Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

14 September 2023 *

(Appeal – State aid – Article 107(1) TFEU – Sale of canned beverages to residents of the Kingdom of Denmark – Sale without deposit on condition that the beverages purchased are exported – Non-imposition of a fine – Concept of 'State aid' – Concept of 'State resources' – Decision declaring the absence of aid – Action for annulment)

In Joined Cases C-508/21 P and C-509/21 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 18 August 2021,

European Commission, represented by T. Maxian Rusche and B. Stromsky, acting as Agents,

appellant (C-508/21 P)

defendant at first instance (C-509/21 P),

Interessengemeinschaft der Grenzhändler (IGG), established in Flensburg (Germany), represented by M. Bauer and F. von Hammerstein, Rechtsanwälte,

appellant (C-509/21 P)

intervener at first instance (C-508/21 P),

the other parties to the proceedings being:

Dansk Erhverv, established in Copenhagen (Denmark), represented initially by T. Mygind and H. Peytz, advokaten, and subsequently by H. Peytz, advokat,

defendant at first instance (C-508/21 P and C-509/21 P),

Danmarks Naturfredningsforening, established in Copenhagen,

Federal Republic of Germany,

interveners at first instance (C-508/21 P and C-509/21 P),

THE COURT (Fifth Chamber),

* Language of the case: English.

composed of E. Regan, President of the Chamber, D. Gratsias, M. Ilešič, I. Jarukaitis and Z. Csehi (Rapporteur), Judges,

Advocate General: A.M. Collins,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 7 December 2022,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2023,

gives the following

Judgment

1 By their respective appeals, the European Commission and Interessengemeinschaft der Grenzhändler (IGG), an association representing the interests of border shops in the north of the Federal Republic of Germany, seek to have set aside the judgment of the General Court of the European Union of 9 June 2021, *Dansk Erhverv* v *Commission* (T-47/19, 'the judgment under appeal', EU:T:2021:331), by which the General Court annulled Commission Decision C(2018) 6315 final of 4 October 2018 concerning State Aid SA.44865 (2016/FC) – Germany – Alleged State aid to German beverage border shops ('the decision at issue').

Legal context

European Union law

Directive 94/62/EC

2 Article 7 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10), as amended by Directive 2015/720/EU of the European Parliament and of the Council of 29 April 2015 (OJ 2015 L 115, p. 11) ('Directive 94/62'), entitled 'Return, collection and recovery systems', provides in paragraph 1:

'Member States shall take the necessary measures to ensure that systems are set up to provide for:

(a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;

(b) the reuse or recovery including recycling of the packaging and/or packaging waste collected,

in order to meet the objectives laid down in this Directive.

These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the [FEU] Treaty.'

Directive 2008/98/EC

3 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3) defines 'waste' in Article 3(1) as 'any substance or object which the holder discards or intends or is required to discard'.

German law

4 The Verordnung über die Vermeidung und Verwertung von Verpackungsabfällen (Verpackungsverordnung) (Ordinance on the prevention and recycling of packaging waste), of 21 August 1998 (BGBl. 1998 I, p. 2379 ('the VerpackV'), in the version applicable to the facts in the main proceedings, transposes Directive 94/62 into German law.

5 According to Paragraph 2(1) of the VerpackV, that ordinance applies to every item of packaging put into circulation within the territorial scope of the Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen (Kreislaufwirtschaftsgesetz – KrWG) (Law to promote the circular economy and ensure the environmentally sustainable management of waste) of 24 February 2012 (BGBl. 2012 I, p. 212; 'Law to promote the circular economy and ensure the environmentally sustainable management of waste').

6 Paragraph 9(1) of the VerpackV lays down a deposit scheme for certain non-reusable packaging for beverages ('the deposit scheme'). It provides, inter alia, as follows:

'Distributors who put drinks into circulation in non-reusable drinks packaging with a volume of between 0.1 and 3 litres shall be obliged to charge the purchaser a deposit of at least [EUR 0.25] including value added tax [(VAT)] per drinks pack. The first sentence above shall not apply to packaging sold to final consumers outside the territorial scope of the VerpackV. The deposit shall be charged by each further distributor at each distribution level until transfer to the final consumer. … [The amount of the deposit] shall be refunded upon return of the packaging. Deposits shall not be refunded without packaging being returned …'

7 It is apparent from Paragraph 15(1)(14) of the VerpackV that failure to collect the deposit in breach of Paragraph 9(1) of the VerpackV constitutes an administrative offence *(Ordnungswidrigkeit)*.

8 Paragraph 69(3) of the Law to promote the circular economy and ensure the environmentally sustainable management of waste provides that that type of offence is punishable by a fine of up to EUR 100 000.

9 The deposit scheme came into effect on 1 January 2003.

Background to the dispute

10 The background to the dispute is set out in paragraphs 1 to 27 of the judgment under appeal. For the purposes of the present proceedings, it may be summarised as follows.

11 On 14 March 2016, Dansk Erhverv, a trade association representing the interests of Danish undertakings, lodged a complaint with the Commission alleging infringement of the rules of EU law on State aid laid down in Articles 107 and 108 TFEU.

12 In that complaint, Dansk Erhverv submitted that the Federal Republic of Germany had granted to a group of North German retail undertakings ('the border shops') specifically targeting consumers resident in neighbouring countries, in particular Denmark, unlawful aid incompatible with the internal market, consisting of an exemption from the general obligation to charge a deposit on non-reusable drinks packaging laid down in Paragraph 9(1) of the VerpackV.

13 In particular, Dansk Erhverv argued that it was with the agreement of the authorities of the two *Länder* concerned, namely Schleswig-Holstein and Mecklenburg-Vorpommern (Germany), that those border shops sold drinks in non-reusable packaging to Danish and Swedish consumers without charging the relevant deposit, namely EUR 0.25 including tax per can. Those authorities do not impose a fine on border shops where they do not charge the deposit. Dansk Erhverv also observed that exemption from the deposit entails an exemption from VAT relating to the amount of that deposit.

