Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

11 June 2020*

(Appeal — State aid — Article 107(1) TFEU — Social security system — Health insurance bodies — Concepts of 'undertaking' and 'economic activity' — Social objective — Principle of solidarity — State supervision — Overall assessment — Possibility of seeking profits — Residual competition on quality and on health insurance services offered)

In Joined Cases C-262/18 P and C-271/18 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 and 19 April 2018,

European Commission, represented by F. Tomat and P.-J. Loewenthal, acting as Agents,

appellant,

supported by:

Republic of Finland, represented by S. Hartikainen, acting as Agent,

intervener in the appeal,

the other parties to the proceedings being:

Dôvera zdravotná poisťovňa a.s., established in Bratislava (Slovakia), represented by F. Roscam Abbing, A. Pliego Selie and O.W. Brouwer, advocaten,

applicant at first instance,

Slovak Republic, represented by M. Kianička, D. Kaiserová and B. Ricziová, acting as Agents,

Union zdravotná poisťovňa a.s., established in Bratislava, represented by A.M. ter Haar, A. Kleinhout and J.K. de Pree, advocaten,

interveners at first instance (C-262/18 P),

and

Slovak Republic, represented by M. Kianička, D. Kaiserová and B. Ricziová, acting as Agents,

appellant,

* Language of the case: English.

supported by:

Republic of Finland, represented by S. Hartikainen, acting as Agent,

intervener in the appeal,

the other parties to the proceedings being:

Dôvera zdravotná poisťovňa a.s., represented by F. Roscam Abbing, A. Pliego Selie and O.W. Brouwer, advocaten,

applicant at first instance,

European Commission, represented by F. Tomat and P.-J. Loewenthal, acting as Agents,

defendant at first instance,

Union zdravotná poisťovňa a.s., represented by A.M. ter Haar, A. Kleinhout and J.K. de Pree, advocaten,

intervener at first instance (C-271/18 P),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan, S. Rodin, L.S. Rossi and I. Jarukaitis, Presidents of Chambers, E. Juhász, M. Ilešič, J. Malenovský, T. von Danwitz (Rapporteur), D. Šváby, F. Biltgen and A. Kumin, Judges,

Advocate General: P. Pikamäe,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 1 October 2019,

after hearing the Opinion of the Advocate General at the sitting on 19 December 2019,

gives the following

Judgment

1 By their appeals, the European Commission and the Slovak Republic ask the Court of Justice to set aside the judgment of the General Court of the European Union of 5 February 2018, *Dôvera zdravotná poisťovňa* v *Commission* (T-216/15, not published, EU:T:2018:64, 'the judgment under appeal'), by which the General Court annulled Commission Decision (EU) 2015/248 of 15 October 2014 on the measures SA.23008 (2013/C) (ex 2013/NN) implemented by Slovak Republic for Spoločná zdravotná poisťovňa, a.s (SZP) and Všeobecná zdravotná poisťovňa, a.s (VZP) (OJ 2015 L 41, p. 25, 'the decision at issue').

Background to the dispute and the decision at issue

2 In 1994, the Slovak health insurance system changed from a unitary system, with a single State-owned health insurer, to a pluralistic model in which both public and private bodies could operate. Under Slovak legislation which entered into force on 1 January 2005, those bodies, whether State-owned or in private ownership, must have the legal status of a profit-seeking joint stock company governed by private law.

3 During the period from 1 January 2005 to the adoption of the decision at issue, Slovak residents could choose between the following health insurance bodies:

– Všeobecná zdravotná poisťovňa a.s. (VšZP) and Spoločná zdravotná poisťovňa a.s. (SZP), which merged on 1 January 2010 and whose sole shareholder is the Slovak State;

– Dôvera zdravotná poisťovňa a.s. ('Dôvera'), whose shareholders are private sector entities; and

– Union zdravotná poisťovňa a.s. ('Union'), whose shareholders are private sector entities.

4 Following a complaint lodged by Dôvera on 2 April 2007 concerning State aid allegedly granted by the Slovak Republic to SZP and to VšZP, the Commission initiated the formal investigation procedure on 2 July 2013.

5 By the decision at issue, the Commission found that SZP and VšZP were not undertakings within the meaning of Article 107(1) TFEU, on the ground that the activity which they were carrying out was non-economic in nature, and therefore the measures to which the complaint related did not constitute State aid.

The procedure before the General Court and the judgment under appeal

6 By application lodged at the General Court Registry on 24 April 2015, Dôvera brought an action for annulment of the decision at issue, in support of which it put forward two pleas in law. The first plea alleged misinterpretation of the concepts of 'undertaking', within the meaning of Article 107(1) TFEU, and 'economic activity', and the second plea alleged misapplication of those concepts with respect to SZP and VšZP and infringement of the obligation to state reasons.

