JUDGMENT OF THE GENERAL COURT (Tenth Chamber, Extended Composition)

22 June 2022 (*)

(State aid – Finnish air-transport market – Aid granted by Finland to Finnair in the context of the COVID-19 pandemic – Recapitalisation of an airline by its public and private shareholders on a pro rata basis in proportion to the previously existing ownership structure – Decision not to raise any objections – Temporary Framework for State aid measures – Measure intended to remedy a serious disturbance in the economy of a Member State – Derogation from certain requirements of the temporary framework – No weighing of the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition – Equal treatment – Freedom of establishment – Freedom to provide services – Obligation to state reasons)

In Case T-657/20,

Ryanair DAC, established in Swords (Ireland), represented by F.-C. Laprévote, V. Blanc, E. Vahida, S. Rating and I.-G. Metaxas-Maranghidis, lawyers,

applicant,

v

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

defendant,

supported by

French Republic, represented by T. Stéhelin and P. Dodeller, acting as Agents,

and by

Republic of Finland, represented by H. Leppo and A. Laine, acting as Agents,

interveners,

THE GENERAL COURT (Tenth Chamber, Extended Composition),

composed of A. Kornezov, President, E. Buttigieg, K. Kowalik-Bańczyk, G. Hesse (Rapporteur) and D. Petrlík, Judges,

Registrar: I. Pollalis, Administrator,

having regard to the written part of the procedure,

further to the hearing on 8 December 2021,

gives the following

Judgment

1 By its action on the basis of Article 263 TFEU, the applicant, Ryanair DAC, seeks annulment of European Commission Decision C(2020) 3970 final of 9 June 2020 on State aid SA.57410 (2020/N) – Finland COVID-19: Recapitalisation of Finnair ('the contested decision').

Background to the dispute

2 On 3 June 2020, the Republic of Finland notified the Commission, in accordance with Article 108(3) TFEU, of an aid measure in the form of a recapitalisation (a rights issue) of an amount which, depending on the final terms of the rights issue, could range from EUR 499 million to EUR 512 million ('the measure at issue'). The new shares were offered to all the shareholders of the beneficiary, Finnair, Plc ('the beneficiary' or 'Finnair'), on a pro rata basis in proportion to their existing shares in its capital.

3 The measure at issue is based on Article 107(3)(b) TFEU. It follows the grant of a State guarantee for Finnair which the Commission, in Decision C(2020) 3387 final of 18 May 2020 on State aid SA.56809 (2020/N) – Finland COVID-19: State guarantee for Finnair ('the State guarantee decision'), declared to be compatible with the internal market in the light of sections 3.2 and 3.4 of the Commission Communication of 19 March 2020 entitled 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak' (OJ 2020 C 91 I, p. 1), as amended on 3 April and 8 May 2020 ('the temporary framework'). That State guarantee covered 90% of a loan of EUR 600 million obtained by Finnair from a pension fund.

4 On 9 June 2020, the Commission adopted the contested decision, by which it decided not to raise objections to the measure at issue on the ground that it was compatible with the internal market pursuant to Article 107(3)(b) TFEU. The Commission assessed the compatibility of each measure forming part of the overall transaction, namely the State guarantee and the recapitalisation. In particular, it examined whether any effects arose from the cumulative presence of the two measures and determined whether those possible cumulative effects were compatible with the internal market.

Forms of order sought

5 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

6 The Commission contends that the Court should:

– dismiss the action as inadmissible or unfounded;

– order the applicant to pay the costs.

7 The French Republic and the Republic of Finland contend that the Court should dismiss the action.

Law

8 In support of the action, the applicant puts forward four pleas in law, alleging, first, infringement of Article 107(3)(b) TFEU, second, infringement of the principles of non-discrimination, the freedom to provide services and the freedom of establishment, third, infringement of its procedural rights and, fourth, failure to state reasons.

Admissibility

9 The Commission, supported by the French Republic, disputes the admissibility of the first three pleas. The Commission argues that the applicant is not entitled to challenge the merits of the contested decision since it has not established that its competitive position on the Finnish air-transport market has been substantially affected. The applicant, it submits, has merely mentioned that it provided services on the Helsinki (Finland)-Vienna (Austria) route during the summer of 2020, but has stated that it had ended that route. The Commission therefore also doubts that the applicant has established that it was an interested party since it has not provided any evidence to demonstrate that it was in competition with the beneficiary of the aid.

10 The applicant disputes those pleas of inadmissibility.

11 It should be borne in mind that, where the Commission adopts a decision not to raise objections on the basis of Article 4(3) 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), as in the present case, it not only declares that the measures at issue are compatible with the internal market, but also, by implication, that it refuses to initiate the formal investigation procedure laid down in Article 108(2) TFEU and in Article 6(1) of that regulation (see, by analogy, judgment of 27 October 2011, *Austria* v *Scheucher-Fleisch and Others*, C-47/10 P, EU:C:2011:698, paragraph 42 and the case-law cited). If, following the preliminary examination, it finds that the measure notified raises doubts as to its compatibility with the internal market, the Commission is required to adopt, on the basis of Article 4(4) of Regulation 2015/1589, a decision initiating the formal investigation procedure under Article 108(2) TFEU and Article 6(1) of that regulation. Under the latter provision, such a decision is to call upon the Member State concerned and upon other interested parties to submit comments within a prescribed period which must not as a rule exceed one month (see, by analogy, judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 46).

12 In the present case, the Commission decided as a result of a preliminary examination not to raise objections to the measure at issue on the ground that it was compatible with the internal market, pursuant to Article 107(3)(b) TFEU. Since the formal investigation procedure was not initiated, the interested parties who could have submitted comments during that stage were deprived of that possibility. In order to remedy this, they are entitled to challenge the Commission's decision not to initiate the formal investigation procedure before the EU Courts. Accordingly, an action brought by a party concerned for the purposes of Article 108(2) TFEU for annulment of the contested decision would be admissible in so far as that party would be seeking to safeguard the procedural rights available to it under that latter provision (see, to that effect, judgment of 18 November 2010, *NDSHT* v *Commission*, C-322/09 P, EU:C:2010:701, paragraph 56 and the case-law cited).

13 In the light of Article 1(h) of Regulation 2015/1589, an undertaking competing with the beneficiary of an aid measure is without doubt an 'interested party' within the meaning of Article 108(2) TFEU (judgment of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraph 50; see also, to that effect, judgment of 18 November 2010, *NDSHT* v *Commission*, C-322/09 P, EU:C:2010:701, paragraph 59).

14 Contrary to the submissions of the Commission and the French Republic, the applicant has demonstrated to the requisite legal standard that it was a competitor of Finnair. It has explained that it provided passenger transport services by air to and from Finland for more than 17 years. It is also common ground that the applicant, before the start of the COVID-19 pandemic, had a share of the market for those services, even if that share was small. The applicant has also stated that in 2019 it had carried more than 100 000 passengers to and from Finland and that its initial schedule, before the start of the COVID-19 pandemic, for the 2020 summer season included six routes from three Finnish airports. The applicant also explained, without being contradicted on that point, that its operations in Finland had been more affected by the pandemic than those of the beneficiary.

15 Contrary to what is claimed by the Commission, that finding is not called into question by the fact that the applicant stopped providing its services in Finland owing to the COVID-19 pandemic. Taking account of

the facts set out in paragraph 14 above and the circumstances that caused those services to be brought to an end, it must be held that that cessation of services was most likely temporary and that the competitive relationship between the applicant and the beneficiary had not ended at the time when the application was lodged (see, to that effect, judgment of 2 September 2021, *NeXovation* v *Commission*, C-665/19 P, EU:C:2021:667, paragraph 63). In addition, the applicant stated at the hearing that it was again operating flights to and from Finland.

16 It follows that the applicant, a competitor of the beneficiary, has demonstrated that it was an interested party within the meaning of Article 1(h) of Regulation 2015/1589, with an interest in safeguarding the procedural rights available to it under Article 108(2) TFEU.

17 In the present case, it is apparent from paragraphs 33 to 39 of the application that, by its action, the applicant seeks solely to secure respect for the procedural rights that are available to it under Article 108(2) TFEU, even though the third plea is the only one that refers expressly to safeguarding its rights. It must therefore be held that the action is admissible in so far as the applicant claims infringement of its procedural rights. It is necessary, in consequence, to determine which pleas may be admissible inasmuch as they seek to establish that infringement.

18 The third plea, intended to secure respect for the applicant's procedural rights, is admissible. In addition, it should be borne in mind that the applicant can, in order to demonstrate infringement of its procedural rights, raise arguments aimed at demonstrating that the Commission's finding as to the compatibility of the measure at issue with the internal market was incorrect, which, a fortiori, is such as to establish that the Commission should have had doubts when assessing the compatibility of that measure with the internal market. Consequently, in the present case, the Court is entitled to examine the substantive arguments put forward by the applicant in its first two pleas, to which it refers in its third plea, in order to determine whether they are such as to support the plea expressly made by it regarding the existence of doubts justifying initiation of the procedure under Article 108(2) TFEU (see, to that effect, judgments of 13 June 2013, *Ryanair* v *Commission*, C-287/12 P, not published, EU:C:2013:395, paragraphs 57 to 60, and of 6 May 2019, *Scor* v *Commission*, T-135/17, not published, EU:T:2019:287, paragraph 77).