14 Since the prices of beer and other beverages are higher in border countries, such as Denmark, than in Germany, owing, in particular, to differences relating to wholesale prices, VAT and excise duties, a specialised border business has developed, in which retailers established in the two *Länder* concerned target customers from neighbouring countries, in particular Danish customers. Beer, mineral water and soft drinks are sold in those retail outlets only in large packaging, namely 'trays', in particular, trays of 24 cans in plastic wrapping. About 20 undertakings currently carry out such a business in about 60 shops. Those border undertakings employ around 3 000 employees and set up the IGG, an association representing their interests which is the appellant in the appeal in Case C-509/21 P.

15 It is common ground, as is apparent from paragraph 155 of the judgment under appeal, that, following the order of the Schleswig-Holsteinisches Verwaltungsgericht (Administrative Court, Schleswig-Holstein, Germany) of 7 July 2003 (12 B 30/03), upheld by an order of the Schleswig-Holsteinisches Oberverwaltungsgericht (Higher Administrative Court, Schleswig-Holstein, Germany) of 23 July 2003 (4 MB 58/03, 12 B 30/03) ('the orders of the German courts of 2003'), the enforcement authorities of the two *Länder* concerned ('the competent German regional authorities') decided not to adopt new administrative constraint measures in respect of border shops which did not apply the deposit.

16 Those authorities took the view that the obligation to charge the deposit did not apply to border shops where the beverages were sold only to customers resident in particular in Denmark and if those customers undertook in writing (by signing an export declaration) to consume those beverages and to dispose of their packaging outside Germany.

17 On 4 October 2018, the Commission adopted the decision at issue at the end of the preliminary procedure for investigating aid laid down under Article 108(3) TFEU. In that decision, the Commission confined itself to examining the condition relating to State resources, set out in

Article 107(1) TFEU. In that regard, it examined in turn the three measures capable of constituting an advantage financed through State resources ('the contested measures'): non-charging of the deposit itself, non-collection of the VAT relating to the deposit and the non-imposition of a fine on undertakings which do not charge the deposit.

18 As regards, first, the non-charging of the deposit, the Commission took the view, in recitals 32 and 33 of the decision at issue, that that measure did not constitute State aid, since the deposit scheme was not financed through State resources.

19 Second, it stated, in recitals 41 and 42 of the decision at issue, that the non-collection of the VAT relating to the deposit was the normal consequence of the application of the general VAT rules and inferred from this that that non-collection was not intended, by its purpose and structure, to create an advantage which would constitute an additional burden for the State and that therefore that measure did not constitute State aid either.

20 As regards, third, the non-imposition of a fine on undertakings which did not apply the deposit scheme, the Commission recalled, in recitals 45 and 47 of the decision at issue, that, according to the case-law of the Court of Justice, a release from the obligation to pay fines could in principle constitute an advantage granted through State resources. However, the Commission stated that, in determining whether the condition relating to State resources was met, it was, in principle, appropriate to distinguish cases where the public authorities had introduced the possibility of avoiding the payment of fines that would normally be due from cases where the public authorities did not impose a fine because they had expressly authorised certain behaviour.

21 The Commission added, in recitals 48 and 49 of the decision at issue, that, where the national authorities are faced with serious and reasonable doubts concerning the scope and the meaning of a national rule imposing an obligation, the non-imposition of a fine is not necessarily the result of a decision taken by those authorities not to collect fines which are payable, but might be the consequence of difficulties of interpretation inherent in any legal system. Consequently, the Commission considered that a distinction should also be made between situations in which the authorities were faced with difficulties of interpretation of the relevant provision inherent in the normal exercise of their police power and situations in which they decided not to collect fines, which were payable, or provided undertakings with the means to avoid the payment of such fines.

22 The Commission then observed, in recital 50 of the decision at issue, that the competent German regional authorities took the view that, as a matter of law, there was no obligation on the border shops to charge the deposit, so that not charging the deposit did not, in their view, constitute an offence and the non-imposition of a fine was merely the consequence of no offence having been committed.

23 The Commission nevertheless concluded, in recital 69 of the decision at issue, that the competent German regional authorities were faced, in the normal exercise of their police power, with serious and reasonable doubts concerning the scope and the meaning of the obligation to charge the deposit and that, consequently, the non-imposition of a fine did not involve an advantage granted through State resources.

24 In that regard, the Commission stated, in recital 51 of the decision at issue, that it is true that, in the light of its wording, Paragraph 9(1) of the VerpackV, to the extent that it applies to the 'German territory' and to 'putting drinks into circulation', seems to have to be understood as imposing on border shops the obligation to charge the deposit.

25 However, it found, in recitals 52 and 53 of the decision at issue, that the absence of such an obligation on the border shops if they sold canned beverages exclusively to 'foreign resident' consumers who committed to consume the drinks outside Germany could be considered to be in line with the objective pursued by the VerpackV, namely to promote the return of non-reusable drinks packaging in Germany.

26 The Commission observed in that regard that, according to the interpretation of the competent German regional authorities, that objective did not require the deposit to be charged on cans which were consumed abroad and not returned to Germany. It added that, again according to the interpretation of those authorities, border shops were in the same situation as exporters of canned beverages, which sold goods not intended to be consumed in Germany and in packaging intended to be disposed of far from any recycling facilities connected to the German system. The VerpackV did not require those exporters to charge the deposit.

27 The Commission observed, in recitals 56 to 60 of the decision at issue, that the position taken by the competent German regional authorities was (i) supported by a report drawn up in 2005 by a law professor, commissioned by the border shops and (ii) contradicted by another report, also drafted during the same year, commissioned by the German Federal Government.

28 In recital 61 of the decision at issue, the Commission added that the orders of the German courts of 2003, as referred to in paragraph 15 of the present judgment, tend to confirm the interpretation given by the competent German regional authorities.

29 The Commission also noted, in recital 67 of the decision at issue, that since Directive 94/62 does not regulate that 'export' exception by a consumer, the Member States are free to decide whether or not to charge a deposit provided that they comply with the principle of non-discrimination.

