



ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

10 December 2025 *

(State aid – Portuguese air transport market – Restructuring aid granted by Portugal to TAP SGPS and TAP Air Portugal – Commission decision authorising aid under Article 107(3)(c) TFEU – Guidelines on State aid for rescuing and restructuring undertakings in difficulty – Freedom of establishment – Freedom to provide services – Equal treatment – Obligation to state reasons)

In Case T-458/22,

Ryanair DAC, established in Swords (Ireland), represented by E. Vahida, F.-C. Laprévotte, S. Rating, L. Geiger and C. Cozzani, lawyers,

applicant,

v

European Commission, represented by J. Carpi Badía, I. Barcew and V. Bottka, acting as Agents,

defendant,

supported by

Portuguese Republic, represented by A. Pimenta, P. Barros da Costa, M. Ramos and A. Rodrigues, acting as Agents, and by N. Mimoso Ruiz and G. Oliveira e Costa, lawyers,

intervener,

THE GENERAL COURT (Seventh Chamber),

composed, at the time of the deliberations, of K. Kowalik-Bańczyk (Rapporteur), President, G. Hesse and B. Ricziová, Judges,

* Language of the case: English.

Registrar: S. Spyropoulos, Administrator,
 having regard to the written part of the procedure,
 further to the hearing on 5 June 2025,
 gives the following

Judgment

- 1 By its action under Article 263 TFEU, the applicant, Ryanair DAC, seeks the annulment of Commission Decision (EU) 2022/763 of 21 December 2021 on the State aid SA.60165 – 2021/C (ex 2021/N) which Portugal is planning to implement for TAP SGPS (OJ 2022 L 139, p. 19; ‘the contested decision’).

I. Background to the dispute

- 2 On 10 June 2021, the Portuguese Republic notified the European Commission of its intention to grant restructuring aid within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ 2014 C 249, p. 1; ‘the Guidelines’) to the economic unit comprising Transportes Aéreos Portugueses, SGPS, SA (‘TAP SGPS’), Transportes Aéreos Portugueses, SA (‘TAP Air Portugal’) and the entities under their control (together, ‘TAP’). That aid measure (‘the measure at issue’) consisted of a loan guarantee and a recapitalisation measure and also involved the conversion of a State loan into equity.
- 3 The measure at issue was preceded by a rescue measure for the purposes of the Guidelines, in the form of a loan granted by the Portuguese Republic in an amount up to EUR 1.2 billion, which had been authorised by the Commission pursuant to Article 107(3)(c) TFEU, read in conjunction with the Guidelines, in Decision C(2020) 3989 final of 10 June 2020 on the State aid SA.57369 (2020/N) – COVID 19 – Portugal – Aid to TAP. That decision having been annulled by the Court in the judgment of 19 May 2021, *Ryanair v Commission* (TAP; Covid-19) (T-465/20, EU:T:2021:284), the Commission adopted Decision C(2021) 5302 final of 16 July 2021 on the State aid SA.57369 (2020/N) – Portugal – Rescue aid to TAP SGPS, once again authorising the rescue measure (‘the decision on the rescue measure’). The latter decision was the subject of an action brought by the applicant before the Court, which was dismissed in the judgment of 5 February 2025, *Ryanair v Commission* (TAP II; rescue aid; COVID-19) (T-743/21, not published, under appeal, EU:T:2025:135).
- 4 On 16 July 2021, taking the prima facie view that the measure at issue did not meet all the conditions for compatibility laid down in the Guidelines, the

Commission decided to initiate the formal investigation procedure provided for in Article 108(2) TFEU.

- 5 On 21 December 2021, the Commission adopted the contested decision, in which it found that the measure at issue constituted State aid within the meaning of Article 107(1) TFEU, but that it was compatible with the internal market on the basis of Article 107(3)(c) TFEU, read in conjunction with the Guidelines. The total amount of the measure at issue authorised in the contested decision came to EUR 2.55 billion.

II. Forms of order sought

- 6 The applicant claims that the Court should:
- annul the contested decision;
 - order the Commission to pay the costs.
- 7 The Commission and the Portuguese Republic contend that the Court should:
- dismiss the action;
 - order the applicant to pay the costs.

III. Law

- 8 In support of its action, the applicant relies on nine pleas in law. The first seven pleas allege errors of assessment and of law, as well as failures to state reasons, on the part of the Commission when it verified whether various conditions laid down in the Guidelines were satisfied. More specifically, those pleas allege, first, that the Commission failed to establish that TAP was eligible for restructuring aid; second, that the Commission failed to establish that the measure at issue contributed to an objective of common interest within the meaning of the Guidelines; third, that the Commission failed to establish that the restructuring plan was realistic, coherent, far-reaching and capable of restoring TAP's long-term viability; fourth, that the Commission failed to establish the necessity of the measure at issue or its incentive effect; fifth, that the Commission failed to establish the appropriateness of the measure at issue; sixth, that the Commission failed to establish the proportionality of the measure at issue; and seventh, that the Commission did not adequately review the negative effects of the measure at issue. The eighth plea alleges breach of the principles of non-discrimination, freedom to provide services and freedom of establishment, while the ninth plea alleges infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU.

A. The first plea in law, alleging that the Commission failed to establish that TAP was eligible for restructuring aid

- 9 By the first plea, the applicant submits that the Commission erred in finding that TAP was eligible for restructuring aid, thereby misconstruing the conditions laid down in point 22 of the Guidelines, and that the Commission infringed its obligation to state reasons in that regard. In support of that plea, the applicant puts forward, in essence, two complaints. By the first complaint, it maintains that the Commission failed to examine whether TAP’s difficulties were too serious to be dealt with by the group itself. By the second complaint, it argues that the Commission failed to demonstrate that TAP’s difficulties were intrinsic and were not the result of an arbitrary allocation of costs within the group.
- 10 Before examining the applicant’s arguments, it should be recalled, at the outset, that, under point 22 of the Guidelines, which is in section 2.2 of those guidelines, entitled ‘Material scope: Meaning of “undertaking in difficulty”’, ‘a company belonging to or being taken over by a larger business group is not normally eligible for aid under these guidelines, except where it can be demonstrated that the company’s difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.’
- 11 Point 22 of the Guidelines therefore sets out the conditions for considering that an undertaking in difficulty belonging to or being taken over by a larger business group is eligible for rescue or restructuring aid under those guidelines. Accordingly, if the beneficiary of the aid belongs to or is being taken over by a larger business group, it is the task of the Commission to examine, first, whether the difficulties faced by the beneficiary are intrinsic and are not the result of an arbitrary allocation of costs within the group and, second, whether those difficulties are too serious to be dealt with by that group itself.

1. The first complaint of the first plea in law, concerning the examination of the group’s ability to deal with TAP’s difficulties

- 12 As regards the examination of the ability of the group to which TAP belongs to deal with its difficulties, first, the applicant submits that the Commission wrongly failed to examine the ability of HPGB, SGPS, SA (‘HPGB’), the owner of 22.5% of the capital of TAP SGPS at the time when the contested decision was adopted, and of its shareholder, Mr Humberto Pedrosa, to deal with TAP’s difficulties, even partially. Second, it maintains that the Commission failed properly to examine the ability of the Portuguese Republic to deal with TAP’s difficulties on market terms. It argues that those omissions also constitute a failure to state adequate reasons.
- 13 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

- 14 In the present case, in recitals 189 to 195 of the contested decision, the Commission examined whether TAP SGPS and TAP Air Portugal satisfied the conditions laid down in point 22 of the Guidelines. As regards the condition relating to the group's ability to deal with the difficulties of those undertakings, the Commission noted, *inter alia*, in recital 193 of the contested decision, referring to recitals 8, 11 and 12 of that decision, that the change in the capital ownership of TAP SGPS in July 2020 had resulted in the Portuguese Republic having sole control over TAP SGPS. Following that change, the public undertaking Participações Públicas, SGPS, SA ('Parpública') and the Direção-Geral do Tesouro e Finanças (Directorate-General for the Treasury and Finance, Portugal; 'the DGTF') held shareholdings corresponding to 50% and 22.5% of the capital of TAP SGPS, respectively. The Commission also observed, in recital 192 of the contested decision, that the Portuguese Republic had sole control over TAP Air Portugal, approximately 92% of the capital of TAP Air Portugal being held by the DGTF. In the light of those considerations, the Commission found that TAP SGPS and TAP Air Portugal formed part of the same economic unit or group. Next, it considered, in recital 194 of the contested decision, that the Portuguese Republic and its intermediaries had not, and could not have, dealt with the difficulties of TAP SGPS and TAP Air Portugal on market terms.
- 15 In that regard, in the first place, it must be observed that the applicant does not dispute that, at the time when the contested decision was adopted, only the Portuguese Republic, through Parpública and the DGTF, had control over TAP SGPS and TAP Air Portugal and that the sole private shareholder of TAP SGPS, Mr Pedrosa, who held 22.5% of the capital through HPGB, did not have controlling rights over TAP SGPS. Nor does the applicant explain why Mr Pedrosa should be regarded as belonging to the TAP SGPS group within the meaning of point 22 of the Guidelines, despite the fact that he did not have controlling rights as at the date of the contested decision. The applicant merely claims that the Commission should nevertheless have examined Mr Pedrosa's ability to assist TAP SGPS since, at the time when the rescue measure was granted, Atlantic Gateway, SGPS, Lda. ('AGW'), which was indirectly under the control of Mr Pedrosa, jointly controlled TAP SGPS. However, it must be stated that the Commission was required to apply the eligibility conditions laid down in the Guidelines at the time when the contested decision was adopted, in December 2021, and not at the time of the grant of the rescue measure in June 2020, in respect of which compliance with the eligibility conditions had already been assessed beforehand in the decision on the rescue measure. In so doing, contrary to what the applicant claims, the Commission was not obliged to assess, in the contested decision, the ability of Mr Pedrosa and his group to deal with TAP SGPS's difficulties.
- 16 Moreover, contrary to what the applicant maintains in the reply, the Commission also did not disregard the situation of the TAP SGPS group as it existed at the time of the decision on the rescue measure. Indeed, in recital 191 of the contested decision, the Commission noted that it had concluded in the decision on the rescue measure that the shareholders controlling TAP SGPS at the time when the rescue

aid was granted – which necessarily included AGW, indirectly under the control of Mr Pedrosa at that time – had the ability neither to ensure the viability of TAP SGPS over the next six months nor to finance its restructuring. That finding was reiterated, in essence, in recital 194 of and footnote 56 to the contested decision.

- 17 In the second place, as regards the applicant's criticism that the Commission did not conduct a sufficiently thorough examination when it concluded, in recital 194 of the contested decision, that financial intervention by the Portuguese Republic, inter alia through Parpública, capable of remedying the difficulties of TAP SGPS and TAP Air Portugal could not be carried out on market terms, it must be held that the merits of that conclusion have not really been called into question by the applicant.
- 18 The applicant has not put forward any strong evidence demonstrating the ability of the Portuguese Republic to restore TAP's viability on market terms. Although the applicant asserts in the application that Parpública had assets worth approximately EUR 11 billion as at 31 December 2021, including EUR 650 million in cash and equivalents, it has not put forward any serious arguments claiming that it would have been possible for Parpública to finance TAP SGPS on terms acceptable to a market operator, in particular in the light of the seriousness of TAP's financial situation, as described in recitals 18 to 26 of the contested decision, and the scale of the measures necessary to restructure that group and to restore it to viability, as described in recitals 27 to 53 of the contested decision.
- 19 It follows that the applicant has not demonstrated that a more thorough examination of the Portuguese Republic's ability to deal with the difficulties of TAP SGPS and TAP Air Portugal was necessary in the circumstances of the present case.
- 20 In the third place, as regards the applicant's argument that the examination in the contested decision of the group's ability to deal with TAP's difficulties constitutes a failure to state adequate reasons in breach of Article 296 TFEU, it should be recalled, first of all, 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 of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 8 September 2011,

Commission v Netherlands, C-279/08 P, EU:C:2011:551, paragraph 125 and the case-law cited).

- 21 In that regard, first, it is apparent from the examination, carried out above, of the arguments put forward in the context of the first complaint of the first plea that the Commission explained in the contested decision that only the Portuguese Republic controlled TAP SGPS as at the date on which the contested decision was adopted, which indicates that the Commission did not consider that there was a relationship of control between HPGB or Mr Pedrosa and TAP SGPS, and that, consequently, they did not belong to the same larger business group within the meaning of point 22 of the Guidelines.
- 22 Second, the Commission set out in the contested decision the reasons why the Portuguese Republic did not have the ability to deal with TAP's difficulties on market terms. It must be observed that the Commission explained TAP's very difficult financial situation, described in recitals 18 to 26 and 187 of the contested decision, and the scale of the measures necessary to restructure that group and to restore it to viability, described in recitals 27 to 53 of the contested decision. Moreover, it referred, in recital 191 of the contested decision, to the fact that it had already concluded in the decision on the rescue measure that the shareholders did not have the capacity to meet TAP SGPS's liquidity needs for the following six months, which were estimated at EUR 1.2 billion, or to finance its restructuring, and, in recital 187 of that decision, to the fact that the financial situation of TAP SGPS had worsened in 2020.
- 23 It follows that the statement of reasons provided in the contested decision is adequate in the light of the applicable case-law, cited in paragraph 20 above.
- 24 In view of the foregoing, the first complaint of the present plea must be rejected.

2. *The second complaint of the first plea in law, concerning the examination of the origin of TAP's difficulties*

- 25 As regards the examination of the origin of TAP's difficulties, first, the applicant submits that the Commission failed to establish that those difficulties were intrinsic to TAP. Second, it maintains that the Commission failed to establish that those difficulties were not the result of an arbitrary allocation of costs within the group. In addition, it argues that the redactions of data in the contested decision with regard to TAP's financial situation constitute a failure to state reasons.
- 26 The Commission, supported by the Portuguese Republic, disputes the applicant's arguments.
- 27 In the present case, in its examination, in recitals 189 to 195 of the contested decision, aimed at determining whether TAP SGPS and TAP Air Portugal satisfied the conditions laid down in point 22 of the Guidelines, the Commission verified whether the financial difficulties of those entities were intrinsic to them

and were not the result of an arbitrary allocation of costs within the group. In that regard, in recital 190 of the contested decision, the Commission found, *inter alia*, first, that it had noted in the decision on the rescue measure that there was no evidence that the shareholders of TAP SGPS at that time, namely Parpública and AGW, and their ultimate shareholders had allocated costs to the detriment of TAP SGPS, and, second, referring to recitals 19 to 22 of the contested decision, that the difficulties of TAP SGPS were intrinsic. Next, in recital 192 of the contested decision, the Commission considered, so far as concerned TAP Air Portugal, that there was no evidence that its precarious financial situation stemmed from an arbitrary allocation of costs within its group. The Commission stated that that finding applied both as at the date on which the contested decision was adopted, when TAP Air Portugal was under the sole control of the Portuguese Republic, and in respect of the earlier period during which TAP Air Portugal was under the joint control of Parpública, which was owned by the Portuguese Republic, and of AGW, of which the ultimate shareholders were Mr Pedrosa and Mr David Neeleman.

- 28 In that regard, in the first place, it should be noted at the outset that, contrary to what the applicant claims in its reply, the part of the sentence ‘except where it can be demonstrated that the company’s difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group’ in point 22 of the Guidelines merely sets out one and the same condition which is to be interpreted as meaning that the difficulties of an undertaking belonging to a group must be regarded as being intrinsic if they are not the result of an arbitrary allocation of costs within that group (judgment of 18 May 2022, *Ryanair v Commission (Condor; rescue aid)*, T-577/20, EU:T:2022:301, paragraph 48).
- 29 It should also be noted, to that effect, that the purpose of point 22 of the Guidelines is to prevent a group of undertakings from offloading its costs, debts or liabilities onto a group entity, thus making it eligible for rescue aid, whereas it would not be otherwise. In other words, point 22 seeks to prevent the circumvention of State aid rules by means of mechanisms that are created artificially within a group (see, to that effect, judgment of 18 May 2022, *Ryanair v Commission (Condor; rescue aid)*, T-577/20, EU:T:2022:301, paragraph 46).
- 30 In the second place, it must be held that the Commission had, in the present case, relevant and consistent evidence that TAP’s difficulties were intrinsic and were not the result of an arbitrary allocation of costs within the group.
- 31 First, according to the information set out in recitals 18 to 26 of the contested decision, the solvency and liquidity difficulties of TAP SGPS and TAP Air Portugal arose from the performance and management of those entities prior to the start of the COVID-19 pandemic. Those difficulties were aggravated by that pandemic, which also interrupted the measures undertaken by TAP Air Portugal to reduce its costs, and led to a significant deterioration in the equity position of TAP SGPS and TAP Air Portugal, with both entities being in negative equity in 2020.

