Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

26 September 2014*

(Actions for annulment — State aid — Online gaming — Introduction in Denmark of lower taxes for online gaming than for casinos and amusement arcades — Decision declaring aid compatible with the internal market — Aid to facilitate the development of certain activities — Lack of individual concern — Regulatory act entailing implementing measures — Inadmissibility)

In Case T-601/11,

Dansk Automat Brancheforening, established in Fredericia (Denmark), represented by K. Dyekjær, T. Høg and J. Flodgaard, lawyers,

applicant,

v

European Commission, represented initially by M. Afonso and C. Barslev, and subsequently by M. Afonso and L. Grønfeldt, acting as Agents,

defendant,

supported by

Kingdom of Denmark, represented initially by C. Vang, and subsequently by M. Wolff and C. Thorning, acting as Agents, assisted by K. Lundgaard Hansen, lawyer,

by

Republic of Malta, represented by P. Grech and A. Buhagiar, acting as Agents,

by

Betfair Group plc, established in London (United Kingdom),

and

Betfair International Ltd, established in Santa Venera (Malta),

represented by O. Brouwer and A. Pliego Selie, lawyers,

and by

* Language of the case: Danish.

European Gaming and Betting Association (EGBA), established in Brussels (Belgium), represented by C.-D. Ehlermann, J.C. Heithecker and J. Ylinen, lawyers,

interveners,

APPLICATION for annulment of Commission Decision 2012/140/EU of 20 September 2011 in Case No C 35/2010 (ex N 302/2010) on measures which Denmark is planning to implement in the form of duties for online gaming in the Danish [Law on gaming duties] (OJ 2012, L 68, p. 3),

THE GENERAL COURT (Fifth Chamber),

composed of A. Dittrich (Rapporteur), President, J. Schwarcz and V. Tomljenović, Judges,

Registrar: C. Heeren, Administrator,

having regard to the written procedure and further to the hearing on 30 April 2014,

gives the following

Judgment

Background to the dispute

1 The applicant, Dansk Automat Brancheforening, is an association of undertakings and companies licensed to install and operate gaming machines ('slot machines'). The economic model on which the activity of the applicant's members is based consists in purchasing slot machines and then signing agreements for their installation in amusement arcades and restaurants. The applicant has 80 members and represents approximately 86% of the operators of games played on slot machines in Denmark. Its members receive the gross gaming revenues and pay the taxes owing to the State. They then pay part of the revenues from the games to the establishments where their machines are installed.

2 After the Commission of the European Communities opened infringement proceedings and on 23 March 2007 sent the Kingdom of Denmark a reasoned opinion concerning obstacles to the free movement of sports betting services in Denmark, Denmark decided to reform the national legislation on gaming and betting services and to replace the existing monopoly of the public undertaking D. for certain forms of gaming with a regulated and partially liberalised scheme.

3 On 6 July 2010, pursuant to Article 108(3) TFEU, the Kingdom of Denmark notified the Commission of legislative proposal L 203 on gaming duties, which subsequently became Law No 698 on gaming duties [Lov om afgifter af spil] of 25 June 2010 ('the Law on gaming duties'). That law forms an integral part of a legislative package which also includes a Law on gaming ('the Law on gaming'), a law on the distribution of profits from lotteries and horse and dog racing, as well as a law on the statutes of the public undertaking D. The Law on gaming provides that the supply and organisation of gaming is subject to possession of a licence and regulates those activities. The legislative package also effects a liberalisation by putting an end to the monopoly of the public undertaking D. for certain types of gaming.

4 According to the Law on gaming duties, the entry into force of which had been suspended pending the Commission's decision, the organisation and supply of gaming are taxable. That law provides for a number of taxation rates for gaming, depending on whether it is offered online or offline. Thus, holders of a licence to operate gaming on slot machines in amusement arcades and restaurants must

pay a tax of 41% of gross gaming revenues. Machines installed in restaurants and amusement arcades are subject to an additional tax of 30% on gross gaming revenues exceeding 30 000 Danish crowns (DKK) and DKK 250 000 respectively. Holders of a licence to operate gaming in land-based casinos must pay a basic tax of 45% of gross gaming revenues, minus the value of the tokens in the troncs, and an additional tax of 30% of gross gaming revenues exceeding DKK 4 million, calculated on a monthly basis. By contrast, holders of a licence to operate gaming in an online casino must pay a tax of 20% of gross gaming revenues.

