Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

30 June 2022 *

(Appeal – State aid – Article 107(1) TFEU – Contributions scheme for the collection of waste water – Complaint – Decision finding that there is no State aid – Action for annulment – Admissibility – *Locus standi* – Fourth paragraph of Article 263 TFEU – Regulatory act not entailing implementing measures – Direct concern)

In Case C-99/21 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 17 February 2021,

Danske Slagtermestre, established in Odense (Denmark), represented by H. Sønderby Christensen, advokat,

appellant,

the other parties to the proceedings being:

European Commission, represented by L. Grønfeldt and P. Němečková, acting as Agents,

defendant at first instance,

Kingdom of Denmark, represented by J. Nymann-Lindegren, V. Pasternak Jørgensen, M. Søndahl Wolff and L. Teilgård, acting as Agents,

intervener at first instance,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, S. Rodin, J.-C. Bonichot, L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2022,

* Language of the case: Danish.

gives the following

Judgment

1 By its appeal, Danske Slagtermestre seeks to have set aside the order of the General Court of the European Union of 1 December 2020, *Danske Slagtermestre* v *Commission* (T-486/18, not published, EU:T:2020:576) ('the order under appeal'), by which that court dismissed as inadmissible its action for annulment of Commission Decision C(2018) 2259 final of 19 April 2018 relating to State aid SA.37433 (2017/FC) – Denmark ('the contested decision'), declaring, after the preliminary examination stage, that the contribution introduced by lov nr. 902/2013 om ændring af lov om betalingsregler for spildevandsforsyningsselskaber m.v. (Betalingsstruktur for vandafledningsbidrag, bemyndigelse til opgørelse af særbidrag for behandling af særlig forurenet spildevand m.v.) (Law No 902/2013 amending the law establishing the rules relating to contributions owed to waste water treatment operators (structure of the contributions for the drainage of waste water, authorising special contributions for the treatment of particularly polluted waste water, etc.)) does not confer a selective advantage on specific undertakings and that it does not therefore constitute State aid within the meaning of Article 107(1) TFEU.

Background to the dispute

2 The appellant is a trade association which claims to represent small slaughterhouses, wholesalers, butcher's shops and processing undertakings in Denmark. On 26 September 2013, it lodged a complaint with the European Commission on the ground that, by adopting Law No 902/2013, the Kingdom of Denmark granted State aid to large slaughterhouses in the form of a reduction in the contributions for waste water treatment.

3 Before that law entered into force, Danish legislation provided for a single charge per cubic metre of water for all water consumers connected to the same waste water treatment plant, regardless of their area of activity or their consumption. Law No 902/2013 introduced a degressive 'staircase'model providing for a rate per cubic metre of waste water which is determined based on the volume of waste water discharged ('the staircase model').

4 The staircase model is designed as follows:

– Step 1 corresponds to water consumption of up to 500 m^3 per year per property;

– Step 2 corresponds to the volume of water consumption of between 500 m^3 and 20 000 m^3 per year per property; and

– Step 3 corresponds to the volume of water consumption in excess of 20 000 m^3 per year per property.

5 The operators of waste water treatment plants set the charge per cubic metre for each step as follows:

– the charge per cubic metre for Step 2 is 20% lower than that for Step 1;and

– the charge per cubic metre for Step 3 is 60% lower than that for Step 1.

6 Under the staircase model, consumers covered by the rate in Step 3 first pay the rate specified for Step 1 until their water consumption exceeds 500 m^3. They then pay the rate specified for Step 2 until their consumption exceeds 20 000 m^3 and, finally, pay their waste water contribution in line with the rate provided for in Step 3.

7 Between 10 October 2013 and 12 September 2017, the Commission exchanged information about the complaint with the appellant and the Kingdom of Denmark. On 23 July 2014 and 25 February 2016, the Commission sent preliminary assessment letters to the appellant in which it considered that the measure at issue did not confer a selective advantage and, therefore, did not constitute State aid.

8 On 19 April 2018, the Commission adopted the contested decision. While the appellant was of the view that the staircase model favoured, on the market for animal slaughter, large slaughterhouses in Denmark by affording them an economic advantage constituting State aid within the meaning of Article 107(1) TFEU, the Commission found that the new charging system introduced by Law No 902/2013 did not confer any special advantage on particular undertakings.

Procedure before the General Court and the order under appeal

9 By application lodged at the Registry of the General Court on 15 August 2018, the appellant brought an action under Article 263 TFEU for annulment of the contested decision.