19 As regards the fourth plea in law, alleging that the contested decision is vitiated by a failure to state reasons, it should be noted that disregard for the obligation to state reasons goes to an issue of infringement of essential procedural requirements and is a matter of public policy which must be raised by the EU Courts of their own motion and does not relate to the substantive legality of the contested decision (see, to that effect, judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraphs 67 to 72).

Substance

20 As a preliminary point, it should be borne in mind that the lawfulness of a decision not to raise objections, such as the contested decision, based on Article 4(3) of Regulation 2015/1589, depends on the question whether the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should objectively have raised doubts as to the compatibility of that measure with the internal market, given that such doubts must lead to the initiation of a formal investigation procedure in which the interested parties referred to in Article 1(h) of that regulation may participate (see, by analogy, judgments of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraph 80, and of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 38).

21 The lawfulness of a decision not to raise objections at the end of a preliminary examination procedure falls to be assessed by the EU Courts, in the light not only of the information available to the Commission at the time when the decision was adopted, but also of the information which could have been available to the Commission (judgments of 29 April 2021, *Achemos Grupė and Achema* v *Commission*, C-847/19 P,

not published, EU:C:2021:343, paragraph 41, and of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 42).

22 Proof of the existence of doubts as to the compatibility of the aid in question with the internal market, which requires investigation of both the circumstances in which the decision not to raise objections was adopted and its content, must be furnished by the applicant seeking the annulment of that decision, by reference to a body of consistent evidence (judgments of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraph 82, and of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 40).

23 In the present case, in reviewing the lawfulness of the contested decision, it is the task of the Court to examine the arguments put forward by the applicant that seek to establish that the Commission, following a preliminary examination, should have had doubts as to the compatibility of the measure at issue with the internal market, within the meaning of Article 4(3) and (4) of Regulation 2015/1589.

Third plea in law, alleging infringement of the applicant's procedural rights

24 The third plea, in which the applicant also refers to its first and second pleas, is divided into six parts, based on various indicia that show that the Commission should have harboured doubts, within the meaning given to that concept by Article 4 of Regulation 2015/1589.

– *Evidence relating to an infringement of Article 107(3)(b) TFEU, in that the measure at issue does not remedy a serious disturbance in the economy of Finland*

25 In essence, the applicant criticises the Commission on the ground that it failed to establish that the measure at issue served to remedy a serious disturbance in the Finnish economy.

26 The Commission, supported by the French Republic and the Republic of Finland, disputes that line of argument.

27 It must be noted that, under Article 107(3)(b) TFEU, aid to remedy a serious disturbance in the economy of a Member State may be considered to be compatible with the internal market.

28 Article 107(3)(b) TFEU is a derogation from the general principle laid down in Article 107(1) TFEU that State aid is incompatible with the internal market. It is therefore to be interpreted strictly (see judgment of 9 April 2014, *Greece* v *Commission*, T-150/12, not published, EU:T:2014:191, paragraph 146 and the case-law cited). Article 107(1) TFEU states that any aid granted by a Member State or through State resources is incompatible with the internal market 'in any form whatsoever'. Article 107(3)(b) TFEU therefore applies to individual aid (judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraph 32).

29 According to the case-law, the Commission may declare aid to be compatible under Article 107(3) TFEU only if it can establish that that aid contributes to the attainment of one of the intended objectives, something which, under normal market conditions, the recipient undertaking would not achieve by using its own resources. In other words, the measure at issue cannot be declared compatible with the internal market if it brings about an improvement in the financial situation of the recipient undertaking without being necessary to achieve the objective laid down in Article 107(3)(b) TFEU, namely to remedy the serious disturbance in the Finnish economy (see, to that effect, judgment of 14 January 2009, *Kronoply* v *Commission*, T-162/06, EU:T:2009:2, paragraph 65 and the case-law cited; see also, to that effect, judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraph 33).

30 In the first place, it must be observed that, contrary to the applicant's submission, Article 107(3)(b) TFEU does not require that the aid in question should be capable, in itself, of remedying the serious disturbance

in the economy of the Member State concerned. Once the Commission has established the reality of a serious disturbance in the economy of a Member State, that State may be authorised, if the other conditions laid down in that article are also satisfied, to grant State aid, in the form of aid schemes or individual aid, which help to remedy that serious disturbance. It could therefore involve a number of aid measures, each contributing to that end. Therefore, for an aid measure to be validly based on Article 107(3)(b) TFEU, it cannot be required, in itself, to remedy a serious disturbance in the economy of a Member State (judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraph 41).

31 In those circumstances, the applicant cannot criticise the Commission for having declared that the measure at issue satisfied the conditions laid down in Article 107(3)(b) TFEU, solely on the ground that that measure could not, in itself, remedy the serious disturbance in the economy of Finland caused by the COVID-19 outbreak.

32 In the second place, inasmuch as the applicant submits that the measure at issue does not remedy the serious disturbance in the Finnish economy, but, on the contrary, aggravates it by benefiting only Finnair, the Court must determine whether the Commission was right in stating that that measure contributed to attaining that objective, referred to in Article 107(3)(b) TFEU, in accordance with the case-law set out in paragraph 29 above.

33 In the present case, the applicant does not dispute the fact that the COVID-19 pandemic led to a serious disturbance in the Finnish economy or that the air transport sector as a whole was particularly affected by the crisis caused by that pandemic.

34 The applicant also does not dispute the finding that the State guarantee and the measure at issue are so closely linked that they must be regarded as a single intervention.

35 The purpose of those two measures is, in essence, to provide Finnair with sufficient liquidity to maintain its viability and its air transport services during the period in which the COVID-19 pandemic is causing a serious disturbance in the entire Finnish economy, and to prevent the possible insolvency of Finnair from further disrupting the economy of the Member State concerned (paragraph 41 of the contested decision).

36 In that regard, in the contested decision, the Commission found that the insolvency of or a default by Finnair would be likely to cause a serious disturbance in the Finnish economy owing to its major role in the national and international connectivity of the country and its economic and social weight for many suppliers and workers in Finland. The Commission therefore concluded that the measures from which Finnair benefited contributed to the attainment of one of the objectives referred to in Article 107(3) TFEU, namely to remedy a serious disturbance in the economy of that country (paragraphs 84 to 86 of the contested decision).

37 On that point, first, it should be noted that Finnair operated a domestic and international network which ensured Finland's connectivity. Finnair was the main air carrier in Finland in 2019, with almost 15 million passengers transported, or 67% of all the passengers carried to, from and within Finland that year. Finnair provided services to the majority of the Finnish regional airports and had a vast international network of more than 100 routes, linking Finland to the main business centres of Europe and other regions of the world (see, to that effect, judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraphs 45 and 57).

38 In addition, Finnair was the main air-freight operator in Finland and had an extensive Asian network. While that network was crucial for trade between Finnish and Asian businesses, it was all the more important in the context of the crisis caused by the COVID-19 pandemic. Finnair operated daily freight routes to South Korea, China and Japan in order to meet Finnish demand for pharmaceutical products and medical equipment necessary to deal with the virus (judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraph 47).

39 Second, it should be noted, as the Commission did in the contested decision, that Finnair had great economic and social weight in Finland. In fact, in 2017 Finnair was the sixteenth most important company in Finland in terms of its contribution to the gross domestic product (GDP) of that country, with an added value of EUR 600 million, while in 2019 it had approximately 6 800 employees.

40 The applicant submits that those figures are insufficient, when compared with Finland's GDP (approximately EUR 241 thousand million in 2019) or the total number of persons employed (2.5 million), to justify the measure at issue. However, even if Finnair's added value is only a part of the Finnish GDP and Finnair's employees represent only a fraction of the number of people employed in Finland, that cannot call into question the importance of Finnair for that economy. It suffices to point out that Finnair alone carried 67% of all the passengers travelling to, from and within Finland, and that it was the only airline providing regular services throughout the year to most Finnish regional airports. Some 50% of the passengers carried by Finnair on those domestic flights travelled for business purposes. Finnair therefore plays a major role in the carriage of passengers by air in a country where, due to the climate and geography, the other methods of transport are not always a satisfactory alternative to travel by air. In addition, during the pandemic, Finnair cooperated with the Huoltovarmuuskeskus (the national emergency supply agency, Finland) and used its international network to meet Finnish demand for equipment needed to deal with the COVID-19 pandemic. The security of the supply of the pharmaceutical and medical products in question is strategic both for protecting the health of people living in Finland and for limiting lockdown measures and achieving a rapid recovery of the Finnish economy. Many Finnish undertakings counted on the freight services provided by Finnair and some also relied on Finnair's purchases. Indeed, Finnair's purchases from its suppliers amounted to EUR 1.9 thousand million in 2019, 40% of which came from Finnish businesses (see, to that effect, judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraphs 44 to 53).

