Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

23 January 2025 *

(Appeal – State aid – Aid scheme – Measures intended to support airlines holding a national operating licence in the context of the COVID-19 pandemic – Decision by the European Commission not to raise any objections – Obligation to state reasons)

In Case C-490/23 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 1 August 2023,

Neos SpA, established in Somma Lombardo (Italy), represented by A. Cogoni and M. Merola, avvocati,

appellant,

the other parties to the proceedings being:

Ryanair DAC, established in Swords (Ireland), represented by F.-C. Laprévote and E. Vahida, avocats, and D. Pérez de Lamo and S. Rating, abogados,

applicant at first instance,

European Commission, represented by J. Carpi Badía, L. Flynn and F. Tomat, acting as Agents,

defendant at first instance,

Blue panorama airlines SpA, established in Somma Lombardo,

Air Dolomiti SpA – Linee aeree regionali Europee, established in Villafranca di Verona (Italy), represented by A. Cogoni and M. Merola, avvocati,

interveners at first instance,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin (Rapporteur) and O. Spineanu-Matei, Judges,

Advocate General: N. Emiliou,

* Language of the case: English.

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal Neos SpA seeks to have set aside the judgment of the General Court of the European Union of 24 May 2023, *Ryanair* v *Commission (Italy; aid scheme; COVID-19)* (T-268/21, 'the judgment under appeal', EU:T:2023:279), by which it annulled Commission Decision C(2020) 9625 final of 22 December 2020 on State aid SA.59029 (2020/N) – Italy – COVID-19: Compensation scheme for airlines with an Italian operating licence ('the decision at issue').

The background to the dispute and the decision at issue

2 The background to the dispute, as set out in the judgment under appeal, may be summarised as follows.

3 By decreto-legge n. 34 – Misure urgenti in materia di salute, sostegno al lavoro e all'economia nonche' di politiche sociali connesse all'emergenza epidemiologica da COVID-19 (Decree-Law No 34 on urgent health, labour and economy support, and social-policy measures related to the COVID-19 epidemiological emergency), of 19 May 2020 (GURI No 128 of 19 May 2020, Ordinary Supplement No 21), as amended and converted into law by Law No 77 of 17 July 2020 (GURI No 180 of 18 July 2020, Ordinary Supplement No 25) ('Decree-Law No 34/2020'), the Italian authorities established a compensation fund of EUR 130 million for the damage suffered by the aviation sector in the context of the COVID-19 pandemic ('the measure at issue').

4 On 14 August 2020, the Italian authorities adopted decreto-legge n. 104 – Misure urgenti per il sostegno e il rilancio dell'economia (Decree-Law No 104 laying down urgent measures to support and relaunch the economy) (GURI No 203 of 14 August 2020, Ordinary Supplement No 30). That decree-law authorised, pending completion of the procedure provided for in Article 108(3) TFEU, the Minister for Infrastructure and Transport of the Italian Republic to grant, by way of advance, subsidies financed by the fund created by Decree-Law No 34/2020 in a total amount not exceeding EUR 50 million to airlines satisfying the eligibility conditions set out in Article 198 of Decree-Law No 34/2020.

5 On 15 October 2020, the Italian Republic, in accordance with Article 108(3) TFEU, notified the European Commission of the measure at issue.

6 Article 198 of Decree-Law No 34/2020 established four conditions to be eligible for the measure at issue. First, the airline must not be the beneficiary of a fund created by another decree-law providing for compensation for damage caused by the COVID-19 pandemic for airlines holding a licence issued by the Italian authorities and entrusted with the performance of public service obligations on the date of entry into force of that decree-law. Second, the airline must hold a valid air operator certificate and an Italian licence. Third, the capacity of the airline's aircraft must be greater than 19 places. Fourth, the airline must provide its employees whose home base

is in Italy and employees of third-party undertakings taking part in its activity with remuneration which may not be lower than the minimum remuneration established by the national collective agreement applicable to the air transport sector ('the minimum remuneration requirement').