- 32 Although the applicant disputes the sufficiency of the information in the contested decision regarding the performance of TAP Air Portugal and the financial situation of TAP SGPS, as well as the financial situation of the other entities of the group, it must be stated that it does not deny that those undertakings were encountering difficulties or that TAP Air Portugal was generating almost all of TAP SGPS's revenues when the rescue and restructuring process began, with the result that the Commission was justified in giving significant weight in its examination to the results of TAP Air Portugal rather than to those of the other subsidiaries of TAP SGPS. Furthermore, while the applicant maintains that, in other previous decisions on State aid, the Commission analysed the accounts of the group concerned, that does not mean that it is required to do so in the present case. The legality of the contested decision must be assessed solely in the context of Article 107(3)(c) TFEU, read in conjunction with the Guidelines, and not in the light of an alleged previous decision-making practice of the Commission (see, to that effect, judgment of 26 October 2022, *Siremar v Commission*, T-668/21, not published, EU:T:2022:677, paragraph 121 and the case-law cited).
- 33 Second, as the Commission found in recital 192 of the contested decision, there was no evidence to suggest that the financial difficulties faced by TAP stemmed from an arbitrary allocation of costs within the group, let alone an allocation from Mr Neeleman and Mr Pedrosa, as the applicant claims. Although, in that regard, the applicant criticises the Commission's reference, in recital 190 of the contested decision, to the analysis carried out in the decision on the rescue measure, arguing that the latter decision did not contain a sufficiently thorough analysis of that issue, it must be stated that the applicant has not put forward any serious argument disputing the merits of that analysis, which finds, inter alia in paragraph 117 of the decision on the rescue measure, that there was no evidence of such an allocation of costs to the detriment of TAP SGPS. The applicant's claims concerning the transactions that took place between AGW or Mr Pedrosa, through his companies, and TAP SGPS are speculative and, even if they were established, such transactions would not, in themselves, be capable of demonstrating an arbitrary allocation of costs within the group to the detriment of TAP SGPS.
- 34 In the third place, it is also necessary to reject the applicant's argument that the fact that certain information regarding the financial difficulties of TAP SGPS and TAP Air Portugal is redacted in the public version of recitals 19 and 21 of the contested decision constitutes a failure to state reasons. As is apparent from the examination of the present complaint, the information presented in the contested decision fully enables the persons concerned to ascertain the Commission's reasons in relation to compliance with the eligibility conditions laid down in point 22 of the Guidelines and enables the competent court to exercise its power of review in that regard, in accordance with the case-law principles set out in paragraph 20 above.
- 35 Lastly, it is also necessary, at this stage, to address the applicant's argument, put forward in the context of the third plea, but relating to TAP's eligibility for restructuring aid, according to which the Commission did not determine whether

TAP was still classified as an undertaking in difficulty after the authorisation of the various aid measures intended as compensation for the damage suffered as a result of the travel restrictions linked to the COVID-19 pandemic. It suffices to observe in that regard that the applicant has not put forward any specific arguments challenging the Commission’s assessment, set out in recital 187 of the contested decision, that TAP SGPS and TAP Air Portugal were undertakings in difficulty within the meaning of point 20(a) of the Guidelines. Nor does it call into question the fact, relied on by the Commission in its defence, that the amounts paid under those aid measures were, in any event, insufficient to cover the losses accumulated by TAP SGPS and TAP Air Portugal prior to the pandemic.

- 36 In the light of the foregoing, the second complaint of the present plea and, consequently, the plea in its entirety must be rejected.

B. The second plea in law, alleging that the Commission failed to establish that the measure at issue contributed to an objective of common interest

- 37 By the second plea, the applicant submits that the Commission made errors of law and manifest errors of assessment in that it failed to demonstrate that the measure at issue contributed to an objective of common interest for the purposes of point 44 of the Guidelines. In support of that plea, the applicant raises, in essence, two complaints. By the first complaint, it claims that the risk of disruption to an important service within the meaning of point 44(b) of the Guidelines was not established. By the second complaint, it submits that TAP’s systemic role within the meaning of point 44(c) of the Guidelines was also not demonstrated.
- 38 Before examining the applicant’s arguments, it should be recalled at the outset that, according to the case-law, the Commission can declare aid compatible with Article 107(3) TFEU only if it contributes to the attainment of one of the objectives specified, something which, under normal market conditions, the recipient firms would not achieve by their own actions. In other words, an aid measure cannot be declared compatible with the internal market if it improves the financial situation of the recipient undertaking without being necessary for the attainment of the objectives specified in Article 107(3) TFEU (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).
- 39 As regards, in particular, the application of Article 107(3)(c) TFEU in the case of restructuring aid, it follows from section 3.1 of the Guidelines, entitled ‘Contribution to an objective of common interest’, and more specifically from point 43 of those guidelines, that the mere fact of preventing an undertaking from exiting the market is not sufficient to justify the use of such aid. Point 43 of the Guidelines states that ‘clear evidence should be provided that aid pursues an objective of common interest, in that it aims to prevent social hardship or address market failure’.

- 40 Point 44(a) to (g) of the Guidelines sets out seven examples of situations which establish that the aid pursues a common interest.
- 41 Those examples include, in point 44(b) of the Guidelines, a situation in which ‘there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in (for example, a national infrastructure provider)’.
- 42 In addition, according to point 44(c) of the Guidelines, the failure of the beneficiary would be likely to involve serious social hardship or severe market failure if ‘the exit of an undertaking with an important systemic role in a particular region or sector would have potential negative consequences (for example as a supplier of an important input)’.

1. The first complaint of the second plea in law, concerning the objective of common interest set out in point 44(b) of the Guidelines

- 43 As regards the objective of common interest set out in point 44(b) of the Guidelines, the applicant submits that the Commission failed to substantiate its conclusion that it was unlikely that TAP Air Portugal’s services could be replicated within a reasonable timeframe in the event of TAP Air Portugal’s exit from the market. According to the applicant, TAP’s services could have been replaced in the event of its exit from the market and many airlines would have been able to do so, in particular with TAP’s slots at Lisbon airport (Portugal) being made available. In addition, it maintains that the Commission did not determine whether all or only part of TAP’s services had to be replicated, what a reasonable timeframe would be, or why the replacement of those services would have led to their worsening.
- 44 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.
- 45 In the present case, in recitals 196 to 218 of the contested decision, the Commission considered that the measure at issue pursued the objectives of common interest set out in point 44(b) and (c) of the Guidelines.
- 46 As regards specifically the objective set out in point 44(b) of the Guidelines, the Commission considered that the measure at issue prevented the risk of disruption to an important service, observing that TAP Air Portugal operated unique air transport routes from Lisbon airport, providing regular services between Portugal and the Azores, Madeira and other Portuguese-speaking countries around the world. The Commission considered that it was highly unlikely that, in the event of TAP Air Portugal’s exit from the market, competitors would be willing and able to operate all of those routes, in particular to other Portuguese-speaking countries, with the same frequency as that provided by TAP Air Portugal, or that such replication could take place within a reasonable timeframe. In particular, it found that the business model of TAP Air Portugal’s competitors established in the

European Union excluded direct flights from Portugal to other continents. The Commission noted that the third parties that had submitted comments, which included stakeholders in the tourism sector, airport operators and Portuguese and Brazilian public entities, had referred extensively to the risk of disruption to an important service in the event of TAP's exit from the market.

- 47 In that regard, as a preliminary point, it must be observed that point 44(b) of the Guidelines does not require that it be impossible to replicate an important service; it is sufficient that it is 'hard' to do so (see, to that effect, judgment of 18 May 2022, *Ryanair v Commission (Condor; rescue aid)*, T-577/20, EU:T:2022:301, paragraphs 76 to 84).
- 48 Furthermore, in the first place, it must be stated that the Commission relied on a body of relevant and consistent evidence in order to conclude, correctly, that it was unlikely that TAP Air Portugal's services ensuring the connectivity of Portugal with the Azores, Madeira and other Portuguese-speaking countries around the world would be replaced within a reasonable timeframe by other operators in the event of TAP Air Portugal's exit from the market. As is apparent from paragraph 46 above, it noted the very large number of routes and the unique nature of TAP Air Portugal's network from Lisbon airport, as well as the regularity of those routes, which are operated throughout the year. Moreover, it pointed out that the business model of TAP Air Portugal's competitors established in the European Union, which were low-cost airlines or airlines with hubs at other EU airports, excluded direct flights from Portugal to other continents, which TAP Air Portugal provided. Thus, according to the Commission, it was unlikely that a combination of other operators would have an incentive to replace TAP Air Portugal's services and would be capable of doing so, there being no evidence of willingness on the part of other operators to take such action.
- 49 The arguments put forward by the applicant are not such as to call that assessment into question.
- 50 First, the applicant's claim that the Commission did not specify in the contested decision whether all or only part of TAP Air Portugal's services had to be replaced, or within what timeframe, has no basis in fact. In the contested decision, the Commission stated, in recitals 204 and 207 thereof, that there was a risk that 'the same services in frequency and geographic scope' would not be replaced and, in recital 215 of that decision, that the replacement would be only partial; therefore, it verified whether all the services could have been provided in the event of TAP Air Portugal's exit from the market. That position is consistent with the Commission's assessment, summarised in paragraph 46 above, that it was the very scope of TAP Air Portugal's routes that made its service important within the meaning of point 44(b) of the Guidelines. In addition, in recital 215 of the contested decision, it referred to the possibility that TAP Air Portugal's services might be replaced by the end of the TAP restructuring plan, namely the end of 2025, a timeframe which the applicant appears to acknowledge in paragraph 65 of the application as being reasonable.

- 51 Second, although the applicant refers to several examples of airlines becoming insolvent, such as Malev and Spanair, which allegedly had no negative impact on air transport services at the airports served by those airlines since their operations had been taken over by other airlines, it must be observed that the applicant has not demonstrated that the services provided by those airlines were comparable to those of TAP Air Portugal and that, therefore, those services could have been easily replicated in the event of TAP's failure.
- 52 In the second place, as regards the fact that the Commission relied, in recitals 204, 207 and 213 of the contested decision, on comments from third parties which, according to the applicant, were in favour of the measure at issue and potentially had links with TAP, it must be observed that the Commission did not base its analysis exclusively on those comments. It merely used the comments from third parties to support its findings which, for their part, were based on factual information relating to the routes operated by TAP Air Portugal and to the importance of TAP Air Portugal for the Portuguese economy, and on the comments from the Portuguese authorities. Such use of the comments from third parties is evident from the wording of recitals 204 and 207 of the contested decision, as well as from the wording of recital 213 thereof, which explains that 36 of the 39 replies to the invitation to submit comments on the decision to initiate the formal investigation procedure confirmed the preliminary assessments contained in that decision relating to the risk of disruption to an important service and to the importance of TAP Air Portugal's role for the economy and connectivity of Portugal. In so doing, the Commission cannot be criticised for having relied on the comments from third parties.
- 53 In the light of the foregoing, the first complaint of the present plea must be rejected.

2. The second complaint of the second plea in law, concerning the objective of common interest set out in point 44(c) of the Guidelines

- 54 As regards the objective of common interest set out in point 44(c) of the Guidelines, the applicant submits that the Commission did not define what TAP's alleged systemic role was and also did not provide any evidence to support the conclusion that TAP was truly systemic. The applicant argues, inter alia, that the fact that TAP employed a certain number of people is not sufficient in that regard and points to the importance of other operators for the connectivity of Portugal.
- 55 The Commission, supported by the Portuguese Republic, disputes the applicant's arguments.
- 56 In the present case, in recitals 209 and 210 of the contested decision, the Commission considered that the measure at issue prevented the exit of an undertaking with an important systemic role, within the meaning of point 44(c) of the Guidelines, in Portugal. It found that TAP plays a key role in the development of tourism, the connectivity of Portugal and employment in that country. The

Commission noted, *inter alia*, in that regard, that tourism accounted for 14.6% of Portugal's gross domestic product (GDP) in 2018 and that TAP SGPS employed approximately 10 000 people in 2019 and was responsible for more than 110 000 indirect jobs.

- 57 In that regard, first, the applicant's argument that, in essence, the Commission should have established that TAP's failure would lead to the collapse of the entire sector in which that group operates is based on an overly restrictive interpretation of the objective set out in point 44(c) of the Guidelines.
- 58 There is nothing in the wording of point 44(c) of the Guidelines to suggest that only undertakings whose exit from the market would lead to the collapse of an entire sector are eligible for rescue or restructuring aid. According to that provision, it is sufficient that the exit of an undertaking with an important systemic role in a particular region or sector would have potential negative consequences. As regards the applicant's reference to the State aid rules applicable to the financial sector, *inter alia* the Communication of 30 July 2013 from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') (OJ 2013 C 216, p. 1) and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338), it suffices to recall that the legality of the contested decision must be assessed solely in the context of Article 107(3)(c) TFEU and the Guidelines (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), and not in the light of the abovementioned Banking Communication or Directive 2013/36, as those measures are not applicable in the present case.
- 59 Second, contrary to what the applicant claims, it is apparent from the foregoing that the Commission not only took account, *inter alia* in recital 210 of the contested decision, of the number of TAP's employees in order to conclude that TAP played an important role in Portugal, but that it also relied on other factors, namely the importance of TAP for tourism in Portugal and the Portuguese economy and for Portugal's connectivity with other Portuguese-speaking countries around the world. Thus, the exit of TAP from the market would have had considerable negative consequences for the Portuguese economy in general.
- 60 Third, although the applicant asserts that other airlines would contribute more to the connectivity of Portugal in the event of TAP's exit from the market, it must be observed that, in accordance with what has been stated in paragraphs 48 to 52 above, the applicant has not put forward any arguments capable of calling into question the Commission's assessments regarding the unique nature of TAP Air Portugal's network from Lisbon airport in terms of the number and frequency of the routes to the Azores, Madeira and other Portuguese-speaking countries around

the world. Thus, the Commission was entitled to consider, in recital 210 of the contested decision, that TAP's role in the connectivity of Portugal was very important. Contrary to what the applicant submits, there was no evidence to suggest that other operators would have the ability and willingness to operate that same unique network by purchasing TAP's assets.

- 61 In addition, it should be recalled once again that the Commission justified its conclusion as to the objective set out in point 44(c) of the Guidelines on the basis not only of TAP's importance for the connectivity of Portugal, but also of its importance for tourism and the economy in Portugal, as well as on the basis of the number of direct and indirect jobs generated by that group. Thus, even assuming, as the applicant maintains, that other airlines could have ensured the connectivity of Portugal in the event of TAP's exit from the market, which has not been established, there would still be other grounds in the contested decision justifying the Commission's conclusion. The applicant's line of argument has not called into question the relevance and validity of those other grounds, which relate to TAP's importance for the economy, tourism and employment in Portugal.
- 62 Fourth, the applicant's argument that the Commission incorrectly based its analysis on the comments from third parties must be rejected for the reasons set out in paragraph 52 above.
- 63 In the light of the foregoing, the second complaint of the present plea and, consequently, the second plea in its entirety must be rejected.

C. The third plea in law, alleging that the Commission failed to establish that the restructuring plan was realistic, coherent, far-reaching and capable of restoring TAP's long-term viability

- 64 By the third plea, the applicant submits that the Commission failed to establish that the restructuring plan was realistic, coherent, far-reaching and capable of restoring TAP's long-term viability, thereby disregarding the conditions laid down in points 45 to 52 of the Guidelines. In support of that plea, it relies, in essence, on four complaints, concerning, first, the question whether the changes provided for in the restructuring plan were adequate and the timescale for the restructuring; second, the question whether the financial projections underlying the restructuring plan were realistic; third, the question whether TAP's return to viability was demonstrated; and, fourth, the level of reasoning for the examination in question.
- 65 Before examining the applicant's arguments, it should be noted at the outset that, in section 3.1.2 of the Guidelines, entitled 'Restructuring plan and return to long-term viability', point 45 provides as follows:

'Restructuring aid within the scope of [those] guidelines cannot be limited to financial aid designed to make good past losses without tackling the reasons for those losses. In the case of restructuring aid, therefore, the Commission will require that the Member State concerned submit a feasible, coherent and far-

reaching restructuring plan to restore the beneficiary’s long-term viability. Restructuring may involve one or more of the following elements: the reorganisation and rationalisation of the beneficiary’s activities on to a more efficient basis, typically involving withdrawal from loss-making activities, restructuring of those existing activities that can be made competitive again and, possibly, diversification towards new and viable activities. It typically also involves financial restructuring in the form of capital injections by new or existing shareholders and debt reduction by existing creditors.’

