



Brussels, 4.12.2017
C(2017) 7970 final

PUBLIC VERSION

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Subject: State Aid SA.48604 (2017/N) – Denmark – aid scheme for the horse-racing sector

Sir,

1. PROCEDURE

- (1) On 7 July 2017 the Danish authorities notified an aid scheme for the horse-racing sector.
- (2) On 18 August 2017 the Commission sent a request for information to the Danish authorities.
- (3) The Danish authorities replied to the request for information by letter dated 27 September 2017.
- (4) The Commission sent a request for further information to the Danish authorities on 3 October 2017.
- (5) By letter dated 9 October 2017 the Danish authorities granted a language waiver to the Commission, agreeing to have the decision adopted and notified in English.
- (6) The Danish authorities replied to the request for further information of 3 October 2017 by letter dated 10 October 2017.

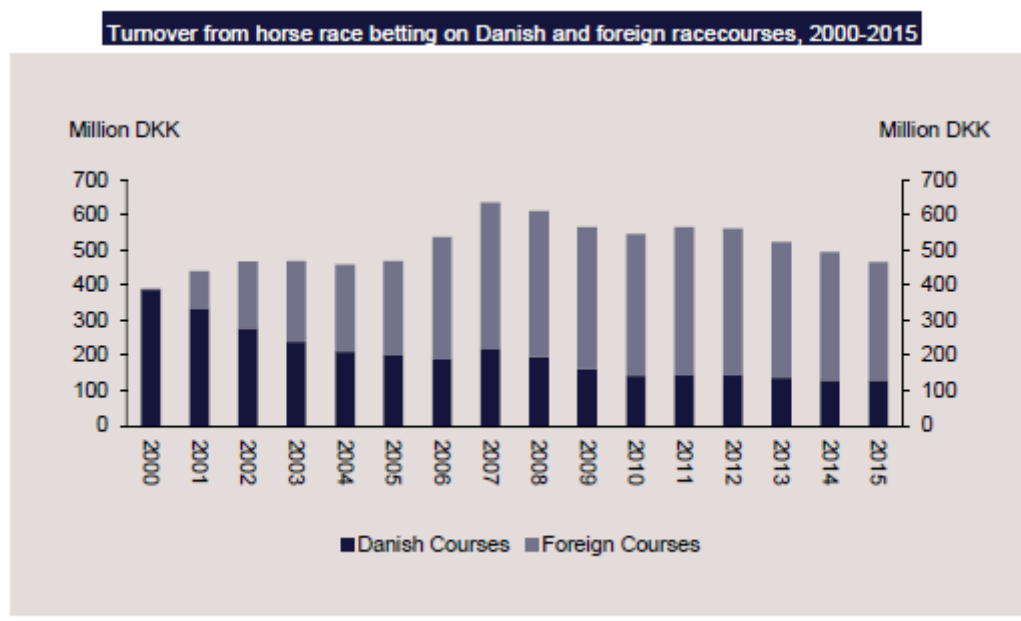
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2. DESCRIPTION OF THE MEASURE

2.1. Background: the horse-racing- and betting markets in Denmark

- (7) Horse racing as a sport and betting on horse races are closely interlinked activities. Betting on local horses is an important part of the environment and tradition surrounding horse racing in Denmark.
- (8) Betting on horse racing is currently provided under a legal monopoly entrusted to Danske Spil A/S. The objective of the monopoly was to retain gambling on local horse races in order to maintain interest in horse racing in general and to ensure continued benefits for local environments, where horse racing and horse breeding traditionally have fulfilled important social and cultural functions.
- (9) The turnover on betting on horse races organised in Denmark has however been declining since 2007, as illustrated in Figure 1. The Danish authorities came to the conclusion that the current monopoly no longer contributes significantly to maintaining the horse- racing sport in Denmark.

Figure 1: Decline in horse race betting turnover



* "Foreign racecourses" refers to races held in countries other than Denmark.