7 On 22 December 2020, the Commission adopted the decision at issue, by which it declared the measure at issue to be compatible with the internal market on the basis of Article 107(2)(b) TFEU and thus did not raise any objections.

The procedure before the General Court and the judgment under appeal

8 By application lodged at the Registry of the General Court on 18 May 2021, Ryanair DAC brought an action for annulment of the decision at issue.

9 In support of its action, Ryanair put forward four pleas in law, alleging, first, infringement of the principles of non-discrimination on grounds of nationality, the free provision of services and the freedom of establishment; second, infringement of Article 107(2)(b) TFEU and a manifest error of assessment of the proportionality of the aid in the light of the damage caused by the COVID-19 pandemic; third, infringement of procedural rights on the ground that the Commission refused to initiate the formal investigation procedure despite the existence of serious doubts on the compatibility of the measure at issue with the internal market; and, fourth, infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU.

10 In the judgment under appeal the General Court examined the fourth plea in law, while stating that failure to fulfil that obligation to state reasons was a breach of essential procedural requirements and did not relate to the substantive legality of the decision at issue.

11 In that regard, the General Court found, in essence, that that decision was vitiated by a dual infringement of the obligation to state reasons as regards the analysis of the fourth condition to be eligible for the measure at issue, namely the minimum remuneration requirement.

12 In the first place, it found in paragraph 24 of the judgment under appeal that the decision at issue did not disclose in a clear and unequivocal manner the reasoning which led the Commission to state both that the minimum remuneration requirement was indissolubly linked to the measure at issue, in recital 93 of that decision, and that that requirement was not inherent in the objective of that measure, in recital 95 of that decision.

13 In the second place, it found, in particular in paragraphs 26 and 34 of the judgment under appeal, that the Commission had not set out the reasons substantiating its view that the only relevant provision, other than Articles 107 and 108 TFEU, in the light of which it had to examine the compatibility of the minimum remuneration requirement with EU law, was Article 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; 'the Rome I Regulation') and not, in particular, Article 56 TFEU, on the freedom to provide services.

14 The General Court stated that in those circumstances it was not in a position to review whether the minimum remuneration requirement was compatible with 'other provisions of Union law' and thus whether the measure at issue as a whole was compatible with the internal market.

15 Consequently, the General Court, without examining the other pleas in the action, upheld the fourth plea and, as a result, it annulled the decision at issue.

Forms of order sought by the parties to the appeal

16 By its appeal, Neos claims that the Court should:

– set aside the judgment under appeal and

– refer the case back to the General Court.

17 Ryanair contends that the Court should:

– dismiss the appeal and

– order the appellant to pay the costs of these proceedings.

18 The Commission contends that the Court should:

– set aside the judgment under appeal,

– refer the case back to the General Court, and

– order Ryanair to bear its own costs and to pay those incurred by the Commission, related both to the proceedings at first instance and on appeal.

19 Air Dolomiti SpA – Linee aeree regionali Europee contends that the Court should set aside the judgment under appeal and refer the case back to the General Court.

The appeal

20 In support of its appeal Neos puts forwards two grounds of appeal, each of which has three parts. The first ground of appeal alleges breach by the General Court of its obligation to state reasons and errors in law as regards the assessment of the relationship between the State aid rules and other Treaty provisions and of the Commission's obligation to state reasons. The second ground of appeal alleges distortion of the decision at issue and errors in law with reference to the Commission's obligation to state reasons, to the application of Article 56 TFEU in the aviation sector and to assessing the relationship between Article 8(1) of the Rome I Regulation and the rules of the internal market.

21 By the third part of the first ground of appeal and the first part of the second ground of appeal, which it is appropriate to examine together, Neos argues that the General Court, in paragraphs 24 and 26 to 34 of the judgment under appeal, erred in law and distorted the facts in finding that the Commission had infringed its obligation to state reasons under the second paragraph of Article 296 TFEU and Article 108(2) TFEU.

