

COMMISSION DECISION
of 19 June 2013
on State aid No SA.30753 (C 34/10) (ex N 140/10)
which France is planning to implement for horse racing companies
(notified under document C(2013) 3554)
(Only the French text is authentic)
(Text with EEA relevance)
(2014/19/EU)

THE EUROPEAN COMMISSION,

online horse-race betting in order to fund a public service mission entrusted to horse racing companies.

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof ⁽¹⁾,

(2) By letter dated 17 November 2010 the Commission notified France of its decision to initiate the procedure laid down in Article 108(2) TFEU (hereinafter referred to as 'the opening decision') regarding this aid.

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

(3) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested third parties to submit their comments on the aid measure in question.

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽²⁾ and having regard to their comments,

Whereas:

(4) France submitted its comments on the opening decision on 18 January 2011.

1. PROCEDURE

(1) By letter dated 13 April 2010 France notified the Commission of a proposal for a parafiscal levy on

(5) The Commission received several comments from interested parties (see Table 1 below):

Table 1

Interested parties

Position	Entity	Short description	Date
In favour of the aid measure	Cheval Français	Harness racing parent company	11.2.2011
	France Galop	Flat and jump racing parent company	11.2.2011
	Laboratoire des Courses Hippiques	Non-profit association that carries out anti-doping tests that are fully funded by the parent companies	11.2.2011

⁽¹⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology used in this Decision is that of the TFEU.

⁽²⁾ OJ C 10, 14.1.2011, p. 4.

⁽³⁾ See footnote 2.

Position	Entity	Short description	Date
	Association de Formation et d'Action sociale des Ecuries de courses	Non-profit association that implements occupational training and social welfare initiatives in the horse racing sector and that receives 60 % of its funding from the parent companies.	11.2.2011
	Union Européenne du Trot	Organisation composed of the national harness racing federations in 19 European countries	9.2.2011
	European and Mediterranean Horseracing Federation	Federation of 18 authorities belonging to the horse racing sector, 14 of which are European, whose objective is to promote horse racing. France Galop represents France in this federation.	14.2.2011
Opposed to the aid measure	European Gambling & Betting Association	Non-profit association, governed by Belgian law, composed of European operators in the gambling sector	14.2.2011
	Anonymous	N/A	14.2.2011

- (6) The interested parties' comments were sent to France on 28 February 2011. France sent its comments on the interested parties' comments on 4 April 2011.
- (7) On 12 April 2011 the Commission sent a request for information to the French authorities.
- (8) On 4 May 2011 a working meeting took place between the Commission's departments and the French authorities.
- (9) By letter dated 11 May 2011 France requested that the time allocated to respond to the questions of 12 April 2011 be extended and this request was approved by the Commission by letter dated 16 May 2011. France answered these questions on 20 June 2011.
- (10) Working meetings between the Commission's departments and the French authorities were held on 11 July and 9 December 2011.
- (11) France submitted a draft amendment to its initial notification on 14 December 2011.
- (12) On 16 December 2011 the Commission sent questions to France regarding the new measure being put forward. The French authorities replied on 1 March 2012.
- (13) A working meeting between the Commission's departments and the French authorities was held on 30 March 2012, based on the new measure proposed by the French authorities.
- (14) Following requests from the Commission for adjustment of this new measure, the French authorities provided additional information on 6 December 2012 and 21 January and 27 February 2013.
- (15) On 29 April 2013, the French authorities officially submitted to the Commission an amendment to the

notification of 13 April 2010 containing the new measure discussed with the Commission's departments.

2. DESCRIPTION OF THE MEASURE AS IT APPEARED IN THE INITIAL NOTIFICATION

2.1. Background: opening-up to competition of the gambling sector

- (16) France opened up the online gambling sector to competition by Law No 2010-476 of 12 May 2010 on the opening-up to competition and regulation of the online gambling sector (hereinafter referred to as 'the Law of 12 May 2010').
- (17) The purpose of the Law of 12 May 2010 was to put a stop to the growing illegal gambling offer on the Internet. Three types of game, chosen for their popularity with gamblers and reduced risk in terms of addiction, were opened up to competition: online horse-race betting, sports betting and poker games.
- (18) Online gambling and betting operators must be in possession of an authorisation, issued for a term of five years and under certain conditions by the French regulatory authority for online gambling (ARJEL), an independent administrative authority created by the Law of 12 May 2010.
- (19) Following the opening-up of online gambling to competition on 24 November 2010, the Commission brought to a close⁽⁴⁾ the infringement proceedings instituted against France. These infringement proceedings⁽⁵⁾ had been instituted in 2006 because the Commission considered that the restrictions imposed by France on the services provided by foreign operators were disproportionate. Within the context of these infringement proceedings, the Commission had issued a reasoned opinion in 2007⁽⁶⁾.

⁽⁴⁾ See in particular IP/10/1597.

⁽⁵⁾ See in particular IP/06/1362.

⁽⁶⁾ See in particular IP/07/909.

- (20) Prior to the opening-up to competition, the monopoly of horse-race betting conducted outside race courses was held by the PMU (Pari Mutuel Urbain), an economic interest grouping ⁽⁷⁾ formed by two horse racing parent companies ⁽⁸⁾ and 49 provincial horse racing companies (hereinafter jointly referred to as 'the horse racing companies'), both for online bets placed via the Internet and for brick-and-mortar bets placed in the PMU's sales network or bets placed at race courses.
- (21) At the time of the notification in 2010, the stakes collected on horse races by the PMU, the leading totalisator betting operator in Europe and the second largest in the world, came to EUR 9 342 million. 8,5 % ⁽⁹⁾ of the PMU's turnover came from online bets in 2010. Its entire net result is paid to the horse racing companies, amounting to EUR 790,9 million in 2010 ⁽¹⁰⁾. It is used to fund 80 % of the horse racing and equine industry (breeding, training centres, horse riding schools, etc.), which employs some 74 000 people and is present in every region with a total of 250 race courses.

2.2. Objective of the measure as it appeared in the initial notification

- (22) Given the importance of the PMU in the financing of the horse racing and equine industry, the French authorities were concerned that the sustainability of the industry would be under threat if the opening-up to competition of the online gambling sector resulted in a significant drop in the PMU's revenues due to the following potential causes:
- competition from other operators authorised to offer online bets on horse races;
 - the fact that, by virtue of the legalisation of online sports betting, there could be a shift in the market from horse race bets to sports bets, which would result in a change in the market's structure.
- (23) Consequently, France decided to introduce a parafiscal levy on online horse-race betting in favour of the horse racing and equine industry to prevent the economic destabilisation of the sector as a result of the opening-up to competition and its potentially harmful consequences. According to the French authorities, the parafiscal levy on online horse-race betting would finance a service of general economic interest (hereinafter referred to as 'SGEI') entrusted to the horse racing companies (see Chapter 2.3).
- (24) The entire revenue from the levy collected from all online horse-race betting stakes, including stakes placed on the PMU's website, would be paid to the horse racing parent companies (in proportion to the bets placed on each speciality: harness, flat and jump racing), which would then distribute the corresponding total among the various beneficiaries ⁽¹¹⁾. The revenue would be in addition to the funding from bets placed in the PMU's physical network of sales outlets (hereinafter referred to as 'brick-and-mortar bets'). On the basis of the financial data for the year 2010, it was estimated that the levy could yield about EUR 64 million.
- (25) The proposed rate of the levy for the year 2010 was 8 % of the stakes placed in online horse-race betting calculated using the financial data from the year 2008, and corresponded to the ratio between the costs of the public service obligations and the total of all online and brick-and-mortar horse-race betting stakes. The aim of the tax rate was therefore to place the same financial burden for the funding of the public service activities on the PMU and the other horse-race betting operators. The rate of the levy could be reviewed in the light of changes in the costs of the public service obligations and the bets placed on horse races using the following formula as a rule:

$$\text{Levy rate} = \frac{\text{Cost of public service obligations (year N - 2)}^{(12)}}{\text{Horse-race betting stakes (year N - 2)}}$$

⁽⁷⁾ An economic grouping is a transparent organisation with no registered capital that is founded by its members for the purpose of pooling some of their operations.