5 The Commission received two complaints about the legislative proposal on gaming duties, the first filed by the applicant on 23 July 2010 and the second filed on 6 August 2010 by a land-based casino established in Denmark.

6 On 14 December 2010, the Commission informed the Kingdom of Denmark of its decision to open the procedure provided for in Article 108(2) TFEU concerning the measure notified by that Member State. By that decision, which was published in the *Official Journal of the European Union* (OJ 2011 C 22, p. 9), the Commission called upon interested parties to submit their comments on the measure in question. A total of 17 interested parties, including the applicant, submitted observations, which were forwarded to the Kingdom of Denmark, which submitted its observations to the Commission by letter of 14 April 2011.

7 By its Decision 2012/140/EU of 20 September 2011 on the measure No C 35/10 (ex N 302/10) which Denmark is planning to implement in the form of duties for online gaming in the Danish [Law on gaming duties] (OJ 2012, L 68, p. 3) ('the contested decision'), the Commission approved the measure notified by that Member State. The operative part of the contested decision reads as follows:

'Article 1

The measure C 35/2010 which Denmark is planning to implement in the form of duties for online gaming in the Danish [Law on gaming duties] is compatible with the internal market within the meaning of Article 107(3)(c) [TFEU].

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to [the Kingdom of] Denmark.'

8 In its reasons in the contested decision, the Commission found, first of all, that the notified measure, namely the imposition of a lower tax on online gaming constituted State aid within the meaning of Article 107(1) TFEU on operators of those games established in Denmark. The Commission found in that regard that the notified law conferred a tax advantage on those operators granted through State resources. The measure at issue is regarded prima facie as selective, since it differentiates between online gaming operators and land-based casino operators who, in the light of the objective pursued by the measure, are in a comparable factual and legal situation. In the Commission's submission, the Danish authorities have not established that the law's apparent selectivity may be justified on the basis of the internal logic of the tax system (recitals 72 to 102 and 144 of the contested decision).

9 Secondly, the Commission found that the aid in question fulfilled the conditions to be regarded as compatible with the internal market within the meaning of Article 107(3)(c) TFEU (recital 145 of the contested decision). In support of that finding, it found, first of all, that the Law on gaming duties, to the extent that it would liberalise the market and allow Danish and foreign online gaming operators to provide their services to Danish residents whilst ensuring that those operators would fulfil the necessary conditions to be licensed by the Danish authorities, served a well-defined objective of common interest (recitals 106 to 123 of the contested decision). Secondly, the Commission considered

that the aid measure met the proportionality requirement since, in its view, the tax rate of 20% of gross gaming revenues applicable to online operators was not lower than necessary to ensure that the objectives of the Law on gaming would be achieved (recitals 124 to 137 of the contested decision). Thirdly, the Commission examined the impact of the aid measure on competition and trade between Member States. It found that setting the tax rate for online gaming at the same or a similar level as the rate for land-based gaming operators would have led to a situation where the operators and players would not have responded to the possibility of legally providing online gaming services on the Danish market, thus defeating the identified objectives of common interest pursued by the Law on gaming (recitals 138 to 142 of the contested decision).

10 On 1 January 2012, the legislative package referred to in paragraph 3 above, including the Law on gaming duties and the Law on gaming, entered into force.

Procedure and forms of order sought

11 By application lodged at the Registry of the General Court on 30 November 2011, the applicant brought the present action.

12 By separate document, also lodged at the Court Registry on 30 November 2011, the applicant lodged an application for interim measures, in which it requested, in essence, the President of the Court to suspend operation of the contested decision. By order of 13 February 2012 in *Dansk Automat Brancheforening* v *Commission*, T-601/11 R, EU:T:2012:66, the President of the Court dismissed the application for interim measures and reserved costs.

13 By document lodged at the Registry of the Court on 9 December 2011, the Kingdom of Denmark applied for leave to intervene in support of the form of order sought by the Commission. After hearing the principal parties, leave to intervene was granted by order of 1 March 2012 of the President of the Seventh Chamber of the Court.

14 On 9 January 2012, the applicants lodged a request for the confidential treatment vis-à-vis the public of certain parts of the application and some of its annexes.

15 By document lodged at the Registry of the Court on 9 March 2012, CODERE SA and the Asociación de Empresarios de Máquinas Recreativas (AEMAR) applied for leave to intervene in support of the form of order sought by the applicant. By order of the President of the Seventh Chamber of the General Court of 21 September 2012, the application was refused.