10 The Kingdom of Denmark sought leave to intervene in those proceedings in support of the form of order sought by the Commission. Leave to intervene was duly granted.

11 By the order under appeal, the General Court declared the action inadmissible on the ground that the appellant lacked standing to bring proceedings.

12 In paragraph 32 of that order, the General Court took the view that, although the first situation covered by the fourth paragraph of Article 263 TFEU, namely the standing of any natural or legal person to institute proceedings against an act addressed to it, was, in any case, irrelevant in the present case, since the Kingdom of Denmark was the sole addressee of the contested decision, it was, however, necessary to examine whether the appellant had standing under the second or third situation covered by that provision, relating, respectively, to the standing of any natural or legal person to bring proceedings against acts which are of direct and individual concern to them, and to the standing of such a person to bring proceedings against regulatory acts of direct concern to them which do not entail implementing measures.

13 In that regard, after finding, in paragraphs 24 to 26 of that order, that the contested decision did not affect the appellant individually in its capacity as negotiator, the General Court held, in paragraphs 33 to 82 of the same order, that the condition that that decision must be of individual concern to the appellant could not be satisfied on the basis of other factors, and that therefore the action brought in this case was not covered by the second situation referred to in the fourth paragraph of Article 263 TFEU.

14 It went on to hold that the third situation referred to in that provision likewise could not apply.

15 In that connection, the General Court took the view, first, in paragraphs 90 to 96 of the order under appeal, with reference in particular to the criteria established by the Court of Justice in the judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci* (C-622/16 P to C-624/16 P, EU:C:2018:873; 'the judgment in *Montessori*'), that the contested decision is a regulatory act.

16 Second, it considered, in paragraphs 97 to 104 of that order, that that act was not of direct concern to the appellant.

17 On that point, the General Court made reference, in paragraph 102 of the order, to paragraph 47 of the judgment in *Montessori*, according to which, 'given that the condition of direct concern requires the contested measure to produce effects directly on the applicant's legal situation, the EU judicature must ascertain whether the applicant has adequately explained the reasons why the Commission's decision is liable to place him in an unfavourable competitive position and thus to produce effects on his legal situation'.

18 In paragraph 103 of the same order, the General Court considered that, 'in the present case, the applicant has not demonstrated that its members, or which of them, are actually concerned by the measure in question, let alone the consequences of that measure for their competitive position (see paragraphs 71 to 77 [of the order under appeal]). The applicant has therefore not adequately established that the [contested] decision was liable to place its members in an unfavourable competitive position and that, therefore, that decision directly affected their legal situation, in particular their right not to be subject to competition distorted by that measure on the relevant market'.

19 Thus, in paragraphs 104 to 106 of the order under appeal, the General Court held that, in the absence of direct concern, the action had to be dismissed as inadmissible, without it being necessary to examine the condition concerning the absence of implementing measures for the contested decision.

Forms of order sought

20 By its appeal, the appellant claims that the Court of Justice should set aside the order under appeal.

21 The Commission contends that the Court should dismiss the appeal and order the appellant to pay the costs.

22 The Kingdom of Denmark contends that the Court should dismiss the appeal and confirm the order under appeal.

The appeal

Admissibility

23 The Commission argues that the form of order sought by the appellant is not consistent with Article 170(1) of the Rules of Procedure of the Court of Justice, since that form of order seeks merely to have the order under appeal set aside, without considering the situation in which the appeal is allowed.

24 In that regard, it must be observed that, under Article 170(1) of those rules, 'an appeal shall seek, in the event that it is declared well founded, the same form of order, in whole or in part, as that sought at first instance'.

25 In the present case, the appellant formally claims that the Court should set aside the order under appeal. Although the form of order expressly sought is not the same as that sought at first instance, that is, to have the contested decision annulled, the form of order sought on appeal cannot be regarded as seeking anything other than, in essence, the same result (see, by analogy, judgment of 16 July 2020, *Inclusion Alliance for Europe* v *Commission*, C-378/16 P, EU:C:2020:575, paragraph 59).

26 The plea of inadmissibility based on infringement of the Rules of Procedure raised by the Commission must therefore be dismissed.

