



C/2024/6307

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POMOC PAŃSTWA – BELGIA

Pomoc państwa SA.53630 (2019/FC) – Belgia

**Domniemana pomoc przyznana przedsiębiorstwu Ladbrokes w związku z wirtualnymi zakładami
Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 Traktatu o funkcjonowaniu Unii
Europejskiej**

(Tekst mający znaczenie dla EOG)

(C/2024/6307)

Pismem z dnia 31 lipca 2024 r., zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Belgię o swojej decyzji o rozszerzeniu zakresu postępowania określonego w art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej dotyczącego wyżej wspomnianego środka pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat środka, w odniesieniu do którego Komisja rozszerza zakres postępowania, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i towarzyszącego mu pisma na następujący adres lub numer faksu:

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Otrzymane uwagi zostaną przekazane Belgii. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie klauzulą poufności ich tożsamości lub fragmentów zgłaszanych uwag.

TEKST STRESZCZENIA

W dniu 1 marca 2019 r. przedsiębiorstwa Rocoluc NV oraz European Amusement Company NV („Rocoluc” i „EAC”) skierowały do Komisji skargę dotyczącą domniemanej niezgodnej z prawem pomocy państwa przyznanej przez Belgię na rzecz przedsiębiorstwa Derby NV (zwanego dalej „Ladbrokes” zgodnie z nazwą, pod jaką prowadzi działalność handlową w Belgii).

W dniu 2 września 2020 r. Komisja przyjęła decyzję („decyzja o wszczęciu postępowania”) o wszczęciu formalnego postępowania wyjaśniającego, w której wstępnie stwierdziła, że przedsiębiorstwu Ladbrokes przysługiwało *de facto* wyłączne prawo – bez uiszczania żadnej konkretnej opłaty licencyjnej – do oferowania wirtualnych zakładów w Belgii w okresie najwcześniej od dnia 10 lutego 2014 r. i najpóźniej do dnia 4 maja 2018 r.

W dniu 26 maja 2021 r., w następstwie unieważnienia z mocą wsteczną dekretu królewskiego w sprawie gier losowych na wirtualnych imprezach sportowych w zakładach gier o stałej klasie IV z dnia 4 maja 2018 r. („dekret królewski z 2018 r.”), skarżący zwrócili się do Komisji o przyjęcie poprawionej decyzji o wszczęciu postępowania (oraz o zorganizowanie nowego zaproszenia do zainteresowanych stron do zgłaszania uwag) w celu przedłużenia okresu domniemanej pomocy objętej dochodzeniem.

Niniejsza decyzja oraz decyzja o wszczęciu postępowania dotyczą wydanego przez Belgię przedsiębiorstwu Ladbrokes zezwolenia *ad hoc* na prowadzenie wirtualnych zakładów w Belgii. Skarżący twierdzą, że środek ten skutkowało faktycznie przyznaniem temu przedsiębiorstwu wyłącznego prawa do prowadzenia od 2014 r. wirtualnych zakładów w Belgii, bez uiszczania za to opłat.

Wirtualne zakłady to gra losowa, w ramach której gracze obstawiają fikcyjne wydarzenia sportowe, którego wynik określa się przy pomocy generatora liczb losowych. W trzech „notach ramowych” wydanych w latach 2012–2015 Komisja ds. Gier Hazardowych – belgijski federalny organ regulujący i kontrolujący ten sektor – wyjaśniła, że uważa wirtualne zakłady za zakłady dotyczące (wirtualnych) wydarzeń i że w związku z tym, jej zdaniem, powinny być one oferowane wyłącznie przez ośrodki gier hazardowych klasy IV. Za pośrednictwem wiadomości e-mail z dnia 10 lutego 2014 r. oraz 5 marca 2015 r. Komisja ds. Gier Hazardowych zezwoliła przedsiębiorstwu Ladbrokes na prowadzenie wirtualnych zakładów.

Następnie w latach 2015–2016 wspomniany organ odmówił kilkakrotnie innym podmiotom klasy IV prawa do oferowania wirtualnych zakładów, powołując się na prowadzoną przez siebie w owym czasie ocenę adekwatności ram regulacyjnych. Nie zawiesił on jednak przy tym swoich not ramowych, ani nie anulował zezwolenia udzielonego przedsiębiorstwu Ladbrokes do 2017 r.

Dekret królewski z 2018 r. zaklasyfikował wirtualne zakłady jako „automatyczną grę losową” i umożliwił wszystkim operatorom klasy IV oferowanie wirtualnych zakładów w Belgii. W dekrete królewskim z 2018 r. wprowadzono bowiem warunki, zgodnie z którymi maksymalnie dwie automatyczne gry losowe oferujące zakłady obejmujące „działalność podobną do działalności agencji zakładów wzajemnych” (tj. wirtualne gry hazardowe) mogą być prowadzone w zakładach gier o stałej klasie IV.

Komisja zauważa, że niektóre fakty i okoliczności opisane w decyzji o wszczęciu postępowania zmieniły się po przyjęciu tej decyzji. W szczególności w następstwie postępowań wszczętych na szczeblu krajowym przez skarżących belgijska Rada Stanu uchyliła w dniu 7 maja 2021 r. z mocą wsteczną dekret królewski z 2018 r.