Arguments of the parties

22 Neos submits in the third part of its first ground of appeal that, in so far as the General Court found, in paragraph 24 of the judgment under appeal, that the Commission had not explained in a clear and unequivocal manner the reasons why the minimum remuneration requirement was 'both' indissolubly linked to the measure at issue and not inherent in its objective, the General Court misconstrued the scope of the Commission's obligation to state reasons under Article 296 and Article 108(2) TFEU.

23 According to Neos, the decision at issue complies with the requirements established by the case-law of the Court of Justice as regards the obligation to state reasons. In the first place, recitals 92 and 93 of that decision include a well-argued assessment of the four conditions to be eligible for the measure at issue, described in the present case as being indissolubly linked to it. In that regard, Neos observes that Ryanair did not contest that assessment in its action, including with respect to the obligation to state reasons, meaning that the General Court, by finding that the Commission had infringed that obligation, breached the prohibition on ruling *ultra petita*.

24 In the second place, as regards recital 95 of the decision at issue, the Commission could have concluded, and even should have done so, that no separate assessment of the minimum remuneration requirement was needed since it is inherent in the objective of the aid measure at issue. Indeed, that requirement is aimed at ensuring that the undertakings concerned share the benefit of that measure with their employees, by guaranteeing that the remuneration of the latter does not fall below the legal minimum established under the national collective agreement applicable to the aviation sector and that they are not penalised because of the pandemic. That objective is perfectly in accordance with the terms of Article 107(2)(b) TFEU, does not constitute discrimination, distort trade between Member States or affect the proper functioning of the internal market to a greater extent than the aid itself. Neos states, however, that the Commission, adopting a cautious approach, took the view that that requirement was not inherent in the objective of the measure at issue, clearly explaining its position in recital 95 of the decision at issue, and assessed it in the light of provisions of EU law other than those specifically governing State aid.

25 In the third place, according to Neos, it is difficult to understand why the General Court considered that the decision at issue was vitiated by an infringement of the obligation to state reasons with regard to the Commission's reasoning and conclusion, that the minimum remuneration requirement is not inherent in the objective of the measure at issue, which, however, benefited Ryanair and any other party with an interest in contesting that decision.

26 In that regard, Neos states that the decision at issue is more substantiated than other Commission decisions authorising the grant of aid to the airline sector during the COVID-19 pandemic, which were contested by Ryanair on the grounds of their reasoning but which were nonetheless upheld by the General Court. Neos observes that, in contrast with those other Commission decisions, the decision at issue has a more detailed assessment of compatibility since it includes an entire section with an assessment of the measure at issue's compliance with provisions of EU law other than Article 107 TFEU and a finding that a condition of eligibility for that measure is not inherent in the latter's objective. In those circumstances, the annulment of the decision at issue owing to infringement of the obligation to state reasons seems at the very least to be paradoxical.

27 Furthermore, the fact that the statement of reasons is sufficient is confirmed by the fact that Ryanair was able to exercise its right to an effective remedy, as is apparent from the first plea in law in the action for annulment. That plea shows that the applicant at first instance understood the scope of the decision at issue and was able to challenge it on the merits.

28 By the first part of its second ground of appeal, Neos argues that the General Court, in paragraphs 26 to 34 of the judgment under appeal, distorted the decision at issue and erred in law with respect to the scope of the Commission's obligation to state reasons.

29 First, the General Court's reasoning whereby it criticises the Commission for having examined the compatibility of the minimum remuneration requirement with the internal market solely in the light of Article 8 of the Rome I Regulation is contradictory and incorrect. As is clear from the decision at issue, in particular recitals 95 and 99 thereof, the Commission did not examine the compatibility of that requirement only in the light of that provision, but also in the light of other provisions of EU law. The General Court thus distorted the decision at issue.

30 Second, in faulting the Commission for failing to provide reasons for the finding in recital 99 of the decision at issue, according to which the minimum remuneration requirement was not contrary to other provisions of EU law, the General Court misconstrued the scope of the obligation to state reasons falling on the Commission under the second paragraph of Article 296 and Article 108(2) TFEU. It cannot reasonably be required of the Commission to provide detailed reasoning in the light of each potentially relevant provision of EU law.