41 In the light of those factors, the Commission was right to find that, owing to Finnair's major role in the national and international connectivity of Finland and its economic and social weight for many Finnish suppliers and workers, the measure at issue contributed to attaining an objective referred to in Article 107(3)(b) TFEU, namely to remedy the serious disturbance in the economy of that country, and did not in any way increase the disruption of the Finnish economy, contrary to what the applicant claims.

42 The other arguments put forward by the applicant in that respect are not capable of altering that finding.

43 First, as regards previous decisions taken by the Commission under Article 107(3)(b) TFEU, the applicant argues that decisions that related to individual companies concerned banks and a manager of a Member State's railway network. It submits that, while a bank may be of systemic importance for an economy and a railway network may play a major role for a country's economy and population, that is not the case with Finnair.

44 However, it must be noted that the legality of the contested decision must be assessed solely in the context of Article 107(3)(b) TFEU, and not in the light of an alleged earlier decision-making practice of the Commission (see, to that effect, judgment of 27 February 2013, *Nitrogénművek Vegyipari* v *Commission*, T-387/11, not published, EU:T:2013:98, paragraph 126 and the case-law cited). In any event, the mere fact that Finnair is neither a bank nor a railway network manager does not mean that it is not important for the Finnish economy. Nor is that fact alone capable of establishing that the measure at issue did not contribute to attaining an objective referred to in Article 107(3)(b) TFEU and that the Commission should have had doubts when assessing the compatibility of that measure with the internal market.

45 Second, as regards the alleged financial difficulties of Finnair before the COVID-19 pandemic, it must be stated that the applicant does not deny that, before the COVID-19 pandemic, that airline was not an undertaking in difficulty within the meaning of Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1).

46 In addition, the document entitled ‘Financial Information 2019, Finnair’, which is annexed to the application and relied on by the applicant in support of its argument, does not point to any difficulties affecting Finnair prior to the start of the COVID-19 pandemic which might have raised doubts as to the compatibility of the measure at issue with the internal market. On the contrary, even if Finnair’s profits fell by 25% in 2019 compared with those of 2018, that document confirms that, despite that fall, Finnair remained a profitable undertaking before the COVID-19 pandemic.

47 Third, as regards Finnair’s importance for Finland’s connectivity, the applicant argues that the contested decision exaggerates that importance, since two thirds of the tickets sold by that airline are tickets for transfers. In that regard, it is sufficient to note that the number of non-transfer passengers carried by Finnair is not the only factor taken into account by the Commission for finding that the measure at issue contributed to achieving one of the objectives referred to in Article 107(3)(b) TFEU. As is apparent from paragraphs 84 to 86 of the contested decision, the Commission did indeed take account of the transport of passengers, but it also took account of the transport of freight, of jobs, of purchases from Finnish suppliers and of the contribution to GDP. Even if it were accepted that two thirds of the tickets sold by Finnair were tickets for transfers, the fact remains that before the COVID-19 pandemic Finnair played an important role in the country’s connectivity (see paragraphs 37 to 40 above). In those circumstances, the applicant’s argument is not capable of establishing that the measure at issue did not contribute to remedying the serious disturbance in the Finnish economy and that the Commission should have harboured doubts when assessing the compatibility of that measure with the internal market.

48 Fourth, as regards the argument that the Commission did not establish that Finnair’s insolvency would necessarily endanger the Finnish economy and connectivity, the applicant, more specifically, criticises the Commission on the ground that it failed to demonstrate (i) that Finnair would necessarily have become insolvent without the measure at issue and that all its operations would then have ceased and (ii) that no other airline would have been able to make adjustments and operate the routes previously served by Finnair. The applicant submits that the failures of the airlines Malev and Spanair show, in that respect, that the insolvency of a flag carrier may increase the connectivity of a country and allow its main airport to thrive.

49 In that regard, even though the Commission found in the contested decision that Finnair’s insolvency or default was likely to cause a serious disturbance in the Finnish economy, the assessment of the compatibility of the measure at issue did not require the Commission to satisfy itself that, without State intervention, Finnair would necessarily have ceased all its operations. It was sufficient for it to find that the measure at issue was necessary given the serious difficulties that Finnair was experiencing in maintaining its operations because of the risks weighing on its solvency.

50 On that point, it should be noted that demand for both domestic and international flights suffered greatly from the spread of COVID-19 and the resulting restrictions on flights. It is not disputed that the collapse in demand had an immediate and dramatic adverse effect on Finnair’s cash flow. In spring 2020, it had cancelled a large number of its flights and subsequently had to reimburse the passengers (paragraph 81 of the contested decision). Finnair had then attempted to obtain financing on the credit markets, but, because of the situation and uncertain outlook, it had not been able to cover all its liquidity needs. At the time of the adoption of the decision on the State guarantee, it had succeeded in obtaining a credit facility and had negotiated a facility for the sale and leaseback of its unencumbered aircraft in order to obtain additional funding. Finnair had also put in place significant cross-company cost-reduction measures in order to preserve cash.

51 Despite those measures, the Commission found in the contested decision, on the basis of Finnair’s financial forecasts for 2020 to 2022, that the company’s equity would fall significantly in comparison with the situation that existed before the COVID-19 pandemic. Taking account of those forecasts, the Commission took the view that, despite the State loan guarantee obtained by Finnair, the lack of a capital increase and the lack of possibility to borrow on the markets to a degree that was sufficient to cover all its liquidity needs could have led to Finnair being faced with a liquidity crisis and, consequently, with the risk

of not being able to meet its payment obligations and having to enter insolvency proceedings (paragraphs 4, 80 and 81 of the contested decision).

52 Moreover, contrary to what the applicant maintains, the fact that other airlines might have found ‘alternative market solutions’ as a result of a sale and leaseback or a reduction in staff cannot call the foregoing considerations into question.

53 It must be stated that Finnair did seek other financing solutions, similar to those referred to by the applicant in its written pleadings, before submitting a written request for recapitalisation to the Republic of Finland, but it did not succeed in obtaining financing on the markets that would have enabled it to cover all its liquidity needs. In addition, the Commission noted that the recapitalisation at issue had two main results for Finnair. First, it made it possible to increase Finnair’s equity and therefore to improve its gearing and its prospects of regaining access to the financial markets on affordable terms. Second, it made it possible to inject cash into Finnair. That is why the Finnish authorities and the Commission found that the liquidity obtained as a result of the recapitalisation could not have been obtained by other means (paragraph 42 of the contested decision). Conversely, nothing in the file, in particular no evidence provided by the applicant, supports the conclusion that ‘alternative market solutions’ would have made it possible to achieve the objective of the measure at issue, while ensuring that both components of the desired result were attained.

54 Therefore, in the light of the foregoing, it must be held that the Commission established that the measure at issue was necessary in view of the serious difficulties that Finnair was experiencing in maintaining its operations owing to the risks weighing on its solvency.

55 Moreover, even if the examples of Malev and Spanair, referred to by the applicant, might show that the failure of an airline would not necessarily lead to a loss of connectivity for the Member State concerned, it suffices to note that Finnair’s importance for the connectivity of the country was not the only factor taken into consideration in order to assess the importance of that company for the Finnish economy (see paragraph 47 above). In addition, the applicant does not adduce any evidence capable of enlightening the Court as to the consequences that those two insolvencies had on employment, suppliers and, ultimately, the added value created in the economy of the two Member States concerned. In those circumstances, the analogy drawn by the applicant between those insolvencies and the present case cannot affect the finding that the measure at issue remedied a serious disturbance in the Finnish economy.

56 Similarly, the applicant’s argument that it has a large fleet of aircraft which could have been swiftly relocated to replace Finnair in the event that it ceased operations focuses on Finland’s connectivity and disregards the other factors taken into account, such as local employment, local suppliers and the added value created by Finnair within the Finnish economy.

57 It follows from all of the foregoing that, although the measure at issue does indeed lead to an improvement in Finnair’s financial situation, it is nevertheless necessary for achieving one of the objectives laid down in Article 107(3)(b) TFEU, namely to remedy the serious disturbance in the Finnish economy, in accordance with the case-law cited in paragraph 29 above. Consequently, it must be held that the applicant has not submitted any conclusive evidence, in the first part of the third plea, of the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589.

58 That part of the plea must therefore be rejected.

– *Evidence relating to an infringement of section 3.11 of the temporary framework*

59 In essence, the applicant claims that the Commission should have had doubts since the measure at issue departed from certain requirements laid down in section 3.11 of the temporary framework.

60 The Commission, supported by the Republic of Finland, disputes that line of argument.

61 It is settled case-law that the Commission, in assessing the compatibility of aid measures with the internal market under Article 107(3) TFEU, enjoys a discretionary power (see, to that effect, judgment of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 38 and the case-law cited). In the exercise of that discretion, the Commission may adopt rules of conduct in order to establish the criteria on the basis of which it proposes to assess the compatibility, with the internal market, of aid measures envisaged by the Member States. In adopting such rules and announcing, through their publication, that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its discretion and, in principle, cannot depart from those rules, without being found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations (see, to that effect, judgments of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 69 and the case-law cited, and of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraphs 39 and 40).

