Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

23 November 2023 *

(Appeal – State aid – Article 107(3)(b) TFEU – Swedish air transport market – Aid scheme notified by the Kingdom of Sweden – Loan guarantees to support airlines amid the COVID-19 pandemic – Temporary Framework for State aid measures – Decision by the European Commission not to raise objections – Aid intended to remedy a serious disturbance in the economy – Principles of proportionality and non-discrimination – Free provision of services)

In Case C-209/21 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 1 April 2021,

Ryanair DAC, established in Swords (Ireland), represented by V. Blanc, F.-C. Laprévote and E. Vahida, avocats, I.-G. Metaxas-Maranghidis, dikigoros, and D. Pérez de Lamo and S. Rating, abogados,

appellant,

the other parties to the proceedings being:

European Commission, represented by L. Flynn, S. Noë and F. Tomat, acting as Agents,

defendant at first instance,

French Republic, represented initially by A.-L. Desjonquères, P. Dodeller, T. Stéhelin and N. Vincent, and subsequently by A.-L. Desjonquères, T. Stéhelin and N. Vincent, and finally by A.-L. Desjonquères and T. Stéhelin, acting as Agents,

Kingdom of Sweden, represented initially by O. Simonsson, H. Eklinder, J. Lundberg, C. Meyer-Seitz, A.M. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson and H. Shev, and subsequently by O. Simonsson, H. Eklinder, C. Meyer-Seitz, A.M. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson and H. Shev, acting as Agents,

interveners at first instance,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin (Rapporteur) and L.S. Rossi, Judges,

* Language of the case: English.

Advocate General: G. Pitruzzella,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 19 October 2022,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2023,

gives the following

Judgment

1 By its appeal, Ryanair DAC seeks to have set aside the judgment of the General Court of the European Union of 17 February 2021, *Ryanair* v *Commission* (T-238/20, 'the judgment under appeal', EU:T:2021:91), by which the General Court dismissed its action for annulment of Commission Decision C(2020) 2366 final of 11 April 2020 on State aid SA.56812 (2020/N) – Sweden – COVID-19: Loan guarantee scheme to airlines (OJ 2020 C 269, p. 2; '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 On 3 April 2020, the Kingdom of Sweden notified the European Commission of an aid measure in the form of a loan guarantee scheme for certain airlines ('the aid scheme at issue'). The aid scheme at issue was intended to enable airlines which hold a licence issued by that Member State ('the Swedish licence'), contributing to the 'connectivity' of Swedish territory, to have sufficient liquidity to ensure that the disruptions caused by the COVID-19 pandemic do not undermine their viability and to preserve the continuity of economic activity during and after the health crisis. The aid scheme at issue was to benefit all airlines which, on 1 January 2020, held a Swedish licence to conduct commercial activities in aviation under Article 3 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p. 3), except for airlines which have non-scheduled passenger air services as their main activity. The maximum amount of the loan guarantees under that scheme was 5 billion kronor (SEK) (approximately EUR 455 million). The guarantees, relating to investment and working capital loans, could be granted until 31 December 2020 at the latest, for a maximum duration of six years.

4 On 11 April 2020, the Commission adopted the decision at issue, by which, after concluding that the aid scheme at issue constituted State aid within the meaning of Article 107(1) TFEU, it assessed its compatibility with the internal market in the light of its communication of 19 March 2020 entitled 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak' (C(2020) 1863, OJ 2020 C 91 I, p. 1), and amended by its communication of 3 April 2020 (C(2020) 2215, OJ 2020 C 112 I, p. 1) ('the Temporary Framework').

5 In that regard, first, the Commission noted that, pursuant to Regulation No 1008/2008, airlines eligible for the aid scheme at issue had their 'principal place of business' in Sweden, and their financial situation was regularly monitored by the national licensing authority. Furthermore, it noted that the operation of scheduled passenger transport services by the beneficiaries of the aid scheme at issue was likely to play a major role in the 'connectivity' of the country and, therefore, the eligibility criteria for that scheme were relevant in order to identify airlines that have a link with Sweden and contribute to the 'connectivity' of Sweden, in line with the objective of that scheme. Second, it considered that the aid scheme at issue was necessary, appropriate and proportionate to remedy a serious disturbance in the Swedish economy and met all the relevant conditions set out in Section 3.2 of the Temporary Framework entitled 'Aid in the form of guarantees on loans'.

6 The Commission thus concluded that the aid scheme at issue was compatible with the internal market pursuant to Article 107(3)(b) TFEU and therefore did not raise objections to it.

The procedure before the General Court and the judgment under appeal

7 By application lodged at the Registry of the General Court on 1 May 2020, Ryanair brought an action for annulment of the decision at issue.

8 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 and the free provision of services; second, infringement of the obligation to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition; third, that the Commission had infringed Ryanair's procedural rights by refusing to initiate the formal investigation procedure despite the existence of serious doubts as to the compatibility of the notified measure with the internal market; and, fourth, infringement of the second paragraph of Article 296 TFEU.

9 By the judgment under appeal, the General Court rejected as unfounded the first, second and fourth pleas in law raised by Ryanair. As regards the third plea, it held, in particular in view of the grounds which had led to the rejection of the first two pleas in the action, that it was not necessary to examine its merits. Consequently, the General Court dismissed the action in its entirety, without ruling on the admissibility of that action.

Forms of order sought by the parties before the Court of Justice

10 By its appeal, Ryanair claims that the Court should:

– set aside the judgment under appeal;

– annul the decision at issue;

– order the Commission, the French Republic and the Kingdom of Sweden to pay the costs or, in the alternative;

– set aside the judgment under appeal, and

– refer the case back to the General Court and reserve the costs.

11 The Commission and the Kingdom of Sweden contend that the Court should:

– dismiss the appeal and

– order the appellant to pay the costs.

