Reports of Cases

JUDGMENT OF THE GENERAL COURT (Tenth Chamber, Extended Composition)

9 June 2021 *

(State aid – German air transport market – Public loan guaranteed by Germany to Condor Flugdienst in the context of the COVID-19 pandemic – Decision not to raise any objections – Aid intended to make good the damage caused by an exceptional occurrence – Article 107(2)(b) TFEU – Assessment of damages – Causal link – Obligation to state reasons – Maintenance of the effects of the decision)

In Case T-665/20,

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

applicant,

v

European Commission, represented by L. Flynn, F. Tomat and V. Bottka, acting as Agents,

defendant,

supported by

Federal Republic of Germany, represented by J. Möller, R. Kanitz and P.-L. Krüger, acting as Agents,

by

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

and by

Condor Flugdienst GmbH, established in Kelsterbach (Germany), represented by A. Birnstiel and S. Blazek, lawyers,

interveners,

APPLICATION under Article 263 TFEU for annulment of Commission Decision C(2020) 2795 final of 26 April 2020 on State aid SA.56867 (2020/N, ex 2020/PN) – Germany – Compensation for the damage caused by the COVID-19 outbreak to Condor Flugdienst.

* Language of the case: English.

THE GENERAL COURT (Tenth Chamber, Extended Composition),

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

Registrar: I. Pollalis, Administrator,

having regard to the written part of the procedure and further to the hearing on 18 March 2021,

gives the following

Judgment

Background to the dispute

1 Condor Flugdienst GmbH ('Condor') is an airline which operates charter flights and has its registered office in Kelsterbach (Germany). It provides air transport services to individual passengers and tour operators from Frankfurt, Düsseldorf, Munich and Hamburg (Germany), with a focus on the leisure travel market.

2 Condor was owned previously by Thomas Cook Group plc ('the Thomas Cook group'). On 23 September 2019, the Thomas Cook group ceased its operations and was placed in compulsory liquidation. The close operational and financial links between the Thomas Cook group and Condor resulted in the latter facing financial difficulties and filing for insolvency on 25 September 2019.

3 On the same day, the Federal Republic of Germany notified the European Commission that it intended to grant individual aid to Condor in the form of a rescue loan of EUR 380 million backed by a State guarantee. The purpose of that measure was to allow Condor to continue its operations while it built its own liquidity reserves allowing it to operate independently of the Thomas Cook group. The rescue loan aimed to maintain orderly air transport and to limit the negative consequences for Condor caused by the liquidation of its parent company. By decision of 14 October 2019, C(2019)7429 final on State aid SA.55394 (2019/N) – Germany – Rescue aid to Condor, the Commission approved the aid.

4 On 24 April 2020, the Federal Republic of Germany notified the Commission, in accordance with Article 108(3) TFEU, of another award of individual aid in favour of Condor in the form of two loans which it guaranteed with subsidised interest rates. The purpose of the notified measure was to compensate Condor for the damage suffered directly because of the cancellation or rescheduling of its flights following the imposition of travel restrictions, and in particular lockdown measures, as a result of the COVID-19 pandemic.

5 On 26 April 2020, the Commission adopted Decision C(2020) 2795 final on State aid SA.56867 (2020/N, ex 2020/PN) – Germany – Compensation for the damage caused by the COVID-19 outbreak to Condor ('the contested decision'), by which it concluded that the measure at issue constituted State aid within the meaning of Article 107(1) TFEU and was compatible with the internal market on the basis of Article 107(2)(b) TFEU.

Procedure and forms of order sought

6 By application lodged at the Court Registry on 6 November 2020, the applicant, Ryanair DAC, brought the present action.

7 By document lodged at the Court Registry on the same date, the applicant requested that the Court adjudicate on the present action by way of the expedited procedure laid down by Articles 151 and 152 of the Rules of Procedure of the General Court.. By decision of 2 December 2020, the General Court (Tenth Chamber) granted the request for an expedited procedure.

8 The Commission lodged its defence at the Court Registry on 21 December 2020.

9 Pursuant to Article 106(2) of the Rules of Procedure, the applicant submitted, on 28 December 2020, a reasoned request for a hearing.

10 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.

