ISSN 1977-0677

Official Journal of the European Union

L 68

English edition

Legislation

Volume 55

7 March 2012

Contents

Price: EUR 3

[1] Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 184/2012

of 6 March 2012

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 March 2012.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	IL	76,4
	JO	78,3
	MA	69,1
	SN	207,5
	TN	85,7
	TR	93,8
	ZZ	101,8
0707 00 05	EG	158,2
	JO	204,2
	TR	155,2
	ZZ	172,5
0709 91 00	EG	76,0
	ZZ	76,0
0709 93 10	MA	54,2
	TR	134,6
	ZZ	94,4
0805 10 20	EG	53,8
	IL	68,5
	MA	52,0
	TN	52,8
	TR	68,6
	ZZ	59,1
0805 50 10	BR	43,7
	TR	56,0
	ZZ	49,9
0808 10 80	CA	124,8
	CL	96,3
	CN	105,4
	MK	31,8
	US	154,3
	ZZ	102,5
0808 30 90	AR	88,1
	CL	153,9
	CN	48,3
	US	99,0
	ZA	102,7
	ZZ	98,4

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION DECISION

of 20 September 2011

on the measure C 35/10 (ex N 302/10) which Denmark is planning to implement in the form of duties for online gambling in the Danish Gaming Duties Act

(notified under document C(2011) 6499)

(Only the Danish text is authentic)

(Text with EEA relevance)

(2012/140/EU)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to those provisions [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 6 July 2010, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU) the Danish authorities notified the Legislative Proposal L 203 on Gaming Duties (the 'Gaming Duties Act' [2]), adopted on 25 June 2010, for the sake of legal certainty. The Commission requested further information by letters dated 11 August 2010 and 22 September 2010. The Danish authorities provided the requested information by letter dated 20 October 2010.

(2) The Commission also received two separate complaints with regard to the proposed Gaming Duties Act. The first was submitted by the Danish Amusement Machine Industry Association ('DAB') on 23 July 2010. The second complaint was submitted by a land-based casino operator, 'the Royal Casino', on 6 August 2010. Both complaints were forwarded to the Danish authorities on 23 September 2010 for their comments. The Danish authorities submitted their comments in their letter of 20 October 2010.

(3) A meeting with the Danish authorities to discuss the notification and the two complaints referred to above took place in Brussels on 10 November 2010. During the meeting the Danish authorities submitted a note entitled 'The dilemma created by the pending State aid case' in which they also announced their intention to delay the entry into force of the notified Act until the Commission had adopted a decision [3].

(4) By decision of 14 December 2010, the Commission informed Denmark that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the notified measure. The Commission decision to initiate the procedure (hereinafter the 'initiating decision') was published in the *Official Journal of the European Union* [4]. The Commission invited interested parties to submit comments.

(5) The Danish authorities submitted their observations on the initiating decision by letter of 14 January 2011.

(6) In total, 17 interested third parties submitted comments between 11 February and 22 February 2011 [5]. These comments were forwarded to Denmark on 16 March 2011, which was given the opportunity to respond. The Commission received Denmark's comments by letter dated 14 April 2011.

[1] OJ C 22, 22.1.2011, p. 9.
[2] Act No 698 on Gaming Duties (*'Lov om afgifter af spil'*).
[3] Although the notified measure was initially due to enter into force on 1 January 2011, in order to comply with the State aid provisions, Article 35, paragraph 1 of the Gaming Duties Act provides that the Minister of Taxation will set the date for the Act's entry into force.
[4] See footnote 1.
[5] See below, Section 5.

2. DESCRIPTION OF THE MEASURE

(7) Following the initiation of infringement proceedings and the sending of a reasoned opinion on 23 March 2007 concerning obstacles to the free movement of sports betting services in Denmark ([6]), the Danish government had decided to reform the national legislation on gambling and betting services and to replace the existing monopoly regime with a regulated and partially liberalised one. The liberalisation was considered necessary, *inter alia*, to comply with EU law and to respond to the threat posed by illegal online gambling services provided by gaming service providers located in other jurisdictions.

(8) The notified Gaming Duties Act is part of a set of Acts introduced to liberalise the gambling sector ([7]). Under the terms of Article 1 of the Gaming Act, the overall objective of this new law reform for gambling services is:

— to keep gambling consumption at a moderate level,

— to protect young persons and other vulnerable persons from exploitation or from becoming addicted to gambling,

— to protect gamblers by ensuring that gambling is supplied in a reasonable, reliable and transparent manner, and

— to ensure public order and prevent gambling being used for criminal purposes.

(9) Under the Gaming Act, 'supplying or arranging gambling requires a licence unless this Act or other legislation provides otherwise'. In addition, the provision or arranging of gambling is subject to the payment of duty (Article 1 of the Gaming Duties Act).

(10) Article 5 of the Gaming Act defines gaming as covering the following activities: (i) lotteries, (ii) combination gambling, and (iii) betting.

(11) Combination gambling refers to 'activities where a participant has a chance to win a prize, and where the likelihood of winning depends on a combination of skill and chance'. Combination gambling thus includes games that are often offered by casinos, such as roulette, poker, baccarat, blackjack, and gaming machines offering cash winnings.

(12) Article 5 of the Gaming Act defines online gambling as 'gambling entered into between a player and a gambling provider using remote communication'. The same provision defines land-based gambling as 'gambling that is entered into by a player and a gambling supplier, or the suppliers' agent, meeting physically'. Betting services are defined as 'activities where a participant has a chance of winning a prize and where a bet is placed on the result of a future event or the occurrence of a future event'.

(13) Under the terms of Articles 2-17 of the Gaming Duties Act, the games subject to duty are (i) lotteries, including class lotteries and non-profit lotteries, (ii) betting, including local pool betting, (iii) land-based casinos, (iv) online casinos, (v) gaming machines offering cash winnings in amusement arcades or restaurants, and (vi) games without stakes.

(14) The Gaming Duties Act sets different tax rates, depending on whether the games are provided in online casinos or in land-based casinos.

(15) Under Article 10 of the Gaming Duties Act, holders of a licence to provide games in land-based casinos are subject to a basic charge of 45 per cent of their gross gaming revenues ('GGR' — stakes minus winnings), less the value of the tokens in the *tronc*, and an additional charge of 30 per cent for GGR (less the value of the tokens in the *tronc*) which exceeds DKK 4 million (calculated on a monthly basis) ([8]).

(16) Under Article 11 of the Gaming Duties Act, holders of a licence to provide games in an online casino are subject to a charge of 20 per cent of their GGR.

(17) Holders of a licence to provide gaming machines offering cash winnings (slot machines) in amusement arcades and restaurants are subject to a charge of 41 per cent of their GGR. An additional 30 per cent is paid on gaming machines in public houses, bars, etc. for GGR exceeding DKK 30 000, and on gaming machines in amusement arcades for GGR exceeding DKK 250 000 ([9]).

(18) With regard to the licence fees, the Gaming Act provides that anyone applying for a licence to offer betting or online casino games is liable to a fee of DKK 250 000 (DKK 350 000 if they apply for both betting and online casino games) and a yearly licence fee ranging from DKK 50 000 up to DKK 1 500 000 depending on the gaming revenues.

([6]) Infringement proceedings No 2003/4365. See also IP/07/360.

([7]) Act on Gaming (No 848 of 1 July 2010); Act on the Distribution of Profits Stemming from Lotteries and Horse and Dog Racing (No 696 of 25 June 2010); Act laying down a Statute governing Danske Spil A/S (Act No 695 of 25 June 2010).

([8]) 1 Danish krone (DKK) ≈ EUR 0,13.

([9]) Under Article 12 of the Gaming Duties Act, the following amounts are additionally levied per month: DKK 3 000 per machine for up to 50 machines and DKK 1 500 for machines beyond that number.

(19) The Gaming Act requires online gambling providers either to be established in Denmark, or if they are residents of another EU or EEA Member State, to nominate an approved representative (Article 27).

3. REASONS FOR OPENING THE PROCEDURE

(20) The Commission opened the formal investigation procedure laid down in Article 108(2) of the TFEU in respect of the measure at issue on the grounds that it might entail State aid within the meaning of Article 107(1) TFEU.

(21) In particular, the Commission considered that the measure could be regarded as selective in the light of case law. It recalled that any assessment of the selectivity of a tax measure should involve examining whether a given measure favours certain undertakings in comparison with other undertakings whose legal and factual situation is comparable in the light of the objective pursued by the scheme in question ([10]).

(22) Given the nature of the games offered online and in land-based establishments, the social experience provided by gaming of both types, and the socioeconomic profiles of the consumers, the Commission had doubts as to whether the differences between online and land-based gambling were substantial enough to consider them not to be comparable in law and in fact for the purposes of their tax treatment under the Gaming Duties Act.

(23) Furthermore, at that stage of the procedure, the Commission took the view that should the measure be considered *prima facie* to be selective, the Danish authorities had failed to establish that the measure could be justified by the logic of the tax system.

(24) In this regard, the Danish authorities argued that the tax rate for online gambling reflected the necessary balance between meeting the aims of the Danish gambling legislation in order to protect players on the one hand, and being able to face the competition from online operators established in other countries with lower tax rates on the other.

(25) In addition, regarding the reference made by the Danish authorities to the overall objectives pursued by the Gaming Act (see paragraph 8), the Commission took the view that these objectives appeared to be of a general nature and external to the tax system. Since it is established case-law that only intrinsic objectives of the tax system are pertinent, the Commission considered that the Danish authorities had not sufficiently substantiated their claim that the selectivity of the tax measure at issue was required by the logic of the tax system.

(26) Moreover, the Commission took the view that the notified Act involved a tax advantage conferred through the use of State resources since foregoing tax revenue gave online gambling operators an advantage in the form of a substantially lower rate of duty. In addition, to the extent that the measure provides a selective economic advantage to online operators operating in Denmark, it could affect trade in the internal market and distort competition.

(27) Finally, the Commission expressed its doubts as to whether the notified measure could fall within the scope of any of the derogations laid down in Article 107(2) and 107(3) TFEU.

4. COMMENTS FROM THE DANISH AUTHORITIES

(28) By letter dated 14 January 2011, the Danish authorities submitted their comments on Commission's decision to initiate proceedings.

Comments regarding the comparability of online and land-based casinos

(29) The Danish authorities, relying on a list of factual and economic differences between online and land-based gambling set out in their notification, reiterated the view that online gambling should be regarded as an activity that is different from land-based gambling.

(30) According to the Danish authorities, the software used in certain electronic games offered in land-based casinos and those used in online casinos is not identical. Besides the fact that the platforms and suppliers are not the same, it was argued that there are major differences between these electronic games since the physical presence of gamblers is required in order to play them in land-based casinos. Physical presence entails various costs (e.g. for transportation, entrance fees, cloakroom fees, food or drink) which are not incurred in online gambling.

(31) For the Danish authorities, the fact that a number of Member States prohibit online gambling while allowing land-based gambling services reflected the differences involved in providing the two types of gaming.

([10]) See paragraphs 73 ff. of the initiating Decision.

(32) Furthermore, the Danish authorities contended that the Commission had not taken account of the conclusions of its 2006 'Study of Gambling Services in the Internal Market of the European Union' ([11]), according to which online and land-based casinos should be considered as being distinct markets.

(33) The Danish authorities also stressed that the Commission's assessment focused only on land-based casinos and did not take account of gambling machines (i.e. slot machines, but not roulette, blackjack, poker, etc.) located in land-based restaurants or amusement arcades and gaming halls.

Comments regarding *prima facie* selectivity being justified by the logic of the tax system

(34) With regard to the justification for the measures by virtue of the logic of the tax system, the Danish authorities claim that the Commission might have misinterpreted the objective of the notified measure. This measure is not aimed at preserving the international competitiveness of the Danish gaming industry, but rather at pursuing the four objectives set out in the legislation (maintaining gambling at a moderate level; protecting young people or other vulnerable persons from being exploited through games or from developing an addiction of gambling; protecting players by ensuring that games are offered in a fair, responsible, and transparent manner; ensuring public order and preventing gaming being used for criminal purposes).

(35) With regard to the different tax rates for online and land-based gambling, the Danish authorities explained that they are confronted with a legislative and regulatory dilemma. On the one hand, they could no longer maintain the current monopolistic situation and delay liberalisation of the online gambling market. On the other hand, providing for a uniform tax level for online and land-based gambling activities would undermine the policy objectives pursued by the government in this field.

(36) In particular, the Danish authorities argued that setting a uniform tax level for all gambling activities would lead to inconsistent solutions, regardless of the tax model opted for. Opting for a model based on a lower, uniform 20 per cent tax rate would give a strong incentive to gamble in land-based casinos, which would be contrary to the general interest of consumer protection.

(37) Conversely, a model based on a higher uniform tax rate similar to that applied to land-based gambling would dissuade online operators from seeking a licence to provide services from Denmark, thus defeating the liberalisation objectives of the law. This would also be contrary to the general interest of consumer protection since no effective control of online gambling would be possible.

(38) In support of their position, the Danish authorities submitted a memorandum from the Ministry of Taxation of 6 March 2010 to the Policy Spokesmen of the political parties of the Danish Parliament concerning the level of duty to be set ([12]). The memorandum shows that the current differential tax treatment should be regarded as the result of a balancing exercise aimed, on the one hand, at ensuring that the law is upheld, while on the other hand maximising the tax revenue and keeping gambling to a moderate level.

(39) In this connection, the Danish authorities considered that international competition and the global nature of the online gambling industry should also be taken into account. In this regard, the Danish authorities referred to the 'Study of Gambling Services in the Internal Market of the European Union', according to which the costs of doing business onshore for suppliers should not exceed the costs of doing business offshore, in order to be more attractive for consumers and suppliers to operate within their jurisdictions than in other countries ([13]).

(40) Furthermore, the Danish authorities argued that the principle laid down by the Court of Justice in the *Salzgitter* case, according to which the Commission should not compare the notified level of taxation with levels applicable in other Member States in order determine whether the notified measure constitutes State aid ([14]), does not apply to the notified Act, since the

([11]) Swiss Institute of Comparative Law, Study of Gambling Services in the Internal Market of the European Union, Final Report, European Commission, 2006. http://ec.europa.eu/internal_market/services/docs/gambling/study1_en.pdf

([12]) For an English version of the memorandum, see Annex B to the Danish authorities' observations of 14 January 2011 on the initiating decision. The Danish version of the memorandum can be found in Annex 20 to the Danish authorities' notification of 6 July 2010.