1. The first complaint of the third plea in law, concerning the question whether the changes provided for in the restructuring plan were adequate and the timescale for the restructuring

- 66 The applicant disputes the adequacy of the changes provided for in the restructuring plan and the period within which the restructuring must take place.
- 67 First, the applicant submits that the Commission incorrectly examined TAP’s return to viability by failing to assess or require the operational changes necessary to remedy TAP’s lack of efficiency and to reduce its costs, as it should have done in accordance with the Guidelines. The applicant claims that, on the contrary, the measure at issue allows TAP to maintain its expansion plans without seeking to restrict its activity, inter alia by reducing the number of routes operated by TAP. In that regard, it argues that the Commission also did not correctly assess the possibilities for reducing TAP’s fleet, in particular by accepting a marginal reduction which was already underway prior to the period of TAP’s restructuring.
- 68 Second, the applicant submits that TAP’s return to viability would, according to the information provided in the contested decision, take at least four years, which does not correspond to a reasonable timescale under the Guidelines.
- 69 As a preliminary point, it should be recalled that the Guidelines state, in point 45, that a ‘far-reaching’ restructuring plan must be submitted in order to restore the beneficiary’s long-term viability and, in point 48, that that plan ‘must identify the causes of the beneficiary’s difficulties and the beneficiary’s own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary’s underlying problems.’
- 70 In the present case, in recitals 28 to 37 of the contested decision, the Commission set out the measures contained in the restructuring plan to remedy TAP’s difficulties and make its operations more efficient, in order to restore its viability. First, that involved focusing on its core business, carried out by TAP Air Portugal and Portugália Airlines – Companhia Portuguesa de Transportes Aéreos, SA, and divesting its non-core business, namely its stakes in TAP Manutenção e Engenharia Brasil, SA (‘M&E Brasil’), an aircraft maintenance undertaking, SPdH-Serviços Portugueses de Handling, SA (‘Groundforce’), a ground handling undertaking, and Cateringpor – Catering de Portugal, SA (‘Cateringpor’), a catering service undertaking. Second, TAP Air Portugal planned to optimise its

network by reducing its aircraft fleet and making that fleet more homogeneous, by enhancing the role of Lisbon airport as a hub and by reducing routes that were loss-making and that had less connectivity value. Third, TAP Air Portugal envisaged reducing its operating costs by renegotiating contracts with its aircraft suppliers and lessors as well as with certain other suppliers, by using aircraft with lower fuel consumption and by decreasing its labour costs through staff reductions and changes in salary conditions. Fourth, TAP Air Portugal expected its revenues to increase once its restructuring plan was implemented.

- 71 In recitals 223 to 238 of the contested decision, the Commission examined whether the restructuring plan enabled TAP's viability to be restored, in accordance with points 45 to 52 of the Guidelines. It took the view that the projections relating to revenues and cost reductions resulting from the measures contained in the restructuring plan were credible. Moreover, it considered that the restructuring plan should enable TAP to return to viability by the end of 2025.
- 72 In that regard, in the first place, it is apparent from recitals 28 to 37 of the contested decision, summarised in paragraph 70 above, that, contrary to what the applicant claims, the TAP restructuring plan did contain a series of operational changes in order to reduce costs and to increase TAP's efficiency. It is also apparent from recitals 223 to 238 of the contested decision, summarised in paragraph 71 above, that the Commission in fact examined whether those operational changes could remedy the difficulties faced by TAP and restore its viability, in accordance with the requirements of the Guidelines. Furthermore, it must be pointed out that, contrary to what the applicant suggests, the operational changes set out in the restructuring plan were indeed mandatory, since, by virtue of Article 2 of the operative part of the contested decision, the Portuguese Republic was under an obligation to require the implementation of the measures contained in the restructuring plan, which necessarily included operational measures.
- 73 In the second place, as regards the arguments concerning, in essence, the scale of the reduction of TAP's activities envisaged by the restructuring plan, it must be recalled that points 45 to 52 of the Guidelines establish the objective of restoring the long-term viability of the beneficiary of restructuring aid, and not the objective of reducing the beneficiary's activities, contrary to what the applicant claims. Indeed, points 45 and 49 of the Guidelines, on which the applicant relies, state that the restructuring plan is '[intended] to restore the beneficiary's long-term viability' and that that plan must provide information on how the beneficiary's long-term viability will be fostered, respectively. Furthermore, it must be noted that points 47 and 52 of those guidelines also expressly require the restoration of the long-term viability of the beneficiary of restructuring aid.
- 74 It follows from paragraph 73 above that, contrary to what the applicant submits, the Commission was not obliged to require, in order to ensure restructuring in accordance with the Guidelines, that TAP Air Portugal reduce its services or the size of its fleet to the minimum necessary to ensure the connectivity of Portugal,

which was one of the objectives justifying the grant of the measure at issue to TAP. Similarly, the Commission was not obliged, under points 45 to 52 of the Guidelines, to require a very significant reduction in the number of routes operated by that undertaking and in the size of its fleet or to ensure that it reduced the fleet to the same extent as airlines which had not received State aid. Rather, the Commission had to focus on TAP's specific situation in order to determine the circumstances of the latter's restructuring and the measures enabling it to return to viability (see, to that effect, judgment of 25 June 1998, *British Airways and Others v Commission*, T-371/94 and T-394/94, EU:T:1998:140, paragraph 211). In that regard, it should also be borne in mind that, although point 45 of the Guidelines refers to a far-reaching restructuring plan (see paragraph 65 above), that does not in any way mean that each measure undertaken in the context of such a plan – such as, in the present case, the reduction of TAP's fleet – must be far-reaching.

- 75 In the third place, as regards the applicant's argument that the reduction of TAP's fleet is not a genuine restructuring measure, since it began prior to the restructuring and involves the divestment of obsolete aircraft, first, it must be observed that it is apparent from recital 32(a) and recital 79 of the contested decision, and from footnote 25 thereto, that TAP's fleet had been reduced in 2020, from 108 aircraft in 2019 to a number ranging between 90 and 100 in February 2021. While that reduction did in fact begin before an initial restructuring plan was submitted to the Commission in December 2020, it must be stated, as the Commission contended at the hearing, that that reduction was indeed part of TAP's restructuring, since TAP had previously begun to undertake restructuring measures in order to remedy its underlying problems.
- 76 Second, the claim that TAP would have disposed of its obsolete aircraft even in the absence of the restructuring cannot succeed given its general and unsubstantiated nature. Moreover, as the Commission points out, that claim fails to take account of the fact that, in the absence of the restructuring, TAP Air Portugal would have exited the market.
- 77 In the fourth place, as regards the applicant's argument that the restructuring would not take place within a reasonable timescale under the Guidelines, it must be noted that it is apparent from recital 27 of the contested decision that the implementation of the restructuring plan covers the period from 2020 until the end of 2025. That period will therefore last from four to five years.
- 78 Point 47 of the Guidelines states that 'the restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale' and that 'the restructuring period should be as short as possible'. Annex II to the Guidelines also sets out an 'indicative model restructuring plan' which states, first, in point 7 of that annex, that the plan should outline the process for restoring the beneficiary's long-term viability within a reasonable timescale 'in principle, not to exceed three years', and, second, in point 8 thereof, that the business plan should

set out the financial projections ‘for the next five years and demonstrat[e] the return to long-term viability’.

79 It follows that, although the indicative model restructuring plan set out in Annex II refers to a timescale of, in principle, three years or less, no strict timescale is imposed by the Guidelines. Accordingly, the timescale of four to five years for the restructuring of TAP does not contravene the terms of the Guidelines, in particular in view of the context in which the Commission authorised the measure at issue, in December 2021, which was still marked by the consequences of the COVID-19 pandemic and the related travel restrictions.

80 In the light of the foregoing, the present complaint must be rejected.

2. *The second complaint of the third plea in law, concerning the question whether the financial projections underlying the restructuring plan were realistic*

81 The applicant submits that the Commission relied on financial projections in the restructuring plan which are erroneous and implausible.

82 First, the applicant maintains that, although the Commission stated, in recital 224 of the contested decision, that TAP’s return to profitability hinged on a reduction in labour and fuel costs, it wrongly failed to examine the possible consequences, for TAP’s return to viability, of the reductions in labour costs not materialising and of volatility in fuel prices.

83 Second, it claims that the Commission, in recital 227 of the contested decision, should not have checked the credibility of the financial projections in the restructuring plan solely in the light of a comparison between TAP’s earnings before interest and taxes (EBIT) and those of a sample of operators. It submits that that comparison is not appropriate since, prior to the COVID-19 pandemic, TAP incurred net income losses while having a positive EBIT margin and that, therefore, the Commission should have also carried out additional checks, in particular by taking into account TAP’s expected future interest payments.

84 Third, it argues that the Commission should have provided further explanation, in recital 227 of the contested decision, of how TAP would achieve an EBIT margin in 2025 which was in line with that of a sample of operators, since such a projection is not credible. The applicant points out, in that regard, that TAP’s EBIT margin over the period from 2015 to 2019 was significantly lower than that of those operators, including low-cost operators.

85 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

86 As a preliminary point, it should be noted that the Guidelines state, inter alia, in point 45, that the restructuring plan must be ‘feasible’ and ‘coherent’ and that it must be prepared, according to point 47, ‘on the basis of realistic assumptions as

to [the] future operating conditions’ of the beneficiary and without being dependent, according to point 51 thereof, ‘on optimistic assumptions about external factors such as variation in prices, demand or supply of scarce resources’.

- 87 In the present case, in recitals 223 to 227 of the contested decision, the Commission assessed the credibility of the assumptions underlying the financial projections contained in the restructuring plan concerning TAP’s future revenues and the reductions in its fuel and labour costs, such reductions being regarded as essential for TAP’s return to viability. To that end, in recital 227 of the contested decision, the Commission, inter alia, compared TAP’s expected EBIT margin in 2025, at the end of the restructuring period, with that of a sample of air transport operators composed of Lufthansa, IAG, SAS, Aegean, Finnair, easyJet, Wizz Air and the applicant, and observed that TAP’s expected EBIT margin should be in line with the average EBIT margin of that sample.
- 88 Furthermore, in recitals 237 and 238 of the contested decision, the Commission found that its conclusions regarding TAP’s return to viability in 2025 were confirmed by the sensitivity analysis and by the adverse scenarios provided by the Portuguese authorities, which took into account higher expected fuel prices and lower yields than anticipated in the baseline scenario, the credibility of which had been examined in recitals 223 to 227 of the contested decision.
- 89 As a preliminary point, it should be recalled that, according to settled case-law, the Commission enjoys wide discretion, the exercise of which involves complex economic and social assessments (see judgment of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 38 and the case-law cited). In the context of the review conducted by the Courts of the European Union on complex economic assessments made by the Commission in the field of State aid, it is true that it is not for those courts to substitute their own economic assessment for that of the Commission. However, the Courts of the European Union must, inter alia, establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (judgment of 24 January 2013, *Frucona Košice v Commission*, C-73/11 P, EU:C:2013:32, paragraphs 75 and 76; see, also, judgment of 24 October 2013, *Land Burgenland and Others v Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682, paragraph 79 and the case-law cited). Likewise, the Courts of the European Union must review the Commission’s interpretation of information of an economic nature (see, to that effect, judgment of 22 November 2007, *Spain v Lenzing*, C-525/04 P, EU:C:2007:698, paragraph 56).
- 90 In the first place, as regards the examination of the possible consequences, for TAP’s return to viability, of the reductions in labour costs not materialising and of volatility in fuel prices, referred to in recitals 224 and 225 of the contested decision, first, it must be stated that the Commission did indeed examine, in recitals 237 and 238 of the contested decision, the consequences which would

follow from fuel prices that were higher than expected and concluded that such an adverse scenario would not jeopardise TAP's return to viability in 2025. The applicant's argument that the Commission failed, in its assessment of TAP's return to viability, to examine the consequences of fuel price volatility therefore has no basis in fact.

- 91 Second, concerning the reductions in salary costs, it must be observed that the Commission verified that those reductions were certain, with the result that it was not necessary for it to examine the possibility of those cost reductions not materialising. Indeed, it is apparent from recital 36(a) and (b) and from recital 225 of the contested decision that measures to decrease labour costs through staff reductions and changes in salary conditions had already been taken and applied until the end of 2024, as has also been confirmed by the Commission in response to a measure of organisation of procedure. Moreover, according to recital 36(c) and recital 225 of the contested decision, agreements had been signed with trade unions containing a commitment to achieve labour cost targets in 2025 either by concluding a new collective bargaining agreement or by applying general labour law – which is less restrictive than the collective agreements in force – to employment contracts. Thus, in accordance with what it states in its defence and in its response to a measure of organisation of procedure, the Commission had sound evidence that the planned reductions in salary costs during the restructuring period would materialise.
- 92 In the second place, as regards the comparison between TAP's EBIT in 2025 and that of a sample of eight European airlines carried out in order to verify the credibility of the financial projections in the restructuring plan, set out in recital 227 of the contested decision, first, it must be noted that, according to the wording of that recital, that comparison was carried out by the Commission in order to corroborate, in an overall manner, the reasonableness of TAP's financial projections concerning its revenues and the reductions in fuel and labour costs during the restructuring plan. It is apparent from recitals 223 to 226 of the contested decision that those financial projections relating to anticipated revenues and costs in 2025 had already been characterised as reasonable and credible. Thus, the assessment carried out in recital 227 of the contested decision merely constitutes an additional examination of TAP's financial projections in the restructuring plan and, therefore, any manifest error of assessment in that comparison cannot, by itself, lead to the annulment of the contested decision.
- 93 Second, it must be observed that that comparison was indeed relevant for the purpose of assessing the robustness of TAP's financial projections concerning its revenues and the reductions in fuel and labour costs, which had been described by the Commission in recital 224 of the contested decision as being essential for TAP's return to viability. Thus, as it contends in the defence, the Commission wished to focus the assessment to be carried out in that part of the contested decision on those revenues and operating costs, and therefore the comparison of TAP's EBIT margin with that of a sample of operators appears to be an assessment that is consistent with that purpose.

- 94 Although the applicant submits, in that regard, that the Commission should have carried out an additional check, taking into account TAP’s interest payments, it must be stated that such a check was not necessary in the present case. The debt interest payments were not linked to the operational aspects of the TAP restructuring plan, the plausibility of which the Commission sought to verify in recital 227 of the contested decision.
- 95 Third, although the applicant doubts whether TAP could become profitable at the end of the restructuring period, in 2025, to a degree comparable to the sample of operators used in view of TAP’s EBIT margin between 2015 and 2019 and of the fact that some of the airlines in the sample were low-cost operators with margins which would normally be higher than that of TAP, it must be observed that the sample included eight European airlines with a variety of business models – and not only low-cost ones – and that the average EBIT margin of that sample must therefore be regarded as representative of the air transport sector in which TAP operates. Moreover, it must be stated that mere scepticism on the part of the applicant with regard to TAP’s expected EBIT margin in 2025, at the end of the implementation of the measures envisaged in the restructuring plan, is not capable of demonstrating that the Commission made a manifest error of assessment when assessing the credibility of the financial projections underlying the restructuring plan.
- 96 In the light of the foregoing, the present complaint must be rejected.

3. The third complaint of the third plea in law, concerning the question whether TAP’s return to viability was demonstrated

- 97 The applicant claims that the Commission did not duly demonstrate that TAP would return to viability.
- 98 In the first place, as regards the comparison of TAP’s return on capital employed (‘ROCE’) with its weighted average cost of capital (‘WACC’), made in recitals 229 to 231 of the contested decision, first, the applicant submits that the Commission failed to demonstrate, in recital 230 of that decision, why it was reasonable to calculate TAP’s ROCE on the basis of the average capital employed in 2024 and 2025 rather than on the basis of the capital employed only in 2025. Thus, it maintains that it is not possible to rule out that TAP’s expected ROCE in 2025 would be lower than its WACC if the capital employed only in 2025 had been used as the denominator to calculate the ROCE, with the result that TAP would not necessarily return to viability by the end of the restructuring period.
- 99 Second, the applicant submits that the Commission, in recital 231 of the contested decision, incorrectly compared TAP’s expected ROCE in 2025 with its WACC as at the date of the contested decision. According to the applicant, the mere fact that TAP could at the end of 2025 achieve an ROCE level in excess of its current WACC does not demonstrate that TAP would return to viability by the end of the

restructuring period. In that regard, TAP's anticipated future WACC, which was expected to increase over time, should have been examined instead.