31 The Commission and Air Dolomiti SpA – Linee aeree regionali Europee both submit that the grounds of appeal put forward by Neos should be upheld.

32 Ryanair contests the arguments put forward by Neos in support of the grounds of appeal. It submits that the General Court was right to find that the Commission had failed to provide a statement of reasons for the conclusion that the minimum remuneration requirement was indissolubly linked to the measure at issue while not being inherent in the objective of that measure. Contrary to what is argued by Neos, the General Court did not adjudicate *ultra petita* since it did not rule solely on the issue of whether there was a link between that requirement and the measure at issue and since the General Court could in any event have raised the question of insufficient reasoning of its own motion. In so far as Neos refers to several recent rulings by the General Court on aid granted to the aviation sector in the context of the COVID-19 pandemic, Ryanair points to differences between the Commission decisions concerned by those judgments and the decision at issue, in particular the complaint filed by the Associazione Italiana Compagnie Aeree Low Fares (Italian Low Fares Airline Association). That complaint reinforced the Commission's duty to review the issue of a breach of the freedom to provide services. More broadly, the issue is not whether the decision at issue was better substantiated than other Commission decisions, but whether it was sufficiently substantiated.

33 As regards the first branch of the second ground of appeal, Ryanair argues that it should be rejected as inadmissible since it is by no means substantiated or clear. In any event, according to Ryanair, Neos has not shown that the General Court distorted the facts in the manner it claims and has produced no proof that the Commission examined the compliance of the minimum remuneration requirement with provisions of EU law other than Article 8 of the Rome I Regulation. Accordingly, having regard in particular to the importance of the complaint filed by

the Italian Low Fares Airline Association in the context of the decision at issue, the General Court did not commit any error in law with respect to the scope of the Commission's obligation to state reasons in that regard.

Findings of the Court

34 It should be observed that, according to settled case-law, the statement of reasons required by the second paragraph of 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 measures in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to specify all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of the second paragraph 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 (judgment of 23 November 2023, *Ryanair* v *Commission*, C-210/21 P, EU:C:2023:908, paragraph 105 and the case-law cited).

35 Specifically, as regards a decision under Article 108(3) TFEU not to raise objections in respect of an aid measure, as in the present case, the Court has held previously that such a decision, which is taken within a short period of time, must simply set out the reasons why 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 that even a succinct statement of reasons for that decision must be regarded as being sufficient for the purpose of satisfying the requirement to state adequate reasons laid down in the second paragraph of Article 296 TFEU, provided that it discloses in a clear and unequivocal fashion the reasons why the Commission considered that it was not faced with serious difficulties, the question whether the reasoning is well founded being a separate matter (judgment of 23 November 2023, *Ryanair* v *Commission*, C-210/21 P, EU:C:2023:908, paragraph 106 and the case-law cited).

36 It is in the light of those criteria that it is necessary to examine whether the General Court erred in law in finding that the decision at issue was vitiated by an infringement of the Commission's obligation to state reasons under the second paragraph of Article 296 TFEU.

37 In the first place, in so far as Neos complains in the third part of the first ground of appeal that the General Court committed such an error by finding, in paragraph 24 of the judgment under appeal, that the decision at issue did not disclose in a clear and unequivocal manner the reasoning which had led the Commission to state 'both' that the minimum remuneration requirement was indissolubly linked to the measure at issue, in recital 93 of that decision, and that that requirement was not inherent in the objective of that measure, in recital 95 thereof, it should be observed that those recitals may be found in the final section of the decision at issue, namely section 3.3.5, which includes recitals 91 to 99 of the decision, which deal specifically with the Commission's assessment of the measure at issue in the light of provisions and principles of EU law other than those on State aid.

