



C/2024/5312

9.9.2024

Appeal brought on 18 July 2024 by Condor Flugdienst GmbH against the judgment of the General Court (Eighth Chamber) delivered on 8 May 2024 in Case T-28/22, Ryanair v Commission (Condor; restructuring aid)

(Case C-505/24 P)

(C/2024/5312)

Language of the case: English

Parties

Appellant: Condor Flugdienst GmbH (represented by: A. Rosenfeld, S. Lünenbürger and K. Reiter, Rechtsanwälte)

Other parties to the proceedings: Ryanair DAC, European Commission, Federal Republic of Germany

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal;
- dismiss the action brought in case T-28/22;
- order Ryanair to bear the costs relating to the proceedings at first instance and to the appeal proceedings.

Pleas in law and main arguments

The appellant relies on three grounds of appeal.

First, the General Court erred in law by finding that the Commission had to apply point 67 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽¹⁾ ('the R&R Guidelines') to a partial write-off of debt, such as the one contained in the measure at issue. It follows clearly from a literal, contextual and teleological reading that point 67 does not apply to the write-off of debt. The extension of the scope of point 67 of the R&R Guidelines applied by the General Court is also not justified in a situation such as the one at hand, in which the restructuring is implemented with the support of a private investor excluding the risk of moral hazard. As far as the General Court held that the Commission should have initiated the procedure under Article 108(2) TFEU because of the inconsistent wording of point 67 of the R&R Guidelines attributable to the Commission, this has no legal basis. In any event, the General Court interfered unduly with the competences of the Commission and the discretion it enjoys in interpreting its own guidelines. Moreover, the General Court unlawfully excluded any exemptions from the requirement set out in the said point 67.

Second, even if one assumed that point 67 of the R&R Guidelines was applicable and had necessarily to be applied to the measure at issue (*quod non*), the decision at issue would contain sufficient elements to consider that the said point is complied with. The General Court wrongfully rejected the argument of the Commission and Condor that securing the best conditions for the repayment of the public loans through the package offered by Attestor Ltd, an investment fund, must be considered as affording the State a reasonable share in future gains within the meaning of point 67. The General Court therefore unlawfully considered that the Commission should have entertained doubts as to whether the measure at issue satisfied the said point.

⁽¹⁾ OJ 2014 C 249, p. 1.

Third, even if one accepted the General Court's reasoning regarding point 67 of the R&R Guidelines (*quod non*), the judgment under appeal would remain wrong. The overall extent of own contribution and burden sharing considered in the decision at issue, including the contributions of the future shareholder Attestor, ascertains already sufficiently that the aid does not incentivise moral hazard or inconsiderate risk taking. It thereby excludes the need for further measures to limit distortions of competition. Any additional requirement to afford the State a share of Condor's future gain in value could only further tilt the balance of the decision at issue in favour of the aid. The General Court therefore incorrectly considered that the alleged noncompliance with point 67 had an impact on the outcome of the decision at issue.