12 The French Republic contends that the Court should dismiss the appeal.

The appeal

13 Ryanair relies on five grounds in support of its appeal. The first ground of appeal alleges errors of law in that the General Court wrongly rejected the plea at first instance alleging infringement of the principle of non-discrimination. The second ground of appeal alleges an error of law and a manifest distortion of the facts in the examination of the plea alleging infringement of the free movement of services. The third ground of appeal alleges that the General Court erred in law in rejecting the application of the balancing test of the beneficial and adverse effects of the aid scheme. The fourth ground of appeal alleges an error of law and a manifest distortion of the facts in so far as the General Court held that the Commission had not infringed its obligation to state reasons under the second paragraph of Article 296 TFEU. The fifth ground of appeal alleges an error of law and a manifest distortion of the facts by the General Court in deciding not to examine the substance of the third plea in the action at first instance, alleging infringement of the appellant's procedural rights.

The first ground of appeal

Arguments of the parties

14 By its first ground of appeal, which comprises four parts and relates to paragraphs 25 to 57 of the judgment under appeal, Ryanair submits that the General Court erred in law in finding that the aid scheme at issue did not infringe the principle of non-discrimination on grounds of nationality.

15 By the first part of its first ground of appeal, Ryanair argues that the General Court failed properly to apply the principle of prohibition of discrimination on grounds of nationality, which is an essential principle of the EU legal order. Although the General Court acknowledged, in paragraph 30 of the judgment under appeal, that the difference in treatment established by the aid scheme at issue could be equated with discrimination in the light of one of the eligibility criteria, namely the holding of a Swedish licence, it wrongly held that such discrimination had to be assessed only in the light of Article 107(3)(b) TFEU, on the ground that that provision was a special provision within the meaning of Article 18 TFEU. Limiting the benefit of the aid scheme at issue to air transport undertakings holding a Swedish licence amounts to direct discrimination on grounds of nationality since, in order to obtain such a licence, an airline must necessarily have its principal place of business in Sweden.

16 Furthermore, the appellant submits that the General Court should have examined whether such discrimination was justified on grounds of public policy, public security or public health, within the meaning of Article 52 TFEU, or, in any event, whether it was based on objective considerations, irrespective of the nationality of the persons concerned.

17 By the second part of that ground of appeal, the appellant submits that, in paragraphs 32 and 33 of the judgment under appeal, the General Court erred in law and manifestly distorted the facts as regards the determination of the objective of the aid scheme at issue. In particular, the appellant claims that the General Court was wrong to consider that the objective of that scheme was limited to ensuring Sweden's 'connectivity', or that it complied with Article 107(3)(b) TFEU, when it was clear from the decision at issue that that objective was to ensure sufficient liquidity for airlines 'holding a Swedish licence'.

18 By the third part of its first ground of appeal, Ryanair submits that the judgment under appeal is vitiated by an error of law and a manifest distortion of the facts in so far as the General Court held, in paragraphs 38 to 44 of the judgment under appeal, that the aid scheme at issue, from which only airlines holding a Swedish licence benefit, was appropriate to achieve its objective. In that regard, the General Court, by misinterpreting Regulation No 1008/2008 and unlawfully supplementing the statement of reasons for the decision at issue, wrongly held, first, that a Member State which has granted a licence to an airline may control the manner in which the aid is used by the beneficiaries, second, that that Member State can ensure that the airline holding the licence honours the loans granted, in such a way as to reduce the risk of the guarantee being called into question, and, third, that airlines holding an operating licence have a closer link with the economy of the Member State which granted that licence. There is, it submits, no difference, in terms of the controls exercised by the Member State which granted the aid, of the risk of non-repayment of loans and links with the economy of that Member State, between airlines which hold an operating licence issued by that Member State and those which hold an operating licence issued by another Member State.

19 By the fourth part of that ground of appeal, Ryanair alleges, in essence, an error of law and a manifest distortion of the facts in so far as the General Court held, in paragraphs 45 to 54 of the judgment under appeal, that the aid scheme at issue was proportionate.

20 First, the General Court wrongly stated, in paragraphs 45 and 51 of the judgment under appeal, that the requirement to hold a Swedish licence was 'the most appropriate for guaranteeing that the presence of an airline on [Swedish] territory is permanent' and that the 'principal place of business', the place where the administrative and financial decisions are taken, was 'particularly important in the present case in order to ensure that Sweden's connectivity is not interrupted from one day to the next'. That causal link between the obligation to hold a Swedish licence and the guarantee of a service on Swedish territory is entirely hypothetical and contradicted by the data provided by Ryanair to the General Court.

21 Second, the General Court wrongly stated, in paragraph 45 of the judgment under appeal, that eligible airlines 'overall contribute most to Sweden's regular air service'. This is a manifest distortion of the facts, since, on the basis of the very figures provided by the General Court in paragraph 46 of the judgment under appeal, airlines holding a Swedish licence accounted for a minority of Sweden's regular air services with respect to two out of three segments of those services, namely flights within the European Union with a combined market share of 49%, and flights outside the European Union with a combined market share of 35%. Moreover, that ground is also vitiated by an error of law, and more specifically by a misapplication of the principle of proportionality, like the ground set out in paragraph 46 of the judgment under appeal, according to which airlines holding a Swedish licence accounted for 98% of domestic passenger traffic and 84% of domestic freight transport and that it was 'a key piece of information bearing in mind the size and geography' of Sweden. In accordance with that principle, the General Court should have assessed the proportion of domestic traffic in Sweden's total traffic.

22 Third, the General Court failed, in the judgment under appeal, to assess the competitive effect of the aid scheme at issue for the purposes of the proportionality test. Such an assessment is, however, essential in order to determine, in the General Court's own words, whether the aid scheme at issue does not go 'beyond what is necessary' to attain its stated objective.

23 Fourth, the General Court wrongly justified, in paragraphs 50 and 51 of the judgment under appeal, the discriminatory eligibility criteria and the ensuing inconsistency with the alleged objective of the aid scheme at issue, by stating that the small airlines operated 'in particular' flights for a specific purpose, that the appellant had reduced its presence in Sweden to a single base with only one aircraft and that its market share had fallen before the beginning of the COVID-19 pandemic. It thus disregarded the importance of Ryanair's 5% market share. The appellant also contests the General Court's statement that 'the resources which may be allocated by the Member State concerned are finite and must therefore address priorities'.