62 While the Commission, in the area of State aid, is bound by the guidelines that it issues, the adoption of such guidelines does not, however, relieve it of its obligation to examine the specific exceptional circumstances relied on by a Member State, in a particular case, for the purpose of requesting the direct application of Article 107(3)(b) TFEU (see, to that effect, judgments of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraphs 70 to 72, and of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 41).

63 In the present case, the Finnish authorities notified the measure at issue under Article 107(3)(b) TFEU. In the contested decision, the Commission examined the measure at issue in the light of section 3.11 of the temporary framework. However, it waived the application of certain requirements of that framework in order to take account of the specific features of that measure, namely the participation of private investors and the fact that the State, as historic shareholder, was not increasing its shareholding in the capital of the beneficiary in comparison with its shareholding prior to the pandemic. The Commission stated that it would in future apply the same approach to comparable cases with the same features and that it would initiate the process for amending the temporary framework in order to take that approach into account.

64 The parties' disagreement thus relates to the requirements laid down in section 3.11 of the temporary framework which the Commission did not apply. That concerns, first of all, the requirement that individual recapitalisation measures adopted in the context of COVID-19 are to include a step-up mechanism for increasing the remuneration of the State in order to incentivise the beneficiary to buy back the State capital injections, next, a prohibition on beneficiaries from acquiring a stake of more than 10% in competing undertakings as long as at least 75% of those measures have not been redeemed and, lastly, a ban on beneficiaries from making dividend payments as long as those measures have not been fully redeemed. The applicant argues that the Commission thereby artificially created an exception to the temporary framework and infringed the principles of equal treatment, legal certainty and the protection of legitimate expectations. The Commission and the Republic of Finland submit, on the contrary, that specific circumstances existed which, in accordance with the case-law cited in paragraph 62 above, justified the direct application of Article 107(3)(b) TFEU to the facts of the present case and, therefore, the non-application of the abovementioned requirements.

65 In that regard, it should be noted, as a preliminary point, that the measure at issue was part of a regulatory framework that was impacted by the exceptional circumstances caused by the COVID-19 pandemic and, in addition, that it had very particular specific features that were unique to it.

66 As regards the regulatory framework that the measure at issue was part of, it must be noted that the COVID-19 pandemic gave rise to exceptional circumstances. The various lockdown measures adopted by the Member States, such as social distancing measures, travel restrictions, quarantine and isolation measures, resulted in the collapse of demand for air transport and impacted businesses operating in that sector in a direct and serious manner.

67 The economic repercussions of those exceptional circumstances required immediate action at both Member State and EU level. To that end, the Commission adopted the temporary framework on 19 March

2020, that is to say, a few days after the Member States had adopted the first lockdown measures, in order to enable those States to act with the urgency that the situation demanded. From that point of view, the Commission set out in the temporary framework the conditions that temporary State aid measures had to fulfil in order to be regarded as compatible with the internal market on the basis of Article 107(3)(b) TFEU and authorised very rapidly after their notification by the Member State concerned. That framework, in the light of the extremely urgent circumstances that existed when it was adopted, could not foresee all the measures that the Member States might adopt for economic operators affected by the crisis caused by the COVID-19 pandemic. In order to take account of developments in the situation and the different types of measures that the Member States planned to utilise in order to deal with the harmful consequences of that pandemic, the Commission has amended the temporary framework on several occasions. Accordingly, inter alia at the time when the contested decision was adopted, the Commission was preparing to initiate the procedure for amending the temporary framework once again so that it could take account of the type of temporary aid measures such as that at issue. That amendment ultimately occurred on 29 June 2020, approximately 20 days after the contested decision had been adopted.

68 As regards the specific features of the measure at issue, it must be noted that that measure had very particular characteristics which the Commission had not envisaged when the temporary framework was adopted. First, that measure did not aim at an increase in the stake held by the State, the historic shareholder, given that it subscribed to the new shares only on a pro rata basis in proportion to its previous stake. Second, the measure at issue provided for substantial private participation. The participation of private investors in Finnair's recapitalisation amounted to at least 30% of the new equity injected, with private banks undertaking to subscribe to the new shares not bought by current or future private investors. As the Republic of Finland stated, that undertaking on the part of the private banks ensured that the State's shareholding would not increase. The recapitalisation method therefore had the consequence that the amount of State aid was much lower than that which would have been necessary without that private participation. In short, Finnair's recapitalisation involved the simultaneous participation of both public and private capital on the same terms, it being noted that the ratio of shares held by the public shareholders to those held by private shareholders remained unchanged.

69 It is in the light of those exceptional circumstances and of the very particular characteristics of the measure at issue that the Court must determine whether the evidence brought before it by the applicant was capable of raising doubts as to the compatibility of the measure at issue with the internal market.

70 In the first place, as regards the step-up mechanism which is to incentivise the beneficiary to buy back the State capital injections, the applicant argues that, pursuant to point 61 of the temporary framework, 'any' recapitalisation measure, without exception, must include such a mechanism. The Commission, in its view, wrongly exempted the Republic of Finland from providing a strategy for the resale by the State of its share of Finnair's equity resulting from the measure at issue, although such a strategy is however required by section 3.11.7 of the temporary framework, entitled 'Exit strategy of the State from the participation resulting from the recapitalisation and reporting obligations'. In that regard, the applicant submits that there is no justification for treating undertakings in which the State was a shareholder before the COVID-19 pandemic differently from those in which it was not. Treating them differently, as the Commission allegedly does, derogates from the rule intended to reduce distortions of competition and infringes the principle of neutrality between public and private property ownership laid down in Article 345 TFEU. In addition, the applicant argues that it is wrong to take the view, as the Commission allegedly did in the contested decision, that the relatively strong level of dilution of the existing shareholders justified waiving the requirement for a step-up mechanism.

71 On that point, as the applicant indeed states, point 61 of the temporary framework provides that 'any recapitalisation measure shall include a step-up mechanism increasing the remuneration of the State, to incentivise the beneficiary to buy back the State capital injections'. However, neither the wording of point 61 nor the content of section 3.11.7 of that framework, also referred to by the applicant, relieves the Commission of its obligation to ascertain whether such a step-up mechanism is suitable for the case at

hand, taking account of the very particular characteristics of the measure at issue, and, if that is not the case, to apply Article 107(3)(b) TFEU directly.

72 In that regard, in paragraph 74 of the contested decision, the Commission found that the incentives provided for in the temporary framework for the State to sell an equity stake acquired by means of aid to respond to the COVID-19 pandemic were not suitable for the recapitalisation of companies already partly owned by the State and in which the State and private investors subscribed on a pro rata basis in proportion to their previous shareholding. Next, in paragraphs 92 and 93 of that decision, the Commission stated that, while the temporary framework provided for a step-up mechanism for the remuneration of the State in two rounds, the measure at issue indicated that the new shares, subscribed to by, inter alia, the State, had been offered at a price that was at least 20% lower than that of Finnair's shares over the 15 days preceding the recapitalisation request. In those circumstances, the Commission found that that discount was enough to provide sufficient remuneration to the Republic of Finland and concluded that other increases in the remuneration of the State were not necessary, in the light of points 60 to 62 of the temporary framework. Lastly, in paragraph 111 of that decision, the Commission found that the absence of an increase in the State's shareholding in Finnair after the recapitalisation meant that an exit strategy, such as that laid down in section 3.11.7 of the temporary framework, was not required.

73 The applicant does not challenge the Commission's findings that, since the price of the new shares subscribed to by the State was at least 20% lower than that of Finnair's shares, that discount was enough to provide sufficient remuneration to the Republic of Finland. By contrast, it criticises the Commission for finding that the incentive for the State to resell the equity stake acquired under the measure at issue, arising from the step-up mechanisms laid down by the temporary framework, was not appropriate in the present case.

74 In that regard, the Court observes that the objective of the step-up mechanisms provided for in points 61 and 62 of the temporary framework is to restore the *status quo ante*.

75 In a case such as the present one, where the State purchases new shares on a pro rata basis in proportion to its previous shareholding, the application of points 61 and 62 of the temporary framework and a requirement for that State to sell the equity stake acquired under the measure at issue would in reality require it to reduce its shareholding to a level below what it was before the measure at issue was implemented, which would lead to a change in the beneficiary's capital structure. In such a scenario, it is possible that the State may be forced out of the position as majority shareholder which it held before the recapitalisation. Such consequences would go beyond the objective of the step-up mechanisms laid down in points 61 and 62 of the temporary framework, as set out in paragraph 74 above.

76 Therefore, in view of the very particular characteristics of the measure at issue, it must be concluded that the requirement for a step-up mechanism which incentivises the beneficiary to buy back the equity stake acquired by the State, as foreseen in points 61 and 62 of the temporary framework, was not suitable, as the Commission rightly found.