16 By documents lodged at the Registry of the Court on 19 and 21 March 2012 respectively, Betfair Group plc and Betfair International Ltd ('Betfair') and the European Gaming and Betting Association (EGBA) applied for leave to intervene in support of the form of order sought by the Commission. After hearing the principal parties, those applications for leave were granted by order of 21 September 2012 of the President of the Seventh Chamber of the Court.

17 On 8 June 2012 and 7 January 2013 respectively, the Kingdom of Denmark and Betfair lodged their statements in intervention at the Registry of the Court. The applicant lodged its observations on those statements on 26 July 2012 and 18 March 2013 respectively. The Commission did not lodge observations on those statements.

18 The composition of the Chambers of the Court having been altered, the Judge-Rapporteur was attached to the Fifth Chamber, to which this case has therefore been assigned.

19 By document lodged at the Registry of the Court on 10 March 2014, the Republic of Malta sought leave to intervene in support of the Commission. After hearing the principal parties, leave to intervene was granted by order of 9 April 2014 of the President of the Fifth Chamber of the Court.

20 As the applications for intervention from the Republic of Malta and the EGBA were lodged after the expiry of the time-limit provided for in Article 115(1) of the Rules of Procedure of the General Court, it was held that the Republic of Malta and the EGBA could submit their observations only during the oral procedure, in accordance with Article 116(6) of the Rules of Procedure.

21 On hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure.

22 By way of measure of organisation of procedure provided for in Article 64 of the Rules of Procedure of the General Court, the Court asked the parties to answer the question whether the contested decision constituted a regulatory act not entailing implementing measures within the meaning of the fourth paragraph in fine of Article 263 TFEU. They did so within the prescribed time-limit.

23 The parties presented oral argument and answered the questions put by the Court at the hearing on 30 April 2014.

24 The applicant claims that the Court should:

— annul Article 1 of the contested decision;

— order the Commission to pay the costs.

25 The Commission contends that the Court should:

— dismiss the action as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

26 The interveners contend that the Court should dismiss the application as inadmissible or, in the alternative, as unfounded. Should the Court annul the contested decision, the Kingdom of Denmark contends that the Court should order the effects thereof to be maintained pursuant to Article 264(2) TFEU. Betfair and the EGBA further contend that the Court should order the applicant to pay the costs, including their costs.

Law

27 Without formally raising a plea of inadmissibility, the Commission, supported by the interveners, disputes the admissibility of the action. It argues that the applicant has no legal interest in bringing proceedings because the contested decision is not of direct and individual concern to it.

28 The applicant observes that it has a legal interest in bringing proceedings because the contested decision is of direct and individual concern to it. It adds that the contested decision constitutes a regulatory act which does not entail implementing measures within the meaning of the fourth paragraph in fine of Article 263 TFEU.

29 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

30 In the present case, it is common ground that the contested decision is addressed solely to the Kingdom of Denmark. In those circumstances, the present action for annulment is admissible under the fourth paragraph of Article 263 TFEU only if the contested decision is of direct and individual concern to the applicant or if the contested decision is of direct concern to the applicant and is a regulatory act which does not entail implementing measures (see, to that effect, judgment in *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 19).

Whether the applicant is individually concerned

31 According to settled case-law, persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed by such a decision (see, to that effect, judgments in Case 25/62 *Plaumann* v *Commission*, EU:C:1963:17, p. 95, 107; and *Spain* v *Lenzing*, C-525/04 P, EU:C:2007:698, paragraph 30).

32 As regards more specifically the field of State aid, applicants who challenge the merits of a decision appraising aid taken at the end of the formal examination procedure are considered to be individually concerned by that decision if their market position is substantially affected by the aid to which the contested decision relates (see, to that effect, judgment in *Cofaz and Others* v *Commission*, 169/84, EU:C:1986:42, paragraphs 22 to 25 and the case-law cited, and *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 54 and the case-law cited).

33 In that regard, in addition to the recipient undertaking, competing undertakings have been recognised as individually concerned by a Commission decision terminating the formal examination procedure where they have played an active role in that procedure, provided that their position on the market is substantially affected by the aid measure which is the subject of the contested decision (see judgment in *Sniace* v *Commission*, paragraph 32 above, EU:C:2007:700, paragraph 55 and the case-law cited).