7 The General Court upheld the second plea and annulled the decision at issue, without having examined the first plea in law put forward in the action.

8 After recalling, in paragraphs 46 to 53 of the judgment under appeal, the case-law of the Court of Justice in relation to the concepts of 'undertaking' and 'economic activity', in particular the case-law in the field of social security, the General Court examined, in paragraphs 55 to 58 of its judgment, the validity of the Commission's assessment that the Slovak compulsory health insurance scheme is characterised by predominant social, solidarity and regulatory features.

9 With regard to the social and solidarity features of that scheme, in paragraphs 55 and 56 of the judgment under appeal, the General Court first of all noted that health insurance is compulsory in Slovakia and that insurers are obliged to register every Slovak resident who so requests, and cannot refuse to insure a person on the grounds of that person's age, state of health or risk of illness. Next, it found that the scheme is based on a system of compulsory contributions, which are fixed by law in proportion to the income of the insured persons, independently of the benefits received or of the risk resulting from, inter alia, the age or state of health of the insured person. It also noted that all insured persons have the right to the same minimum level of benefits. Finally, the General Court observed that

there is a Risk Equalisation Scheme, whereby health insurance bodies insuring high-risk individuals receive funding from health insurance bodies that have a portfolio composed of persons presenting lower risks.

10 As regards State supervision of the Slovak compulsory health insurance scheme, the General Court stated, in paragraph 57 of the judgment under appeal, that the insurance bodies are subject to special regulations, in accordance with which each of them is established with the purpose of executing public health insurance and cannot carry out activities other than those provided for by law. It also noted that the activities of those bodies are subject to supervision by a regulatory office which ensures that they adhere to the relevant legislative framework and intervenes when violations occur.

11 In paragraph 58 of the judgment under appeal, by way of interim conclusion, the General Court upheld the Commission's assessment that, in essence, the Slovak compulsory health insurance scheme has predominant social, solidarity and regulatory features.

12 However, in paragraph 59 of its judgment, the General Court noted that the legislation relating to that scheme allows health insurance bodies, first, to make, use and distribute profits and, second, to compete to a certain degree in terms of quality and services offered.

13 In paragraphs 63 to 69 of the judgment under appeal, the General Court went on to examine the consequences as regards the classification as economic or non-economic of the activity of those health insurance bodies. Those paragraphs are worded as follows:

'63 In the first place, it must be held that the health insurance companies' ability to make, use and distribute part of their profits does call into question the non-economic nature of their activity, contrary to what the Commission found in recital 94 of the [decision at issue].

64 Indeed, the Commission rightly states that the ability to use and distribute profits is regulated more strictly than in normal commercial sectors, since that power is, in the present case, subject to the fulfilment of requirements intended to ensure the continuity of the scheme and the attainment of the social and solidarity objectives underpinning it. However, that becomes irrelevant for the purposes of excluding the economic nature of the activity, once the market operators in question seek to make a profit. In any event, the fact that Slovak health insurance companies are freely able to seek and make a profit shows that, regardless of the performance of their public health insurance task and of State supervision, they are pursuing financial gains and, consequently, their activities in the sector fall within the economic sphere. Therefore, the strict conditions framing the subsequent use and distribution of profits which may result from those activities does not call into question the economic nature of such activities.

65 In the second place, it must be held that the existence of a certain amount of competition as to the quality and scope of services provided by the various bodies within the Slovak compulsory health insurance scheme also has a bearing on the economic nature of the activity, contrary to what the Commission found, in essence, in recitals 92 and 93 of the [decision at issue].

66 While it appears from the case file that health insurance bodies may not freely set the amount of the contributions or formally compete via their tariffs, the legislature did nevertheless introduce an element of competition as to quality, as the companies may freely supplement the compulsory statutory services with related free services, such as better coverage for certain complementary and preventive treatments in the context of the basic compulsory services or an enhanced assistance service for insured persons. They may therefore differentiate themselves in terms of quality and scope of services in order to attract insured persons, who, by law, are free to choose their health insurance company and switch company once a year. The latitude available to health insurance bodies to compete thus enables insured persons to benefit from better social protection for an equal contribution amount, as the additional services offered are free of charge. As the

applicant points out, although Slovak health insurance companies are obliged to offer the same statutory benefits, they compete through the "value for money" of the cover they offer and, therefore, on the quality and efficiency of the purchasing process, as the Commission itself acknowledges in recital 93 of the [decision at issue].