24 Fifth, the General Court wrongly refused, in paragraph 53 of the judgment under appeal, to examine a different aid scenario on the ground that the Commission could not be entrusted with '[examining] every alternative measure possible'. In that regard, the General Court wrongly relied on its judgment of 6 May 2019, *Scor* v *Commission* (T-135/17, EU:T:2019:287), from which it is apparent only that the Commission was not required to examine all alternative measures in its statement of reasons.

25 In addition, the ground set out by the General Court in paragraph 54 of the judgment under appeal, according to which the hypothetical alternative measure, consisting of extending the aid scheme at issue to airlines not established in Sweden, would not have made it possible to achieve the objective of 'connectivity' to the same extent, is based, by way of a cross-reference to paragraphs 40 to 44 of that judgment, on the erroneous legal assumption that, under Regulation No 1008/2008, airlines holding an operating licence issued by another Member State can more easily interrupt their routes to and from Sweden.

26 The Commission, the French Republic and the Kingdom of Sweden submit that the first ground of appeal must be rejected as unfounded.

Findings of the Court

27 It should be recalled, as a preliminary point, that, according to the Court's settled case-law, classification of a national measure as 'State aid', within the meaning of Article 107(1) TFEU, requires all the following conditions to be fulfilled. First, there must be an intervention by the State or through State resources. Second, that intervention must be liable to affect trade between Member States. Third, it must confer a selective advantage on the recipient. Fourth, it must distort or threaten to distort competition (judgment of 28 June 2018, *Germany* v *Commission*, C-208/16 P, EU:C:2018:506, paragraph 79 and the case-law cited).

28 It is therefore with regard to measures having such characteristics and such effects, in so far as they are liable to distort competition and affect trade between the Member States, that Article 107(1) TFEU lays down the principle that State aid is incompatible with the internal market

29 In particular, the requirement of selectivity arising from Article 107(1) TFEU presupposes that the Commission will establish that the economic advantage, understood in the broad sense, arising directly or indirectly from a particular measure specifically benefits one or more undertakings. It

falls to the Commission to show, in particular, that the measure in question creates differences between undertakings which, with regard to the objective of the measure, are in a comparable situation. It is necessary therefore that the advantage be granted selectively and that it be liable to place certain undertakings in a more favourable situation than that of others (judgment of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 103 and the case-law cited).

30 However, Article 107(2) and (3) TFEU provides for certain derogations from the principle that State aid is incompatible with the internal market, referred to in paragraph 28 of the present judgment, such as that set out in Article 107(3)(b) TFEU, concerning aid 'to remedy a serious disturbance in the economy of a Member State'. Accordingly, State aid granted for the purposes of, and in accordance with, the conditions laid down by those derogating provisions, notwithstanding the fact that it has the characteristics and produces the effects referred to in paragraph 27 of the present judgment, is compatible with, or is capable of being declared compatible with, the internal market.

31 It follows that, unless those derogating provisions are to be deprived of all practical effect, State aid which is granted in accordance with those requirements, that is to say, for the purposes of an objective recognised therein and within the limits of what is necessary and proportionate to the achievement of that objective, cannot be held to be incompatible with the internal market having regard solely to the characteristics or solely to the effects, referred to in paragraph 27 of the present judgment, or effects which are inherent in any State aid, that is to say, inter alia, for reasons relating to whether the aid is selective or distorts competition (judgment of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 107 and the case-law cited).

32 Therefore, aid cannot be considered incompatible with the internal market for reasons that are solely linked to whether the aid is selective or distorts or threatens to distort competition (judgment of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 108).

33 That said, as regards the first part of its first ground of appeal, by which Ryanair claims that the General Court erred in law in not applying, in paragraph 31 of the judgment under appeal, the principle of non-discrimination on grounds of nationality laid down in Article 18 TFEU, but examined the measure at issue in the light of Article 107(3)(b) TFEU, it should be recalled that it is clear from the case-law of the Court of Justice that the procedure provided for in Article 108 TFEU must never produce a result that 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 (judgments of 31 January 2023, *Commission* v *Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraph 96, and of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 109).

34 However, as regards Article 18 TFEU specifically, it is settled case-law that that article is intended to apply independently only to situations governed by EU law in respect of which the FEU Treaty lays down no specific prohibition of discrimination (judgments of 18 July 2017, *Erzberger*, C-566/15, EU:C:2017:562, paragraph 25, and of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 110).

35 Since, as has been recalled in paragraph 30 of the present judgment, Article 107(2) and (3) TFEU provides for derogations from the principle, referred to in paragraph 1 of that article, that State aid is incompatible with the internal market, and thus allows, in particular, differences in treatment between undertakings, subject to fulfilment of the requirements laid down by those derogations, those derogations must be regarded as 'special provisions' provided for in the Treaties, within the meaning of the first paragraph of Article 18 TFEU (judgment of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 111).

36 It follows that the General Court did not err in law in finding, in paragraph 31 of the judgment under appeal, that Article 107(3)(b) TFEU constituted such a specific provision and that it was necessary only to examine whether the difference in treatment brought about by the measure at issue was permitted under that provision.

37 It follows that the differences in treatment entailed by the aid scheme at issue likewise do not have to be justified on the grounds set out in Article 52 TFEU, contrary to what Ryanair maintains.

38 In the light of the foregoing, the first part of the first ground of appeal must be rejected as unfounded.

39 By the second part of that ground of appeal, Ryanair submits, in essence, that the General Court, in paragraphs 32 and 33 of the judgment under appeal, incorrectly identified the objective of the aid scheme at issue, as set out in the decision at issue, and that it wrongly considered that that objective consisted of preserving Sweden's 'connectivity'.

40 In that regard, the General Court noted, in paragraph 32 of the judgment under appeal, that the objective of the aid scheme at issue was, in accordance with Article 107(3)(b) TFEU, to remedy the serious disturbance in the Swedish economy caused by the COVID-19 pandemic, by ensuring Sweden's 'connectivity'.