100 Third, it maintains that the Commission should have carried out an alternative calculation of the WACC, the methodology for which is described in recital 231 of the contested decision, based on the average leverage ratio of TAP's competitors.

101 In the second place, as regards the comparison of TAP's ROCE in 2025 with that of a sample of competitors in 2019, described in recital 232 of the contested decision, the applicant submits that the Commission should instead have compared TAP's return on equity with that of its competitors, since the ROCE does not take into account all of TAP's financial charges, in particular interest payments, which was necessary under point 52 of the Guidelines.

102 The Commission, supported by the Portuguese Republic, disputes the applicant's arguments.

103 As a preliminary point, it should be noted that point 52 of the Guidelines provides as follows:

'Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges. The restructured undertaking should be able to compete in the marketplace on its own merits.'

104 In the present case, in recitals 228 to 238 of the contested decision, the Commission assessed whether TAP was able to restore its viability by the end of 2025 by checking, first, whether it could generate a sufficient rate of return, and then whether it was able to compete on its own merits.

105 First, as regards TAP's rate of return, the Commission, in recitals 229 to 231 of the contested decision, compared TAP's expected ROCE in 2025 with its WACC, in order to ensure that the ROCE would be higher than the WACC at the end of the restructuring period, which would mean that TAP would generate sufficient profits to cover its capital costs and would therefore be viable. The Commission also observed, in recital 232 of the contested decision, that the expected ROCE in 2025 was higher than the median 2019 ROCE of a sample of viable airlines, which was a further indication of TAP's return to viability. According to recital 233 of the contested decision, TAP's return to viability was corroborated by an alternative approach, consisting in comparing TAP's return on equity with the cost of equity, which showed that, in 2025, that return would be higher than the cost of equity. Moreover, in recital 234 of the contested decision, the Commission employed an alternative approach to calculate the WACC and the cost of equity and observed that, even with higher costs than those used in recital 231 of the contested decision, TAP's ROCE in 2025 would still enable a return to viability.

- 106 Second, as regards TAP's ability to compete on its own merits at the end of the restructuring period, the Commission considered, in recitals 235 and 236 of the contested decision, that, in view of the projections relating to net income, the value of equity and the ratio of net debt to earnings before interest, taxes, depreciation and amortisation (EBITDA), as well as the recent conclusion of aircraft leasing contracts, TAP would have access to the capital markets without State support in 2025.
- 107 Lastly, in recitals 237 and 238 of the contested decision, the Commission found that its conclusions in that regard were confirmed by the sensitivity analysis and the adverse scenarios provided by the Portuguese authorities. It considered that, even though the adverse scenarios reduced TAP's expected profitability and creditworthiness, its return to viability in 2025 was still not jeopardised.
- 108 In that respect, in the first place, as regards the applicant's arguments challenging the comparison, made by the Commission in recitals 229 to 231 of the contested decision, between TAP's expected ROCE in 2025 and its WACC, first, it is necessary to examine the argument that the Commission did not duly explain, in recital 230 of the contested decision, why it was reasonable for it to use, for the denominator of the ROCE, the average capital employed in 2024 and 2025 and not the capital employed only in 2025.
- 109 It must be observed that the Commission explained in recital 230 of the contested decision that it had used the average capital employed in 2024 and 2025 in order to smooth out the yearly fluctuations in balance sheet variables. Furthermore, in response to a measure of organisation of procedure, the Commission additionally explained that use of the capital employed only in 2025, rather than the average for 2024 and 2025, would also not lead to a different conclusion from the one set out in recital 231 of the contested decision, namely that it was likely that TAP's ROCE in 2025 would be higher than its WACC, and therefore that TAP should return to viability at the end of the restructuring period. Moreover, it stated that the same would be true if the Commission had used, for the numerator of the ROCE, the EBIT average for 2024 and 2025 instead of the EBIT for 2025 only. In those circumstances, the applicant's line of argument is not such as to show that there has been a manifest error of assessment on the part of the Commission.
- 110 Second, the applicant criticises the fact that, for the comparison with the ROCE at the end of the restructuring period in recital 231 of the contested decision, the Commission used TAP's current WACC, namely the rate calculated on the basis of the data available as at the date of the contested decision, instead of the WACC expected in 2025.
- 111 In that regard, although the applicant claims that the WACC was expected to increase over time due to the anticipated increase in the yields on Portuguese government bonds during the restructuring period, its line of argument does not call into question the conservative nature of the WACC used by the Commission, which was calculated on the basis of a number of parameters, deriving both from

the market and from TAP's particular situation. The Commission used a cost of equity which was based on various market and sectoral benchmarks and on a risk-free rate which was higher than the yields on German 10-year government bonds at the time and took into account future developments. Moreover, by taking into account the cost of TAP's debt at the time when the contested decision was adopted, and therefore when TAP was in a very serious financial situation, the Commission applied a rate in that regard which logically had to be higher than that which would apply to TAP at the end of the restructuring period, when its financial situation should have stabilised. Thus, the applicant has not demonstrated that it is plausible that the WACC of TAP used by the Commission for the purposes of its analysis would be lower than the WACC expected in 2025, such that the Commission incorrectly underestimated TAP's WACC in its examination of TAP's return to viability.

- 112 Third, as regards, furthermore, the calculation of TAP's WACC, although the applicant claims in the application that the Commission should have made that calculation on the basis of the industry's leverage ratio, that is to say, the average ratio of its competitors, it must be held that that argument is unsubstantiated. In any event, it must be noted, as the Commission argues in its defence, that the WACC set out in recital 231 of the contested decision was calculated using a debt-to-equity ratio of 1.5, which corresponded to the capital structure of TAP's peers. The WACC calculated in recital 234 of the contested decision, which was used to test the robustness of the assessment of TAP's return to viability, also took account of data from competitors in determining the debt-to-equity ratio.
- 113 In the second place, as regards the applicant's argument that the Commission, in recital 232 of the contested decision, incorrectly compared TAP's ROCE with that of its competitors, whereas it should have compared their respective returns on equity, it must be pointed out, first of all, that it is apparent from the wording of that recital that the comparison at issue was carried out by the Commission on an additional basis, in essence, for the purpose of corroborating the result of its comparison between TAP's expected ROCE in 2025 and its WACC, carried out in recitals 229 to 231 of the contested decision. Thus, as the Commission contends in its defence, any error in the comparison carried out in recital 232 of the contested decision cannot, by itself, invalidate its analysis relating to TAP's return to viability.
- 114 Furthermore, while the applicant asserts that, in the light of the wording of point 52 of the Guidelines, the Commission should have carried out a comparison between TAP's return on equity and that of its competitors, since such a comparison would take account of the financial charges borne by those operators, it must be stated, as the Commission does in its defence, that that institution did take TAP's financial charges into account when comparing, in recital 233 of the contested decision, TAP's return on equity with the cost of its equity. In addition, the Commission pointed out at the hearing that its calculation of the WACC, used in recital 231 of the contested decision in the context of the comparison with TAP's expected ROCE in 2025, took into account the payment of interest on debt.

- 115 Lastly, it must be observed that the Commission carried out a number of calculations in recitals 228 to 238 of the contested decision in order to conclude that TAP would return to viability, the relevance and reliability of which either have not been undermined by the applicant's arguments, for the reasons set out in paragraphs 108 to 112 above, or have not been disputed by it. In the latter regard, the applicant has not put forward any substantiated arguments contesting the validity and relevance of the different approaches used by the Commission, set out in recitals 233 and 234 of the contested decision, which corroborated the conclusions set out in recitals 231 and 232 thereof, according to which TAP would return to viability in 2025 after successfully implementing the restructuring plan. Nor does it dispute the Commission's assessment, set out in recitals 235 and 236 of the contested decision, that TAP should be in a financial situation that would enable it to have access to capital markets in 2025. In those circumstances, the absence of the additional comparison referred to by the applicant, as described in paragraph 114 above, cannot provide a basis for finding that the Commission made a manifest error of assessment.
- 116 In the light of the foregoing, the present complaint must be rejected.

4. The fourth complaint of the third plea in law, concerning the reasoning for the examination of TAP's return to viability

- 117 In the context of the present complaint, the applicant submits that the redaction of various data in recitals 223 to 227, 231, 237 and 238 of the contested decision prevents it from challenging the validity of certain assessments in the contested decision and that the Commission failed to justify, in recital 231 of the contested decision, why it used TAP's target debt to debt plus equity ratio to weight the cost of debt and the cost of equity in its calculation of that group's WACC. It maintains that the Commission therefore infringed its obligation to state reasons.
- 118 In that regard, in the first place, with respect to the redaction of various data from the public version of the contested decision, the Commission contends in its defence that those redactions relate to confidential information concerning TAP and the Portuguese Republic and that they were therefore made in order to comply with the Commission's obligation to preserve professional secrecy, as provided for in Article 339 TFEU and in Articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9), and in accordance with Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (OJ 2003 C 297, p. 6).
- 119 However, according to the case-law, the obligation laid down in Article 339 TFEU to preserve professional secrecy cannot justify deficiencies in the statement of reasons. The obligation to preserve business secrets cannot be given so wide an interpretation that the obligation to provide a statement of reasons is thereby deprived of its essential content (see, to that effect, judgment of 13 March 1985,

Netherlands and Leeuwarder Papierwarenfabriek v Commission, 296/82 and 318/82, not published, EU:C:1985:113, paragraph 27). According to the case-law, the non-confidential version of a decision must disclose in a clear and unequivocal fashion the reasoning followed by the Commission and the methodology used by it, in such a way as to enable the persons concerned to ascertain those reasons and the General Court to exercise its power of review in respect of them (see, to that effect, judgment of 21 December 2016, *Club Hotel Loutraki and Others v Commission*, C-131/15 P, EU:C:2016:989, paragraph 55).

- 120 In the present case, first, it must be observed that the information presented in recitals 223 to 227 of the contested decision does in fact set out the reasoning and methodology followed by the Commission when it assessed the credibility of the assumptions underlying TAP's financial projections in the restructuring plan, even though certain figures are redacted in recitals 223, 226 and 227 of that decision.
- 121 As regards, specifically, recital 223 of the contested decision, while the precise figures are redacted in that recital, it is stated therein that TAP, in its financial projections, had predicted a level of passenger volume in 2025 that was lower than that expected by the International Air Transport Association (IATA), and lower rates of return and of revenue per available seat per kilometre in 2025 as compared with those in 2019. Thus, the Commission concluded that the revenue projections were reasonable.
- 122 As regards recital 226 of the contested decision, it explains that TAP had begun to undertake reductions in costs other than those relating to fuel and labour, that its financial projections had not included additional, envisaged revenue increases, the total amount of which is redacted, which created an additional buffer, and that the restructuring plan included the sale or cessation of non-core activities, such as M&E Brasil. According to the Commission, those factors contributed to the credibility of the financial projections.
- 123 With regard to recital 227 of the contested decision, as summarised in paragraph 87 above, it states that TAP's 2025 EBIT forecast, the actual figure being redacted, is in line with the average of a sample of airlines (13.1%). According to that recital, that comparison was an additional factor in assessing the credibility of the projections underlying the restructuring plan.
- 124 Second, as regards the redaction in recital 231 of the contested decision of a number of figures used to calculate TAP's WACC, including the risk-free rate, in the context of the assessment of the beneficiary's return to viability, it must be observed that the Commission provided, in that recital of the contested decision, a clear explanation of the methodology which it used to calculate TAP's WACC. In particular, that recital states that the WACC was calculated 'in line with the standard methodology' by taking the weighted average of the beneficiary's cost of equity and of the cost of its debt, with a weight equal to TAP's target debt to debt plus equity ratio. The Commission then explained that those components of the WACC were justified because the market data and financial information relating

to TAP's competitors came from Capital IQ and Reuters. Furthermore, the Commission stated that the cost of equity calculation assumed a risk-free rate which was well above the current costs relating to bonds issued by Germany, an equity risk premium of 4.72% and a country risk premium of 1.95%, which were in line with publicly available benchmarks, and a 'beta' based on that of TAP's competitors.

- 125 Third, as regards the redaction of the figures in recitals 237 and 238 of the contested decision, in the context of the assessment of TAP's return to viability in adverse scenarios, namely those relating to an increase in the price of fuel and a decrease in yields, it is apparent from recital 237 of the contested decision that the Commission took into account higher fuel prices and lower yields than those considered in the baseline scenario. Moreover, in recital 238 of the contested decision, the Commission assessed the impact of those assumptions on TAP's return to viability in 2025, by determining TAP's expected EBIT margin, TAP's expected ROCE and the expected return on equity in those adverse scenarios. The Commission stated that, even using the most conservative rates of WACC and of equity costs, TAP would return to viability. It also noted that, in the more pessimistic scenario, TAP would have access to capital markets since its equity position would be positive, referring to its net debt-to-EBITDA ratio. Consequently, although all of TAP's financial data in the abovementioned recitals of the contested decision are redacted, it must be held that the reasoning and methodology followed by the Commission are clearly set out.
- 126 It follows from the foregoing considerations that the redactions in recitals 223 to 227, 231, 237 and 238 of the contested decision do not constitute an infringement of the Commission's obligation to state reasons.
- 127 In the second place, as regards the alleged lack of justification for the use of TAP's target debt to debt plus equity ratio to weight the cost of debt and the cost of equity in the calculation of the WACC, as set out in recital 231 of the contested decision, it is apparent from the summary of that recital in paragraph 124 above, that the Commission explained that it had followed a standard methodology in that respect. The applicant has been able to challenge that methodology and the calculation of the WACC set out in that recital of the contested decision, as is shown by its arguments put forward in the third complaint of the present plea. Accordingly, the applicant's claim cannot establish a failure to state reasons.
- 128 In the light of the foregoing, the present complaint and, consequently, the third plea in its entirety must be rejected.

D. The fourth plea in law, alleging that the Commission failed to establish the necessity of the measure at issue or its incentive effect

- 129 By the fourth plea, the applicant submits that the Commission failed to establish the necessity of the measure at issue or its incentive effect, disregarding the conditions in points 8, 53 and 59 of the Guidelines.

- 130 First, the applicant claims that the Commission did not demonstrate the necessity of the measure at issue, since it failed to examine TAP's ability to borrow or raise funds, inter alia by using its aircraft as collateral, and the contested decision makes no mention of any attempt by TAP in that regard. Furthermore, the relevant part of the contested decision is excessively redacted, which constitutes a failure to state adequate reasons.
- 131 Second, the applicant asserts that the Commission also failed properly to demonstrate the incentive effect of the measure at issue, as required by point 59 of the Guidelines.
- 132 The Commission, supported by the Portuguese Republic, disputes the applicant's arguments.
- 133 Before examining the applicant's arguments, it should be recalled, at the outset, that point 8 of the Guidelines, set out in the introductory part thereof, states that 'undertakings should only be eligible for State aid when they have exhausted all market options'.
- 134 In section 3.2 of the Guidelines, entitled 'Need for State intervention', point 53 provides as follows:
- 'Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating how the relevant objective or objectives in section 3.1.1 would not be attained, or would be attained to a lesser degree, in the case of that alternative scenario. Such scenarios may, for example, include debt reorganisation, asset disposal, private capital raising, sale to a competitor or break-up, in each case either through entry into an insolvency or reorganisation procedure or otherwise.'
- 135 In section 3.4 of the Guidelines, entitled 'Incentive effect', point 59 states as follows:
- 'Member States that intend to grant restructuring aid must demonstrate that in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the objective of common interest identified in section 3.1.1. This demonstration can form part of the analysis presented in accordance with point 53.'
- 136 In the present case, in recital 242 of the contested decision, the Commission explained that the objective of the measure at issue was to prevent the insolvency of TAP SGPS by enabling that undertaking to implement the restructuring plan, which would have the effect of averting a situation of market failure and social hardship. The Commission observed that, in the absence of the measure at issue, TAP SGPS would be unable to fulfil its financial obligations or to have access to capital markets.