30 On the basis of those factors, the Commission, taking the view that it was reasonable to assume that, where a consumer purchased a beverage in Germany in order to take it to another Member State, the packaging of that beverage would not be returned to Germany but would end up in another Member State's waste management system, stated, in recital 65 of the decision at issue, that it appeared reasonable not to require the deposit to be charged when the consumer signed an export declaration. The Commission noted, in recital 68 of that decision, that the interpretation given by the competent German regional authorities constituted an appropriate reconciliation of the objective of protecting the environment pursued by Directive 94/62 and the free movement of goods.

31 In those circumstances, the Commission concluded, in recitals 69 to 71 of the decision at issue, that, since the competent German regional authorities were thus faced, in the context of the normal exercise of their police powers, with serious and reasonable doubts concerning the scope and meaning of the obligation to charge the deposit, the non-imposition of a fine, even if it were to be considered that the deposit should have been collected from border shops under the VerpackV, did not constitute an advantage granted through State resources, with the result that that measure could not be classified as 'State aid'.

The procedure before the General Court and the judgment under appeal

32 On 23 January 2019, Dansk Erhverv brought an action before the General Court for the annulment of the decision at issue.

33 In support of its action, Dansk Erhverv put forward a single plea in law by which it claimed that the Commission, by not initiating the formal investigation procedure provided for in Article 108(2) TFEU, despite the serious difficulties involved in the examination of the contested measures, had infringed its procedural rights under that provision as an interested party. That single plea was divided into three parts. By the first part of the plea, Dansk Erhverv claimed that the Commission had carried out an insufficient examination of the compatibility of the exemption from the deposit with Article 4(3) TEU, Directive 94/62, the 'polluter pays principle' and certain provisions of German law. By the second part, it alleged an insufficient examination by the Commission of VAT revenue foregone, since that measure is granted through State resources. Lastly, by the third part, Dansk Erhverv alleged that the Commission carried out an insufficient examination of the measure consisting of the non-imposition of a fine, since that measure is also granted through State resources.

34 By the judgment under appeal, the General Court annulled the decision at issue.

35 In paragraphs 57 to 75 of the judgment under appeal, the General Court rejected as ineffective the first part of the single plea in law, finding that the fact that a national measure infringes provisions of EU law other than those relating to State aid and, a fortiori, provisions of the law of a Member State, cannot reasonably be relied on, in itself, in order to establish that that measure constitutes State aid.

36 The General Court also rejected the second part of the single plea in law, by finding, inter alia in paragraphs 96 and 97 of the judgment under appeal, that the Commission had been fully entitled to conclude, referring to the case-law arising from the judgment of 17 March 1993, *Sloman Neptun* (C-72/91 and C-73/91, EU:C:1993:97), that the condition relating to State resources was not satisfied as regards the non-charging of the VAT relating to the deposit, given that that non-charging was only an indirect consequence of the mechanism for waiving the deposit, which is inherent in the non-charging of the deposit, and which did not establish that the contested measure was intended, in that regard, to confer an advantage on certain undertakings through State resources.

37 By contrast, the General Court upheld the third part of the single plea on the grounds that the decision at issue was vitiated by errors and that other evidence supported the conclusion that the Commission had encountered serious difficulties when examining the contested measure, consisting in the non-imposition of a fine on undertakings which do not charge the deposit.

38 In that regard, the General Court held, first of all, in paragraph 137 of the judgment under appeal, that the Commission's reasoning had not been vitiated by an error of law when it considered that, in order to find that there was no State resources in relation to a measure consisting, for a public authority, in not imposing a fine, it was necessary, in a situation such as that at issue, to apply a new test, based on the existence of difficulties in interpreting the relevant provision with which the national authorities are faced in the exercise of their police powers.

39 However, the General Court then held, inter alia in paragraphs 157 and 163 of the judgment under appeal, that the Commission had misapplied, in the present case, the test referred to in the preceding paragraph. In that regard, the General Court held that the Commission erred in law in concluding that the condition relating to State resources was not satisfied without examining whether the difficulties of interpretation on which it relied were temporary and inherent in the gradual clarification of the legislative provisions. Moreover, the General Court observed that the Commission was wrong to take the view that it could, in the present case, apply the test based on

the existence of difficulties in interpreting the applicable legislative provision, when the competent German regional authorities did not rely on the existence of such difficulties in order to justify their practice of not imposing fines on border shops when they do not charge the deposit.

40 Lastly, the General Court also held, in paragraphs 169 to 235 of the judgment under appeal, that there was a body of evidence indicating the presence of serious difficulties which raise doubts as to the interpretation of the VerpackV adopted by the competent German regional authorities. In that regard, it stated, in paragraph 203 of the judgment under appeal, that that evidence led, at the very least, to the conclusion that the Commission's examination of the situation before it was incomplete, which was in itself evidence of the existence of serious difficulties.

Forms of order sought by the parties before the Court of Justice

Case C-508/21 P

41 By its appeal, the Commission claims that the Court should:

– set aside the operative part of the judgment under appeal;

– give judgment in Case T-47/19, *Dansk Erhverv* v *Commission*, by annulling Section 3.3 of the decision at issue;

– order Dansk Erhverv to pay the costs of the appeal, and

– order each party and each intervener to bear its own costs for the proceedings at first instance.

42 Dansk Erhverv contends that the Court should:

– dismiss the appeal while substituting certain grounds of the judgment under appeal or – in any event – dismiss the appeal;

– order the Commission to pay Dansk Erhverv's costs relating to the appeal and to the proceedings at first instance, and

– in the alternative, in any event, order the Commission to pay three quarters of the costs incurred by Dansk Erhverv in the proceedings at first instance.

43 IGG contends that the Court should:

– allow the application to have the operative part of the judgment under appeal set aside;

– allow the application that Dansk Erhverv should pay the costs of the appeal, and

– dismiss the remainder of the appeal.

Case C-509/21 P

44 By its appeal, IGG claims that the Court should:

– set aside the judgment under appeal;

– dismiss the application, and

– order Dansk Erhverv to pay the costs.

