

Commission Decision (EU) 2020/1671 of 2 August 2019 on State aid SA.47867 2018/C (ex 2017/FC) granted by France to Ryanair and Airport Marketing Services (notified under document C(2019) 5729) (Only the French text is authentic) (Text with EEA relevance)

- Article 1 The measures implemented by France on the basis of the...
- Article 2 (1) France shall recover the aid referred to in Article 1...
- Article 3 (1) Recovery of the aid referred to in Article 1 shall...
- Article 4 (1) Within two months of notification of this Decision, France...
- Article 5 This Decision is addressed to the French Republic.
- Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2020/1671. (See end of Document for details)

- (1) [OJ C 406, 9.11.2018, p. 17.](#)
- (2) This complaint was submitted as a supplement to a previous complaint lodged on 27 November 2009 (SA.30328 (2010/CP)).
- (3) See footnote 1.
- (4) Air Algérie, Air Arabia, Air France, Air France Hop!, Aer Lingus, British Airways, Chailair Aviation, easyJet, Eurowings, KLM, Norwegian, Royal Air Maroc, SAS Scandinavian Airlines, Transavia, TUI fly, Ural Airlines, and Volotea (source: <https://www.montpellier.aeroport.fr/vols-destinations/compagnies-aeriennes-montpellier/>, visited on 1 July 2019).
- (5) Airports where at least one Ryanair aircraft and its crew are permanently based.
- (6) According to information received from the French authorities, the number of Ryanair passengers was as follows between 2002 and 2009: [...] (2002), [...] (2003), [...] (2004), [...] (2005), [...] (2006), [...] (2007), [...] (2008), [...] (2009).
- (7) In December 2016, the Chambers of Commerce and Industry in Hérault (Béziers, Montpellier and Sète) merged into a single ‘Chamber of Commerce and Industry of Hérault’, which is based in Montpellier and has branch offices in Sète and Béziers.
- (8) This region resulted from the merger of the Languedoc-Roussillon and Midi-Pyrénées regions in 2014.
- (9) Formerly the Communauté de communes du Pays de l’Or.
- (10) Formerly the Communauté d’agglomération de Montpellier.
- (11) See <https://www.montpellier.aeroport.fr/societe-aeroport/aeroport-montpellier-mediterranee/presentation-aeroport-montpellier/> (visited on 1 July 2019).
- (12) The APFTE is governed by the Law of 1 July 1901 on association agreements and by its implementing decree of 16 August 1901.
- (13) Article 3 of the constitution.
- (14) These intentions are clear from several documents relating to the APFTE’s operation, in particular the minutes of the APFTE’s inaugural General Meeting of 24 June 2010: ‘Since 2001, the Chamber of Commerce and Industry of Montpellier had encouraged the operation of low-cost airlines at Montpellier Méditerranée Airport. It had taken this approach in order to develop the airport given that it was the airport concession-holder. In July 2009, the CCIM had become a minority shareholder in the public limited company with supervisory board and board of management Aéroport Montpellier Méditerranée, owing to its national ranking. In other words, as the CCIM was no longer the airport concession-holder, it was no longer able to conclude agreements with low-cost airlines. It had therefore entered into discussions with the Regional Prefecture and all local authorities with a view to setting up a legal structure that could continue with the online marketing agreements.’ See also the record of the CCIM’s General Meeting of 29 March 2011: ‘The Association for the Promotion of Tourist and Economic Flows (APFTE) had the aim of increasing the number of tourists arriving by air in particular. The association had taken over the agreements concluded by the CCIM with regard to promotion aimed at customers of airlines serving the airport. There have been two agreements to date: the first with AIRPORT MARKETING SERVICES, for routes served by Ryanair, and the second with [...], for the route to [...].’
- (15) See also recital 195 for an agreement concluded with a marketing company unconnected with air transport, which has never been implemented.
- (16) See the record of the CCIM’s General Meeting of 26 May 2010, p. 6: ‘The CCIM was the only party entering into agreements with the various marketing companies to promote tourism in our area. At the same time, the CCIM concluded agreements with the local authorities involved in promoting tourist flows. The CGEFI [General Economic and Financial Inspectorate] had taken the view that the CCIM was taking both legal and financial risks when it was no longer the concession-holder. However, the importance of these flows for local tourism was generally acknowledged. The cost of marketing amounted to EUR 1,8 million to date, but the economic benefits had been in the order of EUR 60 million. The CCIM and the local authorities agreed that this approach should be continued.’ See also the minutes of the Regional Council of Languedoc-Roussillon of 20 July 2012, p. 1: ‘In view of the changes in the management of Montpellier airport, an Association for the Promotion of Tourist and Economic Flows (APFTE) had been set up to continue the work of promoting the area carried on with the airlines serving Montpellier airport.’