38 Prior to that assessment, the Commission, in section 2 of the decision at issue, described the measure at issue, referring, inter alia, to its aim, which was namely, in essence, to make good the damage suffered by certain airlines due to the travel restrictions that were imposed as a result of the COVID-19 pandemic; its basis, Article 107(2)(b) TFEU; the measures adopted in that regard by the Member States and third countries with respect to flights to and from Italy; the impact of those measures on Italian airlines; the four conditions to be eligible for the measure at issue; and the eligible damage, namely the net losses directly linked to those restrictions incurred during the period running from 1 March to 15 June 2020.

39 As regards its examination of the compliance of the measure at issue with Article 107(2)(b) TFEU, the Commission found in essence, in sections 3.3.3 and 3.3.4 of the decision at issue, that the measure did indeed concern an exceptional occurrence within the meaning of that provision, that the period covered corresponded to that in which the net losses incurred by the airlines constituted damage that was directly linked to that occurrence, and that the measure was proportional since it did not exceed what was necessary to make good that damage.

40 Following that initial analysis, the Commission, in the final section of the decision at issue, examined the compliance of the measure at issue with other provisions of EU law.

41 In that regard, it first referred, in recital 91 of the decision at issue, to the case-law to the effect that the procedure under Article 108 TFEU must never produce a result which is contrary to the specific provisions of the FEU Treaty. Accordingly, State aid which, as such or by reason of some modalities thereof, contravenes provisions or general principles of EU law cannot be declared compatible with the internal market (see to that effect, inter alia, judgments of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 50 and 51, and of 23 November 2023, *Ryanair* v *Commission*, C-210/21 P, EU:C:2023:908, paragraph 82 and the case-law cited).

42 Second, as noted by the General Court in paragraph 22 of the judgment under appeal, the Commission referred in recital 92 of that decision to the case-law to the effect that when the aspects of aid are so indissolubly linked to the object of the aid that it is impossible to evaluate them separately, their effect on the compatibility or incompatibility of the aid as a whole with the internal market must of necessity be determined by means of the procedure prescribed in Article 108 TFEU (see to that effect, inter alia, judgments of 22 March 1977, *Iannelli & Volpi*, 74/76, EU:C:1977:51, paragraph 14, and of 23 November 2023, *Ryanair* v *Commission*, C-210/21 P, EU:C:2023:908, paragraph 83 and the case-law cited).

43 The General Court then stated in the same paragraph of the judgment under appeal that the Commission had found, in recital 93 of the decision at issue, that the four conditions to be eligible for the measure at issue were 'indissolubly linked' to that measure, for the purposes of that case-law.

44 The General Court also found, in paragraph 23 of that judgment, that the Commission had noted in recital 95 of the decision at issue that there was a particular reason for examining the fourth of those eligibility conditions, on the minimum remuneration requirement, and that the Commission had taken the view that that requirement was 'not inherent in the objective of the measure at issue', given, in essence, that its aim was to ensure that the undertakings benefiting from that measure guarantee a minimum salary protection to their employees whose home base was in Italy, as required by Italian law; the Commission had then found that the compatibility of that requirement had therefore also to be assessed in the light of 'other relevant provisions of Union law'.

45 Lastly, as observed in paragraph 25 of the judgment under appeal, the Commission, after assessing, in recitals 96 to 98 of the decision at issue, the compatibility of the minimum remuneration requirement in the light of Article 8(1) of the Rome I Regulation, found, in recital 99, that that requirement prima facie complied with the protection granted to employees by that regulation and did not constitute a breach of other provisions of EU law.

46 That is the context for the appellant's claim that an error in law vitiates the General Court's assessment in paragraph 24 of the judgment under appeal, which states that the Commission thereby failed to provide reasoning for the decision at issue to the requisite legal standard, in recitals 93 and 95 thereof, by not disclosing in a clear and unequivocal manner the reasoning which led it to consider both that the minimum remuneration requirement was indissolubly linked to the measure at issue and that that requirement was not inherent in the objective of that measure.

47 It should be observed, first, that, as regards a decision not to raise objections in respect of an aid measure in the framework of the procedure under Article 108(3) TFEU, the General Court was required, in accordance with the case-law referred to in paragraph 35 above, to ascertain whether the decision at issue set out the reasons why the Commission had taken the view that it was not faced with serious difficulties in assessing the compatibility of the measure at issue with the internal market.