- (10) Presently, horse races in Denmark mainly attract local audiences and local interest. The Danish authorities want to broaden the appeal of horse racing to gamblers across Denmark by liberalising gambling on horse racing completely and by mutualising interests between the racing industry and betting operators.
- (11) Under the monopoly entrusted to Danske Spil A/S, betting on horse racing can only be offered as pool betting offline or online. Fixed-odds betting is not allowed. Under the intended liberalisation all gambling providers with a Danish betting license will be allowed to offer bets on horse races, and both fixed-odds and pool betting will be permissible, offline and online.

2.2. The scheme: two measures for the horse-racing sector

2.2.1. Rate, duration and scope of the measures

- (12) The horse-racing sector currently benefits from two sources of financing: (i) a racecourse-specific contribution equivalent to 21.25% of the turnover of physical (offline) bets placed on each racecourse and (ii) a share of the revenue of games regulated under the Danish gambling monopoly (lotteries and horse betting) operated by Danske Spil A/S (hereafter referred to as "the share of Danske Spil A/S gambling revenues"). In 2016, the horse-racing sector received approximately DKK 90 million (approximately EUR 12.1 million) in combined support from these two measures.
- (13) The specific racecourse contribution will be abolished as of 1 January 2018. The horse-racing companies will still benefit from a share of the Danske Spil A/S gambling revenues until the end of 2022, but that financing will decrease by 20% each year thereafter, so as to be phased out completely by the end of 2026. A new source of financing, an 8% levy on all betting companies' turnover from horse-race betting, will be introduced on 1 January 2018 and remain in effect until 31 December 2026. The total amount of aid expected to be raised by both measures is illustrated in Table 1.

Table 1: Expected amount of aid (million DKK)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	Total
Levy proceeds	12	13	14	15	16	18	19	21	22	150
Share of Danske Spil A/S gambling revenues	76	78	79	80	81	66	50	34	17	561
Total	88	91	93	95	97	84	69	55	39	<u>711</u>

- (14) The levy will apply to all gambling providers with a Danish license that accept bets on Danish horse races; all undertakings operating racecourses in Denmark where bets on horse races can be placed will benefit from the levy proceeds.
- (15) Until the end of 2022, the total level of funding of the horse-racing sector is expected to remain at approximately the same level as it is today, thereby giving the gaming sector and the horse-racing sector time to adjust to the new regulatory framework and support conditions.

2.2.2. Administration of the measures

- (16) The levy proceeds and the share of Danske Spil A/S gambling revenues will be collected and administered by the Danish Gambling Authority, an independent government agency residing under the Ministry of Taxation. It will channel funds to the horse-racing sector through a joint committee formed by the Dansk Trav-og Galop Union (Union of the Danish Federation of Trotting Races and the Danish Jockey Club, "DTGU") in dialogue with the Ministry of Culture.
- (17) The DTGU will distribute funds yearly to each racecourse track operated in Denmark. The amounts distributed per beneficiary are based on several objective

criteria such as (i) the number of expected race days and prize money, (ii) the number of horses connected to the track, (iii) the number of trainers, amateurs and owners connected to the track, and (iv) the expected maintenance costs of each track. The DTGU will keep annual accounts of the horse-racing sector, including a calculation of the "costs of common interest" (cf. infra).

- (18) Around 1% of the budget administered by DTGU will be dedicated to anti-doping, match fixing, etc. An amount will also be allocated to projects developing the sport in new areas. For these parts of the budget, a yearly plan is developed by Dansk Hestevæddeløb (Danish horse racing), an organisation representing the horse-racing sector.

2.2.3. *Costs covered by the measures*

- (19) The funds raised by the measures are earmarked for costs which are considered to be of common interest to the horse-racing sector and betting operators. Insofar as they can be connected to horse races on which bets can be placed, such costs include for example prize money, organisational costs, costs for recording and transmitting horse races, costs of anti-doping, and training courses for horse-racing trainers. Costs that do not qualify as costs of common interest include for example marketing expenses and other organisational expenses not directly connected with the organisation of horse races in Denmark.
- (20) When calculating the costs of common interest, the revenue earned by the horse-racing sector in connection with holding horse races will be deducted. That revenue includes, for example, admission fees, advertising revenue, sponsorships, donations, and revenue from broadcasting rights. The funds raised by the measures will therefore cover only the net funding needs of the horse-racing sector.