67 Thus, even if there is no competition within the Slovak compulsory health insurance system in respect of either the compulsory statutory benefits or formally on the amount of contributions, there is nevertheless intense and complex competition due to the market volatility resulting from insured persons' power freely to choose their health insurance provider and to switch insurance company once a year, and the fact that health insurance bodies are competing in terms of the quality of service, which is assessed individually by the insured persons.

68 It follows that, in view of the profit pursued by health insurance companies and the existence of intense competition as to quality and the services offered, the activity of providing compulsory health insurance in Slovakia is economic in nature.

69 That conclusion cannot be undermined, even if it were to be argued that SZP and VšZP were not seeking to make a profit. Admittedly, where the bodies whose activity is examined do not have such a goal, but have a degree of freedom to compete to a certain extent in order to attract persons seeking insurance, that competition does not automatically call into question the non-economic nature of their activity, particularly where that element of competition was introduced in order to encourage the sickness funds to operate in accordance with principles of sound management (judgment of 16 March 2004, *AOK Bundesverband and Others*, C-264/01, C-306/01, C-354/01 and C-355/01, EU:C:2004:150, paragraph 56). However, it is apparent from the case-law [derived from the judgments of 1 July 2008, *MOTOE* (C-49/07, EU:C:2008:376, paragraph 27), and of 10 January 2006, *Cassa di Risparmio di Firenze and Others* (C-222/04, EU:C:2006:8, paragraphs 122 and 123)] that the fact that the offer of goods or services is made without seeking to make a profit does not prevent the entity which carries out those operations on the market from being regarded as an undertaking, provided that the offer exists in competition with that of other operators that are seeking to make a profit. It follows that it is not the mere fact of being in a position of competition on a given market which determines the economic nature of an activity, but rather the presence on that market of operators seeking to make a profit. That is the situation in the present case, since it is common ground between the parties that the other operators on the market in question are seeking to make a profit, so that SZP and VšZP, "by contagion", would have to be considered to be undertakings.'

14 At the end of that examination, the General Court concluded that, contrary to the Commission's findings, the activity of SZP and VšZP was economic in nature, and accordingly those insurance bodies had to be classified as undertakings, within the meaning of Article 107(1) TFEU.

The procedure before the Court of Justice and forms of order sought by the parties to the appeals

15 By decisions of the President of the Court of Justice of 10 September 2018, the Republic of Finland was granted leave to intervene in support of the form of order sought by the Commission in Case C-262/18 P and in support of the form of order sought by the Slovak Republic in Case C-271/18 P.

16 In the main appeals, the Commission and the Slovak Republic, supported by the Republic of Finland, claim that the Court should set aside the judgment under appeal and, in the event that the Court gives final judgment in the matter, dismiss the original action, in which case the Commission and the Slovak Republic claim that the Court should order Dôvera and Union to pay the costs.

17 For their part, Dôvera and Union contend that the Court should dismiss the appeal and order the Commission to pay the costs of the proceedings in Case C-262/18 P, and the Slovak Republic to pay the costs of the proceedings in Case C-271/18 P. Dôvera also contends that the Court should order the interveners supporting the Commission to pay the costs in Case C-262/18 P.

18 In the cross-appeals in Cases C-262/18 P and C-271/18 P, Dôvera claims that the Court should set aside paragraph 58 of the judgment under appeal in so far as it states that Dôvera did not challenge the Commission's statement that the Slovak compulsory health insurance scheme had 'predominant social, solidarity and regulatory features'.

19 For their part, the Commission and the Slovak Republic contend that the cross-appeals should be dismissed as being inadmissible and Dôvera ordered to pay the costs. In the alternative, the Commission contends that the Court of Justice should set aside the judgment under appeal and refer the case back to the General Court or give final judgment in the matter, and also order Dôvera and Union to pay the costs.

20 By decision of the President of the Court of 19 November 2018, Cases C-262/18 P and C-271/18 P were joined for the purposes of the oral procedure and of the judgment.

21 In Case C-271/18 P, the Slovak government requested, pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, that the Court sit as a Grand Chamber.

The main appeals

Arguments of the parties

22 In support of their appeals the Commission and the Slovak Republic both raise three grounds of appeal, alleging, in essence; (i) infringement of the obligation to state reasons; (ii) misinterpretation of the concepts of 'undertaking', within the meaning of Article 107(1) TFEU, and 'economic activity'; and (iii) distortion of evidence. The Slovak Republic also advances a fourth ground of appeal, alleging that the General Court exceeded the limits of its judicial review.