11 By documents lodged at the Court Registry on 4, 27 and 28 January 2021 respectively, the Federal Republic of Germany, Condor and the French Republic sought leave to intervene in the present proceedings in support of the form of order sought by the Commission.

12 By decisions of 18 January and 9 February 2021 respectively, the President of the Tenth Chamber of the General Court granted the Federal Republic of Germany and the French Republic leave to intervene.

13 By order of 11 February 2021, the President of the Tenth Chamber of the General Court granted Condor leave to intervene.

14 By measures of organisation of procedure, on 19 January and 11 February 2021 respectively, the Federal Republic of Germany, the French Republic and Condor were authorised, pursuant to Article 154(3) of the Rules of Procedure, to lodge a statement in intervention.

15 The Federal Republic of Germany annexed to its statement in intervention the confidential version of the contested decision. At the hearing, both the Commission and Condor confirmed that they did not object to the confidential version of the contested decision being disclosed to the applicant and to the Court referring to it in its eventual judgment. That confirmation was noted formally in the minutes of the hearing.

16 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

17 The Commission contends that the Court should:

– dismiss the action as unfounded;

– order the applicant to pay the costs.

18 The French Republic contends that the Court should dismiss the action as inadmissible in so far as it seeks to challenge the merits of the contested decision and to dismiss it on the merits as to the remainder. In the alternative, it claims that the Court should dismiss the action in its entirety.

19 Like the Commission, the Federal Republic of Germany and Condor contend that the Court should dismiss the action as unfounded and order the applicant to pay the costs.

Law

20 In support of the action, the applicant relies on four pleas in law alleging, respectively: (i) an infringement of the principles of non-discrimination, freedom to provide services and freedom of establishment; (ii) a misapplication of Article 107(2)(b) TFEU and a manifest error of assessment relating to the proportionality of the aid; (iii) that the Commission should have initiated the formal investigation procedure; and (iv) an infringement of the obligation to state reasons within the meaning of Article 296 TFEU.

Admissibility

21 The applicant submits, in paragraphs 33 to 41 of the application, that it has standing to bring proceedings as a 'party concerned' within the meaning of Article 108(2) TFEU and as 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), which allows it to bring an action for annulment seeking to safeguard its procedural rights against the contested decision, which was adopted without initiating the formal investigation procedure.

22 As a competitor of Condor, the applicant's interests are affected by the grant of the aid measure at issue in that it allows Condor to remain in the market as a subsidised competitor in spite of the adverse effects of the COVID-19 pandemic. By contrast, the applicant, which is the second largest airline in Germany, does not benefit from such support.

23 The Commission does not dispute the admissibility of the action.

24 The French Republic submits that the applicant does not have standing to challenge the merits of the contested decision and that, therefore, the first and second pleas in law are inadmissible. By contrast, the French Republic does not dispute the admissibility of the third or the fourth pleas in law, since the applicant is, in its view, indisputably a party concerned within the meaning of Article 108(2) TFEU.

25 It must be held that there is no doubt as to the admissibility of the action in so far as, by that action, the applicant seeks to maintain that the Commission should have initiated the formal investigation procedure referred to in Article 108(2) TFEU.

26 In the context of the review procedure referred to in Article 108 TFEU, two stages must be distinguished. First, the preliminary examination stage provided for in Article 108(3) TFEU, which allows the Commission to form a *prima facie* opinion on the conformity of the aid in question. 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).

27 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 within the meaning of Article 108(2) TFEU, is admissible where

that party seeks thereby to safeguard the procedural rights available to it under the 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).

28 In the present case, the formal investigation procedure was not initiated by the Commission and the applicant, in the third 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 within the meaning of Article 108(2) TFEU (judgment 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; see also, to that effect, judgment of 18 November 2010, *NDSHT* v *Commission*, C-322/09 P, EU:C:2010:701, paragraph 59).