77 The other arguments put forward by the applicant do not call that conclusion into question.

78 First of all, contrary to what is claimed by the applicant, the Commission's practice referred to in that respect does not demonstrate that there should have been a requirement for a reduction in the State's share of Finnair's capital, compared with what it held before the COVID-19 pandemic. The examples mentioned by the applicant, namely two previous Commission decisions, in respect of Crédit Lyonnais and Alstom, involved, respectively, a situation in which the bank concerned was clearly destined to be privatised and a situation where the State was entering the capital of the undertaking in question. Those situations are different from that referred to in paragraph 75 above. Moreover, in accordance with the case-law referred to in paragraph 44 above, the legality of the contested decision must be assessed in the context of Article 107(3)(b) TFEU, and not by reference to an alleged earlier practice.

79 Next, the applicant's argument that the Commission caused a difference in treatment between undertakings already partly owned by the State and those which were not already partly owned by the State cannot succeed. A measure involving State aid which would increase the State's overall share of an undertaking which it partly owned prior to the COVID-19 pandemic is not comparable to the measure at issue, in view of the particular characteristics of that measure, and therefore there can be no difference in treatment between undertakings benefiting from those two types of measure.

80 Likewise, the applicant's argument that the Commission infringed Article 345 TFEU, which sets out the principle of the neutrality of the Treaties with regard to the rules in the Member States governing the system of property ownership, cannot succeed. The measure at issue does not as such concern the rules in Member States governing the system of property ownership.

81 Lastly, as regards the possible interaction of the level of dilution of existing shareholders and the requirement for a step-up mechanism referred to in the applicant's arguments (see paragraph 70 above), it suffices to note that, in any event, for the reasons already set out in paragraphs 73 to 76 above, a step-up mechanism was not suitable in the specific circumstances that characterised the measure at issue.

82 Consequently, in the particular case of Finnair – in which the aid measure is neutral for its capital structure, there is significant simultaneous participation by the private sector, sufficient remuneration for the State and, accordingly, there is less risk of a distortion of competition – it must be held that the Commission established in the contested decision to the requisite legal standard, in accordance with the case-law cited in paragraph 62 above, that the present case differed from the situations covered by the temporary framework. Therefore, the fact that the measure at issue does not include a strategy for the exit of the State, in particular a step-up mechanism which incentivises the beneficiary to buy back the State capital injections, is not evidence of the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589.

83 In the second place, as regards the beneficiary being banned from acquiring a stake of more than 10% in competing companies or those in the same line of business, laid down in point 74 of the temporary framework, the applicant argues that the Commission unlawfully authorised the Republic of Finland to apply that prohibition for a period of three years. The Commission allegedly erred in finding that such a requirement, laid down in point 74 of the temporary framework, was aimed at creating an incentive for private investors to buy shares acquired by the State in private companies that had received aid during the COVID-19 pandemic and that it was therefore not designed for situations where the State was a historic shareholder. According to the applicant, that requirement was in fact intended to remedy distortions in competition.

84 It should be recalled that point 74 of the temporary framework states that, 'as long as at least 75% of the COVID-19 recapitalisation measures have not been redeemed, beneficiaries other than [small and medium-sized enterprises] shall be prevented from acquiring a more than 10% stake in competitors or other operators in the same line of business, including upstream and downstream operations'.

85 In that regard, it should be noted that that acquisition ban has a twofold objective. First, it limits undue distortions of competition in that it prevents the beneficiaries from using public resources to finance potentially market-distorting activities, such as the acquisition of stakes in competing companies or those in the same line of business. Second, in so far as point 74 of the temporary framework links the lifting of the ban to the redemption of at least 75% of the aid measure, that prohibition provides an incentive to the beneficiary to buy back the State capital injections at the earliest opportunity.

86 However, in the present case, as set out in paragraphs 73 to 76 above and as the Commission explained in paragraph 104 of its decision, such a requirement, linked to the redemption of 75% of the measure at issue, is not appropriate since such a redemption would lead to the Member State concerned being obliged to reduce its stake in the capital of the beneficiary to a level below that which it held before the COVID-19 pandemic. In those circumstances, the Commission was entitled to find that the acquisition ban laid down in point 74 of the temporary framework could not be applied in the present case.

87 Instead, the Republic of Finland imposed a ban on Finnair from making acquisitions for a period of three years from the date of the capital increase (paragraph 25 of the contested decision). The Commission found that period to be suitable and proportional to the need to limit any undue distortion of competition (paragraph 105 of the contested decision).

88 The applicant does not contest the actual period of prohibition that was proposed by the Republic of Finland and accepted by the Commission. It merely complains that the Commission authorised that Member State to derogate from the acquisition ban laid down in point 74 of the temporary framework, on the ground that distortions of competition would be more limited in cases where the aid beneficiary was a public undertaking.

89 However, it must be stated that the Commission did not rely on the public or private nature of the beneficiary. As is apparent from paragraph 105 of the contested decision, the Commission, in order to justify derogating from the acquisition ban laid down in point 74 of the temporary framework on the basis of the very specific circumstances of the present case, relied solely on the fact that the State was not increasing the level of its shareholding in the company concerned, which meant that that requirement could not be applied as such without leading to a significant change in the beneficiary's capital structure.

90 In the light of the foregoing, it must be held that the Commission established in the contested decision, to the requisite legal standard, in accordance with the case-law cited in paragraph 62 above, that the present case differed from the situations referred to in point 74 of the temporary framework. Therefore, the fact that the Commission accepted a three-year acquisition ban, instead of linking that ban to the redemption of 75% of the equity injected by the State, does not constitute evidence of the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589.

91 In the third place, as regards the ban on paying dividends, the applicant argues that the Commission waived that prohibition because it reduced the interest of private investors in participating in Finnair's recapitalisation, disregarding the fact that that finding also applied to private undertakings in which the State injected equity for the first time by means of an aid measure. The ban on paying dividends should ensure that the recapitalisation of an undertaking by the State is not used to enrich its shareholders. By lifting the prohibition on paying dividends, the Commission allegedly caused discrimination based on the ownership structure of the undertaking concerned.

92 In that regard, it should be noted that point 77 of the temporary framework provides that the beneficiary of a recapitalisation measure may not make dividend payments until that measure has been fully redeemed.

93 On that point, it must be stated that the ban on paying dividends is intended to ensure the temporary nature of the State intervention – by providing an incentive for the beneficiary to buy back the State's stake acquired under the aid measure – and to strengthen the beneficiary's capital.

94 In the present case, as stated in paragraphs 73 to 76 above, the Commission correctly found that providing an incentive for the beneficiary to buy back the stake acquired by the State pursuant to the measure at issue was not suitable, given the particular characteristics of that measure.

95 In addition, while it is true, as the applicant submits, that the prospect of not receiving a dividend in all events reduces the interest of a private investor in taking part in a recapitalisation, it must be observed, as stated in paragraphs 73 and 94 of the contested decision, that the measure at issue is based on substantial private sector participation in such a manner that the State's share of Finnair's capital remains unchanged.

96 In view of that characteristic, specific to the measure at issue, it was important in the present case to allow the payment of dividends since that constituted an incentive for private shareholders and investors to subscribe to new shares and thus to provide Finnair with new private capital. Since the measure at issue was designed in such a way as to reduce the amount of aid as much as possible, it was logical, in order to ensure a substantial contribution by private investors, that they be assured of receiving dividends on the new shares to which they had subscribed.

97 That is all the more the case since the exceptional circumstances linked to the COVID-19 pandemic had the inevitable effect of causing a deterioration in the investment climate in the aviation sector. Accordingly, at the time when the contested decision was adopted, the deterioration of that investment climate was such that, as noted in paragraph 43 of the contested decision, it had led the Republic of Finland to grant a State guarantee to Finnair in order to increase the chances of the public and private sectors participating at the same time in Finnair's recapitalisation. The Republic of Finland therefore could not expect substantial participation by private shareholders and investors without putting incentives in place.

98 It must therefore be found that the absence of a ban on dividend payments is justified by the fact that the State does not increase its shareholding from what it was before the crisis caused by the COVID-19 pandemic on account of private shareholders and private investors taking part at the same time in Finnair's recapitalisation, which decreased the amount of aid. Accordingly, the dividends paid to the private shareholders and investors are merely the remuneration for their significant investment in Finnair in crisis circumstances and amid a downbeat investment climate.

99 Moreover, the applicant has not adduced any evidence capable of showing that a situation in which the State enters the capital of a private undertaking by means of an aid measure, in principle increasing the State's share in the capital of that undertaking, is comparable to that in the present case, which is characterised by the participation of both public and private capital on the same terms and on a pro rata basis in proportion to their previous shareholding. What is more, for the reasons set out in paragraph 95 above, it must be held that those situations are different and that the contested decision did not give rise to discrimination. Consequently, this argument cannot succeed.