23 By the second ground of appeal raised by the Commission in Case C-262/18 P and the third ground of appeal raised by the Slovak Republic in Case C-271/18 P, those parties, supported by the Republic of Finland, seek to challenge the General Court's finding that the activity of SZP and VšZP was economic in nature and that accordingly those insurance bodies had to be classified as undertakings within the meaning of Article 107(1) TFEU.

24 In essence, they maintain that the General Court relied on an erroneous interpretation of the concepts of 'undertaking', within the meaning of Article 107(1) TFEU, and 'economic activity'. They argue that the classification of a health insurance scheme that has not only social, solidarity and regulatory features but also economic features depends on an overall assessment that takes into account, in particular, the objectives of the scheme and the respective importance of its different elements. In the present case, it had been established that the Slovak compulsory health insurance scheme pursues a social aim, applies the principle of solidarity and is subject to State supervision. In view of those factors, the General Court had erroneously concluded that the activity of the insurance bodies in the context of that scheme was economic in nature, in reliance only on considerations relating, first, to the ability of those bodies to compete to a certain extent on the value for money of their services and, second, to the fact that they were seeking to make a profit. Furthermore, the existence of a strict regulatory framework for the ability to seek to make and to use and distribute profits would have been a relevant factor which the General Court should have taken into account in that assessment.

25 Dôvera and Union contest those arguments. The mere fact that the Slovak compulsory health insurance scheme pursues a social objective does not, in their view, justify the conclusion that the activity of the insurance bodies within that scheme is non-economic in nature. The economic nature of their activity stems from the fact that they compete on the value for money of their services and that they engage in those activities with the aim of making a profit.

Findings of the Court

26 Under Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is to be classified as State aid within the meaning of that provision.

27 It follows in particular that the prohibition laid down in Article 107(1) TFEU concerns only the activities of undertakings (see, to that effect, judgment of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 39 and the case-law cited).

28 It is apparent from the settled case-law of the Court that, in the context of EU competition law, the concept of 'undertaking' covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed (judgments of 23 April 1991, *Höfner and Elser*, C-41/90, EU:C:1991:161, paragraph 21, and of 3 March 2011, *AG2R Prévoyance*, C-437/09, EU:C:2011:112, paragraph 41 and the case-law cited).

29 Whether or not an entity is to be classified as an undertaking depends, therefore, on the nature of its activity. In accordance with equally settled case-law of the Court, any activity consisting in offering goods or services on a given market is an economic activity (judgments of 16 June 1987, *Commission* v *Italy*, 118/85, EU:C:1987:283, paragraph 7, and of 3 March 2011, *AG2R Prévoyance*, C-437/09, EU:C:2011:112, paragraph 42 and the case-law cited).

30 As regards, in particular, the field of social security, the Court has held that EU law does not, in principle, detract from the powers of the Member States to organise their social security systems. For the purposes of assessing whether an activity carried out in the context of a social security scheme is non-economic in nature, it makes an overall assessment of the scheme at issue and, to that end, takes the following into consideration: the pursuit, by the scheme, of a social objective, its application of the principle of solidarity, whether the activity carried out is non-profit-making, and State supervision of that activity (see, to that effect, judgments of 17 February 1993, *Poucet and Pistre*, C-159/91 and C-160/91, EU:C:1993:63, paragraphs 8 to 10, 14, 15 and 18; of 22 January 2002, *Cisal*, C-218/00, EU:C:2002:36, paragraphs 34, 38 and 43; of 16 March 2004, *AOK Bundesverband and Others*, C-264/01, C-306/01, C-354/01 and C-355/01, EU:C:2004:150, paragraphs 47 to 50; of 5 March 2009, *Kattner Stahlbau*, C-350/07, EU:C:2009:127, paragraphs 35, 38 and 43; and of 3 March 2011, *AG2R Prévoyance*, C-437/09, EU:C:2011:112, paragraphs 43 to 46).

31 In the context of that overall assessment, it is necessary to examine, in particular, whether and to what extent the scheme at issue may be considered to be applying the principle of solidarity and whether the activity of insurance bodies organising such a scheme is subject to State supervision (see, to that effect, judgments of 17 February 1993, *Poucet and Pistre*, C-159/91 and C-160/91, EU:C:1993:63, paragraphs 8 and 14; of 22 January 2002, *Cisal*, C-218/00, EU:C:2002:36, paragraphs 38 and 43; and of 5 March 2009, *Kattner Stahlbau*, C-350/07, EU:C:2009:127, paragraph 43).