48 As is clear from paragraphs 38 to 40 and 45 above, the Commission gave the reasons why it took the view that such was the case, namely that that measure complied with the conditions for applying Article 107(2)(b) TFEU and that it was proportional to the damage for which the compensation was intended, while one condition for being eligible for that measure, which the Commission found necessary to assess in the light of provisions of EU law other than those concerning State aid, did not appear to conflict with any of those provisions.

49 By failing to have regard to all those elements in the decision at issue, the General Court's finding in paragraph 24 of the judgment under appeal proceeds from an analysis of the statement of reasons for that decision which misconstrues the test which had to be used in order to assess the sufficiency of the statement of reasons for that decision.

50 Second, as pointed out in paragraphs 41 to 44 above, the reasoning for the decision at issue shows why the Commission found that it was necessary to assess the minimum remuneration requirement in the light of EU legal provisions other than those concerning State aid, namely that that requirement was not inherent in the objective of the measure at issue. However, contrary to what the General Court impliedly held in paragraph 24 of the judgment under appeal, the Commission could not be required to provide a more detailed statement of reasons concerning that finding, or even as regards the possible relationship between it and the previous finding that all of the conditions to be eligible for that measure were indissolubly linked to it.

51 In that regard, it should be observed that, in accordance with the case-law referred to in paragraph 35 above, the statement of reasons for a decision adopted pursuant to Article 108(3) TFEU not to raise objections with respect to an aid measure may be succinct.

52 Furthermore, it follows implicitly but necessarily from the relationship between recitals 93 and 95 of the decision at issue that the Commission considered that it was required to carry out a further analysis of the minimum remuneration requirement in the light of provisions of EU law other than those concerning State aid. The Commission's reasoning is thus apparent in a sufficiently clear and unequivocal manner.

53 It must be pointed out that the question of whether the reasoning for an act is well founded is a separate matter from whether that reasoning is sufficient. Accordingly, even if it were assumed that the conjunction of the findings made in recitals 93 and 95 of the decision at issue reveals an error in law, that error cannot be penalised on the basis of the obligation to state reasons set out in the second paragraph of Article 296 TFEU.

54 It is apparent from the foregoing that the General Court erred in law by finding, in paragraph 24 of the judgment under appeal, that the decision at issue, and in particular recitals 93 and 95 thereof, did not comply with the obligation to state reasons under the second paragraph of Article 296 TFEU.

55 In the second place, Neos, by the first part of the second ground of appeal, in essence criticises the General Court for erring in law by finding, in particular in paragraphs 26, 27 and 34 of the judgment under appeal, that the Commission had infringed its obligation to state reasons in so far as it had failed to explain why the only relevant provision, other than Articles 107 and 108 TFEU, in the light of which it had to examine the compatibility of the minimum remuneration requirement, was Article 8 of the Rome I Regulation and not, in particular, Article 56 TFEU, which establishes the freedom to provide services.

56 In that regard, as is clear from the case-law referred to in paragraph 41 above, the procedure under Article 108 TFEU must never produce a result which is contrary to the specific provisions of the FEU Treaty. Accordingly, State aid which, as such or by reason of some modalities thereof, contravenes provisions or general principles of EU law cannot be declared compatible with the internal market.

57 In the present case, it must be found, first, that while the decision at issue, having regard in particular to recitals 96 to 99 thereof, includes a detailed examination of the compatibility of the minimum remuneration requirement solely in the light of Article 8 of the Rome I Regulation, that nevertheless does not show, as Neos has correctly observed, that that is the only provision of EU law which the Commission considered as relevant for that examination. Indeed, in recital 99 of the decision at issue, the Commission concluded that the minimum remuneration requirement was prima facie compliant with the Rome I Regulation and that it did not 'constitute a breach of other provisions of Union law'.