([13]) Swiss Institute of Comparative Law, Study of Gambling Services in the Internal Market of the European Union, European Commission 2006, Chapter 7, p. 1402.

([14]) Case T-308/00 *Salzgitter* v *Commission of the European Communities* [2004] ECR II-1933, paragraph 81. The wording of this paragraph is as follows: 'Consequently, in order to identify what constitutes an advantage as contemplated in the case-law on State aid, it is imperative to determine the reference point in the scheme in question against which that advantage is to be compared. In the present case, when a "normal" tax burden with the meaning of the aforementioned case laws is being determined, comparing the tax rules applicable in all of the Member States, or even some of them, would inevitably distort the aid and functioning of the provisions on the monitoring of State aid. In the absence of Community-level harmonisation of the tax provisions of the Member States, such an approach would in effect compare different factual and legal situations arising from legislative and regulatory disparities between the Member States. The information provided by the applicant in the present case illustrates, moreover, the disparity which exists between the Member States, particularly as regards tax bases and rates of taxation on capital goods.' Commission Decision C2/09 *MoRaKG, Conditions for Capital Investment* (OJ C 60, 14.3.2009, p. 9), paragraph 25.

differential tax treatment between land-based and online gambling activities is based exclusively on internal tax considerations. In particular, the Danish government took no account of the tax rates applicable in other Member States so as to enhance the competitiveness of the Danish gaming industry, but merely sought to strike an appropriate balance with the four aforementioned policy objectives of the notified Act.

(41) Moreover, the Danish authorities argued that the Commission had misinterpreted the *Salzgitter* case, as it had relied on it not in order to assess the selective nature of the notified measure but in order to examine whether the selectivity of the notified measure could be regarded as justified.

(42) For the above reasons, the Danish authorities consider that the notified tax measure, if it were found to be selective, should be regarded as justified by the logic of the tax system.

5. COMMENTS FROM THIRD PARTIES

(43) The Commission received comments from 17 interested third parties, including the complainants: seven of them were associations ([15]), seven were undertakings ([16]) and three were Member States ([17]).

Comments from third parties supporting the Danish authorities' position

(44) With regard to the selectivity of the measure, some of the interested parties claim that online and land-based casinos are not in a comparable legal and factual situation because these undertakings do not operate in the same market and, consequently, the tax measure does not depart from the generally applicable tax system. Hence, the tax measure should not be regarded as selective.

(45) In support of this position, the interested third parties claim that the products offered by land-based and online casinos differ substantially. The activities offered by land-based casinos constitute a social experience where, unlike online gambling, discussion, appearance, and physical environment are a central part of the gaming experience. Furthermore, land-based gambling should be regarded as part of the overall entertainment experience, which is complemented by other activities, such as are offered by restaurants, bars, convention facilities, and hotel services.

(46) In addition, those interested parties argue that online and land-based gambling activities do not present the same risks of addiction. Support for this position can be found in the case-law of the Court of Justice of the European Union, which held that 'the offer of games of chance by the Internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection' ([18]). Reference is also made to the study on gambling published by the *Institut National de la Santé et de la Recherche Médicale* ([19]), according to which online gambling presents an actual risk of addiction that needs, however, to be addressed by a regulated market for online gambling.

(47) Moreover, some interested parties argued that there is a segmentation of the gambling market based on different distribution channels, which would constitute a pertinent element for distinguishing different relevant markets. In that respect, they refer to an opinion of the French competition authority of 20 January 2011, which noted that online gambling could be differentiated from gambling in clubs or outlets ([20]).

(48) Some of the interested parties also pointed out that land-based gambling operators are subject to a limited competitive pressure in the specific geographic area where they offer their games. By contrast, online operators would face fierce competition from other online operators. In particular, since the gaming products in land-based casinos are bound to a physical location, customers need to physically move to get to the relevant location. For instance, in Denmark, there are only six locations where land-based casinos can operate. By contrast, online gambling activities allow players to access a great number of gaming line-ups offered by different international operators. Moreover, the strong competition for online casinos is all the more exacerbated by the existence of specialised websites that compare the offer of various online gambling providers, and by numerous blogs and forums that allow players to compare the products, prices and services offered by online operators.

([15]) European Gaming and Betting Association (EGBA), Remote Gambling Association (RGA), *Automatenverband, Eupportunity, Van Speelautomaten*, Danish Chamber of Commerce and European Casino Association (ECA).

([16]) PokerStars, Betfair, Club Hotel Casino Loutraki, Royal Casino (along with DAB), BWin, Compu-Game, nine casinos in Greece (Club Hotel Casino Loutraki, Regency Casino Parnes, Regency Casino Thessaloniki, Casino Xanthi (Vivere Entertainment S.A.), Casino Rio (Theros International gaming INC.), Casino Corfu (Greek Casino Corfu), Casino Rodos, Porto Carras Grand Resort 20 and Casino Syrou).

([17]) Estonia, France and Spain.

([18]) Case C-46/08 *Carmen Media Group*, [2009], not yet published, paragraph 103.

([19]) *Institut national de la santé et de la recherche médicale, Jeux de hasard et d'argent — Contextes et addictions*, July 2008, http://lesrapports.ladocumentationfrancaise.fr/BRP/084000697/0000.pdf

([20]) *Autorité de la concurrence française, Avis 11-A-02 du 20 janvier 2011.*

(49) At the same time, these interested parties point out that profit margins associated with online gambling are significantly lower than those associated with land-based gambling, given the fierce competition among online operators and the absence of such competition between land-based casinos. Thus, online casinos would have significantly lower margins with regard to the payout ratio, i.e. the percentage of the wagered amounts that is credited back to customers. Moreover, land-based casinos can offer other side-products and so benefit from side-earnings such as casino hotels, bars, or restaurants, which are absent in an online environment. Consequently, since land-based gambling operators could generate higher gambling profit than online operators, the difference in tax rates would be justified by the principle of the 'financial capacity to pay', according to which those who can bear a higher tax burden should pay higher taxes.

(50) Besides the aforementioned arguments, some interested parties also argued that even if the Danish measure were found to be selective, the selectivity criterion would be justified by the nature and general scheme of the tax system. The aim of the Danish differential tax rate was to ensure that online operators would apply for a Danish licence and thus pay Danish taxes in the future, whilst at the same time guaranteeing that the objectives of consumer protection, as laid down in the Danish gambling legislation, would be achieved.

(51) In this connection, some interested parties referred to the 1998 Commission Notice on the application of the State aid rules to measures relating to business taxation ([21]), according to which the whole purpose of a tax system is the collection of revenue for State expenditure. On this basis, they take the view that the objective of optimising tax revenue from providing online gambling to Danish residents would otherwise not be achieved with a tax rate higher than the rate laid down for online gambling under the notified Act.

Comments from third parties against the Danish authorities' position

(52) In contrast to the aforementioned arguments, other third parties — mainly land-based operators — submitted comments against the stance adopted by the Danish authorities.

(53) In substance, these interested parties argued that the Danish tax regime should be regarded as selective since it introduces a difference in tax treatment between two groups of undertakings which are in a legal and factual situation that is comparable in the light of the objectives of the measure. These parties allege that the online and land-based casinos carry out competing activities in the one and the same market and they are therefore in comparable situations.

(54) In support of this position, the interested parties claim that that the games provided by online and land-based casinos are similar. The rules of casino games should be regarded as the same, and virtual interactions with croupiers or other players online are comparable with real interactions in land-based casinos. Manufacturers of land-based gambling machines would produce the same models for online use as for land-based use. Hence, from a technical point of view, casino games offered online and offline were identical in terms of technological platforms, descriptions, features, formats and parameters.

(55) Furthermore, the interested parties allege that the consumer profiles of online and land-based casinos are comparable. Hence, the consumer aspect should not be used as a pertinent argument to distinguish online gambling from land-based gambling.

(56) Some interested parties did not think online gambling should be regarded as a different activity from land-based gambling, but simply as another channel through which games are offered to players.

(57) In addition to the aforementioned arguments, the interested parties take the view that the current gaming market should be viewed as a single market which is undergoing major change, marked by a substantial shift of players from land-based to online casinos. There are several possible reasons for this recent development, including the ever-increasing use of the Internet, the low operating costs of online casinos at all levels (facilities, staff, and fixed costs), the fact that online casinos can provide unlimited access to online gambling 24 hours per day anywhere given the ongoing development of new technologies.

(58) The interested parties predict that this shifting of the market share from land-based to online gambling will increase in the future, given the rapid pace of technological progress, commercial initiatives, and the market penetration typical of e-commerce, which have made this sector of the gambling industry extremely dynamic and transformative. In this regard, they also refer to the opinion delivered by Advocate General Bot in the *Liga Portuguesa de Futebol Profissional* case ([22]) according to which, the impact of new means of communication is such that games of chance and gambling, which used to be available only in specific premises, could now be played at any time and any place, given the evolution of new technologies such as phones, interactive television and the Internet.

([21]) Commission Notice on the application of the State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, paragraph 26.

([22]) Opinion of AG Bot (14 October 2008), Case C-42/07 *Liga Portuguesa de Futebol Profissional*, [2009] ECR I-10447, paragraphs 41 ff.

(59) Reference is also made to the 2006 Commission Study on Gambling Services in the Internal Market ([23]). Accordingly, 'the future of gambling in casinos is increasingly going to be server-based as gaming machines move increasingly to downloadable game software' ([24]). This development would be marked by the development of new hybrid gaming venues.

(60) On the basis of the foregoing argument the interested parties conclude that the measure is selective since online and land-based casinos carry out activities which are in a comparable situation in law and in fact. Nor could such selectivity be justified by the logic of the tax system. Moreover, they consider that imposing a higher tax rate would not discourage online providers to apply for a licence in Denmark.

(61) Moreover, the Danish reference to other Member States' national tax systems to justify the need to attract providers of online casinos is not pertinent since it is settled case-law that any justification should be based exclusively on the national tax system ([25]). In addition, the Danish authorities' argument that lowering the tax rate applicable to certain undertakings is necessary in order to render the market more competitive, has consistently been rejected by the courts.

6. COMMENTS FROM DENMARK ON THIRD-PARTY COMMENTS

(62) While reiterating their views that the notified measure is not selective and does not constitute a State aid, the Danish authorities point out that all intervening governments support their position that there is a need, from a regulatory perspective, to draw a distinction between online and land-based casinos.

(63) They also point out that the methodology used to define the relevant market for the purposes of Articles 101 and 102 TFEU is intended for private undertakings and is based on an assessment of product substitutability from a demand and supply point of view, and therefore should not apply for the purpose of a State aid assessment. Applying this methodology would overstep the bounds of the State aid rules, which in the present case are being applied to a Member State's sovereign tax powers.

(64) In their view, online gambling should be set apart from land-based gambling. In this regard, they also refer to the Commission position adopted in merger proceedings, by virtue of which gambling machines (jackpot machines, token machines and all-cash or amusements with prizes (AWPs)) constitute a separate product market ([26]). They also mention, among others, the decision adopted by the French Competition Authority, according to which land-based poker does not form part of the same market as online poker, since land-based poker requires personal self-control, observation of the other players, often higher costs and a limitation from a geographic point of view ([27]). Reference is also made to a merger decision adopted by the British Office of Fair Trading, which draws a distinction between licensed betting offices on the one hand, and telephone or Internet betting, on the other hand ([28]).

(65) With regard to the differences in product markets, the Danish authorities point out that, according to many interveners, additional — and significantly more expensive — services are offered in gaming establishments. From a sociological point of view, the Danish authorities reiterated their view that remote and land-based players are different types of consumers, as also indicated in the Commission's recent Green Paper on Online Gambling in the Internal Market of 24 March 2011, which stated that the profile of online gamblers seems to be different from that of traditional casino or betting shop customers ([29]).

(66) The Danish authorities also reiterate that the payout ratio is significantly higher for online operators, given their lower operating costs. They also point out that disparities between online and land-based casinos can be found in the technical aspects of the software used, the different regulations for granting licences, and the position of local dominance for land-based casinos.

(67) The Danish authorities also contest the interpretation by certain interested parties of the above-mentioned opinion delivered by Advocate General Bot in the *Liga Portuguesa* case. They point out that this opinion, which was issued in the context of the freedom to provide services, accords with the idea that remote gambling operators should be regarded as being in a different legal and factual situation from land-based gambling operators.

(68) However, the Danish authorities recognise that certain types of online gambling services could still constitute another form of sale, as in the case of betting services.

([23]) Swiss Institute of Comparative Law, Study of Gambling Services in the Internal Market of the European Union, European Commission 2006.

([24]) *Ibid*, p. 1403.

([25]) Case T-308/00, *Salzgitter AG* v *Commission of the European Communities*, [2004] ECR II-1933, paragraph 81.

([26]) Commission Decision of 14 March 2003, COMP/M.3109, Candover/Cinven/Gala, paragraph 16.

([27]) *Autorité de la concurrence Avis n° 11-A-02 du 20 janvier 2011 relatif au secteur des jeux d'argent et de hasard en ligne*.

([28]) Office of Fair Trading, Decision ME/1716-05 of 15 August 2005 regarding the acquisition by William Hill of the licensed betting offices of Stanley Plc.

([29]) European Commission, Green Paper on Online Gambling in the Internal Market, COM(2011) 128 final, p. 3.

(69) With regard to the aims of the notified Act, the Danish authorities reject the argument of certain interested parties that the notified Act is aimed at attracting foreign gambling providers. Rather, the objectives pursued by the government are the those listed in the Gaming Act. In addition, the general purpose of the new Act would remain unchanged, that is to generate income on gambling like any similar system for collecting revenue to finance the public budget.

(70) The Danish authorities also agree with the view expressed by some interested parties that the taxable person's ability to pay could be regarded as a valid justification. In the present case, the financial capacity of online gambling operators would indeed be significantly lower.

(71) Finally, the Danish authorities point out that their tax system on remote gambling is designed so as to ensure the best possible revenue yield. Thus, the lower tax rate for online gambling would reflect the need to balance the four objectives set out in the notified Act with the need to maximise tax revenue.