32 Social security schemes applying the principle of solidarity are characterised, in particular, by the compulsory nature of affiliation both for insured persons and for the insurance bodies; contributions which are fixed by law in proportion to the income of the insured persons and not the risk they represent individually on account of their age or state of health; the rule that compulsory benefits set

by law are identical for all insured persons and do not depend on the amount of the contributions paid by each; and a mechanism for the equalisation of costs and risks through which schemes that are in surplus contribute to the financing of those with structural financial difficulties (see, to that effect, judgments of 17 February 1993, *Poucet and Pistre*, C-159/91 and C-160/91, EU:C:1993:63, paragraphs 7 to 12, 15 and 18; of 22 January 2002, *Cisal*, C-218/00, EU:C:2002:36, paragraphs 39, 40 and 42; and of 16 March 2004, *AOK Bundesverband and Others*, C-264/01, C-306/01, C-354/01 and C-355/01, EU:C:2004:150, paragraphs 47, 48, 52 and 53).

33 In that context, the Court has pointed out that the fact that a Member State entrusts the management of a social security scheme to various insurance bodies rather than to a single body does not cast doubt on the principle of solidarity underlying that scheme, *a fortiori* where, within that scheme, the bodies concerned equalise costs and risks between themselves (see, to that effect, judgment of 5 March 2009, *Kattner Stahlbau*, C-350/07, EU:C:2009:127, paragraphs 49, 50 and 53).

34 The Court has also held that the introduction, in a scheme having the characteristics referred to in paragraph 32 of the present judgment, of a competitive element — in so far as this is intended to encourage operators to operate in accordance with principles of sound management, that is to say, in the most effective and least costly manner possible, in the interests of the proper functioning of the social security system — does not change the nature of that scheme (see, to that effect, judgment of 16 March 2004, *AOK Bundesverband and Others*, C-264/01, C-306/01, C-354/01 and C-355/01, EU:C:2004:150, paragraph 56).

35 Conversely, it has also consistently been held by the Court that organisations which manage an insurance scheme based on a system of optional affiliation, operating according to a principle of capitalisation under which there is a direct link between the amount of the contributions paid by the insured person and their financial performance, on the one hand, and the benefits provided to that insured person, on the other, and incorporating extremely limited elements of solidarity, are not applying the principle of solidarity and are, therefore, engaging in an economic activity (see, to that effect, judgments of 16 November 1995, *Fédération française des sociétés d'assurance and Others*, C-244/94, EU:C:1995:392, paragraphs 17, 19 and 22, and of 21 September 1999, *Albany*, C-67/96, EU:C:1999:430, paragraphs 79, 81, 82 and 85).

36 This Court must analyse in the light of the case-law recalled in paragraphs 28 to 35 of the present judgment whether the considerations set out by the General Court in paragraphs 63 to 69 of the judgment under appeal are vitiated by errors of law.

37 In that regard, it is apparent from paragraphs 8 to 13 of the present judgment that, in the course of its overall assessment of the Slovak compulsory health insurance scheme, the General Court, having endorsed the Commission's conclusion that that scheme has predominant social, solidarity and regulatory features reflecting the characteristics of a scheme that is pursuing a social objective and applies the principle of solidarity under State supervision, nevertheless found that that conclusion was undermined by the fact that, within that same scheme, the insurance bodies were able to seek profits and, moreover, engaged in a certain amount of competition as regards both the quality and scope of the services offered and in procurement.

38 In so doing, the General Court attributed undue significance to the latter elements in view of the case-law recalled in paragraphs 28 to 35 of the present judgment, and took insufficient account of the way in which they relate to the social, solidarity and regulatory features of the scheme at issue.

39 As regards, in the first place, the ability of the insurance bodies managing the Slovak compulsory health insurance scheme to seek to make a profit, it should be noted that the fact that, under Slovak legislation which entered into force on 1 January 2005, those bodies were required to have the status of for-profit joint stock companies governed by private law does not mean that they can be classified as

'undertakings' under EU competition law. Such classification depends, according to the case-law recalled in paragraph 28 of the present judgment, not on the legal status of the entity concerned but on all of the elements characterising its activity.

40 In addition, and as is apparent from paragraph 64 of the judgment under appeal, while any profits that may be obtained by those bodies can be used and distributed, such use and distribution is subject to the fulfilment of requirements intended to ensure the continuity of the scheme and the attainment of the social and solidarity objectives underpinning it. It is thus apparent that the ability to seek to make a profit is strictly regulated by law and cannot be considered, contrary to the General Court's findings set out in paragraphs 63 and 64 of the judgment under appeal, to be a factor liable to affect the social and solidarity character that arises from the actual nature of the activities concerned.

41 In the second place, the General Court also erred, in paragraphs 65 to 67 of the judgment under appeal, in finding that the various features that introduced a certain amount of competition into the Slovak compulsory health insurance scheme were such as to call into question the social and solidarity-based nature of that scheme.