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- (17) These intentions are clear from several documents relating to the workings of the APFTE, in particular the minutes of the APFTE's inaugural General Meeting, on 24 June 2010: [The CCIM representative (who was elected President of the APFTE during this meeting)] welcomed all the participants and thanked them for having responded to the invitation, despite the very short notice. Tourist flows, i.e. customers coming mainly from northern Europe, brought to the region by low-cost airlines, were very important not only for all undertakings involved in tourism, but also for those involved in trade and property. 'Since 2001, the Chamber of Commerce and Industry of Montpellier had encouraged the operation of low-cost airlines at Montpellier Méditerranée Airport. It had taken this approach in order to develop the airport given that it was the airport concession-holder. In July 2009, the CCIM had become a minority shareholder in the public limited company with supervisory board and board of management Aéroport Montpellier Méditerranée, owing to its national ranking. In other words, as the CCIM was no longer the airport concession-holder, it was no longer able to conclude agreements with low-cost airlines. It had therefore entered into discussions with the Regional Prefecture and all local authorities with a view to setting up a legal structure that could continue with the online marketing agreements. This structure should be in the form of an association with three collegial bodies in order to meet the legal requirements imposed by the Fillon circular of January 2010 [...].'
- With regard to the operation of the marketing agreements concluded with the airlines, the same minutes state as follows: 'Mr [...] spoke to say that he had been involved with the marketing agreements since 2001. These agreements were intended mainly to secure the advertising of Montpellier as a destination on the websites of various low-cost airlines. In return, and as with any kind of advertising on any type of media, invoices were issued for the service provided. Whatever the difficulties and the charges applied by the low-cost airlines, the benefits for local businesses were very significant. The association was currently the structure best suited to meeting the legal requirements, and would boost the area's development through this low-cost momentum' [...].
- See also the public statement of the President of the APFTE, quoted in an article in *La Tribune Occitanie-Montpellier* of 8 April 2015: 'As local authorities could not conclude marketing agreements with airlines, the method identified involved an association', says [...], President of the APFTE. 'Subsidies are allocated from local authority budgets and the association signs the online marketing agreements. I can't see how this could be regarded as defrauding the taxpayer! The APFTE was set up by the CCIM in agreement with the State authorities, in particular the prefect, [...]. The file has just been passed to Montpellier Méditerranée Métropole.' (see <https://objectif-languedoc-roussillon.latribune.fr/entreprises/tourisme/2015-04-08/apres-le-gel-du-soutien-aux-compagnies-low-cost-a-montpellier-le-president-de-l-apfte-reagit.html>, visited on 1 July 2019).
- See also the record of the Council of the Communauté de communes de Pays de l'Or of 23 June 2010, explaining the positive impact of the flow of low-cost airline passengers on the region: 'The operation of these airlines requires a financial contribution from local authorities in the form of start-up aid for new routes, granted for a maximum period of three years, followed by aid to promote the route, to be provided by purchasing advertising space on airline websites.'
- (18) See the minutes of the APFTE's inaugural General Meeting of 24 June 2010: 'Whatever the difficulties and the charges applied by the low-cost airlines, the benefits for local businesses were very significant.'
- (19) See the minutes of the APFTE's inaugural General Meeting of 24 June 2010: 'The CCIM had taken the decision to set up this association with private businesses initially, because the local authorities and semi-public bodies would have to consider the appointment of their representatives, which would take some time.'
- (20) See the record of the CCIM's General Meeting of 29 November 2017 ('The multiple investigations opened in France by the European Commission and the complaints made by Anticor [French anti-corruption association] against the APFTE and several of its funders had led the Prefect of Hérault in 2016 to ask the members of the APFTE to find a new method of funding these area marketing campaigns instead of using the APFTE. This firm request became a requirement in 2018'), the minutes of the CCIM's General Meeting of 24 January 2018, the minutes of the General Meetings of the Communauté d'agglomération du Pays de l'Or of 28 June 2017 and 22 February 2018, and the minutes of the Board meeting of 25 April 2017.
- (21) The exact number of members varies from year to year.
- (22) This is stated in the minutes of the APFTE's inaugural General Meeting of 24 June 2010.
- (23) See the record of the CCIM's General Meeting of 2 February 2011: 'This association was formed to meet the demands of the General Economic and Financial Inspectorate, which no longer wanted the CCIM, which had become a minority shareholder in the public limited company

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Aéroport Montpellier Méditerranée, to continue as a party to agreements with low-cost airlines. The association was set up in July 2010 and the CCIM appointed Mr [President of the APFTE from June 2010 to March 2011] and Mr [...]. They had now to be replaced. The meeting of the Executive Committee on 27 January 2011 proposed to the General Meeting that the following should be appointed as representatives of the CCIM in the APFTE: [the person who was President of the APFTE between April 2011 and February 2012] and [...].’