41 That description of the objective pursued by that scheme is consistent with that set out in the decision at issue, inter alia, in recitals 8 and 43 thereof, cited in the judgment under appeal, by which the Commission, first, set out the objective of ensuring the 'connectivity' of Swedish territory and, second, assessed the relevance of that objective for the purposes of applying Article 107(3)(b) TFEU. By contrast, contrary to what Ryanair maintains, it is not apparent from that decision that holding a Swedish licence constituted an objective in itself of the aid scheme at issue, but rather that the holding of such a licence constituted, as the General Court held, in essence, in paragraph 32 of the judgment under appeal, an eligibility criterion for that scheme.

42 To the extent that, by the second part of that ground of appeal, Ryanair also alleges that the General Court distorted the facts submitted to it, it should be pointed out that, in accordance with the settled case-law of the Court of Justice, it follows from the second subparagraph of Article 256(1) TFEU and from the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts (judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 103 and the case-law cited).

43 It follows that the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 104 and the case-law cited).

44 Where an appellant alleges distortion of the evidence by the General Court, that person must, under Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in that person's view, led to such distortion. In addition, according to the settled case-law of the Court of Justice, that distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 105 and the case-law cited).

45 In the present case, it should be noted that Ryanair does not specify, in support of the second part of the first ground of appeal, the evidence which the General Court allegedly distorted in determining the objective of the aid scheme at issue and, a fortiori, does not demonstrate how that evidence was distorted.

46 In those circumstances, the second part of the first ground of appeal must be rejected as unfounded.

47 By the third part of that ground of appeal, Ryanair submits that the General Court erred in law and distorted the facts by holding, in paragraphs 38 to 44 of the judgment under appeal, that the aid scheme at issue, in so far as it benefited only airlines holding a Swedish licence, to the exclusion of those operating non-scheduled passenger air transport services, was appropriate for achieving its objective.

48 In that regard, Ryanair submits, by its first complaint, in essence, that, by stating, inter alia, in paragraph 40 of the judgment under appeal, that the criterion of holding a licence issued by the Member State granting the aid made it possible to control the manner in which the aid was used by the beneficiaries, the General Court put forward a justification which did not appear in the decision at issue, with the result that it substituted its own grounds for those relied on by the Commission in support of that decision.

49 It is, admittedly, true that, according to the case-law of the Court of Justice, in reviewing the legality of acts under Article 263 TFEU, the Court of Justice and the General Court cannot under any circumstances substitute their own reasoning for that of the author of the contested act (see, to that effect, judgment of 6 October 2021, *World Duty Free Group and Spain* v *Commission*, C-51/19 P and C-64/19 P, EU:C:2021:793, paragraph 70 and the case-law cited). However, it should be noted that, in recital 43 of the decision at issue, the Commission refers to the fact that airlines which hold a Swedish licence have their principal place of business in Sweden and are subject there to regular monitoring of their financial situation. Accordingly, in paragraph 40 of the judgment under appeal, the General Court merely responded to the appellant's line of argument referred to in paragraph 38 of that judgment, explained the reasoning of the decision at issue and, more specifically, drew some conclusions from the evidence set out therein, without, however, substituting the grounds of that decision.

50 As regards the second complaint put forward in the third part of the first ground of appeal, it should be noted that, in relying on the statements in paragraphs 40 to 42 of the judgment under appeal, the General Court held, in paragraph 43 of that judgment, that, by limiting the benefit of the aid scheme at issue solely to airlines holding a Swedish licence and therefore having their principal place of business in Sweden, the Kingdom of Sweden had legitimately sought, in essence, to ensure that there is a permanent link between it and the airlines benefiting from its guarantee, and, in paragraph 44 of that judgment, that the eligibility criterion relating to the holding of such a licence was therefore appropriate for achieving the objective of remedying the serious disturbance in the economy of that Member State.

51 In that regard, first, the General Court relied on Regulation No 1008/2008, in paragraphs 43 and 44 of the judgment under appeal, only in order to establish the specific nature and stability of the link between airlines holding an operating licence and the Member State which granted that licence, in the light of the provisions of that regulation governing their relations and, in particular, the financial checks exercised by the authorities of that Member State on those airlines. However, the fact that those checks do not relate specifically to the use of aid granted to airlines holding a Swedish licence, or that checks on the use of that aid may also be carried out on airlines which do not hold a Swedish licence, is irrelevant to the assessment of that link, for the purposes of determining whether the eligibility criteria are appropriate for achieving the objective pursued by the aid scheme at issue, as Ryanair maintains.

52 Although, second, Ryanair alleges distortion of the facts as regards the considerations referred to in paragraph 50 of the present judgment, it is sufficient to note that Ryanair has not put forward any argument capable of demonstrating that the General Court distorted the facts in that way, in accordance with the case-law referred to in paragraph 44 of the present judgment.

53 In the light of the foregoing, the third part of the first ground of appeal must be rejected as unfounded.

54 By the fourth part of that ground of appeal, Ryanair submits, in essence, that the General Court erred in law and distorted the facts in so far as it held, in paragraphs 45 to 54 of the judgment under appeal, that the aid scheme at issue was proportionate.

55 In that regard, in so far as the appellant disputes, by the first, second and fourth complaints in that part, some of the General Court's assertions in, inter alia, paragraphs 45 and 46 and 50 and 51 of the judgment under appeal and set out in paragraphs 20 and 21 of the present judgment, it must be held, first, that the appellant thus seeks, in reality, to call into question the definitive assessment of the facts and evidence made by the General Court in holding, in particular in paragraph 55 of the judgment under appeal, that the Commission had not made an error of assessment as regards the proportionality of the aid scheme at issue.

56 Second, although, in the context of the second complaint, the appellant relied on a distortion of the facts by the General Court in paragraph 45 of the judgment under appeal, in so far as the General Court's assertion that the airlines eligible for the aid scheme at issue 'overall contribute most to Sweden's regular air service' does not follow from the data which the General Court itself used, it must be noted that the assessment of that information does not demonstrate any manifestly incorrect assessment which would constitute a distortion of facts.

