport market was adversely affected and, second, the overlaps between air routes upon which it relied, on the ground that the appellant had not provided information as to the geographical scope of those markets, or as to its market shares and those of Ryanair or any competitors on those markets.

66 However, the General Court did not conclude in respect of the fourth paragraph of Article 263 TFEU that the appellant's action was inadmissible on the sole ground that it had not defined the market or markets on which it considered that it had suffered a substantial adverse effect on its competitive position.

67 First, in paragraph 153 of the judgment under appeal, which is not contested in the present appeal, the General Court found that the appellant had provided no proof of the alleged overlaps between the services offered by it and Ryanair on the air routes referred to in paragraphs 151 and 152 of that judgment.

68 Second, in paragraphs 158 to 178 of the judgment under appeal, the General Court examined the arguments put forward by the appellant, and the evidence that it adduced in support thereof, for the purpose of demonstrating that it suffered a substantial adverse effect on its competitive position on the passenger air transport market as a result of the measures in favour of Ryanair and FFHG, in particular the causal link between the measures at issue and the matters put forward to establish the adverse effect on its market position.

69 In its assessment of the facts – which is a matter for it alone and cannot be challenged on appeal except where distortion of those facts is pleaded, which the appellant has not done in the present instance – the General Court drew the conclusion, in paragraph 179 of the judgment under appeal, that the appellant had not established a significant decline in its turnover, appreciable financial losses or a significant reduction in its market share on the market or markets in question following the adoption of the measures in favour of Ryanair and of FFHG, even if the benefit of the measures in favour of the latter was transferred to Ryanair. It added that the appellant likewise had not established the loss of an opportunity to make a profit or a less favourable development than would have been the case without those measures.

70 Furthermore, the appellant has put forward nothing in its appeal to show that the error of law committed by the General Court that has been found in paragraphs 64 and 65 of the present judgment, regarding the extent of the evidence that the appellant had to adduce in order to demonstrate a substantial adverse effect on its competitive position, could have had any impact on the assessment of the arguments and matters referred to in the preceding paragraph of the present judgment and, consequently, on the secondary conclusion that the General Court drew in paragraph 179 of the judgment under appeal.

71 In those circumstances, it must be held that that error of law is not such as to vitiate the General Court's conclusion, in paragraph 182 of the judgment under appeal, as to the admissibility of the appellant's action on the basis of the second situation provided for in the fourth paragraph of Article 263 TFEU, with the result that the sixth part of the first ground of appeal must be rejected, in that regard, as ineffective.

72 Consequently, without it being necessary to examine the argument alleging infringement of Article 47 of the Charter as the conclusion set out in paragraph 182 of the judgment under appeal is based on grounds other than those to which that argument relates, the sixth part of the first ground of appeal must also be rejected.

73 In the light of all the foregoing, the first ground of appeal must be rejected in its entirety as in part inadmissible and in part unfounded.

Second ground of appeal: the General Court infringed the fourth paragraph of Article 263 TFEU in holding that the appellant did not have standing to challenge the decision at issue in so far as it relates to the schedules of airport charges

Arguments of the parties

74 By its second ground of appeal, the appellant complains, in essence, that the General Court infringed the fourth paragraph of Article 263 TFEU in holding, in paragraphs 190 and 196 et seq. of the judgment under appeal, that it was not directly concerned, for the purposes of the second situation set out in that provision, by the decision at issue in so far as it relates, in Article 3, to the

schedules of airport charges, and in applying that determination directly, in paragraph 209 et seq. of the judgment, to the third situation set out in that provision, without any other form of examination.

75 It submits, by the first part of this ground of appeal, that the condition that the applicant must be directly concerned by the act at issue has to be examined in full within the framework of that third situation and it is not permissible for the EU judicature to rely, for that purpose, on the decision resulting from its examination of one of the other two situations referred to in the fourth paragraph of Article 263 TFEU. It is apparent from the judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci* (C-622/16 P to C-624/16 P, EU:C:2018:873) that that condition must be interpreted differently in, respectively, the second and third situations provided for in that provision. So far as concerns proof that the appellant is directly concerned by the act at issue, for the purposes of the third situation – applicable in the case of an aid scheme –that is set out in that provision, the appellant submits that it follows from that judgment that it is for it to prove that the act at issue is actually liable to restrict competition. The present case is comparable to the case which gave rise to that judgment and must result in a similar assessment of the condition that the applicant is directly concerned by the act at issue. In that regard, the appellant inter alia set out and proved in what way the two schedules of airport charges at issue discriminated against other airlines, including vis-à-vis Ryanair.