58 Second, contrary to what the General Court found in particular in paragraphs 26, 27 and 34 of the judgment under appeal, the Commission's obligation to state reasons does not in any event mean that it must in every case justify the absence of an explicit examination of the compatibility of an aid measure in the light of certain provisions or certain principles of EU law other than the State aid rules and, therefore, give its view on their relevance for the purpose of such an examination.

59 Indeed, given the extremely large number of provisions and principles of EU law that may be infringed by the grant of aid, the Commission cannot be required, without undermining the effectiveness of the procedure under Article 108 TFEU, or even the possibility to take a decision

in favour of aid after the preliminary examination phase referred to in Article 108(3) TFEU, and thus without initiation of the formal investigation procedure, to provide specific reasoning concerning each one of them, and, in the present case, as far as concerns Article 56 TFEU.

60 In that respect, it should be held, having regard to the necessity to take account of the context for the purpose of assessing the obligation to state reasons, in accordance with the case-law referred to in paragraph 34 above, that a decision declaring an aid measure to be compatible with the internal market in the framework of a procedure under Article 108 TFEU means, in particular if it is apparent, as in the present case, from the Commission's statement of reasons that it has assessed the aid measure concerned in the light of those provisions or principles, that the latter institution has taken the view that those provisions and principles were either not relevant with respect to that measure or, in any event, had not been infringed.

61 It follows from the foregoing that the General Court also erred in law in finding, in paragraphs 26, 27 and 34 of the judgment under appeal, that the Commission had infringed its obligation to state reasons in that it had not explained why the only relevant provision, other than Articles 107 and 108 TFEU, in the light of which it had to examine the compatibility of the minimum remuneration requirement, was Article 8 of the Rome I Regulation and not, in particular, Article 56 TFEU.

62 In the light of all those findings, the third part of the first ground of appeal and the first part of the second ground of appeal must be upheld, and, consequently, the judgment under appeal must be set aside, there being no need to examine either the complaint alleging distortion of the facts raised in that latter part or the other parts of those grounds of appeal.

The procedure before the General Court

63 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice may, where it has quashed a decision of the General Court, itself give final judgment in the matter where the state of the proceedings so permits.

64 That is the situation in the present case with regard to the first part of the fourth plea in law in the action, alleging infringement of the Commission's obligation to state reasons under the second paragraph of Article 296 TFEU in that the latter did not assess the measure at issue, in particular the minimum remuneration requirement, in the light of certain provisions and principles of EU law other than those specifically governing State aid, such as the principle of non-discrimination, the freedom of establishment and the freedom to provide services.

65 Indeed, it is clear from the findings in paragraphs 34 to 60 above that that part must be dismissed as unfounded.

66 However, as regards the second part of the fourth plea in the action, and as regards the first plea, alleging infringement of the principles of non-discrimination on grounds of nationality, the freedom to provide services and the freedom of establishment, as well as the second plea, claiming infringement of Article 107(2)(b) TFEU and a manifest error of assessment of the proportionality of the aid in the light of the damage caused by the COVID-19 pandemic, and the third plea, alleging infringement of Ryanair's procedural rights owing to the refusal to initiate the

formal investigation procedure despite the existence of serious doubts on the compatibility of the measure at issue with the internal market, the state of the proceedings does not permit judgment to be given.

67 The aforementioned pleas in law, which for the most part concern the merits of the decision at issue, which the General Court did not examine, involve complex factual assessments, in respect of which the Court of Justice does not have all of the necessary information.

68 Consequently, it is necessary to refer the case back to the General Court for judgment on the pleas referred to in paragraph 66 above and to reserve the costs.

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

1. **Sets aside the judgment of the General Court of the European Union of 24 May 2023, *Ryanair* v *Commission (Italy; aid scheme; COVID-19)* (T-268/21, EU:T:2023:279);**

2. **Refers the case back to the General Court of the European Union for judgment on the first to third pleas in law and on the second part of the fourth plea in law of Ryanair DAC's action;**

3. **Reserves the costs.**

Lycourgos Rodin Spineanu-Matei

Delivered in open court in Luxembourg on 23 January 2025.

A. Calot Escobar
Registrar

K. Lenaerts
President