45 Dansk Erhverv contends that the Court should:

– dismiss the appeal while substituting certain grounds of the judgment under appeal;

– in any event, dismiss the appeal, and

– order IGG to pay the costs.

Procedure before the Court

46 On 24 August 2021, the President of the Court invited the parties to express their views on the possible joinder of Cases C-508/21 P and C-509/21 P for the purposes of the further course of the proceedings.

47 By letters of 25 and 27 August 2021, the Commission informed the Court that it had no objections to the joinder of those cases. By letters of 27 August 2021, Dansk Erhverv informed the Court that it was not appropriate to join the cases at that stage of the proceedings.

48 By decision of 9 November 2021, the President of the Court decided that there was no need to join the cases at that stage of the procedure.

49 By decision of 18 October 2022, the Court decided to join Cases C-508/21 P and C-509/21 P for the purposes of the oral part of the procedure.

The appeals

50 In view of the connection between them, it is appropriate to join the present cases for the purposes of the judgment, in accordance with Article 54(1) of the Rules of Procedure of the Court of Justice.

The appeal in Case C-509/21 P

51 In support of its appeal in Case C-509/21 P, which it is appropriate to examine first, IGG puts forward six grounds of appeal.

52 The first ground of appeal alleges that the General Court erred in law by misapplying Article 107(1) TFEU, in that it misinterpreted the concept of a ‘sufficiently direct link’ between an advantage and the State budget when assessing the criterion of ‘State resources’. The second ground of appeal, which is divided into two parts, alleges that the General Court erred in law by

misapplying that provision in so far as it applied a wrong standard for the Commission's assessment of the criterion of 'State resources' in cases of difficulties in interpreting the relevant legislative provision. The third ground of appeal alleges that the General Court erred in law in applying a standard for the Commission's assessment concerning the criterion of 'State resources' which goes beyond the new test, alleging the existence of difficulties in interpreting the relevant legislative provision. The fourth ground of appeal, which is divided into seven parts, alleges that the General Court erred in law when it found that the examination carried out by the Commission in the decision at issue was vitiated by several errors and that there were other indicia supporting a finding that there were 'serious difficulties' in determining whether State resources were involved. The fifth ground of appeal alleges that the General Court erred in law by rejecting IGG's additional arguments to support the finding that the Commission was not faced with 'serious difficulties'. The sixth ground of appeal alleges that the General Court erred in law when it annulled the decision at issue in its entirety, including the part relating to the non-charging of VAT relating to the deposit.

53 It is appropriate to begin by examining the first ground of appeal, the second part of the second ground of appeal and the third ground of appeal.

Arguments of the parties

54 In the first ground of appeal, IGG complains that the General Court erred in law, in particular in paragraphs 140 to 146 of the judgment under appeal, by misinterpreting the concept of a 'sufficiently direct link' between an advantage and the State budget when assessing the criterion of State resources. A sufficiently direct link between the non-imposition of a fine and the State budget could only be established if the imposition of a fine was legally possible.

55 However, as the General Court found, in paragraph 155 of the judgment under appeal, the competent German regional authorities decided, following the orders of the German courts of 2003, not to adopt administrative constraint measures in respect of border shops which did not apply the deposit when purchasers signed an export declaration. Thus, it follows from the General Court's own findings that, in those circumstances, the imposition of fines is legally impossible and, therefore, there is logically no sufficiently direct link between an advantage and the State budget which is possible.

56 In that regard, IGG states that, as the General Court acknowledged in paragraphs 140 to 142 of the judgment under appeal, penalties may be imposed on individuals only if they have, intentionally or negligently, failed to fulfil an obligation, which is clearly defined. In so far as the General Court, in paragraph 147 of the judgment under appeal, refers to the principle of the result of a judicial interpretation which is 'reasonably foreseeable', it is sufficient to state that (i) this applies especially in the light of the interpretation given to the provision in the relevant case-law at the material time and (ii) the existing case-law in the case at hand supported the legal position of the two *Länder* concerned.

57 By the second part of the second ground of appeal, IGG complains that the General Court erred in law, in particular in paragraphs 140 to 158 of the judgment under appeal, by requiring an additional criterion, namely the need for gradual clarification of the legislative provisions.

58 That additional criterion is not justified, given that the General Court's reference to the principle of legal certainty concerning criminal offences and penalties is meaningless since that principle is aimed only at protecting individuals against penalties imposed by the State, while in the present

case it would be applied to ultimately justify a decision which would be detrimental to the alleged beneficiaries. On the contrary, the principle of legal certainty justifies the opposite conclusion that no State resources are involved, as demonstrated in the context of the first ground of appeal, since the imposition of fines would be impossible.

59 Moreover, according to IGG, the administrative practice of not requiring border shops to charge a deposit when purchasers sign the export declaration is, at the very least, very close to the scenario of an express authorisation, as was the case in the *Eventech* case (judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 16).

60 The Commission demonstrated, in the decision at issue, that the objective of the administrative practice was not to exempt the border shops from fines, but that the competent German regional authorities took the view that border shops are not required to charge a deposit. The General Court shared this understanding in paragraph 103 of the judgment under appeal concerning the non-collection of VAT. However, the General Court failed to state the reason why the same logic did not apply concerning the non-imposition of fines, which is sufficient, in itself, to conclude that no State resources were involved due to the lack of a 'sufficiently direct link'.

61 By its third ground of appeal, IGG complains, in essence, that the General Court erred in law, in paragraphs 166 to 203 of the judgment under appeal, by requiring a full analysis of the applicable national law by the Commission. In that regard, it submits that such a requirement, for the same reasons as those set out in the context of the second part of the second ground of appeal, amounts to a misinterpretation of the concept of a 'sufficiently direct link'.