- (24) See the record of the preparatory technical meeting of 28 March 2011 prior to the APFTE’s Governance Committee meeting. This technical meeting brought together the Executive Committee of the APFTE, representatives of all the local authorities funding the APFTE (i.e. elected officers of the Region, the Department, the Communauté d’agglomération de Montpellier, the Communauté de communes du Pays de l’Or, and the City of Montpellier) and of the CCIM, and also a representative of Montpellier airport. At the end of the meeting, it was recorded that the Governance Committee ‘should initiate a discussion regarding the development of tourist flows and make strategic choices on the various routes proposed by the airport’.
- (25) See the minutes of the APFTE’s Governance Committee meeting of 8 April 2011.
- (26) See the minutes of the APFTE’s Board meeting of 18 March 2011: ‘This Committee would choose the destinations for the promotion of tourist and economic flows. The Agglomération de Montpellier refused to fund any action plans for the development of the area that it had not approved. The Department and the Region agreed that this Committee needed to be formed. The funding bodies wanted to be involved in creating a proper strategy for the tourist and economic development of their area. They did not want simply to endorse the choices made by Montpellier Airport.’ See also the minutes of the APFTE’s General Meeting of 18 March 2011: ‘The local authorities were the funding bodies, and their participation and support were essential to this work.’ ‘The formation of a governance committee should also allow the funders to take part in decisions on the routes to be opened.’
- (27) See the conclusion in the record of the preparatory technical meeting of 28 March 2011 prior to the Governance Committee meeting: ‘The Governance Committee should initiate a discussion regarding the development of tourist flows and make strategic choices on the various routes proposed by the airport.’
- (28) See recital 40.
- (29) See the record of the first Governance Committee meeting of 8 April 2011: ‘Mr[...], First Vice-President of the Languedoc-Roussillon Region, stated that he refused to approve the choices made by the Airport Company without prior discussion, and that if the method used to date were to continue the Region would no longer provide any funding.’ ‘[...], President of the CCIM, wanted this Committee to decide the strategic areas of development.’
- (30) Recitals 106 et seq.
- (31) See Table 4 in recital 82.
- (32) See also recitals 82, 107 et seq.
- (33) See the record of the preparatory technical meeting of 28 March 2011 prior to the Governance Committee meeting: ‘On 8 April 2011, the Governance Committee will decide on the development plan for the promotion of tourist flows.’
- (34) See for example resolutions No 10397 (29 September 2011) and No 11796 (25 July 2013) of the Communauté d’agglomération de Montpellier. In its resolution of 29 September 2011 approving a contribution of EUR 550 000 to the APFTE’s budget for 2011, the Council of the Communauté d’agglomération de Montpellier stated as follows: ‘The contribution of the Communauté d’agglomération de Montpellier (CAM) for 2011 is a maximum 25% of the total amount of the online marketing agreements for 2011, for which the estimated amount is EUR 2 095 972. This contribution is limited to a maximum of EUR 550 000 for the forward programme approved by the General Assembly on 20 April 2011. The programme of destinations annexed to the agreement comprises the [...], Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford, [...] and Birmingham routes. The contribution will be paid in proportion to the number of months during which these activities are carried out and on presentation of the corresponding invoices.’
- (35) For the Region (Regional Council of Languedoc-Roussillon/Region of Occitania), the Commission has funding agreements concluded with the APFTE for the 2011 to 2017 budgets. For the Department (Departmental Council of Hérault), the Commission has funding agreements concluded with the APFTE for the 2010 and 2014 budgets.

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For the Communauté d'agglomération de Montpellier/Montpellier Méditerranée Métropole, the Commission has funding agreements concluded with the APFTE for the 2010 to 2016 budget years. For the Communauté d'agglomération du Pays de l'Or, the Commission has funding agreements concluded with the APFTE for the 2010 to 2018 budget years.

For the City of Montpellier, the Commission has funding agreements concluded with the APFTE for the 2011 to 2015 budget years.

For the CCIM, the French authorities have not provided any agreements.

Other information that the Commission has obtained on the workings of the APFTE shows that the absence of agreements in the Commission's file does not mean that, for the year in question, the public body did not pay any subsidies (see Table 3 for the information received from the French authorities on the contributions of the public members to the APFTE's budget).

- (36) For 2010, the CCIM did not contribute to the budget from the setting up of the APFTE, but advanced funds to the APFTE until the local authorities had approved their budgets, in particular so that the agreements concluded with AMS could be funded and maintained.
- (37) The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2011 budget was approved on 18 July 2011.
- (38) See the minutes of the APFTE's General Meeting of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford.'
- (39) The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2012 budget was approved on 31 January 2012.
- (40) See the minutes of the APFTE's General Meeting of 4 July 2013: 'The budget and the online marketing action programme were decided. The action programme focused on: RYANAIR: Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham.'
- (41) The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2013 budget was approved on 4 February 2013.
- (42) The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2014 budget was approved on 20 June 2014.
- (43) The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2015 budget was approved on 28 January 2015.
- (44) The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2016 budget was approved on 23 June 2016.
- (45) The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2017 budget was approved on 28 June 2017.
- (46) See recitals 74 et seq. for a description of the respective agreements concluded with Ryanair in 2017.
- (47) This is apparent from the record of the CCIM's General Meeting of 18 January 2018.
- (48) See the minutes of the APFTE's Board meeting of 18 March 2011: 'This Committee would choose the destinations for the promotion of tourist and economic flows. The Agglomération de Montpellier refused to fund any action plans for the development of the area that it had not approved. The Department and the Region agreed that this Committee needed to be formed. The funding bodies wanted to be involved in creating a proper strategy for the tourist and economic development of their area. They did not want simply to endorse the choices made by Montpellier Airport.'
- (49) Clause 1.3 of the agreement.
- (50) Clause 5.3 of the agreement.