3. ASSESSMENT OF THE MEASURES

3.1. Presence of State aid within the meaning of Article 107(1) TFEU

- (21) Pursuant to 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market*".
- (22) A measure qualifies as State aid if the following cumulative conditions are met: (i) the measure is granted by Member States through State resources, (ii) it confers a selective economic advantage to certain undertakings or the production of certain goods, (iii) the advantage distorts or threatens to distort competition, and (iv) the measure affects intra-EU trade.
- (23) It has to be analysed whether the notified measures can involve State aid to horse-racing companies and/or possibly to betting operators.

3.1.1. *State aid to horse racing companies*

- (24) The Danish authorities have notified the measures as compatible aid to horse-racing companies. They therefore consider the measures to involve State aid to

horse-racing companies. The Commission agrees with this assessment for the reasons explained below.

3.1.1.1. State resources

- (25) Pursuant to Article 107(1) TFEU, for a measure to qualify as State aid it needs to be granted by a Member State or through State resources in any form whatsoever. At this stage, there are two cumulative conditions that need to be assessed: (i) whether the measure is imputable to the State, and (ii) whether the measure is financed through State resources.
- (26) A measure is imputable to the State in cases where a public authority grants an advantage to a beneficiary, even if the authority in question enjoys legal autonomy from other public authorities. This is also the case when a public authority designates a private or public body to administer a measure conferring an advantage. Indeed, Union law cannot allow the circumvention of State aid rules through the creation of autonomous institutions charged with allocating aid¹.
- (27) In the present case, the measures are imputable to the State because they will be administered by the Gambling Authority, which is a public body responsible for securing a proper and regulated gambling market in Denmark. The Gambling Authority is directly involved in the administration of the measures, notably in collecting the amounts and distributing them, through the DTGU, to the final beneficiaries.
- (28) State resources include all resources of the public sector², including resources of intra-State entities (decentralised, federal or other). It is irrelevant whether or not an institution within the public sector is autonomous³. As to the share of Danske Spil A/S gambling revenues, it is to be noted that Danske Spil A/S is a State company, and therefore its revenues are State resources. As to the levy proceeds, the fact that they remain constantly under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources⁴.
- (29) In the case of the levy proceeds, the originally private nature of the resources does not prevent them from being regarded as State resources within the meaning of Article 107(1) TFEU⁵. Subsidies financed through parafiscal charges or

¹ Judgment of the General Court of 12 December 1996, *Air France v Commission*, T-358/94, ECLI:EU:T:1996:194, paragraph 62.

² Judgment of the General Court of 12 December 1996, *Air France v Commission*, T-358/94, ECLI:EU:T:1996:194, paragraph 56.

³ Judgment of the General Court of 12 December 1996, *Air France v Commission*, T-358/94, ECLI:EU:T:1996:194, paragraphs 58 to 62.

⁴ Judgment of the Court of Justice of 16 May 2000, *France v Ladbroke Racing and Commission* C-83/98 P, ECLI:EU:C:2000:248, paragraph 50

⁵ Judgement of the General Court of 12 December 1996, *Air France v Commission*, T-358/94 ECLI:EU:T:1996:194, paragraphs 63-65

compulsory contributions imposed by the State and managed and apportioned in accordance with the provisions of public rules imply a transfer of State resources⁶.

3.1.1.2. Undertaking

- (30) According to settled case-law⁷, the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed.
- (31) In the present case, the organisation of horse races constitutes an economic activity which generates revenues directly, e.g. from the sale of tickets or through the sale of broadcasting rights. Hence, horse-racing companies are to be considered undertakings within the meaning of Article 107(1) TFEU.

