



## Reports of Cases

### Case C-270/15 P

**Kingdom of Belgium**  
v  
**European Commission**

(Appeal — Aid granted by the Belgian authorities to finance screening tests of transmissible spongiform encephalopathies in bovine animals — Selective advantage — Decision declaring that aid incompatible in part with the internal market)

Summary — Judgment of the Court (Sixth Chamber), 30 June 2016

1. *State aid — Meaning — State intervention mitigating the burdens normally included in the budget of an undertaking — Charges arising from compliance with national legislation — Included — Charges relating to the exercise by the State of its powers as a public authority — No effect — State intervention in areas which have not been harmonised in the European Union — No effect*

(Art. 107(1) TFEU)

2. *State aid — Meaning — Objective of protecting public health — Irrelevant to classification as a State aid measure*

(Art. 107(1) TFEU)

3. *State aid — Meaning — Selective nature of the measure — Distinction between the requirement for selectivity and the concomitant detection of an economic advantage and between an aid scheme and individual aid*

(Art. 107(1) TFEU)

4. *State aid — Meaning — Selective nature of the measure — Differentiation between undertakings in a comparable factual and legal situation — Comparability of the situation of a sector subject to a screening test with that of the undertakings as a whole subject to mandatory inspections — Conditions*

(Art. 107(1) TFEU)

1. In order to assess the meaning of charges which are normally borne by the budget of an undertaking and, accordingly, assess the selective nature of a measure for the purpose of its classification as State aid, the additional costs which undertakings normally must bear by virtue of obligations imposed by law, regulation or agreement, inherent in the exercise of a regulated economic activity are, in essence, such charges. The fact that such obligations derive from the public authorities cannot therefore, by itself, have effects on the assessment of the nature of other measures by those same authorities, in order to determine whether they favour undertakings outside of normal market conditions.

The facts that those charges arise from measures of the public authorities in the exercise of their public powers or that the Member States are free to take on those costs have no effect on the categorisation of charges which the undertakings must normally bear.

Moreover, and in any event, the fact that there is no harmonisation on the financing of measures at issue has no bearing on the categorisation of an economic advantage which such financing is likely to constitute. Indeed, even in areas where the Member States have jurisdiction, they must comply with EU law and in particular the requirements of Articles 107 TFEU and 108 TFEU.

(see paras 35, 36, 38, 39)

2. The public health objective of the obligation on undertakings in a specific sector to carry out screening tests of an illness is not sufficient to rule out the categorisation of the State funding of those tests as State aid. Indeed, Article 107(1) TFEU does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects.

(see para. 40)

3. See the text of the decision.

(see paras 48, 49)

4. In order to assess whether a measure is selective for the purpose of categorisation as State aid, it is for the Commission to identify whether that measure, notwithstanding the finding that it confers an advantage of general application, is for the exclusive benefit of certain undertakings or certain sectors of activity. Consequently, the General Court did not err in law by holding that the Commission had properly found that the financing, by a Member State, of screening tests carried out for the protection of public health is selective for the purposes of Article 107(1) TFEU, where the situation of operators in the sector covered by that financing was implicitly but necessarily compared to that of all the undertakings which, like them, are subject to inspections which they are required to perform before placing their products on the market or marketing them.

The argument that the tests intended to control the quality of products, even food products, vary from one sector to another, in their nature, purpose, cost and timing, can possibly affect the comparability of those various sectors is ineffective in the context of the categorisation of State aid, which relates not to the tests themselves but to their financing by State resources having the effect of alleviating the burden of costs on its beneficiaries. Such a question must be raised by a separate plea before the General Court.

(see paras 50, 53-55)