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- (51) Amendment of 25 February 2013.
- (52) See for example the record of the APFTE's Executive Committee meeting of 4 July 2013, p. 1: '[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire', and p. 2: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.'. See also the minutes of the APFTE's General Meeting of 4 July 2013.
- (53) Following the invitation to tender, this '[...]' lot was awarded to the same airline with which the APFTE had previously concluded the marketing agreement for that destination.
- (54) See the record of the APFTE's Board meeting of 24 February 2014, p. 1.
- (55) See recital 16.
- (56) Yield management aims to encourage Ryanair's potential customers to choose a specific destination at a price that is ideal for Ryanair. A key element of Ryanair's yield management is to determine the maximum price that passengers are prepared to pay for their plane ticket while ensuring optimal loading of the aircraft in order to maximise Ryanair's revenues and capture the European market. See Ryanair's 2011 annual report: 'Ryanair sets fares on the basis of the demand for particular flights and by reference to the period remaining to the date of departure of the flight, with higher fares charged on flights with higher levels of demand and for bookings made nearer to the date of departure. Ryanair also periodically runs special promotional fare campaigns.' (https://www.ryanair.com/doc/investor/2011/Annual_Report_2011_Final.pdf, visited on 1 July 2019).
- (57) Communication from the Commission – Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).
- (58) See judgment of the General Court of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290, upheld by judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01, ECLI:EU:C:2002:617, paragraphs 75 to 79; judgment of the General Court of 24 March 2011, *Mitteldeutsche Flughafen AG and Flughafen Leipzig Halle GmbH v Commission*, ECLI:EU:T:2011:117, Joined Cases T-443/08 and T-455/08, paragraphs 93 and 94.
- (59) OJ C 99, 4.4.2014, p. 3.
- (60) See judgment of the Court of Justice of 22 March 1977, *Steinike & Weinlig*, C-78/76, ECLI:EU:C:1977:52, paragraphs 21 et seq.; judgment of the Court of Justice of 2 February 1988, *Kwekerij Gebroeders van der Kooy BV v Commission*, C-67/85, C-68/85 and C-70/85, ECLI:EU:C:1988:38, paragraphs 35-36.
- (61) See judgment of the General Court of 25 March 1999, *Forges de Clabecq SA v Commission*, T-37/97, ECLI:EU:T:1999:66, paragraph 69.
- (62) See in particular judgment of the Court of Justice of 16 May 2002, *France v Commission* (Stardust Marine), C-482/99, ECLI:EU:C:2002:294, paragraphs 55 and 56.
- (63) See footnotes 14 et seq.
- (64) See also footnote 17.
- (65) See also the public statement of the President of the APFTE at the time, quoted in an article published online on the website of the regional newspaper La Tribune Occitanie-Montpellier on 8 April 2015: 'As local authorities could not conclude marketing agreements with airlines, the method identified involved an association', says [...], President of the APFTE. 'Subsidies are allocated from local authority budgets and the association signs the online marketing agreements. I can't see how this could be regarded as defrauding the taxpayer! The APFTE was set up by the CCIM in agreement with the State authorities, in particular the prefect, [...]. The file has just been passed to Montpellier Méditerranée Métropole.' (<https://objectif-languedoc-roussillon.latribune.fr/entreprises/tourisme/2015-04-08/apres-le-gel-du-soutien-aux-compagnies-low-cost-a-montpellier-le-president-de-l-apfte-regagit.html>, visited on 1 July 2019).
- (66) See recital 27.
- (67) See recitals 26 et seq.

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- (68) See Article 2(1)(1) and (4) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (*OJ L 94, 28.3.2014, p. 65*), and previously Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (*OJ L 134, 30.4.2004, p. 114*).
- (69) See also recital 197.
- (70) Article 6 of the constitution of the APFTE.
- (71) An article reports that the transfer of power between the outgoing President and the new President of the APFTE was conducted by the President of the CCIM in the presence of the elected members and representatives of the partner local authorities on 11 December 2012. (see <https://heraultjuridique.com/entreprises/recherche/presidence-apfte-aeroport-de-montpellier-jean-yves-labattut-succede-a-gerard-maurice/>, published online in *Hérault Juridique* on 10 December 2012, visited on 1 July 2019). The same article states that the two APFTE Presidents were also elected members of the CCIM.
- (72) See the record of the preparatory technical meeting of 28 March 2011 prior to the APFTE's Governance Committee meeting: The purpose of the Governance Committee was to 'bring together the local authorities, as funders of the [APFTE]. This committee's objective was to guide and confirm the strategic choices made in the development of routes and the associated budget.'
- (73) See for example the discussions on tourist flows [...] and [...], described in recital 136.
- (74) See also recital 40 for these last two committees.
- (75) See recital 31.
- (76) See recital 41 for a description of the decision-making procedure followed within the APFTE in order to conclude marketing agreements, according to the constitution of the association and the French authorities.
- (77) See for example the APFTE's minutes of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford.' See also the minutes of the APFTE's General Meeting of 29 January 2013: 'On the basis of this budget, the local authorities chose to maintain the tourist flows from Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham [...]. Routes to [...] and [...] were proposed. These flows were put forward by tourism enterprises that regarded these destinations as having a promising tourist public. The budget was not sufficient to select these two flows [...].'
- (78) See the minutes of the CCIM's General Meeting of 15 April 2013.
- (79) See the minutes of the APFTE's General Meeting of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford.'
- (80) See the minutes of the APFTE's General Meeting of 4 July 2013: 'The budget and the online marketing action programme were decided. The action programme focused on: RYANAIR: Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham.'
- (81) The documents on the workings of the APFTE show that, whilst 21 private members took part in the APFTE's General Meeting in 2011, their number had dwindled to between 4 and 9 by 2013.
- (82) See for example the APFTE's minutes of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt Hahn and Leeds-Bradford.' See also the minutes of the APFTE's General Meeting of 29 January 2013: 'On the basis of this budget, the local authorities chose to maintain the tourist flows from Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and

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Birmingham [...]. Routes to [...] and [...] were proposed. These flows were put forward by tourism enterprises that regarded these destinations as having a promising tourist public. The budget was not sufficient to select these two flows [...].’