3.1.1.3. Advantage

- (32) An advantage is conferred to an undertaking if that undertaking receives an economic benefit that it would not have obtained under normal market conditions⁸. According to settled case-law⁹, an advantage is present whenever the financial situation of an undertaking is improved as a result of State intervention on terms differing from normal market conditions.
- (33) Horse-racing companies are the final beneficiaries of the levy proceeds and a share of Danske Spil A/S gambling revenues, which constitute an economic benefit that they would not have obtained without State intervention and under normal market conditions. The financial situation of horse-racing companies is therefore improved as a result of the adoption of the measures. Hence, the Commission finds that the measures grant an economic advantage to horse-racing companies.

3.1.1.4. Selectivity

- (34) A measure is selective inasmuch as it favours certain undertakings or the production of certain goods within the meaning of Article 107(1) TFEU.
- (35) Funds from the notified measures are earmarked for the financing of horse races, the horse-racing industry being their ultimate beneficiary. Therefore, the measures favour a distinct group of undertakings, notably horse-racing companies. In consequence, the Commission finds that the measures at stake are selective.

⁶ Judgment of the Court of Justice of 2 July 1974, *Italy v Commission*, C-173/73, ECLI:EU:C:1974:71, paragraph 16; Judgment of the Court of Justice of 11 March 1992, *Compagnie Commerciale de l'Ouest*, Joined Cases C-78/90 to C-83/90, ECLI:EU:C:1992:118, paragraph 35; Judgment of the Court of Justice of 17 of July 2008, *Essent Netwerk Noord*, C-206/06, ECLI:EU:C:2008:416, paragraphs 58 to 74.

⁷ See Judgment of the Court of Justice of 12 September 2000, *Pavlov and others* Joined cases C-180/98 to C-184/98 ECLI:EU:C:2000:428, paragraph 74.

⁸ Judgment of the Court of Justice of 2 July 1974, *Italy v Commission* C-173/73, ECLI:EU:C:1974:71 paragraph 13; Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60.

⁹ Judgment of the Court of Justice of 12 October 2000, *Magefesa*, C-480/98, ECLI:EU:C:2000:559, paragraphs 19 and 20.

3.1.1.5. Distortion of competition and effect on trade

- (36) According to Article 107(1) TFEU, for a measure to qualify as State aid it has to affect intra-EU trade and to distort, or threaten to distort competition. In this regard, the Court of Justice has consistently held that a measure is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes.¹⁰
- (37) The Danish authorities recognise the general competitive nature of the international horse-racing industry, and it is intended that the Danish horse-racing industry shall reach a level allowing it to compete with the horse-racing industries of other Member States, notably Sweden. In this light, the Danish authorities accept that the notified measures entail selective advantages for the Danish horse-racing industry which might potentially distort competition and affect intra-EU trade.
- (38) Considering the above, the Commission considers that the adoption of the measures will affect intra-EU trade and will distort, or threaten to distort competition.

3.1.1.6. Conclusion

- (39) In the light of the foregoing, the Commission concludes that all conditions set out in Article 107(1) TFEU are fulfilled and that the notified measures constitute State aid granted to horse-racing companies.

3.1.2. Aid to betting operators

- (40) No aid for undertakings in the gambling industry is involved as all providers of horse race betting services with a Danish license will be treated equally in relation to payment of the levy, and will therefore not receive any selective advantage.

3.2. Compatibility of the aid scheme under Article 107(3) c) TFEU

3.2.1. Hypothecation of the aid measure

- (41) In the case of an aid financed by a tax or a levy assigned for a specified purpose, it may be necessary to take into account not only the aid measure itself, but also how it is financed. Indeed, if it is established that there is a compulsory hypothecation between the tax or levy revenue and the aid measure in question, then the underlying tax or levy is considered to be part of the aid measure, which must be taken into account for the compatibility assessment of the aid.¹¹
- (42) According to settled case law, for a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid under the relevant national rules, in the sense that the revenue from the charge is (i) necessarily allocated for

¹⁰ Judgment of the Court of Justice of 17 September 1980, Philip Morris, 730/79, ECLI:EU:C:1980:209, paragraph 11; Judgment of the Court of First Instance of 9 of September 2009, *Holland Malt BV*, T-369/06, EC ECLI:EU:T:2009:319, paragraph 47

¹¹ Judgment of the Court of Justice of 13 of January 2005, *Streekgewest Westelijk Noord-Brabant*, Case C-174/02, ECLI:EU:C:2005:10, paragraph 26

the financing of the aid and (ii) has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the common market¹².