57 In view of the high percentages of domestic passenger traffic (98%) and freight traffic (84%) provided by airlines holding a Swedish licence, those data being of paramount importance in order to achieve the objective pursued by the aid scheme at issue, which, as such, has not been disputed by the appellant, and in view of the significant percentages with regard to the share of those airlines of air passenger traffic both within (49%) and outside (35%) the European Union, the General Court was able, without distorting that factual evidence, to state that, overall, eligible airlines contribute most to Sweden's regular services both as regards freight and passenger transport, which corresponds to the objective of ensuring Sweden's 'connectivity', whether the air routes are within Sweden, from Sweden or to Sweden.

58 Consequently, the first, second and fourth complaints of the fourth part of the first ground of appeal must be rejected as inadmissible and, in any event, as unfounded.

59 As regards the fifth complaint in this part of the first ground of appeal, directed against paragraph 53 of the judgment under appeal, it should be noted that it was only for the sake of completeness that the General Court held, in paragraph 53, that the Commission was not required to rule on all the alternative measures to the aid scheme at issue. As the Advocate General observed in points 65 and 66 of his Opinion, the General Court held in paragraph 54 of that judgment that, in any event, the alternative measures proposed by the appellant did not make it possible to achieve the objective pursued by that scheme. The General Court relied, to that end, on paragraphs 40 to 44 of that judgment, which, as is apparent from paragraphs 48 to 53 of the present judgment, are not vitiated by an error of law.

60 That complaint must therefore be rejected as ineffective.

61 In the light of the foregoing, the fourth part of the first ground of appeal must be rejected and, consequently, that ground of appeal must be rejected in its entirety, subject to the examination of the third complaint in the fourth part of that ground, referred to in paragraph 22 of the present judgment, which is consistent with the arguments put forward in the context of the third ground of appeal and is examined together with that ground, in paragraphs 84 to 90 of the present judgment.

The second ground of appeal

Arguments of the parties

62 By its second ground of appeal, Ryanair submits that, in paragraphs 62 to 64 of the judgment under appeal, the General Court erred in law and manifestly distorted the facts by rejecting the third limb of the first plea in law in its action at first instance, by which it alleged infringement of the principle of the free provision of services.

63 By the first part of that ground of appeal, Ryanair claims that, contrary to what is stated in paragraph 63 of the judgment under appeal, it had relied, before the General Court, on an infringement of Regulation No 1008/2008, claiming that the principle of the free provision of services in the air transport sector had been infringed. By rejecting its arguments on the incorrect ground that 'the [appellant] does not claim that there has been any infringement of that regulation', the General Court manifestly distorted its written pleadings and failed to state the reasons for its judgment to the requisite legal standard.

64 By the second part of this ground of appeal, Ryanair submits that the General Court held, in paragraph 64 of the judgment under appeal, in a contradictory and incorrect manner, that Ryanair had not established how its exclusion from the aid scheme at issue was such as to deter it from providing services to and from Sweden. The fact that airlines are excluded from an advantage reserved for what it calls 'Swedish airlines' is sufficient to demonstrate that the free provision of services is discouraged, without any further demonstration being required. Moreover, the fact that the appellant progressively reduced its activity on the Swedish market is irrelevant for the purpose of determining whether the scheme at issue restricts the free provision of services.

65 The General Court therefore distorted the evidence by failing to examine the significant elements provided by the appellant regarding the restrictive effect of the aid scheme at issue on the free provision of services, and by focusing on irrelevant considerations concerning past fluctuations of the appellant's market share.

66 By the third part of the second ground of appeal, Ryanair submits that, in its action at first instance, it demonstrated to the requisite legal standard, contrary to what the General Court held in paragraph 64 of the judgment under appeal, that the restrictive effects of the aid scheme at issue on the free provision of services were not justified.

67 According to the appellant, the General Court did not properly examine that restriction having regard to the relevant criteria of appropriateness and proportionality. The appellant also provided ample evidence showing that the aid scheme at issue had restrictive effects on the free provision of services which were unnecessary, inappropriate and disproportionate in the light of the objective of that scheme, namely to ensure Sweden's 'connectivity'. Moreover, it mentioned, in that context, an alternative criterion for eligibility of the aid, based on market shares, which would have been less prejudicial to the free provision of services. Moreover, the appellant expressly referred to that criterion in correspondence sent, prior to the adoption of the decision at issue, to the Prime Minister of Sweden and to the European Commissioner for Competition, which it annexed to the application at first instance.

68 According to Ryanair, the General Court made an error of law by stating that there was no need to consider such an alternative in the assessment of the appropriateness and proportionality of the restriction on the free provision of services at issue.

69 The Commission, the French Republic and the Kingdom of Sweden submit that the second ground of appeal must be rejected as unfounded.

Findings of the Court

70 By the second and third parts of the second ground of appeal, which it is appropriate to examine together and in the first place, Ryanair submits, in essence, that the General Court vitiated the judgment under appeal by errors of law, in paragraph 64 of the judgment under appeal, in so far as it examined the fact that the aid scheme at issue benefited only the 'Swedish airlines', namely airlines holding a Swedish licence, solely in the light of the criteria of Article 107 TFEU, instead of verifying whether that measure was justified in the light of the grounds set out in the provisions of the FEU Treaty on the free provision of services. Ryanair, however, submitted to the General Court matters of fact and of law demonstrating an infringement of those provisions.

71 In that regard, as has been pointed out in paragraph 33 of the present judgment, the procedure under Article 108 TFEU must never produce a result which is contrary to the specific provisions of the 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.

72 However, first, the restrictive effects which an aid measure has on the freedom to provide services still do not constitute a restriction prohibited by the Treaty, since it may be inherent in the very nature of State aid, such as its selective nature (judgment of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 132).