⁽⁸⁾ For each horse racing speciality (harness, flat and jump racing), a horse racing company is approved by the Minister for Agriculture as the parent company for horse racing: for harness racing, this company is Cheval Français, and for flat and jump racing it is France Galop. These parent companies play a key role in organising races in their speciality on which bets are placed.

⁽⁹⁾ 5,8 % in 2008 and 7,2 % in 2009.

⁽¹⁰⁾ EUR 736,4 million in 2008, EUR 731,4 million in 2009.

⁽¹¹⁾ The horse racing parent companies are responsible for distributing the proceeds of the levy among the various beneficiaries: horse racing companies (including the parent companies themselves), the national federation of French races, the horse racing laboratory (LCH), the Parisian race courses' technical group (GTHP), the association for professional training and social welfare initiatives in horse racing (AFASEC) and the regional federations.

⁽¹²⁾ The benchmark was the year N-2 for reasons of availability of the financial data needed to calculate the levy rate

However, the notification specified that this rate should remain between 7 % and 9 %. The above formula would result in a rate of 8 % for the year 2012 based on the financial data from the year 2010 (see recital (113)).

- (26) In addition to the revenue from bets collected in the PMU's physical network and from the parafiscal levy, it should be noted that the horse racing companies also benefit from the revenue generated by online sports and poker betting, for which the PMU also received an authorisation following the opening-up to competition of the online gambling sector.
- (27) When the measure was notified, this parafiscal levy on online horse-race betting was to be added to the ordinary general taxation that applied to all brick-and-mortar and online horse-race betting. In this regard, the French general tax code specified that horse-race betting operators had to pay a levy of 5,7 % on stakes⁽¹³⁾.

2.3. The horse racing companies' public service mission

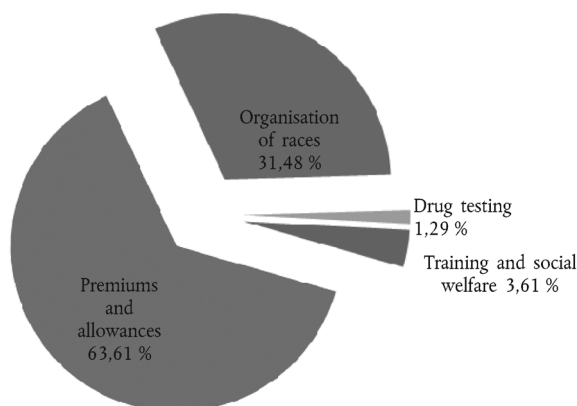
- (28) According to the notification by the French authorities, the horse racing companies provided a public service made up of the following elements:
- improving the equine species
 - promoting horse breeding
 - personnel training in the horse racing and horse breeding sector
 - rural development.
- (29) This mission entrusted generally to the horse racing companies conferred a special role on the horse racing parent companies, which played a central part in organising races and in the entire horse racing and equine industry⁽¹⁴⁾. In particular, Le Cheval Français and France Galop had key responsibilities in the following areas:
- drawing up and enforcing horse racing codes of conduct
 - organising horse races
 - conditions for awarding and sharing out prize money
 - regulating horse races and the horse racing and equine industry
 - facilities needed to organise horse races
 - selecting horses
 - occupational training.
- (30) In practice, the performance of the public service mission entrusted to the horse racing companies was fulfilled by the following activities:
- the distribution of premiums and allowances to the breeders, owners and jockeys associated with the horses placed in horse races by the horse racing companies;
 - the organisation of races by the horse racing companies, including the maintenance and building of race courses;
 - drug testing in horse races by the French horse racing laboratory (LCH);
 - training courses provided by the association for occupational training and social welfare initiatives in horse racing (AFASEC), covering the entire horse racing profession (jockeys, drivers, trainers, etc.).
- (31) The total net cost of this public service mission came to approximately EUR 747 million in 2010⁽¹⁵⁾ (see recital (113)). The chart below shows the proportion of this total cost accounted for by each of the abovementioned activities.

⁽¹³⁾ Article 302 bis ZG of the French general tax code.

⁽¹⁴⁾ Decree No 2010-1314 of 2 November 2010 on the public service obligations of horse racing companies and the intervention procedures of the parent companies.

⁽¹⁵⁾ Corresponding to total costs of EUR 775 million and revenues of EUR 28 million.

Figure 1

Breakdown of the costs of the public service mission (2010 figures)

(32) In 2010, the lion's share of the 'public service' costs mentioned in the notification (see Figure 1) was accounted for by premiums and allowances paid to breeders, owners and jockeys (EUR 493 million, corresponding to approximately 63,6 % of the total cost). The second-largest cost item was horse-race organisation costs (EUR 244 million, corresponding to approximately 31,48 % of the total cost).

(33) The total cost of the public service mission described by France in the notification was said to be fully funded by the horse racing companies' revenues from online bets collected by the PMU via the Internet, brick-and-mortar bets collected in the PMU's sales network, bets collected at race courses, and other own resources of the horse racing companies (such as admission charges to race courses).

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(34) The Commission considered that the aid measure had all the constituent elements of state aid. Having examined the options allowed by the applicable rules, the Commission did not identify a clear way forward for establishing the compatibility of the notified measure with the internal market.

(35) In particular, the Commission expressed serious doubts about the SGEI status cited by France for the mission entrusted to the horse racing companies and, consequently, about the possibility of treating the proposed aid measure as public service compensation

and basing its compatibility on Article 106(2) TFEU and on the Community framework for State aid in the form of public service compensation ⁽¹⁶⁾.

(36) Moreover, following the preliminary investigation conducted by the Commission, no clear way forward in terms of compatibility emerged. In the light of the information available to the Commission, the proposed aid seemed to meet neither the general compatibility conditions set out in Article 107(3)(c) TFEU nor the special conditions laid down by instruments such as the guidelines on regional aid ⁽¹⁷⁾ or the agricultural guidelines ⁽¹⁸⁾.

(37) Furthermore, given the close link between the aid measure and the collection of the parafiscal levy, the compliance of the levy with some of the other principles of the Treaty should also have been fulfilled and the Commission continued to have doubts about the compatibility of the parafiscal levy with the principle of freedom to provide services set out in Article 56 TFEU and the principle of non-discrimination set out in Article 110 TFEU.

4. TRANSITIONAL MEASURES

(38) Pending the Commission's decision, France adopted a transitional measure on 20 October 2010 by which it collects the 8 % levy on online horse-race betting retroactively from 3 August 2010. However, the income from

⁽¹⁶⁾ The French authorities had notified the measure on the basis of the Community framework for State aid in the form of public service compensation, OJ C 297, 29.11.2005.

⁽¹⁷⁾ Guidelines on national regional aid for 2007-2013, OJ C 54, 4.3.2006.

⁽¹⁸⁾ Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013, OJ C 319, 27.12.2006.

this levy is not allocated to the horse racing companies but flows into the general budget of the French State.