- (43) In the present case, the revenue generated by the levy is earmarked for financing the organisation of horse races. As explained by the Danish authorities, the levy proceeds will finance certain areas of expenditure that are intrinsically linked to the sustainable organisation of horse races, notably prize money, anti-doping measures, and the recording and transmitting of horse races. The Gambling Authority does not have the power to allocate the levy proceeds for purposes other than the organisation of horse races.
- (44) The revenues from the levy are therefore used wholly and exclusively to finance the organisation of horse races and have a direct impact on the amount of that aid. There is a link of compulsory hypothecation between the aid measure and the levy proceeds. Hence, the compatibility analysis has to take into account not only the financing of horse racing companies from the levy as an aid measure, but also the specificities of the levy itself.

3.2.2. *Balancing test*

- (45) The Danish authorities consider that the measure is compatible with the internal market under Article 107(3) c) TFEU.
- (46) It is worth noting in this context that the European Commission has previously declared compatible with the internal market under Article 107(3) c) TFEU similar measures concerning the financing of the horse-racing sector, including through the proceeds of betting activities¹³.
- (47) The Commission is also of the opinion in this case that the notified measures may be declared compatible with the internal market pursuant to the derogation provided in Article 107(3) c), which authorises "*...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.*"
- (48) The Commission notes that the measures do not fall within the scope of existing guidelines for the application of Article 107(3) c) TFEU. Thus, the compatibility of the measures should be assessed directly under the Treaty provision. In order to be compatible under Article 107(3) c) TFEU, the aid measure in question must pursue an objective of common interest in a necessary and proportionate way.
- (49) When assessing the compatibility of a measure under Article 107(3) c) TFEU, the Commission balances the positive effects of the measure in pursuing an objective of common interest against its potentially negative side effects, such as the effect on trade and distortion of competition. This balancing test is based on a three-

¹² Judgment of the Court of Justice of 22 December 2008, *Régie Networks*, Case, C-333/07, ECLI: ECLI:EU:C:2008:764, paragraph 99.

¹³ See Commission Decision of 19 June 2013 on State aid N° SA.30753 (C 34/10) (ex N 140/10) which France is planning to implement for horse racing companies; Commission decision of 2 July 2013 on State aid N° SA.35200 (2012/N), *Rennwett-und Lotteriegeseztz*; and Commission Decision of 21 April 2017 on State aid N° SA.46216 (2017/N), *Horsrace Betting Levy for Great Britain*.

stage examination. The first two steps address the positive effects of the State aid measure. The third step addresses the negative effects and the resulting balance between the positive and negative effects. The balancing test is structured as follows:

- (a) Does the aid measure aim at a well-defined objective of common interest?
- (b) If so, is the aid measure well designed to deliver an objective of common interest? In particular,
 - Is the aid measure an appropriate instrument or are there alternative or more suitable instruments?
 - Does the aid act as an incentive?
 - Is the aid proportionate to the objectives pursued?
- (c) Are the distortions of competition and effect on trade limited to the extent that the overall effect of the measure is positive?