34 The Court has thus held that the fact that an undertaking was at the origin of the complaint which led to the opening of the formal examination procedure, the fact that its views were heard and the fact that the conduct of that procedure was largely determined by its observations are factors which are relevant to assessment of the *locus standi* of that undertaking (judgments in *Cofaz and Others* v *Commission*, paragraph 32 above, EU:C:1986:42, paragraphs 24 and 25, and *ASPEC and Others* v *Commission*, T-435/93, EU:T:1995:79, paragraph 63).

35 In the present case, it is common ground that the applicant played an active role during the procedure before the Commission. The applicant filed a complaint with the Commission on 23 July 2010 and submitted observations during the procedure referred to in Article 108(2) TFEU.

36 By contrast, the Commission, supported by the interveners, disagrees that the applicant is substantially affected by the aid measure which is the subject of the contested decision.

37 It should be recalled, in that regard, that a professional association which is responsible for protecting the collective interests of its members is entitled to bring an action for the annulment of a final decision of the Commission on State aid only in two sets of circumstances, namely, first, where the undertakings which it represents or some of those undertakings themselves have *locus standi* and, second, if it can prove an interest of its own, in particular because its position as a negotiator has been affected by the measure of which annulment is sought (order in *Sveriges Betodlares and Henrikson* v *Commission*, C-409/96 P, EU:C:1997:635, paragraph 45; judgments in *AIUFFASS and AKT* v *Commission*, T-380/94, EU:T:1996:195, paragraph 50; and *Aiscat* v *Commission*, T-182/10, EU:T:2013:9, paragraph 48).

38 In the present case, the applicant has not proven an interest of its own, but it does argue that the action is admissible because most of its members have *locus standi* because their competitive position is substantially affected by the aid measure in question.

39 It is therefore appropriate to consider whether the applicant has demonstrated that the position of its members on the market was substantially affected by the aid measure which is the subject of the contested decision (see, to that effect, judgment in *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraphs 33 and 35).

40 It must be borne in mind, as regards the scope of judicial review, that it is not for the EU courts, when considering whether the application is admissible, to make a definitive finding on the competitive relationship between the applicant's members and the undertakings in receipt of the aid in question. It is for the applicant alone to adduce pertinent reasons to show that the aid in question may adversely affect the legitimate interests of one or more of its members by substantially affecting their position on the market in question (see, to that effect, judgments in *Cofaz and Others* v *Commission*, paragraph 32 above, EU:C:1986:42, paragraph 28, and *Aiscat* v *Commission*, paragraph 37 above, EU:T:2013:9, paragraph 60).

41 As regards establishing such a substantial effect on a competing undertaking's position on the market, the Court has held that the mere fact that a measure was able to exercise an influence on the competitive relationships existing on the relevant market and that the undertaking concerned was in a competitive relationship with the recipient of that measure cannot in any event suffice for that undertaking to be regarded as individually concerned by that measure. Therefore, an undertaking cannot rely solely on its status as a competitor of the recipient undertaking but must additionally show that its circumstances distinguish it in a similar way to the undertaking in receipt of the aid (judgment in *Spain* v *Lenzing*, paragraph 31 above, EU:C:2007:698, paragraphs 32 and 33).

42 It must also be borne in mind that a special status of this kind, which distinguishes a 'person other than the persons addressed', within the meaning of *Plaumann* v *Commission* (parargraph 31 above, EU:C:1963:17), from any other economic operator, must not necessarily be inferred from factors such as a significant decline in turnover, appreciable financial losses or a significant reduction in market share following the grant of the aid in question. The grant of State aid can have an adverse effect on the competitive situation of an operator in other ways too, in particular by causing the loss of an opportunity to make a profit or a less favourable development than would have been the case without such aid. Similarly, the seriousness of such an effect may vary according to a large number of factors such as, in particular, the structure of the market concerned or the nature of the aid in question. Demonstrating a substantial adverse effect on a competitor's position on the market cannot, therefore, simply be a matter of the existence of certain factors indicating a decline in its commercial or financial performance (see judgment in *British Aggregates* v *Commission*, paragraph 39 above, EU:C:2008:757, paragraph 53 and the case-law cited).