100 In the light of the foregoing, the contested decision establishes to the requisite legal standard, in accordance with the case-law cited in paragraph 62 above, that the present case differs from the situations covered by the temporary framework. Therefore, the fact that the Commission lifted the ban on paying dividends is not evidence of the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589.

101 In those circumstances, the mere fact that the Commission derogated from the application of certain requirements of the temporary framework in order to take account, in terms of the case-law cited in paragraph 62 above, of the specific circumstances of the measure at issue, namely that the State was the beneficiary's historic majority shareholder and that it subscribed to the new shares only on a pro rata basis in proportion to its previous shareholding, is not sufficient to demonstrate that the Commission ought to have had doubts as to the compatibility of that measure with the internal market which should have led to the adoption of a decision to initiate the formal investigation procedure.

102 In the light of all the foregoing considerations, it must be found that, contrary to what is argued by the applicant, the Commission likewise did not infringe the principles of equal treatment, legal certainty and the protection of legitimate expectations.

103 It follows that the applicant has not submitted, in the second part of the third plea, any conclusive evidence of the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589. That part must therefore be rejected.

– *Evidence relating to an infringement of the alleged obligation to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition*

104 In essence, the applicant argues that, when the Commission examines the compatibility of aid, it is required to weigh the expected positive effects in terms of achieving the objectives set out in Article 107(3)(b) TFEU against the adverse effects in terms of distortions of competition and the effect of the aid on trade between Member States. The temporary framework, in particular section 1.2, it submits, requires the Commission to carry out such a balancing test. In the alternative, the applicant submits that, were the Court to find that the temporary framework exempts the Commission from carrying out such a

test, it seeks to raise a plea of illegality in respect of the temporary framework, under Article 277 TFEU, in that the framework infringes the obligation to perform a balancing test.

105 The Commission, supported by the French Republic and the Republic of Finland, disputes those arguments.

106 Under Article 107(3)(b) TFEU, 'the following may be considered to be compatible with the internal market: … aid … to remedy a serious disturbance in the economy of a Member State'. It follows from the wording of that provision that its authors considered that it was in the interests of the European Union as a whole that one or other of its Member States be able to overcome a major or even an existential crisis which could only have serious consequences for the economy of all or some of the other Member States and therefore for the European Union as a whole. That textual interpretation of the wording of Article 107(3)(b) TFEU is confirmed by comparing it with Article 107(3)(c) TFEU concerning 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest', in so far as the wording of that latter provision contains a condition relating to proof that there is no effect on trading conditions to an extent that is contrary to the common interest, which is not found in Article 107(3)(b) TFEU (see, to that effect, judgment of 22 September 2020, *Austria* v *Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 39).

107 Thus, in so far as the conditions laid down in Article 107(3)(b) TFEU are fulfilled, that is to say, in the present case, that the Member State concerned is indeed faced with a serious disturbance in its economy and that the aid measures adopted to remedy that disturbance are, first, necessary for that purpose and, second, appropriate and proportionate, those measures are presumed to be adopted in the interests of the European Union, so that that provision does not require the Commission to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition, in contrast to what is laid down in Article 107(3)(c) TFEU. In other words, such a balancing exercise would have no *raison d'être* in the context of Article 107(3)(b) TFEU, as its result is presumed to be positive. Indeed, the fact that a Member State manages to remedy a serious disturbance in its economy can only benefit the European Union in general and the internal market in particular (judgment of 17 February 2021, *Ryanair* v *Commission*, T-238/20, under appeal, EU:T:2021:91, paragraph 68).

108 Accordingly, the Court rejects the applicant's argument that the obligation to conduct the balancing test results from the exceptional nature of compatible aid, including aid declared compatible under Article 107(3)(b) TFEU. For the same reasons, it is not justified in relying on the judgments of 6 July 1995, *AITEC and Others* v *Commission* (T-447/93 to T-449/93, EU:T:1995:130), and of 19 September 2018, *HH Ferries and Others* v *Commission* (T-68/15, EU:T:2018:563, paragraphs 210 to 214) (see, to that effect, judgments of 17 February 2021, *Ryanair* v *Commission*, T-238/20, under appeal, EU:T:2021:91, paragraph 69, and of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraphs 70 and 71).

109 Nor does the applicant convince when it states that the obligatory nature of a balancing test arises from the temporary framework, since there is no such obligation in that framework. In particular, section 1.2 of the framework, to which the applicant refers, relating to the 'the need for close European coordination of national aid measures', consists of a single paragraph, point 10, which contains no requirements in that regard.

110 It follows that the Commission was under no obligation to carry out, in the contested decision, the balancing test demanded by the applicant. Although the applicant raises a plea of illegality as regards the temporary framework, Article 107(3)(b) TFEU does not require the Commission, as is apparent from paragraph 107 above, to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition. Therefore, the temporary framework, which does not provide for such a balancing test, cannot infringe that provision.

111 Following the examination of the arguments raised by the applicant in the third part of the third plea, it must be held that the applicant has not adduced any conclusive evidence of the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589. Consequently, that part must be rejected.

– *Evidence relating to an error of assessment of the significant market power of Finnair*

112 In essence, the applicant submits that the Commission disregarded the temporary framework in that it examined the airport-services market only when assessing Finnair's significant market power. In order to determine that significance, it is allegedly necessary to use the 'O&D approach', that is, to examine the markets for passenger air transport services defined by pairs of cities between a point of origin and a point of destination ('the O&D markets'). The applicant relies in this regard on the Commission's practice in the law on mergers. In order to demonstrate Finnair's significant market power on the O&D markets, the applicant refers to that airline's overall share of the carriage of passengers to and from Helsinki Airport, which was 68.4% in 2019. The applicant also claims that the Commission failed to examine any barriers to entry other than airport congestion.

113 The Commission, supported by the Republic of Finland, disputes those arguments.

114 As a preliminary point, it should be recalled that, according to point 72 of the temporary framework, if the beneficiary of a COVID-19 recapitalisation measure above EUR 250 million is an undertaking with significant market power on at least one of the relevant markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets. The temporary framework does not define the concept of 'significant market power', nor does it provide any guidance as to the approach to be taken in defining the markets concerned.

115 In the present case, it is necessary to bear in mind that the measure at issue is intended to remedy the serious disturbance in the Finnish economy caused by the COVID-19 pandemic and that, to that end, it principally seeks to enable Finnair to maintain its viability and its air transport services.

116 However, as the Commission stated in paragraph 98 of the contested decision, by maintaining Finnair's viability, the measure at issue also enables it to preserve slots and other assets which it would not necessarily have been able to retain without that support. Those slots and other assets may be used on any routes to and from an airport served by Finnair, depending, for example, on demand, but also on the various lockdown measures adopted by the States.

117 In that regard, since the measure at issue sought as far as possible to maintain the entirety of Finnair's operations and did not target particular routes, it must be held that it was capable of having the same effects on all the combinations of routes that Finnair could operate owing to the slots and other assets which it succeeded in retaining. The Commission was therefore right to find, in paragraph 99 of the contested decision, that, in order to determine Finnair's market power, it could examine the presence or, conversely, the absence of competitive constraints on that airline at the airports where it held slots. The Commission carried out that assessment, inter alia, on the basis of the level of congestion at the airport concerned and the share of slots held by Finnair at that airport.

118 In paragraph 100 of the contested decision, the Commission found that Finnair principally provided passenger air transport services to and from its main base and hub, Helsinki Airport.

119 The applicant does not identify any other airports apart from Helsinki which the Commission should have examined.

120 Finnair's share of slots, out of the total number of slots at that airport, was less than 25% in 2019 (paragraph 100 of the contested decision). Furthermore, as is apparent from the contested decision, there is no congestion at that airport, even at peak hours, a fact which the applicant does not dispute and which the Republic of Finland confirmed in its statement in intervention. Slots are available at any time of the day for new entrants, including those wishing to compete with Finnair on one route or another.

121 For those reasons, the Commission concluded that Finnair did not have significant market power at Helsinki Airport (paragraph 101 of the contested decision).

122 That finding is not called into question by the applicant's argument based on the fact that Finnair carried a total of 68.4% of all the passengers departing from and arriving at Helsinki Airport in 2019. That argument put forward by the applicant is not sufficient to establish that Finnair had significant market power at that airport, given that it was not congested and that slots were widely available there for existing competitors and new entrants at any time of the day, including peak hours, with the result that they were able to exert actual competitive pressure on Finnair for any of the routes from and to that airport.

123 In order to challenge that finding, the applicant merely maintains that the level of congestion at Helsinki Airport and the number of slots held by Finnair say nothing about any significant market power that that airline may have on the various city pairs which it serves.

124 However, in the light of the considerations set out in paragraph 120 above, it must be stated that the share of slots held by Finnair does not enable it to disturb the various O&D markets to or from Helsinki Airport since a large number of slots remains available. Moreover, the applicant has not adduced any concrete evidence to establish that there was a lack of competitive constraint on the various routes operated by Finnair.