62 Dansk Erhverv takes the view that the first ground of appeal is inadmissible, first, in so far as IGG seeks to change the subject matter of the proceedings before the General Court, in breach of Article 170(1) of the Rules of Procedure, by claiming that the General Court substituted its own reasoning for that of the author of the decision at issue. Second, that ground of appeal is inadmissible in so far as IGG alleges that the General Court assessed the content of the German legislation at issue to an extent which fell outside the General Court's jurisdiction, without having pleaded or demonstrated that the General Court distorted applicable German law. Furthermore, the first ground of appeal is ineffective or unfounded in so far as a 'sufficiently direct link' also exists where the advantage granted to the beneficiary entails a 'sufficiently concrete economic risk of burdens' on the State budget (judgment of 19 March 2013, *Bouygues and Others* v *Commission and Others*, C-399/10 P and C-401/10 P, EU:C:2013:175, paragraph 109).

63 As regards the second part of the second ground of appeal, Dansk Erhverv contends that without the additional criterion laid down in paragraph 146 of the judgment under appeal, namely the need for gradual clarification of the legislative provisions, the competent German regional authorities could use the alleged difficulties in interpretation to persist indefinitely, in breach of EU law, in granting more favourable treatment to certain undertakings.

64 Moreover, Dansk Erhverv submits that IGG's argument that the alleged objective of the aid measure had to be decisive for the purposes of assessing the non-imposition of fines is inadmissible since it does not appear in the decision at issue and has the effect of altering the subject matter of the proceedings before the General Court, in breach of Article 170(1) of the Rules of Procedure. In addition, that argument misinterprets the judgment of 8 September 2011, *Commission* v *Netherlands* (C-279/08 P, EU:C:2011:551), from which it follows that the Court of Justice regarded as decisive not the objective of the aid measure concerned, but rather the effect of that measure.

65 As regards the third ground of appeal, Dansk Erhverv submits that the interpretation and determination of the content of national law form part of the assessment of the facts falling within the jurisdiction of the General Court. Thus, in the judgment of 1 February 2017, *Portovesme* v *Commission* (C-606/14 P, EU:C:2017:75, paragraphs 62 and 63), the Court of Justice held that the General Court's interpretation of national law was a part of the assessment of the facts and that the Court of Justice had jurisdiction only to determine whether there had been a distortion of the evidence.

66 In addition, Dansk Erhverv requests a substitution of grounds with regard to paragraphs 135 to 138 of the judgment under appeal. In support of that request, Dansk Erhverv submits that the second to fifth grounds of appeal raised by IGG are ineffective since the General Court erred in law in those paragraphs by rejecting the first part of the third part of its single plea in law when the General Court accepted that the Commission was entitled to introduce a new test, based on the existence of difficulties in interpreting the relevant provision. Dansk Erhverv states that the non-imposition of fines was comparable to the situations which gave rise to the judgments of 1 December 1998, *Ecotrade* (C-200/97, EU:C:1998:579, paragraphs 42 and 43); of 17 June 1999, *Piaggio* (C-295/97, EU:C:1999:313, paragraphs 41 to 43); and of 8 September 2011, *Commission* v *Netherlands* (C-279/08 P, EU:C:2011:551).

67 As is apparent from paragraphs 149 to 155 of the judgment under appeal, the legal position was sufficiently clear in that a deposit had to be charged also by the border shops and the non-imposition of fines therefore constituted a practice *contra legem*. In addition, Dansk Erhverv claims that, in order to be able to rule out the existence of State aid, the Commission had to establish that the export declaration practice was lawful under German law, which the Commission did not even seek to establish in the decision at issue.

Findings of the Court

– *Preliminary observations*

68 It is necessary, for the purpose of assessing the first ground of appeal, the second part of the second ground of appeal and the third ground of appeal in Case C-509/21 P, to recall the settled case-law of the Court of Justice relating to the obligations binding on the Commission in the context of the preliminary examination procedure under Article 108(3) TFEU, the decision at issue which is the subject of the judgment under appeal having been adopted at the end of that procedure and, therefore, without the formal investigation procedure provided for in Article 108(2) TFEU having been initiated.

69 The procedure under Article 108(2) TFEU is essential whenever the Commission has serious difficulties in determining whether aid is compatible with the internal market. The Commission may therefore confine itself to the preliminary examination under Article 108(3) TFEU when taking a decision in favour of aid only if it is able to satisfy itself after the preliminary examination that that aid is compatible with the internal market. If, on the other hand, the initial examination leads the Commission to the opposite conclusion or if it does not enable it to overcome all the difficulties involved in determining whether that aid is compatible with the internal market, the Commission is under a duty to obtain all the requisite opinions and for that purpose to initiate the procedure provided for in Article 108(2) TFEU (judgment of 17 November 2022, *Irish Wind Farmers' Association and Others* v *Commission*, C-578/21 P, EU:C:2022:898, paragraph 53 and the case-law cited).

70 As the concept of 'serious difficulties' is objective in nature, proof of the existence of such difficulties, which must be looked for both in the circumstances in which the decision was adopted after the preliminary investigation and in its content, must be furnished by the applicant seeking the annulment of that decision, by reference to a body of consistent evidence (judgment of 17 November 2022, *Irish Wind Farmers' Association and Others* v *Commission*, C-578/21 P, EU:C:2022:898, paragraph 54 and the case-law cited).

71 Accordingly, it is for the EU Courts, when they have before them an application for annulment of such a decision, to determine whether the assessment of the information and evidence which the Commission had at its disposal during the preliminary investigation phase of the national measure at issue should objectively have raised doubts as to the categorisation of that measure as aid, given that such doubts must lead to the initiation of a formal investigation procedure (judgment of 17 November 2022, *Irish Wind Farmers' Association and Others* v *Commission*, C-578/21 P, EU:C:2022:898, paragraph 55 and the case-law cited).

72 When an applicant seeks the annulment of a decision not to raise objections, it essentially contests the fact that the Commission adopted the decision in relation to the aid at issue without initiating the formal investigation procedure, thereby infringing the applicant's procedural rights. In order to have its action for annulment upheld, the applicant may invoke any plea to show that the assessment of the information and evidence which the Commission had at its disposal during the preliminary investigation phase of the measure notified should have raised doubts as to the compatibility of that measure with the internal market. The use of such arguments does nothing, however, to bring about a change in the subject matter of the action or in the conditions for its admissibility. On the contrary, the existence of doubts concerning that compatibility is precisely the evidence which must be adduced in order to show that the Commission was required to initiate the formal investigation procedure under Article 108(2) TFEU (see, to that effect, judgments of 2 September 2021, *Ja zum Nürburgring* v *Commission*, C-647/19 P, EU:C:2021:666, paragraph 115, and of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraph 81 and the case-law cited).