- 137 In that regard, in the first place, it must be noted that, in the contested decision, the Commission presented evidence demonstrating TAP's very serious financial situation and the real risk of TAP's exit from the market in the absence of the measure at issue. Thus, a credible scenario without the grant of State aid, of a 'break-up' or 'entry into an insolvency ... procedure', in accordance with the wording of point 53 of the Guidelines, or of a winding up, in accordance with the wording of point 59 of the Guidelines, was indeed examined in the contested decision.
- 138 First, the Commission explained in the contested decision the extent of the difficulties faced by TAP in 2020, which had been exacerbated by the COVID-19 pandemic. It is apparent, *inter alia*, from recital 25 of the contested decision that, on 20 March 2020, the rating agency Standard & Poor's had lowered TAP Air Portugal's credit rating and had announced that TAP's recovery prospects in respect of the bonds issued in December 2019, amounting to EUR 375 million, were 45%. In recital 187 of the contested decision, it also noted that TAP SGPS and TAP Air Portugal were in a negative equity position and that the situation of TAP SGPS had worsened since 2019. Furthermore, in recital 201 of the contested decision, the Commission observed that, in view of its financial situation, there was a concrete and imminent risk that, without the measure at issue, TAP Air Portugal would no longer be able to meet its payment obligations and would have to declare insolvency. It reiterated that finding in recital 242 of the contested decision, as is apparent from paragraph 136 above.
- 139 Second, the Commission explained in the contested decision that access to capital markets was no longer possible for TAP SGPS. In particular, it noted, in recital 148 of the contested decision, that TAP Air Portugal had already made an effort to sell the aircraft which it owned in order to obtain more liquidity. In recitals 149 and 150 of the contested decision, it observed that TAP SGPS had made attempts to raise funds from financial institutions and other stakeholders, but that such financing was not accessible without the strengthening of its equity position through the measure at issue. Similarly, it explained, in recital 244 of the contested decision, that it was impossible to obtain sufficient financing on capital markets and also observed, in recital 245 of that decision, that, in the absence of the measure at issue, TAP would not have sufficient equity to be able to finance itself on the markets.
- 140 It follows that, although the applicant complains in that regard that the Commission failed to examine TAP's ability to borrow or raise funds on the markets, it must be stated that the Commission presented a body of evidence in the contested decision demonstrating that access to financing on a sufficient scale on the markets without the grant of State aid was neither possible nor plausible for TAP and that there was no option other than the measure at issue to prevent TAP's exit from the market.
- 141 In addition, it must be observed that the applicant has not adduced any evidence capable of demonstrating that financing on the markets would have been plausible

for TAP at the time when the measure at issue was notified. In that connection, its argument that other airlines had financed themselves on the market or had applied the possibility of raising funds in an innovative way does not call into question the Commission's conclusion in that regard, given that the applicant has not established that those other airlines were in a financial situation that was comparable to the very specific situation of TAP, as described in paragraphs 138 to 140 above.

- 142 It follows from the foregoing considerations that, contrary to what the applicant claims, the Commission established, to the requisite legal standard, that the measure at issue was necessary in accordance with points 8 and 53 of the Guidelines.
- 143 In the second place, as regards the applicant's argument that the Commission did not examine the incentive effect, for the purposes of point 59 of the Guidelines, of the measure at issue, it must be observed that the Commission, in the contested decision, and in particular in recital 242 thereof, stated that, in the absence of the measure at issue, TAP ran the risk of winding up and exit from the market. That is sufficient to satisfy the condition laid down in point 59 of the Guidelines, according to which it must be demonstrated that, 'in the absence of the aid, the beneficiary would have been restructured, sold or wound up'. Moreover, the fact that the Commission demonstrated this in the context of its analysis provided in accordance with point 53 of the Guidelines does not in any way constitute an error of law, since such an approach is expressly permitted by the wording of point 59 of the Guidelines (see paragraph 135 above).
- 144 In the third place, as regards the claim that there was a failure to state reasons in the light of the excessive redaction of the contested decision, it must be stated that only one piece of information is redacted in the relevant part of the contested decision, in recital 242 thereof. Despite that redaction, it is apparent, first, from paragraph 136 above, that the reasoning followed by the Commission was clearly set out and, second, from the examination of the present plea, that the applicant has been able to challenge that reasoning and that the Court has been able to exercise its power of review. Accordingly, the statement of reasons provided in that recital complies with the requirements of the case-law (see paragraphs 20 and 119 above).
- 145 In the light of the foregoing, the present plea must be rejected.

E. The fifth plea in law, alleging that the Commission failed to establish the appropriateness of the measure at issue

- 146 By the fifth plea, the applicant submits that the Commission failed properly to establish the appropriateness of the measure at issue within the meaning of point 38(c) and of points 54 and 58 of the Guidelines.

- 147 First, the applicant claims that the Commission failed to apply points 38(c) and 54 of the Guidelines, since it did not compare the various options available to TAP in order to assess whether the measure at issue was the one which allowed that group to be restructured in the least distortive way.
- 148 Second, the applicant submits that the Commission did not properly establish that the measure at issue was the right aid instrument in the light of TAP’s specific circumstances, thereby failing to apply point 58 of the Guidelines. It maintains that it is impossible, in particular due to the redaction of certain figures in the contested decision, to verify that TAP was facing both liquidity and solvency difficulties or whether the measure at issue was capable of addressing those difficulties. Moreover, the Commission did not set out in the contested decision any measures other than the measure at issue, such as a credit guarantee.
- 149 Third, the applicant submits that the Commission was incorrect in concluding that the Portuguese Republic was appropriately remunerated.
- 150 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.
- 151 Before examining the applicant’s arguments, it should be recalled, at the outset, that, according to point 38 of the Guidelines, the Commission must assess whether notified aid can be declared compatible with the internal market by ensuring that certain criteria are met, including the criterion referred to in point 38(c), which states as follows:
- ‘appropriateness of the aid measure: an aid measure will not be considered compatible if other, less distortive measures allow the same objective to be achieved (section 3.3). ...’
- 152 In section 3.3 of the Guidelines, entitled ‘Appropriateness’, point 54 states as follows:
- ‘Member States should ensure that aid is awarded in the form that allows the objective to be achieved in the least distortive way. In the case of undertakings in difficulty, that can be achieved by ensuring that aid is in the appropriate form to address the beneficiary’s difficulties and that it is properly remunerated. This section sets out the requirements that must be complied with in order to demonstrate that an aid measure is appropriate.’
- 153 Point 58 of the Guidelines states that Member States are free to choose the form that restructuring aid takes but that they should nonetheless ensure that the instrument chosen is appropriate to the issue that it is intended to address. In particular, Member States should assess whether the beneficiaries’ problems relate to liquidity or solvency and select appropriate instruments to address the problems identified.

- 154 In the present case, in recitals 243 to 249 of the contested decision, the Commission concluded that the measure at issue was appropriate. First, it considered that TAP SGPS needed measures consisting mainly of equity measures in order to address its solvency and liquidity problems. Second, it found that the remuneration for the Portuguese Republic was sufficient, since, following the grant of the measure at issue, the Portuguese Republic would own all the capital of TAP Air Portugal and, on the basis of two valuation methods, that holding would increase in value in the future, with the result that it could be sold at a profit.
- 155 In the first place, as regards the applicant's argument that the Commission should, by virtue of point 54 of the Guidelines, have examined whether another measure, less distortive to competition, was possible, it must be noted that, according to that point, a restructuring aid measure is considered to be appropriate if it allows the beneficiary's difficulties to be addressed, while being properly remunerated, and that such a measure must comply with the requirements established in section 3.3 of the Guidelines, namely those set out in point 58 of the Guidelines with regard to restructuring aid, which are intended to ensure that the measure at issue is an appropriate instrument for addressing the liquidity or solvency problems of the beneficiary. Therefore, if the abovementioned requirements are met, the restructuring aid chosen must be regarded as complying with point 54 of the Guidelines.
- 156 Although the applicant seeks by its line of argument to allege that the Commission failed to examine whether another type of aid measure, such as a credit guarantee, would have been more appropriate and less distortive to competition, it must be observed that the wording of point 54 of the Guidelines does not require such an examination, as is apparent from the analysis carried out in paragraph 155 above, and that point 58 of the Guidelines states that Member States are free to choose the form that restructuring aid takes.
- 157 In addition, it should be recalled that, according to the case-law, it is not for the Commission to make a decision on every other possible alternative aid measure. It is not required to prove, positively, that no other conceivable aid measure, which by definition would be hypothetical, would be more appropriate and less distortive to competition than the aid measure at issue (see, to that effect and by analogy, judgment of 6 May 2019, *Scor v Commission*, T-135/17, not published, EU:T:2019:287, paragraph 94 and the case-law cited). While the Court of Justice has also held that, when 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 (see judgment of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 50 and the case-law cited), in the present case, there is nothing to indicate that the Commission had to make a choice between several appropriate measures, within the meaning of that case-law.
- 158 Furthermore, and in any event, the applicant has not adduced any evidence or indicia capable of demonstrating that the other aid measure which it proposes,

namely a credit guarantee, would have allowed both the equity and liquidity problems of TAP to be addressed in the same manner as in the measure at issue.

- 159 In addition, inasmuch as the applicant also seeks by its line of argument to allege that the Commission failed to examine whether a measure other than State aid would have been possible in order to address TAP's problems, it must be stated that that argument concerns the necessity of the measure at issue and not its appropriateness, as referred to in points 54 and 58 of the Guidelines. In that regard, reference should be made to the examination of the fourth plea, which rejects the applicant's arguments disputing the necessity of the measure at issue.
- 160 Similarly, the claim that, in essence, the Commission should have required a reduction in the size of TAP's fleet in order to limit distortions of competition is, in the light of the wording of points 54 and 58 of the Guidelines, also irrelevant to the issue of the appropriateness of the measure at issue.
- 161 In the second place, as regards the applicant's argument that the Commission did not properly explain how the measure at issue would be appropriate to address both the objective of restoring a certain level of equity and that of restoring TAP's liquidity, it must be observed that the Commission explained, in recital 245 of the contested decision, why it considered that the form of the measure at issue, which consisted mainly of amounts increasing TAP SGPS's equity, was appropriate to address the problems identified. In that regard, first, it stated that TAP SGPS was in a negative equity position in 2019 and that it had to strengthen its position in order to be able to attract significant long-term debt or investment funds in capital markets. Second, TAP SGPS's liquidity projections showed that, in the absence of the measure at issue, TAP SGPS would have been in a negative cash position during the years 2021 to 2023. Thus, although the applicant criticises the redactions of figures in recital 245 of the contested decision, it is nevertheless apparent from that recital that the Commission explained why the measure at issue was appropriate, thereby meeting the requirements of the case-law in relation to the statement of reasons (see the case-law cited in paragraph 119 above).
- 162 In the third place, as regards the applicant's line of argument challenging the assessment of the remuneration of the Portuguese Republic, it must be recalled that, in recitals 246 to 248 of the contested decision, the Commission considered that the Portuguese Republic would be properly remunerated, in accordance with point 54 of the Guidelines, on account of the future value of TAP Air Portugal's capital in 2025, which would be entirely in its possession. In that regard, the applicant has not put forward any substantiated argument disputing the fact, referred to in recital 247 of the contested decision, that the two valuation methods used by the Commission to calculate TAP Air Portugal's expected terminal value, namely the Gordon growth method and the multiples method, are commonly used to calculate the terminal value of an undertaking. They were therefore appropriate methods in the present case.

163 In addition, although the applicant also claims in the application that it does not understand where the data of other airlines applied in the multiples method came from, it must be stated that the Commission, in recital 247 of and footnote 67 to the contested decision, explained the origin of those data.

164 In the light of the foregoing, the present plea must be rejected.

F. The sixth plea in law, alleging that the Commission failed to establish the proportionality of the measure at issue

165 By the sixth plea, the applicant submits that the Commission failed to establish the proportionality of the measure at issue for the purposes of points 61 to 69 of the Guidelines. In support of that plea, the applicant raises, in essence, three complaints. By the first complaint, it alleges a lack of precision in the contested decision as regards the amounts of the components of the measure at issue, *inter alia* on account of the redactions of certain figures. By the second complaint, it claims that the Commission failed to ensure that the amount of the measure at issue was limited to the minimum necessary. By the third complaint, it argues that the Commission did not correctly calculate TAP's own contribution and the burden sharing.

166 Before examining the applicant's arguments, it should be noted at the outset that, in section 3.5 of the Guidelines, entitled 'Proportionality of the aid/aid limited to the minimum', point 61 provides, *inter alia*, that 'the amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs.' That point also states that, 'in particular, a sufficient level of own contribution to the costs of the restructuring and burden sharing must be ensured, as set out in more detail in this section (3.5.2).'

167 As regards own contribution to the costs of the restructuring, point 62 of the Guidelines states, *inter alia*, that 'a significant contribution [to such costs] is required from the own resources of the aid beneficiary, its shareholders or creditors or the business group to which it belongs, or from new investors.'

168 Moreover, with respect to burden sharing, point 65 of the Guidelines states, *inter alia*, that 'aid to cover losses should only be granted on terms which involve adequate burden sharing by existing investors.'

169 In the present case, in recitals 250 to 269 of the contested decision, the Commission assessed the proportionality of the measure at issue by examining TAP's own contribution and the burden sharing.

170 First, as regards own contribution to the costs of the restructuring, the Commission verified whether the own contribution measures included in the restructuring plan were free of State aid and would materialise with sufficient

certainty. In that regard, the Commission examined the payments of costs relating to the reduction of TAP Air Portugal’s wage bill and to the divestment of an asset, the cost reductions resulting from the renegotiation of contracts with third parties and contributions linked to asset phase-outs, the financing granted by a creditor without a guarantee from the Portuguese Republic and by a financial institution, and the deferrals of payments under bonds and loans. The Commission calculated that the total value of those contributions did not reach the threshold of 50% of the restructuring costs, but considered that, due to the exceptional circumstances caused by the COVID-19 pandemic, TAP’s own contribution was sufficient.

171 Second, as regards burden sharing, the Commission considered, inter alia, that TAP’s shareholders, including the Portuguese Republic, would adequately share the burden of the restructuring of that group, since the value of their holdings would be reduced to zero in the loss absorption. Moreover, TAP SGPS would divest its holdings in Cateringpor, Groundforce and M&E Brasil. Consequently, it found, the measure at issue granted in the form of equity held by the Portuguese Republic would provide the latter with all future gains in value of TAP.

172 On the basis of those assessments, the Commission concluded, in recital 269 of the contested decision, that the measure at issue was proportionate and that the burden sharing was appropriate.

173 As regards the applicant’s line of argument, it is appropriate to examine, first, the second complaint, then the third complaint, and, lastly, the first complaint.

1. The second complaint of the sixth plea in law, alleging that the Commission failed to ensure that the amount of the measure at issue was limited to the minimum necessary

174 The applicant submits that the Commission failed to ensure that the amount of the measure at issue was limited to the minimum necessary. First, it maintains that the Commission failed to have regard to point 61 of the Guidelines in assessing the proportionality of the measure at issue solely from the perspective of own contributions and burden sharing. Second, it argues that the Commission validated revenue forecasts based on conservative traffic forecasts even though there was no need to use such conservative assumptions in the baseline scenario. Third, it submits that the Commission failed to establish that TAP’s fleet had been cut back to the strict minimum.

175 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

176 In that connection, in the first place, concerning the applicant’s allegation of a failure to have regard to point 61 of the Guidelines in that the Commission, in essence, erred in law in its examination of the proportionality of the measure at issue by examining only the conditions relating to own contributions and burden sharing, it is to be noted that that point of the Guidelines states that the amount of

aid must be limited to the strict minimum necessary to enable restructuring to be undertaken ‘in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs’, and then requires that ‘a sufficient level of own contribution to the costs of the restructuring and burden sharing must be ensured, as set out in more detail in this section’. Point 61 of the Guidelines therefore expressly states that proportionality is to be assessed in the light of the existing resources of the beneficiary and those of its business group, and specifically sets out two conditions which are closely linked to the issue of the resources of that beneficiary and that group, namely own contribution and burden sharing, the requirements relating to those conditions being laid down in points 62 to 69 of the Guidelines. No further requirements are specified in the relevant section of the Guidelines.

- 177 It follows that the Commission did not fail to have regard to point 61 of the Guidelines in examining the proportionality of the measure at issue solely in the light of the requirements specifically laid down in the Guidelines relating to own contribution and burden sharing.
- 178 In the second place, as regards the reduction of TAP’s fleet, it must be held that the Commission was also not required, for the purpose of concluding that the measure at issue was proportionate, to ensure that TAP’s fleet was reduced to the strict minimum. Such a requirement is not apparent from points 61 to 69 of the Guidelines governing the examination of the proportionality of restructuring aid, in accordance with what has been stated in paragraph 176 above. Thus, the proportionality of restructuring aid is not conditional on the assets of the beneficiary of such aid being limited to the strict minimum necessary to be viable on the market, contrary to what the applicant claims.
- 179 In the third place, as regards the error of assessment which the Commission is purported to have made in the financial projections in recital 151 of the contested decision, it must be observed that the alleged error does not relate to the Commission’s examination of the proportionality of the measure at issue. The financial projections in question were used in the assessment of TAP’s return to viability, which was examined in recitals 228 to 238 of the contested decision, and were not used in the assessment of the proportionality of the measure at issue. Accordingly, that argument is irrelevant to the Commission’s examination of the proportionality of the measure at issue and must be rejected.
- 180 In the light of the foregoing, the second complaint of the present plea must be rejected.