- (39) In parallel with the introduction of this transitional measure, France reduced the level of general taxation on all online and brick-and-mortar horse-race betting. The rate of this tax was reduced from 5,7 % to 4,6 % of stakes.

5. COMMENTS BY THE FRENCH AUTHORITIES

- (40) The French authorities sent their comments on the opening decision by letter dated 18 January 2011.

5.1. On the existence of state aid

- (41) While the French authorities did not dispute the classification as state aid, being as it was in keeping with their notification, they did question the following points:

5.1.1. Existence of an advantage in favour of the horse racing companies

- (42) The French authorities questioned whether the measure could provide an advantage for the horse racing companies compared with the situation prior to the opening-up to competition of the online horse-race betting market. The measure was simply an adjustment needed in the light of the new situation in which there was now not just one gambling operator but several. The burden on the PMU prior to the change would simply be spread over all operators. The French authorities also considered that the PMU could not gain any advantage from the measure because it would pay the entire proceeds from the levy to the horse racing companies.

5.1.2. Impact on competition and effect on trade

- (43) The French authorities considered that there was no potential distortion of competition in the online horse-race betting market because the levy applied uniformly to all online horse-race betting operators, nor was there any distortion of competition at the level of the organisation of the horse races themselves because the horse racing companies did not compete but worked together at the European, and indeed, global level (for example, the racing calendar was optimised to avoid conflicting dates).

5.2. Regarding the SGEI status of the horse racing companies' activities

- (44) The French authorities insisted on the margin of discretion granted to Member States in defining and organising SGEIs.
- (45) On several occasions, the Court of Justice of the European Union had found that, when Member States defined the services of general economic interest which they entrusted to certain enterprises, they could take into account 'objectives pertaining to their national policy' ⁽¹⁹⁾.
- (46) The French authorities considered that the organisation of horse races by the horse racing companies did indeed

contribute towards an SGEI for the improvement of the equine species, the promotion of horse breeding, personnel training in the horse racing and breeding sector, and rural development.

- (47) By the Law of 12 May 2010, the French legislature had sought to make clear the existence of a public service mission to which the horse racing companies contributed. Among the main objectives of the State's policy in the area of gambling, as stipulated in Article 3 of that law, was the 'balanced and fair development of the different types of game in order to avoid any economic destabilisation of the sectors concerned.' Article 65 stipulated that 'the horse racing companies participate inter alia through the organisation of horse races in the public service of improving the equine species, promoting horse breeding, training personnel in the horse racing and breeding sector and developing the countryside.'

- (48) The mission complied with the Community's requirements in the area of SGEIs because its application was universal and compulsory and conferred by an act of a public authority, and it was specific in nature when compared with the operations of an ordinary private business.

- (49) The general-interest dimension of the improvement of the bloodline had been recognised by the Commission through the following in particular:

— The Directive on trade in equidae intended for competitions ⁽²⁰⁾, which recognised the interest in 'ensur[ing] the rational development of equidae production' and encouraging 'the safeguard, development and improvement of breeding'.

— The position adopted in *Ladbroke v Commission* ⁽²¹⁾, in which the Commission had asserted that 'the contribution to the development and greater efficiency of the totalisator betting sector and above all to the improvement of bloodstock constitute legitimate objectives consistent with the Community interest.'

- (50) The French authorities also emphasised the importance of the horse sector in developing the countryside, particularly by means of the 250 race courses, and in preserving a certain cultural heritage.

- (51) Finally, they pointed out that the Council of State in its opinion of 26 November 2009 ⁽²²⁾ had found that such an SGEI existed, by referring both to the objectives set out in the abovementioned Directive and to the general interest objectives such as the promotion of breeding and rural development.

⁽²⁰⁾ Council Directive 90/428/EEC of 26 June 1990 on trade in equidae intended for competitions.

⁽²¹⁾ See judgment in Case T-67/94 *Ladbroke v Commission* [1998] ECR II-1, paragraph 143.

⁽²²⁾ Council of State No 383.270 - Session of Thursday 26 November 2009.

⁽¹⁹⁾ See judgment in Case C-67/96 *Albany* [1999] ECR I-5751.

(52) In addition, the Council of State had found that the promotion of breeding was not unrelated to regional planning and rural development, which might also be considered to be general interest objectives. Horse racing contributed to these objectives particularly because of the considerable number of race courses in France.

5.3. Regarding the compatibility of the measure under Article 106(2) TFEU

(53) The French authorities considered that the conditions of compatibility based on Article 106(2) TFEU were met.

(54) In particular, they considered that compensation for the performance of the public service was necessary (race prizes, for example, made up jockeys' wages) and proportionate. The percentage of the levy assigned to the horse racing companies was precisely determined on the basis of the total cost of the public service obligations and the total amount of the stakes collected from horse-race betting, which should avoid any overcompensation. Furthermore, the notification specified a mechanism for controlling overcompensation.

5.4. Regarding the compatibility of the measure with the principle of free movement of services

(55) The French authorities argued that the parafiscal levy did not contain any discriminatory elements because it benefited:

— In the first instance, the horse racing companies, and particularly those that constituted the PMU, the authorised betting operator. However, these companies gained no advantage, either financial or competitive, over other operators as this income was used solely and exclusively to finance the public service mission which was entrusted to them by the French authorities and which made no distinction according to the nationality of the participants in races.

— Ultimately, and indirectly, all authorised betting operators whether French or foreign. They would benefit from the positive externalities of a high-quality and highly appealing race organisation.

6. COMMENTS BY INTERESTED PARTIES

(56) The Commission received comments from eight interested parties. Of these, five were associations, two were the horse racing parent companies and one wished to remain anonymous (see recital (5)).

6.1. Comments by interested parties in support of the notified measure

(57) Six interested parties were in favour of the notified measure. They included the two horse racing parent companies which stood to benefit significantly from the measure. The main arguments put forward by the interested parties in favour of the notified measure were as follows:

6.1.1. Importance of the measure for the future of horse racing

(58) Some interested parties explained that horse races throughout Europe were financed by the revenues from bets and were therefore totally dependent on these revenues.

(59) There was therefore a correlation between the level of direct employment in the horse racing sector and the revenues generated from betting on horse races that were redirected towards this sector. A drop in revenues would have repercussions on the breeding industry and would not allow horse racing to fulfil its task of improving the equine species and promoting horse breeding.

(60) Moreover, the horse racing sector was a considerable asset for Europe, and the 250 race courses in France played a very significant social role because of the attachment of the French to the horse racing tradition and because they were often located in the more disadvantaged regions of France.

(61) It was also important to protect the totalisator betting system, as it provided the best possible guarantee of transparency and integrity and aimed to secure a fair return for the sport.

6.1.2. Existence of state aid

(62) Some interested parties argued that the notified measure was not aid within the meaning of Article 107(1) TFEU for the following reasons:

(63) It did not confer any economic advantage on the horse racing companies benefiting from it: the income from the levy, which corresponded to 8 % of the stakes placed in online horse race betting, was much lower than the cost to the horse racing parent companies of implementing the public service obligations⁽²³⁾.

(64) Moreover, the measure did not affect trade and neither distorted nor was likely to distort competition because there was no market for horse racing in the strict sense that could be subject to a distortion of competition, but simply a market for horse-race betting.

(65) Even if the Commission were to find that there was a market for horse racing, the horse racing companies benefiting from the measure were not in competition with horse racing companies in other Member States because the horse racing companies coordinated their operations at a Europe-wide or even worldwide level to avoid competition of this kind, by holding races on different dates for example.

(66) Furthermore, should the Commission increase the scope of its analysis to include the horse-race betting market, no distortion could arise in this market given that the measure did not discriminate between betting operators.