7. ASSESSMENT OF THE MEASURE

7.1. Existence of State aid under Article 107(1) TFEU

(72) Under Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the internal market if it affects trade between Member States.

7.1.1. *State resources*

(73) Article 107(1) TFEU requires that the measure be granted by a Member State or through State resources. A loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure.

(74) In the case under review, the presence of State resources has not been contested by any of the parties, neither the Danish authorities, the complainants, nor third parties.

(75) By allowing online gambling operators to pay tax at the relatively low rate of 20 per cent of their GGR ([30]), the Danish authorities forego revenue which constitutes State resources. The Commission therefore takes the view that the measure at issue involves a loss of State resources and is therefore granted through State resources.

([30]) See paragraphs 15 and 16 above.

7.1.2. *Advantage*

(76) The measure also has to confer a financial advantage on the recipient. The notion of advantage covers not only positive benefits but also interventions which, in various forms, mitigate the charges normally borne by an undertaking's budget ([31]).

(77) In the present case, the existence of an advantage has not been challenged by any of the parties, neither the Danish authorities, the complainants, nor third parties.

(78) Under the Gambling Duties Act, online gambling undertakings are liable to pay tax on their GGR at a rate 20 per cent. This rate is substantially lower than the rate applicable to land-based gambling operators. Therefore, online gambling undertakings benefit from an advantage in the shape of a lower tax burden. It follows that the measure under review involves an advantage for undertakings providing online gambling services.

7.1.3. *Distortion of competition and effect on trade*

(79) Under the terms of Article 107(1) TFEU, the measure must affect intra-EU trade and distort, or threaten to distort competition. In the present case, online gambling providers who establish themselves in Denmark will be exposed to competition and will be involved in intra-community trade. Consequently, the Gaming Duties Act, which provides for favourable tax treatment of Danish undertakings supplying online gambling services, necessarily affects intra-Community trade and distorts or threatens to distort competition.

7.1.4. *Selectivity*

(80) In order to be regarded as a State aid within the meaning of Article 107(1) TFEU, the measure should be found selective inasmuch as it favours certain undertakings or the production of certain goods.

(81) The established interpretation of selectivity in case law is that a measure is selective if it is 'intended partially to exempt those undertakings from the financial charges arising from the normal application of the general system of compulsory contributions imposed by law' ([32]). It follows that the measure is selective if

([31]) Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg* v *High Authority of the European Coal and Steel Community* [1961] ECR 3, p. 19.

([32]) Case 173/73 *Italian Republic* v *Commission of the European Communities* [1974] ECR 709, Summary No 3.

it constitutes a departure from the application of the general tax framework. According to existing case law, what has to be assessed is whether a given measure favours certain undertakings over other undertakings whose legal and factual situation is comparable in the light of the objective pursued by the scheme in question ([33]).

(82) Under case law, if the measure is considered to depart from the general tax system, it has to be examined to determine whether that differentiation results from the nature or general scheme of the tax system of which it forms part ([34]). In other words, the question is whether the measure concerned, which appears *prima facie* to be selective, is justified in the light of the logic of the tax system ([35]).

System of Reference

(83) In the present case, the reference system should be defined as the taxation system for Danish gambling activities. The Gaming Duties Act aims at regulating the payment of duties on all gambling activities provided or arranged in Denmark, be it online or through land-based activities. It is therefore against this reference tax system that the measure at issue (i.e. the differential tax treatment in favour of online gambling activities) should be assessed.

Departure from the general tax system

(84) Since the notified Act provides that holders of a licence to provide games in online casinos are subject to a charge of 20 per cent of the GGR, whereas holders of a licence to provide games in land-based casinos are subject to a basic charge of 45 per cent of GGR and an additional charge up to 30 per cent of GGR, the question arises as to whether online and land-based gambling operators, which are subject to different tax duties, should be regarded as being legally and factually comparable.

(85) In this regard, the Danish authorities have consistently argued that online and land-based gambling activities are not legally and factually comparable in terms of platforms, costs, financial margins, social experience, suppliers or products.

([33]) Case C-88/03 *Portuguese Republic* v *Commission of the European Communities* [2006] ECR I-7115, paragraph 54; Case C-172/03 *Wolfgang Heiser* v *Finanzamt Innsbruck* [2005] ECR I-1627, paragraph 40; Case C-169/08 *Presidente del Consiglio dei Ministri* v *Regione Sardegna* [2009] ECR I-10821, paragraph 61.

([34]) Case C-487/06 P *British Aggregates Association* v *Commission*, [2008] ECR-10515, paragraph 83.

([35]) Case 173/73 *Italian Republic* v *Commission of the European Communities* [1974] ECR 709, paragraph 15; Commission Notice on the application of the State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, paragraph 23.

(86) Furthermore, like other interested parties, they have emphasised the substantial difference between the two categories of operators by reference to the fierce competition faced by online casinos compared with the absence of competition encountered by land-based operators.

(87) Despite a number of objective differences between online and land-based gambling operators (such as physical versus online presence), the Commission considers that the aforementioned differences between online and land-based gambling casinos are not sufficient to establish a substantial and decisive distinction in law and in fact between the two types of undertakings.

(88) In this regard, the Commission notes that the games offered by land-based and online gambling operators are equivalent. The games offered by both online and land-based operators — including roulette, baccarat, punto banco, blackjack, poker and gaming on gaming machines — form part of the same activity of gambling, regardless of their online or land-based settings. Moreover, from a technical point of view, casino games offered online and in land-based premises appear to be comparable in terms of the technological platforms, formats and parameters.

(89) In that respect, the Commission considers that, as far as the taxation of gambling activities is concerned, online gambling emerges as another distribution channel of a similar type of gaming activities. In support of this position, the Commission notes the substantial efforts carried out by online casinos to simulate the land-based casino experience in such a way that online players feel as if they were playing in land-based casino surroundings, rather than in virtual environments.

(90) In order to support their view that online and land-based gambling are legally and factually not comparable activities, the Danish authorities have referred, among others, to a decision by the British Office of Fair Trading drawing a distinction between licensed betting shops on the one hand and telephone or Internet betting on the other ([36]). However, this reference contradicts the Danish authorities' position that online and offline betting are identical services ([37]). In this regard, it is also contradictory that the Danish authorities should consider offline and online betting services to be similar activities and so subject them to the same tax treatment while regarding other types of online and land-based gambling activities as distinct activities and subjecting them to different tax rates.

([36]) See footnote 28.

([37]) Article 6 of the Gaming Duties Act.

(91) The Danish authorities also relied on the Candover-Cinven-Gala decision ([38]), which held that gambling machines (jackpot machines, token machines and all-cash or AWPs) constituted an independent product market ([39]). However, apart from the fact that this decision did not concern the application of State aid rules nor the issue of selectivity, it must be noted that although the decision states that 'gaming machines (jackpot machines, token machines and all-cash or amusement with prize (AWP) machines) constitute a separate product market, it also states that they can be regarded as integrated in the gambling package at the respective sites where they are situated, i.e. in casinos, bingo clubs, arcades, pubs, betting shops etc.' ([40]).

(92) The alleged differences in the socioeconomic profiles of consumers, addiction risks, or market evolution are likewise insufficient to demonstrate that online and land-based gambling constitute two different types of activities that are not legally and factually comparable. Some of the studies relied upon by the Danish authorities and the complainants alike, appear to contain enough findings to support opposing conclusions. Thus, with regard to the 2006 Commission Study on Gambling Services in the Internal Market ([41]), the Danish authorities claim that the study tends to show that online and land-based markets are separate ([42]). By contrast, the same report is cited by some interested parties ([43]) to show that the online gambling market should not be regarded as a new market but rather as the evolution of the same gambling market, marked by the development of new hybrid gaming venues ([44]).

(93) Likewise, contradictory statements are found in the study carried out by the Danish National Centre for Social Research ([45]), which is cited by the Danish authorities and the complainants. Whereas the Danish authorities claim that gamblers in land-based casinos differ from those in online casinos in terms of age, gender and education level, the complainants, relying on the same study, come to the opposite conclusion, claiming that the study demonstrates that there are no major distinctions between the profiles of the consumers playing in land-based or online casinos. In their view, the study shows that gamblers playing games both in land-based and online casinos would typically be the same young men between 18 and 24 years old ([46]).

([38]) See paragraph 64 above.
([39]) See footnote 26.
([40]) *Ibid.*
([41]) Swiss Institute of Comparative Law, Study of Gambling Services in the Internal Market of the European Union 2006.
([42]) See answers to request for information sent by the Danish authorities, 20 October 2010, paragraph 2.10; Observations sent by the Danish authorities, 14 January 2011, p. 9, paragraph 42.
([43]) See comments from the Danish Amusement Machine Industry Association and Royal Casino, sent on 18 February 2011, p. 1.
([44]) *Ibid*, p. 1403.
([45]) Study by the *Socialforskningsinstituttet* (National Centre for Social Research), 2007.
([46]) See for instance the observations sent by nine Greek casinos, 21 February 2011, p. 18.

(94) On the basis of the foregoing, the Commission concludes that online and land-based casinos should be perceived as legally and factually comparable. As both online and land-based gambling pose the same risks, the notified measure addresses both online and land-based gambling. The measure at issue introduces differential tax treatment favouring online gambling operators to the detriment of land-based casinos. It follows that the measure under review should be regarded *prima facie* as selective within the meaning of article 107 TFEU, since it constitutes a departure from the general tax regime.

Justification by the logic of the tax system

(95) Whether a measure that appears *prima facie* to be selective can be justified by the nature and general scheme of the system has to be assessed in the light of existing case law. The guiding principles or rationales of the tax system can be relied upon to justify the selectivity of the measure.

(96) In this regard, the Danish authorities argued that, given the peculiarities of the sector involved, the differential tax treatment in favour of online gambling operators constitutes the only way to ensure the efficiency of their tax regime. Setting a higher tax rate would discourage online gambling operators from applying for a Danish licence, whereas introducing a lower tax burden for all operators concerned would be contrary to the overall objective of keeping gambling at a reasonable level.

(97) The Danish authorities have also asserted that the financial capacity of online gambling operators, being allegedly lower than that of land-based casino operators, justified the different tax rates between the two categories of operators.

(98) In the light of the foregoing arguments, the Commission recalls that, according to case law ([47]) and the Commission Notice on the application of the State aid rules to measures relating to direct business taxation ([48]), a Member State has to establish whether the measure under consideration derives from the basic or guiding principles of that system. A justification based on the nature or overall structure of the tax system in question constitutes an exception to the principle that State aid is prohibited. It must therefore be subject to a strict interpretation ([49]).

([47]) Case 173/73 *Italian Republic* v *Commission of the European Communities* [1974] ECR 709, paragraph 15.
([48]) Commission Notice on the application of the State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, paragraph 23.
([49]) Joined Cases T-127/99, T-129/99 and T-148/99 *Diputación Foral de Álava and others* v *Commission* [2002] ECR II-1275, paragraph 250.

(99) It follows that it is incumbent upon the Danish authorities to prove that the tax measure in question is justified by the logic of the tax system. However, the Danish authorities did not adduce any sufficient and convincing evidence to support their assertion that lowering the tax rate for a particular segment (online operators) of a wider category (gambling operators) as a means to ensure that the former would apply for a license derives from the principles and the logic underpinning their tax system. In particular, the objective of attracting foreign online gambling service providers in Denmark and making them subject to the Danish rules should be regarded as a public policy objective that falls outside the logic of the tax system.

(100) Likewise, with regard to online gambling operators' alleged lower capacity to pay, the Danish authorities failed to establish that there is a difference in profitability between online and land-based casino activities that would justify the differential tax treatment. Nor have the Danish authorities demonstrated that the financial capacity to pay is a principle embedded in their system of direct business taxation that could be relied upon in the present case as a justification for the differential tax treatment of online and land-based casinos.

(101) It follows from the foregoing that the Commission does not consider that the selectivity of the notified Act is justified in the light of the logic of the tax system.

7.1.5. *Conclusion*

(102) In the light of the foregoing, the Commission considers that the criteria set out in Article 107(1) TFEU are fulfilled and that the measure imposing a lower tax rate on online gambling constitutes State aid for the providers of online gambling services established in Denmark.

7.2. **Compatibility of the measure on the basis of Article 107(3)(c) TFEU**

(103) Article 107(2) and (3) of the Treaty on the Functioning of the European Union lay down rules stipulating when certain aid measures are compatible with the internal market and what types of aid may be considered to be compatible with the internal market.

(104) The Commission considers that the measure at issue can be declared compatible with the internal market under the derogation provided for in Article 107(3)(c) TFEU, which allows '… 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.'

(105) The Commission notes that the measure does not fall within the scope of existing guidelines for the application of Article 107(3)(c) of the TFEU. It therefore has to be assessed directly under this Treaty provision. To be compatible under Article 107(3)(c) TFEU, an aid measure must pursue an objective of common interest in a necessary and proportionate way. When assessing a measure's compatibility with the internal market, the Commission balances its positive impact in terms of attaining an objective of common interest against its potentially negative side effects, such as distortion of trade and competition. This test is based on a three-stage examination. The first two stages address the positive effects of the State aid and the third stage deals with the negative effects and the resulting balance of positive and negative effects ([50]). The test is structured as follows:

(1) Does the aid measure have a well-defined objective of common interest?

(2) Is the aid well suited to attain the objective of common interest i.e. does the proposed aid address a market failure or other objective? In particular:

(a) is the aid measure an appropriate instrument, i.e. are there other, better placed instruments?

(b) is there an incentive effect, i.e. does the aid change the behaviour of potential beneficiaries?

(c) is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?

(3) Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

7.2.1. *Objective of common interest*

(106) The Danish authorities explained that they decided to proceed with a reform of the existing legislation on gambling and betting services in order to replace the existing monopoly regime with a regulated and partially liberalised regime. Liberalisation was considered necessary, *inter alia*, to comply with EU law following the initiation of infringement proceedings and the issuing of a reasoned opinion on 23 March 2007 ([51]), and to respond to the threat posed by illegal online gambling services provided by gaming service providers located in other countries.

([50]) In this regard, see State Aid Action Plan — Less and better targeted State aid: a roadmap for State aid reform 2005-2009, COM(2005) 107 final.

([51]) See footnote 6.