Substance

27 The appellant puts forward five grounds in support of its appeal. The first and second grounds, which must be examined together, allege a misapplication of the condition that the measure at issue must be of direct concern to the appellant, within the meaning of the fourth paragraph of Article 263 TFEU, and the conflation of that condition with the condition that the measure at issue must be of individual concern to the appellant. The third ground of appeal alleges that the criteria established in the judgment in *Montessori* relating to the condition of direct concern are met in the present case, the fourth that the General Court was wrong to take the view that the appellant had not demonstrated that its members were exposed to distorted competition, and the fifth that the General Court's assessments as regards the condition that the contested decision must be of individual concern to the appellant contain errors of fact and of law.

The first and second grounds of appeal

– *Arguments of the parties*

28 The appellant alleges that, in relation to direct concern, the General Court made it subject to requirements that go beyond those that follow from the interpretation of the fourth paragraph of Article 263 TFEU provided by the Court of Justice in the judgment in *Montessori*.

29 Despite citing the judgment in *Montessori* in paragraph 102 of the order under appeal, in paragraph 103 of that order the General Court did not have due regard to the guidance arising from that judgment, since it required the appellant to demonstrate which of its members are actually affected by the contested decision, and it referred, in support of its assessment that that decision is not of direct concern to the appellant, to paragraphs 71 to 77 of that order, even though those paragraphs relate not to the condition of direct concern but rather the condition that the appellant must be individually concerned.

30 In the Commission's opinion, those allegations are unfounded. The General Court faithfully reproduced, in paragraph 102 of the order under appeal, the relevant criterion contained in the judgment in *Montessori*, before taking the view, in paragraph 103 of that order, that the action does not satisfy that criterion. In so doing, the General Court did not commit any error of law.

31 The use, in paragraph 103 of the order, of the verb 'demonstrate' correctly reflects the words 'adequately explain', contained in paragraph 47 of the judgment in *Montessori*.

32 Furthermore, the situation at issue in the case that led to the judgment in *Montessori* is different from that of the present case. The Commission submits that that first case concerned a tax exemption for clearly identified entities in a specific services sector. This explains why the Court took the view, in paragraph 50 of that judgment, that the fact that the applicants had submitted, with evidence in support, that their establishments were situated in the immediate vicinity of those operated, on the same market for services, by beneficiaries of the alleged aid was sufficient to regard the decision at issue in that case as being liable to place the appellants in an unfavourable competitive position. By contrast, in the present case, the contested decision concerns a measure under a general tax scheme, applicable to the activities of all persons who discharge waste water. The appellant neither set out nor substantiated how that scheme places its members in an unfavourable competitive position as compared to the other undertakings subject to that measure. It did not even identify the market at issue, as its description of the goods or services in question was too vague.

33 As for the reference in paragraph 103 of the order under appeal to paragraphs 71 to 77 of that order, the Commission observes that, in those paragraphs, the General Court examined whether the contested decision was liable to place the appellant's members in an unfavourable competitive position. The fact that that assessment was relevant to the analysis of the condition that the measure at issue must be of individual concern to the appellant in no way prevents those same findings from likewise being relevant to the assessment of the condition that that measure must be of direct concern to the appellant.

34 It follows, in any event, from paragraphs 71 to 77 of the order under appeal that the appellant has not adequately explained how the contested decision could place its members in an unfavourable competitive position.

35 In the alternative, if the Court of Justice were to take the view that the General Court did err in law in its assessment of the condition of direct concern, the Commission contends that the Court should replace the grounds of the order under appeal by finding that the contested decision is a regulatory act that entails implementing measures, such that the condition laid down in the fourth paragraph of Article 263 TFEU that there are no such measures is not met.

36 In that regard, the Commission observes that it follows from paragraph 105 of the order under appeal that the General Court did not rule on that condition. However, the contested decision does entail implementing measures. Unlike the case that led to the judgment in *Montessori*, the present case concerns a measure which imposes a tax on both the beneficiaries of the alleged aid and their competitors. The competitors could therefore, like the beneficiaries of the alleged aid, lodge an appeal against their tax notice before the national courts, which would enable those courts to make a request for a preliminary ruling under Article 267 TFEU.

37 Furthermore, the Commission notes that Law No 902/2013 requires that the operators of waste water treatment plants determine each year the rate applicable to the three steps in the staircase model. It follows that application of that model requires subsequent implementation in Danish law. That law requires, moreover, that the setting of that rate is approved, in each municipality, by the municipal council. An administrative act is thus adopted which is open to challenge before the national courts on the ground that the rates are set in a manner contrary to EU law. Accordingly, in that situation too, the appellant could have prompted those courts to put

questions to the Court of Justice under Article 267 TFEU. In addition, the appellant's members could bring an action for a declaration before the Danish courts to contest the compatibility of Law No 902/2013 with EU law.