2. The third complaint of the sixth plea in law, concerning the examination of own contribution and burden sharing

- 181 The applicant claims that the Commission did not correctly calculate TAP’s own contribution and the burden sharing under points 62 to 69 of the Guidelines. First, it submits that the Commission failed to establish that the own contribution was

free of State aid. Second, it maintains that the Commission wrongly accepted a level of own contribution of less than 50%. Third, it argues that the Commission failed to verify whether the burden sharing was adequate as regards the Portuguese Republic and HPGB.

182 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

183 In that regard, in the first place, so far as concerns own contribution, although the applicant submits, first, that the Guidelines require, in points 62 and 63 thereof, that own contribution from a beneficiary of restructuring aid should not contain any State aid, it must be stated that it has not provided any evidence demonstrating the existence of State aid in the present case. Its claims that the renegotiation of contracts with suppliers and the deferrals in respect of bonds and loans, referred to in recitals 255 to 257 and 259 respectively of the contested decision, might have involved State aid are not supported by any strong factual evidence. The mere reference made by the applicant to the fact that certain airports served by TAP might be owned or controlled by public authorities or to the fact that TAP might potentially have financing from State creditors is not sufficient in that respect. Nor does the applicant plausibly indicate how any of the contract renegotiations listed in recital 43(b), (d) and (g) of the contested decision could have contained State aid.

184 Second, the applicant submits that the Commission was not entitled to consider that exceptional circumstances justified a level of own contribution of less than 50%.

185 In that regard, it must be recalled that point 64 of the Guidelines states that ‘own contribution will normally be considered to be adequate if it amounts to at least 50% of the restructuring costs’, but that, ‘in exceptional circumstances and in cases of particular hardship, which must be demonstrated by the Member State, the Commission may accept a contribution that does not reach 50% of the restructuring costs, provided that the amount of that contribution remains significant.’

186 In the present case, the Commission did not make an error of assessment in finding, in recitals 261 to 263 of the contested decision, that the COVID-19 pandemic had given rise to exceptional circumstances justifying an own contribution below the threshold laid down in point 64 of the Guidelines. As set out in recitals 18 and 24 to 26 of the contested decision, the COVID-19 pandemic and the travel restrictions adopted by governments around the world in order to curb its spread had a considerable impact on the aviation sector, and particularly on TAP by interrupting TAP Air Portugal’s transformation process and by deteriorating the financial situation of TAP Air Portugal and that of TAP SGPS. TAP’s ability to access financing on the markets was therefore significantly affected.

- 187 The arguments put forward by the applicant are not such as to call that finding into question.
- 188 First, the argument that the Commission, in essence, applied Article 107(3)(b) TFEU as the legal basis for the measure at issue is based on a misreading of recital 263 of the contested decision. In that recital, the Commission merely stated that the pandemic could be regarded as a serious disturbance in the economy within the meaning of that provision of the FEU Treaty, but it did not in any way state that the measure at issue had to be examined on that basis.
- 189 Second, while the applicant points out that TAP benefited from aid measures compensating for the damage caused by the COVID-19 pandemic, that did not preclude the view, as taken by the Commission in the contested decision, that the pandemic had given rise to exceptional circumstances which reduced TAP's ability to provide an own contribution reaching 50% of the restructuring costs. Moreover, the fact that the Commission may, in previous decisions, have accepted other reasons justifying an own contribution of less than 50% is irrelevant to the examination carried out by the Commission in the present case, which had to be based on TAP's specific circumstances.
- 190 Furthermore, contrary to what the applicant claims, the fact that the COVID-19 pandemic had already been used by the Commission as a reason to justify a restructuring period longer than the usual period permitted under the Guidelines also does not exclude the possibility of citing that circumstance when examining TAP's ability to make an own contribution to the restructuring costs.
- 191 In the second place, as regards burden sharing, the applicant claims that the Commission did not properly verify whether the burden sharing in the present case was adequate under the Guidelines.
- 192 In that regard, first, it should be recalled that point 66 of the Guidelines provides that 'adequate burden sharing will normally mean that incumbent shareholders and, where necessary, subordinated creditors must absorb losses in full.'
- 193 Although the applicant claims that the Commission did not explain in the contested decision how the market value of the Portuguese Republic's holdings in TAP SGPS would be reduced to zero in the loss absorption, given that TAP would become viable again at the end of the restructuring, it must be observed that the Commission explained, in recital 266 of the contested decision, without being contradicted by the applicant, that the value of the Portuguese Republic's holdings in TAP SGPS would be reduced to zero, in accordance with the requirement laid down in point 66 of the Guidelines. That factual finding as to the reduction in the value of the Portuguese Republic's holdings in TAP SGPS cannot be invalidated by the mere fact that, in the future, namely after the implementation of the restructuring plan, the Portuguese Republic's holding will increase in value, since TAP will become financially viable again, that being, moreover, a necessary condition for the authorisation of the measure at issue under the Guidelines.

- 194 In addition, the applicant’s argument that the Commission failed to examine whether HPGB, a minority shareholder of TAP SGPS, participated in the burden sharing must be rejected. The Commission expressly found, in recital 266 of that decision, that ‘existing shareholders’ of the beneficiary participated adequately in the burden sharing, since their holdings would be reduced to zero in the loss absorption. By referring to ‘existing shareholders’, that finding necessarily included HPGB.
- 195 Second, point 67 of the Guidelines states, in particular, that adequate burden sharing ‘will also mean that any State aid that enhances the beneficiary’s equity position should be granted on terms that afford the State a reasonable share of future gains in value of the beneficiary’. The applicant criticises the Commission’s assessment in that regard by claiming that the gradual divestment of three subsidiaries of TAP SGPS, referred to in recital 266 of the contested decision, namely Cateringpor, Groundforce and M&E Brasil, is not sufficiently certain to afford the Portuguese Republic a reasonable share of future gains in value of the beneficiary.
- 196 However, it must be borne in mind that those subsidiary sales form an integral part of the restructuring plan, as two of them are even listed in Article 2(2) of the contested decision. The divestments in question were therefore mandatory, even though their precise dates and the amounts involved could not have been known at the time when the contested decision was adopted.
- 197 Furthermore, even assuming, as the applicant submits, that the financial situation of the three subsidiaries of TAP SGPS in question would be strengthened as a result of the measure at issue and therefore that the minority shareholders of those subsidiaries would also benefit indirectly from that measure, such an assumption would not invalidate the Commission’s conclusion in recital 266 of the contested decision that there was adequate burden sharing under point 67 of the Guidelines. Indeed, as the Commission pointed out at the hearing, as the majority shareholder of TAP, the Portuguese Republic would necessarily benefit from future gains in value of the abovementioned subsidiaries, thereby meeting the requirement laid down in that point of the Guidelines.
- 198 In the light of the foregoing, the third complaint of the present plea must be rejected.

3. *The first complaint of the sixth plea in law, concerning the alleged lack of precision as regards the amounts of the components of the measure at issue*

- 199 The applicant submits that, in view of the redactions made in the contested decision, it is impossible to determine the amount of aid granted in the form of the loan guaranteed by the Portuguese Republic and the amount granted through the direct equity injection, and therefore to ascertain whether the measure at issue is proportionate. Moreover, the applicant maintains that the Commission did not

explain precisely the difference between the amount of the measure at issue which was notified by the Portuguese Republic and the amount which was authorised in the contested decision. It argues that those omissions also constitute a failure to state reasons.

- 200 In that regard, first, with respect to the applicant's criticism concerning the redaction of the amounts of the various components of the measure at issue in the public version of the contested decision, that redaction does not mean that the assessment of the proportionality of the measure at issue under the Guidelines is vitiated by an error of assessment or a failure to state reasons. In accordance with the analysis carried out in paragraphs 176 and 177 above, it is not apparent from points 61 to 69 of the Guidelines that the Commission was required to ensure that the amounts allocated in the form of loans and recapitalisation corresponded exactly to the beneficiary's financial needs, in terms of liquidity and equity, at the time of the contested decision. By contrast, those points require the Commission to ensure that restructuring aid is accompanied by an own contribution to the costs of the restructuring and adequate burden sharing, which the Commission did in the contested decision.
- 201 Second, as regards the applicant's argument that the difference between the notified amount of the measure at issue and the authorised amount of that measure is not explained in the contested decision, it must be stated that the applicant does not make clear why such an explanation would be necessary for the examination of the proportionality of the measure at issue under the Guidelines. In any event, it must be observed, as the Commission contended at the hearing, that an explanation in that regard was provided in recital 40 and in recital 43(e) of the contested decision, in which it was found that an initially envisaged component of the aid at issue, namely a liquidity aid measure, was no longer necessary and was therefore withdrawn from the measure at issue prior to the adoption of the contested decision.
- 202 In the light of the foregoing, the present complaint and, consequently, the sixth plea in its entirety must be rejected.

G. The seventh plea in law, alleging that the Commission did not adequately review the negative effects of the measure at issue

- 203 By the seventh plea, the applicant submits that the Commission made several errors of law and of assessment in its analysis of the negative effects of the measure at issue. This plea is divided into two complaints. By its first complaint, the applicant claims that the Commission did not correctly apply the 'one time, last time' condition. By its second complaint, it maintains that the Commission accepted measures which were too weak to limit distortions of competition.

1. *The first complaint of the seventh plea in law, concerning the ‘one time, last time’ condition*

204 The applicant submits that the Commission did not correctly apply the ‘one time, last time’ condition laid down in point 74 of the Guidelines, according to which no aid may be passed on to an entity in the beneficiary’s group which has received rescue or restructuring aid during the previous 10 years. It argues that the Commission did not exclude the possibility that the measure at issue might be passed on to an earlier beneficiary of such aid among the undertakings of the group to which TAP belonged, such as HPGB.

205 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

206 Before examining the applicant’s arguments, it should be recalled, at the outset, that, in section 3.6.1 of the Guidelines, entitled “‘One time, last time’ principle”, point 71 provides as follows:

‘... the Member State must specify whether the undertaking concerned has already received rescue aid, restructuring aid or temporary restructuring support in the past ... If so, and where less than 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), the Commission will not allow further aid pursuant to these guidelines.’

207 Point 74 of the Guidelines states as follows:

‘Where a business group has received rescue aid, restructuring aid or temporary restructuring support, the Commission will normally not allow further rescue or restructuring aid to the group itself or any of the entities belonging to the group unless 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted, whichever occurred the latest. Where an entity belonging to a business group has received rescue aid, restructuring aid or temporary restructuring support, the group as a whole as well as the other entities of the group remain eligible for rescue or restructuring aid (subject to compliance with the other provisions of these guidelines), with the exception of the earlier beneficiary of the aid. Member States must demonstrate that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.’

208 In the present case, in recitals 271 to 273 of the contested decision, the Commission assessed whether the conditions laid down in the Guidelines relating to the ‘one time, last time’ principle had been complied with. It noted, inter alia, that none of the entities making up the TAP economic unit, namely TAP SGPS, TAP Air Portugal and the entities under their control, had received any rescue aid, restructuring aid or temporary restructuring support during the previous 10 years, other than the rescue measure approved in the decision on the rescue measure. Since the latter measure forms part of the same restructuring operation as the

measure at issue, the prior grant of that measure did not entail a breach of the ‘one time, last time’ principle, in accordance with point 72(a) of the Guidelines.

- 209 In that regard, first, it must be recalled that, as has been explained in the context of the examination of the first plea, HPGB did not belong to the TAP group as at the date of the contested decision. The applicant does not call into question the analysis in the contested decision according to which HPGB did not have controlling rights over TAP SGPS (see paragraph 15 above). Consequently, even if HPGB had received rescue aid, restructuring aid or temporary restructuring support during the previous 10 years, it was not necessary for the Commission, for the purpose of ensuring that the measure at issue complied with point 74 of the Guidelines, to demonstrate in the contested decision that no part of that measure could be passed on to HPGB.
- 210 Second, the applicant has not put forward any evidence showing that HPGB had received any of the types of aid covered by the ‘one time, last time’ principle during the previous 10 years, or indicating how or why TAP would pass the measure at issue or part of that aid on to HPGB. The applicant’s line of argument therefore remains purely speculative.
- 211 In the light of the foregoing, the first complaint of the present plea must be rejected.

2. The second complaint of the seventh plea in law, concerning the measures to limit distortions of competition

- 212 According to the applicant, the Commission imposed measures that were insufficient to limit distortions of competition. More specifically, in the context of the present complaint, it criticises the measures relating, first, to the size of TAP’s fleet, second, to the divestment of slots at Lisbon airport and, third, to the sale of TAP SGPS’s subsidiaries, Groundforce and Cateringpor.
- 213 Before examining, in order, the different parts of the applicant’s line of argument, it should be recalled, at the outset, that, in section 3.6.2 of the Guidelines, entitled ‘Measures to limit distortions of competition’, point 76 provides as follows:
- ‘When restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. The Commission will assess the appropriate form and scope of such measures in accordance with this section (3.6.2).’
- 214 In section 3.6.2.1 of the Guidelines, entitled ‘Nature and form of measures to limit distortions of competition’, point 78 provides, inter alia, as follows:
- ‘... undertakings benefiting from restructuring aid may be required to divest assets or reduce capacity or market presence. Such measures should take place in particular in the market or markets where the undertaking will have a significant

market position after restructuring, in particular those where there is significant excess capacity.’

215 Point 80 of the Guidelines provides as follows:

‘Measures to limit distortions of competition should not lead to a deterioration in the structure of the market. Structural measures should therefore normally take the form of divestments on a going concern basis of viable stand-alone businesses that, if operated by a suitable purchaser, can compete effectively in the long term. In the event that such an entity is not available, the beneficiary could carve out and subsequently divest an existing and appropriately funded activity, creating a new and viable entity that should be able to compete in the market. Structural measures that take the form of divestment of assets alone and do not involve the creation of a viable entity able to compete in the market are less effective in preserving competition and will therefore only be accepted in exceptional cases where the Member State concerned demonstrates that no other form of structural measures would be feasible or that other structural measures would seriously jeopardise the economic viability of the undertaking.’

216 In section 3.6.2.2 of the Guidelines, entitled ‘Calibration of measures to limit distortions of competition’, point 92 of the Guidelines provides, inter alia, that ‘measures limiting distortions of competition should not compromise the prospects of the beneficiary’s return to viability’.

(a) The applicant’s line of argument relating to the cap on TAP’s fleet

217 The applicant submits that the reduction in TAP’s fleet is insufficient. It maintains that the reduction in the number of TAP’s aircraft is not only marginal and had already begun before the restructuring, but that the Commission also failed to examine whether TAP’s capacity in terms of available seat kilometres had materially decreased. According to the applicant, the Commission also failed to explain why the divestment of assets in the present case, which was in any event necessary to ensure TAP’s viability, would be effective in limiting distortions of competition, rather than the divestment of a viable entity able to compete on the market.

218 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

219 In the present case, in recitals 280 and 281 of the contested decision, the Commission assessed the measure consisting of a cap on the size of TAP Air Portugal’s fleet at a maximum of 90 to 100 aircraft until 2025. It considered that that cap reduced TAP Air Portugal’s market presence and capacity, since it meant that TAP would not have sufficient aircraft to meet expected demand in 2025. The Commission also found that such a reduction was in line with the measures adopted in previous decisions authorising the restructuring of airlines in order to limit distortions of competition.