(107) Up to now the Danish gambling sector has essentially been a State monopoly as only one licence has been issued to a state-controlled company, 'Danske Spil A/S'. Despite the regulatory framework prohibiting foreign online gambling providers from marketing their services to consumers resident in Denmark, many online gambling providers established in other Member States and also in third countries have offered their services via channels not located in Denmark, such as satellite television channels broadcast from the UK. The Danish authorities stated in their notification that they could not in practice enforce the prohibition against other gaming service providers marketing their services in Denmark because of Danish court proceedings in which it was claimed that the current Danish gambling monopoly constituted a restriction of the free movement of services. As a result, an unsatisfactory situation persisted whereby the legality of the existing monopoly was challenged not only in administrative and judicial proceedings but also through the direct supply of online gambling services by unlicensed operators established in other jurisdictions.

(108) According to explanatory memorandum accompanying the Gaming Act, the liberalisation process was justified by reference to the latest technological developments, which meant that Denmark was now part of a global communication society where consumers have access to a wide range of services from providers of various jurisdictions. Over the past 10 years, gaming has developed into a major sales product on the Internet, especially after the introduction of online poker. The Internet has provided Danish citizens with the opportunity to compare Danske Spil's products and product range with the products offered by online gambling providers established in the UK, Malta, Gibraltar and other countries. In recent years a rapidly growing number of Danes have begun to gamble with the international gaming providers. As explained by the Danish authorities, the government's fear was that the provision of gaming, if not regulated and controlled effectively, could be linked with negative effects on society in the form of crime and a breakdown of public order, and could cause vulnerable individuals to become addicted to gambling. At the same time, the profits of Danske Spil have been steadily declining. The Danish authorities therefore needed to be able to regulate and control the gaming offered to Danish citizens in order to channel gaming into a controlled framework and so prevent negative consequences for society.

(109) In this connection, the Commission recalls that the gambling sector has never been subject to any harmonisation within the European Union. Under Article 2 of the Services Directive, gambling is even explicitly excluded from the Directive's scope ([52]). However, despite the lack of any kind of secondary legislation in this field, cross-border gambling activities may fall within the scope of the fundamental freedoms of the Treaty, namely the freedom of establishment (Article 49 TFEU) and the freedom to provide services (Article 56 TFEU).

(110) In principle, Article 56 TFEU requires the abolition of all restrictions on the freedom to provide services, even if those restrictions apply without distinction to national providers of services and to providers from other Member States, if the restrictions are liable to prohibit, impede, or render less advantageous the activities of service providers established in another Member State where they lawfully provide similar services ([53]). It is also settled case law that legislation by a Member State prohibiting providers established in other Member States from offering services in the territory of that first Member State via the Internet constitutes a restriction of the freedom to provide services enshrined in Article 56 TFEU ([54]). Moreover, the freedom to provide services is for the benefit of both providers and recipients of services ([55]).

(111) In the present case, although the provision of gambling services primarily falls under the scope of the fundamental freedom of Article 56 TFEU, the Danish legislation also affects the freedom of establishment. Under Article 27 of the Gaming Act, Denmark requires online gambling providers either to be established in Denmark or, if they are residents of another EU or EEA Member State, to appoint an approved representative. The justifications for the restrictions are the same for the freedom of establishment as for the freedom to provide services.

(112) Restrictions on these fundamental freedoms are only acceptable as exceptional measures expressly provided for in Article 52 TFEU or justified, in line with the case law of the Court, for reasons of overriding general interest. Article 52(1) TFEU allows restrictions justified on grounds of public policy ('*ordre public*'), public security, or public health.

(113) In so far as gambling activities are concerned, a certain number of reasons of overriding general interest have been recognised by the Court of Justice in its rulings, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander on gaming, as well as the general need to preserve public order. In that context, moral, religious and cultural factors, and the morally and financially harmful consequences for the individual and society associated with gaming and betting, could serve to justify

([52]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

([53]) Case C-76/90 *Säger* [1991] ECR I-4221, paragraph 12; Case C-58/98 *Corsten* [2000] ECR I-7919, paragraph 33.

([54]) Case C-243/01 *Gambelli* [2003] ECR I-13031, paragraph 54.

([55]) Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377, paragraph 16.

the existence on the part of the national authorities of a margin of appreciation sufficient to enable them to determine what consumer protection and the preservation of public order require. Accordingly, the restrictions must in any event be justified by imperative requirements in the general interest, must be suitable for achieving the objective they pursue, and must not go beyond what is necessary in order to attain it. They must also be applied without discrimination ([56]).

(114) It should be noted, however, that loss of tax revenue is not one of the grounds listed in Article 52 TFEU nor accepted in case law ([57]) and cannot therefore be regarded as an overriding reason in the public interest which could be relied upon to justify a measure which is, in principle, contrary to a fundamental freedom.

(115) As regards specifically the justification for restrictions on the provision of cross-border gambling, the Court of Justice has held as follows ([58]):

'57. In that context (…) it also should be noted that the legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of Community harmonization in this field, it is for each Member State to determine those areas, in accordance with its own scale of values, what is required in order to ensure that the interest in question are protected.

58. The mere fact that a Member State has opted for a system of protection which differs from that adopted by another Member State cannot affect the assessment of the need for, and proportionality of, the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the degree of protection which they seek to ensure.

59. The Member States are therefore free to set the objectives of their policy on betting and gambling and, where appropriate, to define in detail the level of protection sought. However, the restrictive measures that they impose must satisfy the conditions laid down in the case law of the Court as regards their proportionality (Placanica and Others, paragraph 48).

(…)

69. In that regard, it should be noted that the sector involving games of chance offered via the Internet has not been the subject of Community harmonisation. A Member State is therefore entitled to take the view that the mere fact that an operator (…) lawfully offers services in that sector via the Internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.

70. In addition, because of the lack of direct contact between consumer and operator, games of chance accessible via the Internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games.'

(116) In a recent judgment, the Court also referred in detail to the risks of online gambling ([59]):

'103. It should be noted that, in the same way, the characteristics specific to the offer of games of chance by the Internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection, particularly in relation to young persons and those with a propensity for gambling or likely to develop such a propensity, in comparison with traditional markets for such games. Apart from the lack of direct contact between the consumer and the operator, previously referred to, the particular ease and the permanence of access to games offered over the Internet and the potentially high volume and frequency of such an international offer, in an environment which is moreover characterised by isolation of the player, anonymity and an absence of social control, constitute so many factors likely to foster the development of gambling addiction and the related squandering of money, and thus likely to increase the negative social and moral consequences attaching thereto, as underlined by consistent case-law.

([56]) See Case C-243/01 *Gambelli* [2003] ECR I-13031, paragraphs 63 to 65 and Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraphs 46 to 49.

([57]) Case C-446/03 *Marks & Spencer* [2005] ECR I-10837, paragraph 44; Case C-319/02 *Manninen* [2004] ECR I-7477, paragraph 49 and the case-law cited. In so far as restrictions on gambling activities are concerned, see Case C-243/01 *Gambelli* [2003] ECR I-13031, paragraphs 61 and 62.

([58]) Case C-42/07 *Liga Portuguesa de Futebol Profissional* [2009] ECR I-10447, paragraphs 57 ff.

([59]) Case C-46/08 *Carmen Media Group* [2009] not yet published, paragraph 103.

104. Moreover, it should be noted that, having regard to the discretion which Member States enjoy in determining the level of protection of consumers and the social order in the gaming sector, it is not necessary, with regard to the criterion of proportionality, that a restrictive measure decreed by the authorities of one Member State should correspond to a view shared by all the Member States concerning the means of protecting the legitimate interest at issue (see, by analogy, Case C-518/06 Commission v Italy [2009] ECR I-3491, paragraphs 83 and 84).

105. Having regard to the whole of the above, it must be acknowledged that a prohibition measure covering any offer of games of chance via the Internet may, in principle, be regarded as suitable for pursuing the legitimate objectives of preventing incitement to squander money on gambling, combating addiction to the latter and protecting young persons, even though the offer of such games remains authorised through more traditional channels.'

(117) The lack of harmonisation in the field of gambling and the Member States' different approaches regarding the range of games permitted and the operators authorised to offer them paints a picture of a very fragmented internal market for the provision of cross-border gambling services. While some Member States restrict or even ban the offer of certain games of chance, others have opted for more open markets. Many Member States have also recently reviewed their gambling legislation or are in the process of doing so in view of the growth of online gambling services.

(118) The Danish authorities did not provide detailed figures on the size of illegal gambling by Danish residents, but instead they pointed out that the development of the unregulated online gambling sector was a worrying aspect from a societal perspective.

(119) This trend is confirmed by the European Commission's Green Paper of March 2011 ([60]). The accompanying Commission Staff Working Paper cites a total Gross Gaming Revenue for Online Gambling in Denmark of EUR 250 m in 2008, of which 14 % (i.e. EUR 34 m) related to casino games and 22 per cent (i.e. EUR 56 m) to poker ([61]). By definition, both online casino games and online poker are prohibited activities.

([60]) European Commission, Green Paper on Online Gambling in the Internal Market, COM(2011) 128 final, p. 8.

([61]) European Commission, Green Paper on Online Gambling in the Internal Market, Commission Staff Working Paper SEC(2011) 321, p. 10.

(120) These figures are expected to increase. The Green Paper reports that online gambling is the fastest growing segment of the gambling market, accounting for 7,5 per cent of the annual revenues of the overall gambling market in 2008 (EU-27) and it is expected to double in size by 2013 ([62]). Second, the proportion of national gambling consumption attributable to online-gambling is estimated to be 21,9 per cent in Denmark, i.e. the second highest rate within the EU, which posts an average of 7,5 per cent ([63]).

(121) Taking into consideration the above-mentioned case law, as well as the overall characteristics of the gambling market in the EU, the Commission takes the view that the arguments put forward by the Danish authorities to justify the adoption of the notified measure are well-founded. In particular, the Commission is aware of the peculiarities of the activities at issue: online gambling provided via the Internet has transformed the sector, bringing about a global marketplace where physical borders are blurred. In this context, as stated in the 2011 Green Paper ([64]), the Commission also notes the need to control the online gambling sector in order to prevent harmful negative consequences that online gambling can have on consumers. In addition to the significant risk of online gambling addiction that various social studies have established ([65]), special attention should be given to minors and other vulnerable persons, including players on low incomes, gamblers with previous gambling addiction and young adults unaware of the risks associated with gambling problems. In order to protect these categories of potential players, the Member States should be able to control the online gambling sector, amongst other things by imposing age limits or licence conditions, controlling payment processing systems and limiting marketing or promotion of online gambling.

(122) The reform undertaken in Denmark, resulting in the adoption of the notified Act, is therefore in line with the objective of the European Commission's Green Paper of 24 March 2011 on 'On-line gambling in the Internal Market', which was to contribute to the emergence in the Member States of a legal framework for online gambling providing for greater legal certainty for all stakeholders ([66]). The Green Paper was a response to the Council Conclusions of December 2010 welcoming a broad consultation by the European Commission on online gambling in the internal market

([62]) See footnote 60.

([63]) European Commission, Green Paper on Online Gambling in the Internal Market, Commission Staff Working Paper SEC(2011) 321, p. 9.

([64]) European Commission, Green Paper on Online Gambling in the Internal Market, COM(2011) 128 final, p. 19.

([65]) For further details on these studies, see European Commission, Green Paper on Online Gambling in the Internal Market, COM(2011) 128 final, pp. 19 ff.

([66]) European Commission, Green Paper on Online Gambling in the Internal Market, COM(2011) 128 final, p. 7.

which would allow for an in-depth discussion of the issues raised by online gambling services in particular ([67]) and to the resolution of the European Parliament adopted on 10 March 2009 that called on the Commission, working in close cooperation with national governments, to study the economic and non-economic effects of the provision of cross-border gambling services ([68]). It must be stressed that the legislative reform implemented through the notified Act is in line with the objectives advocated by the Commission which led to the initiation of infringement proceedings and the sending of a reasoned opinion to the Danish authorities in March 2007 ([69]).

(123) For these reasons, the Commission considers that the notified Gaming Duties Act, to the extent that it will liberalise the market and allow Danish and foreign online gambling operators to provide their services to Danish residents, while ensuring that they will they fulfil the necessary conditions to be licensed by the Danish authorities, serves a well-defined objective of common interest.

7.2.2. *Aid well suited for the desired objective*

(124) An aid measure is considered necessary and proportional when it constitutes an appropriate instrument to achieve the identified objective of common interest, when it has an incentive effect on the beneficiaries and when it does not introduce unnecessary distortions of competition.

Appropriate instrument

(125) The Danish government decided to liberalise the Danish online gambling market and to allow an unlimited number of online licences to be issued. However, the issue of such a licence is subject to a number of conditions relating, *inter alia*, to the trustworthiness of the managers of the company applying for a licence. To make the liberalisation successful, the Danish government also decided to lower the taxation for online operators, only leaving intact the tax rates applicable to land-based gambling operators. In this regard, the complainants argued that lowering the tax rate for online operators was not the most appropriate solution. For instance, blocking payment and communication (ring-fencing instruments) could still be used to achieve the objectives of the liberalisation process without a need to introduce lower tax rates for online operators. According to the complainants, Denmark could therefore have chosen to enforce the prohibition of illegal online gambling by resorting to 'payment and communication' blocking (domain name system filtering, Internet protocol blocking and payment blocking) or by limiting the number of licences to be issued.

(126) With regard to the use of 'blocking systems', the Commission Green Paper states that the efficiency of blocking systems depends on a pre-defined and updated list of items to block as well as efficient software systems. However, as the Danish authorities pointed out, it is questionable whether these blocking systems could produce the expected results, since online gamblers could circumvent Internet blocking by changing the 'ports' used and prohibiting certain payments could block perfectly lawful commercial transactions other than payments relating to stakes and prizes.

(127) With regard to the possibility of issuing a limited number of online licences, the effects depend on the numbers of licences to be issued. If the number is restricted to only a few licences, the small number of competitors will reduce competition and influence supply, which would mean a higher cost for consumers, in the form of a lower payout ratio, than with an unlimited number of licences. A reduced number of licences also limits the variety and quality of choice available to consumers in the marketplace and encourages producers to be less diligent in responding to consumer wants and needs ([70]). Limiting the number of licences also raises questions regarding the criteria for determining the number of licences in a non-arbitrary manner, how and by which institutions the licensing requirements are monitored, and how illegal provision is dealt with, i.e. who takes what measures against illegally provided gambling services ([71]).