29 In the present case, it is indisputable that there is a competitive relationship between the applicant and Condor, the beneficiary of the aid. The applicant submitted, without being contradicted, that it has been part of the German air services market for more than 20 years, that in 2019 it had carried 19 million passengers to and from Germany and that it had a market share of approximately 9% in Germany, making it the second largest airline in Germany. The applicant also submitted that its summer 2020 flight schedule, which was drawn up before the outbreak of the COVID-19 pandemic, included 265 routes departing from 14 German airports. In addition, in paragraph 15 of the contested decision, the Commission found that certain destinations served by Condor were also served by the applicant and that those airlines were in competition with regard to the sale of 'dry seats', that is to say seats sold directly to individual passengers. The applicant is therefore a party concerned with an interest in safeguarding its procedural rights under Article 108(2) TFEU.

30 It must therefore be held that the action is admissible in so far as the applicant alleges an infringement of its procedural rights.

31 In that context, it must be held that the third plea, which expressly seeks to secure respect for the applicant's procedural rights, is admissible, given its status as a party concerned, as established in paragraph 29 above. The applicant may, in order to preserve the procedural rights which it enjoys under the formal investigation procedure, rely only 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 notified measure 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 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 59).

32 It should be borne in mind, in addition, that the applicant can, 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, 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. The Court is therefore entitled to examine the substantive arguments put forward by the applicant in order to ascertain whether they are such as to support the plea expressly made by the applicant regarding 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).

33 As regards the fourth plea in law, alleging an infringement of the obligation to state reasons, it should be noted that the failure to fulfil the obligation to state reasons is a breach of essential procedural requirements and is 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

34 It is appropriate first to examine the fourth plea in law.

The fourth plea in law, alleging an infringement of the obligation to state reasons

35 By its fourth plea, the applicant submits, in essence, that the contested decision is vitiated by a failure to state reasons or by insufficient reasoning in several respects.

36 In particular, the applicant submits that the Commission did not give sufficient reasons, in the contested decision, regarding its assessment of the damage that the aid measure at issue seeks to compensate, which, in essence, prevents the applicant, and the Court, from verifying the proportionality of that aid measure.

37 To that end, the applicant submits, inter alia, in the context of its second plea, that the Commission did not provide any explanation of the reasons which led it to include, in calculating the damage that the aid measure at issue is intended to compensate, the costs associated with the extension of the period of Condor's insolvency following its abortive sale. In that regard, the applicant criticises the reasoning in paragraph 79 of the contested decision. Since the abovementioned costs are of a greater amount than the difference between the alleged damage and the amount of the aid, the contested decision is likely to give rise to overcompensation and, therefore, to misapplication of Article 107(2)(b) TFEU.

38 The Commission, supported by the Federal Republic of Germany, the French Republic and Condor, disputes those arguments. The Commission submits, in its response to the second plea, that it duly established in paragraphs 21 and 79 of the contested decision, that the previously unforeseen extension of Condor's insolvency proceedings was a direct consequence of the exceptional occurrence at issue. Had it not been for the COVID-19 pandemic and the restrictions adopted in that context, Condor would not have continued to be subject to insolvency proceedings in April 2020. The Commission states that the potential investor had withdrawn from the purchase agreement because of the economic and financial difficulties encountered by Condor, and the investor itself, as a result of the COVID-19 pandemic. Accordingly, the Commission submits that the applicant, in fact, criticises the merits of its assessment on that point and not the statement of reasons set out in the contested decision in that respect; taking account of the latter allows its analysis to be fully understood.

39 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 permit the persons concerned to ascertain the reasons for it and to allow 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 an explanation. 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 TFEU 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).

40 While it is true that the institutions are not obliged, in the statement of reasons for decisions which they adopt, to take a position on all the arguments relied on by the parties concerned before them during an administrative procedure, it nonetheless remains the case that they are required to set out the facts and the legal considerations having decisive importance in the context of their decisions (see, to that effect, judgments of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala* C-413/06 P, EU:C:2008:392, paragraph 169 and the case-law cited, and of 18 September 2018, *Duferco Long Products* v *Commission*, T-93/17, not published, EU:T:2018:558, paragraph 67).

41 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 (judgments 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; see also, to that effect, judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs 65, 70 and 71).