- 220 In that regard, first, with respect to the Commission's decision to accept the cap on the size of TAP Air Portugal's fleet as a measure intended to limit distortions of competition, instead of the divestment of a viable entity able to compete on the market, it must be noted that, under point 78 of the Guidelines (see paragraph 214 above), the divestment of assets and measures reducing the capacity or market presence of a beneficiary of restructuring aid are among the measures envisaged by the Guidelines to limit distortions of competition. The cap on the number of aircraft in TAP Air Portugal's fleet until 2025 is precisely such a measure, since TAP Air Portugal will have fewer aircraft than before the restructuring period and will not be able to meet the demand expected at the end of that period.
- 221 Furthermore, although point 80 of the Guidelines (see paragraph 215 above) states that structural measures should 'normally' take the form of divestments of viable stand-alone businesses, as the applicant points out, it must be stated that the cap on TAP Air Portugal's fleet forms part of a set of measures adopted by TAP in order to limit distortions of competition. Those measures included divestments of undertakings, such as the divestment of Groundforce and Cateringpor, and divestments of assets, namely the slots at Lisbon airport, with the aim of reducing TAP's market presence and enabling the expansion of competitors' activities, in accordance with points 78 to 80 of the Guidelines. In those circumstances, the fact that the Commission accepted the capping of the size of TAP Air Portugal's fleet as a measure limiting distortions of competition does not constitute a failure to have regard to the Guidelines.
- 222 Second, as regards the scale of that measure, although the applicant maintains that the cap in question represents a marginal reduction, it must be observed that the Guidelines do not impose any quantitative threshold relating to the reduction of the market presence of the beneficiary of a restructuring aid measure for the purpose of limiting distortions of competition. Moreover, it must be recalled that, under point 92 of the Guidelines (see paragraph 216 above), such measures should not compromise the return to viability of the beneficiary of restructuring aid. Therefore, the reduction in the size of TAP Air Portugal's fleet did not necessarily have to be greater, as the applicant in essence submits, in order to be accepted as a measure to limit distortions of competition.
- 223 In addition, as regards the applicant's argument alleging a failure by the Commission to examine the capacity of the fleet, that argument also does not call into question the validity of the cap on the size of TAP Air Portugal's fleet. The applicant does not dispute that that measure would result in TAP Air Portugal being unable to meet demand in 2025 and having a more limited market presence than it had in 2019, which is consistent with the objective set out in point 78 of the Guidelines.
- 224 Third, as regards the applicant's claim that the capping of the size of TAP Air Portugal's fleet had begun before the restructuring and that such a cap was in fact a measure to ensure TAP's viability rather than to limit distortions of competition, it must be observed, as the Commission contends, that the applicant confuses two

separate measures. The reduction of TAP Air Portugal’s fleet, the lawfulness of which under the Guidelines has been examined in the context of the third plea, was carried out as part of the restructuring plan. By contrast, the cap on the size of that fleet until the end of the restructuring period constituted a mandatory commitment, by virtue of Article 2(2)(b) of the operative part of the contested decision, which formed part of a measure expressly adopted in order to limit distortions of competition, as is apparent from recitals 276, 280 and 281 of the contested decision.

225 In the light of the foregoing, the applicant’s line of argument relating to the size of TAP’s fleet must be rejected.

(b) The applicant’s line of argument relating to the divestment of slots at Lisbon airport

226 The applicant submits that the divestment of a maximum of 18 slots at Lisbon airport is also insufficient and inadequate for various reasons. In that regard, it puts forward arguments criticising the scale of that measure, the procedure for allocating the slots at issue and the conditions attached to that allocation.

227 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

228 In the present case, in recitals 282 to 320 of the contested decision, the Commission examined the measure consisting of the divestment of slots at Lisbon airport. It observed that TAP Air Portugal held – and would continue to hold after the restructuring period – a significant position at that airport and that measures limiting distortions of competition were therefore necessary under point 78 of the Guidelines. In view of the congestion existing at that airport, a significant barrier to the entry or expansion of TAP Air Portugal’s competitors would be removed through the divestment of slots, with the result that such a divestment would be the most effective measure to limit distortions of competition. The Commission considered that the amount of 18 slots per day was sufficient to enable the remedy taker to establish operations at Lisbon airport or to expand such operations, for example, by basing three aircraft there and by operating three rotations per day per aircraft. Those slots would be available to potential remedy takers from the winter 2022/2023 IATA season until the end of 2025. The Commission also considered that the eligibility criteria for the selection of a remedy taker, including the criterion relating to independence from TAP Air Portugal, were appropriate.

(1) The applicant’s arguments concerning the scale of the divestment of the slots at issue

229 As regards the applicant’s arguments concerning the allegedly insufficient scale of the divestment of the slots at issue, first, it must be pointed out that it is apparent from the summary of the contested decision in paragraph 228 above that the Commission considered that the divestment of slots at Lisbon airport removed a

significant barrier to the entry or expansion of competitors and that the amount of slots at issue would enable a competitor to compete effectively, in accordance with point 80 of the Guidelines. As the Commission observed in recital 292 of the contested decision, without being challenged on that point by the applicant, the amount of 18 slots per day would enable the remedy taker to base three aircraft at Lisbon airport and to operate three rotations per day per aircraft, which, by way of example, would afford the applicant or easyJet the possibility of increasing the size of their fleet based at that highly congested airport by more than 40%.

- 230 Second, although the applicant claims that the number of slots at issue is too low and therefore does not make it possible to reduce or eliminate TAP's dominant position at Lisbon airport or for an entrant to reach the same size as the competitors at that airport, it must be stated that no such requirements are apparent from the Guidelines.
- 231 As regards measures to limit distortions of competition, the Guidelines expressly require, in point 79 thereof, that such measures are intended to 'strengthen competition' by favouring 'the entry of new competitors' or 'the expansion of ... small competitors' and, in point 80 of those guidelines, that the divestment of businesses or assets on the basis of those measures should be such as to enable a competitor to compete effectively with the beneficiary of the aid (see paragraph 215 above). Similarly, point 92 of the Guidelines provides that measures must not be on such a scale as to compromise the beneficiary's return to viability (see paragraph 216 above). Thus, the quantitative thresholds envisaged in the applicant's line of argument have no basis in the Guidelines.
- 232 In that regard, although the applicant refers, in its reply, to Commission Decision C(2020) 4372 final of 25 June 2020 on the State aid SA.57153 (2020/N) – Germany – COVID-19 – Aid to Lufthansa, the case which gave rise to that decision must be distinguished from the present case. In that decision, by which the Commission authorised aid under Article 107(3)(b) TFEU and its 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 2020 (OJ 2020 C 112 I, p. 1) and 8 May 2020 (OJ 2020 C 164, p. 3), it was found that the slots to be divested by the beneficiary of the aid in question at Frankfurt and Munich airports (both in Germany) would enable the entry of a new competitor of a size comparable to that of the existing competitors at the airports concerned. However, that does not in any way mean that the Commission, in the contested decision, had no choice but to accept a corresponding number of slots at Lisbon airport, as it was required to assess the measures to limit distortions of competition solely in the light of the requirements of the Guidelines and TAP's specific circumstances in the present case.
- 233 In any event, as has already been stated, the Commission found in recital 292 of the contested decision that the amount of slots at issue enabled the applicant or easyJet to increase the size of their fleet at Lisbon airport by more than 40%. Such a change cannot be described as marginal, contrary to what the applicant claims.

- 234 In addition, although the applicant complains that the Commission did not specifically address the question whether the number of slots could encourage new entries into the market, it must be pointed out that the Commission stated on several occasions in the contested decision, for instance in recitals 285, 288 to 290, 292 and 293 thereof, that the divestment of the slots at issue could enable the establishment of operations at Lisbon airport and, therefore, the entry of a new competitor into the market. In any event, it must be observed that, under the Guidelines, effective competition may also be exerted by an existing competitor that strengthens its position by acquiring the slots at issue, with the result that the specific examination referred to by the applicant was not necessary.
- 235 Third, the applicant submits, in essence, that the Commission did not sufficiently examine whether TAP Air Portugal could have divested more slots without compromising its return to viability, as no analysis is provided in support of its conclusion in that respect in recital 319 of the contested decision.
- 236 In that regard, it is apparent from recitals 313 to 319 of the contested decision that the Commission did indeed assess whether or not the divestment of 18 slots by TAP Air Portugal compromised that undertaking's return to viability and that it found that the transfer of more than 18 slots could compromise its return to viability in the most adverse market circumstances. There was therefore an assessment by the Commission of that possibility.
- 237 Furthermore, the applicant's argument that, in essence, the Commission should have required measures reducing TAP's activities to the point of non-viability is not supported by point 92 of the Guidelines, which merely requires the Commission to ensure that all measures taken to limit distortions of competition do not have negative consequences for the return to viability of the beneficiary of restructuring aid. Indeed, measures on the scale envisaged by the applicant would jeopardise the rationale for authorising restructuring aid, which is precisely to enable an eligible undertaking to become viable again.
- 238 Lastly, the applicant claims that the divestment of the slots at issue is not sufficient in the light of TAP Air Portugal's market position at Lisbon airport and the level of TAP's own contribution. However, it is apparent from the foregoing analysis, first, that the divestment of the slots at issue reduced the beneficiary's presence at Lisbon airport, as did the cap on the size of TAP Air Portugal's fleet, and that the number of slots involved would strengthen competition at that airport and, second, that the divestment of a higher number of slots could have compromised TAP's return to viability. In those circumstances, the Commission did not fail to have regard to the conditions relating to measures to limit distortions of competition laid down in the Guidelines.

(2) *The applicant's arguments concerning the procedure for allocating the slots at issue*

- 239 As regards the applicant's arguments concerning the procedure for allocating the slots at issue, first, the applicant submits that the Commission delayed the divestment of the slots at issue until the winter 2022/2023 IATA season instead of starting implementation in the summer 2022 IATA season and did not justify why those slots had been left vacant during the summer of 2022.
- 240 In that regard, it must be recalled that point 78 of the Guidelines provides, *inter alia*, that divestments to limit distortions of competition 'should take place without undue delay, taking into account the type of asset being divested and any obstacles to its disposal, and in any case within the duration of the restructuring plan.'
- 241 In the present case, it is apparent from recital 300 of the contested decision that the call for proposals regarding the divestment of the slots was to be published well in advance of the general slot allocation procedure for each IATA season and that it would begin with the winter 2022/2023 IATA season, the latter being the first IATA season in respect of which the general slot allocation procedure had not yet started as at the date of the contested decision. Thus, on account of the date of adoption of the contested decision, namely 21 December 2021, the winter 2022/2023 IATA season was the next season in respect of which the general slot allocation procedure had not yet started. That timeframe therefore afforded potential remedy takers the opportunity to organise their bids better and, as explained by the Commission in its defence, to plan their networks in line with the next general slot allocation procedure. There was therefore no 'undue delay' within the meaning of point 78 of the Guidelines.
- 242 Although the applicant criticises that timeframe by claiming that it had the consequence that the slots at issue were not available to the potential remedy taker for the summer 2022 IATA season, it must be observed that the Commission was entitled to consider that organising the divestment of the slots in respect of that season would have been very difficult from a practical point of view, *inter alia* with regard to the submission of bids by potential remedy takers. As the Commission contends in its defence, not only was the period between the adoption of the contested decision and the start of the summer 2022 IATA season, on 27 March 2022, very short, but the call for proposals could not have been adequately coordinated with the general slot allocation procedure for the summer 2022 IATA season, which was to end in January 2022 at the latest.
- 243 Second, the applicant criticises some of the criteria, examined in recitals 303 to 310 of the contested decision, for evaluating the bids of the potential takers of the slots at issue.
- 244 It disputes the fact that, if the Commission were to give the same or similar evaluation to several proposals, TAP would have the possibility of deciding which

bid won, which would enable it to choose the remedy taker that posed the lesser competitive threat and entail the risk of a conflict of interest.

- 245 In that regard, it should be noted that, while it is true that, according to the contested decision, the Commission, in the event of tied bids, was to give preference to the bid ranked best by TAP Air Portugal, the risk of a conflict of interest, as alleged by the applicant, or that the remedy taker would not compete with TAP Air Portugal, were purely hypothetical. Indeed, it is apparent from recitals 93, 94 and 309 of the contested decision that it was only in the event of tied bids, after the Commission had taken into account, inter alia, the seat capacity of the aircraft based at Lisbon airport and the number of direct routes to and from that airport, that the choice would fall to TAP Air Portugal. Next, in the event that TAP Air Portugal's choice might play a role in the selection of the remedy taker, that choice nevertheless had to be circumscribed by transparent criteria, as is apparent from recital 94 of the contested decision. The requirement of transparency thus ensured that the criteria used by TAP Air Portugal would not be arbitrary and would be announced in advance. Lastly, and above all, it is clear from recital 304(b) of the contested decision that, in order to be eligible, the remedy taker had to be 'independent of' and 'unconnected with' TAP Air Portugal.
- 246 Moreover, the applicant submits that the evaluation of the bids of potential remedy takers on the basis of the criteria set out in recital 93 of the contested decision wrongly gives priority to the number of departing seats from Lisbon airport rather than the number of destinations served and also disregards the expected load factor on the routes operated by the slot taker.
- 247 However, the applicant's line of argument cannot succeed in the light of the objective of the divestment of the slots at issue, namely to limit distortions of competition by enabling the remedy taker to compete effectively in the long term at Lisbon airport. Taken as a whole, the eligibility conditions and the criteria for evaluating bids ensured that the taker of the slots at issue would exert competitive pressure on TAP Air Portugal, as the Commission explained in recitals 303 to 310 of the contested decision. In that connection, it must be noted that the remedy taker had to hold a licence issued by a Member State of the European Economic Area (EEA) in order to be able to operate routes within the EEA without restrictions and had to commit to basing aircraft at Lisbon airport, such that the connectivity of that airport would be guaranteed. The remedy taker also had to be able to compete with TAP Air Portugal in terms of independence and financial soundness. Furthermore, the use of criteria relating to the number of departing seats from Lisbon airport and the number of destinations served meant that the remedy taker was to be chosen according to criteria which, logically, would result in competition with TAP Air Portugal at Lisbon airport. In the light of all those factors, it has in no way been demonstrated that the objective of the divestment of the slots at issue could be undermined by the mere fact that, according to the applicant, the criteria for evaluating bids gave priority to the number of departing

seats from Lisbon airport, rather than the number of destinations served, and that those criteria disregarded the load factor expected by the remedy taker.

(3) *The applicant's arguments concerning the conditions attached to the slots at issue*

- 248 As regards the applicant's arguments concerning the conditions attached to the slots at issue, first, the applicant submits that certain time-related conditions attached to the grant of the slots at issue are excessively restrictive, which reduce the effect of the divestment of those slots on competition at Lisbon airport.
- 249 In that regard, it is apparent from recital 297 of the contested decision that the Commission noted that there were two constraints imposed on the taker of the slots, which were aimed at protecting TAP Air Portugal's hub-and-spoke operations at Lisbon airport. First, TAP Air Portugal was not obliged to transfer, *inter alia*, more than one slot before 08:00 per aircraft based at that airport, in accordance with recital 84 of the contested decision. Second, TAP Air Portugal could allocate slots corresponding to the slots requested by the remedy taker within a range of more or less 20 minutes for short-haul flights and of more or less 60 minutes for long-haul flights. The Commission considered that those constraints would not affect the ability of the slot taker to compete with TAP Air Portugal.
- 250 While the applicant criticises the potential cap on the number of slots transferred before 08:00 per aircraft, such slots being very important to TAP Air Portugal's competitors, the fact remains that the taker of the slots at issue was to benefit from access to at least one slot per aircraft before 08:00. In view of the fact that the remedy taker was also to have three aircraft based in Lisbon, such a cap would enable it to operate three routes to or from Lisbon airport before 08:00. As the Commission found in recital 297 of the contested decision, without being contradicted by the applicant, the data provided by the Portuguese authorities showed that that cap was compatible with the usual rotations of aircraft based at Lisbon airport and should not therefore restrict the ability of competitors to compete with TAP Air Portugal at Lisbon airport.
- 251 In addition, the applicant's criticism relating to the time window within which TAP was to transfer the slots at issue must be rejected, inasmuch as it is alleged that TAP Air Portugal could use that window to impair the operations of the taker of those slots, without it being necessary to rule on its admissibility, which is disputed by the Commission. As was explained in recital 297 of and footnote 85 to the contested decision, the commitment in question prevents TAP Air Portugal from exercising its discretion in order to undermine the reasonable rotation of the remedy taker's aircraft.
- 252 Second, the applicant maintains that there is no provision laid down in the contested decision to ensure *ex post* monitoring of whether the taker of the slots at issue complies with its bid, which risks rendering the measure ineffective.

253 In that regard, it is not disputed that the operation by the taker of the slots at issue was not subject to any monitoring in order to verify whether the remedy taker complied with the plan which it had submitted in its bid. However, it must be observed that the Guidelines do not require such monitoring of a structural measure, as in the present case. Those guidelines simply require, in point 79 thereof, that a structural measure strengthen competition and, in point 80 thereof, that such a measure enable the purchaser to compete in the long term. Moreover, in accordance with recital 296 of the contested decision, the fact that the remedy taker would remain free to use the slots at its discretion would make the divestment at issue even more attractive from a commercial point of view for the potential remedy taker, since it could adapt its services during the operation of the slots, making it easier for it to compete with TAP Air Portugal at Lisbon airport.

254 In the light of all the foregoing considerations, the applicant’s line of argument relating to the divestment of the slots at Lisbon airport must be rejected.