Według skarżących w następstwie wyroku Rady Stanu z dnia 7 maja 2021 r. dekret królewski z 2018 r. należy uznać za nieistniejący w prawie belgijskim i w związku z tym nie można go uznać za akt umożliwiający wykonywanie wirtualnych zakładów w Belgii. Oznacza to również, że dzień 4 maja 2018 r., w którym przyjęto (unieważniony później) dekret królewski z 2018 r., nie ma już znaczenia dla oceny czasu trwania domniemanej pomocy państwa przyznanej przedsiębiorstwu Ladbrokes. Rocoluc i EAC uważają ponadto, że wyrok Rady Stanu potwierdza ich stanowisko, zgodnie z którym Ladbrokes nadal korzysta z niezgodnej z prawem pomocy państwa belgijskiego, które nadal toleruje działalność Ladbrokes w zakresie wirtualnych zakładów, podczas gdy działalność ta była zawsze niezgodna z prawem w świetle prawa belgijskiego. W związku z tym zdaniem skarżących przedłużenie czasu trwania domniemanej niezgodnej z prawem pomocy zwiększyłoby również kwotę domniemanej pomocy przyznanej przedsiębiorstwu Ladbrokes.

W świetle niepewności dotyczącej ram prawnych mających zastosowanie do wirtualnych zakładów (offline i online) począwszy od dnia 4 maja 2018 r., niezależnie od faktu, że po tej dacie na tym rynku mogli działać operatorzy inni niż Ladbrokes, Komisja musiałaby dokładniej zbadać, czy tolerancja państwa belgijskiego wobec tej sytuacji braku pewności prawa faworyzowała przedsiębiorstwo Ladbrokes.

Biorąc pod uwagę, że niektóre fakty i okoliczności zmieniły się po przyjęciu decyzji o wszczęciu postępowania, w szczególności że stwierdzono nieważność dekretu królewskiego z 2018 r. z mocą wsteczną i w związku z tym zmienił się czas trwania kwestionowanego środka, w szczególności w odniesieniu do daty zakończenia i obliczenia domniemanej pomocy, w niniejszej decyzji Komisja rozszerza zakres postępowania określonego w art. 108 ust. 2 TFUE w celu uwzględnienia tych nowych elementów.

Zgodnie z art. 16 rozporządzenia Rady (UE) 2015/1589 wszelka niezgodna z prawem pomoc może podlegać odzyskaniu od beneficjenta.

TEXT OF LETTER

1. PROCEDURE

- (1) By letter of 1 March 2019, the Commission services received a complaint lodged by Rocoluc NV and European Amusement Company NV (hereafter respectively referred to as “**Rocoluc**” and “**EAC**” or together as the “complainants”) concerning the alleged grant of State aid by Belgium to Derby NV through an *ad hoc* authorisation to operate virtual betting in Belgium granted to Ladbrokes without appropriate remuneration (“**the contested measure**”). Derby NV (hereafter referred to under its commercial name in Belgium, “**Ladbrokes**”) is a local branch of the betting and gambling company Ladbrokes PLC.

- (2) On 2 September 2020, the Commission adopted a decision (hereinafter the “**Opening Decision**”) ⁽¹⁾ to initiate the formal investigation procedure, in which it provisionally concluded that Ladbrokes enjoyed a *de facto* exclusive right - without paying any specific (license) fee - to provide virtual betting in Belgium during a certain period of time between 10 February 2014, at the earliest, and 4 May 2018, at the latest (recital (53) of the Opening Decision).
- (3) Belgium submitted comments on the Opening Decision on 9 October 2020. Rocoluc and EAC submitted comments on the Opening Decision on 18 November 2020. The Commission received comments on the opening Decision from Ladbrokes as an interested party on 18 December 2020. Belgium provided its observations on the interested parties’ comments on 10 February 2021.
- (4) On 26 May 2021, following the retroactive annulment of the Royal Decree on “games of chance on virtual sporting events in fixed class IV gaming establishments” dated 4 May 2018 (hereafter the “**2018 Royal Decree**”) ⁽²⁾, the complainants requested the Commission to adopt a corrective opening decision (and to organise a fresh call to the interested parties to submit their observations) to extend the period of alleged investigated aid.
- (5) On 9 September 2021, Ladbrokes provided a further submission.
- (6) On 28 October 2021, the Commission forwarded to Belgium the complainants’ and Ladbrokes’ submissions with a request for information, to which Belgium replied on 30 November 2021.
- (7) On 7 February 2022, the Commission sent a further request for information to Belgium, to which Belgium replied on 9 March 2022, 5 March and 22 April 2022.
- (8) On 23 February 2023, the Commission services held a meeting with the complainants.
- (9) On 9 March 2023, the Commission received an additional submission from the complainants regarding the selective character of the alleged aid.
- (10) On 23 February 2024, the Commission received a submission by V.D.B. Faculty NV, a Belgian company active in the gambling sector (“**Faculty**”), regarding the same contested measure.
- (11) On 8 March 2024, the Commission sent a request for information to Belgium asking, *inter alia*, additional clarifications on the factual and legal situation for offline and online virtual betting following the retroactive annulment of the 2018 Royal Decree, to which the Belgian authorities provided a response on 21 May 2024, and after some follow-up questions, on 19 June 2024 and 28 June 2024.

⁽¹⁾ Commission decision of 2 September 2020 in State Aid SA.53630 (2019/FC) – Belgium – Alleged aid granted to Ladbrokes in relation to virtual betting, OJ C 355, 23.10.2020, p. 6.

⁽²⁾ «Arrêté royal relatif aux jeux de hasard sur des événements sportifs virtuels dans les établissements de jeux de hasard fixes de classe IV» Published in the Belgian Official Gazette on 9 May 2018.

- (12) On 29 April 2024, the complainants submitted to the Commission a letter of formal notice requesting the Commission to adopt a 'corrective [opening] decision' although they "would not oppose" a final negative decision that will assess the impact of the retroactive annulment of the 2018 Royal Decree on the duration of the alleged infringement.

2. DESCRIPTION OF THE FACTS RELEVANT FOR THE EXTENSION OF THE FORMAL INVESTIGATION PROCEDURE

2.1. The Opening Decision of 2 September 2020

- (13) The Opening Decision was based on the information at the disposal of the Commission at the moment of its adoption, as provided by Belgium and third parties.
- (14) On that basis, the Commission preliminarily concluded that Ladbrokes enjoyed a *de facto* exclusive right - without paying any specific (license) fee - to provide virtual betting in Belgium during a certain period of time between 10 February 2014, at the earliest, and 4 May 2018, at the latest.
- (15) In particular, the Commission provisionally concluded that Ladbrokes' *de facto* exclusive right started:
- (i) *At the earliest*, on 10 February 2014, when the Belgian Gaming Commission^(?) granted Ladbrokes via email the right to operate virtual betting offline (see recital (53) of the Opening Decision).
 - (ii) *At the latest*, on 13 January 2016, the date on which the Belgian Gaming Commission adopted its first transitional suspension decision⁽⁴⁾ of the framework note of 1 July 2015⁽⁵⁾ and Ladbrokes' authorisation⁽⁶⁾, making however every effort not to obstruct Ladbrokes (*de facto* refusing new requests to operate); or 1 April 2016, the date recommended by the sub-commission⁽⁷⁾ to suspend the framework note of 1 July 2015 and thus also Ladbrokes' right to operate virtual betting (see recital (54) of the Opening Decision).
- (16) Moreover, the Commission provisionally concluded that Ladbrokes' *de facto* exclusive right ended:
- (i) *At the earliest*, on 1 July 2017, the date on which the suspension of the framework note of 1 July 2015 and of the authorisation granted to Ladbrokes became (theoretically) effective. In practice, however, the Belgian authorities do not appear to have taken steps against Ladbrokes to ensure that it ceased to provide virtual betting after 1 July 2017 (see recital 55 of the Opening Decision).

(?) The Gaming Commission is a federal regulator within the Federal Public Service of Justice (formerly, the Ministry of Justice) tasked with advising the Government and Parliament on the gaming legislative framework, taking decisions (including the granting of licenses necessary for opening any of the above establishments), and controlling the sector.

(4) "Nota: Beslissing van de Kansspelcommissie betreffende "virtuele weddenschappen" (13 januari 2016)".

(5) "Nota: Weddenschappen op virtuele evenementen". According to the Belgian authorities, this note was published on the following page: www.gamingcommission.be/opencms/opencms/jhksweb_nl/gamingcommission/besl/wdsch/. It is however not or no longer publicly available there. By way of this and others "framework notes" or "memoranda" (*omkaderingsnota* and *nota*) dated 12 January 2012, 17 April 2013 and 1 July 2015 ("the Framework Notes"), the Gaming Commission explained that it considered virtual betting to be betting on (virtual) events and, thus, that it should be offered only via class IV gaming establishments.

(6) The Belgian Gaming Commission transitional decision dated 13 January 2016 was effective as of 1 June 2016.

(7) The Belgian Gaming Commission set up a sub-commission to investigate whether legal action was required to regulate virtual betting.

- (ii) At the latest, on 4 May 2018, the date on which Belgium regulated the market of offline virtual betting through a Royal Decree on “games of chance on virtual sporting events in fixed class IV gaming establishments” (the 2018 Royal Decree) ⁽⁸⁾ (see recital (53) and (55) of the Opening Decision).
- (17) The 2018 Royal Decree classified virtual betting as an “automatic game of chance” and allowed all class IV operators to offer virtual betting in Belgium. Indeed, pursuant to Article 2 of the 2018 Royal Decree, “Games of chance on virtual sporting events are automatic games of chance where the stakes of a player or several players in several places can be accepted at the same time for a virtual sports event, the existence of which, the odds associated with the event and the chances of winning are determined by a remote server” ⁽⁹⁾. Article 3 of the same Decree provided that “Games of chance on virtual sporting events are automatic games of chance authorised in Class IV fixed gambling establishments” ⁽¹⁰⁾ and Article 4 provided that the number of automatic gaming machines on virtual sports events in Class IV fixed gambling establishments is limited to two. Indeed, in light of Article 43/4, paragraph 2, 3rd sentence, 3rd indent of the Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players (hereafter the “**Gaming Act**”) ⁽¹¹⁾, as amended by an Act of 10 January 2010 ⁽¹²⁾, the 2018 Royal Decree is implementing the conditions under which a maximum of two automatic games of chance offering bets on “activities similar to those engaged in the betting agency” (i.e., virtual betting games) may be operated in a fixed class IV gaming establishments ⁽¹³⁾. Hence, there is no authorisation required in order to operate virtual betting. Therefore, if the operator holds a valid F1 and F2 licence and has fixed class IV gaming establishment that respect the licence conditions, the gaming operator may operate a maximum of two virtual betting games in the class IV fixed gaming establishment.

2.2. Grounds for the extension of the investigation procedure

- (18) The Commission notes that some of the facts and circumstances described in the Opening Decision changed after the adoption of that decision.

⁽⁸⁾ «Arrêté royal relatif aux jeux de hasard sur des évènements sportifs virtuels dans les établissements de jeux de hasard fixes de classe IV» Published in the Belgian Official Gazette on 9 May 2018.

⁽⁹⁾ Free translation of “Les jeux de hasard sur des évènements sportifs virtuels sont des jeux de hasard automatiques où les mises d’un joueur ou de plusieurs joueurs se trouvant dans plusieurs lieux, peuvent être acceptées en même temps sur un évènement sportif virtuel, dont tant l’existence que les cotes liées à l’évènement et les chances de gain sont déterminées par un serveur à distance”.

⁽¹⁰⁾ Free translation of «Les jeux de hasard sur des évènements sportifs virtuels sont des jeux de hasard automatiques autorisés dans les établissements de jeux de hasard fixes de classe IV»

⁽¹¹⁾ Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players (“Loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs”). Published in the Belgian Official Gazette on 30 December 1999.

⁽¹²⁾ Act of 10 January 2010 modifying the Act of 7 May 1999 as regards the Gaming Commission (“Loi du 10 janvier 2010 modifiant la loi du 7 mai 1999 sur les jeux de hasard, les établissements de jeux de hasard et la protection des joueurs, en ce qui concerne la Commission des jeux de hasard”). Published in the Belgian Official Gazette on 1 February 2010.

⁽¹³⁾ According to Article 43/4, paragraph 2, 3rd sentence, 3rd indent of the Gaming Act, “Les établissements de jeux de hasard de classe IV sont des lieux exclusivement destinés à engager des paris autorisés conformément à la présente loi pour le compte de titulaires de la licence de classe F1. L’engagement de paris requiert une licence de classe F2.

Hormis les exceptions prévues au § 5, il est interdit d’engager des paris en dehors d’un établissement de jeux de hasard de classe IV.

[...]

§ 2. Les établissements de jeux de hasard de classe IV sont fixes ou mobiles.

Un établissement de jeux de hasard fixe est un établissement permanent, clairement délimité dans l’espace, dans lequel les paris sont exploités.

Un établissement de jeux de hasard fixe a pour destination exclusive l’engagement de paris à l’exception de :

— La vente de journaux spécialisés, de magazines de sport et de gadgets ;

— La vente de boissons non alcoolisées ;

— L’exploitation de maximum deux jeux de hasard automatiques qui proposent des paris sur des activités similaires à celles engagées dans l’agence de paris. Le Roi fixe les conditions auxquelles ces jeux de hasard peuvent être exploités”.

(19) In particular, following proceedings lodged at national level by the complainants, on 7 May 2021 the Belgian Council of State retroactively annulled the 2018 Royal Decree ⁽¹⁴⁾.

(20) In its judgment of 7 May 2021, the Belgian Council of State found that:

- (i) the conditions for operating automatic games of chance on virtual sports events set out in the 2018 Royal Decree were incomplete. Therefore, by allowing, through the transitional regime established by Articles 19 and 20 of the 2018 Royal Decree ⁽¹⁵⁾, the operation of gambling on virtual sports events while all the conditions for its operation have not yet been established, the 2018 Royal Decree has violated article 43/4, § 2, paragraph 3, of the Gaming Act;
- (ii) no sufficient legal basis allows the King to delegate to the Gambling Commission the power to adopt a protocol (provided by Article 15 of the 2018 Royal Decree) ⁽¹⁶⁾ containing regulatory standards, whether they pertain to detailed or technical matters. Since, the annulment of Article 15 alone would result in a revision of the 2018 Royal Decree, as it would leave it in effect without requiring all the operating conditions that the King deems necessary, it is therefore necessary to annul the entire 2018 Royal Decree;
- (iii) the 2018 Royal Decree must be annulled in its entirety with retroactive effect ⁽¹⁷⁾.

2.3. Complainants' and third party' submissions on the retroactive annulment of the 2018 Royal Decree

(21) As mentioned in recital (4), the Commission received on 26 May 2021 a submission from the complainants, informing the Commission that on 7 May 2021 the 2018 Royal Decree has been retroactively annulled (meaning that it should be considered as non-existent) and it cannot be considered as having put an end to the alleged aid granted to Ladbrokes.

(22) As regards the duration of the aid, the complainants consider that, following the judgment of the Council of State of 7 May 2021, the 2018 Royal Decree must be regarded as non-existent in Belgian law and can therefore not be considered as an act allowing the exploitation of virtual betting in Belgium. This also means that the date of 4 May 2018, on which the annulled 2018 Royal Decree was adopted, is no longer relevant to assess the duration of the

⁽¹⁴⁾ Belgian Council of State, judgment n. 250.535 of 7 May 2021.

⁽¹⁵⁾ Article 19 of the 2018 Royal Decree provides that «Dans un délai de deux mois à compter de l'entrée en vigueur du présent arrêté, le titulaire de licence de classe F2 communique à la Commission des jeux de hasard le nombre d'appareils automatiques de jeux de hasard sur des événements sportifs virtuels qu'il exploite»

Article 20 of the 2018 Royal Decree provides that «Après l'adoption, par la Commission des jeux de hasard, du protocole visé à l'article 15, alinéa 2, le titulaire de licence de classe F2 dispose d'un délai de trois mois pour se conformer audit protocole»

According to the Belgian Council of State, the purpose of these two provisions is to allow the holder of a class F2 license to resume the operation of gambling machines on virtual sports events that they were operating as soon as the 2018 Royal Decree comes into force, and to only be required to bring their gambling machines into compliance with the protocol (under Article 15) to be adopted by the Gambling Commission three months after its adoption.

⁽¹⁶⁾ Article 15 of the 2018 Royal Decree provides that : «Les protocoles de contrôle technique des jeux de hasard automatiques destinés à l'exploitation des établissements de jeux de hasard de classe IV et les protocoles en matière de règles de surveillance et de contrôle des jeux de hasard dans les établissements de jeux de hasard de classe IV, et les sites où des paris sont acceptés au sens de l'article 43/4, § 5, de la loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs, en particulier moyennant un système informatique approprié, s'appliquent aux jeux de hasard sur des événements sportifs virtuels .
La Commission des jeux de hasard émet un protocole concernant les spécifications techniques nécessaires pour les jeux de hasard sur des événements sportifs virtuels.

Le protocole contient les informations suivantes : [...]

⁽¹⁷⁾ «Il est de principe qu'un arrêt d'annulation ait un caractère rétroactif et la bonne foi de la personne qui l'exécute ne pourrait mener, sauf à priver toute annulation d'un tel caractère, à moduler l'effet de l'arrêt dans le temps. [...] Il y a donc lieu de rejeter la demande de maintien des effets de l'arrêté attaqué».

alleged State aid granted to Ladbrokes. In addition, Rocoluc and EAC consider that the judgment of the Council of State confirms their view that Ladbrokes is still benefitting from an unlawful State aid from the Belgian State that still tolerates Ladbrokes' virtual betting activities while those activities have always been illegal under Belgian law ⁽¹⁸⁾. In the view of the complainants, the Council of State's judgment of 7 May 2021 confirmed that the sole purpose of the transitional measure laid down in Article 19 of the 2018 Royal Decree was to allow "the F2 license holder" ⁽¹⁹⁾, meaning Ladbrokes, to resume the exploitation of the virtual betting terminals it was operating before the adoption of the 2018 Royal Decree and not to have to bring these games into conformity with the protocol to be adopted by the Gaming Commission pursuant to Article 15 of the 2018 Royal Decree. Accordingly, except for Ladbrokes, that benefitted from the aforementioned transitional measure, the 2018 Royal Decree indicated that no virtual betting could be offered awaiting the adoption of this protocol. As such, the 2018 Royal Decree merely formalised Ladbrokes' *de facto* monopoly. Hence, the Council of State considered that the transitional measure allowing Ladbrokes to exploit virtual betting games before the adoption of the protocol laying down the necessary conditions of use was not in line with the Belgian Gaming Act.

- (23) Consequently, in the complainants' view, the extended duration of the alleged unlawful aid would also increase the amount of the alleged aid granted to Ladbrokes.
- (24) As mentioned in recitals (8), on 23 February 2023 the Commission held a meeting with the complainants, where they reiterated the request for a corrective opening decision extending the duration of the alleged aid. In particular, they claimed that the Opening Decision is based on "incomplete facts" and "incorrect legal classification of those facts" and that the retroactive annulment of the 2018 Royal Decree constitutes a "substantial change to the investigation framework defined". Therefore, the complainants argued that the relevant investigated period should be extended: (i) until 7 May 2021 for offline virtual betting, since no operators are allowed to operate nor actually operate offline virtual betting after this date, and (ii) indefinitely for online virtual betting, because even though it is currently not allowed, Ladbrokes is still offering online virtual betting and thus enjoys State aid as long as it is not paying any consideration to the Belgian State.
- (25) As mentioned in recital (9), on 9 March 2023, the complainants provided further clarifications on the persisting selective character of the alleged aid after the adoption of the 2018 Royal Decree. According to the complainants, the situation of Ladbrokes was clearly different from that of the operators of offline virtual betting and it was the only operator to receive a preferential treatment that was imputable to the Belgian State until 7 May 2021. This is because, pending the adoption of the protocol provided by Article 15 of the 2018 Royal Decree, only Ladbrokes could continue operating virtual betting thanks to the transitional regime provided by Articles 19 and 20 of the 2018 Royal Decree. Accordingly, except for Ladbrokes that benefitted from the aforementioned transitional measure, virtual betting had to be considered unlawful awaiting the adoption of this protocol. In any event, it is very unlikely that apart from Ladbrokes, the three other operators mentioned by the Belgian State would have been operating virtual betting as from the first day of the adoption of the 2018 Royal Decree. Indeed, the decision by an operator to launch virtual betting and its technical implementation would logically require some time. This is all the more so in the case at hand, where the other operators were probably hesitating to engage in an illegal activity.
- (26) In any event, although offline virtual betting has been offered illegally by other operators after the adoption of the 2018 Royal Decree, the complainants insist that since Ladbrokes was the main operator to provide virtual betting, its situation was clearly different from that of the other operators and that it was the only operator to receive a preferential treatment that was imputable to the Belgian State until 7 May 2021 ⁽²⁰⁾.

⁽¹⁸⁾ According to the complainants, "[T]he judgment of the Council of State confirms that Ladbrokes has in fact benefited from a selective aid measure until at least 7 May 2021".

⁽¹⁹⁾ The complainants insist that the use of singular means that only Ladbrokes was the addressee of the transitional measure.

⁽²⁰⁾ According to the complainants, this has also been confirmed by the Belgian Minister of Justice following the annulment of the 2018 Royal Decree: "Following this ruling, on 28 May the Gaming Commission removed the annulled [2018] Royal Decree from its website. It also issued a notice informing betting operators that they could no longer operate betting on virtual sports events and urging them to stop such activities. Last year, only 491 machines were operated. The impact of the above judgment is limited and mainly concerns one operator". See <https://www.lachambre.be/doc/CCRI/pdf/55/ic501.pdf>, p. 42 (free translation).

- (27) According to the complainants, the same reasoning above applies to online virtual betting: as it is dependent on the possibility to offer it offline ⁽²¹⁾, only Ladbrokes enjoyed a preferential treatment for online virtual betting. The annulment of the 2018 Royal Decree, which strictly speaking only regulated offline virtual betting, must be considered as having the same implications for online virtual betting. However, despite the 2018 Royal Decree being annulled, Ladbrokes was still offering online virtual betting. Consequently, it is the view of Rocoluc and EAC that Ladbrokes is to date still benefitting from State aid with regard to online virtual betting.
- (28) As mentioned in recital (10), on 23 February 2024 the Commission received a submission from Faculty, which holds a class C license allowing it to operate a maximum of two automatic gaming machines and a maximum of two machines with reduced stakes in a so-called class III gaming establishment or drinking establishment. The submission concerns the same contested measure but exclusively relating to the alleged aid linked to the offering of offline virtual betting games in Ladbrokes' betting offices. Indeed, Faculty argued that as an operator of a class III gaming establishment, it cannot be active online and, therefore, has not been negatively affected by the offering of virtual betting games via Ladbrokes' website(s). In addition, similarly to the complainants, it claimed that the date of 4 May 2018, on which the annulled 2018 Royal Decree was adopted, is no longer relevant to assess the duration of the alleged State aid granted to Ladbrokes. For the same reasons put forward by the complainants and described in recital (22), Faculty argued that the judgment of the Council of State of 7 May 2021 confirmed that Ladbrokes in fact benefited from a selective aid measure until at least 7 May 2021 for offline virtual betting.

2.4. Replies of the Belgian authorities to the complainants' submission on the retroactively annulment of the 2018 Royal Decree

- (29) According to the Belgian authorities, the retroactive annulment of the 2018 Royal Decree does not have an impact on the duration of the contested measure.
- (30) The Belgian authorities argue that, notwithstanding the fact that the 2018 Royal Decree has to be considered never to have existed in the Belgian legal order, this does not mean that the conditions for unlawful State aid have been fulfilled. The criteria in the now annulled 2018 Royal Decree were applied without discrimination to all valid F1 and F2 license holders who wanted to offer virtual betting. Consequently, there was no selectivity in determining who was authorised to offer virtual betting. Even though the conditions set out in the 2018 Royal Decree now are to be deemed never to have existed in the Belgian legal order, the criteria applied by the Belgian Government were neutral and did not selectively benefit certain undertakings compared to others. Therefore, in the Belgian authorities' view, the question of whether or not there was any State aid cannot be answered based on a legal fiction (the retroactive annulment of the Royal Decree of 4 May 2018) but must be based on the actual facts. In this regard the Belgian authorities pointed out that following the adoption of the 2018 Royal Decree, several operators in Belgium provided virtual betting: Wedwinkel – Bettica, Bingo Bet – bet 90, Sagevas, Derby (Ladbrokes), and Stanleybet.
- (31) Indeed, the Belgian authorities clarified the *de jure* and *de facto* situation from 10 February 2014 onwards. In particular, they described that from 4 May 2018 until 7 May 2021 all class IV fixed betting establishments were allowed to operate virtual betting and that Wedwinkel – Bettica, Bingo Bet – bet 90 (until 12 March 2020), Derby (Ladbrokes), and Stanleybet were actually operating virtual betting.

⁽²¹⁾ Pursuant to Article 43/8 of the Gaming Act, operators with an A, B or F1 licence may acquire an additional licence "plus" (i.e., A+, B+ or F1+), by which they are authorised to offer games of chance online "of the same nature" as those offered under the underlying (land-based) licence. In addition, the period of validity of these supplementary licences shall be linked to the respective period of validity of the Class A, B or F1 licence.

- (32) However, the Belgian authorities submitted inconsistent positions on the consequences of the retroactive annulment of the 2018 Royal Decree. Firstly, they argued that the Judgment of the Council of State of 7 May 2021 merely confirmed that virtual betting must be classified as a form of betting regulated by the Gaming Act, contrary to what the complainants claim. However, in later submissions, the Belgian authorities considered that class IV gaming establishments (betting shops) are not allowed anymore to offer virtual betting. Indeed, virtual betting as described by the 2018 Royal Decree (Article 2) needs 'multiplayer' gaming machines, which allow multiple players to bet in different betting shops at the same time on the same virtual sport event. On the contrary, 'monoplayer' gaming machines ("*machine individuelles, mono-joueur, basées sur le pari à la cote*")⁽²²⁾ remained (and currently remain) allowed on the basis of the Royal decree of 22 December 2010 "establishing the list of automatic games of chance authorized in Class IV gaming establishments"⁽²³⁾ (hereafter the "**2010 Royal Decree**")⁽²⁴⁾. Therefore, pursuant to the Belgian authorities, from 7 May 2021 onwards, all class IV fixed gaming establishments (operating with licenses F1+F2) have maintained the possibility to offer exclusively 'monoplayer' gaming machines to their customers as provided by the 2010 Royal Decree, which however cannot be considered as relating to virtual betting as defined in Article 2 of the 2018 Royal Decree.
- (33) In order to clarify the aforementioned inconsistency, the Belgian authorities submitted that since Article 2 of the 2018 Royal Decree has been retroactively annulled, as from 7 May 2021 onwards there is no longer a legal definition for 'virtual betting'. Therefore, "*it is unclear whether the term "virtual betting" also encompasses monoplayer virtual betting machines (virtual event created locally on that specific machine for that specific player) or only virtual betting as was defined in the annulled [2018 Royal] decree (i.e. a virtual sporting event created on a remote server, on which players in different locations can wager)*". In any case, in their last submission the Belgian authorities have used the definition of 'virtual betting' of Article 2 of the 2018 Royal Decree to argue that from 7 May 2021 onwards no operator is allowed to offer such virtual betting (i.e., using multiplayer gaming machines).
- (34) As for online virtual betting, the Belgian authorities argued that the same reasoning above applies⁽²⁵⁾. In their view, the retroactive annulment of the 2018 Royal Decree regulating offline virtual betting "*did not have a material impact on the market for online virtual betting*" as "*the legal basis for online virtual betting was always broader*". Although it is expected to be issued at some point, there is currently no Royal decree setting out exactly which games are allowed to be offered under each licence (A+, B+ or F1+). Therefore, online virtual betting is (and has always been) considered sufficiently of the same nature as 'monoplayer' betting machines⁽²⁶⁾ and is (and remains) therefore allowed under the F1+ licence. Following the annulment of the 2018 Royal Decree (which positioned offline virtual betting as an activity allowed (only) in class IV gaming establishments), taking into account the fact that virtual betting is considered as more akin to machine gambling than actual sports betting, not only F1+ license holders that offer land-based 'monoplayer' gambling machines in class IV fixed establishments are allowed to offer online virtual betting, but the Gaming Commission currently does not object class A+ license holders offering virtual betting in their online casino. As a consequence, several operators combine(d) different online licenses (e.g., A+ and F1+) and

⁽²²⁾ These are gaming machines whereby sports events are 'simulated' albeit for each player/machine individually. They are not the same as virtual betting.

⁽²³⁾ Royal decree of 22 December 2010 (*«Arrêté royal établissant la liste des jeux de hasard automatiques dont l'exploitation est autorisée dans les établissements de jeux de hasard de classe IV»*). Published in the *Belgian Official Gazette* on 29 December 2010.

⁽²⁴⁾ Article 1 of the 2010 Royal Decree provides that:

«Dans les établissements de jeux de hasard fixes de classe IV, les seuls jeux de hasard automatiques autorisés en vertu de l'article 43/4, § 2, alinéa 3, de la loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs sont ceux permettant au joueur de parier sur la réalisation d'un événement virtuel : il s'agit de machines individuelles, mono-joueur, basées sur le pari à la cote»

However, the second paragraph of Article 1 of the 2010 Royal Decree (*«Les jeux de hasard automatiques, appelés jeux de hasard sur des événements sportifs virtuels, sont également permis dans les établissements de jeux de hasard fixes de classe IV»*) has been retroactively annulled by the Council of State's judgment of 7 May 2021.

⁽²⁵⁾ The submissions of the Belgian authorities on this point have also pointed out to the same inconsistencies referred above. The Belgian authorities have clarified providing the distinction between 'virtual betting' encompassing also monoplayer gaming machines and 'virtual betting' using exclusively multiplayer machines referred above.

⁽²⁶⁾ Pursuant to Article 43/8 of the Gaming Act, operators with an A, B or F1 licence may acquire an additional licence "plus" (i.e., A+, B+ or F1+), by which they are authorised to offer games of chance online "*of the same nature*" as those offered under the underlying (land-based) licence.

offer(ed) games and betting products under the scope of these licenses jointly on one single website. In this context, following rulings of the Belgian Constitutional Court ⁽²⁷⁾, the Gaming Act has been amended to prohibit the cumulation of multiple online licenses of distinct classes (A+, B+ and F1+) for the operation of games of chances and betting through the same domain name and the URLs associated with ⁽²⁸⁾. According to the Belgian authorities, this amendment, which will enter into force on 1 September 2024, will put an end to potential confusion with regard to what licence is relied upon by operators to offer online virtual betting.

2.5. Scope of extension of formal investigation

- (35) In light of all the foregoing, the Commission considers that some of the facts and circumstances described in the Opening Decision have changed after the adoption of that decision. Notably the duration of the contested measure, as identified in the Opening Decision, might have been affected since the adoption of that decision, in particular as regards the closure date and, consequently, the extent of the alleged aid. Consequently, the Commission has decided to extend the scope of its investigation in order to cover the new elements submitted by the complainants and third parties (Faculty), as well as the Commission's preliminary views concerning those new elements, and to allow all interested third parties to comment on the new elements presented by the complainants.

3. ASSESSMENT OF THE MEASURE AS AMENDED

3.1. Existence of State aid

- (36) The assessment of the existence of State aid included in the Opening Decision remains applicable also to the new extended period of time starting from 4 May 2018 onwards.
- (37) Indeed, the provisional conclusion of the Commission according to which “*Ladbrokes enjoyed an advantage granted from State resources in the form of a de facto exclusive right to provide virtual betting in Belgium without paying adequate consideration for that right. Since the contested measure applied only to Ladbrokes, the Commission provisionally concludes that that advantage is selective. The Commission also considers the contested measure to be imputable to Belgium, since the authorisation granted to Ladbrokes as well as the Framework Note on the basis of which that authorisation was granted were adopted by the Gaming Commission, a public body. Finally, the Commission provisionally concludes that the contested measure is liable to distort competition and affect trade between Member States, since the aid in question is operating aid that strengthens Ladbrokes' position as compared to its competitors and gaming is a liberalised, competitive market, with several operators besides Ladbrokes, such as the complainants, active in Belgium, and with Ladbrokes active in several other Member States*” (recital (57) of the Opening Decision) is valid also for the new extended period from 4 May 2018 onwards.

⁽²⁷⁾ See judgments of the Belgian Constitutional Court judgment No 129/2017 of 9 November 2017; No 122/2022 of 13 October 2022 finding that in so far as it does not prohibit the cumulation of several additional licenses of distinct classes (A+, B+ and F1+) for the operation of games of chances and betting through the same domain name and the URLs associated with it, the Law of 7 May 1999 on games of chances, betting, gaming establishments and the protection of players violates Articles 10 and 11 of the Constitution.

⁽²⁸⁾ Article 27 of the Gaming Act has been introduced by Article 4 of the Law of 18 February 2024 and contains certain provisions requiring that the operation of online games of chance to be divided according to the supplementary (+) licence class used. It provides that : «[l]e cumul de plusieurs licences supplémentaires de classes distinctes transitant par le biais des instruments de la société de l'information et utilisant le même nom de domaine et les URL associées est interdit. Il est interdit de rediriger les joueurs vers ou de les confronter à des jeux de hasard relevant d'une autre licence. Il est interdit d'utiliser un même compte de joueur en vue de participer à des jeux de hasard qui sont exploités sur la base de licences différentes. Il est également interdit d'effectuer des transactions entre différents comptes de joueurs»

- (38) The retroactive annulment of the 2018 Royal Decree occurred on 7 May 2021 and made the 2018 Royal Decree as non-existent. However, until then and pending the adoption of the protocol under Article 15 of the 2018 Royal Decree, which never occurred, it appears that only Ladbrokes was entitled to offer offline virtual betting based on Article 19 of the 2018 Royal Decree.
- (39) In light of the uncertainty of the legal framework applicable to virtual betting (offline and online) from 4 May 2018 onwards, notwithstanding the fact that other operators than Ladbrokes might have been active in this market after this date, the Commission would need to investigate further whether the tolerance of the Belgian State towards this situation of legal uncertainty has preferably advantaged Ladbrokes. For instance, the Commission would need to investigate whether the implications of the transitional measure included at Articles 19 and 20 of the 2018 Royal Decree preferentially advantaged Ladbrokes, as it was the only operator who could continue exploiting the virtual betting terminals it was operating before the adoption of the 2018 Royal Decree, without having to bring these games into conformity with the protocol to be adopted by the Gaming Commission pursuant to Article 15 of the 2018 Royal Decree.
- (40) Consequently, the Commission's amended provisional conclusion is that Ladbrokes enjoyed a *de facto* exclusive right to provide virtual betting in Belgium during a period of time starting on 10 February 2014 at the earliest.

3.2. Compatibility

- (41) The assessment of the compatibility with the internal market of the alleged aid remains unchanged (recitals (59) and (60) of the Opening Decision).
- (42) Belgium has as yet offered no grounds in support of declaring the contested measure, as amended, compatible with the internal market. Nor does the Commission have any indication at this stage that the measure, if it constitutes State aid, can be considered compatible with the internal market.

4. CONCLUSION

- (43) In view of the changes in certain facts and circumstances following the Opening Decision, notably the retroactive annulment of the 2018 Royal Decree and the consequent modification of the duration of the contested measure, in particular as regards the closure date and the calculation of the alleged aid, the Commission extends the procedure laid down in Article 108(2) of the TFEU in order to cover the elements described in the present decision. The extension will give the opportunity to third parties whose interests may be affected by the granting of the aid to provide comments in light of the new developments after the adoption of the Opening Decision.
- (44) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the TFEU, requests Belgium to submit its comments and to provide all such information as may help assess the new developments surrounding the contested measure, within one month of the date of receipt of this letter. It requests the Belgian authorities to forward a copy of this letter to the potential beneficiary of the aid without delay.
- (45) The Commission wishes to remind Belgium that Article 108(3) of the TFEU has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.

- (46) The Commission warns Belgium that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.
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