⁽²³⁾ As set out in the Law of 1891 and Decree No 2010-1314 of 2 November 2010.

- (67) Finally, certain interested parties also argued that the activities of the horse racing companies were local in nature and therefore had no effect on trade between Member States.

6.1.3. Definition of SGEI

- (68) Some interested parties insisted on the Member States' margin of discretion in defining and organising SGEIs.
- (69) They also explained that the SGEI status of the horse racing companies' activities was justified by the historical, cultural and economic dimension of the French horse racing and equine industry. The organisation of horse races satisfied a public need and was in keeping with the choice to preserve a cultural and genetic heritage and specific areas of expertise in a context of spatial planning. Lastly, the organisation of horse races also had a sporting dimension.
- (70) Some interested parties argued further that horse racing was a structurally loss-making activity which relied on the non-recoverable contributions of owners, as well as a network of 6 000 volunteers, in order to exist. Consequently, horse racing could not be ruled satisfactorily by the market, and hence the SGEI status of the horse racing companies' activities was justified.

6.1.4. Compatibility under Article 106(2) TFEU

- (71) Some interested parties maintained that, should the measure be deemed to be state aid, it was compatible under the rules governing the financing of SGEIs.
- (72) All the resources of the horse racing parent companies were allocated to the performance of structurally loss-making public services and any overcompensation that could potentially feed into competitive activities was excluded *per se*. Moreover, the amount collected through the levy would be relatively marginal compared with the total amount of the costs borne by the horse racing companies in implementing the SGEI entrusted to them.

6.1.5. Compatibility under Article 107(3)(c) TFEU

- (73) Some interested parties argued that the tasks entrusted to the horse racing companies served to support and develop horse breeding, an economic activity within the meaning of Article 107(3)(c) TFEU.
- (74) Without a horse racing and equine sector that was viable in the long term, horse races could no longer take place. A direct link between the levy and the organisation of horse races was therefore established. Inasmuch as all the costs of the horse racing companies contributed to the organisation of races and hence benefited all horse-race betting operators, it was also possible, according to these

interested parties, using an approach based on Article 107(3)(c) TFEU, to approve the funding through a parafiscal levy of activities of common interest to a sector. All the costs of the horse racing companies should be taken into account in such an approach, which justified the rate of 8 % proposed by the French authorities for the notified measure, as well as the procedures planned for reviewing that rate.

6.1.6. Compatibility of the levy with the principle of freedom to provide services

- (75) The levy that would be imposed in a non-discriminatory manner on all online horse-race betting operators, including the PMU, could not in any way violate the principle of freedom to provide services set out in Article 56 TFEU or the principle of non-discrimination set out in Article 110 TFEU.

6.2. Comments by the interested parties opposed to the notified measure

- (76) Two interested parties - an association and a body which wished to remain anonymous - were opposed to the measure. The main arguments of the interested parties opposed to the notified measure were as follows:

6.2.1. Existence of state aid

- (77) The interested parties emphasised that the specifications annexed to Decree No 2010-1314 of 2 November 2010 on horse racing companies' public service obligations and the intervention procedures of the horse racing parent companies, stated that the horse racing companies had to ensure that French horse races maintained the same level of appeal as those organised in other Member States. This provision confirmed the impact of the measure on trade between Member States and the possibility of distortion of competition at that level.
- (78) Given that the PMU was an EIG, it was only an offshoot of the horse racing companies, which were both horse-race betting operators and horse-race organisers. The distinction between both of these activities was artificial. Consequently, the levy was equivalent to forcing online betting operators to finance their rival, which was a clear distortion of competition between horse-race betting operators.

6.2.2. Clear error of assessment regarding the new SGEI

- (79) According to the interested parties, the French authorities had committed a manifest error in considering the activities of the horse racing companies to be an SGEI.
- (80) In particular, there had been no national debate prior to the creation of that SGEI and no specific explanation by the Council of State as to the need for its creation.

(81) On the contrary, on several occasions in the past, the Council of State had formally concluded that the organisation of horse races was not an SGEI ⁽²⁴⁾ and, more generally, the framework chosen by France for the horse-race sector for more than a century now had not included any public service dimension.

(82) In the opinion of the interested parties, the objective in opening up the online gambling market was to support the PMU's policy of commercial expansion, a policy that was somewhat inconsistent with the concepts of general interest and public service, by allowing it, in particular, to diversify its activities into sports betting and online poker.

6.2.3. Necessity of the measure

(83) The interested parties expressed doubts about the risk, suggested by the French authorities to justify the measure, of a decrease in the PMU's revenues caused either by competition from other horse-race betting operators or by a cannibalisation of horse-race betting by sports betting.

(84) They considered this risk to be insignificant because:

— In 2010, the Internet turnover of the PMU had increased by 39 % overall and by 10 % for online horse-race betting. Thanks to the opening-up to competition, the PMU had been able to enter the online poker and sports betting markets and thereby expand its customer base. Its profits had grown by 18 % in 2010.

— According to the French competition authority (Autorité de la Concurrence), the PMU dominated the online horse-race betting market with an 85 % share of the market and was by far the dominant player in the market if one included the monopoly on brick-and-mortar betting. It was also the market leader when sports betting was included, with a market share of between 40 % and 55 %.

— There was no substitutability between sports betting and horse-race betting because the required expertise, age categories and incomes of the players as well as the bets offered by the operators were very different.

(85) Moreover, there was no need for the measure because the PMU's monopoly on brick-and-mortar betting allowed it to:

— offer gamblers a higher payout ratio, through the gamblers' winnings, than online betting operators;

— take advantage of its network of 10 000 sales outlets and the revenues generated by this network to finance and promote its online activities.

6.2.4. Level of the parafiscal levy and calculation of the expenditure needing to be financed

(86) The interested parties argued that, in so far as the French authorities had not presented a clear budget for the expenditure that needed to be financed, the levy was not intended to cover the costs of the public service mission. Moreover, the levy financed activities which did not directly benefit online horse-race betting organisers.

(87) Even if there were grounds for imposing a levy of that kind, the rate of 8 % proposed by the French authorities was excessive when compared with the betting levy paid by sports betting operators to the sports federations, which was of the order of 1 % of stakes.

6.2.5. Discrimination based on the origin of horses

(88) Some interested parties pointed out that, among the premiums and allowances distributed by the PMU, some breeders' premiums were reserved for horses born in France. Such a state of affairs infringed the principle of non-discrimination set out in Article 110 TFEU.

6.2.6. Additional measures

(89) One interested party mentioned other measures from which the PMU was said to benefit:

— The transitional measure of the 8 % levy on online betting stakes, in combination with the reduction in the tax rate on all brick-and-mortar and online horse-race bets, favoured the PMU and was tantamount to circumventing the effects of the opening decision taken by the Commission. While online operators, including the PMU for its online activities, paid the 8 % levy, the PMU did not pay it for its brick-and-mortar activities. Moreover, the PMU gained a greater advantage than other operators from the 1,1 % reduction in the tax rate because of the volume of its brick-and-mortar betting business.

— The PMU and the horse racing companies were exempt from the tax on profits.

— The French competition authority had pointed to several PMU practices that could be deemed an abuse of a dominant position ⁽²⁵⁾. These included the

⁽²⁴⁾ For example: Council of State in its judicial capacity, No 141204, 9 February 1979: 'It follows both from the provisions of the Law of 2 June 1891 and from the regulations that are applicable to the totalisator betting system that the horse racing companies, inasmuch as they are responsible for organising races and the totalisator betting system, are not vested with a public service mission and act as legal entities governed by private law subject to the control of the public authorities.'