42 Apart from the fact that, as the General Court itself indicated in paragraph 66 of the judgment under appeal, there can be no such competition either in respect of the compulsory statutory benefits or on the amount of the contributions, it should be noted first that, while the Slovak health insurance bodies may supplement the compulsory statutory services with supplementary services, the latter are free of charge, related services, such as better coverage for certain complementary and preventive treatments in the context of the compulsory services or an enhanced assistance service for insured persons, enabling those health insurance bodies to differentiate themselves, in a residual and ancillary manner, in terms of the scope and the quality of the services offered.

43 However, according to the case-law recalled in paragraph 34 of the present judgment, the introduction, in a scheme having the characteristics referred to in paragraph 32 of this judgment, of a competitive element which is intended to encourage operators to operate in accordance with principles of sound management, that is to say, in the most effective and least costly manner possible, in the interests of the proper functioning of the social security system, is not such as to change the nature of that scheme.

44 It is, moreover, common ground that those supplementary services are provided on a free of charge basis, so that the ability to offer them in the context of the Slovak compulsory health insurance scheme cannot in any way call into question the social and solidarity-based nature of that scheme.

45 As regards, second, the freedom of insured persons to choose their health insurer and to switch once a year, while that freedom has a bearing on competition between those insurers, it serves the interests of the proper functioning of the Slovak health insurance scheme and must be understood in the light of the obligation of all Slovak residents to affiliate to one of the bodies participating in the management of that scheme, and the obligation of those bodies to enrol everyone who makes a request to that effect, irrespective of the person's age and state of health. Such obligations are among the decisive characteristics of the principle of solidarity, as is apparent from the case-law referred to in paragraph 32 of the present judgment.

46 It should be added that the competition introduced into the Slovak compulsory health insurance scheme by the features referred to in paragraphs 42 to 45 of the present judgment is closely related to the fact that the management of that scheme was entrusted to various insurance bodies rather than to a single body. In so far as that scheme includes a mechanism for the equalisation of costs and risks, the General Court's assessment in paragraphs 65 to 67 of the judgment under appeal, that that competition calls into question the principle of solidarity underpinning that scheme, is also at odds with the case-law referred to in paragraph 33 of the present judgment.

47 Consequently, contrary to the General Court's finding in paragraphs 65 to 67 of the judgment under appeal, the existence of a certain amount of competition as regards the quality and scope of services provided in the Slovak compulsory health insurance scheme, as a result of the features referred to in paragraphs 42 to 46 of the present judgment, cannot call into question the actual nature of the activity carried out by the insurance bodies in the context of that scheme.

48 As regards, third, the fact, also noted in paragraph 66 of the judgment under appeal, that the bodies managing the Slovak compulsory health insurance scheme compete when procuring the relevant services, that cannot, as the Advocate General noted in point 119 of his Opinion, be regarded as being a relevant factor in assessing the nature of their activity of providing compulsory healthcare insurance services in Slovakia. When determining the nature of the activity of an entity, there is no need to dissociate the activity of purchasing goods or services from the subsequent use to which they are put, since the nature of the activity of the entity concerned is determined according to whether or not the subsequent use amounts to an economic activity (see, to that effect, judgment of 11 July 2006, *FENIN* v *Commission*, C-205/03 P, EU:C:2006:453, paragraph 26).

49 In the third place, contrary to what the General Court held in paragraph 69 of the judgment under appeal, there is no basis for its reasoning in the case-law constituted by the judgments of 10 January 2006, *Cassa di Risparmio di Firenze and Others* (C-222/04, EU:C:2006:8, paragraphs 122 and 123), and of 1 July 2008, *MOTOE* (C-49/07, EU:C:2008:376, paragraph 27). It is apparent from those two judgments that, where an operator's activity consists in the offer of services of an economic nature — that is to say, in the case that gave rise to the first of those judgments, services linked to financial, commercial, real estate and asset operations, and, in the case that gave rise to the second of those judgments, services linked to the organisation of sporting competitions based on sponsorship, advertising and insurance contracts for the commercial exploitation of those competitions — in a market environment of competition with other operators which are seeking to make a profit, the fact that that offer of services is made by the not-for-profit operator does not call into question the classification of the activity concerned as an economic activity.

50 Accordingly, it cannot be inferred from that case-law that a body involved in the management of a scheme which has a social objective and applies the principle of solidarity under State supervision could be classified as an undertaking on the ground, emphasised by the General Court in paragraph 69 of the judgment under appeal, that other bodies operating in the context of the same scheme are actually seeking to make a profit.

51 In view of the foregoing, it must be concluded that the General Court's findings set out in paragraphs 63 to 69 of the judgment under appeal are vitiated by errors of law which led it, wrongly, to rule that, notwithstanding the fact that the Slovak compulsory health insurance scheme pursues a social objective and applies the principle of solidarity under State supervision, the activity of the bodies that manage it is economic in nature.

52 Consequently, the second ground of appeal in Case C-262/18 P and the third ground of appeal in Case C-271/18 P must be upheld and, accordingly, the judgment under appeal set aside, without there being any need for the Court to examine the other grounds of appeal put forward in support of the main appeals.

The cross-appeals

53 By its cross-appeals, Dôvera claims that the Court should 'set aside' paragraph 58 of the judgment under appeal if it intends to rely on the General Court's findings in that paragraph as set out in the version of the judgment that is in the language of the case, that is to say, in the English version.

54 Suffice it to note in that regard that, in accordance with Article 169(1) and Article 178(1) of the Rules of Procedure of the Court, any appeal, whether it be a main appeal or a cross-appeal, must seek to have set aside, in whole or in part, the decision of the General Court. By its cross-appeals, however, Dôvera is merely seeking a substitution of the grounds, which cannot lead to the operative part of the judgment under appeal being set aside, even in part. Therefore, those appeals must be dismissed as inadmissible.

The action before the General Court

55 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, if the judgment under appeal is set aside, give final judgment in the matter, where the state of the proceedings so permits.

56 In the present case, the Court considers that, in the action for annulment brought by Dôvera in Case T-216/15, the state of the proceedings is such that the Court may give final judgment in the matter and that it must do so.

57 By its action, Dôvera seeks to challenge the Commission's conclusion that SZP and VšZP were not carrying out an economic activity and, therefore, could not be regarded as being undertakings within the meaning of Article 107(1) TFEU.

58 For the purposes of assessing whether the activity carried out in the context of the Slovak compulsory health insurance scheme is non-economic in nature, it is necessary to make an overall assessment of that scheme, taking into consideration the matters referred to in paragraph 30 of the present judgment. In that respect, as is recalled in paragraph 31 of the present judgment, it must be ascertained, in particular, whether and to what extent that scheme may be considered to be applying the principle of solidarity under State supervision.

59 In that regard, it is apparent from paragraphs 9 to 11 of the present judgment that the Slovak compulsory health insurance scheme, which pursues a social aim of ensuring that all Slovak residents have health insurance cover, has all the characteristics of the principle of solidarity covered by the settled case-law of the Court recalled in paragraph 32 of the present judgment. Membership of the scheme is compulsory for all Slovak residents, the amount of contributions is fixed by law in proportion to the income of the insured persons and not to the risk they represent on account of their age or state of health, and all insured persons have the right to the same level of benefits set by law, so that there is no direct link between the amount of the contributions paid by the insured person and that of the benefits provided. In addition, since the insurance bodies are required to ensure that every Slovak resident who requests it has health insurance cover, regardless of the risk resulting from that person's age or state of health, the scheme also provides for a mechanism for equalisation of the costs and risks.

60 The scheme is, moreover, subject to State supervision. The activities of insurance bodies within that scheme are supervised by a regulatory office which ensures that those bodies adhere to the legislative framework and intervenes when violations occur.

61 The presence of competitive elements in the Slovak compulsory health insurance scheme is secondary, as compared with the scheme's social, solidarity and regulatory aspects, and, as such, as has been set out in paragraphs 41 to 50 of the present judgment, is not capable of changing the nature of that scheme. The ability of insurance bodies to compete with each other cannot extend either to the amount of the contributions or to the compulsory statutory benefits, so that those bodies can only differentiate themselves, in a residual and ancillary manner in relation to the latter benefits, in terms of the scope and quality of services.

62 In addition and above all, it is apparent from recital 94 of the decision at issue that the ability of insurance bodies to seek, use and distribute profits is strictly framed by law, the purpose of those legal obligations being to preserve the viability and continuity of compulsory health insurance. In the same vein, the requirement that insurance bodies operating in the Slovak compulsory health insurance scheme must have the legal status of a for-profit joint stock company governed by private law and the opening up of that scheme to insurance bodies controlled by private entities is intended, according to the statements in recital 13 of that decision, to strengthen efficiency in the use of available resources and the quality of healthcare provision. It thus appears that those features, as well as the freedom of Slovak residents to choose their health insurer and to switch insurer once a year, were introduced in the interests of the proper functioning of that scheme and cannot, therefore, call into question the non-economic nature of the scheme.