125 In addition, and without it being necessary to rule on whether the Commission was also required to examine the possible existence of significant market power on the part of Finnair on each of the routes which it operated, it must be recalled that, where a complaint is made against the Commission for not having initiated the formal investigation procedure, it is for the applicant to show that the assessment of the information and evidence available to the Commission, or which could have been available to it, at the time when it adopted the contested decision should have raised doubts as to the compatibility of the measure at issue with the internal market, in accordance with the case-law referred to in paragraphs 20 to 22 above. In the present case, this means that the applicant, at the very least, was required to identify the O&D markets concerned and to describe the competitive situation on those markets at the time when the Commission adopted the contested decision.

126 However, the applicant has not adduced any specific evidence capable of enlightening the Court as to the possible existence of significant market power on the part of Finnair on any O&D market on which Finnair operates.

127 The only barriers capable of deterring an entrant from competing with the beneficiary to which the applicant refers are the State's control over Finnair and Finavia (the operator of Helsinki Airport), Finnair's ability to sell below cost, and the context of the COVID-19 pandemic. However, none of those arguments is sufficiently substantiated to succeed.

128 In support of the first argument, the applicant submits that State control over Finavia discouraged the latter from cooperating with low-cost airlines in the development of regional airports. The applicant also claims that Finnair has received favourable treatment at Helsinki Airport in that its airport charges are lower than those of other airlines. In order to substantiate that argument, the applicant refers to the Commission Decision of 25 July 2012 on measure SA.23324 – C 25/07 (ex NN 26/07) – Finland Finavia, Airpro and Ryanair at Tampere-Pirkkala airport (OJ 2013 L 309, p. 27), without, however, stating why that decision, which does not concern Helsinki Airport, is capable of supporting that argument. In any event, the applicant's argument concerns the conduct of the operator of Helsinki Airport, Finavia, and not that of the beneficiary. Even if the applicant's claims were well founded, the corrective measures that might have to be taken would concern Finavia and not Finnair, with the result that those claims go beyond the subject matter of the present dispute.

129 In support of the second argument, the applicant refers to a document entitled 'Ryanair Holdings PLC – COVID-19 Market Update' annexed to the application and dated 1 May 2020, which it itself produced.

However, that document does not contain any evidence capable of demonstrating that Finnair would sell below cost as a result of the measure at issue.

130 In support of the third argument, the applicant merely claims that the context of the COVID-19 pandemic makes any new entry into the Finnish air-transport market or an expansion of that market very unlikely. However, as the Commission observes, the applicant does not specify how the repercussions of the pandemic could have been taken into account as barriers to entry. That argument also contradicts the applicant's assertion in paragraph 7 of its observations on the Republic of Finland's statement in intervention that its recent expansion in Finland shows the ability of airlines other than Finnair to operate and develop in Finland during the crisis caused by COVID-19. Having regard to the foregoing, that argument must be rejected.

131 Having regard to all those considerations and in view of the absence of evidence submitted or offered that is capable of supporting its claims, it must be concluded that the applicant has not adduced any conclusive evidence, in the fourth part of the third plea, of the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589. That part must therefore be rejected.

– *Evidence relating to an infringement of the principle of non-discrimination*

132 In order to establish the existence of doubts as to the compatibility of the measure at issue with the internal market, the applicant submits that that measure infringes the principle of non-discrimination. In particular, the applicant argues that the contested decision treated differently the comparable situation of airlines operating routes to and from Finland by favouring Finnair without any objective justification. The Commission, it submits, failed to establish either the need to grant aid solely to Finnair or the proportionality of the difference in treatment of Finnair and the other airlines. It adds that if the aid was allocated to all the airlines that operate in Finland, on the basis of their market share, the objective of the measure would have been reached with no discrimination. The applicant infers from this that the measure at issue is a 'measure of naked economic nationalism', as confirmed by the press release of the Finnish Government.

133 The Commission, supported by the French Republic and the Republic of Finland, disputes those arguments.

134 The principle of non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraph 66; see also, to that effect, judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 49).

135 The elements which characterise different situations, and hence their comparability, must in particular be determined and assessed in the light of the subject matter and purpose of the EU act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 26).

136 Furthermore, it should be borne in mind that the principle of proportionality, which is one of the general principles of EU law, requires that acts adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question (judgment of 17 May 1984, *Denkavit Nederland*, 15/83, EU:C:1984:183, paragraph 25); where there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 30 April 2019, *Italy* v *Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332, paragraph 55).

137 It is true that other airlines contribute to a certain extent to Finland's connectivity and that they are affected just as much as Finnair by the COVID-19 pandemic and the travel restrictions resulting from it. However, the fact remains, as the Commission submits, that there is no requirement for Member States to

grant aid to remedy a serious disturbance in the economy, within the meaning of Article 107(3)(b) TFEU (see, to that effect, judgment of 14 July 2021, *Ryanair and Laudamotion* v *Commission (Austrian Airlines; Covid-19)*, T-677/20, under appeal, EU:T:2021:465, paragraph 54). In addition, as stated in paragraphs 30 and 31 above, aid may be intended to remedy a serious disturbance in the economy of a Member State, in accordance with Article 107(3)(b) TFEU, irrespective of the fact that it does not, in itself, remedy such a disturbance. The Republic of Finland cannot therefore be required to grant aid to all the undertakings which contribute, in some way or other, to the connectivity of its territory.

138 In addition, it should be noted that individual aid such as the measure at issue, by definition, benefits only one undertaking, to the exclusion of all other undertakings, including those in a situation comparable to that of the recipient of that aid. Thus, by its nature, such individual aid introduces a difference in treatment, or even discrimination, which is inherent in the individual character of that measure. To maintain, as the applicant does, that the individual aid at issue is contrary to the principle of non-discrimination amounts essentially to calling into question systematically the compatibility with the internal market of any individual aid solely on account of its inherently exclusive and thus discriminatory nature, even though EU law allows Member States to grant individual aid provided that all the conditions laid down in Article 107 TFEU are satisfied (judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraph 81).

139 In any event, even if, as the applicant claims, the difference in treatment established by the measure at issue, in so far as it benefits only Finnair, may amount to discrimination, it is necessary to ascertain whether it is justified by a legitimate objective and whether it is necessary, appropriate and proportionate in order to attain that objective. Similarly, in so far as the applicant refers to the first paragraph of Article 18 TFEU, it must be pointed out that, under that provision, any discrimination on grounds of nationality within the scope of application of the Treaties 'without prejudice to any special provisions contained therein' is prohibited. Therefore, it is important to ascertain whether that difference in treatment is permitted under Article 107(3)(b) TFEU, which is the legal basis for the contested decision. That examination means, first, that the objective of the measure at issue satisfies the requirements of that provision and, second, that the detailed rules for granting the measure at issue, namely, in the present case, the fact that it benefits only Finnair, are such as to enable that objective to be achieved and do not go beyond what is necessary in order to attain it (judgment of 14 April 2021, *Ryanair* v *Commission (Finnair I; Covid-19)*, T-388/20, under appeal, EU:T:2021:196, paragraph 82).

140 As regards the objective of the measure at issue, it is common ground that the COVID-19 pandemic led to a serious disturbance in the Finnish economy and that it had major adverse effects on the Finnish air-transport market. In that context, for the reasons set out in paragraphs 39 to 41 above, the objective of the measure at issue, namely to maintain Finnair's viability and its air transport services, was capable of remedying the serious disturbance in the Finnish economy.

141 As for the detailed rules for granting the measure at issue, as the Commission stated in paragraphs 84 and 85 of the contested decision and as is apparent from paragraphs 37 to 41 above, Finnair contributed in a significant manner to Finland's economic development and foreign trade, by means of both its major role in the country's national and international connectivity and its economic and social weight for many Finnish suppliers and workers.

142 According to the applicant, those circumstances do not justify the difference in treatment arising from the measure at issue. That measure, it argues, is not proportionate in that it grants all of the aid to Finnair, even though the latter's share of Finland's connectivity is between 45 and 67%.

143 However, taking account of its major role in national and international connectivity and its economic and social weight in Finland, as already established in the context of the first part of the third plea, it must be held that ensuring the continuity of Finnair's economic activities was more likely to contribute to remedying the serious disturbance in the Finnish economy than maintaining the operations of other airlines which operated – to a lesser extent than Finnair – in Finland. In particular, it is not apparent from any document in the file before the Court that the applicant or any other airline, owing to their role in the

national and international connectivity of Finland or their economic and social weight for that country, was of comparable importance to that of Finnair for the Finnish economy and its recovery.

144 As far as concerns the question whether the measure at issue goes beyond what is necessary to achieve the objective pursued, the Commission observed, in paragraph 89 of the contested decision, that the planned capital increase, in particular the State's participation, was lower than the expected losses. It concluded from this that the measure at issue did not go beyond restoring Finnair's capital structure as it existed on 31 December 2019, that is to say before the COVID-19 pandemic.

145 The applicant does not dispute those facts. It merely claims that the measure at issue is disproportionate in that it is intended solely for Finnair and maintains that it is a measure of 'naked economic nationalism'.