73 In the present case, IGG's line of argument, as summarised in paragraphs 54 to 61 of the present judgment, raises the question whether the General Court erred in law when assessing the criterion relating to 'State resources' laid down in Article 107(1) TFEU, such as to demonstrate that the Commission had encountered serious difficulties during the examination of the contested measure, consisting in the non-imposition of a fine on undertakings which do not charge the deposit, difficulties which should have led the Commission to initiate the formal investigation procedure provided for in Article 108(2) TFEU.

74 In that respect, it should be recalled that, under the terms of Article 107(1) TFEU, save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the internal market.

75 On that basis, only advantages granted directly or indirectly through State resources or constituting an additional burden on the State are to be regarded as 'aid' within the meaning of Article 107(1) TFEU. The very wording of this provision and the procedural rules laid down in Article 108 TFEU show that advantages granted from resources other than those of the State do

not fall within the scope of the provisions in question (judgment of 19 March 2013, *Bouygues and Others* v *Commission and Others*, C-399/10 P and C-401/10 P, EU:C:2013:175, paragraph 99 and the case-law cited).

76 As regards the condition relating to the commitment of State resources, according to settled case-law, the concept of 'aid' embraces not only positive benefits, such as subsidies, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect (judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 33 and the case-law cited).

77 Consequently, for the purposes of determining the existence of State aid, it is necessary to establish a sufficiently direct link between, on the one hand, the advantage given to the beneficiary and, on the other, a reduction of the State budget or a sufficiently concrete economic risk of burdens on that budget (judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 34 and the case-law cited).

78 In order to assess the existence of that link, it is necessary, in particular, to ascertain whether, by virtue of its object and general scheme, the measure seeks to create an advantage which constitutes an additional burden for the State (judgment of 17 March 1993, *Sloman Neptun*, C-72/91 and C-73/91, EU:C:1993:97, paragraph 21).

79 In the present case, as is apparent from paragraphs 131 to 135 of the judgment under appeal, the General Court noted that the competent German regional authorities consider that there is no infringement, when beverages are purchased under the export declaration, of the legislation punishable by a fine, with the result that, since the non-charging of the deposit complies with that legislation, as interpreted by those authorities, the imposition of a fine on the border shops is necessarily precluded. The General Court concludes that such a context, in which the non-imposition of a fine is inseparable from the non-charging of the deposit and, therefore, from the interpretation of the relevant legislation, does not correspond to any of the situations hitherto considered in the case-law of the Court of Justice. In particular, the exemption from the deposit and, accordingly, the non-imposition of a fine does not, therefore, stem either from an explicit exemption adopted by the author of the national legislation at issue or from a prior and transparent authorisation, laid down by legislation, but from a mere practice on the part of the competent German regional authorities. Therefore, the Commission was right to rely on a new legal test, based on difficulties in interpreting the relevant provision.

80 As is apparent from paragraphs 38 to 40 of the present judgment, the General Court nevertheless concluded, in paragraphs 157, 163 and 203 of the judgment under appeal, that the Commission misapplied that new test.

– *The existence of an error of law in the assessment of the criterion of 'State resources'*

81 At the outset, as regards the admissibility of IGG's line of argument, it is necessary to reject Dansk Erhverv's claim that IGG is attempting, in the context of the first ground of appeal, to change, in breach of Article 170(1) of the Rules of Procedure, the subject matter of the proceedings before the General Court by claiming that the General Court had substituted its own reasoning for that of the Commission. It must be stated that IGG does not raise such an argument, but, on the contrary, claims that it is legally impossible to impose fines as a result of the General Court's own findings. As regards IGG's claim that the General Court misinterpreted national law which

allegedly falls outside the jurisdiction of the General Court, it is sufficient to note that, by its first ground of appeal, IGG is seeking to call into question not the General Court's interpretation of national law, but the inferences which the General Court drew therefrom for the examination of whether the contested measure involved the grant of an advantage through State resources, within the meaning of Article 107(1) TFEU. Such a line of argument, which seeks to demonstrate that the judgment under appeal is vitiated by an error of law concerning the interpretation and application of that provision of EU law, is admissible at the appeal stage.

82 Moreover, it is also necessary to reject Dansk Erhverv's line of argument that IGG is seeking, in the context of the second part of the second ground of appeal, to change, in breach of Article 170(1) of the Rules of Procedure, the subject matter of the proceedings before the General Court by claiming that the alleged objective of the aid measure had to be decisive for the purposes of assessing the non-imposition of fines. It must be stated that IGG's argument does not constitute a change in the subject matter of the proceedings, but seeks to rely on the analysis carried out by the General Court, in particular in paragraph 93 of the judgment under appeal, according to which 'in order to assess the existence of the [sufficiently direct link], it is necessary, in particular, to ascertain whether, by virtue of its object and general scheme, the measure seeks to create an advantage which would constitute an additional burden for the State'.

83 As regards the merits of IGG's argument that a sufficiently direct link between the non-imposition of a fine and the State budget could be established only if the imposition of a fine was legally possible, it should be noted that it is inherent in any legal system that conduct previously defined as being lawful and permitted does not expose individuals to penalties (judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 36).

84 It is apparent from paragraph 155 of the judgment under appeal that the competent German regional authorities decided, following the orders of the German courts of 2003, as referred to in paragraph 15 of the present judgment, not to adopt new administrative constraint measures in respect of border shops which did not apply the deposit. As the General Court noted in paragraph 131 of the judgment under appeal, those authorities consider that, where beverages are purchased under the export declaration, there is no infringement of Paragraph 9(1) of the VerpackV, read in conjunction with Paragraph 2(1) of the VerpackV, punishable by a fine and that, in such a situation, since the non-charging of the deposit complies with that legislation, imposing a fine on border shops was necessarily precluded.

