



C/2023/624

13.11.2023

**Judgment of the Court (Second Chamber) of 21 September 2023 — Fachverband Spielhallen eV, LM v European Commission, Federal Republic of Germany**

(Case C-831/21 P) <sup>(1)</sup>

*(Appeal — State aid — Article 107(1) TFEU — Concept of ‘aid’ — Condition relating to selective advantage — Tax treatment of operators of public casinos in Germany — Levy on the profits — Partial deductibility of the amounts paid in respect of that levy from the tax base for income or corporation tax and trade tax — Decision of the European Commission — Rejection of a complaint at the end of the preliminary examination stage on the ground that that deductibility does not constitute State aid — Separate finding of no economic advantage and no selectivity — Action before the General Court of the European Union limited to the finding of no selectivity — Action deemed ineffective — Identification by the Commission of the reference system or ‘normal’ tax system — Interpretation for that purpose of the applicable national tax law — Classification of the levy on the profits as a ‘special tax’ deductible in respect of ‘costs associated with commercial transactions’ — Principle ne ultra petita)*

(C/2023/624)

Language of the case: German

**Parties**

*Appellants:* Fachverband Spielhallen eV, LM (represented by: A. Bartosch and R. Schmidt, Rechtsanwälte)

*Other parties to the proceedings:* European Commission (represented initially by: K. Blanck and B. Stromsky, and subsequently by B. Stromsky, acting as Agents), Federal Republic of Germany (represented by: J. Möller and R. Kanitz, acting as Agents)

**Operative part of the judgment**

The Court:

1. Sets aside the order of the General Court of the European Union of 22 October 2021, Fachverband Spielhallen and LM v Commission (T-510/20, EU:T:2021:745);
2. Refers the case back to the General Court of the European Union;
3. Reserves the costs.

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<sup>(1)</sup> OJ C 198, 16.5.2022.