76 In the second part of the second ground of appeal, the appellant complains that, in paragraph 205 of the judgment under appeal, the General Court distorted the clear sense of its pleading so far as concerns the term 'other airlines' that appeared there. In the appellant's submission, that term referred to any airline – including the appellant – other than Ryanair.

77 The Commission, the *Land* and Ryanair contend that the second ground of appeal should be rejected in its entirety as unfounded. In the Commission's submission, this ground of appeal is, moreover, in part inadmissible, in so far as it seeks to challenge matters of fact.

Findings of the Court

78 It should be noted, first of all, that in paragraphs 190 to 208 of the judgment under appeal, to which the appellant refers from time to time in the context of the second ground of appeal but against which it does not direct any criticism in particular, the General Court examined whether the appellant had standing to seek the annulment of the decision at issue on the basis of the second situation provided for in the fourth paragraph of Article 263 TFEU, as a party directly and individually concerned by that decision, in so far as the latter relates, in Article 3, to the schedules of airport charges.

79 After having, in a first stage, reviewed whether the appellant was directly concerned by that aspect of the decision at issue, the General Court concluded, in paragraph 208 of the judgment under appeal, that the appellant had not established that it met that criterion and that it consequently did not have *locus standi* on the basis of the second situation provided for in the fourth paragraph of Article 263 TFEU.

80 In a second stage, the General Court inferred from that finding, in paragraphs 209 to 213 of the judgment under appeal, that the appellant likewise did not have *locus standi* on the basis of the third situation provided for in the fourth paragraph of Article 263 TFEU, holding, in particular in paragraph 211 of that judgment, that the criterion that the applicant must be directly concerned by the act at issue is identical in the second and third situations provided for in that provision.

81 It is in that context that, by the first part of the second ground of appeal, the appellant complains, in essence, that the General Court did not conduct a complete review of whether that criterion was met under the third situation set out in the fourth paragraph of Article 263 TFEU, but, in order to determine whether that criterion was met, did no more than refer to, and apply to that situation, the decision resulting from its examination of the second situation referred to in that provision.

82 However, contrary to the appellant's submissions in support of this ground of appeal, it does not follow from the Court's case-law, in particular the judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci* (C-622/16 P to C-624/16 P, EU:C:2018:873), that that criterion would have a different meaning for the purposes of the second and the third situations provided for in the fourth paragraph of Article 263 TFEU.

83 On the contrary, in paragraph 42 of that judgment the Court, without drawing a distinction between those situations, recalled that according to settled case-law – as the General Court, moreover, correctly stated in paragraph 197 of the judgment under appeal – the condition that the natural or legal person must be directly concerned by the decision against which the action is brought, 'laid down in the fourth paragraph of Article 263 TFEU', requires two cumulative criteria to be met, namely, first, that decision must directly affect the legal situation of that person and, second, it must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from the EU rules alone without the application of other intermediate rules.

84 It follows that the General Court did not err in law in holding, in paragraph 211 of the judgment under appeal, that the scope of that condition is identical in the second and third situations provided for in the fourth paragraph of Article 263 TFEU and in inferring, in paragraph 212 of the judgment, from the finding that the appellant did not fulfil that condition for the purposes of the second situation referred to in that provision that it did not fulfil it either for the purposes of the third situation referred to therein.

85 The appellant has, moreover, failed to show in what way the requirements relating to proof that it was directly concerned by the decision at issue, as set out and applied by the General Court, in particular in paragraphs 198 and 206 of the judgment under appeal, for the purpose of examining the schedules of airport charges at issue, did not correspond to the requirements that result from the Court's case-law on State aid – and in particular from paragraph 47 of the judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci* (C-622/16 P to C-624/16 P, EU:C:2018:873), according to which the EU judicature must ascertain whether an applicant has adequately explained the reasons why the Commission's decision is liable to place it in an unfavourable competitive position and thus to produce effects on its legal situation.

86 As to the remainder, in accordance with the case-law recalled in paragraph 46 of the present judgment, the first part of the second ground of appeal must be rejected as inadmissible in so far as the appellant thereby, first, contends anew that, contrary to what the General Court held, it had proved that it was directly concerned by the decision at issue in so far as it relates to the schedules of airport charges and, second, repeats, for that purpose, matters put forward in its application at first instance.

87 Consequently, the first part of the second ground of appeal must be rejected as in part inadmissible and in part unfounded.

88 In so far as, by the second part of this ground of appeal, the appellant complains that, in paragraph 205 of the judgment under appeal, the General Court distorted the clear sense of its pleading so far as concerns the term 'other airlines', by considering that that term did not refer to the appellant itself, it must be stated that no such distortion is apparent from paragraph 205 of the judgment under appeal. On the contrary, it is apparent, in essence, from that paragraph of the judgment under appeal that the General Court correctly understood that term as referring to airlines other than Ryanair, but found that the appellant was not among the users of Frankfurt Hahn airport and, therefore, could not rely on discrimination in favour of Ryanair and to the detriment of the other companies that used that airport.

