Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

4 October 2024*

(Appeal – Competition – Agreements, decisions and concerted practices – Market for concrete reinforcing bars – European Commission Decision finding an infringement of Article 65 CS after the expiry of the ECSC Treaty on the basis of Regulation (EC) No 1/2003 – Decision adopted following the annulment of earlier decisions – Holding of a new hearing attended by the competition authorities of the Member States – Rights of the defence – Principle of sound administration – Requirement of impartiality – Reasonable time – Obligation to state reasons – Proportionality – *Ne bis in idem* principle – Plea of illegality – Aggravating circumstances – Repeated infringement – Mitigating circumstances – Equal treatment)

In Case C-31/23 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 January 2023,

Ferriere Nord SpA, established in Osoppo (Italy), represented by B. Comparini, G. Donà and W. Viscardini, avvocati,

appellant,

the other parties to the proceedings being:

European Commission, represented by G. Conte, P. Rossi and C. Sjödin, acting as Agents, and by M. Moretto, avvocato,

defendant at first instance,

Council of the European Union, represented by E. Ambrosini and O. Segnana, acting as Agents,

intervener at first instance,

THE COURT (Sixth Chamber),

composed of T. von Danwitz, President of the Chamber, P.G. Xuereb (Rapporteur) and A. Kumin, Judges,

Advocate General: N. Emiliou,

* Language of the case: Italian.

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, Ferriere Nord SpA seeks, primarily, to have set aside the judgment of the General Court of the European Union of 9 November 2022, *Ferriere Nord* v *Commission* (T-667/19, EU:T:2022:692; 'the judgment under appeal'), by which the General Court dismissed its action seeking, primarily, the annulment of Commission Decision C(2019) 4969 final of 4 July 2019 relating to an infringement of Article 65 of the ECSC Treaty (Case AT.37956 – Reinforcing bars) ('the contested decision'), in so far as it concerns the appellant. In the alternative, that undertaking seeks, on the one hand, to have set aside the judgment under appeal to the extent that that judgment rejected its alternative claim for the annulment in part of the decision at issue and, on the other, the annulment in part of that decision and the reduction of the fine imposed on it.

Legal context

Regulation (EC) No 1/2003

2 Article 7 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1), entitled 'Finding and termination of infringement', provides in paragraph 1 thereof:

'Where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of Article [101 or of 102 TFEU], it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past.'

3 Article 14 of that regulation, entitled 'Advisory Committee', provides:

'1. The Commission shall consult an Advisory Committee on Restrictive Practices and Dominant Positions prior to the taking of any decision under Articles 7, 8, 9, 10, 23, Article 24(2) and Article 29(1).

2. For the discussion of individual cases, the Advisory Committee shall be composed of representatives of the competition authorities of the Member States. …

…

5. The Commission shall take the utmost account of the opinion delivered by the Advisory Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

…'

4 According to Article 23(2)(a) of that regulation, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently they infringe Article [101 or Article 102 TFEU].

5 Article 25 of that regulation, entitled 'Limitation periods for the imposition of penalties', states:

'1. The powers conferred on the Commission by Articles 23 and 24 shall be subject to the following limitation periods:

(a) three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;

(b) five years in the case of all other infringements.

2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

3. Any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:

(a) written requests for information by the Commission or by the competition authority of a Member State;

(b) written authorisations to conduct inspections issued to its officials by the Commission or by the competition authority of a Member State;

(c) the initiation of proceedings by the Commission or by the competition authority of a Member State;

(d) notification of the statement of objections of the Commission or of the competition authority of a Member State.

4. The interruption of the limitation period shall apply for all the undertakings or associations of undertakings which have participated in the infringement.

5. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 6.

6. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice.'

6 Article 27 of Regulation No 1/2003, entitled 'Hearing of the parties, complainants and others', provides:

'1. Before taking decisions as provided for in Articles 7, 8, 23 and Article 24(2), the Commission shall give the undertakings or associations of undertakings which are the subject of the proceedings conducted by the Commission the opportunity of being heard on the matters to which the Commission has taken objection. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment. Complainants shall be associated closely with the proceedings.

2. The rights of defence of the parties concerned shall be fully respected in the proceedings. …

3. If the Commission considers it necessary, it may also hear other natural or legal persons. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted. The competition authorities of the Member States may also ask the Commission to hear other natural or legal persons.

…'

Regulation No 773/2004

7 Article 11, entitled 'Right to be heard', of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18), as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 (OJ 2008 L 171, p. 3) ('Regulation No 773/2004'), provides:

'1. The Commission shall give the parties to whom it has addressed a statement of objections the opportunity to be heard before consulting the Advisory Committee referred to in Article 14(1) of [Regulation No 1/2003].

2. The Commission shall, in its decisions, deal only with objections in respect of which the parties referred to in paragraph 1 have been able to comment.'

8 Article 12 of Regulation No 773/2004 states:

'1. The Commission shall give the parties to whom it addresses a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written submissions.

2. However, when introducing their settlement submissions the parties shall confirm to the Commission that they would only require having the opportunity to develop their arguments at an oral hearing, if the statement of objections does not reflect the contents of their settlement submissions.'

9 Article 13 of that regulation, entitled 'Hearing of other persons', provides:

'1. If natural or legal persons other than those referred to in Articles 5 and 11 apply to be heard and show a sufficient interest, the Commission shall inform them in writing of the nature and subject matter of the procedure and shall set a time limit within which they may make known their views in writing.

2. The Commission may, where appropriate, invite persons referred to in paragraph 1 to develop their arguments at the oral hearing of the parties to whom a statement of objections has been addressed, if the persons referred to in paragraph 1 so request in their written comments.

3. The Commission may invite any other person to express its views in writing and to attend the oral hearing of the parties to whom a statement of objections has been addressed. The Commission may also invite such persons to express their views at that oral hearing.'

10 Article 14 of that regulation, entitled 'Conduct of oral hearings', is worded as follows:

'1. Hearings shall be conducted by a Hearing Officer in full independence.

2. The Commission shall invite the persons to be heard to attend the oral hearing on such date as it shall determine.

3. The Commission shall invite the competition authorities of the Member States to take part in the oral hearing. It may likewise invite officials and civil servants of other authorities of the Member States.

…'

2011 Commission Notice

11 The principal purpose of the Commission Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (OJ 2011 C 308, p. 6) ('the 2011 Commission Notice'), as is apparent from paragraph 1 thereof, is to provide practical guidance on the conduct of proceedings concerning Articles 101 and 102 TFEU.

12 Paragraph 6 of that notice provides that it would be applied as from the date of publication for 'pending and future cases'. It is apparent from footnote 16 to that notice that, with regard to cases which are pending, it will apply to 'any procedural steps that remain to be taken after publication'.

13 Under paragraphs 84, 86 and 109 of that notice:

'(84) The Statement of Objections will clearly indicate whether the Commission intends to impose fines on the undertakings, should the objections be upheld …. In the Statement of Objections the Commission will indicate the essential facts and matters of law which may result in the imposition of a fine, such as the duration and gravity of the infringement and that the infringement was committed intentionally or by negligence. The Statement of Objections will also mention in a sufficiently precise manner that certain facts may give rise to aggravating circumstances and, to the extent possible, to attenuating circumstances.

…

(86) Should the Commission intend to depart in its final decision from the elements of fact or of law set out in the Statement of Objections to the disadvantage of one or more parties or should the Commission intend to take account of additional inculpatory evidence, the party or parties concerned will always be given the opportunity to make their views known thereon in an appropriate manner.

…

(109) If, after the Statement of Objections has been issued, new evidence is identified which the Commission intends to rely upon or if the Commission intends to change its legal assessment to the disadvantage of the undertakings concerned, the undertakings in question shall be given an opportunity to present their observations on these new aspects.'

Background to the dispute and the decision at issue

14 The background to the dispute is set out in paragraphs 1 to 31 of the judgment under appeal:

'1 The [appellant], Ferriere Nord SpA, is a company incorporated under Italian law which has operated in the concrete reinforcing bar sector since April 1992.

A. The Commission's first decision (2002)

2 From October to December 2000, the Commission of the European Communities carried out a number of checks pursuant to Article 47 CS at the premises of certain Italian undertakings engaged in the manufacture of concrete reinforcing bars, including the [appellant], and at the premises of an association of undertakings, the Federazione Imprese Siderurgiche Italiane (Federation of Italian Steel Undertakings; ["the Federation"]). It also requested them to supply information under that provision.

3 On 26 March 2002, the Commission initiated a proceeding under Article 65 CS and formulated objections under Article 36 CS ("the statement of objections"), which were notified to the [appellant], among others. The [appellant] replied to that statement of objections on 31 May 2002.

4 A hearing of the parties to the administrative procedure took place on 13 June 2002.

5 On 12 August 2002, the Commission sent the same addressees further objections ("the supplementary statement of objections") under Article 19(1) of Council Regulation No 17 of 6 February 1962: first regulation implementing Articles [81] and [82 EC] (OJ, English Special Edition 1959-1962, p. 87). In that supplementary statement of objections, the Commission explained its position regarding continuation of the procedure following the expiry of the ECSC Treaty on 23 July 2002. The [appellant] replied to the supplementary statement of objections on 20 September 2002.

6 A new hearing of the parties to the administrative procedure was held on 30 September 2002 in the presence of the competition authorities of the Member States. It concerned the subject matter of the supplementary statement of objections, namely the legal consequences of the expiry of the ECSC Treaty for the continuation of the procedure.

7 At the end of the administrative procedure, the Commission adopted Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 of the ECSC Treaty (COMP/37.956 – Reinforcing bars) ("the 2002 decision"), addressed to [the Federation] and eight undertakings, including the [appellant]. In that decision, the Commission found that, between December 1989 and July 2000, those entities had engaged in a single, complex and continuous restrictive practice on the Italian market for concrete reinforcing bars and coils ("concrete reinforcing bars") which had as its object or effect price fixing and limiting or controlling output or sales, contrary to Article 65(1) CS.

8 The Commission stated that the [appellant's] involvement in the infringement spanned the period from 1 April 1993 to 4 July 2000. On that basis, the Commission imposed a fine of EUR 3.57 million on the [appellant]. That amount included a 20% reduction of the fine in favour of the [appellant], pursuant to Section D.1 of the Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4 …), which provides for the possibility of reducing the fine which would have been imposed on an undertaking if it cooperates by providing the Commission, before a statement of objections is sent, with information, documents or other evidence which materially contribute to establishing the existence of the infringement.