- (83) In the context of its commitment to the APFTE, the CCIM was carrying out its public policy task and acting under the supervision of the prefect, as shown by the documents received from the French authorities. The Commission must therefore consider the CCIM is as a public body for the purposes of this assessment. See also judgment of the General Court of 13 December 2018, *Ryanair and Airport Marketing Services v Commission*, T-53/16, ECLI:EU:T:2018:943, paragraphs 81 et seq.
- (84) See for example resolutions No 10397 (29 September 2011) and No 11796 (25 July 2013) of the Communauté d’agglomération de Montpellier. In its resolution of 29 September 2011 approving a contribution of EUR 550 000 to the APFTE’s budget for 2011, the Council of the Communauté d’agglomération de Montpellier stated as follows: ‘The contribution of the Communauté d’agglomération de Montpellier (CAM) for 2011 is a maximum 25% of the total amount of the online marketing agreements for 2011, for which the estimated amount is EUR 2 095 972. This contribution is limited to a maximum of EUR 550 000 for the forward programme approved by the General Assembly on 20 April 2011. The programme of destinations annexed to the agreement comprises the [...], Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford, [...] and Birmingham routes. The contribution will be paid in proportion to the number of months during which these activities are carried out and on presentation of the corresponding invoices.’
- (85) See also recitals 107 et seq. on the imputability of the measures to the State.
- (86) See recital 38.
- (87) See also judgment of the Court of Justice of 13 September 2017, *ENEA v Prezes Urzędu Regulacji Energetyki*, C-329/15, ECLI:EU:C:2017:671, paragraph 23; judgment of the Court of Justice of 22 March 1977, *Steinike & Weinlig v Germany*, C-78/76, ECLI:EU:C:1977:52, paragraph 21; judgment of the Court of Justice of 13 March 2001, *PreussenElektra AG v Schleswig AG*, C-379/98, ECLI:EU:C:2001:160, paragraph 58.
- (88) In accordance with paragraphs 57 et seq. of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (C/2016/2946) (OJ C 262, 19.7.2016, p. 1).
- (89) See recital 59 of the opening decision.
- (90) See in particular judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.
- (91) See Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 (2012/C) (ex 2012/NN) implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited (OJ L 113, 27.4.2016, p. 32), recitals 314 to 315.
- (92) Articles 1 and 5.3 of the 2010 agreement.
- (93) The Commission will therefore use ‘Ryanair’ in the rest of the assessment to denote the beneficiary of the measures in question.
- (94) This has been expressly confirmed by the APFTE.
- (95) See the proceedings of the CCIM’s General Meeting of 26 May 2010, p. 6: ‘The CCIM was the only party entering into agreements with the various marketing companies to promote tourism in our area. At the same time, the CCIM concluded agreements with the local authorities involved in promoting tourist flows. The CGEFI [General Economic and Financial Inspectorate] had taken the view that the CCIM was taking both legal and financial risks when it was no longer the concession-holder. However, the importance of these flows for local tourism was generally acknowledged. The cost of marketing amounted to EUR 1,8 million to date, but the economic benefits had been in the order of EUR 60 million. The CCIM and the local authorities agreed that this approach should be continued.’
- (96) The situation of Montpellier airport is therefore different from the situation of Charleroi airport in Case T-196/04, *Ryanair v Commission*, ECLI:EU:T:2008:585, paragraphs 53 to 61, in which the General Court, in its judgment of 17 December 2008, regarded the Walloon Region and the airport operator BSCA as one single entity for the purposes of applying the principle of the private

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- investor in a market economy, because the BSCA's shareholding reflected the dominant influence of the Walloon Region.
- (97) This figure also includes the contribution from the City of Montpellier. The City of Montpellier is not a shareholder in AMM. The French authorities have provided information only on the combined contributions of the City of Montpellier and Montpellier Méditerranée Métropole.
- (98) See recitals 23 and 45.
- (99) See Section 3.5 of the 2014 guidelines.
- (100) See in particular judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.
- (101) C/2016/2946 (OJ C 262, 19.7.2016, p. 1).
- (102) See also recital 117.
- (103) See recitals 164, 24 and recitals 45 et seq.
- (104) See judgment of the General Court of 1 March 2017, *SNCM v Commission*, T-454/13, ECLI:EU:T:2017:134, paragraphs 232 and 233.
- (105) See judgment of the Court of Justice of 2 September 2010, *Commission v Deutsche Post AG*, C-399/08, ECLI:EU:C:2010:481, paragraph 41 and judgment of the Court of Justice of 9 June 2011, *Comitato 'Venezia vuole vivere' and others v Commission*, C-71/09 P, ECLI:EU:C:2011:368, paragraph 92.
- (106) See paragraph 82 of the Notice on the notion of State aid and the case-law cited therein.
- (107) See judgment of the General Court of 5 August 2003, *P&O v Commission*, T-116/01, ECLI:EU:T:2003:217, paragraphs 116 and 117.
- (108) The formal investigation has found evidence that the actual advertising effect of the marketing campaigns was small (see recitals 272 et seq.).
- (109) For example, the record of the APFTE's Funders Committee meeting of 15 October 2012 show that the APFTE's website, which was officially intended to promote Montpellier and its surrounding area, had been designed by [the CCIM] without any real marketing function, but rather to officially justify the APFTE's 'marketing' expenditure: '[The President of the APFTE] broached the subject of the website and its maintenance. This website was needed in order to justify the communication expenditure incurred in order to bring significant numbers of European customers to the greater Montpellier area. It was proposed that the website should be improved and become a full-scale promotional website for the area.'
- (110) See for example the record of the Regional Council of Languedoc-Roussillon of 20 July 2012, p. 1: 'In view of the changes in the management of Montpellier airport, an Association for the Promotion of Tourist and Economic Flows (APFTE) had been set up to continue the work of promoting the area carried on with the airlines serving Montpellier airport'; and p. 2: 'The flight routes through which the promotion will occur are Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford, Birmingham and [...]'. See also recital 28.
- (111) See also the record of the Council of the Communauté de communes de Pays de l'Or of 23 June 2010; this document explains the contribution of low-cost traffic to the region, and states as follows: 'The operation of these airlines requires a financial contribution from local authorities in the form of start-up aid for new routes, granted for a maximum period of three years, followed by aid to promote the route, to be provided by purchasing advertising space on airline websites.' See also the statement of the former President of the APFTE made in an article in the newspaper 20 minutes, entitled 'marketing to attract customers' and published online on 23 November 2011: '[The President of the APFTE] rejects accusations of "blackmail" and "disguised subsidies". He explains: "If we don't conduct these marketing campaigns, some airlines will stay, but others will no longer be interested in Montpellier because the routes will no longer be attractive."' (see <https://www.20minutes.fr/montpellier/828538-20111123-marketing-attirer-clientele>, visited on 1 July 2019). See also the minutes of the APFTE's inaugural General Meeting of 24 June 2010: 'Whatever the difficulties and the charges applied by the low-cost airlines, the benefits for local businesses were very significant. The association was currently the structure best suited to meeting the legal requirements, and would boost the area's development through this "low-cost" momentum'.
- (112) See for example the record of the Council of the Communauté d'agglomération du Pays de l'Or of 28 June 2013, which, with regard to 'expenditure to support economic and tourist flows