42 Under Article 107(2)(b) TFEU, which constitutes the legal basis of the contested decision, aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market. Since this is an exception to the general principle, stated in Article 107(1) TFEU, that State aid is incompatible with the common market, Article 107(2)(b) TFEU must be interpreted narrowly. Therefore, only economic damage caused by natural disasters or exceptional occurrences may be compensated for under that provision. There must be a direct link between the damage caused by the exceptional occurrence and the State aid and as precise an assessment as possible must be made of the damage suffered (judgment of 23 February 2006, *Atzeni and Others*, C-346/03 and C-529/03, EU:C:2006:130, paragraph 79).

43 The Commission must, subsequently, examine whether or not the aid measures at issue are of a kind as to be useful in the making good of damage caused by exceptional occurrences and ban general measures unconnected with the damage allegedly caused by such occurrences (judgment of 17 February 2021, *Ryanair* v *Commission*, T-259/20, EU:T:2018:92, paragraph 25). The Member State concerned must also limit the amount of the compensation to what is necessary to make good the damage suffered by the beneficiaries of the measure at issue.

44 It follows that aid likely to exceed the damage suffered as a direct result of the occurrence at issue is not covered by Article 107(2)(b) TFEU (see, to that effect, judgment of 11 November 2004, *Spain* v *Commission*, C-73/03, not published, EU:C:2004:711, paragraphs 40 and 41).

45 Thus, the occurrence giving rise to the damage, as defined in the contested decision, must be the determining cause of the damage which the aid at issue is intended to remedy and must be directly responsible for causing it. A direct link will only exist where the damage is the direct consequence of the occurrence in question without being dependent on the interposition of other causes.

46 In the present case, in the first place, it should be noted that it is apparent from paragraph 11 of the contested decision that the objective of the aid at issue is to compensate Condor for 'the direct damage suffered due to the cancellation or re-scheduling of its flights as a result of the imposition of travel restrictions linked to the COVID-19 outbreak, and in particular the lockdown measures'. Paragraph 84 of the contested decision expressly confirms that objective of the aid at issue.

47 Furthermore, in the contested decision, the Commission described in detail the travel restrictions imposed by the Member States and in particular by Germany. It explained that the COVID-19 pandemic led to travel restrictions throughout the world and to the closure of most passenger airlines. For that reason, Condor had to cancel or reschedule the vast majority of its flights and ground a large part of its fleet (see, in particular, paragraphs 4, 9 and 72 of the contested decision).

48 In paragraph 59 of its defence, the Commission expressly confirmed that the aid measure at issue was intended to compensate Condor for its 'losses due to the cancellation or re-scheduling of flights exclusively as a result of the imposition of travel restrictions linked to the COVID-19 outbreak' and that the contested decision '[did] not foresee compensation for any other damage that may have occurred due to the COVID-19 outbreak'. The Commission also explains that the method used in the contested decision to estimate the damage at issue does not include 'other sources of damage', 'apart from travel restrictions'.

49 It is therefore clear that, according to the actual wording of the contested decision and the Commission's arguments in its defence, the aid measure at issue is intended to compensate Condor for the damage directly caused by the cancellation and rescheduling of its flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic, and not for any other damage more generally linked to that pandemic.

50 Accordingly, in the second place, it is necessary to examine whether, in the contested decision, the Commission set out to the requisite legal standard the reasons which led it to consider, inter alia, that the additional costs incurred by Condor as a result of the extension of the insolvency proceedings, to which the applicant refers, were directly caused by the cancellation and rescheduling of Condor's flights as a result of the travel restrictions imposed in the context of COVID-19 pandemic.

51 It should also be pointed out that it is for the Commission, which is responsible for reviewing the compatibility of State aid measures with the internal market, to ascertain whether such a causal link exists.

52 In the present case, in order to assess the amount of the damage which the aid measure at issue seeks to make good, the Commission relied, in essence, on the difference between the forecasts of profits before taxes ('EBT') for the period from March to December 2020, made before and after the announcement of travel restrictions and lockdown measures. That difference was assessed at EUR 259.7 million. In addition, the Commission considered that it was 'legitimate' to add to that amount additional costs incurred by Condor due to the extension of the latter's insolvency proceedings, which were not foreseeable when the EBT forecast after the COVID-19 pandemic had been made (paragraph 79 of the contested decision). The amount of those additional costs was assessed at EUR 17 million. The total amount of the damage for which Condor was deemed to be compensated was thus increased to EUR 276.7 million.