43 In support of its assertion that the position of most of its members is substantially affected by the aid measure in question, the applicant states that the tax rate which is applicable to them, which is higher than for online gaming, means that the profits earned by the players of the member undertakings are lower than they would be if the rate was lower. The applicant refers, by way of example, to two undertakings among its members, whose turnover is based on the operation of land-based slot machines. In the applicant's submission, in the long term, the relatively weak profit expectations for players will lead to their being decommissioned in favour of online games. Moreover, the lower profit margin has a negative effect on its members' competitive situation, inter alia because operators of online games have greater resources to devote to advertising and other similar means. The applicant refers to the results of the calculations relating to the turnover of one of its member undertakings. Those results show a roughly two-thirds drop in revenues for that undertaking if, due to competition, the rate of redistribution is increased without changes to betting levels.

44 It should be observed in that regard that the Law on gaming duties lays down inter alia rules concerning taxes on gaming which are applicable to holders of a licence to operate gaming in an online casino, to holders of a licence to operate gaming in land-based casinos and to holders of a licence to operate gaming on slot machines in amusement arcades and restaurants, such as the applicant's members. Whilst the first group must pay a tax of 20% of gross gaming revenues, the second must pay a basic tax of 45% of gross gaming revenues and an additional tax on 30% of gross gaming revenues exceeding DKK four million. The third group must pay a tax of 41% of gross gaming revenues. Furthermore, machines installed in restaurants and amusement arcades are subject to an additional tax of 30% of gross gaming revenues exceeding DKK 30 000 and DKK 250 000 respectively.

45 It is true that, given that operators of online games and operators of offline games are in a comparable factual and legal situation, as found by the Commission in recital 94 of the contested decision, it cannot be inferred that the aid measure in question, which sets a much more favourable rate of tax for the first group than for the second, does not cause the loss of an opportunity to make a profit or a less favourable development than would have been the case without such aid.

46 The applicant has not established, however, that it followed from those circumstances that its members were in a situation which distinguished them in a manner analogous to that of the addressee of the contested decision.

47 First of all, the applicant confirmed, in response to a question put at the hearing, that the results of the calculations relating to the turnover of one of its member undertakings, which showed that that undertaking had a drop in revenues of approximately two-thirds, show only that the mechanism implemented by the aid measure in question applies, as it has acknowledged, to all its members and not just that undertaking in particular. It follows that, in the applicant's submission, all of its 80 members are equally concerned by the contested decision, in their objective capacity as operators of slot machines in Denmark.

48 Secondly, the applicant stated, also in response to a question put at the hearing, that in its view the mechanism implemented by the aid measure in question, as it affects its members' economic situation, applies not only to them but to all operators of slot machine games in Denmark. The line of argument put forward by the applicant therefore concerns all operators of slot machine games in Denmark and does not distinguish the situation of one or more of its members.

49 Thirdly, the applicant has not established how the impact of the Law on gaming duties on the position of its members on the market in question differs from the impact of that law on the position of operators of games in land-based casinos. Under that law, operators of games in land-based casinos are also subject to a much higher tax rate than operators of online casino games (see paragraph 44 above). Yet the applicant has not adduced evidence establishing that the mechanism implemented, in its view, by the aid measure in question relating to the economic situation of its members does not apply in the same manner to operators of games in land-based casinos. The line of argument put forward by the applicant therefore concerns not only all operators of slot machine games in Denmark but also all operators of games in land-based casinos in Denmark as well.

50 It should be borne in mind that it is clear from settled case-law that the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as that measure is applied by virtue of an objective legal or factual situation defined by it (see judgment in *Telefónica* v *Commission*, paragraph 30 above, EU:C:2013:852, paragraph 47 and the case-law cited).

51 Fourthly, it should be noted that the applicant has not demonstrated the extent of the potential impact of the aid measure in question on the economic situation of its members. It is true that, in putting forward calculations relating to the turnover of one of its member undertakings, the applicant intended to demonstrate the potential impact of the aid measure in question on the economic

situation of its members, as assessed at the time the action was lodged. However, the applicant has not adduced any evidence in support of those calculations, so that they necessarily remain hypothetical since the Law on gaming duties entered into force only after the present action was lodged, namely on 1 January 2012. Nor can the possibility be ruled out that the lower turnover experienced by the applicant's members is due to the effects of the economic crisis in the European Union, as observed by the Kingdom of Denmark.

52 As the applicant has not demonstrated that the consequences of the aid measure in question affects not only its members in their objective capacity as operators of offline games in Denmark in the same way as any other economic operator in the same situation, nor demonstrated the extent of the potential impact of the aid measure in question on the economic situation of its members, it has not established that the aid measure in question was liable to have a substantial adverse effect on the position of one or more of its members on the market concerned. The applicant's members and, consequently, the applicant are therefore not individually concerned by the contested decision.