⁽²⁵⁾ Notice of 20 January 2011 of the French competition authority on the online gambling sector.

use by the PMU of the same trademark (the PMU trademark) for its monopolistic and its competitive activities, the use of certain generic names (tiercé, trio, etc.) to identify certain types of bet, and the launch of the PMU card used to gather data on customers placing brick-and-mortar bets. These data could then be used to draw customers into online betting.

- (90) It should be pointed out that this Decision concerns only the compatibility of the measure notified by France in favour of the horse racing companies. It does not in any way prejudice the future position of the Commission on the additional objections mentioned in recital (89) above.

7. FRANCE'S COMMENTS ON THE COMMENTS BY THE INTERESTED PARTIES

- (91) France submitted its comments on the comments by the interested parties on 4 April 2011. In these comments, the French authorities essentially referred to the comments they sent on 18 January 2011.

- (92) However, the French authorities emphasised the following points:

— The PMU had lost about 15 % of its online market share in 2010, which demonstrated that the risk of a loss in revenues for the equine sector was real.

— The opinion of the competition authority was unrelated to the present case.

— France's policy in the area of gambling essentially dealt with social and public policy objectives and not with economic or commercial objectives.

8. AMENDMENT OF THE NOTIFICATION BY FRANCE

- (93) On 29 April 2013 the French authorities submitted to the Commission an amendment to their initial notification. The plan was that the system introduced by this amended notification should be implemented from 1 January 2014, subject to the prior consent of the Commission.

- (94) The French authorities also undertook to submit a report to the Commission on the implementation of the new system, two years after the planned entry into force of these measures on 1 January 2014.

8.1. Description of the new system

- (95) The French authorities no longer present the measure for the financing of horse racing as compensation for a public service entrusted to the horse racing companies. Consequently, the doubts expressed by the Commission on the SGEI classification attributed to the activities of the horse racing companies, as well as the possibility of authorising the measure on the basis of Article 106(2) TFEU, are rendered irrelevant.

- (96) The new system is presented as aid to an economic sector, namely the horse racing and equine industry, based on the common interest that the PMU and competing online horse-race betting operators have in organising horse races on which bets are placed.

- (97) Consequently, the calculation of the level of the tax to be levied on all online horse-race betting operators takes into account only compensation for the costs of organising races that also benefit all online horse-race betting operators (hereinafter referred to as 'common interest costs').

- (98) Compared with the measure envisaged in the initial notification, the new system reduces the level of the costs to be financed by the revenues generated by the parafiscal levy. The French authorities have calculated that the rate of the levy would be no greater than 5,6 % (calculated for the year 2012 on the basis of the financial data from the year 2010), whereas it could have come to 8 % on the basis of the system envisaged in the initial notification (see recital (113)).

8.2. Premium races and non-premium races

- (99) In order to determine the common interest costs (see recital (97)), the French authorities make a distinction between premium races (on which bets are placed)⁽²⁶⁾ and non-premium races (on which no bets are placed).

- (100) Given that betting, and particularly online betting, takes place only for premium races, the French authorities consider that it is logical to equate the common interest costs with the costs connected with organising premium races.

- (101) The French authorities use the ratio of horses participating in premium races to divide up some of the horse racing parent companies' fixed costs between premium and non-premium races. The breakdown for each horse racing parent company is set out in Table 2 below:

⁽²⁶⁾ For premium races, not only online bets are taken but also brick-and-mortar bets through the PMU's sales network.

Table 2

Number of horses starting in premium and non-premium races

	Cheval français (harness)	France Galop (flat and jump)
Total horses starting	150 822	77 304
Number of premium horses starting	58 112 (38,5 %)	48 027 (62 %)
Number of non-premium horses starting	92 170 (61,5 %)	29 277 (38 %)

8.3. Identification of the common interest costs and calculation of the levy rate*8.3.1. Identification of the common interest costs*

- (102) The common interest costs identified by the French authorities on the basis of the financial data from the year 2010 are presented below by cost category:

8.3.2. Incentives

- (103) The incentives (EUR 493 million in 2010) consist in the distribution by the horse racing parent companies of premiums and allowances payable to breeders, owners and jockeys in relation to the horses entered in races by the horse racing companies. The French authorities propose to incorporate the incentives corresponding to premium races in the common interest costs. They propose to exclude the premiums paid to owners in flat races reserved for horses born and bred in France, thereby dealing with the reservations expressed by the Commission regarding the compliance of the levy with the principles of non-discrimination and freedom to provide services were the premiums reserved for born or bred horses to be financed by the parafiscal levy (see recitals (151)-(156)). Ultimately, the French authorities therefore propose to place EUR 321 million of common interest costs in this category (or about 65 % of the total incentives granted by the horse racing parent companies).

8.3.3. Organisation costs borne by the horse racing parent companies

- (104) The horse racing parent companies' organisation costs (EUR [...] (*) in 2010) are composed of their head office running costs, their staff and marketing costs, the running costs and staff costs of their race courses, and the depreciation costs associated with the maintenance and building of race courses.
- (105) These costs are included by the French authorities in the calculation of the common interest costs only if they can

be attributed to the organisation of premium races. Some costs which by nature benefit only the horse racing companies (marketing costs) are excluded in full, while others such as head office costs are distributed according to the ratio of horses entered in premium races. Ultimately, the French authorities place EUR [...] (or approximately [...] % of the parent companies' total organisation costs) of common interest costs in this category.

8.3.4. Organisation costs borne by provincial horse racing companies

- (106) The total costs borne by the 230 provincial horse racing companies for organising races came to EUR [...] in 2010. The French authorities include in the common interest costs only EUR [...] (or approximately [...] of the total organisation costs borne by the provincial horse racing companies), corresponding to the costs connected with the premium races organised by 49 of them.

8.3.5. Costs of recording and broadcasting racing events

- (107) The horse racing parent companies finance the recording and broadcasting of live premium racing action made available to online gambling operators. In particular, these video feeds are used to check the results of the races when they finish. The French authorities consider that these video feeds, which concern only premium races, are of benefit to all online gambling operators. Their absence would result in a major decrease in betting. The French authorities therefore include the total cost of recording and broadcasting the video feeds of premium races in the calculation of the common interest costs, that is to say EUR [...] in 2010.

- (108) On the other hand, other costs for the promotion of the equine sector, particularly through the television channels, are not included in the common interest costs⁽²⁷⁾. It should be noted that the costs related to the recording and broadcasting of the video feeds of races were not included in the public service costs initially notified.

8.3.6. The fight against doping

- (109) The fight against doping, which concerns premium races, is a key element in the organisation of high-quality racing and in ensuring the integrity of horse-race betting operations. The French authorities therefore include the full amount of these costs, i.e. EUR [...] in 2010, within the scope of the common interest costs.

(*) Business secret

⁽²⁷⁾ Particularly the costs related to the TV programme called "La Minute Hippique" on France 3.

8.3.7. Training and social welfare

- (110) The total costs involved in training the highly qualified staff planning to work in the world of horse racing (drivers, jockeys, stable-lads, etc.) came to EUR [...] in 2010. The French authorities include EUR [...] in the common interest costs, which corresponds to the proportion of premium races.

8.3.8. Revenues of the horse racing companies

- (111) The horse racing companies' own revenues (for example the admission charges paid by spectators) that can be attributed to the organisation of races (EUR [...]) are deducted from the common interest costs.