9 On 10 March 2003, the [appellant] brought an action before the [General] Court challenging the 2002 decision. The [General] Court annulled that decision with regard to the [appellant] (judgment of 25 October 2007, *Ferriere Nord* v *Commission*, T-94/03, …, EU:T:2007:320) and the other addressee undertakings, on the ground that the legal basis used, namely Article 65(4) and (5) CS, was no longer in force when the decision was adopted. Accordingly, the Commission did not have the power under those provisions to establish and penalise an infringement of Article 65(1) CS following the expiry of the ECSC Treaty. The [General] Court did not examine the other aspects of that decision.

10 The 2002 decision became final with regard to [the Federation], which did not bring an action before the [General] Court.

B. The Commission's second decision (2009)

11 By letter of 30 June 2008, the Commission informed the [appellant] and the other undertakings concerned of its intention to adopt a new decision, with a corrected legal basis. It also stated that that decision would be based on the evidence set out in the statement of objections and the supplementary statement of objections. At the Commission's request, the [appellant] submitted written observations on 1 August 2008.

12 By faxes of 24 July and 25 September 2008 and of 13 March, 30 June and 27 August 2009, the Commission requested information from the [appellant] concerning its ownership and asset situation. The [appellant] replied to those requests for information by letters dated 1 August and 1 October 2008 and 18 March, 1 July and 8 September 2009 respectively.

13 On 30 September 2009, the Commission adopted Decision C(2009) 7492 final relating to a proceeding under Article 65 of the ECSC Treaty (Case COMP/37.956 – Reinforcing bars, re-adoption), addressed to the same undertakings as the 2002 decision, including the [appellant]. That decision was adopted under the procedural rules of the EC Treaty and [Regulation No 1/2003]. It was based on the evidence referred to in the statement of objections and the

supplementary statement of objections and reproduced, in essence, the content and findings of the 2002 decision. In particular, the amount of the fine imposed on the [appellant], totalling EUR 3.57 million, was unchanged.

14 On 8 December 2009, the Commission adopted an amending decision which included, in the annex thereto, tables illustrating price variations omitted from its decision of 30 September 2009 and correcting the numbered references to those tables in eight footnotes.

15 On 19 February 2010, the [appellant] brought an action before the [General] Court challenging the Commission's decision of 30 September 2009, as amended ("the 2009 decision"). On 9 December 2014, the [General] Court reduced the amount of the fine imposed on the [appellant] to EUR 3.42144 million, on the ground that it had not participated, for a period of three years, in the part of the cartel concerned with limiting or controlling output or sales, and dismissed the action as to the remainder (judgment of 9 December 2014, *Ferriere Nord* v *Commission*, T-90/10, …, EU:T:2014:1035). The [General] Court annulled the 2009 decision in part with regard to another of its addressees, reduced the fine imposed on one other addressee and dismissed the other actions brought.

16 On 20 February 2015, the [appellant] brought an appeal against the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, …, EU:T:2014:1035). By judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), the Court of Justice set aside the judgment of the General Court and annulled the 2009 decision with regard to, inter alia, the [appellant].

17 In its judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), the Court of Justice held that, when a decision is adopted on the basis of Regulation No 1/2003, the procedure resulting in that decision must conform to the procedural rules laid down by that regulation and by [Regulation No 773/2004], even if the procedure began before those regulations came into force.

18 The Court of Justice found that, in that case, the hearing of 13 June 2002, which was the only hearing on the substance of the procedure, could not be regarded as fulfilling the procedural requirements in relation to the adoption of a decision on the basis of Regulation No 1/2003, in the absence of participation by the competition authorities of the Member States.

19 The Court of Justice concluded that the General Court had erred in law in holding that the Commission was not obliged to organise a new hearing before adopting the 2009 decision, on the ground that the undertakings had already had the opportunity to be heard orally at the hearings of 13 June and 30 September 2002.

20 In its judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), the Court of Justice recalled the importance of holding a hearing, at the request of the parties concerned, to which the competition authorities of the Member States are invited, as failure to hold such a hearing constitutes infringement of an essential procedural requirement.

21 The Court of Justice held that, in so far as that right, as made explicit in Regulation No 773/2004, had not been respected, it was not necessary for the undertaking whose right had been infringed in that way to demonstrate that such infringement might have influenced the course of the proceedings and the content of the [2009] decision … to its detriment.

22 The Court of Justice also set aside a number of other judgments of the General Court of 9 December 2014 adjudicating on the legality of the 2009 decision and annulled that decision, with regard to four other undertakings, on the same grounds. However, the 2009 decision became final for the addressee undertakings which did not appeal against those judgments.

C. The Commission's third decision (2019)

23 By letter of 15 December 2017, the Commission informed the [appellant] of its intention to resume the administrative procedure and to organise, in that context, a new hearing of the parties to that procedure in the presence of the competition authorities of the Member States.

24 By letter of 1 February 2018, the [appellant] submitted observations in which it challenged the Commission's power to resume the administrative procedure and thus called upon the Commission to refrain from doing so.

25 On 23 April 2018, the Commission held a new hearing concerning the substance of the procedure, in which the [appellant] and three other addressee undertakings of the 2009 decision participated in the presence of the competition authorities of the Member States and the hearing officer.

26 By letters of 19 November 2018 and of 17 January and 6 May 2019, the Commission sent three requests for information to the [appellant] concerning its ownership and asset situation. The [appellant] replied to those requests for information by letters dated 10 December 2018 and 31 January and 9 May 2019 respectively.

27 On 21 June 2019, the [appellant] attended a meeting with the Commission's services during which the latter stated that they had decided to propose to the College of Commissioners that a new penalty decision be adopted, but that, in the light of the objectively long time taken, they would suggest that an extraordinary mitigating circumstance be applied.

28 On 4 July 2019, the Commission adopted [the decision at issue], addressed to the five undertakings in respect of which the 2009 decision had been annulled, namely, in addition to the [appellant], Alfa Acciai SpA, Feralpi Holding SpA (formerly Feralpi Siderurgica SpA and Federalpi Siderurgica SRL), Partecipazioni Industriali SpA (formerly Riva Acciaio SpA and subsequently Riva Fire SpA; "Riva") and Valsabbia Investimenti SpA and Ferriera Valsabbia SpA.

29 In the [decision at issue], the Commission found the same infringement as that forming the subject matter of the 2009 decision, but reduced the fines imposed on the undertakings to which it was addressed by 50% on account of the duration of the procedure. The [appellant] also received an additional reduction of 6% of the fine because it had not participated in the part of the cartel concerned with limiting or controlling output or sales during a certain period of time. By Article 2 of the [decision at issue], the Commission thus imposed a fine of EUR 2.237 million on the [appellant].

30 On 8 July 2019, an incomplete copy of the [decision at issue], containing only the odd-numbered pages, was notified to the [appellant], which informed the Commission thereof by letter of 9 July 2019.

31 On 18 July 2019, a complete version of the [decision at issue] was notified to the [appellant].'

Procedure before the General Court and the judgment under appeal

15 By application lodged at the Registry of the General Court on 30 September 2019, the appellant brought an action for annulment of the decision at issue in so far as it concerns it or, in the alternative, for the reduction in the amount of the fine imposed on it.

16 In support of its action for annulment of the decision at issue, the appellant put forward, in essence, six pleas in law, alleging: (i) infringement of the rights of the defence and of procedural rules at the hearing of 23 April 2018; (ii) that the Commission unlawfully refused to ascertain, before adopting the decision at issue, whether that decision was compatible with the reasonable time principle; (iii) failure to observe the reasonable time principle; (iv) breach of the duty to state reasons, misuse of powers and failure to observe the principle of proportionality; (v) failure to observe the *ne bis in idem* principle; and (vi) that the rules on limitation periods laid down in Article 25 of Regulation No 1/2003 are unlawful.

17 With regard, in particular, to the first plea, the appellant claimed, by the first two of the five complaints raised in the context of that plea, that, first, the impartiality of the Advisory Committee established by Regulation No 1/2003 ('the Advisory Committee') was called into question to the extent that the conduct of the representatives of the Member States' competition authorities making up the Advisory Committee could have been influenced by the fact those authorities had been aware of the position adopted on the case (i) by the Commission in its 2002 and 2009 decisions and (ii) by the General Court, in the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), and, second, the independence of the Commission was affected by the fact that, strengthened by that judgment, it was no longer actually in a position to uphold a contrary opinion issued by representatives of the Member States' competition authorities sitting on the Advisory Committee.

18 By the third complaint of that plea, the appellant claimed that the Commission, on the one hand, had infringed various rules relating to the organisation of hearings and, on the other, had erred in failing to invite the Federation, Leali SpA and its subsidiary Acciaierie e Ferriere Leali Luigi SpA (together, 'Leali'), Lucchini SpA, Riva, Industrie Riunite Odolesi SpA ('IRO') and the Associazione Nazionale Sagomatori Ferro (National Association of Iron Millers, 'Ansfer') to the hearing of 23 April 2018 even though, given their significant role in the matter, those entities could have provided the competition authorities of the Member States with information that would have allowed those authorities to adopt their position in full knowledge of the facts. According to the appellant, since it was unable to benefit from an opinion delivered in full knowledge of the facts by those authorities, its rights of defence were infringed.

19 By the fourth complaint of the first plea, the appellant submitted that it was impossible to make good the procedural defect censured by the Court of Justice. Given the period of time that had passed, the changes in the identity of the relevant persons on the market and that market's structure were such, in the appellant's view, that a hearing could not be organised in conditions identical or, at the very least, equivalent to those which prevailed in 2002.

20 By the fifth complaint of that plea, the appellant claimed, in particular, that the opinion delivered by the Advisory Committee, which included a declaration signed by eight competition authorities of the Member States, according to which the hearing of 23 April 2018 made good the procedural error found by the Court of Justice in the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), was flawed. Two of those eight authorities, including the rapporteur competition authority, did not participate in that hearing.

21 In support of its alternative claim seeking the annulment in part of the decision at issue and a corresponding reduction in the amount of the fine imposed on it, the appellant put forward three additional pleas, alleging: (vii) failure to discharge the burden of proof and failure to observe the *in dubio pro reo* principle; (viii) that the increase in the amount of the fine imposed for repeated infringement was unlawful and; (ix) failure to observe the principle of equal treatment as regards the taking into account of mitigating circumstances and that the statement of reasons justifying a limited reduction in the amount of the fine was submitted out of time.

22 By decision of 11 February 2020, the General Court granted the Council of the European Union leave to intervene in support of the forms of order sought by the Commission.

23 By the judgment under appeal, the General Court dismissed the action in its entirety.

24 With regard to the first plea in law at first instance, the General Court held, first, that the appellant's arguments were not such as to establish that the impartiality of both the representatives of the competition authorities of the Member States sitting on the Advisory Committee and the Commission was not guaranteed in the present case. Second, by failing to invite various entities and associations to participate in the hearing of 23 April 2018, the Commission did not infringe the rules relating to the organisation of hearings or the appellant's rights of defence. Third, the changes in context that had occurred, on account of the time that had elapsed, did not affect the possibility for the Commission to resume a procedure following the annulment of one of its decisions by a judgment of the Court of Justice or General Court, provided that that institution had assessed the continuation of the procedure to still be an appropriate solution, as the Commission did in the present case. Fourth, the argument that the opinion issued by the Advisory Committee was flawed is unfounded.