89 In the light of the foregoing, the second ground of appeal must be rejected as in part inadmissible and in part unfounded.

Third ground of appeal: the General Court infringed the fourth paragraph of Article 263, Article 108(2) TFEU and the obligation to state reasons in that it held that the appellant did not have standing to challenge the decision at issue in so far as it relates to 'Measure No 12'

Arguments of the parties

90 By its third ground of appeal, the appellant complains that the General Court infringed the fourth paragraph of Article 263, Article 108(2) TFEU and the obligation to state reasons in that it held that the appellant did not have standing to challenge the decision at issue in so far as it relates to 'Measure No 12'.

91 The appellant states that the Commission did not conduct an in-depth formal investigation procedure and classified that measure as 'investment aid' that was compatible with the internal market.

92 However, the appellant expressly contended in the proceedings before the General Court that the Commission should not have considered that that aid was compatible with the internal market without having initiated an in-depth formal investigation procedure. Pointing out the aspects upon which it relied for that purpose, the appellant complains that the General Court did not examine those aspects and erred in law in examining, without stating any reasons, 'Measure No 12' from the point of view of the 'second alternative' in the case-law arising from the judgment of 17 September 2015, *Mory and Others* v *Commission* (C-33/14 P, EU:C:2015:609).

93 The appellant sets out a number of factual matters relating to the financing of FFHG and maintains that that financing, which was then replaced by 'Measure No 12', was not examined by the Commission in the decision at issue. The appellant in any event adduced sufficient proof that

its action was admissible under the 'first alternative' in the case-law arising from the judgment of 17 September 2015, *Mory and Others* v *Commission* (C-33/14 P, EU:C:2015:609). Since the General Court examined only the 'second alternative' set out in that judgment and held that the conditions laid down by that alternative were not met, it infringed the appellant's procedural rights, guaranteed by Article 108(2) TFEU. In support of this ground of appeal, the appellant refers, furthermore, to a new decision of the Commission, adopted by it in the meantime, to the operating aid financed by 'Measure No 12', to the investment aid and to transfer to Ryanair of the aid granted to FFHG.

94 The Commission submits that 'Measure No 12' was not covered by the proceedings before the General Court. In any event, it contends, as the *Land* and Ryanair do, that the third ground of appeal must be rejected as entirely unfounded.

Findings of the Court

95 First of all, it should be recalled that it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must identify precisely the contested points in the grounds of the judgment which the appellant seeks to have set aside and indicate precisely the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal in question will be dismissed as inadmissible (judgments of 26 January 2017, *Mamoli Robinetteria* v *Commission*, C-619/13 P, EU:C:2017:50, paragraph 42, and of 8 June 2017, *Dextro Energy* v *Commission*, C-296/16 P, not published, EU:C:2017:437, paragraph 60).

96 That requirement is not satisfied inter alia by an appeal or ground of appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment or order which the appellant seeks to have set aside, simply reproduces the pleas in law and arguments already put forward before the General Court. Such an appeal or ground of appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake on appeal (see, to that effect, judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 51 and the case-law cited, and order of 29 January 2020, *Silgan Closures and Silgan Holdings* v *Commission*, C-418/19 P, not published, EU:C:2020:43, paragraph 71).

97 Irrespective of whether 'Measure No 12' referred to by the third ground of appeal was in fact covered by the decision at issue and, subsequently, by the proceedings before the General Court, which the Commission disputes, it must be stated, first, that the appellant has, in any event, failed to identify the grounds of the judgment under appeal to which this ground of appeal refers, and the Court of Justice is thus unable to review whether the General Court committed the errors of law pleaded.

98 Second, while referring to the procedure before the Commission rather than the judgment under appeal, the appellant puts forward a number of factual matters concerning, inter alia, the financing of FFHG which, it states, have already been pleaded by it at first instance. As is apparent from the settled case-law recalled in paragraphs 95 and 96 of the present judgment, the assessment of such matters clearly falls outside the jurisdiction of the Court of Justice in an appeal.

99 Consequently, the third ground of appeal must be rejected as inadmissible.

100 In the light of all the foregoing considerations, the appeal must be dismissed in its entirety.

Costs

101 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.

102 Under Article 138(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, 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 appellant has been unsuccessful and the Commission and the interveners at first instance have applied for costs to be awarded against it, the appellant must be ordered to pay all the costs relating to the present appeal.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Deutsche Lufthansa AG to bear its own costs and to pay those incurred by the European Commission, Land Rheinland-Pfalz and Ryanair DAC.**

[Signatures]