8.3.9. Calculation of the maximum rate of the levy

- (112) The new system provides that the maximum rate of the levy for a year N is calculated by dividing the common interest costs for year N-2 by the total online and brick-and-mortar horse-race betting stakes for year N-2.

$$\text{Levy (max)} = \frac{\text{Common interest costs (year N - 2}^{(28)})}{\text{Horse-race betting stakes (year N - 2)}}$$

- (113) Applied to the year 2012, on the basis of the 2010 financial data (see Table 3 below), this calculation gives a maximum rate of 5,6 %, since it takes into account a common interest costs total of EUR 519 million. The system envisaged in the initial notification would for its part result in a rate of 8 % calculated on the basis of total costs of EUR 747 million.

Table 3

Calculation of the rate of the levy for the year 2012

	Common interest costs (2010) (EUR [...])	Notified public service costs (2010) (EUR [...])
Incentives	[...]	[...]
Organisation costs of the parent companies	[...]	[...]
Organisation costs of the provincial companies	[...]	[...]
Recording and broadcasting of the video feeds of races	[...]	[...] (*)
The fight against doping	[...]	[...]
Training and social welfare	[...]	[...]
(a) Total costs	[...]	[...]
(b) Horse racing companies' own revenues		[...]
(c = a - b) Net costs to be financed	518	747
(d) Total brick-and-mortar and online horse-race betting stakes		9 286
(e = c/d) Corresponding level of the levy	5,6 %	8 %

(*) The costs of recording and broadcasting race video feeds were not included in the calculation of the public service costs initially notified.

9. ASSESSMENT OF THE MEASURE

- (114) As mentioned in recital (90), this Decision confines itself to examining the compatibility of the measure notified by France in favour of the horse racing companies with the internal market. As indicated in recital (90), it does not prejudge the future position of the Commission regarding any additional measures in favour of the PMU or the horse racing companies denounced by certain interested parties and mentioned in recital (89).

⁽²⁸⁾ The benchmark is the year N-2 for reasons of availability of the financial data needed to calculate the levy rate.

9.1. Existence of state aid within the meaning of Article 107(1) TFEU

(115) In the opening decision, the Commission found that the notified measure constituted state aid⁽²⁹⁾ within the meaning of Article 107(1) TFEU. This finding has never been challenged by the French authorities. Nor do they challenge the classification as state aid following the amendment to the notification of 29 April 2013.

(116) The grounds for the state aid classification are nevertheless set out below, while also taking into consideration the comments of certain interested parties.

9.1.1. State resources

(117) In accordance with the practice of the Commission and the case law of the Court of Justice of the European Union, the concept of state resources within the meaning of Article 107(1) TFEU covers all the financial means by which public authorities may support economic operators, irrespective of whether or not those means are permanent assets of the public authorities. Consequently, even though the sums involved in the measure at issue are not held permanently by the public authorities, the fact that they remain constantly under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as state aid⁽³⁰⁾. Similarly, the originally private nature of the resources does not prevent them being regarded as state resources within the meaning of the Article⁽³¹⁾.

(118) According to the case law, the mere fact that a subsidy scheme benefiting certain economic operators in a given sector is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned is not sufficient to divest the scheme of its character as state aid⁽³²⁾.

(119) In this instance, the levy on online horse-race betting is imposed in a binding fashion by the national rules (the Law of 12 May 2010) and allocated by the same rules to the horse racing companies, which are the beneficiaries of the measure. It is therefore financed using state resources.

9.1.2. Advantage

(120) The notified measure, which allocates the income from the parafiscal levy collected on online horse-race bets to

finance activities that are currently financed by the horse racing companies out of their own revenues, *prima facie* confers an economic advantage on the horse racing companies. Routine activities of the horse racing companies, such as the organisation of horse races, are thus partially financed using state resources.

(121) Moreover, the horse racing companies are *de facto* also online betting operators because of their capacity as associates of the PMU. By virtue of its status as an EIG, the PMU is a transparent structure. Consequently, the PMU's revenues from its horse-race betting business are transferred to the horse racing companies, which finance both the development of the PMU and the organisation of races using the revenues generated by horse-race betting. Moreover, only these horse racing companies are in a position to make substantial investments for the development of the PMU's own activities when this is needed.

(122) Thus, the measure at issue, which aims to secure a certain level of revenues for the horse racing companies should there be a downturn in the PMU's business due to the opening-up to competition of the online horse-race betting market, has the indirect consequence of protecting and strengthening the PMU's position in this market.

9.1.3. Selectivity

(123) Inasmuch as the lion's share of the income from the parafiscal levy collected from online horse-race betting operators would be paid to the horse racing companies members of the PMU, the measure is clearly selective.

9.1.4. Distortion of competition and effect on trade

(124) The effect on trade and the distortion of competition must be assessed with regard to both the horse race organisation activity and the betting activity.

(125) In the opinion of the Commission, given in Communication 97/C 163/03 on presumed aid granted to the horse racing companies and the PMU⁽³³⁾, there is a Community market for betting on horse races, there is trade between the Member States in the collection of bets on horse races, and the businesses that collect these bets are in competition with each other.

(126) The levy, which will benefit only horse racing companies that are approved by the French Ministry of Agriculture, is by nature liable to distort competition in the market for horse-race betting operators and the organisation of races where the horse racing companies work together as an integrated group.

⁽²⁹⁾ See recital 79 of the opening decision.

⁽³⁰⁾ Judgment of the Court of Justice in Case C-83/98 P *France v Ladbroke Racing and Commission* [2000] ECR I-3271, paragraph 50, and in Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraph 37.

⁽³¹⁾ Judgment of the Court of First Instance in Case T-358/94 *Air France v Commission* [1996] ECR II-2109, paragraphs 63-65, and in Case T-243/09 *Fedecom v Commission*, not published in the ECR, paragraph 48.

⁽³²⁾ Judgment of the Court of Justice in Case 78/76 *Steinike & Weinlig* [1977] ECR 595, paragraph 22, and in Case 259/85, *France v Commission* [1987] ECR 4393, paragraph 23; judgment of the Court of First Instance in Case T-243/09, cited above, paragraph 49.

⁽³³⁾ Page 4 of Communication 97/C 163/03 pertaining to Case C-4/97 (ex NN35/93): Communication of the Commission pursuant to Article 93(2) of the Treaty, addressed to the Member States and other interested parties, concerning the presumed aid granted by France to the horse racing companies, the PMU and the PMH.

- (127) Moreover, it is worth noting that Decree No 2010-1314 of 2 November 2010 on horse racing companies' public service obligations and the intervention procedures of the horse racing parent companies provides that the horse racing companies must 'constantly maintain the appeal of French races in relation to races of a comparable level organised abroad in order to draw in the best possible participants'.
- (128) By making it possible to maintain a high level of premiums⁽³⁴⁾ with the resulting effect of retaining the best horses (and preventing them from being sold abroad for example), attracting betters and maximising the revenues from bets for the French horse racing companies compared with the bets on races organised by other European horse racing companies, the measure notified by the French authorities is liable to distort competition between horse racing companies from different Member States.
- (129) It is also worth pointing out that betting operators from other Member States take bets on French races⁽³⁵⁾. A measure in favour of the horse racing companies is therefore liable to affect trade between Member States.

9.2. Compatibility of the measure with the internal market under Article 107(3)(c) TFEU

- (130) The Commission is of the opinion that the notified measure may be considered compatible with the internal market under the derogation provided for in Article 107(3)(c) TFEU authorising 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.
- (131) On the basis of this Article, the Commission has declared compatible several cases of aid to finance, via a levy on businesses in a given sector, joint activities carried on for the benefit of the sector as a whole, where the purpose of those measures was to promote technical progress,

improve the quality, competitiveness and productivity of the businesses and adapt them to the needs of the market⁽³⁶⁾.