(128) In view of these considerations, the Commission considers that the lower tax rate applicable to online gambling activities is an appropriate instrument to attain the liberalisation objectives of the new Gaming Act. The aid measure will ensure that online operators wishing to provide gambling services for Danish residents will apply for a licence and comply with the applicable national regulations.

Incentive effect

(129) The Commission considers that the aid measure is capable of modifying the behaviour of foreign providers of online gambling services, since the lower tax rate constitutes an incentive for such operators to obtain a licence in Denmark and thus for the first time to provide online gambling services legally.

([67]) Conclusion on the framework for gambling and betting in the EU Member States, adopted at the 3057th Competitiveness Council meeting, Brussels, 10 December 2010, Council document 16884/10.

([68]) European Parliament resolution of 10 March 2009 on the integrity of online gambling. (2008/22125(INI)), P6-2009-0097. These issues include advertising and marketing, under-age persons, fraud and criminal behaviour and integrity, social responsibility, consumer protection and taxation.

([69]) See paragraph 7 above.

([70]) Swiss Institute of Comparative Law, Study of Gambling Services in the Internal Market of the European Union, European Commission 2006, p. 1108.

([71]) Swiss Institute of Comparative Law, *International Vergleichende Analyse des Glücksspielwesens*, 2009, p. 18. http://mpk.rlp.de/mpkrlpde/sachthemen/studie-zum-gluecksspielwesen/

Proportionality of the aid

(130) Aid is deemed proportionate only if the same change in behaviour could not be achieved with less aid and less distortion. The amount of the aid must be limited to the minimum needed for the aided activity to take place. In the present case, the Commission considers that the Danish authorities have designed the measure in such a way as to diminish the possible amount of State aid involved and to minimise the distortions of competition arising from the measure.

(131) In the memorandum submitted by the Danish Ministry of Taxation of 6 March 2010 to the Policy Spokesmen of the political parties of the Danish Parliament on the level of duty to be set ([72]), the choice of the lower tax rate of 20 per cent of GGR for the online gambling was justified by reference to the following criteria:

(a) Gambling provided under Danish licences should be adapted to the current offering from online gambling providers abroad, i.e. the tax rate needs to be adjusted in order to match the high payout ratios offered by foreign online gambling providers, inducing them to actually apply for a licence.

(b) The total number of games offered should be increased, leading overall to an increase in turnover.

(c) The gambling products should be so attractive that players would not want to gamble on sites of foreign (illegal) operators.

(d) Blocking instruments should be used to ensure, in combination with items (a)-(c), that gambling on the sites of illegal operators is reduced to a minimum.

(132) In this memorandum, the Danish authorities note that the legislation in the UK, which should be regarded as being very close to the Danish gambling regulation, provides for a tax rate of 15 per cent for online gambling. The Danish authorities considered that the tax rate for online gambling could be set higher than in the UK since Denmark, in contrast to the UK, will also introduce complementary blocking measures to make it more difficult for players to gamble on sites of foreign operators that have not obtained a Danish licence.

(133) Similarly, the Danish authorities cite the examples of France and Italy, which have liberalised their markets and imposed higher rates of duty than the UK. The Danish authorities note that these markets are significantly bigger than the Danish market. The size of a market can have a tangible impact on operators' willingness to enter a market even if there is a higher tax rate, as costs which are always associated with setting up operations in a new market tend to be comparatively higher for entry into smaller markets.

(134) The memorandum includes a simulation of the possible revenue effect of tax rates of 15, 20 and 25 per cent, also taking into account possible changes in gamblers' gambling patterns and operators' actions. The simulation exercise concludes that a tax rate of 20 per cent will presumably still make it sufficiently attractive for gambling providers to apply for a Danish licence and for gamblers to be offered attractive services. Setting a higher tax rate (i.e. 25 per cent) can be expected to increase pressure on payout ratios with the result that the positive revenue effect of a 25 per cent rate may turn out to be lower than with a 20 per cent rate.

(135) The Danish legislator therefore concluded that setting the tax rate for online gambling higher would most likely result in a gambling product that would not be attractive enough to gamblers, leading in turn to lower turnover, offsetting the immediate prospect of higher tax revenues.

(136) The conclusions reached by the Danish legislator as to the appropriate level of taxation for online gambling activities are also confirmed by a report from an industry consulting company, which found that a tax rate of 20 per cent would not mean that the State would forego revenue it would otherwise have received ([73]). According to that report, this was the highest rate economically feasible — a higher rate would be a 'rate of no return', i.e. a tax rate that was simply too high for there to be a valid business case for operators to enter the market. Above this rate, the tax revenue would start to fall.

(137) In view of the foregoing, the Commission considers that the tax rate of 20 per cent of GGR applicable to online operators is not lower than is necessary to ensure that the objectives of the Gaming Act are achieved. Therefore, the aid measure meets the proportionality requirement set out in the case law of the Court of Justice.

7.2.3. *Impact on competition and trade between Member States*

(138) With regard to the impact of the aid measure on competition and trade, a distinction has to be made between possible distortions of the trade between Member States and distortions of competition within Denmark, especially with existing land-based gambling operators.

([72]) See paragraph 38 above.

([73]) H2 Gambling Capital, An independent model assessment of various taxation/licensing models for regulating remote gambling in the Netherlands, February 2011.

(139) With regard to trade between Member States, no negative impact is to be expected. The Gaming Act enables Danish residents to gamble legally on websites of licensed online gambling operators. Those websites are not restricted to Danish resident users but can be accessed by residents of all EU Member States, subject to the restrictions imposed by their national law. By setting the tax rate on online gambling operators at 20 per cent of GGR, the Danish aid measure is broadly in line with the rates of similar taxes applied by other Member States that have already reformed their online gambling legislation. For example, both Belgium and the UK apply a tax rate of 15 per cent of GGR to online gambling, whereas other Member States apply even lower rates (for example, Estonia 5 per cent of GGR, Latvia 10 per cent of GGR, Finland 8,25 per cent of GGR). Only Slovakia has set its a higher tax rate of 27 per cent of GGR.

(140) With regard to distortions of competition within Denmark, the measure will potentially benefit a considerable number of different Danish and foreign online gambling operators who up to now were prohibited from providing their services to Danish residents. Denmark submitted a list of online gambling providers who have already indicated their willingness to apply for a licence. As only the State- controlled company has hitherto been allowed to provide online gambling services, the liberalisation will increase overall competition in the market.

(141) Although the measure constitutes a State aid and its implementation may not be without repercussions for existing land-based gambling operators, who are taxed at a tax rate of up to 75 per cent of GGR, the Commission considers that the overall balance of implementing the measure is positive.

(142) As shown above, setting the tax rate for online gambling at the same or a similar level as the rate for land-based gambling operators would have led to a situation where the industry and players would not have responded to the possibility of legally providing online gambling services on the Danish market, thus defeating the identified objectives of common interest pursued by the Gaming Act.

(143) Accordingly, the Commission concludes that the measure is compatible with the internal market under Article 107(3)(c) TFEU.

8. **CONCLUSION**

(144) The Commission considers that the notified Act confers a tax advantage on online gambling operators that is granted through State resources. The measure is regarded *prima facie* as selective, since it differentiates between online gambling 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. The Danish authorities have failed to demonstrate that the *prima facie* selectivity of the notified act is justified by the logic of the tax system. Hence, the notified Act is regarded as State aid within the meaning of Article 107(1) TFEU.

(145) However, the Commission considers that the aid fulfils the conditions required for it to be regarded as compatible with the internal market under Article 107(3)(c) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The measure C 35/10 which Denmark is planning to implement in the form of duties for online gambling in the Danish Gaming Duties Act is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 20 September 2011.

For the Commission
Joaquín ALMUNIA
Vice-President

RULES OF PROCEDURE

AMENDMENTS TO THE INSTRUCTIONS TO THE REGISTRAR OF THE GENERAL COURT

THE GENERAL COURT

Having regard to Article 23 of its Rules of Procedure;

Having regard to the Instructions to the Registrar adopted on 5 July 2007, as amended by the decision of the General Court of 17 May 2010;

HAS ADOPTED THE FOLLOWING AMENDMENTS TO THE INSTRUCTIONS TO THE REGISTRAR:

Article 1

1. (Does not apply to the English version.)

2. Article 3 shall be amended as follows:

— in Article 3(1), a comma shall be added after the word 'orders' and after the word 'Court', and the words 'all the documents placed' shall be replaced by the words 'all the procedural documents placed';

— (does not apply to the English version);

— the second subparagraph of Article 3(4) shall be replaced by the following:

'The note of the registration, including the registration number and the date of entry in the register, shall be made on the original of the procedural document lodged by the parties or on the version deemed to be the original of that document, [1] as well as on every copy which is served on them. This note shall be in the language of the case.';

— the content of Article 3(5) shall be replaced by the following:

'When a procedural document is not entered in the register on the same day on which it is lodged, the date of lodgment shall be entered in the register and noted on the original version or the version deemed to be the original, as well as on the copies of that document.';

— in Article 3(6), the words ', the date referred to in Article 5 of the decision of the General Court of 14 September 2011' shall be added after the words 'a Registry official or employee'.

3. Article 4 shall be amended as follows:

— the second subparagraph of Article 4(2) shall become the first subparagraph of Article 4(3);

— the third subparagraph of Article 4(2) shall become the second subparagraph of Article 4(3);

— the fourth subparagraph of Article 4(2) shall be numbered Article 4(4);

— Article 4(3) shall be renumbered Article 4(5).

4. Article 5 shall be amended as follows:

— the content of Article 5(1) shall be replaced by the following:

'The case-file shall contain: the procedural documents, where applicable together with their annexes, bearing the note referred to in the second subparagraph of Article 3(4) of these Instructions, signed by the Registrar; the decisions taken in the case, including any decisions relating to refusal to accept documents; reports for the hearing; minutes of the hearing; notices served by the Registrar; and any other documents or correspondence to be taken into consideration in deciding the case.';

[1] In accordance with Article 3 of the decision of the General Court of 14 September 2011 on the lodging and service of procedural documents by means of e-Curia (OJ 2011 C 289, p. 9).

— in Article 5(2), the words 'whether a document is to be placed on the case-file' shall be replaced by the words 'of the placing of a procedural document on the case-file';

— in the first subparagraph of Article 5(4), the word 'original' shall be deleted;

— the content of Article 5(5) shall be replaced by the following:

'The confidential and non-confidential versions of procedural documents shall be filed separately in the case-file. Authorisation for access to the confidential version of procedural documents shall be granted only to the parties in respect of whom no confidential treatment has been ordered.';

— in Article 5(6), the words 'A document which is produced' shall be replaced by the words 'A procedural document which is produced';

— in Article 5(7), the word 'documents' shall be replaced by the words 'procedural documents';

— (does not apply to the English version).

5. Article 6 shall be amended as follows:

— in Article 6(1), the words 'any information or documents' shall be replaced by 'certain information';

— in the first subparagraph of Article 6(2), the words 'certain information or documents' shall be replaced by the words 'certain information', and the words 'points 74 to 77' shall be replaced by 'points 88 to 91'.

6. Article 7 shall be amended as follows:

— in the title, the words 'of documents' shall be replaced by the words 'of procedural documents';

— (does not apply to the English version);

— in the second subparagraph of Article 7(1), the words 'documents lodged' shall be replaced by the words 'procedural documents lodged';

— in the third subparagraph of Article 7(1), the word 'pleading' shall be replaced by the words 'procedural document', and the words 'in points 55 and 56', by the words 'in point 55';

— in the fourth subparagraph of Article 7(1), the words 'in points 57 and 59' shall be replaced by the words 'in points 64 and 66 to 68', and the words 'of a pleading' shall be replaced by the words 'of a procedural document';

— in Article 7(2), the words 'pleadings or' shall be deleted;

— in the first subparagraph of Article 7(3), the words 'of documents' shall be replaced by the words 'of procedural documents', the phrase 'any decision determining the criteria for a procedural document sent to the Registry by electronic means to be deemed to be the original of that document as referred to in Article 43(7) of those Rules' shall be replaced by the phrase 'the decision of the General Court of 14 September 2011', and the word 'handwritten' shall be inserted before the word 'signature';

— in Article 7(4), the words 'pleading or' and 'to pleadings' shall be deleted;

— in the first subparagraph of Article 7(5), the words 'pleadings or' shall be deleted;

— in the second subparagraph of Article 7(5), the words 'documents annexed to a pleading or procedural document are not accompanied' shall be replaced by the words 'documents annexed to a procedural document are not accompanied';

— (does not apply to the English version);

— the content of Article 7(6) shall be replaced by the following:

'Where a party challenges the Registrar's refusal to accept a procedural document, the Registrar shall submit that document to the President for a decision on whether it is to be accepted.'.

7. In Article 9(2), the words 'pleading or' shall be deleted.

8. Article 10 shall be amended as follows:

— in the first subparagraph of Article 10(1), the words 'shall be effected,' shall be deleted and the comma after the words 'Rules of Procedure' shall be replaced by the words 'shall be effected';

— in the second subparagraph of Article 10(1), the last sentence shall be deleted;

— in the second subparagraph of Article 10(4), the word 'documents' shall be replaced by the words 'procedural documents';

— (does not apply to the English version);

— the content of Article 10(6) shall be replaced by the following:

'Where only one copy of an annex to a procedural document is produced, owing to its size or for other reasons, and copies cannot be served on the parties, the Registrar shall inform the parties accordingly and indicate to them that the annex is available to them at the Registry for inspection.'.

9. In Article 11(2), the word 'Documents' shall be replaced by the words 'Procedural documents'.

10. (Does not apply to the English version.)

11. In Article 13(3), the words 'evidence or documents produced' shall be replaced by the words 'procedural documents produced'.

12. (Does not apply to the English version.)

13. In Article 19(2), the words ', to the decision of the General Court of 14 September 2011 and the Conditions of Use of e-Curia' shall be added after the words 'Rules of Procedure', and the phrase 'pursuant to the Practice Directions to parties and pursuant to these Instructions to the Registrar' shall be replaced by the phrase 'to the Practice Directions to parties and to these Instructions to the Registrar,'.

Article 2

These amendments to the Instructions to the Registrar shall be published in the *Official Journal of the European Union*.

They shall enter into force on the day following their publication.