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- (2013 forecast)' clearly refers to 'the Ryanair routes (Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham)'. See also the minutes of the APFTE's inaugural General Meeting of 24 June 2010 ('Tourist flows, i.e. customers coming mainly from northern Europe, brought to the region by low-cost airlines, were very important not only for all undertakings involved in tourism, but also for those involved in trade and property').
- (113) See for example the minutes of the APFTE's General Meeting of 18 March 2011 ('The formation of a governance committee should also allow the funders to take part in decisions on the routes to be opened'), the resolution of the Council of the Communauté d'Agglomération du Pays de l'Or of 28 June 2013 (which, with regard to 'expenditure to support economic and tourist flows (2013 forecast)' clearly refer to 'the Ryanair routes (Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham)'), and the record of the preparatory technical meeting prior to the first meeting of the Governance Committee of 28 March 2011 ('The Governance Committee should initiate a discussion regarding the development of tourist flows and make strategic choices on the various routes proposed by the airport.').
- (114) BIPE, 'Etude des retombées socio-économiques du transport aérien en région Languedoc-Roussillon' [Study of the socioeconomic benefits of air transport in the Languedoc-Roussillon region], 4 April 2013 (see <http://montpellier.cci.fr/fichier/retombeesecoairportlr2012pdf/download>, visited on 1 July 2019).
- (115) The Commission would point out that the agreement concluded with the undertaking [...] in 2017 was not implemented, owing to the APFTE's failure to issue purchase orders (see recital 81).
- (116) See recitals 56, 59 and 65.
- (117) See the proceedings of the General Meeting of the Chamber of Commerce and Industry of Hérault of 24 January 2018.
- (118) In the comments it submitted when the formal investigation was opened under Article 108(2) TFEU, Ryanair, as part of its argument that the situation of Montpellier airport was comparable to that of other airports for purposes of applying the market economy operator principle, confirms that it has a wide choice of airports in Europe (United Kingdom, Spain, France and [...]), which are in competition with each other for Ryanair's routes and capacity and which, from Ryanair's point of view, are substitutable.
- (119) See Article 1(2) of the Decision ([OJ L 113, 27.4.2016, p. 32](#)).
- (120) The decision was upheld by the judgment of the General Court of 13 December 2018, *Ryanair and AMS v Commission*, T-53/16, ECLI:EU:T:2018:943.
- (121) See also the minutes of the APFTE's General Meeting of 19 October 2011, p. 6: 'For 2012 ... the Association therefore had a budget of EUR [...], including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford'; or the record of the APFTE's bureau meeting of 4 July 2013, p. 1: '[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire', and p. 2: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.'
- (122) See p. 1 of the record: '[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire', and p. 2: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.' See also the minutes of the APFTE's General Meeting of 4 July 2013, p. 3: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination. The President gave the members of the General Meeting an undertaking that a standard invitation to tender dossier would be sent, for information purposes, to all the local authorities, as requested by the Regional Council.'
- (123) See recitals 16 and 74.
- (124) See for example Commission Decision (EU) 2015/1227 of 23 July 2014 on State aid SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia ([OJ L 201, 30.7.2015, p. 109](#)). Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 (2012/C) (ex 2012/