- (132) The new system notified by the French authorities satisfies the conditions of this approach: the measure constitutes aid to the horse racing and equine sector which benefits all online horse-race betting operators subject to the levy. The key point that needs to be examined in order to determine the compatibility of the aid is therefore whether the costs financed by the levy are in the common interest. Moreover, because of the close connection between the parafiscal levy and the aid to the horse racing companies⁽³⁷⁾, the opening decision stated that the compatibility of the aid could not be assessed without checking whether the levy was compatible with the principle of freedom to provide services set out in Article 56 TFEU and the principle of non-discrimination set out in Article 110 TFEU⁽³⁸⁾.
- (133) In accordance with the approach mentioned in recital (131), the Commission considers that the notified measure does not come within the scope of the guidelines currently in force for the application of Article 107(3)(c) TFEU but can be authorised directly on the basis of this provision of the Treaty. In assessing whether an aid measure is compatible with the internal market within the meaning of Article 107(3)(c) TFEU, the Commission balances the positive impact of the measure (reaching an objective of common interest) against its potentially negative side effects (distortions of trade and competition)⁽³⁹⁾. The examination of the measure is carried out in three stages on the basis of the following questions:
1. Does the aid measure pursue a clearly defined common interest objective?
 2. If so, is the aid measure an appropriate instrument for achieving the common interest objective? To this end, the following questions must be examined:
 - a) Is the aid an appropriate instrument or are there alternative or more suitable instruments?
 - b) Does the aid act as an incentive?
 - c) Is the aid proportional to the objectives pursued?

⁽³⁴⁾ The French authorities indicated that the level of premiums and allowances distributed in France was higher than the European average.

⁽³⁵⁾ The Chairman and Managing Director of the PMU, Philippe Germond, pointed out in an article in *Les Echos* that 'the dissemination of French races by foreign betting operators has enjoyed good growth, increasing by 20 % in 2010.' In the same article he also referred to significant contracts concluded between the PMU and a Greek operator, as well as the agreement concluded in Belgium with Ladbrokes on the distribution of its totalisator bets.

⁽³⁶⁾ Some examples taken from Commission practice: aid No 472/2000 - parafiscal charge imposed with a view to financing joint initiatives by the Inter-trade Committee for the Development of the Leather Goods and Footwear Industries (Comité Interprofessionnel de Développement des Industries du Cuir, de la Maroquinerie et de la Chaussure) in favour of the industry. Aid No 163/2002: parafiscal charge imposed for the purpose of financing joint initiatives by the national Cognac trade association (Bureau National Interprofessionnel du Cognac) in favour of the sector. Aid No 496/2000: parafiscal charge on clockmaking, jewellery and goldsmith's trade goods imposed for the purpose of financing joint initiatives by the Inter-trade Committee for the development of the clockmaking, jewellery, and goldsmith's trades and the Technical Centre for the clockmaking industry in favour of the industry.

⁽³⁷⁾ The volume of aid granted is directly linked to the income from the levy.

⁽³⁸⁾ See recital 57 of the opening decision.

⁽³⁹⁾ See State aid action plan - Less and better targeted state aid: a roadmap for state aid reform 2005-2009, COM(2005) 107 final, paragraphs 19 and 20.

3. Are the distortion of competition and the effect on trade limited to the extent that the overall effect of the measure is positive?

9.2.1. Common interest objective

- (134) By distributing fairly the burden of funding horse races on which bets are placed between the different online horse-race betting operators, the measure allows fair competition between these operators in the newly liberalised market for online horse-race betting. Consequently, the measure contributes also to the objective of opening up the online gambling sector in accordance with the principle of freedom to provide services within the Union embodied in Article 56 TFEU.
- (135) The liberalisation of online gambling in France is in keeping with the objective of the European Commission's Green Paper of 24 March 2011 on online gambling in the internal market, which is to contribute to the emergence in the Member States of a legal framework for online gambling and thereby to increase legal certainty for all stakeholders ⁽⁴⁰⁾.
- (136) The liberalisation of online gambling in France is also in keeping with the objective, emphasised by the European Commission's Communication of 23 October 2012 on online gambling, of contributing to the creation of legal structures for online gambling in the Member States and thereby providing greater legal clarity for all stakeholders ⁽⁴¹⁾.
- (137) Moreover, the notified measure favours the rational development of equidae production and breeding, which is also a common interest objective. In the recitals to Directive 90/428/EEC of the Council of 26 June 1990 on trade in equidae intended for competitions and laying down the conditions for participation therein ⁽⁴²⁾, the Council recognises the importance of ensuring 'the rational development of equidae production' and states that 'the breeding and rearing of equidae and in particular of horses is generally included in the farming sector [and] it constitutes a source of income for part of the farming population.'
- (138) The Commission therefore concludes that the aid measure notified by the French authorities pursues clearly defined common interest objectives.

9.2.2. Appropriateness of the measure

- (139) An aid measure is deemed to be necessary and balanced when it constitutes an appropriate instrument for achieving a set common interest objective, acts as an incentive to the recipients of the aid and does not distort competition.

⁽⁴⁰⁾ European Commission, Green Paper on on-line gambling in the Internal Market, COM(2011) 128 final, p. 7.

⁽⁴¹⁾ European Commission, Towards a comprehensive European framework for online gambling, COM(2012) 596, p. 4.

⁽⁴²⁾ OJ L 224, 18.8.1990, p. 60.

9.2.3. The aid is an appropriate instrument

- (140) The French Government has decided to liberalise the online horse-race betting market. Prior to liberalisation, horse races were almost exclusively financed by the income generated by the organisation of horse-race betting by the horse racing companies through the PMU. The aid measure aims to spread the burden of financing horse races among all the operators that are authorised to offer online horse-race bets in the French market. It is therefore highly suited to ensuring fair competition between horse-race betting operators by preventing the PMU's competitors from obtaining a share of the online betting market without contributing to the costs of organising horse races. Consequently, the measure ensures the continuity of horse racing and its positive impact on horse breeding and on the entire equine industry.
- (141) In its Green Paper of 24 March 2011 on online gambling in the internal market, the Commission pointed out that 'A specificity of horse racing compared to other sports is that its primary attraction is for gamblers. Thus, to a greater degree than other sport events, its viability will depend on sufficient proportions of gambling revenues being reinvested into the activity.'⁽⁴³⁾
- (142) In the light of the above elements, the measure notified by the French authorities is appropriate to achieve the objective of ensuring the continuity of horse racing and ensuring fair competition in the newly liberalised online horse-race betting market.

9.2.4. Incentive effect of the aid

- (143) If the measure did not exist, the long-term effect of the development of competition in the horse-race betting sector would be a decrease in the horse racing companies' resources, which would lead to the contraction or even the collapse of the sector.
- (144) Given that the activities of the horse racing companies are financed by the income from horse-race betting, the aid measure has a direct effect on the behaviour of horse racing companies by encouraging them to maintain and develop their horse-race organisation activities.

9.2.5. Proportionality of the aid

- (145) The aid measure seeks to ensure a balanced financing between horse-race betting operators of the costs directly connected with the organisation of premium races. The method used to calculate the rate of the levy ensures that the total amount collected on online horse-race betting, and hence the aid granted to the horse racing companies, cannot exceed the total amount of the common interest costs.

⁽⁴³⁾ European Commission Green Paper of 24 March 2011 on on-line gambling in the Internal Market, COM(2011) 128 final, p. 35.