38 The Kingdom of Denmark contends, like the Commission, that the General Court was right to dismiss the action as inadmissible.

39 According to that Member State, the appellant interprets the judgment in *Montessori* in a way that weakens the evidential requirements established by the Court in that judgment. In paragraph 50 of the judgment in *Montessori*, the Court found that the appellants were directly concerned in light of the fact that they had adduced evidence of their geographical proximity to the beneficiaries of the alleged aid and of the conduct of similar activities on the same market. However, in the present case, the appellant has not furnished relevant information to support the view that the competitive position of its members could be affected.

40 The Kingdom of Denmark adds that, if the Court of Justice were to take the view that the General Court erred in law in applying the condition of direct concern, the appeal must nevertheless be dismissed because the contested decision entails implementing measures.

– *Findings of the Court*

41 The admissibility of an action brought by natural or legal persons against an act which is not addressed to them, in accordance with the fourth paragraph of Article 263 TFEU, is subject to the condition that they be accorded standing to bring proceedings, which arises in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (judgment of 20 January 2022, *Deutsche Lufthansa* v *Commission*, C-594/19 P, EU:C:2022:40, paragraph 29 and the case-law cited).

42 The conditions of admissibility thus laid down in that provision must be interpreted in the light of the fundamental right to effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, but such an interpretation cannot have the effect of setting aside those conditions, which are expressly laid down in the FEU Treaty (judgment of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraph 55 and the case-law cited).

43 This appeal concerns the last situation provided for in the fourth paragraph of Article 263 TFEU, which accords standing to bring proceedings where the contested measure is a regulatory act not entailing implementing measures that is of direct concern to an applicant. In that regard, the General Court found, in paragraphs 94 to 96 of the order under appeal, that the contested decision – by which the Commission refused to classify as State aid the scheme, introduced by the Danish legislature, providing for the degressive charging of contributions for waste water treatment – constitutes a regulatory act. It also held, however, in paragraphs 97 to 104 of that order, that that act is not of direct concern to the appellant. The General Court deduced from that fact, in paragraphs 105 and 106 of the order, that the action is inadmissible, without it being necessary to determine whether that act entails implementing measures.

44 Accordingly, it is necessary to examine whether the General Court, as the appellant claims, erred in law in applying the condition of direct concern.

45 That condition requires two cumulative criteria to be met, namely, first, the contested measure must directly affect the legal situation of the applicant and, secondly, it must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (judgment of 13 January 2022, *Germany and Others* v *Commission*, C-177/19 P to C-179/19 P, EU:C:2022:10, paragraph 72 and the case-law cited).

46 With regard to the second of those criteria, the General Court took the view, in paragraph 98 of the order under appeal, without this being contested in the context of this appeal, that the contested decision, in so far as it states that the staircase model introduced by the Kingdom of Denmark as part of its contributions scheme for waste water treatment does not involve any aid element, within the meaning of Article 107(1) TFEU, had the effect, purely automatically and by virtue of EU rules alone, of allowing that Member State to apply that model, without the application of other intermediate rules.

47 As for the first criterion referred to in paragraph 45 of this judgment, which relates to direct concern, the Court recalled, in paragraph 43 of the judgment in *Montessori*, that, in the field of State aid, the fact that a Commission decision leaves intact all the effects of a national measure which the applicant, in a complaint addressed to that institution, claimed were not compatible with the objective of preserving competition and placed it in an unfavourable competitive position makes it possible to conclude that that decision directly affects its legal situation, in particular its right under the provisions on State aid of the FEU Treaty not to be subject to competition distorted by that national measure.

48 In that regard, the Court clarified, in paragraphs 46 and 47 of the judgment in *Montessori*, that, while the direct effect on the appellant's legal situation cannot be deduced from the mere potential existence of a competitive relationship between the appellant and the beneficiaries of the alleged aid, that condition must, however, be regarded as being satisfied where the applicant has adequately explained the reasons why the Commission's decision on State aid is liable to place him or her in an unfavourable competitive position. The verification that the General Court is required to carry out in that regard must not, however, lead to it ruling definitively, at the stage of the examination of the action's admissibility, on the competitive relationships between an applicant and the beneficiaries of the alleged aid.

49 The Court of Justice thus established an interpretation of the condition of direct concern that allows the person who has addressed a complaint to the Commission related to State aid to have access to the General Court in order for that court to review the legality of the decision adopted by the Commission on the national measure to which the complaint relates, provided however that that person adequately explains before the General Court that he or she risks suffering a competitive disadvantage on account of that decision.