3.2.3. *Objective of common interest*

- (50) The Commission is of the opinion that the notified measures aim at pursuing valid objectives of common interest.
- (51) Indeed as justified by the Danish authorities, the measures support the liberalisation of the horserace betting sector currently operated under a monopoly and such liberalisation supports cross-border trade. In addition, the Commission has consistently declared compatible with the internal market tax measures applied to enterprises of a certain sector that aim at financing collective activities that would benefit the entire sector¹⁴.
- (52) The organisation of horse races contributes to the improvement of the performance of horses and, therefore, supports national horse breeding activities. The notified measures finance areas of spending such as prize money, anti-doping activities and other costs related to the organisation of races that are linked to the development of equine production and breeding. These areas of spending are essential for the sustainability of the Danish horse-racing sector, notably the number of horses in training, the number of owners, core industry employment and field size (the number of horses running in a given race). Council Directive 90/428/EEC of 26 June 1990¹⁵ on trade in equidae intended for competitions and laying down the conditions for participation therein acknowledges in its preamble the interest to ensure a rational development of equidae production and to favour the safeguard, development and improvement of the breeding sector.

¹⁴ See e.g. State Aid decision N472/2000 of 3 May 2001, *Renouvellement à l'identique de la taxe parafiscale sur les industries du cuir*, JOCE C/7322/2000; State aid decision N163/2002 of 18 September 2002, *Taxe parafiscale – financement du Bureau National Interprofessionnel du Cognac (BNIC)*, JOCE C/310/2002; State aid decision N496/2000 of 17 December 2002, *Aides à l'élimination des déchets dangereux pour l'eau*, JOCE C/108/2003.

¹⁵ OJ No L 224, 18.8.1990, p. 60

- (53) The Commission therefore concludes that the measures pursue valid objectives of common interest.

3.2.4. Well-designed aid

- (54) An aid measure is considered necessary and proportionate when it constitutes an appropriate instrument for achieving 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.

3.2.4.1. Appropriate instrument

- (55) The horse-racing and betting industries both benefit from the organisation of horse races. The proposed levy aims at financing the organisation of horse races in a manner which reflects this mutual interest by ensuring a fair distribution of the financial burden between the betting and the racing industry. In addition, the levy will allow fair competition amongst operators in the market for horse-race betting, by distributing fairly the burden of funding horse races on which bets are placed between all betting operators registered in Denmark. Without a levy, betting operators could in a liberalised market benefit from the organisation of horse races by accepting bets on races without bearing a share of the financial burden related to the organisation of these races.
- (56) The Commission has previously acknowledged the interdependency between the betting and racing industry in its Green Paper of 24 March 2011 on online gambling in the internal market, stating that "*a specificity of horse racing compared to other sports is that its primary attraction is for gamblers. Thus, to a greater degree than other sport events, its viability will depend on sufficient proportions of gambling revenues being reinvested into the activity*".¹⁶
- (57) The Danish authorities consider that adopting a fixed levy rate, rather than a fixed nominal amount, will ensure that payments adjust in line with the level of benefit that betting operators derive from horse-racing products. In addition, there is no incentive for the horse-racing sector to increase costs, as the levy proceeds are unrelated to the amount of costs of common interest identified.
- (58) The share of Danske Spil A/S gambling revenues is phased out, rather than immediately abolished, so as to initially keep the total level of funding of the horse-racing sector approximately the same as it is today. That will ensure the continuity of the horse-racing sector and allow operators in both the horse-racing sector and the gaming industry to adapt to the new market conditions.
- (59) On the basis of the foregoing, the Commission considers that the notified measures are appropriate to achieve the objectives of ensuring the continuity of horse racing and ensuring fair competition in the Danish horse-race betting market.

¹⁶ European Commission Green Paper of 24 March 2011 on online gambling in the Internal Market, COM(2011) 128 final, p.35

3.2.4.2. Incentive effect

- (60) The Danish authorities consider that without aid for the horse-racing sector, the long-term effect would be a decrease in horse-racing companies' resources, which would lead to the contraction and possibly even the total collapse of the sector.
- (61) It is an intrinsic effect of the envisaged future system that an increase in stakes on horse-race betting on Danish racecourses will lead to an increase in funding for the Danish horse-racing sector. Consequently, there is an incentive for horse-racing companies to maintain and develop their racing products so that more bets are placed on races. The horse-racing and betting industries thus have a mutual interest in the organisation of horse races on which bets are placed and they must be expected to work together in order to increase the attractiveness of horse racing as a betting product and maximise the quality of racing.
- (62) The Commission concludes that the aid measures have an incentive effect since they are capable of modifying the behaviour of horse-racing companies by incentivising the organisation of more and more attractive horse races. Indeed, given that the activities of horse-racing companies will be partially financed by the income from horse-race betting, the aid measures have a direct effect on the behaviour of horse-racing companies by encouraging them to maintain and develop their horse-racing activities.