(146) All the other costs of the horse racing companies are consequently borne by the companies themselves, whether they concern the financing of non-premium races or costs that may benefit the PMU but not other horse-race betting operators.

(147) In the light of the foregoing, the Commission considers that the aid measure satisfies the criterion of proportionality.

9.2.6. *Effect on competition and on trade between Member States*

(148) The aid in favour of the horse racing companies could hinder competition between European horse-race operators if it were not proportional. Given that the measure is proportional (see recitals (145)-(147)), the risk that it might confer a disproportionate advantage on French horse racing companies can be ruled out.

(149) Moreover, there could be some negative effects of the aid on competition and trade between Member States if the financing method used (in this instance, the levy imposed on online horse-race bets) breached the principle of freedom to provide services set out in Article 56 TFEU and that of non-discrimination set out in Article 110 TFEU. On the basis of the analysis below, the Commission concludes that there are no such negative effects. In fact, the measure taken as a whole promotes competition in so far as it ensures fair competition between online horse-race betting operators.

9.2.7. *Compatibility of the levy with the principles of freedom to provide services and non-discrimination*

(150) The Commission identified three possible levels of discrimination and obstruction of the principle of freedom to provide services, described below, in the initially notified measure. The French authorities provided answers to each of the risks identified by the Commission by modifying the measure as envisaged in the initial notification or by supplementing it with adequate commitments.

9.2.8. *Discrimination in the allocation of certain premiums*

(151) The Commission considered it problematic that premiums paid to breeders and owners should be financed by the levy if they were reserved for horses born and bred in France (this was the case for non-harness racing). European operators who are not established in France would thus be taxed in order to finance premiums that would benefit only the breeders and owners of horses born and bred in France.

(152) In order to remove the difficulty mentioned in the previous recital, the French authorities excluded from the calculation of the shared costs to be financed by the levy all those premiums which are reserved for horses born and bred in France (see recital (103)).

9.2.9. *Discrimination between horse-race betting operators as regards the benefits from the levy*

(153) The levy, which de facto effects a transfer between the PMU's competitors and the horse racing companies also actively involved in online betting activities, would be discriminatory if it financed costs that were of greater benefit to the horse racing companies and the PMU than to other betting operators.

(154) The Commission considers that the risk of discrimination between horse-race betting operators as regards the benefits from the levy is neutralised if the costs financed are in the common interest of all horse-race betting operators.

(155) However, the Commission also considers, that, in so far as these common interest costs may change over time, this change, which is essentially the result of the choices made by the horse racing companies, particularly as far as incentives are concerned, must be managed in a controlled way. The objective is to prevent the horse racing companies from being tempted to increase the incentives excessively if their cost is borne in part by the PMU's competitors, who would then be subject to a higher rate of levy.

(156) In order to avert this risk and ensure that the changes in common interest costs remain within reasonable limits, the French authorities have agreed to maintain the following control measures:

- The horse racing companies will be under the strict financial control of the State, and in particular of the Ministries of Agriculture and the Economy and Finance, regarding the finances of all the horse racing companies, as required by Decree No 97-456 of 5 May 1997 on horse racing companies and the totalisator betting system, including Title V 'Financial control'.

- Regulatory control by the Court of Auditors of all beneficiaries of parafiscal levies.

(157) The Commission considers that the abovementioned control measures will allow the French authorities to ensure that the common interest costs remain within reasonable limits and will not increase the benefits that the horse racing companies gain from the levy being imposed. The trend in common interest costs will also be monitored by the Commission on the basis of the implementation report to be provided by the French authorities (see recital (94)).

9.2.10. *Discrimination between horse-race betting operators as regards the obligation to pay the levy*

(158) It is worth recalling that the PMU holds a monopoly on the operation of brick-and-mortar horse-race betting and

that it therefore also benefits from premium races, without actually being under an obligation to pay the parafiscal levy. The Commission considers that it is important to ensure that, as with the revenues of online horse-race betting operators, including the PMU itself, the revenues from the PMU's monopoly on brick-and-mortar horse-race betting contribute to the financing of premium races in exactly the same way.

(159) In the opinion of the French authorities, the neutrality between brick-and-mortar and online betting is guaranteed because:

- The revenues from the PMU's monopoly that are transferred to the horse racing and equine industry are structurally at a much higher level than the planned levy on online horse-race bets. The rate of return to the industry in 2011 and 2012, under the system introduced by the Law of 2010, is almost 10 % of stakes (report on the net result of the PMU from brick-and-mortar horse-race betting operations). This rate of 10 % is much higher than the rate of the levy imposed on online horse-race bets, namely 5,6 %.
- The horse racing companies that sit on the PMU's board of directors and the horse racing parent companies in particular, which represent 40 % of the votes, also have an interest in ensuring that the PMU's contribution, which defines their level of resources for the year, does not decrease. This is particularly the case since any decrease in the PMU's contribution would have an impact not only on the organisation of premium races but also on the organisation of non-premium races, which are financed exclusively on the basis of the revenues paid by the PMU to the horse racing and equine industry.

(160) The French authorities have, however, made a commitment to ask the PMU, through the state representatives who are members of the PMU's board of directors and who represent 40 % of the votes, to pay each year to the horse racing and equine industry a fraction of the PMU's brick-and-mortar horse-race betting stakes that is greater than or equal to the level of the parafiscal levy on online horse-race betting.

(161) Should the PMU present a budget which provides for a return to the industry below the level of the parafiscal levy on online bets, and should the horse racing companies approve such a budget, thereby placing the state representatives in a minority on the PMU's board of directors, the French authorities have given a commitment that the competent Ministers will exercise their right to reject the budget pursuant to Article 33 of Decree No 97-456 of 5 May 1997 on horse racing companies and the totalisator betting system, which states that: "The budget of the horse racing companies and the joint bodies mentioned in Article 12(I) [including the PMU] and the modifications made during the

financial year may be enforced only after approval by the authorities specified in Article 34 below. Such approval shall be deemed to be obtained in the absence of a reply from these authorities within one month of the documents being received. If no decision has been taken before the start of the financial year, no investment expenditure may be carried out and the operating costs entered in the previous budget may be carried forward, less 5 %, until the draft budget has been approved.'

(162) The Commission considers that the neutrality of the levy between brick-and-mortar and online bets may be considered to be guaranteed by the above commitments by the French authorities, also taking into account the special relations that exist between the PMU, the horse racing companies and the State. This point will also be verified by the Commission on the basis of the implementation report to be provided by the French authorities (see recital (94)).

(163) From the above analysis, the Commission concludes that the levy which finances the aid to the horse racing companies is compatible with the principles of freedom to provide services and non-discrimination. The method of financing the measure is therefore not likely to adversely affect trading conditions to an extent contrary to the common interest. Consequently, the Commission considers that the measure is compatible with the internal market under Article 107(3)(c) TFEU.

10. CONCLUSION

(164) The Commission finds that the notified aid measure, as amended, constitutes state aid within the meaning of Article 107(1) TFEU.

(165) The Commission finds, however, that the aid satisfies the conditions for being considered compatible with the internal market under Article 107(3)(c) TFEU.

(166) The Commission considers that the amendments made by France to the method of financing the aid ensure that the levy complies with the principle of freedom to provide services set out in Article 56 TFEU and the principle of non-discrimination set out in Article 110 TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The state aid that France is planning to implement for horse racing companies is compatible with the internal market within the meaning of Article 107(3)(c) TFEU.

The implementation of the aid is therefore authorised.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 19 June 2013.

For the Commission
Joaquín ALMUNIA
Vice-President