25 As regards the third plea in law at first instance, the General Court considered that neither the duration of the administrative stages of the procedure carried out by the Commission or the procedure's total duration was excessive and that, in any event, even if the duration of the procedure could be considered contrary to the reasonable time principle, the appellant had not established that the procedure's duration interfered in any way with its rights of defence.

26 So far as concerns the fourth plea in law at first instance, the General Court held that, first, the Commission had provided an adequate explanation of its reasons which led it to adopt a new decision despite the two previous annulments, second, the fine imposed on the appellant in the decision at issue continued to have a significant deterrent effect, since the fines imposed in the 2002 and 2009 decisions were repaid to it following the annulment of those decisions, third, before the adoption of the decision at issue, the appellant had not yet been penalised for the infringement at issue, in the light of the two annulments, fourth, the resumption of the procedure and the adoption of a new decision were likely to facilitate the task of third parties wishing to bring claims for compensation, having regard, in particular, to the fact that Member States other than the Italian Republic could be affected and that the application of national laws other than Italian law could not be ruled out by the Commission and, fifth, the principle of proportionality had not been breached.

27 Concerning the fifth plea in law at first instance, the General Court held that the *ne bis in idem* principle had not been breached, given that, at the date of the judgment under appeal, no decision had given a definitive ruling on the substance of the case as regards the appellant's involvement in the infringements of which it is accused.

28 With regard to the sixth plea in law at first instance, the General Court held that the plea of illegality in respect of Article 25 of Regulation No 1/2003 which it contained had to be dismissed. The appellant had not shown that the EU legislature, in its reconciliation of the objectives that had to be taken into account in that regard, exceeded the leeway which it must be allowed in that context. In establishing a limitation period of five years for penalising infringements of EU competition law and, in the event of interruption, a limitation period of 10 years, the Commission's actions are strictly limited in time. As for the fact that, under Article 25(6) of Regulation No 1/2003, the limitation period is suspended for the duration of review proceedings brought against the Commission's decision, the General Court noted that Article 25(6) concerns situations in which the Commission's inaction is not the result of a lack of diligence on its part.

29 As regards the eighth plea in law at first instance, the General Court considered that, first, the increase in the fine imposed on the appellant for repeated infringement was sufficiently foreseeable for the appellant and did not therefore infringe its rights of defence, second, the period of time to be taken into account to decide whether such an increase should be imposed was not excessively long and, third, the 50% increase applied in the present case for repeated infringement was not excessive.

30 Concerning the ninth plea in law at first instance, the General Court held that, first, the difference in the amount of the reduction of the fine granted to the appellant and to another undertaking, in the absence of participation by those undertakings in a specific part of the cartel which was the subject of the decision at issue, was justified and, second, that the Commission had not provided the information relating thereto out of time.

Forms of order sought before the Court

31 By its appeal, the appellant claims that the Court should:

– set aside the judgment under appeal and, as a result, annul the decision at issue;

– in the alternative, set aside the judgment under appeal in so far as it dismissed its claim in the alternative for the annulment in part of the decision at issue, set aside that decision in part and reduce the fine imposed on it;

– order the Commission to pay the costs at first instance and on appeal.

32 The Commission contends that the Court should:

– dismiss the appeal and;

– order the appellant to pay the costs.

33 The Council claims that the Court should reject the plea of illegality in respect of Article 25 of Regulation No 1/2003 and order the appellant to pay the costs of the appeal.

The appeal

34 In support of its appeal, the appellant raises eight grounds of appeal.

The first ground of appeal

35 By its first ground of appeal, which is in four parts, the appellant submits that the General Court infringed its rights of defence, failed to examine the evidence, manifestly distorted the facts and evidence, breached its obligation to state reasons for its judgments and made arbitrary assessments.

The third part

– *Arguments of the parties*

36 By the third part of its first ground of appeal, which it is appropriate to examine in the first place, the appellant claims, in essence, that the General Court erred in law in considering, in paragraphs 158 to 162 of the judgment under appeal, that, despite the changes that had occurred in the identity of the operators and in the structure of the market, the Commission had been able to rectify the procedural defect censured by the Court in the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), by organising the hearing of 23 April 2018. It disputes the reasons set out in paragraphs 159 and 160 of the judgment under appeal, by which the General Court considered that the time elapsed prevented a new hearing being held under the same conditions as those prevailing in 2002. According to the appellant, the illegality established by the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), is irremediable, not because of the changes that had occurred over time, but as a result of the wrongful participation of that institution in the commission of that illegality.

37 The Commission contends that that line of argument is a new one and, as a result, inadmissible. In any event, that line of argument is unfounded.

– *Findings of the Court*

38 Under the second sentence of Article 170(1) of the Rules of Procedure of the Court of Justice, the subject matter of the proceedings before the General Court may not be changed in the appeal. Thus, according to settled case-law, to allow a party to put forward for the first time before the Court of Justice pleas in law and arguments which it has not raised before the General Court would mean allowing that party to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the jurisdiction of the Court of Justice is thus confined to a review of the assessment of the General Court of the pleas and arguments debated before it (judgment of 29 February 2024, *Euranimi* v *Commission*, C-95/23 P, EU:C:2024:177, paragraph 53 and the case-law cited).

39 In paragraph 158 of the judgment under appeal, the General Court noted that the appellant's complaint that it was not possible to rectify the procedural defect identified by the Court was based on the finding that, as a result of the time elapsed, the changes in the identity of the operators and in the structure of the market were such that no hearing could be organised in conditions identical, or at least, equivalent to, those prevailing in 2002.

40 That description of the complaint put forward at first instance is not disputed by the appellant in its appeal. However, it must be noted that it is not apparent from that description that the appellant argued, before the General Court, that the errors committed by the Commission made the procedural defect identified by the Court in the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716) irremediable.

41 Admittedly, in its rejoinder, the appellant states that, in paragraphs 62, 82, 97, 127, 133, 136, 167, 182 and 205 of its application at first instance, it noted that the combined effect of the errors committed by the Commission and the abnormal duration of the procedure made it impossible to rectify the procedural defect identified by the Court. It is not apparent, however, from any of those paragraphs that the appellant maintained, before the General Court, that it was not the changes that had occurred over time that had made the procedural defect identified by the Court in the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716) irremediable, but the Commission's wrongful participation in bringing about that illegality.

42 It follows that since the line of argument set out in the third part of the first ground of appeal was raised for the first time before the Court, it must be dismissed as inadmissible.

The first part

– *Arguments of the parties*

43 By the first part of its first ground of appeal, the appellant submits, in essence, that the General Court, in paragraphs 64 to 78 of the judgment under appeal, wrongly held that, at the hearing of 23 April 2018 and in the adoption of the opinion of the Advisory Committee, both the Commission and the representatives of the Member States' competition authorities complied with the requirement of impartiality.

44 In the first place, the appellant takes the view that those authorities could not adopt positions other than those already set out in the 2009 decision and which had been confirmed by the General Court in the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), and in seven other judgments delivered in 2014 on appeals brought by other addressees of the 2009 decision against that decision ('the 2014 judgments'), some of which had become final.

45 In the second place, the General Court's assessment that the requirement of impartiality had been complied with in respect of the Autorità Garante della Concorrenza e del Mercato (AGCM) (Competition and Markets Authority, Italy; 'the AGCM') is incorrect and is based on a manifest distortion of the facts and evidence, or even an outright failure to examine the facts and evidence.

46 The General Court took into consideration the fact that the AGCM was aware of the 2009 decision and the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035). However, the General Court failed to take into account the fact that that authority relied, as established by several documents before the General Court, on that decision and on that judgment when censuring, in 2017, a cartel involving the same undertakings and the same type of conduct as that at issue in that decision ('the 2017 decision of the AGCM'). The appellant notes that the role played by the two persons representing the AGCM at the hearing of 23 April 2018 in the procedure for the adoption of the 2017 decision of the AGCM was decisive.

47 In the light of those factors, the two premisses on which the General Court relied in paragraph 75 of the judgment under appeal are incorrect. On the one hand, the fact that the cartel which was the subject of the 2017 decision of the AGCM was different from that which was the subject of the decision at issue is irrelevant. On the other, the premiss that the 2017 decision of the AGCM could not influence that authority, because that decision had been annulled by an Italian court, is also incorrect. That annulment was carried out after the hearing of 23 April 2018, since it stems from a judgment of 12 June 2018 of the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy). In those circumstances, the appellant submits that the AGCM had an interest, at the hearing, in confirming the objections set out by the Commission. In addition, when, on 27 June and 1 July 2019, the AGCM issued its opinion in the Advisory Committee, the appeal it had brought against that judgment was still pending.

48 In the third place, after the 2014 judgments, there was no reason for the Commission to be influenced by a possible contrary opinion issued by the Advisory Committee.

49 Furthermore, the appellant claims that the General Court failed to rule on its line of argument alleging infringement of the presumption of innocence, set out in paragraphs 123 to 127 of the application at first instance. The General Court found, in the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), that the appellant had participated in the cartel, which was the subject of the decision at issue, of which the representatives of the Member States' competition authorities could not have been unaware at the hearing of 23 April 2018 or, subsequently, when intervening in the Advisory Committee.

50 The Commission argues that that argument is inadmissible in that it is partly too imprecise and partly new. It is, in any event, unfounded.

– *Findings of the Court*

51 With regard to the admissibility of the second part of the first ground of appeal, it should be borne in mind, on the one hand, that it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure that an appeal must indicate precisely the contested paragraphs of the judgment under appeal and the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal concerned may be inadmissible (judgment of 11 January 2024, *Foz* v *Council*, C-524/22 P, EU:C:2024:23, paragraph 26 and the case-law cited).

52 Thus, elements of an appeal that contain no argument specifically identifying the error of law allegedly vitiating the judgment in respect of which the appeal is brought do not fulfil that requirement and must be rejected as inadmissible (judgment of 22 June 2023, *YG* v *Commission*, C-818/21 P, EU:C:2023:511, paragraph 105 and the case-law cited).

53 On the other hand, an appellant is entitled to bring an appeal relying, before the Court of Justice, on pleas and arguments arising from the judgment under appeal itself which seek to criticise its merits in law (judgment of 6 July 2023, *EIB and Commission* v *ClientEarth*, C-212/21 P and C-223/21 P, EU:C:2023:546, paragraph 96 and the case-law cited).