3.2.4.3. Proportionality of the aid

- (63) An aid measure is considered to be proportionate only if the common interest objectives could not be reached with less aid and less distortion of competition. The amount of the aid must be limited to the minimum needed for the common-interest objectives to be attained. In the present case, the Commission considers that the Danish authorities have designed the measures in such a way as to diminish the possible amount of State aid involved and to minimise the distortions of competition arising from them.
- (64) The horse-racing sector's own income (ticket sales, broadcasting rights, etc.) is duly taken into account in the calculation of the funding need: costs eligible for compensation are restricted to the net costs of common interest (cf. paragraph 20). Dansk Hestevæddeløb (cf. paragraph 18) has estimated, based on historical data, that annual funding of at least DKK 110 million would be required to maintain and develop the horse-racing sport in Denmark. That is more than what is expected to be raised by the notified measures (cf. Table 1). Considering the above, in the Danish authorities' view there is no real risk that the notified measures could result in overcompensation of the beneficiaries.
- (65) The Danish authorities have committed to monitoring the development of the proceeds of the levy in order to ensure proportionality between the levy rate and the objective pursued. In addition, the horse-racing sector is required to keep separate accounts of costs of common interest (the eligible costs) in order for the granting authorities to check whether overcompensation (revenues from the notified measures in excess of net costs of common interest) has occurred. This check will be carried out annually.
- (66) Under the notified measures, the horse-racing sector will be allowed to carry forward a limited amount of overcompensation (max. 20 % of the total aid

received in any given year) to the following year, with a view to ensuring a certain degree of financial flexibility for the sector and to take into account the fact that the costs of common interest could vary significantly from year to year (e.g. due to larger investments in user facilities). Only overcompensation exceeding 20 % of the total annual compensation for costs of common interests will therefore be subject to claw-back on a year-by-year basis.

- (67) However, the aid granted (including overcompensation that has been carried forward) will not in any circumstances be allowed to exceed the net funding needs calculated over a fixed period of five years (e.g. 2018-2022) and any remaining overcompensation should therefore be repaid at the end of each five-year period, as well as in connection with a possible termination of the scheme.
- (68) In the event of overcompensation, first the funds deriving from the levy proceeds will be repaid, by the Gambling Authority, to betting operators in proportion to the amounts raised from them. If the repayable amount exceeds the levy proceeds in the relevant period, the remaining part (i.e. funds deriving from the share of Danske Spil A/S gambling revenues during the transitional period) shall be repaid to the granting authority (presently the Ministry of Culture).
- (69) In light of the foregoing, the Commission concludes that the measures are proportionate since the Danish authorities have designed the scheme in such a way as to minimise the possible amount of State aid involved and to minimise the distortions of competition arising from the measures.

3.2.5. Balancing the positive with the negative effects: effect on competition and on trade between Member States

- (70) The Danish authorities consider that the measures are not likely to adversely affect trade conditions to an extent contrary to the common interest, as they have been designed in such a way as to minimise both the amount of State aid involved and the potential distortion of competition arising from them. The Danish authorities note in particular that the total amount of aid granted to the horse-racing sector is expected to decrease over time.
- (71) The Commission considers that the measures have the following positive effects:
- They support the liberalisation of the Danish market for horse-race betting, which in turn supports the development of competition in the betting market.
 - They support the horse-racing and equine sector based on the mutual interest that the racing industry and betting operators have in the organisation of races.
- (72) The notified measures might however distort competition in either the horse-racing market or the horse-race betting market and affect trade within the EU, although not, in the opinion of the Commission, to an extent contrary to the common interest, for the following reasons:

As regards the horseracing sector:

- The horse-racing sector will not be overcompensated and the total amount of aid granted to the horse-racing sector is expected to decrease over time.
- The race calendar is planned in coordination with Norway, Sweden and Finland, to further limit effects on trade and distortions to competition.