73 Second, it is apparent from the case-law of the Court that, where the modalities of an aid measure 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 viewed as a whole with the internal market must therefore of necessity be determined by means of the procedure prescribed in Article 108 TFEU (see, to that effect, judgments of 22 March 1977, *Iannelli & Volpi*, 74/76, EU:C:1977:51, paragraph 14; of 31 January 2023, *Commission* v *Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraph 97; and of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 133).

74 In the present case, as is apparent from paragraphs 40 and 41 of the present judgment, although holding a Swedish licence did not in itself constitute the objective of the aid scheme at issue, but rather an eligibility criterion for that scheme, that criterion was, as such, inextricably linked to the object of that scheme, which consisted of remedying the serious disturbance in the Swedish economy caused by the COVID-19 pandemic, by ensuring Sweden's 'connectivity'. It follows that the effect of that eligibility criterion of the aid scheme at issue on the internal market cannot be examined separately from the effect of the compatibility of that aid measure as a whole with the internal market by means of the procedure prescribed in Article 108 TFEU.

75 It follows from the reasons set out above and from the case-law referred to in paragraph 31 of the present judgment that the General Court did not err in law by holding, in paragraph 64 of the judgment under appeal, in essence that, in order to establish that the aid scheme at issue constituted, because the aid in question benefited only airlines holding a Swedish licence and not, inter alia, Ryanair, an obstacle to the freedom to provide services, Ryanair should have demonstrated, in the present case, that that measure produced restrictive effects which went beyond those inherent in State aid granted in accordance with the requirements laid down in Article 107(3)(b) TFEU (see, by analogy, judgment of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 135).

76 The line of argument put forward by Ryanair in support of the second and third parts of the second ground of appeal seeks, as a whole, to criticise the aid scheme at issue in so far as only airlines holding a Swedish licence were eligible for that scheme and the restrictive effects of that eligibility criterion on the free provision of services, even though such effects are inherent in the selective nature of that scheme.

77 In addition, as regards the evidence which it submitted before the General Court, it must be held that Ryanair has not put forward any argument capable of demonstrating that the General Court distorted that evidence.

78 It follows that the second and third parts of the second ground of appeal must be rejected as unfounded.

79 Lastly, the first part of that ground of appeal must be rejected as ineffective, in so far as it seeks to challenge paragraph 63 of the judgment under appeal, the grounds of which are included purely for the sake of completeness in relation to those set out in paragraph 64 of that judgment. In the light of the foregoing, the second ground of appeal must be rejected in its entirety.

The third ground of appeal

Arguments of the parties

80 By its third ground of appeal, Ryanair submits, in essence, that the General Court erred in law by holding, in paragraphs 68 and 69 of the judgment under appeal, that the Commission is not required under Article 107(3)(b) TFEU to weigh the beneficial effects of aid against its adverse effects on trading conditions and the maintenance of undistorted competition when examining the compatibility of that aid. The present ground of appeal must be read in conjunction with the third complaint in the fourth part of the first ground of appeal, referred to in paragraph 22 of the present judgment, by which the appellant complains that the General Court failed to assess the anticompetitive effect of the aid scheme at issue.

81 By the first part of the third ground of appeal, Ryanair submits that the General Court adopted an excessively broad interpretation of the judgment of 22 September 2020, *Austria* v *Commission* (C-594/18 P, EU:C:2020:742, paragraphs 20 and 39) in order to hold that the condition that the aid must not unduly affect trading conditions applies to the aid referred to in Article 107(3)(c) TFEU but not to that referred to in paragraph 3(b) of that article. First, Article 107(3)(c) TFEU, which that judgment applied, refers only to the effect of the aid on trading conditions, and not to the protection of undistorted competition which, as the General Court admitted, must also be taken into account in the weighing up of the beneficial and adverse effects of the aid. Second, in that case, the Court did not examine Article 107(3)(b) TFEU in depth. Third, the obligation to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition is also apparent from principles which apply generally to all aid under Article 107(3) TFEU.

82 By the second part of the third ground of appeal, the appellant submits that, contrary to what the General Court held in paragraph 68 of the judgment under appeal, the existence of a serious disturbance in the economy of a Member State should not give rise to a presumption that the beneficial effects of aid outweigh its adverse effects, but should, on the contrary, give rise to particular vigilance in the weighing up of those effects, for the purposes of assessing the compatibility of that aid.

83 The Commission, the French Republic and the Kingdom of Sweden submit that the third ground of appeal must be rejected as unfounded.

Findings of the Court

84 It should be noted that, in paragraph 20 of the judgment of 22 September 2020, *Austria* v *Commission* (C-594/18 P, EU:C:2020:742), the Court highlighted the differences between the wording of Article 107(3)(b) TFEU and Article 107(3)(c) TFEU, and noted, in particular, that only the first of those provisions laid down the condition that the aid at issue must pursue an objective of common interest. The Court concluded from this that Article 107(3)(c) TFEU did not make the compatibility of aid subject to such a condition.

85 For a similar reason based on a comparison of the wording of the provisions concerned, as the General Court held, in essence, in paragraph 67 of the judgment under appeal, in the absence of any reference in Article 107(3)(b) TFEU to demonstrating that there was no effect on trading conditions to an extent contrary to the common interest and, therefore, to the need to weigh up the beneficial effects and the adverse effects of the aid, that provision cannot be interpreted, unlike Article 107(3)(c) TFEU, as requiring the Commission to carry out such a balancing exercise for the purposes of assessing the compatibility of the aid with the internal market.

86 As the French Republic rightly pointed out in its response, that difference in the assessment of the compatibility of the aid referred to in Article 107(3)(b) TFEU and that referred to in Article 107(3)(c) TFEU can be explained by the particular nature of the aid referred to in Article 107(3)(b) TFEU, which pursues objectives of an exceptional nature and of particular weight consisting either in promoting the execution of an important project of common European interest or in remedying a serious disturbance in the economy of a Member State. Aid measures which contribute to one of those objectives, provided that they are necessary and proportionate, may therefore be considered to ensure a fair balance between their beneficial effects and their adverse effects on the internal market and are therefore in the common interest of the European Union.