54 In the present case, although the appellant refers, in the context of the first ground of appeal, and with regard to the hearing of 23 April 2018 and the opinion of the Advisory Committee, to the infringement of Article 266 TFEU and Article 47 of the Charter of Fundamental Rights of the

European Union ('the Charter'), it fails to state the reasons why those provisions could support a complaint alleging the lack of impartiality of the members of the Advisory Committee and of the Commission, contrary to the case-law cited in paragraph 51 above. It follows that that part must be dismissed as being inadmissible in that it is based on the infringement of those provisions.

55 By contrast, the complaint alleging breach of the principle of the presumption of innocence, enshrined in Article 48(1) of the Charter and in Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), is set out in sufficiently clear terms to understand that the appellant maintains that the General Court failed to rule on a part of the application at first instance. That complaint is therefore admissible.

56 In addition, the appellant argued before the General Court that, having regard to the 2017 decision of the AGCM, the representatives of the AGCM that participated in the hearing of 23 April 2018 and that were involved in the work of the Advisory Committee relating to the adoption of the contested decision cannot be considered to be objective and impartial. It is apparent from paragraph 75 of the judgment under appeal that the General Court rejected that claim on the ground that the 2017 decision of the AGCM was subsequently set aside by the judgment of 12 June 2018 of the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio). Therefore, in accordance with the case-law cited in paragraph 53 above, the appellant is entitled, in the context of its appeal, to challenge that finding, by arguing that the date of that judgment was relevant.

57 As to the substance, it should be observed that the General Court first of all noted, in paragraphs 64 to 66 of the judgment under appeal, that the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), having been set aside by the Court of Justice, disappeared from the legal order of the European Union. Next, it held, in paragraphs 71 and 72 of the judgment under appeal, that 'potential knowledge of a solution adopted previously and, as the case may be, confirmed in a judgment of the General Court subsequently set out aside by the Court of Justice on appeal is inherent in the obligation to give due effect to an annulment'. According to the General Court, deciding that that knowledge could 'hinder, in itself, the resumption of a procedure' would be incompatible with Article 266 TFEU, which, in the case of annulment on the basis of Article 263 TFEU, requires the institutions, bodies, offices and agencies of the European Union to take the necessary measures to comply with the judgments given in their regard without, however, freeing them from the task of ensuring, in their fields of competences, the implementation of EU law. Lastly, the General Court considered, in paragraph 73 of the judgment under appeal, that, in such circumstances, the resumption of the procedure is precluded only if, on the basis of specific evidence, the appellant can establish that the impartiality of the representatives of the competition authorities of the Member States and the Commission 'had actually been negatively affected'.

58 That assessment is not vitiated by any error of law.

59 It should be borne in mind, in that regard, that the right to good administration, enshrined in Article 41 of the Charter, provides that every person has the right, inter alia, to have his or her affairs handled impartially by the institutions of the European Union. That requirement of impartiality encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be sufficient guarantees to exclude

any legitimate doubt as to bias on the part of the institution concerned (judgment of 1 February 2024, *Scania and Others* v *Commission*, C-251/22 P, EU:C:2024:103, paragraph 70 and the case-law cited).

60 In the present case, with the exception of the AGCM, the appellant's argument concerns only the objective impartiality of representatives of the competition authorities of the Member States and of the Commission.

61 However, even assuming that the requirement of impartiality, pursuant to Article 41 of the Charter, also applies with regard to representatives of the competition authorities of the Member States, when participating in a hearing and when contributing to the opinion issued by the Advisory Committee on a draft Commission decision concerning competition, the mere knowledge, on the part of such representatives, of an earlier Commission decision, confirmed in a judgment of the General Court and subsequently set aside by the Court of Justice, is not sufficient, in itself and in the absence of any other objective evidence, to raise a legitimate doubt, in the eyes of third parties, as to the existence of any prejudices among those representatives. The members of the Advisory Committee, when participating in a hearing and contributing to the drawing up of the opinion of that committee on a draft Commission decision concerning competition, are not required to take into account such an earlier decision. Therefore, mere knowledge of such a decision cannot, in itself, give rise to a legitimate doubt as to the existence of any prejudice on the part of the members of the Advisory Committee.

62 The same applies, a fortiori, to the Commission. If the appellant's arguments were to be accepted, it would preclude the Commission from resuming the procedure following the annulment of a decision by the General Court or Court of Justice, even if only in a situation such as that at issue in the present case, and even in the absence of any specific evidence giving rise to a legitimate doubt as to its impartiality. Such a prohibition would, as the General Court rightly found, be incompatible with Article 266 TFEU which, in the event of annulment of an act, requires the institutions, bodies, offices and agencies of the European Union from which it emanates to take the necessary measures to comply with the judgments given in their regard, without ruling out the possibility of adopting a new act, free from the defects identified by the EU Courts. Furthermore, such a solution would preclude the Commission from fulfilling its duty to ensure, within its fields of competence, the application of EU competition law.

63 As regards the alleged lack of impartiality of the AGCM, the appellant submits that that authority relied on the 2009 decision and the 2014 judgments when adopting the 2017 decision of the AGCM.

64 However, it is apparent from the evidence put forward by the appellant in that regard that the 2009 decision and the 2014 judgments, although mentioned in the 2017 decision of the AGCM, do not constitute one of the foundations of that decision. Furthermore, the appellant's claims relating to the lack of objectivity or impartiality on the part of the AGCM were not set out in a sufficiently clear manner in its application at first instance. In those circumstances, the General Court neither distorted the facts and evidence, nor failed to rule on the appellant's line of argument.

65 With regard to the complaint that the General Court failed to rule on the line of argument alleging a breach of the principle of the presumption of innocence, it must be noted that the appellant maintained, at first instance, that since the General Court had already established, in the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), its

participation in the cartel, the representatives of the competition authorities of the Member States were not, at the hearing of 23 April 2018 and during the subsequent work of the Advisory Committee, in a position to presume its innocence. That complaint was therefore confused with the appellant's more general line of argument that those authorities lacked impartiality. However, in so far as the General Court rejected that argument in its entirety, it was not required to rule specifically on that complaint. It must be observed, in that regard, that the appellant had not put forward any argument aimed at supplementing in a specific way its complaint relating to the observance of the presumption of innocence.

66 It follows that the first part of the first ground of appeal must be dismissed as partly inadmissible and partly unfounded.

The second part

– *Arguments of the parties*

67 By the second part of the first ground of appeal, the appellant submits that the General Court, by rejecting, in paragraphs 79 to 157 of the judgment under appeal, its line of argument based on the incomplete nature of the hearing of 23 April 2018, since the Commission failed to invite Riva, Leali, IRO, Lucchini, the Federation and Ansfer, erred in law. In particular, the General Court incorrectly answered the question whether the Commission, with regard to that hearing, had in any way other than the infringement of a rule that it was obliged to observe, impeded the appellant's rights of defence.

68 In the first place, so far as concerns Riva, the appellant submits that that addressee of the decision at issue was forced to refrain from participating in the hearing of 23 April 2018. On account of the time that had elapsed since the facts of the case took place, none of Riva's employees was in a position to provide useful evidence to support the Commission's complaints. The appellant notes that it is not Riva's absence of participation in the hearing of 23 April 2018 that is responsible for the injury to its rights of defence but the abnormally long duration of the procedure. Consequently, that excessively long duration prevented the Advisory Committee from hearing Riva and from acquiring a complete view of the context and grounds of defence relating to the cartel that the Commission sought to penalise.

69 In the second place, with regard to the situation of undertakings and associations which, according to the appellant, should have been invited to the hearing of 23 April 2018 in their capacity as interested third parties, pursuant to the second sentence of Article 27(3) of Regulation No 1/2003 and Article 13(1) and (2) of Regulation No 773/2004, the appellant submits, on the one hand, that the General Court rejected, in paragraph 102 of the judgment under appeal, its line of argument relating to the infringement of its rights of defence resulting from the absence of participation of Leali, IRO and the Federation, on the basis of irrelevant considerations.

70 On the other hand, the appellant submits that the General Court wrongly found that the Commission had validly considered Lucchini and Ansfer not to be interested third parties.

71 The General Court's assessment of Lucchini is arbitrary, rigid and formalistic. It makes it impossible to ascertain why Lucchini's request for leave to participate, as a party to the procedure, in the hearing of 23 April 2018 could not be interpreted as meaning that that undertaking wished to be invited to the hearing as an interested third party.

72 As for Ansfer's capacity as an interested third party, the appellant submits that the General Court's judgment was contradictory and distorted, and that the General Court carried out an arbitrary examination of the facts. It puts forward three complaints in that regard.

73 First, the grounds set out in paragraphs 126 to 128 of the judgment under appeal are contradictory. Having noted that it would be legitimate for an entity recognised as an interested third party at an earlier stage of the procedure to retain that status throughout the procedure, the General Court examined whether, in the present case, Ansfer had been able to retain that status.

74 Second, by considering, in paragraph 129 of the judgment under appeal, that 'Ansfer's declared interest in participating in the procedure was not maintained throughout that procedure', the General Court distorted recital 110 of the contested decision by which the Commission recognised Ansfer as being an interested third party. Furthermore, the General Court limited, in paragraph 124 of the judgment under appeal, the scope of the complaint raised at first instance to Ansfer's procedural position during 2002.

75 The General Court also disregarded Article 13(1) and (2) of Regulation No 773/2004, under which the Commission is required to inform interested third parties of the nature and subject matter of the procedure and invite them, if they so request in their written comments, to develop their arguments at the oral hearing of the parties to whom a statement of objections has been addressed. It is common ground that the Commission did not inform Ansfer of the resumption of the administrative procedure in December 2017 or invite it to participate in the hearing of 23 April 2018.

76 Furthermore, the General Court disregarded Article 5(1) and (2) and Article 6(2) of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011 L 275, p. 29).

77 Third, even assuming that the General Court was justified in finding that it was necessary to determine whether Ansfer had been able to retain its status as a third party showing sufficient interest, the reasons set out in paragraphs 132 to 135 of the judgment under appeal, on the basis of which the General Court concluded that it had not, and which were based, in particular, on certain specific facts, were neither logical nor decisive.

78 First of all, according to the appellant, Ansfer did not participate in the hearing of 30 September 2002, because it related not to the substance of the case but only to the legal consequences of the expiry of the ECSC Treaty. The fact that Ansfer did not speak at the hearing of 13 June 2002 is irrelevant in the absence of any obligation to that effect on the part of the participants. Next, the fact that Ansfer's written observations had been included in the file and had been subsequently reproduced in the draft of the decision at issue is in no way decisive, given that, otherwise, it would not even be necessary to invite the parties to a new hearing. Lastly, the assessment, in paragraph 133 of the judgment under appeal, according to which in the interest of good administration, 'a large number of interveners must be avoided' is incomprehensible given the small number of entities present at the hearing of 23 April 2018.

79 In any event, the foregoing considerations clearly highlight the arbitrary nature of the Commission's assessment, as validated by the General Court.

80 In the third place, with regard to the position of other third parties, covered by the first sentence of Article 27(3) of Regulation No 1/2003 and Article 13(3) of Regulation No 773/2004, namely persons other than those to whom the statement of objections was addressed and interested third parties, such as Leali, IRO and the Federation, the appellant submits that the General Court infringed those provisions.

81 The same applies to Lucchini. While in the meantime some addressees of the 2002 and 2009 decisions had disappeared after being declared bankrupt, others remained outside the procedure for the adoption of the decision at issue because they did not challenge the 2002 decision or the 2014 judgments. In those circumstances, the Commission was required to grant Lucchini's request to participate in the hearing of 23 April 2018. The Commission's refusal to grant that request infringed the rights of defence of the undertakings concerned by the investigation which were deprived of invoking Lucchini's evidence. Furthermore, Lucchini's absence was detrimental to the prerogatives of the members of the Advisory Committee representing the competition authorities of the Member States. The Commission thus exercised its discretion in respect of Lucchini in an arbitrary manner, which the General Court failed to find.

82 For similar reasons, the appellant maintains that the Commission was required to invite Ansfer to participate in the hearing of 23 April 2018 as another third party, since the Commission also exercised its discretion in respect of that association in an arbitrary manner.

83 The Commission contends that the appellant's arguments are inadmissible in several respects. First, those arguments amount, in essence, to a request for the Court to carry out a new assessment of the facts and evidence submitted at first instance. Second, those arguments are not based on any specific complaint but are limited to expressing doubts. Third, those arguments are too general and do not concern a specific error of law. Fourth, the complaints, alleging the arbitrary exercise, by the Commission, of its discretion, are new. In any event, the appellant's arguments are unfounded.

– *Findings of the Court*

84 As a preliminary point, it must be noted that the appellant observes that, irrespective of whether the undertakings and associations in question were entitled to participate in a hearing before the decision at issue could be adopted, the hearing of 23 April 2018, in the presence of the Member States' competition authorities, did not provide the latter with a complete picture of the context and grounds of defence relating to the cartel that the Commission sought to penalise, thus infringing the appellant's rights of defence. It is apparent, however, from its line of argument that the appellant also maintains that, by not inviting certain undertakings or associations to participate in that hearing, the Commission infringed the procedural rules relating to hearings.

85 With regard, in the first place, to Riva's position, the appellant does not dispute the General Court's finding, in paragraph 93 of the judgment under appeal, that that undertaking did not request to participate in the hearing of 23 April 2018. Contrary to the requirements arising from the case-law cited in paragraph 52 above, the appellant does not put forward any arguments specifically identifying the error of law allegedly vitiating the judgment under appeal. The second part of the first ground of appeal must therefore be rejected as inadmissible in so far as it concerns Riva's position.

86 So far as concerns, in the second place, the position of undertakings and associations likely to be regarded as interested third parties, it must be noted, first, that, although the appellant disputes the relevance of the ground set out in paragraph 102 of the judgment under appeal, according to which the Commission, by not inviting Leali, IRO and the Federation to participate in the hearing of 23 April 2018 as interested third parties, did not infringe the appellant's rights of the defence, it does not rely on any error of law in that regard.

87 Second, as for Lucchini, the General Court observed, in paragraph 103 of the judgment under appeal, that, after the resumption of the procedure on 15 December 2017, that undertaking applied to the Commission for leave to participate in the hearing of 23 April 2018 as a party to the procedure, on the same basis, inter alia, as the appellant, and not as an interested third party. The General Court considered, on the one hand, that the Commission had not erred in law by rejecting Lucchini's request, and, on the other, that Lucchini had not subsequently claimed that it was entitled to be invited to the oral hearing as a third party with sufficient interest. The General Court, in paragraph 104 of that judgment, inferred from those findings that the Commission, by failing to invite Lucchini to participate in the hearing of 23 April 2018, had not infringed a procedural rule capable of having an impact on the appellant's exercise of its rights of the defence.

88 In that regard, the appellant does not specify the legal arguments on the basis of which it criticises those paragraphs of the judgment under appeal, but merely requests that the Court re-examines the arguments it put forward before the General Court and to carry out a new assessment of the facts, without alleging a distortion.

89 However, under Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal is limited to points of law. The General Court alone has jurisdiction to establish and assess the relevant facts and to evaluate the evidence. The assessment of those facts and evidence does not therefore constitute, save in the case of their distortion, a question of law subject, as such, to review by the Court of Justice in the context of an appeal (judgment of 29 February 2024, *Euranimi* v *Commission*, C-95/23 P, EU:C:2024:177, paragraph 84 and the case-law cited).

90 Furthermore, the appellant's argument according to which Lucchini's request for leave to participate, as a party to the procedure, in the hearing of 23 April 2018 should have been interpreted as meaning that, in the alternative, it also requested leave to participate in that hearing as an interested third party was raised for the first time in the context of the present appeal.

91 The appellant's argument based on the fact that Lucchini should have been invited to participate in the hearing of 23 April 2018 as an interested third party must therefore be dismissed as inadmissible, having regard to the case-law cited in paragraphs 38 and 89 above.

92 Third, with regard to Ansfer, it should be borne in mind that the General Court, in paragraph 130 of the judgment under appeal, listed certain facts not disputed by the appellant, namely, in particular, that, in 2002 Ansfer had learned of the opening of the procedure carried out by the Commission and requested leave to participate in the hearing of 13 June 2002 as an interested third party; that that request was granted by the Commission; that Ansfer had attended that hearing, at which, without its representative speaking, it had lodged written observations, and that, on that basis, it had been invited to participate in the hearing of 30 September 2002 relating to the consequences of the expiry of the ECSC Treaty for the procedure but that it did not respond to that invitation and nor did it attend that hearing.

93 It was on the basis of those facts that the General Court held, in paragraph 135 of the judgment under appeal, that the Commission had been able to consider that Ansfer had waived its right to participate in the procedure or, at the very least, did not wish to develop its arguments further at the hearing of 23 April 2018.

94 None of the three complaints raised by the appellant directed against that finding and summarised in paragraphs 73 to 79 above can succeed.

95 Contrary to the appellant's assertions by its first complaint, the General Court's reasoning set out in paragraphs 126 to 128 of the judgment under appeal does not reveal any contradiction. After confirming, in paragraphs 126 and 127 of that judgment, the principle that an entity recognised as having the status of a third party showing sufficient interest retains that status throughout the procedure, even if that procedure has been interrupted by judicial proceedings that have given rise to an annulment ordered by the EU judicature, the General Court pointed out, in paragraph 128 of that judgment, that it was necessary to determine whether, in the present case, it were otherwise in respect of Ansfer.

96 With regard to the appellant's second complaint, it is true that the finding set out in paragraph 129 of the judgment under appeal and summarised in paragraph 74 above, according to which the appellant acknowledged that Ansfer's interest in participating in the procedure was not maintained throughout that procedure, does not accurately reflect the appellant's argument at first instance. The appellant argued that Ansfer had maintained that status and should therefore have been invited to participate in the hearing of 23 April 2018.

97 Nevertheless, it is apparent from the context of that finding that the General Court did not distort the substance of the appellant's line of argument. In paragraphs 123 and 125 of the judgment under appeal, the General Court pointed out that the appellant asserted that Ansfer had obtained the status of interested third party and retained that status throughout the procedure.

98 In paragraph 129 of the judgment under appeal, the wording 'without this being contested by the [appellant]' can be understood as relating to the facts set out in paragraph 130 of that judgment and summarised in paragraph 92 above. However, those facts were not actually contested by the appellant. The error alleged by the appellant therefore results from an erroneous reading of the judgment under appeal and is not such as to lead to the annulment of the operative part of that judgment.

99 Furthermore, the appellant submits that the General Court, in paragraph 129 of the judgment under appeal, distorted recital 110 of the contested decision. However, that argument is based on an erroneous reading of that recital. That recital merely noted that the hearing officer had, at a given time, recognised Ansfer as a third party showing a sufficient interest but did not determine whether that association retained that status following the resumption of the procedure for the purpose of the hearing of 23 April 2018.

100 In addition, the appellant argues that the General Court, in paragraph 124 of the judgment under appeal, distorted its argument put forward at first instance by reducing its scope to cover only the procedural situation existing in 2002. However, in paragraph 125 of that judgment, the General Court noted that the appellant had argued that Ansfer's status as an interested third party should have led the Commission to inviting that association to participate in the hearing of 23 April 2018. The appellant's argument is therefore based on an erroneous reading of the judgment under appeal.

101 In that context, the appellant's argument cannot be understood in the sense that it also seeks to dispute the grounds on which the General Court considered that the Commission had not been able to inform Ansfer of the resumption of the administrative procedure in December 2017. Those grounds, set out in paragraphs 108 to 122 of the judgment under appeal, are not challenged in the appeal; the appellant merely maintains that such grounds are irrelevant.

102 It must also be observed that the appellant merely asserts that the General Court disregarded Article 5(1) and (2) and Article 6(2) of Decision 2011/695 relating to the hearing officer, without however indicating precisely the paragraphs of the judgment under appeal in respect of which it wishes to raise objections and the legal arguments which specifically support those objections, in disregard of the provisions referred to in paragraph 51 above.

103 Contrary to the appellant's submissions, the General Court's assessment in paragraph 133 of the judgment under appeal, according to which a large number of interveners must be avoided in the interest of good administration, is not meaningless. It is apparent from paragraph 134 of that judgment that it was in the light of that assessment that the General Court observed that Ansfer had been invited to participate in the hearings in 2002 as an interested third party. By contrast, it is not apparent from the judgment under appeal that the General Court, on the basis of that assessment, found that the Commission had not erred in considering that Ansfer had subsequently lost that status.

104 As for the third complaint, the General Court did not err in law in considering that an entity recognised as having interested third party status may subsequently lose that status on account, in particular, of its conduct.

105 The appellant, under the guise of invoking an error of law, is in fact requesting that the Court carries out a new assessment of the facts referred to in paragraph 92 above, without alleging a distortion. In accordance with the provisions recalled in paragraph 89 above, that third complaint must therefore be dismissed as inadmissible.

106 Furthermore, in criticising the arbitrary nature of the Commission's assessment of Ansfer's position, the appellant raises, in the context of the present appeal, a new legal argument which must therefore be dismissed as inadmissible, pursuant to the procedural rules relating to appeals recalled in paragraph 38 above.

107 So far as concerns, in the third place, the situation of other third parties, the appellant submits that the General Court, in confirming the Commission's decision not to invite, in that capacity, Leali, IRO, Lucchini, the Federation and Ansfer to the hearing of 23 April 2018, misapplied the first sentence of Article 27(3) of Regulation No 1/2003 and Article 13(3) of Regulation No 773/2004.

108 Those provisions provide, as is apparent from their wording, for the possibility – not the obligation – for the Commission, on the one hand, to hear any natural or legal persons, other than the undertakings concerned by the procedure or third parties showing a sufficient interest and, on the other, to invite them to express their views in writing and to attend the hearing of the parties to whom a statement of objections has been addressed. It follows, as noted by the General Court in paragraph 149 of the judgment under appeal, that the Commission enjoys a discretion to decide whether the participation of such third parties may be useful. Thus, an infringement of those provisions can be found only if it were established that the Commission manifestly exceeded the limits placed on its discretion.

109 However, the appellant does not claim that that was the case with regard to Leali, IRO and the Federation.

110 It is true that the appellant maintains that the Commission arbitrarily exercised its discretion in respect of Lucchini and Ansfer. However, since that argument has been raised for the first time in the context of the present appeal, it must, in the light of the case-law cited in paragraph 38 above, be considered inadmissible.

111 The appellant further claims that the General Court, by failing to examine whether the Commission had in some other way than the infringement of a rule that it was obliged to observe, impeded its rights of the defence, erred in law. It should be borne in mind that, in paragraph 156 of the judgment under appeal, the General Court held that the appellant had 'not established that it was hindered in the exercise of its rights of the defence regardless of the infringement of a rule, by virtue of the absence of an undertaking or a third party from the oral hearing [of 23 April 2018]'.

112 Such an obstacle to the exercise of its rights of the defence has not, moreover, been established by the appellant in its appeal.

113 It is true that the presence of Leali, IRO, Lucchini, the Federation and Ansfer at that hearing may have been useful in the sense that it could have provided the Advisory Committee with an overall view of the context and grounds of appeal relating to the cartel. However, that putative finding is not sufficient to establish the existence of an infringement of the appellant's rights of the defence.

114 It follows that the second part of the first ground of appeal must be dismissed as partly inadmissible and partly unfounded.

The fourth part

– *Arguments of the parties*

115 By the fourth part of the first ground of appeal, the appellant submits that, by ruling, in paragraphs 163 to 195 of the judgment under appeal, on the one hand, that the two members of the Advisory Committee who had not participated in the hearing of 23 April 2018 had the necessary information to take a decision in full knowledge of the facts, even without the recording of the hearing and, on the other, that the absence, at the hearing, of the competition authority rapporteur did not vitiate the opinion delivered by that committee, the General Court erred in law.

116 In paragraph 185 of the judgment under appeal, the General Court pointed out that, according to the case-law, when important and new information is not sent to the Advisory Committee, it is prevented from delivering its opinion in full knowledge of the facts. The appellant takes the view that this was the case here. The appellant maintains that its oral observations made at the hearing of 23 April 2018 were only partially included in the documents sent to the Advisory Committee. Accordingly, at that hearing, it addressed, inter alia, the issue of the contemporary situation in the iron and steel sector.

117 By failing to compare the content of Annexes A.7 and E.1 produced in the context of the procedure at first instance, the General Court thus failed to examine evidence or, at the very least, distorted certain documents in the file. In those circumstances, the appellant considers that, in the absence of the recording of the hearing, the Advisory Committee did not have access to important and new information.

118 With regard to the complaint relating to the absence, at the hearing, of the competition authority rapporteur, the appellant takes notice of the judgment on which the General Court relied in paragraph 194 of the judgment under appeal to find that the presence of that authority was not required, while inviting the Court to 'clarify' that point. It notes, in that regard, that in the case giving rise to that judgment, the competition authorities of the Member States had received a copy of the minutes of the hearing, which was not so in the present case. Furthermore, given the importance of the competition authority rapporteur within the Advisory Committee, it would be illogical to consider that that authority could attest to the procedural regularity of a hearing in which it did not participate.

119 The Commission contends that the appellant's line of argument is inadmissible and, in any event, unfounded.

– *Findings of the Court*

120 In the first place, the appellant claims, in essence, to have presented orally, at the hearing of 23 April 2018, important and new information. In the absence of two members of the Advisory Committee at that hearing and without the recording of the hearing, that Committee was prevented from delivering its opinion in full knowledge of the facts.

121 It must be noted that, in paragraph 186 of the judgment under appeal, the General Court found that, in the present case, the appellant had not alleged that the non-communication of the recording of that hearing had been such as to mislead the Advisory Committee on essential points or that it had not provided any indication as to the existence of a possible discrepancy between its written responses to the statements of objections, as sent to the Advisory Committee, and its oral observations at the hearing.

122 The appellant does not challenge that paragraph of the judgment under appeal in its appeal. It follows that the argument alleging a possible discrepancy between its oral observations at the hearing of 23 April 2018 and the content of the documents in the possession of the Advisory Committee was raised for the first time before the Court and is therefore inadmissible, in accordance with the case-law cited in paragraph 38 above.

123 It is true that the appellant contests the reasoning set out in paragraph 187 of the judgment under appeal, according to which the examination of the file had not revealed any evidence capable of casting doubt on the fact that the Advisory Committee actually had, at its meeting, the information necessary for its deliberations. However, under the guise of alleging distortion of the evidence, the appellant refers, in a general manner, only to two documents in the file and sets out 'new' questions which it addressed at the hearing of 23 April 2018, without providing any details likely to support the existence of such distortion. In particular, the appellant claims to have addressed, at that hearing, the issue of the contemporary situation in the iron and steel sector, also in the light of the publication in March 2018 of the opening of an investigation with a view to adopting safeguard measures concerning imports of iron and steel products. However, that

claim is not sufficient to demonstrate that its oral observations made during that hearing included important and new information in relation to the content of documents communicated to the Advisory Committee.

124 In the second place, the appellant merely asks the Court to provide 'clarification', without however putting forward any legal arguments that specifically support its request for annulment of the judgment under appeal, contrary to the obligation imposed on it in accordance with the case-law referred to in paragraph 51 above.

125 Likewise, the appellant claims that it would be illogical to consider that the competition authority rapporteur could attest to the procedural regularity of a hearing in which it did not participate, without providing any legal arguments specifically aimed at calling into question the reasoning set out in paragraphs 192 and 193 of the judgment under appeal.

126 It follows that the fourth part of the first ground of appeal and, therefore, that ground in its entirety must be dismissed as partly inadmissible and partly unfounded.

The fifth ground of appeal

Arguments of the parties

127 By its fifth ground of appeal, the appellant submits that the grounds, set out in paragraphs 349 to 367 of the judgment under appeal, on which the General Court rejected the plea of illegality in respect of Article 25 of Regulation No 1/2003 are vitiated by errors of law.

128 First, the appellant recalls that that provision states that, in the event of interruption of the limitation period, the limitation period expires, at the latest, after ten years. However, in the present case, on account of the suspension of the limitation period during the legal proceedings, the procedure remained open for more than twenty years after the termination of the infringing conduct, that is to say a period longer than 'twice' the ordinary limitation period. That circumstance proves that the EU legislature did not fairly reconcile the requirements of legal certainty and respect for the law.

129 Second, the reasoning of the General Court has the effect of forcing the appellant to accept either being subject to an unlawful penalty or being subject to open-ended proceedings. However, the Commission should not be able to profit from its errors to benefit from an extension of the time limit to impose penalties. Furthermore, the right to an effective remedy should not be turned against the individual by leading, to his detriment, to the de facto imprescriptibility of the Commission's power to impose penalties.

130 Third, the appellant observes that, in the event of a failure to comply with the reasonable time principle, the undertakings concerned can bring an action for the annulment of the decision finding a breach, provided that the breach impeded the exercise of their rights of the defence, or bring an action for compensation. The appellant takes the view that the only remedy to ensure protection of the reasonable time principle consists, however, in the annulment of the decision adopted in the event of a clear breach of that principle regardless of the expiry of the limitation period. Recital 37 of Regulation No 1/2003, pursuant to which that regulation must be interpreted and applied with respect to the fundamental rights and principles recognised by the Charter, is in no way reflected by the wording of Article 25 of that regulation.

131 Fourth, with regard to the principle of proportionality, the appellant claims that the General Court referred, in particular, to the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 144), although that judgment was criticised in the Opinion of Advocate General Bot in *ThyssenKrupp Nirosta* v *Commission* (C-352/09 P, EU:C:2010:635, points 183 to 185). The General Court failed to respond to the appellant's request that it adopt the solution recommended in that Opinion.

132 The Council and the Commission dispute the arguments put forward by the appellant.

Findings of the Court

133 As the General Court observed in paragraph 354 of the judgment under appeal, Article 25 of Regulation No 1/2003 is the result of the reconciliation by the EU legislature, in the exercise of the powers conferred on it, of two objectives, namely, first, the need to ensure legal certainty by preventing situations which arose a long time previously from being indefinitely brought into question and, second, the requirement to ensure observance of the law by pursuing, establishing and penalising infringements of EU law.

134 In that regard, and as the General Court observed in paragraphs 355 and 356 of the judgment under appeal, the EU legislature, in seeking to reconcile those objectives, did not exceed the limits of its discretion. Article 25(1)(b) and Article 25(5) of Regulation No 1/2003 provide, so far as concerns the conduct of infringement proceedings in respect of Articles 101 and 102 TFEU, that the limitation period expires after five years or, in the event of interruption, at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or periodic penalty payment. It follows from those provisions that the power of that institution to impose penalties is subject to strict limits.

135 Moreover, that reconciliation observes the principle of proportionality, as the General Court found in paragraphs 359 to 366 of the judgment under appeal.

136 It is true that, in the event of an appeal to the EU Courts, the limitation period remains, in accordance with Article 25(6) of Regulation No 1/2003, suspended until the end of the procedure before the Court. As the General Court observed, in essence, in paragraph 363 of the judgment under appeal, that suspension protects the Commission against the effects of limitation in situations in which the Commission's inaction is not the result of a lack of diligence on its part. The possibility that, as a result of such suspension periods, the total duration of a procedure substantially exceeds, like in the present case, the 5- or 10-year limitation period laid down in Article 25(1)(b) of Regulation No 1/2003, or, in the event of interruption thereof, the period of 10 years provided for in Article 25(5) of that regulation, does not permit the conclusion that the EU legislature exceeded the limits of its discretion.

137 As the General Court noted, in paragraph 356 of the judgment under appeal, individuals who complain that a procedure was unreasonably long may seek the annulment of the decision adopted at the end of that procedure, provided that the excessive time taken has interfered with the exercise of the rights of the defence, or, where no such interference has occurred, by bringing an action for damages before the EU Courts.

138 The fact that, in the present case, the total duration of the procedure exceeds 20 years does not permit the conclusion that Article 25 of Regulation No 1/2003 is unlawful.

139 That conclusion is not called into question by the other arguments relied on by the appellant.

140 First, in view of the limitation periods set out in paragraph 134 above, and notwithstanding the duration of the procedure at issue, the appellant cannot claim to have been at risk of indefinitely being the subject of proceedings conducted by the Commission or of the de facto imprescriptibility of the Commission's power to impose penalties.

141 Second, the difficulties that individuals could face when implementing the remedies referred to in paragraph 137 above, considerable though they may be, cannot be sufficient to consider that only the annulment of the decision imposing penalties constitutes an effective remedy in the event of a breach of the reasonable time principle, irrespective of the expiry of the limitation period.

142 Third, the appellant merely claims that respect for the fundamental rights and principles recognised by the Charter, although referred to in recital 37 of Regulation No 1/2003, is not reflected in the wording of Article 25 of that regulation, without however providing any detail in that regard.

143 Fourth, with regard to the relevance of the interpretation advocated in points 183 to 185 of the Opinion of Advocate General Bot in *ThyssenKrupp Nirosta* v *Commission* (C-352/09 P, EU:C:2010:635), it is sufficient to point out, as the appellant itself acknowledges, that it was not reflected in the judgment in that case or, more generally, in the Court's case-law.

144 Lastly, in so far as the appellant argues that the General Court should have ruled, in the judgment under appeal, on that passage of the Opinion of Advocate General Bot in *ThyssenKrupp Nirosta* v *Commission* (C-352/09 P, EU:C:2010:635) and thus failed to rule in that regard, it must be noted that the passage contained a proposal relating not to the lawfulness of the provisions at issue but to their interpretation. Therefore, the position thus expressed in that opinion is not, in any event, such as to support the plea of illegality referred to in the fifth ground of appeal.

145 It follows that the fifth ground of appeal must be dismissed as unfounded.

The second ground of appeal

146 By its second ground of appeal, the appellant disputes the grounds on which the General Court, in paragraphs 229 to 272 of the judgment under appeal, considered that the reasonable time principle had not been breached.

147 The second ground of appeal is in three parts.

148 By the first two parts, the appellant disputes, on the one hand, the General Court's assessments relating to the duration of the procedure for adopting the 2009 decision and the contested decision and, on the other, the assessments concerning the total duration of the procedure which, on the date of adoption of the contested decision, had already exceeded 19 years.

149 By the third part, it disputes the General Court's finding that the procedure's duration had not interfered with its rights of the defence.

150 As the General Court pointed out, in essence, in paragraph 215 of the judgment under appeal, the breach of the principle of observance of a reasonable period is capable of justifying the annulment of a decision taken following an administrative procedure based on Article 101 or 102 TFEU only

if it also constitutes an infringement of the rights of the defence of the undertaking concerned (see, to that effect, judgment of 9 June 2016, *PROAS* v *Commission*, C-616/13 P, EU:C:2016:415, paragraphs 74 to 76 and the case-law cited).

151 It follows that, as the General Court observed in paragraph 230 of the judgment under appeal, the duration of the procedure may result in a contested decision being annulled if two cumulative conditions are met: first, the length of that procedure appears to have been unreasonable and, second, the fact that a reasonable time was exceeded impeded the exercise of the rights of the defence.

152 It is in the light of the second of those conditions that it is necessary to examine the third part of the second ground of appeal.

Arguments of the parties

153 By the third part of the second ground of appeal, the appellant submits that, contrary to the assessments made in paragraphs 266 to 272 of the judgment under appeal, the duration of the procedure interfered with its rights of the defence and caused it harm. In particular, it is on account of the excessive duration of that procedure that most of the entities that provided information of use for its defence – including exculpatory evidence – were not in a position to participate in the hearing of 23 April 2018. If all the interested parties had been heard concerning the substance of the objections before the adoption of the 2002 or 2009 decisions, the Commission could have adopted a different decision.

154 The Commission considers that argument to be inadmissible and, in any event, unfounded.

Findings of the Court

155 Contrary to what the Commission submits, the appellant is not merely asking the Court to carry out a new examination of the application at first instance and to undertake a new assessment of the facts, without indicating precisely the errors committed in the judgment under appeal. However, with a view to demonstrating that the duration of the procedure led to an infringement of its rights of the defence, the appellant reiterates the line of argument raised in the context of the first ground of appeal, which was dismissed, in paragraph 126 above, as partly inadmissible and partly unfounded.

156 Therefore, the third part of the second ground of appeal must also be dismissed.

157 It follows that one of the two conditions, referred to in paragraph 151 above, for the courts to order the annulment of a decision by reason of breach of the reasonable time principle is not met.

158 Accordingly, the second ground of appeal, based on a breach of the reasonable time principle, must be dismissed as unfounded, without it being necessary to examine the first and second parts of that ground.

The third ground of appeal

The first part

– *Arguments of the parties*

159 By the first part of the third ground of appeal, the appellant maintains that the General Court, in holding, in paragraphs 275 to 296 of the judgment under appeal, that the Commission had sufficiently explained the reasons which led it to adopt a new decision imposing a fine, erred in law.

160 The General Court, in paragraphs 282 to 287 of judgment under appeal, considered, in essence: first, that the Commission had stated that the duration of the procedure did not entail any failure to observe the reasonable time principle and that there had been no infringement of the undertakings' rights of the defence, since, on the one hand, they had been able to submit their observations on the resumption of the procedure and, on the other, had also set out their arguments at the hearing of 23 April 2018; second, that the Commission had concluded, having weighed the public interest in ensuring the effective application of the competition rules against the need to mitigate the possible consequences of the procedural errors made, that it was only by adopting the contested decision that it could ensure that the infringers would not be left unpunished and would actually be deterred from engaging in similar conduct in the future; and, third, that the Commission had decided, in order to mitigate the possible adverse effects arising from the length of the procedure, to reduce the fines imposed by 50%.

161 According to the appellant, the first and third of those considerations are not relevant for the purpose of verifying compliance with the last sentence of Article 7(1) of Regulation No 1/2003, from which it follows that the Commission may find that an infringement of EU competition law has been committed in the past only if the Commission has a legitimate interest in doing so. The second of those considerations, referred to in paragraphs 284 to 286 of the judgment under appeal, does not constitute a sufficient justification for the General Court's opinion, on the basis that, if only the imposition of a penalty would allow the Commission to ensure there is no impunity for an infringement of competition rules and repeated infringement, the discretion conferred on it by that regulation would be meaningless.

162 In any event, the appellant considers that the reasoning put forward by the Commission to justify the adoption of the contested decision and approved by the General Court is unfounded.

163 In the first place, the General Court wrongly considered, in paragraph 290 of the judgment under appeal, that, in recital 567 of the contested decision, the Commission had replied to the appellant's argument criticising the Commission for not explaining why, even though the Italian market had seen dramatic changes in line with the period of infringement, it was necessary to impose on the appellant, in July 2019, a penalty concerning conduct which had taken place more than 30 years previously. That recital of the contested decision, which highlights the deterrent effect of the penalty, does not explain why that effect remained relevant, when, in reality, it would only have been relevant when the Commission's investigation was opened in 2000. Moreover, that recital does not explain why the deterrent effect should be 'particularly desirable' in a market such as the Italian market for concrete reinforcing bars.

164 In the second place, the General Court failed to note the generic nature of the statement, made in recital 562 of the contested decision, that it was necessary to prevent undertakings from 'continuing or resuming their anti-competitive conduct, without determining past liability for the infringement established'.

165 The Commission disputes that argument.

– *Findings of the Court*

166 It must be recalled that, according to the case-law of the Court of Justice, the statement of reasons required by Article 296 TFEU for measures adopted by EU institutions must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (judgment of 9 November 2023, *Altice Group Lux* v *Commission*, C-746/21 P, EU:C:2023:836, paragraph 217 and the case-law cited).

167 In the present case, the General Court did not err in finding, in paragraph 288 of the judgment under appeal, that the Commission had provided a detailed statement of reasons setting out clearly and unequivocally the reasoning it had followed to justify the adoption of a new decision imposing a fine despite the two previous annulments.

168 The explanations provided in that regard in the contested decision and summarised by the General Court in paragraphs 282 to 287 of the judgment under appeal, state, in a sufficiently clear manner, the reasons which led the Commission to adopt a new decision imposing a fine.

169 In that regard, it must be observed, on the one hand, that the appellant's summary of those reasons, set out in paragraph 160 above, is incomplete, in so far as it fails to mention that the General Court, in paragraph 285 of the judgment under appeal, recalled that, in recitals 560 and 561 of the contested decision, the Commission had noted that the addressee undertakings of that decision had participated, over an 11-year period, in an infringement considered to be one of the most serious restrictions of competition and that, against that backdrop, failure to re-adopt the decision finding that the undertakings had participated in that infringement would be contrary to the public interest in ensuring the effective application of EU competition law and would go beyond the interest in mitigating the consequences of any breach of the fundamental rights of the addressee undertakings. That finding was, moreover, sufficient to explain that the Commission considered there to be a legitimate interest in adopting the contested decision, within the meaning of Article 7(1) of Regulation No 1/2003.

170 On the other hand, as the General Court noted in paragraph 280 of the judgment under appeal, after the first two decisions taken by the Commission to penalise the anti-competitive conduct in question were annulled and the lapse of time between the initial investigative measures and the adoption of the decision was exceptionanly long, it was for that institution to take those circumstances into account when setting out the reasons why it considered it necessary to adopt a new decision imposing a fine. Contrary to what the appellant argued, those considerations set out in paragraphs 282 and 287 of the judgment under appeal were relevant.

171 The assessment set out in paragraph 167 above is not called into question by the argument by which the appellant disputes the statement of reasons for the contested decision justifying a legitimate interest in adopting the contested decision.

172 In that regard, it must be borne in mind that the duty to state adequate reasons in decisions is an essential procedural requirement which must be distinguished from the question of whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (judgment of 18 April 2024, *Dumitrescu and Others* v *Commission and Court of Justice*, C-567/22 P to C-570/22 P, EU:C:2024:336, paragraph 46 and the case-law cited).

173 However, under the guise of invoking a breach of the duty to state reasons, the appellant actually seeks to challenge the merits of the statement of reasons for the contested decision.

174 Those arguments are not such as to call into question paragraphs 275 to 296 of the judgment under appeal by which the General Court held that, in the present case, the Commission had not breached its duty to state reasons.

175 It follows that the first part of the third ground of appeal must be dismissed as unfounded.

The second part

– *Arguments of the parties*

176 By the second part of the third ground of appeal, the appellant maintains, in essence, that the General Court, in paragraphs 298 to 302 of the judgment under appeal, erred in law and breached its duty to state reasons concerning the deterrent effect of the contested decision.