85 As the General Court found, in paragraphs 160 to 164 of the judgment under appeal, that application of national law is consistent with the interpretation given to it by the national case-law in the orders of the German courts of 2003, as referred to in paragraph 15 of the present judgment. It is thus apparent from the General Court's own findings that the competent German regional authorities applied the national legislation without encountering difficulties in interpreting the relevant legislative provision.

86 In that regard, it should be borne in mind that the principle that penalties must have a proper legal basis is enshrined in Article 49(1) of the Charter of Fundamental Rights of the European Union. That principle requires that legislation must clearly define offences and the penalties which they attract. That requirement is satisfied where the individual concerned is in a position to ascertain from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him or her criminally liable (judgments of

22 October 2015, *AC-Treuhand* v *Commission*, C-194/14 P, EU:C:2015:717, paragraph 40, and of 24 March 2021, *Prefettura Ufficio territoriale del governo di Firenze*, C-870/19 and C-871/19, EU:C:2021:233, paragraph 49).

87 Furthermore, the Court has already stated that the clarity of a law is assessed having regard not only to the wording of the relevant provision but also to the clarification provided by settled, published case-law (see, to that effect, judgment of 22 May 2008, *Evonik Degussa* v *Commission*, C-266/06 P, EU:C:2008:295, paragraphs 40 and 46).

88 In that context, it is apparent that the General Court's findings, in paragraphs 157 and 203 of the judgment under appeal, as recalled in paragraphs 39 and 40 of the present judgment, according to which, in the decision at issue, an insufficient and incomplete examination of the non-imposition of fines on the border shops was carried out are vitiated by errors of law.

89 In that regard, it is apparent more particularly from paragraphs 146 to 157 of the judgment under appeal that the General Court criticises the Commission for failing to examine whether the difficulties of interpretation faced by the competent German regional authorities were temporary and were part of a process of gradual clarification of the legislative provisions.

90 However, it must be held that, as is apparent from the case-law cited in paragraphs 83 and 86 of the present judgment, only conduct which is clearly defined – and, if need be, with the assistance of the courts' interpretation of it – as an infringement which makes the person concerned liable, allows administrative penalties to be imposed.

91 It follows that, even if there were difficulties of interpretation of the relevant legislative provisions which are likely to persist, that finding would not be sufficient to conclude that the condition relating to State resources was satisfied. In that regard, as the Advocate General observed in points 57 to 60 of his Opinion, the requirement of gradual clarification misconstrues the scope of the case-law cited in paragraph 86 of the present judgment.

92 It is true that the General Court correctly held, in paragraph 147 of the judgment under appeal, that, as is apparent from the judgment of 22 October 2015, *AC-Treuhand* v *Commission* (C-194/14 P, EU:C:2015:717, paragraph 41), the principle that offences and penalties must be defined by law cannot be interpreted as precluding the gradual, case-by-case clarification of the rules on criminal liability by judicial interpretation. The fact remains, however, that it is not possible to infer from this, as the General Court did in paragraphs 146 and 157 of the judgment under appeal, that there must always be a process of gradual clarification.

93 That assessment cannot be called into question by the findings of the General Court in paragraphs 143 and 145 of the judgment under appeal, according to which, when a directive is transposed into the legal order of a Member State, it is essential that the national law in question actually ensures the full application of that directive and which suggest that national legislation the meaning of which has not been clarified would allow the Member States, which are the authors of that legislation, to avoid, without any temporal limitation, their obligations in relation to State aid.

94 In this instance, Article 7(1) of Directive 94/62 does not oblige a Member State to require a deposit to be charged to retail purchasers of non-reusable packaging for the consumption of drinks outside its territory, as the Commission found in recitals 63, 65 and 70 of the decision at issue and without that finding having been called into question by the General Court in the judgment under appeal.

95 In that regard, it should be borne in mind that that provision provides that Member States must ensure that systems are set up for the return and/or collection of used packaging and/or packaging waste from the consumer. When consumers residing in one Member State purchase drinks packaging in another Member State in order to consume the contents of that packaging in their Member State of residence, the empty packaging becomes waste, within the meaning of Article 3(1) of Directive 2008/98, in the latter Member State.

96 It follows, as the Advocate General observed, in points 49 to 51 of his Opinion, that Article 7(1) of Directive 94/62 does not require a deposit to be collected in circumstances such as those that furnish the background to this appeal, where the sale of canned beverages in border shops to consumers who sign an export declaration is analogous to the sale of goods to traders for export in respect of which the vendor is under no obligation to collect a deposit.

97 Furthermore, it must be stated that the Court has held that a deposit scheme can achieve the objectives pursued by Directive 94/62 only where consumers who have paid a deposit can easily recover it without having to return to the place of initial purchase (see, to that effect, judgment of 14 December 2004, *Radlberger Getränkegesellschaft and S. Spitz*, C-309/02, EU:C:2004:799, paragraph 46). Consequently, the objective of Directive 94/62 aimed at the effective collection of waste does not require the collection of a deposit on non-reusable packaging not disposed of on the territory of the exporting State, irrespective of the fact that, as is apparent from paragraph 200 of the judgment under appeal, the border shops were not authorised, despite their efforts and following opposition from Dansk Erhverv, to join the Danish deposit scheme.

98 It follows from all the foregoing considerations that the General Court erred in law in holding, in paragraphs 157 and 203 of the judgment under appeal, that the Commission, in the decision at issue, had carried out an insufficient and incomplete examination of the non-imposition of fines on the border shops, in that it did not verify whether the difficulties of interpretation which the competent German regional authorities had encountered were temporary and were part of a process of gradual clarification of the legislative provisions, so that the Commission was not in a position to overcome, at the preliminary examination phase, all the serious difficulties encountered in determining whether that non-imposition of a fine constituted State aid.

99 Accordingly, the first ground of appeal, the second part of the second ground of appeal and the third ground of appeal must be upheld and, consequently, the judgment under appeal must be set aside, without it being necessary to rule on the other grounds of appeal.