50 In the present case, the appellant appeared before the General Court in its capacity as a trade association representing small slaughterhouses, wholesalers, butcher's shops and processing undertakings in Denmark. It therefore fell to the General Court to examine whether the appellant adequately explained the reasons why the contested decision, according to which the staircase model introduced by the Kingdom of Denmark as part of the contributions scheme for waste water treatment does not contain any elements of State aid, was liable to place its members, or at the very least a significant proportion of them, in an unfavourable competitive position.

51 It is apparent from paragraph 103 of the order under appeal that the General Court based its assessment that that condition was not met on the finding that 'the applicant has not demonstrated that its members, or which of them, are actually concerned by the measure in question, let alone the consequences of that measure for their competitive position (see paragraphs 71 to 77 [of the order under appeal])'.

52 By requiring that the appellant 'demonstrate' which anticompetitive effects are 'actually' produced by the national measure at issue and, therefore, by the contested decision that allows the Member State concerned to apply that measure, the General Court, as the Advocate General observed in point 27 of his Opinion, made the condition of direct concern subject to a requirement that goes beyond the requirements arising from the interpretation provided by the Court of Justice in the judgment in *Montessori*. Pursuant to the balance struck by the Court of Justice to ensure effective judicial protection, it is enough for the person who submitted the complaint to provide an adequate explanation of the potential for an unfavourable competitive position.

53 Having therefore, in relation to the condition of direct concern, applied a requirement that is at odds with the scope of that condition as laid down in the fourth paragraph of Article 263 TFEU, read in conjunction with Article 47 of the Charter of Fundamental Rights, the General Court erred in law.

54 The existence of that error is borne out by the reference made in paragraph 103 of the order under appeal to paragraphs 71 to 77 of that order, by which the General Court alleged that the appellant had failed to provide, in support of the admissibility of its action, specific information relating, in particular, to the shares of the relevant market held by its members and by the beneficiaries of the alleged aid, the turnovers and revenues of its members and the knock-on effect of the waste water treatment fees on the price that its members can actually charge to their customers. According to paragraph 77 of that order, the appellant thus 'failed to establish an actual effect of the alleged aid on its members and on their own competitive position on the relevant market'.

55 By taking the view that such information was necessary to establish the appellant's direct concern, the General Court went beyond the requirement arising from the judgment in *Montessori*. As is clear from paragraphs 46 and 47 of that judgment, an examination of direct concern must be based not on an in-depth analysis of the competitive relationships on the relevant market that allows the extent of the damage to competition to be established with precision, but rather on a prima facie assessment of the likelihood of the Commission's decision, that the national measure at issue does not constitute State aid incompatible with the internal market, placing the appellant or its members in an unfavourable competitive position.

56 It follows that the first and second grounds of appeal are well founded.

57 As for the case-law relied on by the Commission and the Kingdom of Denmark to the effect that, if the grounds of a decision of the General Court disclose an infringement of EU law but the operative part is shown to be well founded on other legal grounds, such an infringement is not capable of bringing about the setting aside of that decision and the grounds of the decision should be replaced (see, inter alia, judgment of 6 October 2021, *Banco Santander* v *Commission*, C-52/19 P, EU:C:2021:794, paragraph 105 and the case-law cited), that case-law cannot be applied in the present case.

58 Contrary to the arguments raised by the Commission and the Kingdom of Denmark, the order under appeal, by which the General Court declared the action inadmissible, is not well founded on legal grounds other than those given by it.

59 In that connection, as regards the condition – relied on by the Commission and the Kingdom of Denmark – concerning the absence of implementing measures, the Court made clear in paragraphs 63 and 66 of the judgment in *Montessori* that although, for the beneficiaries of an aid scheme, the national provisions establishing that scheme and the measures implementing those provisions, such as a tax notice, constitute implementing measures entailed by a decision declaring the scheme incompatible with the internal market or declaring it compatible with that market subject to compliance with commitments entered into by the Member State concerned, that interpretation cannot be applied to the situation of the competitors of beneficiaries of a national measure that has been found not to constitute State aid within the meaning of Article 107(1) TFEU. Such a competitor does not satisfy the conditions laid down by that measure to be eligible to benefit from it. In those circumstances, it would be artificial to require that competitor to request the national authorities to grant it that benefit and to contest the refusal of that request before a national court, in order to cause that court to ask the Court of Justice about the validity of the Commission's decision concerning that measure.