53 The origin of the additional costs was explained in paragraphs 18 to 21 of the contested decision, from which it is apparent, in essence, that, since September 2019, that is to say, well before the travel restrictions due to the COVID-19 pandemic were imposed, Condor had been in insolvency proceedings and that the restructuring plan drawn up in the context of those proceedings provided, inter alia, for its sale to a new investor. However, that sale was aborted when that investor announced its decision to withdraw from the proposed transaction towards the end of March 2020. According to paragraph 21 of the contested decision, the 'failure of sales efforts will result in a prolonged insolvency procedure', which generates the additional costs, estimated at EUR 17 million.

54 It appears from the passages of the contested decision cited above that the additional costs in question result from the failure of the efforts to sell Condor. The consequence of that failure was that the insolvency proceedings, which had been ongoing since September 2019, could not be closed according to the original schedule, but had to be extended, which resulted in additional costs associated with those proceedings.

55 However, the contested decision does not explain how the additional costs incurred in connection with the extension of Condor's insolvency proceedings were directly caused by the cancellation or rescheduling of its flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic.

56 First, it must be pointed out that the Commission merely stated, in paragraph 79 of the contested decision, that it considered it 'legitimate' to add the additional costs incurred as a result of the extension of Condor's insolvency proceedings to the damage claimed, since they were not foreseeable at the time when the EBT forecast after the outbreak of COVID-19 pandemic had been made. However, the fact that those costs were or were not foreseeable at that time does not demonstrate that they were directly caused by the cancellation and rescheduling of Condor's flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic. Similarly, it is not sufficient to state, in the contested decision, that it is 'legitimate' to add those costs, without explaining, in a sufficiently clear and precise manner, the reasons why the Commission found that the decisive cause of those costs was the cancellation and rescheduling of flights mentioned above.

57 Second, the contested decision also fails to explain the reason for the failure of Condor's sale. There is nothing in the contested decision to indicate that that sale was aborted due to the cancellation and rescheduling of Condor's flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic.

58 Third, it is apparent from the contested decision that the insolvency proceedings, which were initiated in September 2019, were started because of the financial difficulties faced by Condor following the liquidation of its parent company, and not because of the difficulties associated with the COVID-19 pandemic. Those proceedings and the associated costs therefore arose before the occurrence of that pandemic. Accordingly, it was incumbent on the Commission to examine with particular care whether the cancellation and rescheduling of Condor's flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic were in fact the decisive cause of the additional costs incurred by Condor as a result of the extension of the insolvency proceedings, and to set out the reasons for its decision on that point to the requisite legal standard.

59 Even if the COVID-19 pandemic had made it more difficult to bring the insolvency proceedings to a close as soon as possible, as the Commission argued at the hearing, there is nothing in the contested decision to indicate what, in the Commission's view, constitutes the causal link between the cancellation and rescheduling of Condor's flights and the occurrence of those additional costs. In particular, although the Commission stated, in paragraph 21 of the contested decision, that those costs were the result of Condor's abortive sale, it did not specify either the reason for that failure or, moreover, whether, as a result of that failure, Condor was obliged to continue with the insolvency proceedings or whether it could withdraw from them, notwithstanding that failure. The fact that, according to paragraph 21 of the contested decision, that extension was going to last two to three months, whereas, according to paragraphs 92 and 93 of that decision, a subsequent sale of Condor was considered to be possible around June 2022, seems to suggest that Condor intended to cease to be subject to those proceedings well before and independently of whether or not such a sale took place.

60 Fourth, the Commission also failed to explain, in the contested decision, how the additional costs arising from the extension of the insolvency proceedings were assessed or what type of costs were involved. Furthermore, the Commission did not indicate whether all or only a part of those costs were considered to be directly caused by the cancellation and rescheduling of Condor's flights.

61 Accordingly, in the absence of other specific and verifiable factors in the contested decision, it is impossible for the Court to verify whether the Commission was able to conclude, without having any doubts in that regard, that there was a direct causal link between the costs occasioned by the extension of the insolvency period and the cancellation and rescheduling of Condor's flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic.