63 Accordingly, the Commission was justified in concluding, in the decision at issue, that the Slovak compulsory health insurance scheme pursues a social objective and applies the principle of solidarity under State supervision, and that the elements identified in the preceding two paragraphs cannot affect that conclusion.

64 The Commission was, therefore, entitled to find that the activity of SZP and VšZP within that scheme was not of an economic nature and, accordingly, that those bodies could not be classified as undertakings within the meaning of Article 107(1) TFEU.

65 In the light of all those considerations, the first and second pleas put forward in the action at first instance must be rejected in so far as Dôvera thereby maintains that the Commission erred in its interpretation and application of the concepts of 'undertaking' and 'economic activity'.

66 As to the remainder, in the context of the second plea, Dôvera argues that the Commission did not provide sufficient reasons for its finding that the mechanism for equalisation of costs and risks was a significant feature militating in favour of the non-economic nature of the Slovak compulsory health insurance scheme.

67 It should be recalled in that regard that, in accordance with settled case-law, the question whether the statement of reasons for a decision meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context. In particular, the reasons given for a measure adversely affecting persons are sufficient if that measure was adopted in a context which was known to them (judgment of 14 April 2015, *Council* v *Commission*, C-409/13, EU:C:2015:217, paragraph 79).

68 In the present case, it must be noted that, in recitals 25 and 87 of the decision at issue, the Commission found, in essence, that the equalisation mechanism concerned ensured that insurance risks were shared, which strengthened the solidarity-based nature of the Slovak compulsory health insurance scheme. In those circumstances, and since Dôvera, in its capacity as an insurance body subject to that mechanism, was necessarily aware of the operation of that mechanism, the reasons given in that decision provided it with sufficient information to be able to challenge the validity of that Commission finding.

69 Accordingly, the complaint alleging infringement of the obligation to state reasons must also be rejected.

70 Since none of the pleas in law put forward in the action in Case T-216/15 has been upheld, the action must be dismissed.

Costs

71 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

72 According to Article 138(1) of those Rules of Procedure, 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.

73 In the present case, since Dôvera has been unsuccessful and the Commission has applied for Dôvera to be ordered to pay the costs, Dôvera must be ordered to pay the Commission's costs of the present appeals and of the proceedings before the General Court. Furthermore, since the Slovak Republic has applied for Dôvera to be ordered to pay the costs, Dôvera must be ordered to pay the Slovak Republic's costs of the present appeals.

74 In accordance with Article 140(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Republic of Finland, intervener in the present appeals, must therefore bear its own costs of these proceedings. Furthermore, as intervener in the action before the General Court, the Slovak Republic must bear its own costs of those proceedings.

75 Finally, under Article 184(4) of the Rules of Procedure, where the appeal has not been brought by an intervener at first instance, that intervener may not be ordered to pay costs in the appeal proceedings unless it participated in the written or oral part of the proceedings before the Court of Justice. Where an intervener at first instance takes part in the proceedings, the Court may decide that that intervener is to bear its own costs. In accordance with Article 140(3) of those Rules of Procedure, the Court may order an intervener other than those referred to in the preceding paragraphs of that article to bear its own costs. Having regard to those provisions, Union must be ordered to bear its own costs incurred in the context of the present appeals and of the proceedings before the General Court.

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

1. **Sets aside the judgment of the General Court of the European Union of 5 February 2018, *Dôvera zdravotná poisťovňa* v *Commission* (T-216/15, not published, EU:T:2018:64);**

2. **Dismisses the action brought by Dôvera zdravotná poisťovňa a.s. in Case T-216/15;**

3. **Orders Dôvera zdravotná poisťovňa a.s., to pay the costs incurred by the European Commission in the context of the present appeals and of the proceedings before the General Court of the European Union; to bear its own costs incurred in the context of the present appeals and of the proceedings before the General Court of the European Union; and to pay the costs incurred by the Slovak Republic in the context of the present appeals;**

4. **Orders the Slovak Republic to bear its own costs incurred in the context of the proceedings before the General Court of the European Union;**

5. **Orders Union zdravotná poisťovňa a.s. to bear its own costs incurred in the context of the present appeals and of the proceedings before the General Court of the European Union;**

6. **Orders the Republic of Finland to bear its own costs incurred in the context of the present appeals.**

Lenaerts	Silva de Lapuerta	Bonichot
Vilaras	Regan	Rodin
Rossi	Jarukaitis	Juhász
Ilešič	Malenovský	von Danwitz
Šváby	Biltgen	Kumin

Delivered in open court in Luxembourg on 11 June 2020.

A. Calot Escobar Registrar	K. Lenaerts President