Done at Luxembourg, 24 January 2012.

E. COULON
Registrar

M. JAEGER
President

PRACTICE DIRECTIONS TO PARTIES BEFORE THE GENERAL COURT

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THE GENERAL COURT

Having regard to Article 150 of its Rules of Procedure;

Whereas:

It is in the interest of the sound administration of justice that practice directions be issued to the parties' representatives, whether lawyers or agents, for the purpose of Article 19 of the Protocol on the Statute of the Court of Justice of the European Union ('the Statute'), dealing with the manner in which procedural documents are to be submitted and how best to prepare for the hearing before the General Court ('the Court');

The present directions reflect, explain and complement provisions in the Court's Rules of Procedure and are designed to enable the parties' representatives to take account of those matters which concern the Court, particularly those relating to translation, the internal processing of procedural documents and interpretation;

The Instructions to the Registrar dated 5 July 2007 (OJ 2007 L 232, p. 1), as amended on 17 May 2010 (OJ 2010 L 170, p. 53) and on 24 January 2012 (OJ 2012 L 68, p. 23) ('the Instructions to the Registrar'), require the Registrar to ensure that procedural documents placed on a case-file comply with the provisions of the Statute, the Rules of Procedure and these Practice Directions ('the Practice Directions') together with the Instructions to the Registrar; in particular, he is to require that any irregularities of form in documents lodged be made good and, in default of such regularisation, to refuse, where appropriate, to accept them if they do not comply with the provisions of the Statute or of the Rules of Procedure;

Compliance with the Practice Directions will assure parties' representatives, as persons concerned in the administration of justice, that the procedural documents lodged by them may properly be processed by the Court and will not, with respect to the matters dealt with in the Practice Directions, entail the application of Article 90(a) of the Rules of Procedure;

Following consultations with the representatives of the agents of the Member States, of the institutions acting in proceedings before the Court and of the Council of Bars and Law Societies of Europe (CCBE);

HEREBY DECIDES TO ADOPT THE FOLLOWING PRACTICE DIRECTIONS.

I. **WRITTEN PROCEDURE**

A. GENERAL PROVISIONS

A.1. **Use of technical means of communication**

(1) *By means of the e-Curia application*

1. The lodging of procedural documents by exclusively electronic means is allowed using the e-Curia application (https://curia.europa.eu/e-Curia) in compliance with the Conditions of use of the e-Curia application.

2. Annexes to a procedural document, mentioned in the body of that document, which by their nature cannot be lodged by e-Curia, may be sent separately in accordance with Article 43(1) of the Rules of Procedure, provided that they are mentioned in the schedule of annexes to the document lodged by e-Curia. The schedule of annexes must identify which annexes are to be lodged separately. Those annexes must reach the Registry no later than 10 days after the lodging of the procedural document by e-Curia.

3. Without prejudice to specific rules, the provisions of these Directions shall be applicable to procedural documents lodged by means of the e-Curia application.

(2) *By fax or email*

4. A copy of the signed original of a procedural document may be transmitted to the Registry in accordance with Article 43(6) of the Rules of Procedure either:

— by fax (fax number: (+352) 4303 2100), or

— by email (email address: GeneralCourt.Registry@curia.europa.eu).

5. In the case of transmission by email, only a scanned copy of the signed original will be accepted. Scanned documents should ideally be scanned at a resolution of 300 dpi and submitted in PDF (image and text) using software such as Acrobat or Readiris 7 Pro. A document dispatched in the form of an ordinary electronic file which is unsigned or bears an electronic signature or a facsimile signature generated by computer will not be treated as complying with Article 43(6) of the Rules of Procedure. Correspondence relating to a case which is received by the Court in the form of an ordinary email message will not be taken into consideration.

6. The date on which a procedural document is lodged by fax or email will be deemed to be the date of lodgment for the purposes of compliance with a time-limit only if the original of that document, bearing the representative's handwritten signature, is lodged at the Registry no later than 10 days thereafter, as prescribed under Article 43(6) of the Rules of Procedure.

7. The signed original must be sent without delay, immediately after the dispatch of the copy, without any corrections or amendments, even of a minor nature, being made thereto. In the event of any discrepancy between the signed original and the copy previously lodged, only the date of lodging of the signed original will be taken into consideration. In accordance with the second subparagraph of Article 43(1) of the Rules of Procedure, the signed original of every procedural document is to be accompanied by the adequate number of certified copies.

8. Where, in accordance with Article 44(2) of the Rules of Procedure, a party consents to being served by fax or other technical means of communication, the statement to that effect must specify the fax number and/or the email address for the purpose of service by the Registry. The recipient's computer must be equipped with suitable software (for example, Acrobat or Readiris 7 Pro) enabling communications from the Registry, which will be transmitted in PDF, to be read.

A.2. **Presentation of procedural documents**

9. The following information must appear on the first page of the procedural document:

   (a) the title of the document (application, defence, response, reply, rejoinder, application for leave to intervene, statement in intervention, objection of inadmissibility, observations on …, replies to questions, etc.);

   (b) the case-number (T-…/…), where it has already been notified by the Registry;

   (c) the names of the applicant and of the defendant, and the name of any other party to the proceedings in intellectual property cases and appeals against decisions of the Civil Service Tribunal;

   (d) the name of the party on whose behalf the document is lodged.

10. Each paragraph of the document must be numbered.

11. In documents not lodged by means of the e-Curia application, the handwritten signature of the party's representative is required and must appear at the end of the document. Where more than one representative is acting for the party concerned, the signing of the document by one representative shall be sufficient.

12. Procedural documents must be submitted in such a way as to enable them to be processed electronically by the Court.

    Accordingly, the following requirements must be complied with:

   (a) the text, in A4 format, must be easily legible and appear on one side of the page only;

   (b) paper documents produced must be placed together in such a way as to enable them to be easily undone. They must not be bound together or fixed to each other by any other means (e.g. glued or stapled);

(c) the text must appear in characters that are sufficiently large to be easily read [1] with sufficient line spacing and margins to ensure that a scanned version will be legible; [2]

(d) the pages of the document must be numbered consecutively in the top right-hand corner; where annexes to a document are produced, they must be paginated in accordance with the requirements at point 59 of the Practice Directions.

13. The first page of each copy of the signed original of every procedural document not lodged by means of the e-Curia application and required to be produced by the parties pursuant to the second subparagraph of Article 43(1) of the Rules of Procedure must be initialled by the representative of the party concerned and certified by him as a true copy of the original document.

A.3. **The presentation of files lodged by means of the e-Curia application**

14. Procedural documents lodged by means of the e-Curia application shall be presented in the form of files. To assist the Registry in handling them, it is recommended to follow the practical guidance given in the e-Curia User Manual available on line on the Internet site of the Court of Justice of the European Union, viz:

— files must include names identifying the document (Pleading, Annexes Part 1, Annexes Part 2, Covering letter, etc.);

— the procedural document need not necessarily bear a handwritten signature;

— the text of the procedural document can be saved in PDF direct from the word-processing software without the need of scanning;

— the procedural document must include the schedule of annexes;

— the annexes must be contained in one or more files separate from the file containing the procedural document. A file may contain several annexes. It is not compulsory to create one file per annex.

A.4. **Length of pleadings**

15. Depending on the subject-matter and the circumstances of the case, the maximum number of pages [3] shall be as follows:

— 50 pages for the application and the defence;

— 20 pages for the application and responses in intellectual property cases;

— 15 pages for the appeal and the response;

— 25 pages for the reply and the rejoinder;

— 15 pages for the reply and the rejoinder in appeal cases and in intellectual property cases;

— 20 pages for an objection of inadmissibility and observations thereon;

— 20 pages for a statement in intervention and 15 pages for observations thereon.

[1] For example, 'Times New Roman' 12 font for the main text and 'Times New Roman' 10 font for the text of footnotes.
[2] For example, single line spacing, and margins of at least 2,5 cm.
[3] The text must be presented in accordance with the requirements at point 12(c) of these Practice Directions.

16. Authorisation to exceed those maximum lengths will be given only in cases involving particularly complex legal or factual issues.

B. FORM AND CONTENT OF PLEADINGS

B.1. **Direct actions**

17. The Rules of Procedure contain provisions which specifically govern proceedings relating to intellectual property rights (Articles 130 to 136). The rules relating to applications and responses lodged in the context of such proceedings (2) are therefore set out separately from those relating to applications and defences lodged in the context of any other proceedings (1).

(1) *Application and defence (other than in intellectual property cases)*

a. Application initiating proceedings

18. The mandatory information to be included in the application initiating proceedings is prescribed by Article 44 of the Rules of Procedure.

19. The following information must appear at the beginning of the application:

(a) the name and address of the applicant;

(b) the name and capacity of the applicant's representative;

(c) the identity of the party against whom the application is made;

(d) the statements referred to in Article 44(2) of the Rules of Procedure (statement of an address for service in Luxembourg and/or agreement to service by technical means of communication).

20. The introductory part of the application should be followed by a brief account of the facts giving rise to the dispute.

21. Legal arguments should be set out and grouped by reference to the particular pleas in law to which they relate. Each argument or group of arguments should generally be preceded by a summary statement of the relevant plea. In addition, the pleas in law put forward should ideally each be given a heading to enable them to be identified easily.

22. The precise wording of the form of order sought by the applicant must be stated either at the beginning or at the end of the application.

23. In the case of an action for annulment, a copy of the contested measure must be annexed to the application and identified as such.

24. The documents referred to in Article 44(3) and (5)(a) and (b) of the Rules of Procedure must be produced together with the application, but separately from the annexes mentioned in the text of the pleading. For the purposes of the production of the document required by Article 44(3) of the Rules of Procedure, reference may be made, in accordance with Article 8(2) of the Instructions to the Registrar, to a document previously lodged at the Registry of the Court.

25. Each application must be accompanied by a summary of the pleas in law and main arguments relied on, designed to facilitate the drafting of the notice prescribed by Article 24(6) of the Rules of Procedure. Since the notice is required to be published in the *Official Journal of the European Union* in all the official languages, it is requested that the summary should not exceed two pages and that it should be prepared in accordance with the model available on line on the Internet site of the Court of Justice of the European Union. It must be produced separately from the annexes mentioned in the application. The summary must, if not lodged by means of the e-Curia application, be sent by email, as an ordinary electronic file, to GeneralCourt.Registry@curia.europa.eu, indicating the case to which it relates.

26. All evidence offered in support must be expressly and accurately indicated, in such a way as to show clearly the facts to be proved:

— documentary evidence offered in support must refer to the relevant document number in a schedule of annexed documents. Alternatively, if a document is not in the applicant's possession, the pleading must indicate how the document may be obtained;

— where oral testimony is sought to be given, each proposed witness or person from whom information is to be obtained must be clearly identified.

27. If the application is lodged after the submission of an application for legal aid, the effect of which, under Article 96(4) of the Rules of Procedure, is to suspend the period prescribed for the bringing of an action, this must be stated at the beginning of the application initiating proceedings.

28. If the application is lodged after notification of the order making a decision on an application for legal aid, reference must also be made in the application to the date on which the order was served on the applicant.

b. Defence

29. The mandatory information to be included in the defence is prescribed by Article 46(1) of the Rules of Procedure.

30. In addition to the case-number and the name of the applicant, the following information must appear at the beginning of the defence:

(a) the name and address of the defendant;

(b) the name and capacity of the defendant's representative;

(c) the statements referred to in Article 44(2) of the Rules of Procedure (statement of an address for service in Luxembourg and/or agreement to service by technical means of communication).

31. The precise wording of the form of order sought by the defendant must be stated either at the beginning or at the end of the defence.

32. Points 21, 24 and 26 of the Practice Directions shall apply to the defence.

33. Any fact alleged by the other party which is contested must be specified and the basis on which it is contested expressly stated.

(2) *Application and response (in intellectual property cases)*

a. Application initiating proceedings

34. The mandatory information to be included in the application initiating proceedings is prescribed by Articles 44 and 132(1) of the Rules of Procedure.

35. The following information must appear at the beginning of the application:

(a) the name and address of the applicant;

(b) the name and capacity of the applicant's representative;

(c) the names of all parties to the proceedings before the Board of Appeal and the addresses given by them for notification purposes during those proceedings;

(d) the date on which the applicant was notified of the decision of the Board of Appeal that is the subject-matter of the action;

(e) the statements referred to in Article 44(2) of the Rules of Procedure (statement of an address for service in Luxembourg and/or agreement to service by technical means of communication).

36. The contested decision of the Board of Appeal must be annexed to the application.

37. Points 20 to 22, 24, and 26 to 28 of the Practice Directions shall apply to applications in intellectual property cases.

b. Response

38. The mandatory information to be included in the response is prescribed by Article 46(1) of the Rules of Procedure.

39. In addition to the case-number and the name of the applicant, the following must appear at the beginning of the response:

(a) the name and address of the defendant or of the intervener;

(b) the name and capacity of the defendant's or intervener's representative;

(c) the statements referred to in Article 44(2) of the Rules of Procedure (statement of an address for service in Luxembourg and/or agreement to service by technical means of communication).

40. The precise wording of the form of order sought by the defendant or by the intervener must be stated either at the beginning or at the end of the response.

41. Points 21, 24, 26 and 33 of the Practice Directions shall apply to the response. Where, prior to the response, the other party to the proceedings before the Board of Appeal lodges observations on the language of the case, in accordance with Article 131(2) of the Rules of Procedure, those observations shall be accompanied by the document referred to in Article 44(3) of the Rules of Procedure.

B.2. **Appeals**

a. Notice of appeal

42. The notice of appeal must contain the information prescribed by Article 138(1) of the Rules of Procedure.

43. The following must appear at the beginning of any notice of appeal:

(a) the name and address of the appellant;

(b) the name and capacity of the appellant's representative;

(c) a reference to the decision of the Civil Service Tribunal appealed against (nature of the decision, formation of the Tribunal, date and case-number);

(d) the names of the other parties to the proceedings before the Civil Service Tribunal;

(e) a reference to the date of receipt by the appellant of the decision of the Civil Service Tribunal;

(f) the statements referred to in Article 44(2) of the Rules of Procedure (statement of an address for service in Luxembourg and/or agreement to service by technical means of communication).

44. The precise wording of the form of order sought by the appellant must be stated either at the beginning or at the end of the notice (Article 139(1) of the Rules of Procedure).