62 The Commission cannot rely on the fact that the German authorities undertook to check *ex post* whether the amount of the aid exceeded the amount of the damage and to recover from Condor any overcompensation which would have resulted therefrom (paragraphs 98 to 100 of the contested decision). Since the Commission concluded, in the contested decision, that the costs associated with the extension of the insolvency proceedings had to be added to the damage to be compensated, that *ex post* verification will relate only to the precise quantification of those costs and not to the legal question of whether or not those costs may or may not be offset under Article 107(2)(b) TFEU.

63 It follows that the contested decision is vitiated by an inadequate statement of reasons in that regard.

64 The fourth plea in law must therefore be upheld, without it being necessary to examine the other arguments put forward by the applicant in the context of that plea.

65 It should also be noted that, according to the contested decision, the damage caused to Condor was assessed at EUR 276.7 million, whereas the amount of the aid was assessed at EUR 267.1 million. On that basis, the Commission concluded that the aid measure at issue did not exceed what was necessary to remedy that damage (paragraphs 96 and 97 of the contested decision). It follows that any deduction of the costs associated with the extension of the insolvency proceedings, assessed at EUR 17 million, from the total amount of damages, in the event that the condition relating to a direct causal link is not satisfied, which the Court is not in a position to verify on account of the inadequate statement of reasons vitiating the contested decision, would have the consequence that the amount of the aid exceeds the amount of the damage at issue, which could render it incompatible with the internal market, in accordance with the case-law cited in paragraph 44 above. Accordingly, the inadequate statement of reasons vitiating the contested decision in that regard precludes the Court from examining whether the Commission was entitled to find that there were no serious difficulties in assessing the compatibility of the aid in question with the internal market.

66 Since the contested decision is vitiated by an inadequate statement of reasons, this therefore requires the annulment of that decision.

67 The contested decision must therefore be annulled, without there being any need to examine the other pleas in law.

Maintenance of the effects of the annulled decision

68 It is settled case-law that where it is justified by overriding considerations of legal certainty, the EU judicature has discretion under the second paragraph of Article 264 TFEU to indicate, in each particular case, which of the effects of the act 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).

69 It therefore follows from the second paragraph of Article 264 TFEU that, if it considers it necessary, the EU judicature 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).

70 In accordance with that case-law, the EU judicature 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).

71 In the present case, the Court considers that there are overriding considerations of legal certainty justifying the limitation of the temporal effects of the annulment of the contested decision. First, the immediate calling into question of the receipt of the sums of money provided for by the aid measure at issue would have harmful consequences for the German economy in an economic and social context already marked by the adverse effects of the COVID-19 pandemic. Second, account must be taken of the fact that the cause of the annulment of the contested decision is the inadequacy of its reasoning.

72 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 of the General Court.

73 For those reasons, the effects of the annulment of the contested decision are to be suspended pending the adoption of a new decision by the Commission. Having regard to the speed with which the Commission acted following the pre-notification and notification of the measure at issue, those effects are to be suspended for a period of no more than two months from the date of delivery of the present 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

74 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 incurred by the applicant, in accordance with the form of order sought by the latter.

75 Furthermore, in accordance with Article 138(1) of the Rules of Procedure, Member States and institutions which intervene in proceedings are to bear their own costs. Under Article 138(3) of the Rules of Procedure, the Court may order an intervener other than those referred to in paragraph 1 to bear its own costs.

76 It must therefore be ordered that the Federal Republic of Germany, the French Republic and Condor are to bear their own costs.

On those grounds,

THE GENERAL COURT (Tenth Chamber, Extended Composition)

hereby:

1. **Annuls Commission Decision C(2020) 2795 final of 26 April 2020 on State aid SA.56867 (2020/N, ex 2020/PN) – Germany – Compensation for the damage caused by the COVID-19 outbreak to Condor Flugdienst GmbH;**

2. **Suspends the effects of the annulment of that decision pending the adoption of a new decision by the Commission under Article 108 TFEU. Those effects are to be preserved 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 Federal Republic of Germany, the French Republic and Condor Flugdienst to bear their own costs.**

Kornezov Buttigieg Kowalik-Bańczyk

Hesse Stancu

Delivered in open court in Luxembourg on 9 June 2021.

E. Coulon
Registrar

S. Papasavvas
President