87 Therefore, since Article 107(3)(b) TFEU reflects the balancing of the effects of State aid referred to in that provision carried out by the authors of the Treaty, the Commission is not required to carry out a new balancing of those effects when it examines the compatibility of aid which is envisaged to be granted on the basis of that provision.

88 Furthermore, although the derogation from the principle of incompatibility of State aid provided for in Article 107(3)(b) TFEU must be interpreted strictly, the terms used to define that derogation must not, however, be construed in such a way as to restrict its scope unduly or to deprive it of its effects. A derogation must be interpreted in a manner consistent with the objectives which it pursues (see, to that effect, judgment of 11 September 2014, *Fastweb*, C-19/13, EU:C:2014:2194, paragraph 40).

89 In the light of the foregoing, the General Court did not err in law in finding that the Commission was not obliged by Article 107(3)(b) TFEU to weigh the beneficial effects of the aid scheme at issue against its adverse effects on trading conditions and the maintenance of undistorted competition.

90 It follows that the third ground of appeal must be rejected as unfounded.

The fourth ground of appeal

Arguments of the parties

91 By its fourth ground of appeal, Ryanair alleges that the General Court erred in law and manifestly distorted the facts in that it wrongly held, in paragraphs 77 to 81 of the judgment under appeal, that the Commission had not infringed its obligation to state reasons under the second paragraph of Article 296 TFEU.

92 According to the appellant, the General Court accepted that the context in which the decision at issue was adopted, marked by the occurrence of the COVID-19 pandemic and the difficulties to which that pandemic may have given rise in the drafting of the Commission's decisions, could justify a lack of crucial evidence in the statement of reasons for that decision, even though that evidence was necessary for the appellant to understand the reasoning underlying the Commission's conclusions. The General Court's interpretation of the second paragraph of Article 296 TFEU is contrary to the case-law of the Court of Justice and deprives the obligation to state reasons of any practical effect.

93 The Commission, the French Republic and the Kingdom of Sweden submit that the fourth ground of appeal must be rejected as unfounded.

Findings of the Court

94 It should be pointed out 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 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 198 and the case-law cited).

95 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 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 (see, to that effect, judgment of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 199 and the case-law cited).

96 It is in the light of those requirements that it is necessary to examine whether the General Court erred in law in holding that the decision at issue was sufficiently reasoned.

97 In that regard, first, in so far as Ryanair complains that the General Court, in essence, relaxed the requirements relating to the obligation to state reasons in view of the context of the COVID-19 pandemic in which the decision at issue had been adopted, it must be stated that, by referring, in paragraph 77 of the judgment under appeal, to the context in which the decision at issue had been adopted, namely that of a pandemic and the extreme urgency in which the Commission had adopted the Temporary Framework, examining the measures notified to it by the Member States, in particular pursuant to that framework, and had adopted the decisions relating to those measures, including that decision, the General Court rightly, as required by the case-law referred to in paragraphs 94 and 95 of the present judgment, took into consideration relevant factors in order to determine whether, by adopting that decision, the Commission had complied with its obligation to state reasons.

98 Second, in so far as Ryanair relies on specific factors on which the Commission, in breach of its obligation to state reasons, did not take a decision or which it did not assess in the decision at issue, such as whether the aid scheme at issue complied with the principle of equal treatment and the free provision of services, its effect on trade and competition and the weighing up of the beneficial effects of the aid against its adverse effects, it is apparent from paragraphs 79 and 80 of the judgment under appeal that the General Court considered that those factors were either not relevant for the purposes of that decision, or that reference was made to them to the requisite legal standard in that decision for the Commission's reasoning to be understood in that regard.

99 It does not appear that, by those assessments, the General Court failed to have regard to the requirement to state reasons for a Commission decision adopted under Article 108(3) TFEU not to raise objections, as follows from the case-law referred to in paragraphs 94 and 95 of the present judgment, since that statement of reasons, in the present case, enables Ryanair to ascertain the reasons for that decision and enables the EU judicature to exercise its power of review with regard to that decision, as is, moreover, apparent from the judgment under appeal.

100 Furthermore, in so far as the line of argument put forward in the fourth ground of appeal seeks in reality to demonstrate that the decision at issue was adopted on the basis of an insufficient or legally incorrect assessment by the Commission, that line of argument, relating to the merits of that decision rather than to the requirement to state reasons as an essential procedural requirement, must be rejected in the light of the case-law referred to in paragraph 95 of the present judgment.

101 It follows from the foregoing that the General Court did not err in law in holding, in paragraphs 77 to 81 of the judgment under appeal, that the decision at issue was sufficiently reasoned.

102 Lastly, it must be pointed out that Ryanair has not put forward any argument capable of demonstrating that the General Court distorted the facts, within the meaning of the case-law referred to in paragraph 44 of the present judgment, when examining the fourth plea in the action at first instance.

103 Accordingly, the fourth ground of appeal must be rejected as unfounded.

The fifth ground of appeal

Arguments of the parties

104 By its fifth ground of appeal, Ryanair submits that, by finding, in paragraphs 82 and 83 of the judgment under appeal, that the third plea in its action at first instance, relating to the Commission's refusal to initiate the formal investigation procedure provided for in Article 108(2) TFEU, was deprived of its stated purpose as a result of the rejection of the first two pleas in that action and lacked any content independent of those two pleas, the General Court erred in law and manifestly distorted the facts.

105 Ryanair claims that, contrary to what the General Court held, the third plea in law had independent content in relation to the first two pleas in the action at first instance. Judicial review of the existence of serious difficulties which should have led to the initiation of a formal investigation procedure differs from review of the error of law or manifest error of assessment made by the Commission in the substantive examination of the aid measure. The existence of serious difficulties could thus be established even though, contrary to what the appellant maintained by its first two pleas in the action at first instance, the Commission's examination of the aid scheme at issue is not vitiated by either a manifest error of assessment or an error of law.