146 In that regard, first, it must be pointed out that there is no obligation on the Commission to assess whether the Republic of Finland, aside from maintaining Finnair, should have widened the circle of beneficiaries of the aid since the decision on the State guarantee and the contested decision establish, to the requisite legal standard, the need to preserve Finnair's contribution to the Finnish economy.

147 Second, it must be noted that aid which satisfies the conditions laid down in Article 107(3)(b) TFEU, as is the case here, may be granted to an undertaking that is majority-owned by the Member State concerned. Therefore, even if the Finnish Government's press release, referred to by the applicant and annexed to its application, states that the Republic of Finland was acting as a 'responsible owner', that would not be sufficient to establish that the measure at issue is a measure of 'economic nationalism'. Moreover, it must be noted that that press release mentions the importance of the routes operated by Finnair for Finland's security of supply, for freight and passenger transport and the influence of that company on the national economy. It therefore tends to confirm the Commission's findings in relation to Finnair's importance for remedying the serious disturbance in the Finnish economy.

148 In any event, and in so far as the difference in treatment brought about by the measure at issue may amount to discrimination, it follows that the grant of the benefit of the measure at issue to Finnair alone was justified.

149 Consequently, it is not established that the Commission should have had doubts, within the meaning of Article 4(3) and (4) of Regulation 2015/1589, when assessing the compatibility of the measure at issue with the internal market. The mere reference by the applicant to the Commission's alleged practice under Article 107(2)(b) TFEU is not capable of altering that conclusion.

– *Evidence relating to an infringement of the freedom to provide services and the freedom of establishment*

150 In essence, the applicant argues that the measure at issue, in that it goes beyond what is necessary to achieve the stated aim of the aid, unjustifiably restricts the freedom to provide services and the freedom of establishment, which gives rise to doubts as to its compatibility with the internal market. In that regard, the applicant submits that granting the aid at issue solely to Finnair leads to fragmentation of the internal market and, in the case of airlines, curtails their rights freely to provide air transport services within the internal market as granted to them by the European operating licensing scheme provided for in 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).

151 The Commission, supported by the French Republic and the Republic of Finland, disputes that line of argument.

152 It should be borne in mind that the freedom to provide services precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State, irrespective of whether there is discrimination on the grounds of nationality or residence (judgment of 6 February 2003, *Stylianakis*,

C-92/01, EU:C:2003:72, paragraph 25). However, it should be pointed out that, pursuant to Article 58(1) TFEU, freedom to provide services in the field of transport is governed by the provisions of the title relating to transport, namely Title VI of the FEU Treaty. The freedom to provide services in the field of transport is therefore governed, in the primary law, by a special legal regime (judgment of 18 March 2014, *International Jet Management*, C-628/11, EU:C:2014:171, paragraph 36). Consequently, Article 56 TFEU, which enshrines the free provision of services, does not apply as such to the air transport sector (judgment of 25 January 2011, *Neukirchinger*, C-382/08, EU:C:2011:27, paragraph 22).

153 Measures liberalising air transport services may therefore be adopted only under Article 100(2) TFEU (judgment of 18 March 2014, *International Jet Management*, C-628/11, EU:C:2014:171, paragraph 38). Indeed, the EU legislature adopted Regulation No 1008/2008 on the basis of that provision, and its very purpose is to define the conditions for applying in the air transport sector the principle of the freedom to provide services (see, by analogy, judgment of 6 February 2003, *Stylianakis*, C-92/01, EU:C:2003:72, paragraph 24).

154 In the present case, it should be pointed out that the applicant argues, in essence, that the measure at issue constitutes a barrier to the freedom of establishment and to the freedom to provide services in so far as it benefits Finnair alone.

155 While it is true that the measure at issue concerns individual aid which benefits only Finnair, the applicant does not show how that exclusive character is such as to deter air carriers from establishing themselves in Finland or from providing services from that country or to it. In particular, the applicant fails to identify the elements of fact or law which would cause that measure to produce restrictive effects that would go beyond those which trigger the prohibition in Article 107(1) TFEU. On the contrary, as found in paragraphs 139 to 148 above, those effects are necessary and proportionate to remedy the serious disturbance in the Finnish economy caused by the COVID-19 pandemic, in accordance with the requirements of Article 107(3)(b) TFEU.

156 Consequently, the measure at issue cannot constitute a barrier to the freedom of establishment or to the freedom to provide services. It follows that the applicant is not justified in criticising the Commission on the ground that it failed to examine the compatibility of that measure with the freedom of establishment and the freedom to provide services or, a fortiori, in claiming that the Commission should have had doubts in that regard.

157 It follows from all of the foregoing that the applicant has not provided evidence in the third plea to show the existence of doubts within the meaning of Article 4(3) and (4) of Regulation 2015/1589. The third plea must therefore be rejected in its entirety.

The fourth plea in law, alleging an infringement of the obligation to state reasons

158 The applicant argues that the Commission failed to assess a number of factors that were crucial for establishing the compatibility of the aid with Article 107(3)(b) TFEU and the temporary framework. First, it claims, the Commission failed to determine how a measure targeting Finnair could, by itself, remedy a serious disturbance in the Finnish economy. Second, the Commission did not provide reasons why Finnair did not have any means of recapitalisation available to it other than the measure at issue. Third, the Commission omitted to explain why a higher level of dilution of existing shareholders could be a substitute for the incentive for a buy-back by Finnair of the State's participation. Fourth, the Commission failed to carry out, even summarily, a balancing test of the positive and adverse effects of the measure at issue. Fifth, the Commission did not provide reasons why Finnair's market power had to be assessed solely in the light of the level of congestion at Helsinki Airport or the reasons why it did not have such power. Sixth, the Commission failed to assess whether the measure at issue was non-discriminatory and whether it complied with the principles of the freedom to provide services and the freedom of establishment.

159 The Commission, supported by the Republic of Finland, disputes those arguments.

160 It should be borne in mind that, according to settled case-law, the statement of reasons required by 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 measure, in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent court 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 go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements laid down by that article 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 (judgments of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraph 79, and of 8 September 2011, *Commission* v *Netherlands*, C-279/08 P, EU:C:2011:551, paragraph 125).

161 In the first place, as regards the statement of reasons concerning the ability of the measure at issue to remedy by itself the serious disturbance in the Finnish economy, it should be recalled that Article 107(3)(b) TFEU does not require the aid in question to be capable, on its own, of remedying the serious disturbance in the economy of the Member State concerned. Consequently, the Commission did not have to provide reasons in that regard.

162 In the second place, with regard to the statement of reasons for the contested decision as far as concerns the other means for Finnair to increase its capital, the Commission explained in a sufficiently clear and precise manner, as is apparent from paragraphs 49, 51 and 53 above, why it took the view that the Finnish authorities had established that there were no other means of finding equity in the short term.

163 In the third place, with regard to the statement of reasons for the contested decision concerning the possible interaction between the level of dilution of the existing shareholders and the buy-back by Finnair of the State shareholding, it must be stated that, on any view, as is apparent from paragraph 72 above, the Commission in the contested decision stated to the requisite legal standard the reasons why the measure at issue satisfied the conditions laid down in Article 107(3)(b) TFEU, even if it did not include the step-up mechanism.

164 In the fourth place, in respect of the statement of reasons for the contested decision concerning the balancing test of the positive and adverse effects of the measure at issue, it is sufficient to note that, as is apparent from paragraphs 106 to 110 above, that balancing test is not required by Article 107(3)(b) TFEU or the temporary framework. Consequently, the Commission did not have to provide any reasoning in that regard.

165 In the fifth place, with regard to the statement of reasons relating to the significant market power of Finnair, a reading of paragraphs 98 to 102 of the contested decision supports the finding that the Commission set out in a sufficient manner its approach to that question, the reasons why it had chosen that approach and the grounds underpinning the conclusion that that airline did not have such power.

166 In the sixth place, concerning the statement of reasons in the light of the principles of non-discrimination, the freedom to provide services and the freedom of establishment, it must be stated that the contested decision contains the information referred to in paragraph 36 above, which makes it possible to understand Finnair's particular importance for the connectivity and the economy of Finland and the reasons why the Republic of Finland chose that company as the sole beneficiary of the measure at issue.

167 It follows that the contested decision contains a sufficient statement of reasons and that, consequently, the fourth plea must be rejected.

168 In the light of the foregoing considerations, the action must be dismissed in its entirety.

Costs

169 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the latter.

170 In addition, in accordance with Article 138(1) of the Rules of Procedure, the Member States which have intervened in the proceedings are to bear their own costs. The French Republic and the Republic of Finland must therefore bear their own costs.

On those grounds,

THE GENERAL COURT (Tenth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

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 Republic of Finland to bear their own respective costs.**

Kornezov Buttigieg Kowalik-Bańczyk

Hesse Petrlík

Delivered in open court in Luxembourg on 22 June 2022.

E. Coulon S. Papasavvas

Registrar President

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* Language of the case: English.