(c) The applicant’s line of argument relating to the divestment of the stakes in Cateringpor and Groundforce

255 The applicant submits that, as regards the divestment of TAP SGPS’s stakes in Cateringpor and Groundforce, the Commission failed to take account of the fact that, in accordance with the wording of point 78 of the Guidelines, divestments of loss-making activities which are in any event necessary to restore the long-term viability of a beneficiary of rescue or restructuring aid are generally not considered sufficient to address distortions of competition. In addition, the abovementioned undertakings do not operate in the market where TAP has a significant market position, with the result that the divestment at issue is not such as to limit distortions of competition.

256 The Commission, supported by the Portuguese Republic, disputes the applicant’s arguments.

257 Before examining the applicant’s arguments, it must be recalled, at the outset, that point 78 of the Guidelines states, first, that structural measures to limit distortions of competition ‘should take place in particular in the market or markets where the undertaking will have a significant market position after restructuring’ and, second, that divestments ‘which would at any rate be necessary to restore long-term viability will generally not be considered sufficient ... to address distortions of competition.’

258 In the present case, in recitals 277 to 279 of the contested decision, the Commission explained, first, that Cateringpor and Groundforce had been profit-making until 2019, their financial difficulties having been caused by the COVID-19 pandemic, and that there was interest on the part of potential investors in acquiring them. According to the Commission, the divestment of those undertakings satisfied the conditions laid down in point 80 of the Guidelines since they could compete in the long term if they were managed by a suitable purchaser.

The Commission considered that the divestment of those undertakings constituted a measure limiting distortions of competition, since they were vertically integrated within the TAP SGPS group and were its main suppliers of catering and ground handling services. It found that the divestment of those undertakings to competitors would therefore lead to an increase in competition in the relevant markets. Second, the Commission did not accept the divestment of M&E Brasil as a measure to limit distortions of competition since that undertaking was loss-making prior to the COVID-19 pandemic and, therefore, its sale was regarded rather as a measure that was necessary to restore TAP's viability.

- 259 In that connection, in the first place, the Court must reject the applicant's argument that Cateringpor and Groundforce were engaged in loss-making activities which had to be divested at any rate in order to restore TAP's long-term viability. While that divestment was also part of the restructuring plan submitted by TAP as a measure enabling it to focus on its core activity, namely aviation, in accordance with recital 29 of the contested decision, it must be stated that the applicant does not call into question the finding in recital 277 of the contested decision that those undertakings were fundamentally viable and therefore of interest to potential purchasers. Therefore, although the divestment of Cateringpor and Groundforce was included by TAP in the restructuring plan, that does not mean that those undertakings were loss-making, unlike M&E Brasil, the divestment of which was not accepted as a measure to limit distortions of competition.
- 260 In the second place, the fact that Cateringpor and Groundforce were not operating in the market where TAP Air Portugal had a significant market position at the time of the contested decision, namely passenger air transport in Portugal, does not mean that the Commission erred in accepting the divestment of those undertakings as a measure capable of limiting distortions of competition under the Guidelines. In that regard, while it is true that point 78 of the Guidelines states that such a measure is to take place 'in particular' in the market or markets where the beneficiary will continue to have a significant market position, the Guidelines do not require that all measures to limit distortions of competition must relate to the market or markets where a significant market position is held. In the present case, measures relating to the passenger air transport market were also adopted by TAP, through the cap on the size of its fleet and the divestment of slots at Lisbon airport. Thus, the divestment of Cateringpor and Groundforce forms part of an additional measure which, as stated, in essence, in recital 278 of the contested decision, reduces TAP's presence and significance as a group in the market in general, which, moreover, is consistent with point 78 of the Guidelines.
- 261 In the light of the foregoing, the applicant's line of argument relating to the divestment of the stakes in Cateringpor and Groundforce and, consequently, the second complaint of the present plea and the plea in its entirety, must be rejected.

H. The eighth plea in law, alleging breach of the principles of non-discrimination, freedom to provide services and freedom of establishment

262 By the eighth plea, the applicant submits that the Commission infringed the principles of non-discrimination, freedom to provide services and freedom of establishment.

1. Breach of the principle of non-discrimination

263 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).

264 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).

265 In addition, it should be recalled 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).

266 In the context of the present plea, the applicant submits, in essence, that the contested decision authorises discriminatory treatment which is neither appropriate nor necessary to achieve the objective of the measure at issue. It maintains that at no time did the Commission examine the need and objective justification for granting the aid only to the beneficiary, even though the COVID-19 pandemic had serious repercussions for all the airlines that were operating in Portugal. According to the applicant, the aid goes beyond what is necessary in order to achieve its objective since the beneficiary receives 100% of the aid, even though it ensures only 33% of Portugal's connectivity. It claims that, in that regard, the allocation of aid to all the airlines operating in Portugal according to their market share would have enabled the same objective to be achieved.

- 267 The Commission, supported by the Portuguese Republic, disputes the applicant's arguments.
- 268 In that connection, first of all, it should be recalled that classification of a national measure as 'State aid', within the meaning of Article 107(1) TFEU, requires, *inter alia*, that that measure confer a selective advantage on the recipient while distorting or threatening to distort competition (judgments of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 101, and of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 32). In particular, the requirement of selectivity arising from Article 107(1) TFEU presupposes that the Commission will establish that the economic advantage, understood in the broad sense, arising directly or indirectly from a particular measure specifically benefits one or more undertakings. It falls to the Commission to show, in particular, that the measure in question creates differences between undertakings which, with regard to the objective of the measure, are in a comparable situation. It is necessary therefore that the advantage be granted selectively and that it be liable to place certain undertakings in a more favourable situation than that of others (judgments of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 103, and of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 34).
- 269 Nonetheless, State aid granted for the purposes of and in accordance with the conditions laid down by Article 107(3)(c) TFEU is compatible with the internal market. It follows that, unless that provision is to be deprived of all practical effect, State aid which is granted for the purposes of an objective recognised therein and within the limits of what is necessary and proportionate to the achievement of that objective, cannot be held to be incompatible with the internal market for effects which are inherent in any State aid, that is to say, *inter alia*, for reasons relating to whether the aid is selective or distorts competition (see, to that effect, judgment of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraphs 106 and 107; see also, by analogy, judgment of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraphs 35 and 36).
- 270 Therefore, aid cannot be considered incompatible with the internal market for reasons that are solely linked to whether the aid is selective or distorts or threatens to distort competition (judgments of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 108, and of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 37).
- 271 Admittedly, the procedure provided for in Article 108 TFEU must never produce a result that is contrary to the specific provisions of the FEU Treaty. Accordingly, State aid which, as such or by reason of some modalities thereof, contravenes provisions or general principles of EU law cannot be declared compatible with the internal market (judgments of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 109, and of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 38).

- 272 However, as regards Article 18 TFEU specifically, it is settled case-law that that article is intended to apply independently only to situations governed by EU law in respect of which the FEU Treaty lays down no specific prohibition of discrimination (judgments of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 110, and of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 39).
- 273 Since Article 107(3)(c) TFEU provides for derogations from the principle, referred to in paragraph 1 of that article, that State aid is incompatible with the internal market, and thus allows, in particular, differences in treatment between undertakings, subject to fulfilment of the requirements laid down by those derogations, those derogations must be regarded as ‘special provisions’ provided for in the Treaties, within the meaning of the first paragraph of Article 18 TFEU (see, to that effect, judgments of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 111, and of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 40).
- 274 It follows that, in the present case, it is necessary to examine only whether the difference in treatment brought about by the measure at issue is permitted under Article 107(3)(c) TFEU. That examination requires, first, that the objective of the measure at issue fulfils the requirements laid down by that provision and, second, that the modalities for granting the measure at issue – namely, in the present case, the fact that it benefits only TAP – are such as to enable that objective to be achieved and do not go beyond what is necessary to achieve it.
- 275 In that connection, as regards, in the first place, the objective of the measure at issue, it must be recalled, as is apparent inter alia from the examination of the second and fourth pleas above, that the Commission explained in the contested decision that that measure was intended to prevent the insolvency of TAP, which was facing solvency and liquidity difficulties, in particular due to heavy operating losses recorded following the COVID-19 pandemic, in order to avert a situation of market failure and social hardship. Thus, the objective of the measure at issue was to enable TAP to implement the restructuring plan in order to return to viability. That objective was therefore consistent with Article 107(3)(c) TFEU, read in conjunction with the Guidelines.
- 276 As regards, in the second place, the modalities for granting the measure at issue, it has not been established, as is apparent from the analysis of the first seven pleas, that the Commission infringed Article 107(3)(c) TFEU, read in conjunction with the Guidelines. More specifically, the Commission correctly considered that the measure at issue pursued an objective of common interest, in accordance with the analysis set out in the examination of the second plea above. Furthermore, the Commission did not make an error of assessment regarding the appropriateness and proportionality of the measure at issue and the measures to limit distortions of competition generated by that measure, as is apparent from the examination of the fifth, sixth and seventh pleas above.

- 277 In addition, the applicant has not established that dividing the amount of the aid at issue between all the airlines present in Portugal would have been effective in achieving the objective pursued by the measure at issue, namely to enable TAP to return to viability in order to avert a situation of market failure and social hardship in the event of TAP's exit from the market. Moreover, only undertakings in difficulty, like TAP, are eligible for restructuring aid.
- 278 It follows that the measure at issue does not infringe the principle of non-discrimination.

2. Breach of the principles of freedom to provide services and freedom of establishment

- 279 The applicant submits that the Commission should have determined, when assessing the compatibility of the measure at issue, whether the form of the aid granted in the present case complied with the principles of freedom to provide services and freedom of establishment. It maintains that, by failing to do so, the Commission erred in law. The applicant claims that reserving the aid solely to the beneficiary restricts the rights granted to EU carriers by the EU operating licence system established by 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), in other words, the right of those carriers freely to provide air transport services within the internal market. It argues that the contested decision entails an unjustified restriction of the principles of freedom to provide services and freedom of establishment.
- 280 The Commission, supported by the Portuguese Republic, disputes the applicant's arguments.
- 281 In that regard, as has been pointed out in paragraph 271 above, the procedure provided for in Article 108 TFEU must never produce a result that is contrary to the specific provisions of the Treaty. Accordingly, State aid which, as such or by reason of some modalities thereof, contravenes provisions or general principles of EU law cannot be declared compatible with the internal market (judgment of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 131).
- 282 However, the Court of Justice has previously held that the restrictive effects which an aid measure has on the freedom to provide services or the freedom of establishment still do not constitute a restriction prohibited by the FEU Treaty, since it may be inherent in the very nature of State aid, such as its selective nature (judgment of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 132).
- 283 Where the modalities of an aid measure are so indissolubly linked to the object of the aid that it is impossible to evaluate them separately, their effect on the compatibility or incompatibility of the aid viewed as a whole with the internal

market must therefore of necessity be determined by means of the procedure prescribed in Article 108 TFEU (see judgment of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 133 and the case-law cited).

- 284 In the present case, the choice of TAP as the beneficiary of the measure at issue forms part of the objective of that measure, namely preventing TAP's exit from the market and enabling it to return to viability, and, in any event, even if that choice were to be regarded as a modality of that measure, the applicant does not dispute that such a modality is indissolubly linked to that object. It follows that the effect of the choice of TAP as the beneficiary of the measure at issue on the internal market cannot be examined separately from the effect of the compatibility of that aid measure viewed as a whole with the internal market by means of the procedure prescribed in Article 108 TFEU (see, to that effect, judgment of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 134).
- 285 In any event, while it is true that the measure at issue relates to individual aid, namely restructuring aid, which benefits only TAP, the applicant has not shown how that exclusive character is such as to deter it from providing services to and from Portugal, or from exercising its freedom of establishment in that Member State. In particular, it fails to identify the matters of fact or of law which mean that the measure at issue produces restrictive effects that go beyond those which trigger the prohibition laid down in Article 107(1) TFEU, but which are nevertheless necessary and proportionate to cover TAP's financial needs in order to prevent its exit from the market, in accordance with Article 107(3)(c) TFEU, read in the light of the Guidelines.
- 286 Consequently, the measure at issue cannot constitute an obstacle to the freedom of establishment or to the freedom to provide services. It follows that the applicant is not justified in alleging that the Commission failed to examine the compatibility of that measure with the freedom of establishment and the freedom to provide services.
- 287 In the light of the foregoing, the eighth plea must be rejected in its entirety.

I. The ninth plea in law, alleging infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU

- 288 By the ninth plea, the applicant submits that the Commission infringed its obligation to state reasons at various points in the contested decision.
- 289 First, it argues that the Commission failed to provide any justification in support of its conclusions that (i) the Portuguese Republic was unable to deal with TAP's difficulties on market terms and (ii) that HPGB and Mr Pedrosa were unable to deal with TAP's difficulties either.

- 290 Second, as regards the examination of TAP's return to viability, the level of reduction of TAP's fleet, including in terms of capacity, is not explained, in particular due to the redactions in the contested decision.
- 291 Third, the impact of other restructuring measures, such as the reduction in staff costs and the renegotiation of supply contracts, was disregarded, as was the question whether those measures had started prior to the onset of the COVID-19 pandemic.
- 292 Fourth, the restructuring costs and sources of financing are overly redacted, making it impossible to verify the assumptions used in the contested decision.
- 293 Fifth, there is a lack of information regarding TAP's profitability during the restructuring period, TAP's future performance in terms of EBIT, ROCE and return on equity, and the assumptions underpinning the adverse scenario.
- 294 Sixth, the redaction of the level of own contribution makes it impossible to ascertain whether that level is significant.
- 295 Seventh, the Commission does not justify its conclusion that the divestment of more than 18 slots at Lisbon airport could compromise TAP's return to viability in the adverse scenario and did not provide any analysis in that regard in relation to the baseline scenario.
- 296 Eighth, the Commission failed to weigh up the positive and negative effects of the measure at issue.
- 297 The Commission, supported by the Portuguese Republic, disputes the applicant's arguments.
- 298 In that regard, as has already been stated in paragraph 20 above, 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 of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 8 September 2011, *Commission v Netherlands*, C-279/08 P, EU:C:2011:551, paragraph 125 and the case-law cited).

- 299 In the first place, as regards the applicant's first argument relating to the ability of TAP's shareholders to deal with TAP's difficulties without recourse to State aid, it must be observed that, as is apparent from the examination of the first plea, the Commission stated to the requisite legal standard the reasons for the conclusion that the beneficiary was eligible for restructuring aid pursuant to the Guidelines.
- 300 More specifically, it is apparent from paragraph 22 above that the Commission, in recitals 191 and 194 of the contested decision, examined the ability of the Portuguese Republic to deal with TAP's difficulties on market terms and concluded that it was not capable of doing so.
- 301 In the second place, the second to seventh arguments put forward by the applicant in the context of the present plea concern, in essence, redactions of certain figures by the Commission in the public version of the contested decision in order to comply with its obligation to preserve professional secrecy (see paragraph 118 above). It follows from the examination of the third, sixth and seventh pleas that the Commission sufficiently substantiated its reasoning and methodology in the parts of the contested decision to which the applicant's line of argument relates. More specifically, it set out the reasons why it had considered that the measures forming part of the restructuring plan were appropriate, that TAP's return to viability had been demonstrated, that TAP's own contribution to the costs of the restructuring was in accordance with the Guidelines and that the scale of the slot divestment as a measure to limit distortions of competition was sufficient under the Guidelines. As is apparent from the examination of the third, sixth and seventh pleas, the applicant has been able to challenge those assessments and the Court has been able to exercise its power of review, in accordance with the case-law cited in paragraph 298 above.
- 302 Lastly, as regards the alleged failure to weigh the beneficial effects of the measure at issue against its adverse effects, it suffices to observe that the Commission did indeed carry out that assessment in the contested decision. In order to ensure that that measure did not adversely affect trading conditions to an extent contrary to the common interest under Article 107(3)(c) TFEU, the Commission examined whether the conditions laid down in the Guidelines were satisfied. More specifically, it verified, *inter alia*, that the measure at issue contributed to an objective of common interest, was necessary, appropriate and proportionate, had an incentive effect, and was accompanied by measures to limit distortions of competition. Accordingly, the applicant's argument is bound to fail.
- 303 In the light of the foregoing, the present plea must be rejected and, consequently, the action must be dismissed in its entirety.

IV. Costs

- 304 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.

305 In addition, in accordance with Article 138(1) of the Rules of Procedure, the Portuguese Republic must bear its own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

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 Portuguese Republic to bear its own costs.**

Kowalik-Bańczyk

Hesse

Ricziová

Delivered in open court in Luxembourg on 10 December 2025.

V. Di Bucci

S. Papasavvas

Registrar

President