60 In the present case, the alleged benefit which, in the appellant's view, the Commission should have classified as State aid consists in the introduction of the degressive charging scheme which, according to the arguments put forward by the appellant, has the effect that, under the staircase model described in paragraphs 4 and 5 of this judgment, large slaughterhouses are subject to a more favourable rate than that applied to small slaughterhouses. In those circumstances, as the Advocate General observed, in essence, in points 59 and 60 of his Opinion, echoing the Court's finding in the judgment in *Montessori*, it would be artificial, and moreover contrary to the interest of the proper administration of justice, to require the appellant or the slaughterhouses that are members of that association to request the national authorities implementing that charging scheme to allow small slaughterhouses to enjoy the advantageous rate applied to large slaughterhouses, whilst knowing they are not entitled to it, solely with a view to contesting the refusal of that request before a national court and causing that court to ask the Court of Justice about the validity of the contested decision regarding that scheme.

61 In the light of all the foregoing, the first and second grounds of appeal must be upheld and the order under appeal be set aside.

The third to fifth grounds of appeal

62 Since the order under appeal is set aside on the basis of the first and second grounds of appeal, there is no need to examine the third to fifth grounds of appeal.

The action before the General Court

63 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, in the event the decision of the General Court is quashed, the Court of Justice may itself give final judgment in the matter where the state of the proceedings so permits.

64 The Court of Justice is not in a position, at the present stage of the proceedings, to give judgment on the merits of the action brought before the General Court, since this would involve considering questions of fact based on evidence which were not assessed before the General Court or argued before the Court of Justice.

65 However, the Court of Justice does have the information necessary to assess the admissibility of that action. In those circumstances, final judgment must be given on this procedural point (see inter alia, by analogy, judgments of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 66; of 27 February 2014, *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 66; and of 21 February 2018, *LL* v *Parliament*, C-326/16 P, EU:C:2018:83, paragraphs 31 and 32).

66 In that regard, it must be pointed out, in the first place, that the contested decision is a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU. As the Court made clear in paragraphs 28, 31 and 32 of the judgment in *Montessori*, non-legislative acts of the Commission which, in the field of State aid, authorise or prohibit a national scheme come under that concept.

67 It must be observed, in the second place, that the contested decision cannot, for the reasons set out in paragraphs 59 and 60 of this judgment, be regarded as entailing implementing measures.

68 In the third place, as regards the condition of direct concern, it is necessary, as recalled in paragraph 45 of the present judgment, for two cumulative criteria to be satisfied, namely that the contested measure, first, produces effects directly on the applicant's legal situation and, second, leaves no discretion to its addressees who are entrusted with the task of implementing it.

69 The contested decision, under which the staircase model introduced by the Kingdom of Denmark as part of its contributions scheme for waste water treatment does not contain any element of State aid within the meaning of Article 107(1) TFEU, produces its legal effects purely automatically as a result of EU rules alone and without the application of other intermediate rules. The action therefore satisfies the second of the two criteria set out in the previous paragraph.

70 As for the first criterion cited in paragraph 68 of this judgment, it must be observed that the appellant claimed before the General Court, with supporting evidence, that several of the members that it represents are in the same line of business as an undertaking that is dominant on the market for the slaughter of cattle and pigs in Denmark and that that undertaking is liable, given its high volume of waste water, to a lower contribution than that which undertakings that are members of the appellant association can claim under the staircase charging model introduced by Law No 902/2013. It also explained, and duly substantiated, that the charge per animal slaughtered is significantly higher for its members than for the dominant undertaking, since they cannot benefit from the same step in the staircase model.

71 In so doing, the appellant adequately explained the reasons why the contested decision is liable to place, at the very least, a significant proportion of its members, that is, small slaughterhouses, in an unfavourable competitive position.

72 Consequently, the contested decision produces effects directly on the appellant's legal situation, and therefore the action also satisfies the first of the two criteria set out in paragraph 68 of this judgment.

73 It follows that the action at first instance is admissible. The case must therefore be referred back to the General Court for a decision on the merits.

Costs

74 Since the case has been referred back to the General Court, the costs must be reserved.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Sets aside the order of the General Court of the European Union of 1 December 2020, *Danske Slagtermestre* v *Commission* (T-486/18, not published, EU:T:2020:576);**

2. **Declares the action at first instance to be admissible;**

3. **Refers the case back to the General Court of the European Union for a decision on the merits;**

4. **Reserves the costs.**

[Signatures]