106 Similarly, the third plea in the action at first instance was not deprived of its stated purpose, since demonstrating the existence of a manifest error of assessment on the part of the Commission is completely different from demonstrating the existence of serious difficulties which should have led to the initiation of a formal investigation procedure. In addition, Ryanair raised independent arguments to that effect, demonstrating, inter alia, that the Commission did not have market data on Sweden's air 'connectivity', which were of crucial importance for examining the compatibility of the aid scheme at issue in the light of its alleged objective. Before the General Court, Ryanair identified specific shortcomings in the information provided to the Commission and highlighted serious difficulties rendering its third plea independent of the first two pleas in the action.

107 The Commission, the French Republic and the Kingdom of Sweden submit that the fifth ground of appeal must be rejected as unfounded.

Findings of the Court

108 When an applicant seeks the annulment of a decision of the Commission not to raise objections in relation to State aid, it essentially contests the fact that that decision was adopted without the Commission initiating the formal investigation procedure provided for in Article 108(2) TFEU, thereby infringing the applicant's procedural rights. In order to have its action for annulment upheld, the applicant may invoke any plea to show that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should have raised doubts as to the compatibility of that measure with the internal market. The use of such arguments cannot, however, have the consequence of changing the subject matter of the application or altering the conditions of its admissibility. On the contrary, the existence of doubts concerning that compatibility is precisely the evidence which must be adduced in order to show that the Commission was required to initiate the formal investigation procedure under Article 108(2) TFEU and Article 6(1) 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) (see, to that effect, judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 59 and the case-law cited).

109 Thus, it is for the party applying for annulment of a decision not to raise any objections to show that there were doubts concerning the compatibility of the aid with the internal market, meaning that the Commission was required to initiate the formal investigation procedure. Such proof must be sought both in the circumstances in which the decision was taken and in its content, on the basis of a body of corroborating evidence (see, to that effect, judgment of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 40 and the case-law cited).

110 In particular, the insufficient or incomplete nature of the examination carried out by the Commission during the preliminary examination procedure is an indication that the Commission was faced with serious difficulties in assessing the compatibility of the notified measure with the internal market, which should have led it to initiate the formal investigation procedure (see, to that effect, judgment of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 41 and the case-law cited).

111 In that respect, as regards, first of all, the complaint alleging that the General Court held, in paragraph 83 of the judgment under appeal, that the third plea in law in the action at first instance lacked any independent content, it should be noted that it is true, as Ryanair has stated in its appeal, that if the existence of serious difficulties, within the meaning of the case-law of the Court of Justice referred to in paragraph 110 of the present judgment, had been established, the decision at issue could have been annulled on that ground alone, even though it had not been established, moreover, that the Commission's assessments as to substance were wrong in law or in fact (see, by analogy, judgment of 2 April 2009, *Bouygues and Bouygues Télécom* v *Commission*, C-431/07 P, EU:C:2009:223, paragraph 66).

112 Furthermore, the existence of such difficulties may be sought, inter alia, in those assessments and may, in principle, be established by pleas or arguments put forward by an applicant in order to challenge the merits of the decision not to raise objections, even if the examination of those pleas or arguments does not lead to the conclusion that the Commission's assessments as to substance are wrong in fact or in law (see, to that effect, judgment of 2 April 2009, *Bouygues and Bouygues Télécom* v *Commission*, C-431/07 P, EU:C:2009:223, paragraphs 63 and 66 and the case-law cited).

113 In the present case, it must be stated that the third plea in law in Ryanair's action at first instance alleged, in essence, that the examination carried out by the Commission during the preliminary examination procedure and the different assessment of the compatibility of the aid scheme at issue which the Commission would have made if it had decided to initiate a formal investigation procedure were incomplete and insufficient. It is also apparent from that action that, in support of that plea, Ryanair essentially either repeated in a condensed manner the arguments put forward in the first and second pleas in law of that action, relating to the merits of the decision at issue, or referred directly to those arguments.

114 In those circumstances, the General Court was fully entitled to find, in paragraph 83 of the judgment under appeal, that the third plea in the action at first instance lacked 'any independent content' in relation to the first two pleas in that action, in that, having examined the substance of those three pleas, including the arguments alleging that the examination carried out by the Commission was incomplete and insufficient, it was not required to assess separately the merits

of the third plea in that action, all the more so since, as the General Court also rightly pointed out in paragraph 83 of the judgment under appeal, Ryanair had not, by that plea, put forward specific evidence capable of demonstrating the existence of possible serious difficulties encountered by the Commission in assessing the compatibility of the measure at issue with the internal market.

115 It follows that the General Court did not err in law in finding, in paragraph 84 of the judgment under appeal, that there was no need to rule on the merits of the third plea in the action at first instance. It is not necessary, in that regard, to examine, moreover, whether the General Court was right to hold, in paragraph 82 of the judgment under appeal, that that plea was subsidiary in nature and that it was deprived of its stated purpose.

116 Finally, it must be held that Ryanair has not put forward any argument capable of demonstrating that the General Court distorted the evidence, within the meaning of the case-law referred to in paragraph 44 of the present judgment, in its examination of the third plea in the action at first instance.

117 It follows from the foregoing that the fifth ground of appeal must be rejected as unfounded.

118 Since none of the grounds of appeal raised by the appellant has been upheld, the appeal must be dismissed in its entirety.

Costs

119 In accordance with Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.

120 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant has been unsuccessful and the Commission has applied for costs to be awarded against it, the appellant must be ordered to pay the costs of the present appeal.

121 In accordance with Article 184(4) of the Rules of Procedure, an intervener at first instance who participates in the written or oral part of the proceedings before the Court may be ordered to pay costs. The Court may decide that it is to bear its own costs. Accordingly, the French Republic and the Kingdom of Sweden, interveners in the action at first instance, having participated in the proceedings before the Court of Justice, are to bear their own costs.

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

1. **Dismisses the appeal;**

2. **Orders Ryanair DAC to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the French Republic and the Kingdom of Sweden to bear their own costs.**

Lycourgos Spineanu-Matei Bonichot

Rodin Rossi

Delivered in open court in Luxembourg on 23 November 2023.

A. Calot Escobar
Registrar

C. Lycourgos
President of the Chamber