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- NN) implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited (OJ L 113, 27.4.2016, p. 32); Commission Decision (EU) 2015/1584 of 1 October 2014 on State aid SA.23098 (C 37/07) (ex NN 36/07) implemented by Italy in favour of Società di Gestione dell'Aeroporto di Alghero So.Ge.A.AL S.p.A. and various air carriers operating at Alghero airport ((OJ L 250, 25.09.2015, p. 38) Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA.33983 (2013/C) (ex 2012/NN) (ex 2011/N) Compensation paid to Sardinian airports for public service obligations (SGEIs) (OJ L 268, 18.10.2017, p. 1).
- (125) See recital 137.
- (126) It should be noted that by the time the lots were awarded the Birmingham route had already been withdrawn (November 2013).
- (127) See recitals 63 et seq., in particular: 'In all cases, tenderers must include a link to the APFTE's website (go to Montpellier) on their own website'.
- (128) The Commission would point out that the agreement concluded with the undertaking [...] in 2017 was not implemented, owing to the APFTE's failure to issue purchase orders (see recital 81).
- (129) See recitals 26 et seq. and 192 et seq.
- (130) See recitals 77 et seq.
- (131) BIPE, 'Etude des retombées socio-économiques du transport aérien en région Languedoc-Roussillon' [Study of the socioeconomic benefits of air transport in the Languedoc-Roussillon region], 4 April 2013 (see <http://montpellier.cci.fr/fichier/retombeeseoairportlr2012pdf/download>, visited on 1 July 2019). See also recital 290.
- (132) See Table 2.
- (133) See recitals 86 and 274.
- (134) Ryanair operates flights from Béziers to the following destinations in northern Europe: Düsseldorf-Weeze, Brussels-Charleroi, Bristol, London-Luton, London-Stansted, Manchester, Edinburgh, Stockholm-Skavsta and Paris-Beauvais. The northern European destinations served by Ryanair from Nîmes airport are Brussels-Charleroi, London-Stansted and London-Luton.
- (135) See recital 207.
- (136) See Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 (2012/C) (ex 2012/NN) implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited (OJ L 113, 27.4.2016, p. 32), recitals 102, 547 and 548.
- (137) Commission Decision (EU) 2016/287 of 15 October 2014 on State aid SA.26500 – 2012/C (ex 2011/NN, ex CP 227/2008) implemented by Germany for Flugplatz Altenburg-Nobitz GmbH and Ryanair Ltd (OJ L 59, 4.3.2016, p. 22).
- (138) See judgment of the General Court of 13 December 2018, *Ryanair and AMS v Commission*, T-165/16, ECLI:EU:T:2018:952, paragraph 258.
- (139) See recitals 56, 59 and 60.
- (140) See recitals 65 et seq.
- (141) See <https://www.montpellier-tourisme.fr/Preparer-Reserver/Pro-Presse/Chiffres-cles-Observatoire>, visited on 1 July 2019.
- (142) See recitals 273 et seq.
- (143) See footnote 56.
- (144) BIPE, 'Etude des retombées socio-économiques du transport aérien en région Languedoc-Roussillon' [Study of the socioeconomic benefits of air transport in the Languedoc-Roussillon region], 4 April 2013 (see <http://montpellier.cci.fr/fichier/retombeeseoairportlr2012pdf/download>, visited on 1 July 2019).
- (145) According to page 32 of the study, out of EUR 261 million spent by visitors arriving by air, passengers on Ryanair flights spent EUR 28 million in total (EUR 12 million spent by passengers from Brussels-Charleroi, EUR 7 million spent by passengers from Frankfurt-Hahn, EUR 5 million spent by passengers from Birmingham, and EUR 4 million spent by passengers from Leeds-

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- Bradford), compared for example with EUR 80 million spent by passengers from Paris-Orly, EUR 63 million spent by passengers from Paris-Roissy, or EUR 25 million spent by passengers from London-Gatwick (plus EUR 7 million spent by passengers from London-Luton).
- (146) See pages 42 and 43 of the report, which is based on INSEE statistics <https://www.montpellier-tourisme.fr/Media/Files/Observatoire/Rapport-d-activite-2017> (visited on 1 July 2019).
- (147) Article 3 of the constitution.
- (148) See the statistics published on the website <https://www.montpellier-tourisme.fr/Preparer-Reserver/Pro-Presse/Chiffres-cles-Observatoire> (visited on 1 July 2019).
- (149) See recital 255.
- (150) According to the report, the ‘top 5 for overnight stays by foreign nationals in hotels’ are as follows: 1. Spain, 2. United Kingdom, 3. Germany, 4. the United States and 5. Belgium. The ‘top 5 for overnight stays by foreign nationals in holiday homes’ are as follows: 1. Belgium, 2. Spain, 3. Germany, 4. Italy and 5. United Kingdom.
- (151) See also recital 209.
- (152) See judgment of the General Court of 13 December 2018, *Ryanair and AMS v Commission*, T-165/16, ECLI:EU:T:2018:952, paragraph 258.
- (153) See also recital 235.
- (154) See footnote 56.
- (155) For example, according to the article by Jean Rieaucou ‘La Grande-Motte, une ville-station touristique’ [La Grande-Motte: a resort-city] (Norois, 2000, Poitiers, Vol. 47, No 187, pp. 341-352), the foreign tourists visiting the resort of La Grande-Motte near to Montpellier between 1996 and 1999 were mainly Belgian, Swiss, German, Dutch and British. In 2006, almost 60% of second homes in Hérault that belonged to owners living abroad had Belgian, German or British owners, out of an approximate total number of 5 500 second homes (Geneviève Prady, ‘Résidences secondaires : 30 000 propriétaires habitent à l’étranger’, les Cahiers Transport Aménagement en Languedoc-Roussillon, No 32, December 2006).
- (156) See for example Ryanair’s 2011 annual report, p. 44: ‘When Ryanair commences new routes, its load factors initially tend to be lower than those on its established routes and its advertising and other promotional costs tend to be higher, which may result in initial losses that could have a material negative impact on the Company’s results of operations as well as require a substantial amount of cash to fund. In addition, there can be no assurance that Ryanair’s low-fares service will be accepted on new routes. Ryanair also periodically runs special promotional fare campaigns, in particular in connection with the opening of new routes. Promotional fares may have the effect of increasing load factors and reducing Ryanair’s yield and passenger revenues on such routes during the periods that they are in effect. (See ‘Item 4. Information on the Company—Route System, Scheduling and Fares.’) Ryanair expects to have other substantial cash needs as it expands, including as regards the cash required to fund aircraft purchases or aircraft deposits related to the acquisition of additional Boeing 737-800s. There can be no assurance that the Company will have sufficient cash to make such expenditures and investments, and to the extent Ryanair is unable to expand its route system successfully, its future revenue and earnings growth will in turn be limited.’ (https://www.ryanair.com/doc/investor/2011/Annual_Report_2011_Final.pdf, visited on 1 July 2019). See also the 2000 annual report, p. 7.
- (157) See footnote 56.
- (158) See also footnote 56.
- (159) See for example Ryanair’s 2000 annual report, p. 8, or its 2011 annual report, p. 44.
- (160) See for example Ryanair’s 2011 annual report, p. 44: ‘When Ryanair commences new routes, its load factors initially tend to be lower than those on its established routes and its advertising and other promotional costs tend to be higher, which may result in initial losses that could have a material negative impact on the Company’s results of operations as well as require a substantial amount of cash to fund. In addition, there can be no assurance that Ryanair’s low-fares service will be accepted on new routes. Ryanair also periodically runs special promotional fare campaigns, in particular in connection with the opening of new routes. Promotional fares may have the effect of increasing load factors and reducing Ryanair’s yield and passenger revenues on such routes during the periods that they are in effect. See ‘Item 4. Information on the Company—Route System,