The existence of a regulatory act entailing implementing measures

53 The applicant submits that the contested decision constitutes a regulatory act not entailing implementing measures within the meaning of the fourth paragraph in fine of Article 263 TFEU.

54 The Court has held previously that the concept of a regulatory act which does not entail implementing measures within the meaning of the fourth paragraph in fine of Article 263 TFEU is to be interpreted in the light of that provision's objective, which, as is clear from its origin, consists in preventing an individual from being obliged to infringe the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a direct legal remedy before the European Union judicature for the purpose of challenging the legality of the regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgment in *Telefónica* v *Commission*, paragraph 30 above, EU:C:2013:852, paragraph 27).

55 The Court has also held that where a regulatory act entailed implementing measures, judicial review of compliance with the European Union legal order was ensured irrespective of whether those measures were adopted by the European Union or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the European Union judicature are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails (judgment in *Telefónica* v *Commission*, paragraph 30 above, EU:C:2013:852, paragraph 28).

56 Moreover, the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the fourth paragraph in fine of Article 263 TFEU (judgment in *Telefónica* v *Commission*, paragraph 30 above, EU:C:2013:852, paragraph 30).

57 In order to determine whether the measure being challenged entails implementing measures, reference should be made exclusively to the subject-matter of the action (judgment in *Telefónica* v *Commission*, paragraph 30 above, EU:C:2013:852, paragraph 31).

58 In the present case, the applicant has brought an action for annulment of Article 1 of the contested decision, which was adopted on 20 September 2011, by which the Commission declared the aid in question compatible with the internal market. That article does not specify the specific, actual consequences of that declaration for each of the taxpayers. It is apparent from recital 3 of the contested decision that the entry into force of the Law on gaming duties was postponed by the Danish authorities until the Commission had given a final decision on the matter in question, in accordance with Article 108(3) TFEU. Under that law, the Danish authorities were to fix the date of its entry into force. The Law on gaming duties came into force on 1 January 2012.

59 It follows that the specific, actual consequences of the contested decision for the applicant's members materialised as national acts in the form of the Law on gaming duties, by which the aid scheme in question was introduced in Denmark, and the acts implementing that law fixing the amounts of tax owing by the taxpayers, which, as such, are themselves implementing measures entailed by the contested decision within the meaning of the fourth paragraph in fine of Article 263 TFEU (see, to that effect, judgment in *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 53, and *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 40). Those acts were to come into effect after the adoption of the contested decision so that the aid scheme in question would produce effects in respect of the applicant's members. Moreover, since those acts could be challenged before the national courts, as confirmed by the Kingdom of Denmark, the applicant's members could have access to a court without being required to infringe the law. In proceedings before the national court they could have pleaded the invalidity of the contested decision and caused the court to request a preliminary ruling from the Court of Justice pursuant to Article 267 TFEU (see, to that effect, judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 93, and *Telefónica* v *Commission*, EU:C:2013:852, paragraph 29).

60 Consequently, irrespective of the question whether the contested decision constitutes a regulatory act within the meaning of the fourth paragraph in fine of Article 263 TFEU, the applicant's action does not fulfil the admissibility requirements laid down in that provision.

61 In the light of the foregoing and without its being necessary to rule on the question whether the applicant is directly affected, the action must be dismissed as inadmissible on the ground that the applicant lacks the necessary legal interest in bringing proceedings.

Costs

62 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(4) of those Rules, the Member States which have intervened in the proceedings are to bear their own costs.

63 Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those of the Commission, Betfair and the EGBA in accordance with the form of order sought by them. The applicant must also be ordered to bear its own costs relating to the proceedings for interim measures and to pay those incurred by the Commission, in accordance with the form of order sought by the latter. The Kingdom of Denmark and the Republic of Malta must be ordered to bear their own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Dansk Automat Brancheforening to bear its own costs and to pay those incurred in the main proceedings by the European Commission, Betfair Group plc, Betfair International Ltd and the European Gaming and Betting Association (EGBA);**

3. **Orders Dansk Automat Brancheforening to pay its own costs in connection with the interim proceedings and to pay those incurred by the Commission;**

4. **Orders the Kingdom of Denmark and the Republic of Malta to bear their own costs.**

Dittrich Schwarcz Tomljenović

Delivered in open court in Luxembourg on 26 September 2014.

[Signatures]