

4. Must Article 1(2)(b) of Directive 2004/18 or Article 2(6)(c) of Directive 2014/24 be interpreted as precluding *ex tunc* the assumption that an agreement to enter into a future sales agreement, such as that at issue in the main proceedings, has produced legal effects?

- (¹) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).
- (²) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).
- (³) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

Appeal brought on 26 January 2023 by European Commission against the judgment of the General Court (Seventh Chamber — Extended Composition) delivered on 16 November 2022 in Case T-469/20, Kingdom of the Netherlands v Commission

(Case C-40/23 P)

(2023/C 173/20)

Language of the case: Dutch

Parties

Appellant: European Commission (represented by: B. Stromsky, H. van Vliet, I. Georgiopoulos, acting as Agents)

Other party to the proceedings: Kingdom of the Netherlands

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court (Seventh Chamber — Extended Composition) of 16 November 2022 in Case T-469/20, *Kingdom of the Netherlands v Commission*, EU:T:2022:713;
- reject the fourth and fifth pleas in Case T-469/20;
- exercise its jurisdiction under the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union and itself give final judgment in the matter and declare the action unfounded in its entirety, and
- order the Kingdom of the Netherlands to pay the costs.

Grounds of appeal and main arguments

The appellant puts forward a single ground of appeal, consisting of two branches.

The Commission decision contested at first instance (¹) ('the decision') declared a measure compatible with the internal market, without making a final ruling in that regard on whether that measure constituted State aid within the meaning of Article 107(1) TFEU.

By the first branch, the Commission maintains that the General Court committed an error of law in holding that the Commission may only issue a decision not to raise objections within the meaning of Article 4(3) of Regulation 2015/1589 (²) where it first pronounces on the question whether the measure under examination constitutes State aid. The Commission argues that the various methods of interpretation of EU law do not support that conclusion. The Commission argues *inter alia* that the judgment under appeal runs counter to the aim of the EU legislature of swiftly gaining clarity on whether measures are compatible with the internal market. After all, if the judgment stands, it may result in the Commission being compelled to carry out lengthy and unnecessary examinations into whether a given measure contains all the elements of Article 107(1), despite the fact that it is in any event convinced that that measure is compatible with the internal market.

By the second branch, the Commission argues that the General Court committed an error of law in holding that the decision infringes the principle of legal certainty. On the contrary, the decision increased legal certainty, in declaring that the measure is compatible with the internal market as soon as the Commission has reached that conclusion.

- (¹) Commission Decision C(2020) final 2998 of 12 May 2020 concerning State Aid SA.54537 (2020/NN) — Netherlands — Prohibition of coal for the production of electricity in the Netherlands.
- (²) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 3 February 2023 — WY v Laudamotion GmbH, Ryanair DAC

(Case C-54/23, Laudamotion and Ryanair)

(2023/C 173/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: WY

Defendants: Laudamotion GmbH, Ryanair DAC

Questions referred

1. Is a right to compensation for a flight delay of at least three hours precluded in general under Articles 5, 6 and 7 of the Regulation (¹) where, faced with a long delay, the passenger uses a self-booked replacement flight and thereby reaches the final destination with a delay of less than three hours, or can a right to compensation exist in that situation in any event where, before the time by which the passenger must present himself for check-in, there is already sufficiently reliable information indicating that the flight will arrive at its final destination with a delay of at least three hours?
2. In the event that Question 1 is to be answered in the latter sense: does a right to compensation for a flight delay of at least three hours under Articles 5, 6 and 7 of the Regulation in that situation require the passenger to present himself for check-in in good time under Article 3(2)(a) of the Regulation?

(¹) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 2 February 2023 — JH v Policejní prezidium

(Case C-57/23, Policejní prezidium)

(2023/C 173/22)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: JH

Defendant: Policejní prezidium