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Scheduling and Fares.’ Ryanair expects to have other substantial cash needs as it expands, including as regards the cash required to fund aircraft purchases or aircraft deposits related to the acquisition of additional Boeing 737-800s. There can be no assurance that the Company will have sufficient cash to make such expenditures and investments, and to the extent Ryanair is unable to expand its route system successfully, its future revenue and earnings growth will in turn be limited.’ (https://www.ryanair.com/doc/investor/2011/Annual_Report_2011_Final.pdf, visited on 1 July 2019). See also the 2000 annual report, p. 9.

- (161) See Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 (2012/C) (ex 2012/NN) implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited ([OJ L 113, 27.4.2016, p. 32](#)), recitals 102, 547 and 548.
- (162) See also paragraph 96 of the Notice on the notion of State aid.
- (163) See paragraph 89 of the Notice on the notion of State aid.
- (164) See also recitals 150 et seq.
- (165) The example given by Ryanair has not been accepted by the Commission, because it involved an invitation to tender for marketing in a region in which Ryanair was in fact present at two airports.
- (166) According to Ryanair, the prices of marketing campaigns on the Ryanair website are based on the CPM.
- (167) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU ([OJ L 248, 24.9.2015, p. 9](#)).
- (168) See the record of the APFTE’s Executive Committee meeting of 4 July 2013, p. 1: ‘[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire’, and p. 2: ‘As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.’
- (169) See judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraphs 60 et seq. See judgment of the Court of Justice of 30 June 2016, *Commission v Belgium*, C-270/15 P, ECLI:EU:C:2016:489, paragraph 49. See also judgment of the General Court of 13 December 2018, *Ryanair and Airport Marketing Services v Commission*, T-53/16, ECLI:EU:T:2018:943, paragraphs 165 et seq., and judgment of the General Court of 13 December 2018, *Ryanair and Airport Marketing Services v Commission*, T-165/15, ECLI:EU:T:2018:953, paragraphs 402 et seq.
- (170) See judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest (Flemish Region) v Commission*, T-214/95, ECLI:EU:T:1998:77.
- (171) See the non-confidential version of Ryanair’s comments of 15 January 2019: ‘Ryanair has a large choice of airports in Europe. Airports in the UK, Spain, France or Italy compete for Ryanair routes and capacity, and are substitutable from Ryanair’s perspective. The similarities between the Airport and these other airports are significant enough to render them comparable for MEO test purposes.’
- (172) Communication from the Commission – Community guidelines on financing of airports and start-up aid to airlines departing from regional airports ([OJ C 312, 9.12.2005, p. 1](#)).
- (173) See points 71 to 75 and 79(b) and (c) of the 2005 guidelines, and points 139, 140, 141 and 151 of the 2014 guidelines.
- (174) See point 79(b), (d) and (i) of the 2005 guidelines, and point 147 of the 2014 guidelines.
- (175) See point 79(g) and (h) and point 80 of the 2005 guidelines, and points 101, 150, 152 and 153 of the 2014 guidelines.
- (176) Judgment of the Court of Justice of 12 July 1973, *Commission v Germany*, C-70/72, ECLI:EU:C:1973:87, paragraph 13.
- (177) Judgment of the Court of Justice of 21 March 1990, *Belgium v Commission*, C-142/87, ECLI:EU:C:1990:125, paragraph 66.
- (178) Judgment of the Court of Justice of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.

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(179) See recital 156.

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