- The average level of prize money for Danish horse races, at approximately EUR 6900 per race in 2016, is significantly lower than e.g. in France (EUR 26 486) and Ireland (EUR 19 528).

As regards the horse-race betting sector:

- The measures ensure that betting operators contribute only to the costs of common interest to the betting-and horse-racing sectors, which limits the impact on the horserace betting sector to the minimum necessary¹⁷.
- The levy applies equally to all betting operators, ensuring a lack of distortion of competition within that market.

(73) The Commission concludes therefore that the positive effects of the measures outweigh the potential negative effects.

3.2.6. *Compatibility of the scheme with other Treaty provisions*

(74) As already pointed out in section 3.2.1, given the close link between the aid to horse racing and the collection of the levy, it is also necessary to ensure that the levy itself does not infringe the principles of the Treaty, more precisely the principle of freedom to provide services set out in Article 56 TFEU and the principle of non-discrimination in taxation matters as set out in Article 110 TFEU.

(75) The levy will apply to all betting operators taking bets on horse races organised in Denmark. They will all be subject to the same conditions, regardless of nationality, physical location, or place of registry. The aid therefore does not unduly restrict the freedom to provide horse-racing betting services under Article 56 TFEU and does not infringe the principle of non-discrimination in taxation matters as set out in Article 110 TFEU.

(76) From the above analysis, the Commission concludes that the notified measures which finance the aid to horse-racing companies are compatible with the principles of non-discrimination and freedom to provide services. The method in which the measure is financed is therefore not likely to adversely affect trading conditions to an extent contrary to the common interest.

3.2.7. *Conclusion on compatibility of the measures*

(77) The Commission concludes that the notified scheme can be considered compatible with the internal market pursuant to Article 107(3) c) TFEU. The Danish authorities have clearly shown that the scheme is necessary and proportionate and that it is an appropriate instrument to achieve an objective of common interest. The Danish authorities have also demonstrated that the notified scheme has an incentive effect on the beneficiaries and that it does not introduce unnecessary distortions of competition. (cf. paragraphs 50-73)

¹⁷ It can be noted in this respect that the rate of the levy, at 8%, is lower than the rate of 10% recently approved by the Commission in a similar case in the UK. The British betting market, moreover, is a mature and highly competitive market, whereas in the case of Denmark, the market for betting on horse races is currently under a monopoly entrusted to Danske Spil A/S, with revenues in decline since 2007 (cf. supra).

3.3. Transparency of the aid measures

(78) The notified measures fulfil the requirements of transparency. As mentioned in paragraph 16, the funds raised by the measures will be distributed to the final beneficiaries by DTGU, a committee set up by an organisation representing the horse-racing sector. DTGU will make annual activity plans for this process. In addition, as mentioned in paragraph 18, Dansk Hestevæddeløb (Danish horse racing) will develop an annual plan regarding projects related e.g. to anti-doping and match fixing. These annual plans will be made publicly available most likely on a new website established by the DTGU. The Danish authorities have also committed to monitoring the development of the proceeds of the levy in order to ensure proportionality between the levy rate and the objective pursued (cf. paragraph 65), the results of which will be included in the Gambling Authority's annual report, which is published on the Gambling Authority's website. Lastly, the Danish authorities intend to produce a status report regarding the transition period three years after the liberalisation and the introduction of the levy (i.e. in 2021), which will be published by the Ministry of Taxation.

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3) c) of the Treaty on the Functioning of the European Union
- The Commission notes that for the sake of urgency, Denmark exceptionally accepts the adoption and notification of the Decision in the English language.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission