APPLICATION principally for annulment of Commission Decision 93/625/EEC of 22 September 1993 concerning aid granted by the French authorities to the Pari Mutuel Urbain (PMU) and to the racecourse undertakings (OJ 1993 L 300, p. 15),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of: C. W. Bellamy, President, B. Vesterdorf, C. P. Briët, A. Kalogeropoulos and A. Potocki, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 11 March 1997,

gives the following

Judgment

Facts and procedure

1 The applicant, Ladbroke Racing Ltd (hereinafter 'Ladbroke'), is a company incorporated under English law and controlled by Ladbroke Group plc whose activities include organising and providing betting services in connection with horse-races in the United Kingdom and other countries in the European Community.

2 The Pari Mutuel Urbain ('the PMU') is an economic interest group (*groupement d'intérêt économique*) consisting of the principal racecourse undertakings (*sociétés de courses*) in France (Article 21 of Decree 83-878 of 4 October 1983 concerning racecourse undertakings and totalisator betting), which was set up to manage the organisation of off-course totalisator betting on behalf of its members. In discharging that responsibility, the PMU's status was initially that of a 'joint administrative department' (decree of 11 July 1930 extending totalisator betting to off-course operations). Article 13 of Decree 74-954 of 14 November 1974 concerning the racecourse undertakings provides that as from that date the PMU alone may manage the organisation of off-course totalisator betting by the racecourse undertakings. The PMU's exclusive position is further safeguarded by the preclusion of persons other than the PMU from offering to receive or receiving bets on horse-races (Article 8 of the Interministerial Order of 13 September 1985 laying down rules for the PMU). It covers the taking of bets on races in France and bets in France on races abroad, services which likewise can be offered only by the racecourse undertakings which are authorised to do so and/or the PMU (Article 15(3) of Law 64-1279 of 23 December 1964 laying down the Finance Law for 1965, and Article 21 of Decree 83-878, cited above).

3 On 7 April 1989 seven companies belonging to the Ladbroke Group, including the applicant, submitted a complaint to the Commission in respect of several forms of aid which the French authorities had granted to the PMU and which those companies maintained were incompatible with the common market.

4 The complaint criticised the following aid measures:

1. cash-flow benefits granted to the PMU in the form of authorisation to defer the payment to the French State of certain charges levied on horse-race betting;

Misapplication of Article 92(1) of the Treaty

41 The applicant maintains that the Commission misapplied Article 92(1) of the Treaty in so far as it decided that four of the seven State measures impugned did not constitute State aid and that as of 1989 the exemption from the one-month delay rule for deduction of VAT did not constitute State aid since it was offset by a permanent deposit lodged with the French Treasury.

The change in the allocation of the levies and the subsequent waiver of FF 180 million in betting levies as from 1985

— Summary of the parties' arguments

42 The applicant maintains that it is clear from the evidence put forward in the complaint that the reduction in the State share of the levy by decrees of 23 January 1985 and 12 March 1986 — estimated at FF 180 million — was directly linked to the PMU recovery plan and that a significant part of that money went to finance the large-scale redundancies imposed on PMU staff. The applicant refers to a news release from the AFP press agency, reporting that the then French Secretary of State for the Budget approved the PMU recovery plan, stating that 'the State, for its part, is contributing aid worth FF 180 million, thanks to its waiver in favour of the racecourse undertakings of part of its share of the levy on stakes'.

43 The fact that the legislative amendment to the allocation of the levies was subsequently maintained in force in no way alters the fact that the amendment was inextricably linked to the PMU's recovery plan. According to the applicant, a Member State cannot evade the State aid rules by making what had originally been regarded

as temporary assistance into a permanent arrangement. In any event, the levy system as a whole constitutes a State aid arrangement and, accordingly, any change in the levy system which favours the PMU itself constitutes State aid.

44 As regards the Commission's argument that it is legitimate for a Member State to assist in the restructuring of undertakings subject to special high taxation, the applicant refers to the judgment in Case 173/73 *Italy* v *Commission* [1974] ECR 709, in which the Court of Justice rejected the argument that a reduction in the burden of taxation for such a purpose could escape the prohibition laid down by Article 92 of the Treaty. Furthermore, the applicant does not accept that the PMU is subject to heavy taxation which goes beyond the taxation of other economic activities, and emphasises that the contested decision does not mention that argument, which was put forward by the Commission in its defence.

45 The Commission maintains that the reduction in the share of betting revenue accruing to the French State from 1985 onwards was a permanent change in the taxation scheme and therefore cannot be regarded as a State aid.

46 While the Commission does not accept that there is a direct link between the change in the levy system and the PMU recovery plan, it maintains that, even if such a link existed, the measure in question would not necessarily constitute State aid, since it is legitimate for the Member State, in the context of special high taxation such as that to which the PMU is subject, to assist in the restructuring of the undertakings concerned with a view to securing its own future revenue, and the French Treasury would have much to gain from any improvement in the PMU's efficiency.

47 Lastly, the Commission argues that it is clear from the statement made by the French Secretary of State for the Budget and quoted by the applicant (see above, paragraph 42) that the measure in question was adopted 'in favour of the

racecourse undertakings', not of the PMU. Since the procedure initiated under Article 92(3) of the Treaty concerned the PMU alone, and not the racecourse undertakings, the Commission could not adopt a position on aid granted to the latter.

48 Furthermore and in any event, the essential conditions to be met for a measure to be classed as State aid incompatible with the common market and unlawful under the Treaty are lacking in the case of the racecourse undertakings, since they are not in competition with the applicant.

49 Lastly, at the hearing, the Commission — relying on the judgment in Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229 — argued that it must be acknowledged as enjoying a measure of discretion when deciding the most appropriate way to ensure that activities exposed to free competition are not subsidised, and its conclusions can be vitiated solely by a manifest error of assessment.

50 The intervener supports the Commission's submissions and, for the rest, refers to its own arguments in relation to the cash-flow benefits granted (see below, paragraphs 72 and 73).

— Findings of the Court

51 The Court notes that, according to the contested decision, the change in the allocation of levies in 1985 and 1986 did not constitute State aid but a 'reform in the form of a "tax" adjustment that is justified by the nature and economy [sic] of the system in question', in so far as the three criteria used by the Commission in order to assess its compatibility with Article 92(1) of the Treaty were not satisfied. According to the contested decision, the measure in question was (a) merely a limited reduction in the rate of taxation (approximately 1.6%) and did not strengthen

the financial situation of an undertaking in a monopoly position, (b) ongoing in character and (c) not aimed at financing an *ad hoc* operation but at 'increasing the resources of the recipients of the non-public levies' (part V, point 3, of the contested decision).

52 The first point to note, since the present case turns on the extent to which the Community judicature may review the criteria chosen by the Commission for assessing whether a particular fiscal measure is caught by Article 92(1) of the Treaty, is that the latter provision — which provides that State intervention in any form whatsoever which confers on certain undertakings advantages which distort or threaten to distort competition on the common market — does not distinguish between measures of State intervention by reference to their causes or aims but defines them in relation to their effects (see Case C-241/94 *France* v *Commission* [1996] ECR I-4551, paragraphs 19 and 20). It follows that the concept of aid is objective, the test being whether a State measure confers an advantage on one or more particular undertakings. The characterisation of a measure as State aid, which, according to the Treaty, is the responsibility of both the Commission and the national courts, cannot in principle justify the attribution of a broad discretion to the Commission, save for particular circumstances owing to the complex nature of the State intervention in question (Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraphs 10 and 11, and Case T-358/94 *Air France* v *Commission* [1996] ECR II-2109, paragraph 71). The relevance of the causes or aims of State measures falls to be appraised only in the context of determining — pursuant to Article 92(3) of the Treaty — whether such measures are compatible with the common market. It is only in cases where Article 92(3) falls to be applied and where, accordingly, the Commission must rely on complex economic, social, regional and sectoral assessments, that a broad discretion is conferred on that institution (Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 18, and Case C-355/95 P *TWD* v *Commission* [1997] ECR I-2549, paragraph 26).

53 That conclusion is not affected by the judgment in *FFSA* (cited above) on which the Commission relies, in which this Court — addressing the question whether a

State measure meeting the conditions for the application of Article 92(1) of the Treaty (paragraphs 167 and 168 of the judgment) may nevertheless qualify for the derogation provided for in Article 90(2) of the Treaty — acknowledged that the Commission had a broad discretion (paragraphs 170 to 187 of the judgment) since, in contrast to that judgment, the State measure at issue here does not fall to be assessed in the light of Article 90(2) of the Treaty.

54 Secondly, although, as the Commission pointed out in the contested decision, both tax legislation and the implementation of tax arrangements are matters for the national authorities, the fact remains that the exercise of that competence may, in certain cases, prove incompatible with Article 92(1) of the Treaty (Case 47/69 *France* v *Commission* [1970] ECR 487).

55 Accordingly, the foregoing considerations must be borne in mind when determining whether, in the present case, the Commission was entitled to employ the three criteria mentioned above (see paragraph 51) as a basis for finding that the tax measure in question did not constitute State aid for the purposes of Article 92(1) of the Treaty but was a 'reform in the form of a "tax" adjustment that is justified by the nature and economy [sic] of the system in question'.

56 As regards, first, the criterion of the ongoing nature of the measure in question, Article 92(1) of the Treaty, as explained above, does not distinguish between permanent and provisional measures. Furthermore, it would be difficult to apply such a criterion in this area since, as the intervener rightly emphasised at the hearing, it is no easy matter in view of the frequency with which tax rates are adjusted by national authorities to determine whether a measure which was initially regarded as permanent must subsequently be classed as provisional because of a fresh adjustment of the rates and therefore regarded, according to the Commission's line of reasoning, as State aid by reason of its limited duration. Conversely, a measure

initially regarded as temporary — so that, according to the Commission, Article 92(1) of the Treaty applies — may subsequently be transformed into a permanent measure with the result (still according to the Commission) that it is no longer State aid. In those circumstances, application of the criterion of the permanent nature of a State measure, such as the Commission has proposed, would make application of Article 92 of the Treaty so unpredictable as to make that criterion incompatible with the principle of legal certainty.

57 As regards the second criterion, according to which the measure in question was not intended to finance a specific operation, the Court notes that, as pointed out above, Article 92(1) does not distinguish between measures of State intervention by reference to their causes or aims but defines them in relation to their effects (Case C-241/94 *France* v *Commission*, cited above, paragraph 20). However, as was stated in the contested decision itself, the measure was in fact aimed at 'increasing the resources of the recipients of the non-public levies on a permanent basis'.

58 In any event, even if such a criterion could legitimately be relied on in order to distinguish between tax measures which fall within the scope of Article 92(1) of the Treaty and those which do not, the Commission's finding that the change in the levy rates was not intended to finance a specific operation is contradicted in this case by another finding in the contested decision to the effect that 'as from 1984, the racecourse undertakings were showing a deficit' and that 'as a result, in addition to the introduction of a recovery plan, the French authorities decided to change the allocation of the levies' (see part IV, point 3, of the contested decision). Moreover, that finding in the contested decision must be read in the light of the

letter opening the procedure, according to which all the financial advantages accorded to the PMU enabled it to deal with the costs of computerisation and restructuring necessary for the organisation of its management responsibilities.

59 Lastly, as regards the Commission's third criterion, the limited nature of the reduction applied by the French authorities to the rate of the public levy, the Court observes, first of all, that it is settled law that the fact that the level of aid is relatively low does not as such rule out the application of Article 92(1) of the Treaty (Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraph 43, and Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 42). Nevertheless, even if the limited nature of the reduction may in certain cases make it appropriate not to apply Article 92(1) of the Treaty, in the present case it is common ground that, according to the contested decision, the adjustment of the rates of levy had the effect of 'increasing the resources of the recipients of the non-public levies'. Furthermore, although the reduction in the public levy may be regarded as 'limited' in terms of the rate (approximately 1.6%), that does not mean that levels are also low in terms of net figures. As is apparent from the letter opening the procedure and from the case-file (see above, paragraph 5), the benefit to the PMU for the year 1986 amounted to FF 180 million. Since the measure in question was permanent, the annual benefit to the PMU of such magnitude could not justify the finding that the advantage derived by the PMU from the 'limited' rate of levy was minimal. In that connection it should also be noted that, in the context of the Commission's policy on State aid, as set out in its communication of 20 May 1992 concerning the Community guidelines on State aid for small and medium-sized enterprises (OJ 1992 C 213, p. 2), the sum of FF 180 million by which the PMU benefited for the year 1986 alone cannot be classed as minimal aid. According to that communication, which was applicable at the time the contested decision was adopted, the level of aid below which Article 92(1) could be regarded as inapplicable was fixed at ECU 50 000 paid over a period of three years. However, an amount in the order of FF 180 million — roughly ECU 27 137 000 — paid over a single year manifestly exceeds that threshold.

60 As for the Commission's argument that according to the statement made by the Secretary of State for the Budget and quoted by the applicant (see above, paragraph 42) to the effect that, in any event, the measure in question concerned only the racecourse undertakings and not the PMU, it is contradicted by the contested decision itself, which is confined to the measures taken by the French authorities for the benefit of the PMU alone (see the letter opening the procedure under Article 93(3) of the Treaty, and part V of the contested decision). Nowhere in the contested decision is it stated that Article 92(1) of the Treaty does not apply in the present case because the measure in question did not concern the PMU — the undertaking actually referred to in the opening of the procedure — but, rather, the racecourse undertakings.

61 Furthermore, the same argument of the Commission is contradicted by its reasoning as a whole, particularly as set out in its defence where it argues that the assessment of the measure in the contested decision was justified on the ground that 'the activities of the PMU were being strangled *inter alia* by the level of taxation, and that it was necessary to rectify the situation' and that since that measure led to the 'improvement in the efficiency of the PMU' it permitted 'the French Treasury to benefit substantially'. Lastly, although, according to the abovementioned statement (see above, paragraph 42), the French State contributed aid worth FF 180 million 'to the racecourse undertakings', it is also apparent that that 'aid' was the subject of an agreement between the French State, the racecourse undertakings and the PMU and that it was intended, *inter alia*, to assist the racecourse undertakings which were members of the PMU to undertake 'some thousand dismissals essentially from the PMU'. The Commission's argument cannot therefore be accepted.

62 It follows from the foregoing that the three criteria mentioned above, as applied in the present case, were not such as to justify the finding that the reduction in the levy rate was not State aid for the purposes of Article 92(1) of the Treaty, but should be classed as a reform in the form of a tax adjustment that is justified by the nature and organisation of the system in question. That part of the contested decision must therefore be annulled.

The cash-flow facilities enabling the PMU to defer payment of certain betting levies

— Summary of the parties' arguments

63 The applicant argues that the levies subject to deferred payment are public levies, as the Commission acknowledged, moreover, in part IV, point 5, of the contested decision. According to established case-law, the imposition of such public levies by the State and the disbursement of all, or part, of the proceeds thereof by the State constitutes State aid within the meaning of Article 92(1) of the Treaty. Accordingly, the French State's decision allowing the PMU to defer payment of the share of the levy due to the State is caught by the prohibition in Article 92(1) (Case 78/76 *Steinike und Weinlig* v *Germany* [1977] ECR 595, Case 222/82 *Apple and Pear Development Council* v *Lewis* [1983] ECR 4083 and Case 290/83 *Commission* v *France* [1985] ECR 439).

64 According to the applicant, the change in the rules on the payment of the public levies cannot be equated — contrary to the Commission's contention — with a general change in the rate of taxation for horse-races, since it was not for the general benefit of the horse-racing industry but for the benefit of the PMU. The fact that the cash-flow benefits also benefit the racecourse undertakings which are members of the PMU does not alter the fact that aid was granted in favour of the PMU or the fact that the aid in question is not a general measure, since the racecourse undertakings belonging to the PMU represent only 10 out of some 275 racecourse undertakings in France and the PMU only accepts bets on less than 1% of races organised on racecourses not owned by its members. This is confirmed, first, by the 1987 Report of the French Cour des Comptes (Court of Auditors), which states that the change in the rules on the payment of levies to the State was prompted by a desire to assist the PMU in meeting the increase in commission costs payable to its point-of-sale outlets and, secondly, by the reply to that Report given by the French Ministère de l'Économie, des Finances et de la Privatisation (Ministry of the Economy, Finance and Privatisation), to the effect that the fiscal regime governing the PMU 'derogates from the ordinary rules of law'.

65 The applicant concludes that the change in the levy arrangements was an *ad hoc* and *temporary* measure for the benefit of a specific undertaking, which means that, in view of the settled case-law to the effect that a fiscal regime, even of a permanent nature, which favours a specific industry constitutes State aid (Case 70/72 *Commission* v *Germany* [1973] ECR 813 and Case 310/85 *Deufil* v *Commission* [1987] ECR 901), the same must be all the more true of measures for the benefit of a single undertaking.

66 As for the Commission's argument that the change in the rules on the payment of levies to the State was justified by the French authorities' concern to bring the arrangements for paying the PMU levies into line with those for the lotto levies (part IV, point 5, of the contested decision), the applicant maintains that it must be disregarded in so far as it forms no part of the Commission's legal reasoning in the contested decision and because the Commission failed to adduce any reason why, in its view, the Cour des Comptes erred in finding the contrary.

67 In the alternative, the applicant asks the Court to annul that part of the contested decision for lack of reasoning.

68 The Commission argues that the case-law cited by the applicant to the effect that special fiscal measures for the benefit of a single economic sector constitute State aid does not apply since the present case does not concern the normal system of taxation applicable to all undertakings but an exceptional system for the taxation of a single operator. Changes to such a system cannot be assessed on the same basis as derogations from the general system. According to the Commission, if the applicant's view were correct, the French authorities would be prevented from making any changes in the taxation of horse-race betting, which cannot be the purpose of Article 92 of the Treaty.

69 On that point, the Commission adds that although Advocate General Darmon referred in his Opinion in Joined Cases C-72/91 and C-73/91 *Sloman Neptun* [1993] ECR I-887, at 903, to the concept of 'derogation', meaning that a measure which does not apply to all undertakings or all industrial sectors which could benefit from it constitutes aid, that criterion must be applied in a different manner in respect of the horse-race betting sector. In the Commission's view, since that sector bears a heavier tax burden than that applicable under the normal system of taxation, the sole test for determining whether a change in that special tax scheme constitutes State aid is one which enables it to be established whether the change was permanent or temporary, and only if it is temporary is it capable of constituting State aid.

70 The Commission also challenges the assertion that the measure at issue was solely for the benefit of the PMU. Since the income of the PMU flows through it to its members, the racecourse undertakings, the measure was for the benefit of each of them. The fact that the racecourse undertakings which are members of the PMU do not represent the whole of the French horse-racing industry is irrelevant, since those companies are the only ones to which that tax scheme applies.

71 Lastly, the Commission argues that the numerous references made by the applicant in its pleadings to the 1987 Report of the French Cour des Comptes are irrelevant, since that institution is not competent to determine whether fiscal or quasi-fiscal measures constitute State aid within the meaning of Article 92(1) of the Treaty.

72 The intervener endorses the Commission's arguments, adding that the applicant's argument that the aid granted to the PMU benefits only a limited number of those engaged in horse-breeding in France is without substance, because all racecourse undertakings may benefit indirectly from the services of that body.

73 As for the funds derived from the PMU, the intervener emphasises that they are used for French horse-breeding as a whole since the *primes* and incentives are given to breeders, owners and other professionals in the whole equestrian sector, and thus go in large part to racecourse undertakings which are not members of the PMU.

— Findings of the Court

74 The Commission's refusal to class the measure in question as State aid for the purposes of Article 92(1) of the Treaty is based on the view that the tax arrangements applicable to the PMU, and the horse-racing sector in general, do not derogate from the general fiscal regime but constitute a 'special' scheme, justified by the particular features of the sector concerned, and that, considered in the light of the criteria applied by the Commission to the aid in the form of adjustments to the rate of levy paid by the PMU (see above, paragraphs 68 and 69), that measure does not constitute State aid since it is not *ad hoc* and has 'had the effect of increasing the share of the non-public levy continuously since 1981' and does not involve 'a temporary waiving of resources by the public authorities' (part V, point 5, of the contested decision).

75 Consequently, it should first be determined whether the Commission was correct in maintaining that the tax regime applicable to the horse-racing sector does not constitute in itself a derogation from the general tax system, but a special system intended to apply solely to that sector.

76 In so far as the PMU's activities are subject to special rules which guarantee it exclusive rights over the organisation of totalisator betting in France (see above, paragraph 2), and the tax arrangements applicable to it take into account not only that fact but all the characteristic features of French horse-racing, the Commission was entitled to take the view that the special system of levies, which determines the proportion of betting revenue allocated to the State, the bettors, the PMU and the

racecourse undertakings, respectively, did not constitute a derogation from the tax arrangements generally applied to other activities, and that, consequently, the measure concerned had to be evaluated solely in the context of the special tax arrangements applicable to the horse-racing sector.

77 However, the mere fact that that measure belongs to a separate system, and does not fall within the derogations from the general fiscal arrangements, does not remove it from the ambit of Article 92(1) of the Treaty. Accordingly, the effects of that measure must be examined in order to determine whether the finding that Article 92(1) of the Treaty did not apply in this case was correct.

78 The Court notes that the Commission acknowledged in the contested decision that the measure amounted in effect to a waiver of revenue by the public authorities, which 'had the effect of increasing the share of the non-public levy continuously since 1981'. However, as has just been recalled, any State measure, whether permanent or temporary, which has the effect of granting financial advantages to an undertaking and improving its financial position falls within the definition of State aid for the purposes of Article 92(1) of the Treaty (see above, paragraph 52) and, accordingly, the question whether a change in the rules for allocation of the levies is temporary or permanent is not an adequate test for determining whether Article 92(1) of the Treaty applies in a particular case (see above, paragraph 56).

79 As for the fact that the change in the rules concerning payment to the Treasury of the public levies did not constitute an *ad hoc* derogation, but was a general amendment to the tax regime for the entire horse-racing sector, the Court observes that, contrary to the Commission's assertion, the contested decision contains no statement to that effect and, according to part IV, point 5, thereof, the Minister for the Budget allowed the payments due to the Treasury to be deferred solely in the case of the PMU. The fact that, as a general rule, the operation of the *pari mutuel* in

France can benefit not only members of the PMU, but also, indirectly, non-member companies, cannot be regarded as decisive evidence. Although, certainly, aid granted to a particular economic operator may also, indirectly, benefit a number of others whose affairs depend on that operator's principal activities, it does not follow that the measure in question is a general measure outside the ambit of Article 92(1) of the Treaty; at the very most it may qualify for the sectoral derogation provided for in Article 92(3)(c) of the Treaty.

80 Furthermore, as the Commission emphasises in the contested decision (see part V, point 7), for the purposes of applying Article 92(1) of the Treaty a distinction should be drawn between the PMU's main business (the organisation and processing of bets) and that of its members (the organisation of horse-races). Consequently, even if the horse-racing sector as a whole benefits in one way or another from the cash-flow benefits granted to the PMU, those financial advantages permit the PMU to improve its position on the market in bet-taking — both at home and abroad — through the PMI, in direct competition with the applicant (part III of the contested decision). In any event, it is evident that the arguments put forward in this connection by the Commission and the intervener did not form part of the legal assessment set out in the contested decision and, accordingly, that in this respect, too, the decision must be regarded as vitiated by the fact that no, or no sufficient, reasons are given.

81 Lastly, with respect to the Commission's argument that the State intervention in question was made in the context of the exceptionally heavy taxation of the horse-racing sector, which is considerably higher than in other sectors, put forward for the first time before the Court, unsupported by adequate evidence, that argument is not sufficient in itself to show that the Commission's argument is well founded.

82 In those circumstances, the applicant's allegation that Article 92(1) was misapplied in respect of the cash-flow benefits granted to the PMU is well founded and that part of the contested decision must be annulled.

The exemption from corporation tax

— Summary of the parties' arguments

83 The applicant maintains that the decision is vitiated by an error of law, in so far as the Commission considered that the PMU's exemption from corporation tax stems from the normal application of the general tax system, which does not cover *groupements d'intérêt économique*.

84 The applicant explains that the issue in the present case is the exemption from corporation tax not for the benefit of the PMU, but for the benefit of its members, which the applicant criticised in its complaint of 7 April 1989 and in its letter of formal notice of 5 November 1992. Moreover, according to the French Cour des Comptes, an exemption of that nature for the racecourse undertakings was unlawful even under French law. Furthermore, no equivalent exemption is granted to other racecourse undertakings or to other members of a *groupement d'intérêt économique*.

85 Lastly, the applicant challenges the implied rejection of its argument in the complaint that the PMU's exemption from income tax also constitutes State aid, and claims that in that respect the contested decision is devoid of reasoning.

86 The Commission explains that although the PMU is not subject to corporation tax, it is because as a *groupement d'intérêt économique* it does not have any capital of its own, and its financial results may be integrated directly in the results of its members so that it is fiscally transparent, that is to say, the tax is payable not by the group as such but by its members. As for the applicant's argument that the tax should have been paid by the racecourse undertakings, the Commission contends that its decision to open the Article 93(2) procedure related solely to the aid for the PMU, not that for racecourse undertakings.

87 As regards the applicant's allegation that its complaint concerning the PMU's exemption from income tax was implicitly rejected, the Commission points out that that measure was not addressed in the decision to open the Article 93(2) procedure and therefore could not be dealt with in the contested decision.

88 The intervener emphasises the fact that if, on the assumption that their betting business is separate from the rest of their operations and the share reserved for bettors remains constant, the racecourse undertakings were subject to corporation tax and tax under the general law, they would pay much less than they do now. Thus, if VAT at the normal rate (18.6%) applied to the share not accruing to the bettors (28% of the stakes), the gross income of the racecourse undertakings would be 22.8% of the stakes (28%-(28 x 18.6%) = 28% -5.2%). The 'profit' before tax of the PMU would thus be equal to that result minus the PMU's operating costs, that is to say, 17.3% (22.8% -5.5%). Corporation tax, calculated at the current rate of 33% on profits, would amount to 5.7% of stakes (17.3% x 33%). The final share of the racecourse undertakings would thus be, after deduction of the PMU's operating costs, 11.6% of stakes (17.3% -5.7%), whereas it is today between 4.5% and 5%. This makes it clear, according to the French Government, that the current system for taxing the PMU, involving exemption from corporation tax, does not constitute State aid to the racecourse undertakings.

— Findings of the Court

89 The Court points out that, according to the contested decision, the exemption of the PMU from corporation tax is a consequence of the normal application of the general fiscal regime in so far as no such tax applies to *groupements d'intérêt économique*. However, although the applicant does not challenge that finding, it argues that, as stated in the complaint, the issue in the present proceedings is not the PMU's exemption from corporation tax, but the exemption of the racecourse undertakings from such a tax.

90 Accordingly, it should be determined whether the fact that the Commission — contrary to the assertion made in the applicant's complaint — found it necessary to bring proceedings solely against the PMU and not against the racecourse undertakings is capable of affecting the lawfulness of the contested decision.

91 In that respect it should be noted that the right of third parties to lodge a complaint with the Commission for infringement of Article 92 of the Treaty and thereby to induce it to open the procedure under Article 93(2) of the Treaty in respect of the Member State concerned, which may culminate in its adoption of a final decision, is not governed by any provisions of secondary legislation analogous to Regulation No 17 of the Council of 6 February 1962, the First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-62, p. 87).

92 However, if the Commission decides to reject a complaint by adopting a decision to that effect, that decision must, pursuant to Article 190 of the Treaty, contain a statement of reasons which enables the person concerned to ascertain the reasons for the measure and, where appropriate, assert his rights before the Community judicature. In the present case, however, there was no decision expressly rejecting the applicant's complaint: on the contrary, a decision was adopted to open the procedure under Article 93(2) of the Treaty, by letter addressed to the French Government and published in the *Official Journal of the European Communities*

(see above, paragraph 5). In those circumstances, if the applicant considered that by so doing the Commission had failed to adopt a position on all the State measures which were the subject of the complaint, it ought to have called upon the Commission to do so in accordance with Article 175 of the Treaty.

93 According to the case-file, Ladbroke did indeed request the Commission, in its letter of 11 August 1992, to adopt a position, in accordance with Article 175 of the Treaty, regarding the aid challenged in the complaint but not dealt with in the interim decision (see above, paragraph 9), and by letter of 12 October 1992 the Commission replied (see above, paragraph 10). After receiving that reply, however, Ladbroke again sent a letter of formal notice to the Commission, requesting it this time to adopt a position only with regard to the measures referred to in the decision opening the procedure (see above, paragraph 11). Since the Commission failed to respond to the second letter, Ladbroke brought an action for failure to act before the Court of First Instance, which it abandoned, however, following the adoption of the contested decision (see above, paragraphs 12 to 14). If, however, Ladbroke considered that the Commission's reply to its first formal notice did not amount to a definition of the Commission's position on all the measures criticised in the complaint, it should have issued a fresh formal notice requesting the Commission to adopt a position on all the measures criticised, rather than merely requesting it to adopt a position solely on the measures referred to when the procedure was initiated. If, by contrast, Ladbroke considered that the Commission's reply to the first formal notice constituted a definition of its position, impliedly rejecting the part of the complaint in which the relevant measure was criticised, it ought to have brought an action for annulment under Article 173(5) of the Treaty.

94 The applicant failed to initiate and follow the procedure laid down in Article 175 of the Treaty or to bring in due time an action for annulment. Consequently, its claim that in the contested decision the Commission failed to address a measure which was not the subject of the procedure which had been initiated is inadmissible.

95 The position is the same, and for the same reasons, with regard to the applicant's argument based on the implied rejection of the complaint as regards the PMU's exemption from income tax.

Retention of unclaimed winnings by the PMU

— Summary of the parties' arguments

96 The applicant argues, first of all, that the contested decision is vitiated by an error of law in so far as the Commission considered that the PMU's entitlement under Decree 83-878 to retain unclaimed winnings in order to finance social security expenditure did not constitute State aid because such winnings are considered to be 'normal resources', forming part of the non-public levies, and not 'State resources' within the meaning of Article 92(1) of the Treaty.

97 According to the applicant, since the imposition of levies and their allocation are matters decided by the French State, it is incorrect to regard such resources as non-public levies, since any transfer of resources to the PMU pursuant to measures of public law constitutes State aid. In any event, even if unclaimed winnings are to be regarded as normal resources of the racecourse undertakings, the amendment introduced by Article 27 of Decree 83-878 constituted State aid inasmuch as the decision to allow the PMU access to the money was instigated and approved by the State (see Case 290/83 *Commission* v *France*, cited above, paragraphs 14 and 15, and Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 32 to 38).

98 The applicant argues next that resources derived from unclaimed winnings and made available to the PMU were in fact to be used to finance the PMU's operating costs incurred by the computerisation of its betting operations. The applicant explains that, before the adoption of Decree 83-878, a decree of 18 July 1941 provided that the racecourse undertakings could retain unclaimed winnings on condition that such monies were used exclusively for a specified class of employee working in the horse-racing sector and that any surplus had to be handed over to the State. However, the change introduced by Decree 83-878 consisted in permitting the PMU to use such winnings for its own purposes. In support of this view, the applicant refers to the Report of the French Cour des Comptes, according to which the resources handed over to the PMU, which are 'not subject to VAT and generate considerable financial income (FF 24.6 million in 1985)', were used 'to finance, to the tune of 105 million, the corporate strategy of the racing sector', three-quarters of which was reserved 'to the PMU for the payment of a supplementary redundancy payment for employees whom it will have to dismiss in view of the computerisation of its betting operations (some FF 75 million in respect of 750 employees)'.

99 Lastly, the applicant maintains that in so far as Article 281 *bis* of the French *Code Général des Impôts* provides that VAT is payable on the remuneration received by organisers of totalisator betting, the fact that the PMU is not obliged to pay VAT on unclaimed winnings also constitutes State aid within the meaning of Article 92(1) of the Treaty and, accordingly, the contested decision is vitiated by an error of law in this respect also.

100 The Commission points out that in France the sums in question can only be used for defined categories of social spending. Following the adoption of Decree 74-954, any sums not so used accrue to the State, and Decree 83-878 simply altered the categories of social spending for which unclaimed winnings may be used. The fact that that amendment led to a reduction in the portion of unclaimed winnings accruing to the State does not mean therefore that it amounted to State aid.

101 In the Commission's view, the applicant has been led to challenge the description of the sums in question as 'non-public levies' (*'prélèvements non-publics'*) by a misunderstanding brought about by the use of the English term 'levy', which in English indicates a tax. The applicant thus arrived at the false conclusion that the FF 30 withheld by the PMU for every FF 100 in bets (see above, paragraph 16) constituted a State tax and that any distribution of part of that sum constituted State aid. In fact, only part of those FF 30, the FF 18 taken by the French authorities, can be regarded as a 'tax' in the true sense. Since the sums concerned constitute a non-public levy which does not accrue to the State and cannot therefore be regarded as a tax, the criterion of State resources is, in this context, not satisfied.

102 The Commission argues that, even if it refrained in its defence from specifically rebutting the applicant's assertion that the measure in question was directed towards assisting in the computerisation of the PMU, allowing unclaimed winnings to be used to provide surplus employees with a supplementary redundancy payment amounted to a social measure benefiting the ex-employees rather than the PMU itself.

103 As for the applicant's argument that the fact that unclaimed winnings are not subject to VAT also constitutes State aid, the Commission contends that this is a new argument which did not appear in the complaint and, consequently, could not be addressed in the contested decision.

104 The intervener explains that prior to the adoption of Decree 74-954 unclaimed winnings were wholly retained by the racecourse undertakings and that the decree simply restricted the use to which those winnings could be put to certain categories of social security spending on the part of the racecourse undertakings, the winnings not used for that purpose reverting to the State (Article 20(4) of the decree). Decree 83-878 merely extended the possible uses to which unclaimed winnings could be put to other activities directly linked to the operations of the racecourse undertakings, such as monitoring and operating costs, breeding incentives and investments connected with the organisation of races and betting (Article 27 of the decree). At all times — before 1974, from 1974 to 1983, and after 1983 —

unclaimed winnings remained wholly at the disposal of the racecourse undertakings: changes affected solely the range of uses to which those winnings could be put, so that it was reasonable to regard such funds as part of the normal resources of the racecourse undertakings.

— Findings of the Court

105 By way of a preliminary point, the Court notes that it is indicated in the parties' arguments that the measure enabled the racecourse undertakings to cover, *inter alia*, the social security costs incurred by the PMU in connection with redundancy for some of its surplus staff. The Court considers it necessary to determine, first, whether the funds derived from unclaimed winnings constitute 'normal resources' within the meaning advocated by the Commission, which thus claims that one of the conditions for applying Article 92(1) of the Treaty — the transfer of State resources to the aid recipient — is lacking in the present case.

106 It is apparent from the case-file that although before 1974 unclaimed winnings were wholly retained by the racecourse undertakings, Decree 74-954 restricted for the first time the use to which those winnings could be put to certain categories of social security expenditure, the winnings not used for that purpose having to be paid to the State. Article 20(4) of that decree provided that 'each year the racecourse undertakings may be authorised by the authorities responsible for approving their budget to allocate the winnings on uncashed tickets to relief, social assistance, welfare or additional retirement benefits for their staff, excluding all other benefits. Such sums are to be paid to one of the bodies provided for in Article 25 hereunder or to a vocational training centre. The fraction of the winnings on uncashed tickets which is not allocated to funding the activities defined in the preceding subparagraph shall be paid to the Treasury'.

107 It is clear from that provision of French legislation that the use which racecourse undertakings could make of unclaimed winnings was not only restricted (to social

expenditure) but also depended on prior authorisation from 'the authorities responsible for approving their budget'. Those authorities are defined in the above decree as the Minister for Agriculture and the Minister for the Economy and Finance (see Articles 22 and 23 of the decree) and, in Decree 83-878 which replaced Decree 74-954, as the Minister for Agriculture and the Minister responsible for the Budget (Articles 29 and 30 of Decree 83-878). However, if use of unclaimed winnings is to be regarded — as stressed in the contested decision — as 'normal resources', there would be no need for the French legislature to adopt regulations restricting their use to strictly defined expenditure, failing which those resources would automatically revert to the Treasury.

108 In those circumstances, the resources in question cannot be regarded as 'normal resources' belonging to the racecourse undertakings and the PMU, but constitute 'State resources' the allocation of which to the Treasury depends on whether certain statutory conditions are met.

109 That conclusion can also be inferred from Decree 83-878, whereby, as the French Government and the Commission have emphasised, the French legislature extended the range of uses to which unclaimed winnings may be put to other activities of the racecourse undertakings, such as the allocation 'of vocational training credits, or welfare or additional retirement benefits for staff of racecourse undertakings or racing stables, as well as for jockeys' (Article 27(5) of Decree 83-878). In so doing, all the French legislature did was in effect to waive revenue which would otherwise have been paid to the Treasury, so that, for the same reason, the condition for applying Article 92(1) of the Treaty, namely that State funds are transferred to the recipient, is satisfied in the present case.

110 However, according to established case-law, in so far as those resources have been used 'to finance social expenditure, in particular', as stated in the contested decision, they constitute a reduction in the social security commitments which an

undertaking must normally discharge, and hence a grant of aid (Case 173/73 *Italy* v *Commission* and *Steinike und Weinlig*, both cited above).

111 Consequently, the Commission's finding that although the measure in question is designed to finance social expenditure of the racecourse undertakings linked to the organisation of totalisator betting it does not constitute State aid because no transfer of State resources is involved is based on false premisses and must therefore be annulled.

112 Lastly, as regards the applicant's argument that the fact that the PMU is not required to pay VAT on unclaimed winnings also constitutes State aid, it should be stated that this point was not mentioned in the complaint or raised when the procedure under Article 92 was opened, which means that the applicant cannot reproach the Commission for not addressing that point in the contested decision.

The exemption from the one-month delay rule for VAT deductions as from 1 January 1989

— Summary of the parties' arguments

113 The applicant argues that, while the Commission states in the contested decision that the exemption from the one-month rule for VAT deductions has been offset, as of 1989, by a permanent deposit lodged by the racecourse undertakings with the French Treasury, it is silent both as to the size of that deposit and the basis on which it is re-assessed from time to time. The failure to provide that information is all the more improper in view of the fact that, owing to the existence of that

deposit, the Commission reached a conclusion different from its initial finding in the interim decision.

114 The applicant asks the Court to request, by way of measures of inquiry, first, that the Commission indicate the size of the permanent deposit lodged with the French Treasury in 1989, the criteria by which it is re-assessed and on what occasions a re-assessment has been carried out and, secondly, that the French Government state the annual cost of the VAT derogation to the French State and the annual interest earned by the French State as a result of that deposit between 1 July 1989 and 1 July 1993, when the measure at issue was finally abolished.

115 The Commission maintains that the fact that as regards the exemption from the one-month delay rule for VAT deductions the provisional conclusion reached in its interim decision was different from that in the contested decision does not affect the validity of the latter.

116 As to the amount of the deposit, the Commission points out that until 1988 it was a fixed amount of FF 14 million, which was increased to FF 16 million in 1989 and to FF 20 million in 1993.

117 The intervener points out that the case-file shows that the deposit lodged with the French Treasury has existed since 1969, and not since 1989 as indicated by the contested decision, from which it follows that the State measure at issue never constituted State aid. Furthermore, if the French authorities did not point this out to the Commission during the administrative procedure, it was because the mistake had no practical consequence for the assessment of the measure at issue.

— Findings of the Court

118 According to the correspondence exchanged by the Commission and the intervener on this point since the opening of the procedure and produced at the Court's request, the French authorities had clearly stated to the Commission during the administrative procedure that, in return for the exemption from the one-month rule for VAT deductions granted to the racecourse undertakings on 1 August 1969, the latter were required from that date to lodge a permanent deposit with the French Treasury (letter of 7 February 1992 to the Commission from France's Permanent Representative to the European Communities).

119 Furthermore, at the hearing the Commission conceded that the permanent deposit had, indeed, existed not since 1989 but since 1969, and that the contested decision was vitiated on this point by a manifest error.

120 It follows that the Commission's consideration of the question whether the permanent deposit with the French Treasury offset the cash-flow benefits resulting from the exemption from the normal VAT rules should have applied to the period from 1969 or, at the least, from 1985 (when the PMU acquired legal personality), not from 1989. Consequently, in the absence of a detailed examination by the Commission going back to 1969 or to 1985, the Court cannot rule on the question whether the permanent deposit has since 1969 offset the cash-flow benefits with the result that the measure in question never constituted State aid, and whether, if that is not the case, from which date the alleged aid in fact existed because the benefits complained of were not offset.

121 That conclusion is not affected by the figures produced by the Commission in reply to the Court's questions, figures which were contained in a letter it received from France's Permanent Representative to the European Communities (see

above, paragraph 118). According to those figures, although as regards 1985, 1986 and 1990 the amount of the permanent deposit appears to offset the 'average monthly worth' of the benefit derived by the PMU from its exemption from the one-month delay rule for VAT deduction, as regards 1987, 1988 and 1989 the PMU benefited by some FF 7 968 000. However, in so far as the Commission did not, for the reasons explained above (see paragraph 119), consider those figures when it adopted its decision, the Court cannot, on the basis of the parties' written replies to its questions, rule on the existence or otherwise of State aid, since in doing so it would encroach on the powers which Article 92(1) confers exclusively on the Commission and the national courts.

122 Furthermore, since the Commission's assessment of the measure in question was in any event vitiated by error the applicant's claims must be upheld and that part of the contested decision must be annulled.

Misapplication of Article 92(3)(c) of the Treaty

The applicant's pleas in law and arguments

123 The applicant argues that none of the State measures classed as State aid in the contested decision — namely (1) the French State's waiver, in favour of the PMU, of the amounts derived from rounding down bettors' winnings to the nearest ten-centimes from 1982 to 1985; (2) the exemption prior to 1989 from the one-month delay rule for the deduction of VAT; and (3) until 1989, the PMU's exemption from the housing levy — can be held to be compatible with the common market under Article 92(3)(c) of the Treaty.

(1) The waiver from 1982 to 1985 of the sums deriving from the practice of rounding down bettors' winnings to the nearest ten centimes

124 The applicant makes the preliminary point that since Article 92(3)(c) of the Treaty is an exception to the general rule prohibiting State aid, it is to be strictly construed, and that for aid to fall within its scope it must satisfy two conditions, the first of which is positive — namely, the aid must facilitate the development of certain economic activities or of certain economic areas — and the second of which is negative — namely, the aid must not adversely affect trading conditions to an extent contrary to the common interest. In the present case, neither of those conditions is satisfied.

125 First, the reference in the contested decision to the 'direct and indirect effects of the aid in developing all the economic activities in the sector, including the improvement of bloodstock', which was intended to demonstrate that the aid in question facilitated the development of certain activities (the positive condition), cannot satisfy that condition since the aid in question was not directed either to the improvement of bloodstock or to horse-racing, but rather to one particular form of betting, namely off-course betting. The PMU's activities have very little direct relation to horse-breeding and the percentage of the turnover generated by the PMU that goes to horse-breeding is less than the share received by the State.

126 The Commission's finding is also contrary not only to the Court's case-law in this area (see Case 730/79 *Philip Morris Holland* v *Commission* [1980] ECR 2671) but also to the rules which the Commission laid down for its own guidance in its *Tenth* and *Twelfth Reports on Competition Policy*. According to the Tenth Report, aid is not compatible with the common market unless it contributes 'to the achievement of the Community objectives and interests set out in Article 92(3) of the Treaty'. In its Twelfth Report, the Commission stated that, in order to make sure that aid does not distort competition to a degree contrary to the common interest, the measure in question (1) must contribute to the development of the

sector concerned in the interest of the Community as a whole (2) must be necessary to bring about the development concerned, and (3) its modalities (its intensity, its duration, the degree of distortion of competition, and so on) must be commensurate with the objectives sought.

127 The contested decision completely ignores the first of the above tests. The assertion in the Commission's defence that the objective of the aid was to improve the efficiency of totalisator betting and 'above all the improvement in horse-breeding, a legitimate objective consistent with the Community interest' constitutes a new argument and, accordingly, cannot be taken into account by the Court.

128 As regards the second test — whether the aid is necessary to bring about the development sought — the applicant points out that the Commission did not address that question until it lodged its defence, in which it is stated that without the aid at issue the computerisation of the PMU could not have been achieved. Since that claim is unsupported by argument, it is possible that the racecourse undertakings could have financed the computerisation of their operations either by reducing the levels of prize money offered or by obtaining bank loans.