The appeal in Case C-508/21 P

100 The Commission raises three grounds of appeal. The first ground of appeal alleges infringement of Article 264 TFEU and of the principle of proportionality, in that the General Court erred in law by finding that the upholding of the third part of the single plea in law leads to the annulment of the decision at issue in its entirety. The second ground of appeal alleges lack of reasoning and contradictory reasoning. The third ground of appeal alleges that the General Court erred in law in holding that the three contested measures are inseparable.

101 However, in view of the setting aside of the judgment under appeal as a result of the appeal in Case C-509/21 P being upheld, it is no longer necessary to rule on the appeal brought by the Commission in Case C-508/21 P.

The action before the General Court

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

103 That is so in the present case, since the pleas in the action seeking annulment of the decision at issue have been the subject of an exchange of arguments before the General Court and the examination of those pleas does not require the adoption of any additional measure of organisation of procedure or of inquiry.

104 Dansk Erhverv put forward a single plea in law before the General Court, seeking to show that the Commission, by not initiating the formal investigation procedure provided for in Article 108(2) TFEU, despite the serious difficulties involved in the examination of the contested measures, had infringed its procedural rights under that provision as an interested party.

105 By the third part of that single plea in law, Dansk Erhverv submits, in essence, that the Commission carried out an insufficient examination of the measure consisting in the non-imposition of a fine, since that measure was granted through State resources.

106 In that regard, it is apparent from the grounds set out in paragraphs 83 to 99 of the present judgment that it cannot be alleged that the Commission carried out, in the decision at issue, an insufficient and incomplete examination of the non-imposition of fines on the border shops.

107 In particular, it is apparent from the grounds set out in paragraphs 83 to 85 of the present judgment that the Commission was correct to state, in recital 50 of the decision at issue, that the competent German regional authorities did not exempt border shops from administrative penalties and from the payment of fines which would normally be due to the State budget, but took the view, without having encountered difficulties in interpreting the relevant legislative provision, that, where beverages are purchased under the export declaration, there is no infringement of national legislation punishable by a fine, in which case the non-charging of the deposit being consistent with that legislation, the imposition of a fine on the border shops was necessarily precluded.

108 Although the Commission did indeed state, in recital 51 of the decision at issue, that the wording of Paragraph 9(1) of the VerpackV might suggest, as was observed in paragraph 24 of the present judgment, that that provision imposed on border shops the obligation to charge the deposit, it nevertheless considered, in recitals 52 and 53 of that decision, which are recalled in paragraph 25 of the present judgment, that the absence of such an obligation for border shops if they sold canned beverages exclusively to ‘foreign resident’ consumers who committed to consume those drinks outside Germany could be regarded as consistent with the VerpackV’s objective of promoting the return of non-reusable drinks packaging in Germany.

109 Furthermore, as is apparent from the reasoning set out in paragraphs 93 to 96 of the present judgment, the Commission was right to observe, in recitals 63, 65 and 70 of the decision at issue, that a different approach by the competent German regional authorities was also not required in the light of the Member States' obligations, when transposing a directive into their legal order, to ensure the full application of that directive, given that Article 7(1) of Directive 94/62 does not oblige those Member States to require a deposit to be charged to retail purchasers of non-reusable packaging for the consumption of drinks outside their territory.

110 While it is true that the Commission, as is apparent, in particular, from recitals 69 and 70 of the decision at issue, considered, moreover, that, 'even if' national law were to be interpreted as meaning that border shops are required, in any event, to charge the deposit, the non-imposition of a fine would nevertheless result, in such a case, from a reasonable interpretation of that national law, it is apparent, in the light of paragraphs 107, 108 and 109 of the present judgment, that those considerations are included purely for the sake of completeness in relation to the reasoning set out, inter alia, in recitals 50, 52, 53, 63, 65 and 70 of the decision at issue.

111 In so far as the practice of the border shops not to charge deposits thus constitutes conduct previously defined as being lawful and permitted which does not expose those shops to penalties, the non-imposition of a fine is therefore not a measure granted through State resources (see, by analogy, judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 36).

112 In the light of the foregoing, the single plea in law raised by Dansk Erhverv before the General Court must be rejected as unfounded.

113 Accordingly, the action for annulment brought by Dansk Erhverv before the General Court must be dismissed.

Costs

114 Under Article 184(2) of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

115 Article 138(1) of those rules, which is applicable to appeal proceedings by virtue of Article 184(1) of the same rules, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

116 In the present case, as regards the appeal brought in Case C-509/21 P, IGG having been successful, it is appropriate, in accordance with the form of order sought by it, to order Dansk Erhverv to bear its own costs and to pay those incurred by IGG.

117 As for the appeal in Case C-508/21 P, under Article 149 of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 190 thereof, where a case does not proceed to judgment, the Court is to give a decision as to costs. In accordance with Article 142 of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184 thereof, the costs are, in such a case, to be in the discretion of the Court. In the present case, Dansk Erhverv must be ordered to pay the costs relating to the appeal in Case C-508/21 P.

118 Furthermore, since the action before the General Court has been dismissed, Dansk Erhverv is ordered to pay all the costs relating to the proceedings at first instance.

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

1. **Joins Cases C-508/21 P and C-509/21 P for the purposes of the judgment;**

2. **Sets aside the judgment of the General Court of the European Union of 9 June 2021, *Dansk Erhverv* v *Commission* (T-47/19, EU:T:2021:331);**

3. **Dismisses the action for annulment lodged by Dansk Erhverv before the General Court of the European Union;**

4. **Declares that there is no need to adjudicate on the appeal in Case C-508/21 P;**

5. **Orders Dansk Erhverv to pay the costs incurred by Interessengemeinschaft der Grenzhändler (IGG) and the European Commission at first instance and in the appeal proceedings.**

Regan Gratsias Ilešič

Jarukaitis Csehi

Delivered in open court in Luxembourg on 14 September 2023.

A. Calot Escobar
Registrar

E. Regan
President of the Chamber