45. It is not generally necessary to describe the background or subject-matter of the proceedings. A reference to the decision of the Civil Service Tribunal is sufficient.

46. It is recommended that the pleas in law be summarised at the beginning of the notice. Legal arguments should be set out and grouped by reference to the particular pleas in law in support of the appeal to which they relate, and in particular by reference to the errors of law relied on.

47. A copy of the decision of the Civil Service Tribunal appealed against shall be annexed to the notice.

48. Each notice of appeal must be accompanied by a summary of the pleas in law and main arguments relied on, designed to facilitate the drafting of the notice for publication prescribed by Article 24(6) of the Rules of Procedure. Since the notice is required to be published in the *Official Journal of the European Union* in all the official languages, it is requested that the summary should not exceed two pages and that it should be prepared in accordance with the model available on line on the Internet site of the Court of Justice of the European Union. It must be produced separately from the annexes mentioned in the notice of appeal. The summary must, if not lodged by means of the e-Curia application, be sent by email, as an ordinary electronic file, to GeneralCourt.Registry@curia.europa.eu, indicating the case to which it relates.

49. The document referred to in Article 44(3) of the Rules of Procedure (certificate that the lawyer is authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area) must be produced together with the notice of appeal, unless the party bringing the appeal is an institution of the Union or a Member State represented by an agent. For the purposes of the production of the document required by Article 44(3) of the Rules of Procedure, reference may be made, in accordance with Article 8(2) of the Instructions to the Registrar, to a document previously lodged at the Registry of the Court.

b. Response

50. The response must contain the information prescribed by Article 141(2) of the Rules of Procedure.

51. In addition to the case-number and the name of the appellant, the following must appear at the beginning of each response:

(a) the name and address of the party submitting the response;

(b) the name and capacity of that party's representative;

(c) the date of receipt of the appeal by that party;

(d) the statements referred to in Article 44(2) of the Rules of Procedure (statement of an address for service in Luxembourg and/or agreement to service by technical means of communication).

52. The precise wording of the form of order sought by the party submitting the response must be stated either at the beginning or at the end of the response (Article 142(1) of the Rules of Procedure).

53. If the response seeks to set aside, in whole or in part, the decision of the Civil Service Tribunal on a plea in law which was not raised in the appeal, a reference to that effect should be included in the heading of the pleading ('response and cross-appeal').

54. Legal arguments must, as far as possible, be set out and grouped by reference to the appellant's pleas in law and/or, as the case may be, to the pleas in law relating to the cross-appeal.

55. Since the factual and legal background is already included in the judgment under appeal, it should be repeated in the response only in truly exceptional circumstances, in so far as its presentation in the notice of appeal is contested or requires clarification. The contested matter of fact or of law must be identified and the basis of that contest clearly stated.

56. The document referred to in Article 44(3) of the Rules of Procedure (certificate that the lawyer is authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area) must be produced together with the response, unless the party producing it is an institution of the Union or a Member State represented by an agent.

C. ANNEXES TO PROCEDURAL DOCUMENTS

57. Only those documents mentioned in the actual text of a procedural document and which are necessary in order to prove or illustrate its contents may be submitted as annexes.

58. Annexes will be accepted only if they are accompanied by a schedule indicating, for each document annexed:

(a) the number of the annex (by reference to the procedural document to which the documents are annexed, using a letter and a number: for example, Annex A.1, A.2, … for annexes to the application; B.1, B.2, … for annexes to the defence; C.1, C.2, … for annexes to the reply; D.1, D.2, … for annexes to the rejoinder);

(b) a short description of the document (for example, 'letter', followed by its date, author and addressee and the number of pages);

(c) the page reference and paragraph number in the procedural document where that document is mentioned and its relevance is described.

59. The documents annexed to a procedural document must be paginated in the top right-hand corner, in ascending order. Pagination of the documents may be made either consecutively with the procedural document to which they are annexed or consecutively but separately from that document.

60. Where annexes are documents which themselves contain annexes, they must be arranged and numbered in such a way as to avoid all possibility of confusion and should, where necessary, be separated by dividers.

61. Each reference to a document lodged must state the relevant annex number as given in the schedule of annexes and indicate the procedural document with which the annex has been lodged, in the manner described at point 58 above.

D. REGULARISATION OF PROCEDURAL DOCUMENTS

D.1. **Regularisation of applications**

a. Those requirements, non-compliance with which is grounds for not serving the application

62. If an application does not comply with the following requirements, the Registry shall not serve it and a reasonable period shall be prescribed for the purposes of putting it in order:

	Direct actions (other than intellectual property)	Intellectual property cases	Appeals
(a)	production of the certificate of the lawyer's authorisation to practise (Article 44(3) of the Rules of Procedure)	production of the certificate of the lawyer's authorisation to practise (Article 44(3) of the Rules of Procedure)	production of the certificate of the lawyer's authorisation to practise (Article 44(3) of the Rules of Procedure)
(b)	proof of the existence in law of a legal person governed by private law (Article 44(5)(a) of the Rules of Procedure)	proof of the existence in law of a legal person governed by private law (Article 44(5)(a) of the Rules of Procedure)	
(c)	authority (Article 44(5)(b) of the Rules of Procedure)	authority (Article 44(5)(b) of the Rules of Procedure)	
(d)	proof that that authority has been properly conferred by someone authorised for the purpose (Article 44(5)(b) of the Rules of Procedure)	proof that that authority has been properly conferred by someone authorised for the purpose (Article 44(5)(b) of the Rules of Procedure)	
(e)	production of the contested measure (action for annulment) or of the documentary evidence of the date on which the institution was requested to act (action for failure to act) (second paragraph of Article 21 of the Statute; Article 44(4) of the Rules of Procedure)	production of the contested decision of the Board of Appeal (second subparagraph of Article 132(1) of the Rules of Procedure)	production of the decision of the Civil Service Tribunal that is the subject of the appeal (Article 138(2) of the Rules of Procedure)

	Direct actions (other than intellectual property)	Intellectual property cases	Appeals
(f)		the names of the parties to the proceedings before the Board of Appeal and the addresses which they had given for the purposes of the notifications to be effected in the course of those proceedings (first subparagraph of Article 132(1) of the Rules of Procedure)	
(g)		the date on which the decision of the Board of Appeal was notified (second subparagraph of Article 132(1) of the Rules of Procedure)	the date on which the decision of the Civil Service Tribunal that is the subject of the appeal was notified (Article 138(2) of the Rules of Procedure)

b. Procedural rules, non-compliance with which justifies delaying service

63. If an application does not comply with the following procedural rules, service of the application shall be delayed and a reasonable period shall be prescribed for the purposes of putting the application in order:

	Application lodged in paper format (lodgment preceded, as the case may be, by dispatch by fax or email)	Application lodged by e-Curia
(a)	indication of the applicant's address (first paragraph of Article 21 of the Statute; Article 44(1)(a) of the Rules of Procedure; point 19(a), 35(a) or 43(a) of the Practice Directions)	indication of the applicant's address (first paragraph of Article 21 of the Statute; Article 44(1)(a) of the Rules of Procedure; point 19(a), 35(a) or 43(a) of the Practice Directions)
(b)	position of the representative's handwritten signature (point 11 of the Practice Directions)	
(c)	paragraph numbering (point 10 of the Practice Directions)	paragraph numbering (point 10 of the Practice Directions)
(d)	production of the annexes mentioned in the schedule (second subparagraph of Article 43(1) of the Rules of Procedure)	production of the annexes mentioned in the schedule (second subparagraph of Article 43(1) of the Rules of Procedure)
(e)	sufficient number of copies of the annexes mentioned in the schedule (second subparagraph of Article 43(1) of the Rules of Procedure)	
(f)	production of a schedule of annexes (Article 43(4) of the Rules of Procedure and point 58 of the Practice Directions)	production of a schedule of annexes (Article 43(4) of the Rules of Procedure and point 58 of the Practice Directions)
(g)	sufficient number of copies of the schedule (second subparagraph of Article 43(1) of the Rules of Procedure)	
(h)	schedule of annexes with a short description of each document (point 58(b) of the Practice Directions) and page reference and paragraph number(s) (point 58(c) of the Practice Directions)	schedule of annexes with a short description of each document (point 58(b) of the Practice Directions) and page reference and paragraph number(s) (point 58(c) of the Practice Directions)
(i)	sufficient number of copies of the schedule of annexes with page reference and paragraph number(s) (second subparagraph of Article 43(1) of the Rules of Procedure)	

	Application lodged in paper format (lodgment preceded, as the case may be, by dispatch by fax or email)	Application lodged by e-Curia
(j)	sufficient number of copies of the contested measure or of the documentary evidence of the date on which the institution was requested to act (second subparagraph of Article 43(1) of the Rules of Procedure)	
(k)	production of a copy of the contract containing the arbitration clause (Article 44(5a) of the Rules of Procedure)	production of a copy of the contract containing the arbitration clause (Article 44(5a) of the Rules of Procedure)
(l)	sufficient number of copies of the contract containing the arbitration clause (second subparagraph of Article 43(1) of the Rules of Procedure)	
(m)	pagination of the application and annexes (points 12(d) and 59 of the Practice Directions)	pagination of the application and annexes (points 12(d) and 59 of the Practice Directions)
(n)	sufficient number of certified copies of the application (seven for inter partes intellectual property cases and six for all other cases) (second subparagraph of Article 43(1) of the Rules of Procedure)	
(o)	production of certified true copies of the application (second subparagraph of Article 43(1) of the Rules of Procedure; point 13 of the Practice Directions)	

c. Procedural rules non-observance of which does not prevent service

64. If the application does not comply with the following procedural rules, the application shall be served and a reasonable period shall be prescribed for the purposes of putting it in order:

(a) address for service (statement of an address for service in Luxembourg and/or agreement to service by technical means of communication) (Article 44(2) of the Rules of Procedure; Article 10(3) of the Instructions to the Registrar; points 8 and 19(d) of the Practice Directions);

(b) certificate of authorisation to practise in respect of any additional lawyer (Article 44(3) of the Rules of Procedure);

(c) other than in intellectual property cases, a summary of the pleas in law and main arguments (points 25 and 48 of the Practice Directions);

(d) translation into the language of the case accompanying any document drafted in a language other than the language of the case (second subparagraph of Article 35(3) of the Rules of Procedure).

D.2. **Regularisation of lengthy applications**

65. An application comprising a number of pages which exceeds the maximum number of pages prescribed at point 15 of the Practice Directions by 40% or more shall require regularisation, unless otherwise directed by the President.

66. An application comprising a number of pages which exceeds the maximum number of pages prescribed at point 15 of the Practice Directions by less than 40% may require regularisation if so directed by the President.

67. Where an applicant is requested to put his application in order, service on the defendant of the application which requires regularisation on account of its length shall be delayed.

D.3. **Regularisation of other procedural documents**

68. The instances of regularisation referred to above shall apply as necessary to procedural documents other than the application.

E. APPLICATIONS FOR EXPEDITED PROCEDURE

69. An application in respect of which the expedited procedure is requested must not in principle exceed 25 pages. Such an application must be submitted in accordance with the requirements set out at points 18 to 25 above.

70. An application for a case to be decided by the Court under the expedited procedure must be made by a separate document in accordance with Article 76a of the Rules of Procedure and must contain a brief statement of the reasons for the special urgency of the case and any other relevant circumstances. The provisions of Sections A.2, A.3 and C above shall apply.

71. It is recommended that the party applying for the expedited procedure specify in its application the pleas in law, arguments or passages of the pleading in question (application or defence) which are put forward only in the event that the case is not decided under the expedited procedure. That information, referred to in the second subparagraph of Article 76a(1) of the Rules of Procedure, must be clearly specified in the application, indicating the numbers of the paragraphs concerned.

72. It is recommended also that an abbreviated version of the relevant pleading be annexed to any application for a case to be decided under the expedited procedure which contains the information referred to in the preceding point.

73. Where an abbreviated version is annexed, it must comply with the following directions:

(a) the abbreviated version shall be in the same format as the original version of the pleading in question, with omitted passages being identified by the word 'omissis' in square brackets;

(b) paragraphs which are retained in the abbreviated version shall keep the same numbering as in the original version of the pleading in question;

(c) if the abbreviated version does not refer to all of the annexes to the original version of the pleading in question, the schedule of annexes accompanying the abbreviated version shall identify each annex omitted by the word 'omissis';

(d) annexes which are retained in the abbreviated version must keep the same numbering as in the schedule of annexes in the original version of the pleading in question;

(e) the annexes referred to in the schedule accompanying the abbreviated version must be attached to that version.

74. In order to ensure that it is dealt with as expeditiously as possible, the abbreviated version must comply with the above directions.

75. Where the production of an abbreviated version of the pleading is requested by the Court under Article 76a(4) of the Rules of Procedure, the abbreviated version must be prepared in accordance with the above directions, unless otherwise specified.

76. If the applicant has not specified in his application for expedited procedure the pleas in law, arguments or passages of the application which are to be taken into consideration only in the event that the case is not decided under the expedited procedure, the defendant must respond to the application initiating proceedings within a period of one month.

77. If the applicant has specified in his application for expedited procedure the pleas in law, arguments or passages of the application which are to be taken into consideration only in the event that the case is not decided under the expedited procedure, the defendant must respond, within a period of one month, to the pleas in law and arguments advanced in the application, in the light of the information provided in the application for the expedited procedure.

78. If the applicant has attached an abbreviated version of the application to his application for expedited procedure, the defendant must respond, within a period of one month, to the pleas in law and arguments contained in that abbreviated version of the application.

79. If the Court decides to reject the application for an expedited procedure before the defendant has lodged his defence, the period of one month for lodgment of the defence prescribed under the first subparagraph of Article 76a(2) of the Rules of Procedure shall be extended by a further month.

80. If the Court decides to reject the application for an expedited procedure after the defendant has lodged his defence within the period of one month prescribed by the first subparagraph of Article 76a(2) of the Rules of Procedure, the defendant shall be allowed a further period of one month in order to supplement his defence.

F. APPLICATIONS FOR SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

81. The application must be made by a separate document. It must be intelligible in itself, without necessitating reference to the application lodged in the main proceedings.