129 In the case of the third test, namely whether the impact of the aid is commensurate with the objective sought, the applicant maintains that, if the other State measures adopted in favour of the PMU and impugned in the complaint constitute State aid, the contested decision is vitiated by the Commission's failure to estimate the cumulative impact of the various forms of aid granted to the PMU, rather than the impact of each measure viewed in isolation. In any event, even if those measures are not to be regarded as State aid, the fact remains that the effect of that aid — worth FF 315 million — should have been assessed in the light of all the financial advantages which had accrued to the PMU and which, according to the Report of the French Cour des Comptes mentioned above, amounted to FF 1.3 billion for the period from 1982 to 1985 alone.

130 Secondly, as regards the question whether the aid adversely affects trade between Member States to an extent contrary to the common interest (the negative condition), the applicant maintains that the answer given by the Commission in the contested decision to the effect that computerisation of the PMU's operations had taken place at a time when the PMU had no foreign operations, or indeed plans to establish foreign operations, is based on false premisses. According to the summary of a presentation given by the Director-General of the PMU in London at the Sixth Conference of the European Associations of PMUs, as early as May 1987, that is to say, before the creation of the PMI, the PMU already planned to extend its operations abroad. This conclusion is also supported by the reply given, at about the same time as the above statement, by the Chairman of the PMU to the *Premier Président* of the French Cour des Comptes on the subject of the 'proposed inclusion in the public report [of the Cour des Comptes] of a study of the racing sector and the *modus operandi* of the PMU', in which the Chairman regretted the effects of the publication of that report at a 'time when [the PMU is pursuing] negotiations with foreign countries who wish to benefit from [its] experience in the field of the taking of bets on races and at a time when [the PMU is going] to face, in 1992, competition from [the 12 Member States of the European Communities].'

131 Lastly, the applicant maintains that where the undertaking benefiting from the aid (a) receives aid of a high intensity, (b) faces no competition by reason of its monopoly, and (c) uses the aid in order to start competing with other undertakings in markets outside its home base, the negative condition laid down by Article 92(3)(c) of the Treaty cannot be regarded as satisfied, since a situation of that nature is contrary to the fundamental principle of a single market characterised by free competition.

(2) The exemption prior to 1989 from the one-month delay rule for the deduction of VAT

132 The applicant argues that in so far as the contested decision stated that the aid resulting from the exemption from the one-month delay rule for the deduction of VAT was compatible with the common market prior to 1989, on the same grounds

as aid in the form of the waiver from 1982 to 1985 of the sums deriving from rounding down bettors' winnings to the nearest ten centimes, it follows for the reasons set out above (see paragraphs 124 to 131) that the exemption has no better claim to be regarded as satisfying the conditions for the application of Article 92(3)(c) of the Treaty.

133 Furthermore, the argument put forward by the Commission in its defence that the positive condition to be met if aid is to be declared compatible with the common market under Article 92(3)(c) is satisfied in this case because the aid in question had '[as] its ultimate objective ... the improvement of horse-breeding rather than the simple continued operation of the PMU or the [racecourse undertakings] as such' is at variance with the reasoning set out in the contested decision, according to which the disruptive effects of the aid in question were not liable to outweigh any beneficial effects 'on the development of the sector', which includes the improvement of breeding as well as the taking of off-course bets.

134 Lastly, the applicant argues that, since the measure in question is an operating aid, it cannot be declared compatible with the common market save in exceptional circumstances (see *Twelfth Report on Competition Policy*, paragraph 160, and *Deufil*, cited above), which do not exist in the present case.

(3) The exemption from the housing levy up to 1989

135 The applicant maintains that, in so far as the Commission considered that the aid granted to the PMU in the form of exemption from the housing levy could, 'like the VAT derogation', benefit until 1989 from the derogation provided for by Article 92(3)(c) of the Treaty, the contested decision is vitiated by an error in law for the same reasons as those set out above in connection with the aid deriving

from rounding down bettors' winnings and the exemption from the VAT rules (paragraphs 124 to 133).

136 Furthermore, an ongoing operating aid of some FF 5 million per annum, such as the aid in question, can never satisfy the positive condition laid down by Article 92(3)(c) of the Treaty.

The Commission's pleas in law and arguments

137 The Commission relies on the considerations set out in the contested decision concerning the compatibility of the aid derived from rounding down bettors' winnings to the nearest ten centimes, on the basis of which the other two State aid measures were also declared compatible with the common market, to reject the applicant's arguments in their entirety. Apart from that the Commission addresses only the essential aspects of the application of Article 92(3)(c), namely, the lawfulness of the objectives pursued by the aid (the positive condition) and, secondly, the absence of disruptive effects on the market which are contrary to the Community interest (the negative condition). Lastly, it rejects the applicant's assertion that in adopting the decision the Commission failed to comply with its own guidelines as set out in the reports on competition policy referred to above.

(1) The lawfulness of the objectives pursued by the State aid measures in favour of the PMU, namely computerisation of the PMU and bloodstock improvement

138 The Commission relates that, from 1930 until the beginning of the 1980s, the PMU processed bets manually, creating difficulties for its operations and entailing costs representing some 60% of the PMU's total operating expenses. In order to overcome these difficulties the PMU decided in 1972 to computerise all its operations,

a decision which, according to the Commission, was not in any way intended to enable it to expand its operations outside France, but was necessary in order to adjust to the economic and technical trends on the national market. Those measures enabled a more reliable system to be set up, making it possible to provide a service better suited to the requirements of bettors, described in the contested decision as 'the direct and indirect effects of the aid in developing all the economic [activities in] the sector' and, secondly, an increase in the revenue of the French State, which is in the Community interest since it is always preferable for any economic activity to have an efficient organisation.

139 According to the Commission, the PMU's management costs decreased constantly after 1986 because of the computerisation of the PMU's collection and processing operations: from 5.95% in 1986 they declined to 5.45% in 1990, representing a reduction in expenses of some FF 170 million, enabling the racecourse undertakings to devote additional resources to their function of encouraging the improvement of bloodstock.

(2) Lack of disruptive effect on the market

140 The Commission submits that, in so far as the PMU's operations were confined before 1989 to France and there was no competition between the PMU and other operators in France or elsewhere, the Commission was entitled to conclude that the measures had no significant effect on trade between Member States, and it was merely the absence of a *de minimis* rule as regards State aid that led the Commission to regard the measures in question as State aid, and ultimately to declare them compatible with the common market.

141 As regards the applicant's assertion that, according to statements made in May 1987 by representatives of the PMU (see above, paragraph 130), the assistance with regard to the PMU's computerisation had disruptive effects on the market since it enabled the PMU to expand abroad, the Commission argues that the process of