82. An application for suspension of operation or enforcement or for other interim measures must state, with the utmost concision, the subject-matter of the proceedings, the pleas of fact and of law on which the main action is based (establishing a prima facie case on the merits in that action) and the circumstances giving rise to urgency. It must specify the measure(s) applied for. Sections A.2, A.3, B and C above shall apply.

83. Because an application for interim measures requires the existence of a prima facie case to be assessed for the purposes of a summary procedure, it need not set out in full the text of the application in the main proceedings.

84. In order that an application for interim measures may be dealt with urgently, the number of pages it contains must not in principle (depending on the subject-matter and the circumstances of the case) exceed a maximum of 25 pages.

G. APPLICATIONS FOR CONFIDENTIAL TREATMENT

85. Without prejudice to the provisions of the second and third subparagraphs of Article 67(3) of the Rules of Procedure, the Court shall take into consideration only those documents which have been made available to the parties' representatives and on which they have been given an opportunity of expressing their views (first subparagraph of Article 67(3) of the Rules of Procedure).

86. Nevertheless, a party may apply for certain parts or passages of the procedural documents placed in the case-file that are secret or confidential:

— to be excluded from the documents to be furnished to an intervener (Article 116(2) of the Rules of Procedure);

— not to be made available to a party in a joined case (Article 50(2) of the Rules of Procedure).

87. An application for confidential treatment shall be made by a separate document. It may not be lodged as a confidential version.

88. Such an application must specify the party in relation to whom confidentiality is requested. It must be limited to what is strictly necessary and may not in any event cover the entirety of a procedural document; only exceptionally may it extend to the entirety of an annexed document. It should usually be possible to furnish a non-confidential version of a document in which passages, words or figures have been deleted without affecting the interests it is sought to protect.

89. An application for confidential treatment must accurately identify the particulars or passages to be excluded and state very briefly the reasons for which each of those particulars or passages is regarded as secret or confidential. Failure to provide such information may result in the application being rejected by the Court.

90. On lodging an application for confidential treatment in respect of one or more procedural documents, a party must produce a non-confidential version of each procedural document concerned with the confidential material deleted.

a. Applications for leave to intervene

91. Where an application is made for leave to intervene in a case, the parties are requested to state, within the period prescribed by the Registrar to that effect, whether they wish to seek confidential treatment in respect of certain information included in the documents already placed on the case-file.

92. With regard to all documents that the parties may lodge subsequently, the parties must specify, in accordance with points 87 to 90 above, the information for which confidential treatment is sought, and provide, in addition to the full version of the documents lodged, a version from which the information in question has been removed. In the absence of such indication, the documents lodged will be furnished to the intervener.

b. Joined cases

93. Where it is envisaged that several cases will be joined, the parties are requested to state, within the period prescribed by the Registrar to that effect, whether they wish to seek confidential treatment in respect of certain information included in the documents already placed on the case-files.

94. With regard to all documents that the parties may lodge subsequently, the parties must specify, in accordance with points 88 to 90 above, the information for which confidential treatment is sought, and provide, in addition to the full version of the documents lodged, a version from which the information in question has been removed. In the absence of such indication, the documents lodged will be made available to the other parties.

H. APPLICATIONS CONCERNING A SECOND EXCHANGE OF PLEADINGS

H.1. **Applications for leave to submit a reply or rejoinder in intellectual property cases**

95. Under Article 135(2) of the Rules of Procedure, the President may, on application within the period prescribed by that provision, allow a reply or a rejoinder to be submitted if it is necessary in order to enable the party concerned to put forward his point of view.

96. Save in exceptional circumstances, such an application must not exceed 2 pages and must be confined to summarising the precise reasons for which, in the opinion of the party concerned, a reply or a rejoinder is necessary. The request must be intelligible in itself, without necessitating reference to the application or to the response(s).

H.2. **Applications for leave to submit a reply in appeal proceedings**

97. Under Article 143(1) of the Rules of Procedure, the President may, on application within the period prescribed by that provision, allow a reply to be submitted if it is necessary in order to enable the appellant to put forward his point of view or in order to provide a basis for the decision on the appeal.

98. Save in exceptional circumstances, such an application must not exceed 2 pages and must be confined to summarising the precise reasons for which, in the appellant's opinion, a reply is necessary. The request must be intelligible in itself, without necessitating reference to the appeal or to the response.

I. APPLICATIONS FOR HEARING OF ORAL ARGUMENT

I.1. **Applications for hearing of oral argument in intellectual property cases**

99. The Court may decide to rule on the appeal without an oral procedure, unless one of the parties submits an application to be heard within the period prescribed under Article 135a of the Rules of Procedure.

100. The application must set out the reasons for which the party wishes to be heard. That reasoning must be based on a real assessment of the benefit of a hearing to the party in question and must indicate the elements of the file or arguments which that party considers it necessary to develop or refute more fully at a hearing. It is not sufficient to provide a general statement of reasons referring to the importance of the case or of the questions to be decided.

I.2. **Applications for hearing of oral argument in appeal proceedings**

101. The Court may decide to rule on the appeal without an oral procedure, unless one of the parties submits an application to be heard within the period prescribed under Article 146 of the Rules of Procedure.

102. The application must set out the reasons for which the party wishes to be heard. That reasoning must be based on a real assessment of the benefit of a hearing to the party in question and must indicate the elements of the file or arguments which that party considers it necessary to develop or refute more fully at a hearing. It is not sufficient to provide a general statement of reasons referring to the importance of the case or of the questions to be decided.

J. APPLICATIONS FOR LEGAL AID

103. The use of a form in making an application for legal aid is compulsory. The form is available on the Internet site of the Court of Justice of the European Union at http://curia.europa.eu.

104. The form may also be obtained on request from the Registry of the Court either by sending an email stating the applicant's name and address to GeneralCourt.Registry@curia.europa.eu, or by writing to the following address:

Registry of the General Court of the European Union
Rue du Fort Niedergrünewald
L-2925 Luxembourg

105. Any request for legal aid submitted otherwise than by using the application form will not be taken into consideration and will give rise to a reply from the Registrar reiterating that the use of the form is compulsory and attaching a copy of the form.

106. The original application for legal aid must be signed by the legal aid applicant or by his lawyer. However, if the application is lodged by means of e-Curia by the applicant's lawyer, the lawyer's signature is not required.

107. If the application for legal aid is submitted by the legal aid applicant's lawyer before the application initiating proceedings has been lodged, it must be accompanied by the document referred to in Article 44(3) of the Rules of Procedure (certificate that the lawyer is authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area). For the purposes of the production of the document required by Article 44(3) of the Rules of Procedure, reference may be made, in accordance with Article 8(2) of the Instructions to the Registrar, to a document previously lodged at the Registry of the Court.

108. The application form is intended to provide the Court, in accordance with Article 95(2) of the Rules of Procedure, with the information required to give an effective decision on the application for legal aid. The information required concerns:

— the legal aid applicant's economic situation;

and,

— where the action has not yet been brought, the subject-matter of the action, the facts of the case and the arguments relating thereto.

109. The legal aid applicant is required to produce, together with the application form, documentary evidence to support his assertions.

110. The duly completed form and supporting documents must be intelligible in themselves, without reference to any other letters lodged at the Registry by the legal aid applicant.

111. Without prejudice to the Court's power to request information or the production of further documents under Article 64 of the Rules of Procedure, the application for legal aid may not be supplemented by the subsequent filing of additional material. Such material will be returned, unless it has been lodged at the request of the Court. In exceptional cases, supporting documents intended to establish the applicant's lack of means may nevertheless be accepted subsequently, subject to the delay in their production being adequately explained.

112. Under Article 96(4) of the Rules of Procedure, the introduction of an application for legal aid is to suspend the period prescribed for the bringing of the action to which the application refers until the date of notification of the order making a decision on that application or, where no lawyer is designated in that order to represent the person concerned, until the date of service of the order designating the lawyer instructed to represent the legal aid applicant.

113. The suspension shall take effect from the date on which the form is lodged or, where the request for legal aid is submitted without using the form, from the date on which that request is lodged, provided that the form is returned within the period prescribed by the Registry to that effect in the letter referred to at point 105 above. If the form is not returned within the prescribed period, the suspension shall take effect from the date on which the form is lodged.

114. Where the form is lodged by fax or email, the original, bearing the handwritten signature of the lawyer or of the applicant, must reach the Registry of the Court no more than 10 days after such lodgment, in order for the date of lodgment of the fax or email to be taken into account in the suspension of the time-limit for bringing an action. If the original form is not lodged within that 10-day period, the suspension of the time-limit for bringing an action shall take effect on the date on which the original form is lodged. In the event of any discrepancy between the signed original and the copy previously lodged, only the signed original will be taken into account, and the relevant date for the purpose of suspension of the time-limit for bringing an action will be the date on which that original was lodged.

II. **ORAL PROCEDURE**

115. The oral procedure exists:

— where necessary, to reiterate in condensed form the position taken by the parties, emphasising the key submissions advanced in writing;

— to clarify, if necessary, certain arguments advanced during the written procedure and to submit any new arguments arising from events occurring after the close of the written procedure and which therefore could not have been set out in the pleadings;

— to reply to any questions put by the Court.

116. It is for each party to assess, in the light of the purpose of the oral procedure, as defined in the preceding point, whether oral argument is really necessary or whether it would be sufficient simply to refer to the pleadings or written observations. The oral procedure can then concentrate on the replies to questions put by the Court. If the representative does consider it necessary to address the Court, he may always confine himself to making specific points and referring to the pleadings in relation to other points.

117. If a party refrains from presenting oral argument, this will never be construed as constituting acquiescence in the oral argument presented by another party where the arguments in question have already been refuted in writing. Such silence will not preclude that party from responding to the other party's submission.

118. In some cases, the Court may consider it preferable to start the oral procedure with questions put by its Members to the parties' representatives. In that case, the latter are requested to take this into account if they then wish to make a brief address.

119. In the interests of clarity and in order to enable the Members of the Court to understand oral submissions better, it is generally preferable for Counsel to speak freely on the basis of notes rather than to read out a written text. The parties' representatives are also requested to simplify their presentation of the case as far as possible; a series of short sentences will always be preferable to a long, complicated sentence. It would also assist the Court if representatives could structure their oral argument and indicate, before developing it, the structure they intend to adopt.

120. When the submission has been prepared in writing, it is advisable to bear in mind when drafting it that it will have to be presented orally and should therefore resemble a spoken text as much as possible. To facilitate interpretation, parties' representatives are requested to send any text or written notes for their submissions to the Directorate for Interpretation in advance either by fax ((+352) 4303 3697) or by email (interpret@curia.europa.eu).

121. Any notes for submissions thus transmitted will be treated in the strictest confidence. To avoid any misunderstanding, the name of the party must be stated. Notes for submissions will not be placed on the case-file.

122. Representatives are reminded that, depending on the case being heard, only some of the Members of the bench may be following the oral argument in the language in which it is being presented; the other Members will be listening to the simultaneous interpretation. In the interests of the better conduct of the oral procedure and of maintaining the quality of the simultaneous interpretation, representatives are strongly advised to speak slowly and directly into the microphone.

123. Where representatives intend to cite verbatim passages from certain texts or documents, particularly passages not appearing in the case-file, it would be helpful if they would indicate the passages concerned to the interpreters before the hearing. Similarly, it may be helpful to draw the interpreters' attention to any terms which may be difficult to translate.

124. As the courtrooms are equipped with an automatic sound amplification system, representatives need to press the button on the microphone in order to switch it on and wait for the light to come on before starting to speak. The button should not be pressed while a Member of the Court or another person is speaking, in order not to cut off their microphone.

125. The time taken in presenting oral submissions may vary, depending on the complexity of the case and on whether or not new facts have arisen. The representatives of the main parties are requested to limit their oral submissions to 15 minutes or thereabouts for each party, and those of any intervener to 10 minutes (in joined cases, each of the main parties will be allowed 15 minutes for each case and each intervener will be allowed 10 minutes for each case), unless the Registry has indicated otherwise. These limitations apply only to the presentation of oral argument itself and not to time spent in answering questions put at the hearing.

126. If circumstances so require, a request for leave to exceed the speaking time normally allowed, giving reasons and indicating the speaking time considered necessary, may be made to the Registry at least 15 days (or less, in duly substantiated exceptional circumstances) before the date fixed for the hearing. When such requests are made, representatives will be informed of the time which they will have for presenting their oral submissions.

127. When several representatives act for a party, no more than two of them may normally present argument and their combined speaking time must not exceed the time-limits indicated above. However, representatives other than those who addressed the Court may answer questions from Members of the Court and reply to observations of other representatives.

128. Where two or more parties are advancing the same argument before the Court (a situation which may arise where, in particular, there are interventions or where cases have been joined), their representatives are requested to confer with each other before the hearing in order to avoid any repetition.

129. The Report for the Hearing, drawn up by the Judge-Rapporteur, is confined to setting out the pleas in law and a succinct summary of the parties' arguments.

130. The Court will make every effort to ensure that the parties' representatives receive the Report for the Hearing at least three weeks before the hearing. The sole purpose of this document is to prepare the hearing for the oral procedure.

131. If, at the hearing, representatives submit oral observations on the Report for the Hearing, these will be recorded by the Registrar or acting Registrar.

132. The Report for the Hearing shall be made available to the public outside the courtroom on the day of the hearing.

133. When citing a decision of the Court of Justice, the General Court or the Civil Service Tribunal, representatives are requested to refer to it by the usual name of the case and the case-number, and, where relevant, to specify the relevant paragraph(s).

134. The Court will accept documents submitted at the hearing only in exceptional circumstances and only after the parties have been heard in that regard.

135. A request to use particular technical means for the purposes of a presentation must be made in good time. Arrangements for such use of technology should be made with the Registrar, so that any technical or practical constraints can be taken into account.

III. **ENTRY INTO FORCE OF THESE PRACTICE DIRECTIONS**

136. The Practice Directions to Parties of 5 July 2007 (OJ 2007 L 232, p. 7), as amended on 16 June 2009 (OJ 2009 L 184, p. 8), 17 May 2010 (OJ 2010 L 170, p. 49) and 8 June 2011 (OJ 2011 L 180, p. 52) are hereby revoked and replaced by these Practice Directions.

137. These Practice Directions shall be published in the *Official Journal of the European Union*. They shall enter into force on the day following their publication.

Done at Luxembourg, 24 January 2012.

E. COULON
Registrar

M. JAEGER
President

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