177 First, the General Court failed to respond to the appellant's argument based on the fact that the Consiglio di Stato (Council of State, Italy) had confirmed, by a judgment of 21 January 2020, that another cartel in which the appellant was allegedly involved does not exist. It is apparent from that judgment that, since 2000, the appellant engaged in activities in accordance with competition rules, such that the objective of deterrence pursued by the 2002 decision was fully achieved.

178 Second, the General Court merely set out, in paragraph 298 of the judgment under appeal, general considerations concerning the deterrent effect of the contested decision.

179 Third, the judgment under appeal is vitiated by contradictory reasoning. It is apparent from paragraph 299 of that judgment that, according to the General Court, the decision to impose a penalty in the contested decision is justified, from the point of view of the objective of deterrence, in the restitution after the annulment of the 2002 and 2009 decisions of the amount of the fines imposed by those decisions. However, in paragraph 660 of that judgment, the General Court held that the objective of deterrence had already been implemented in respect of the appellant, in part and in any event, by the penalties imposed on it in the 2002 and 2009 decisions.

180 Fourth, the General Court, in paragraphs 300 and 301 of the judgment under appeal, failed to take into account the fact that the penalties imposed in the 2002 and 2009 decisions, and the litigation costs relating thereto already constituted a penalty, in particular by adversely affecting its reputation. In that regard, the appellant notes that it is apparent from the General Court's

case-law, in particular the judgment of 12 December 2018, *Biogaran* v *Commission* (T-677/14, EU:T:2018:910), that account must be taken of the non-negligible stigma attached to a finding of involvement in an infringement of the competition rules for a legal person. Furthermore, the reasons set out in that regard in the judgment under appeal amount, by reason of their general nature, to a failure to state reasons.

181 The Commission disputes those arguments.

– *Findings of the Court*

182 It must be observed, in the first place, that the judgment of the Consiglio di Stato (Council of State) of 21 January 2020, to which the appellant refers, found there to be no infringement with regard to the appellant's alleged involvement in another cartel. In any event, that judgment fails to establish that, since 2000, the appellant engaged in activities in accordance with competition rules and that the objective of deterrence, already pursued by the 2002 decision, had therefore already been achieved. Accordingly, the General Court cannot be criticised for not taking a view on that judgment in the judgment under appeal.

183 In the second place, it must be recalled that, in paragraph 298 of the judgment under appeal, the General Court held that the Commission could consider, given the serious nature of the infringement established, that adopting a decision and imposing a fine was still justified in the light of the deterrent effect that that decision and that penalty could have on the markets. That finding is explained in paragraph 299 of that judgment, in which the General Court pointed out that it is the penalty, that is to say, the requirement to pay the fine imposed, which actually has a deterrent effect following the annulment of the 2002 and 2009 decisions. It follows that paragraph 298 of that judgment, read in conjunction with paragraph 299 thereof, far from setting out considerations of a general nature, sets out the General Court's reasoning clearly and unequivocally.

184 In the third place, contrary to what the appellant claims, the reasoning set out in paragraphs 299 and 660 of the judgment under appeal is not contradictory. While the General Court acknowledged, in paragraph 660 of the judgment under appeal, which appears in the part of the judgment in which the General Court examined, in the exercise of its unlimited jurisdiction, whether to grant an additional reduction of the fine imposed on the appellant, that the 2002 and 2009 decisions had already had a certain deterrent effect, it is clear from the context and, in particular, paragraphs 658, 659 and 661 of that judgment, that the General Court took the view that the objective of deterrence had not been fully achieved before the adoption of the contested decision. In those circumstances, imposing a penalty on the appellant in that decision could be deemed justified in the light of the need to ensure the deterrent effect, as the General Court observed in paragraph 299 of the judgment under appeal.

185 In the fourth place, it must be observed that, in paragraphs 300 and 301 of the judgment under appeal, the General Court considered that the objective of imposing a fine, in the present case, was not to give the contested decision a deterrent effect but was also to prevent the undertakings concerned from going wholly unpunished.

186 In so far as the 2002 and 2009 decisions were annulled, and the corresponding fines were repaid, plus interest, only the adoption of a new decision imposing a fine on the appellant could guarantee that its participation in the cartel which was the subject of the contested decision does not go unpunished.

187 As for the costs relating to the two cases prior to the 2002 decision, it suffices to note that, in the judgment of 25 October 2007, *Ferriere Nord* v *Commission* (T-94/03, EU:T:2007:320), the General Court ordered the Commission to pay the costs incurred by the appellant and, in the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), the Court of Justice ordered the Commission to pay the costs incurred by the appellant both at first instance and in the appeal giving rising to that judgment.

188 Furthermore, it is true that, in the judgment of 12 December 2018, *Biogaran* v *Commission* (T-677/14, EU:T:2018:910), to which the appellant refers, the General Court took account of the non-negligible stigma attached to a finding of involvement in an infringement of the competition rules for a natural or legal person. However, that assessment was not intended to indicate that such stigma amounts to a form of penalty resulting from the Commission's finding of the existence of an infringement, but to explain why it was necessary for the Commission to show precise and consistent evidence in order to establish the existence of the infringement.

189 In the light of the foregoing, it must be held that the General Court did not err in law in finding, in paragraph 300 of the judgment under appeal, that the imposition of a fine in the contested decision was intended to prevent the undertakings concerned from going wholly unpunished.

190 It follows that the second part of the third ground of appeal must be dismissed as unfounded.

The third part

– *Arguments of the parties*

191 By the third part of the third ground of appeal, the appellant maintains that the General Court, in paragraphs 304 to 307 of the judgment under appeal, did not comply with its obligation to state reasons in so far as it failed to respond to the appellant's argument alleging an infringement of Article 6(1) ECHR.

192 The Commission disputes that argument.

– *Findings of the Court*

193 In paragraph 303 of the judgment under appeal, the General Court noted that the appellant had maintained at first instance that the fact that it had the status of having been charged with a criminal offence throughout the proceedings was in itself a sufficient penalty. The General Court rejected that argument holding, in paragraphs 304 and 305 of that judgment, that the appellant, in view of the annulment of two decisions prior to the adoption of the contested decision, had not yet been penalised for having committed an infringement of EU competition law and that, in those circumstances, the adoption of that decision sought to ensure that the appellant was actually penalised for that infringement.

194 In support of the third part of the third ground of appeal, the appellant reiterates that a sanction had already been imposed on it before the adoption of the contested decision, but puts forward no arguments to challenge, more specifically, the General Court's reasoning set out in paragraphs 304 and 305 of the judgment under appeal. It merely argues that the General Court failed to rule on its argument alleging an infringement of Article 6(1) ECHR.

195 In that regard, it must be noted that, in paragraph 238 of the application initiating proceedings, the appellant claimed that the fact of having had the status of 'accused' for more than 17 years – that is to say since the statement of objections was received in March 2002 – apart from the fact that it amounted to an infringement of Article 6(1) ECHR, which includes the obligation to protect persons charged with a criminal offence from being left in a state of uncertainty about their fate for too long, amounted, per se, to a serious penalty being imposed on the appellant.

196 However, such a line of argument was intended, as demonstrated by the title of the section in which it appears, to challenge the grounds of the contested decision according to which the imposition of a penalty was necessary to prevent the undertakings concerned from going wholly unpunished. Accordingly, and in the absence of any specific details in that regard, the General Court was right to consider that the reference to Article 6 ECHR was intended only to strengthen the appellant's argument that it had already been penalised prior to the adoption of the contested decision, to which the General Court responded in paragraphs 304 and 305 of the judgment under appeal.

197 The General Court cannot therefore be criticised in that regard for failing to adjudicate.

198 It follows that the third part of the third ground of appeal must be dismissed as unfounded.

The fourth part

– *Arguments of the parties*

199 By the fourth part of the third ground of appeal, the appellant maintains that the General Court, by relying, in paragraphs 310 to 315 of the judgment under appeal, on the possibility, for third parties, to bring claims for compensation before the national courts, substituted the grounds, failed to examine the documents in the file and reversed the burden of proof.

200 The Commission contends that in so far as that argument is directed against the grounds included in the judgment under appeal for the sake of completeness, it should be rejected as ineffective. In any event, the fourth part is unfounded.

– *Findings of the Court*

201 In paragraph 301 of the judgment under appeal, the General Court held that, given the gravity and duration of the infringement established by the Commission, the objective of avoiding leaving the undertakings at issue wholly unpunished was sufficient, in itself, to justify in the present case the adoption of a decision imposing a penalty.

202 That assessment by the General Court was not challenged by the appellant in its appeal.

203 It follows that the General Court, by setting out other considerations liable to justify the adoption of the contested decision, such as the intention to protect the rights of third parties to bring claims for compensation before the national courts, mentioned such considerations for the sake of completeness, in order to reply exhaustively to the arguments put forward by the appellant.

204 Consequently, since the complaints raised by the appellant in the context of the fourth part of the third ground of appeal are directed against the grounds of the judgment under appeal included purely for the sake of completeness, they cannot lead to that judgment being set aside.

205 It follows that the fourth part of the third ground of appeal must be dismissed as ineffective.

The fifth part

– *Arguments of the parties*

206 By the fifth part of the third ground of appeal, the appellant submits that the General Court, by rejecting, in paragraphs 317 to 323 of the judgment under appeal, its complaint alleging breach of the principle of proportionality, relied on irrelevant considerations which are not sufficient to justify that rejection.

207 Furthermore, after the fifth part has been set out, the appeal contains a section entitled 'Final considerations', in which the appellant reiterates the arguments put forward in paragraphs 242, 243 and 252 to 254 of its application at first instance.

208 The Commission considers the fifth part to be inadmissible in the light of its vague and generic nature. It is, in any event, unfounded.

– *Findings of the Court*

209 It should be borne in mind that the appellant merely disputes the relevance of the factors taken into account by the General Court in paragraphs 317 to 323 of the judgment under appeal, without setting out in detail the legal arguments which specifically support its request that that judgment be set aside, contrary to the requirements set out in paragraph 51 above.

210 Furthermore, those requirements are not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the contested judgment, confines itself to reproducing the pleas in law and arguments previously submitted to the General Court. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (judgment of 9 February 2023, *Boshab* v *Council*, C-708/21 P, EU:C:2023:84, paragraph 60 and the case-law cited).

211 In the present case, by the argument summarised in paragraph 207 above, the appellant merely repeats, with the exception of some minor amendments, the argument that it had already put forward before the General Court.

212 It follows that the fifth part of the third ground of appeal must be dismissed as inadmissible.

213 The third ground of appeal must therefore be dismissed as partly inadmissible and partly unfounded.

The fourth ground of appeal

Arguments of the parties

214 By its fourth ground of appeal, the appellant submits that the General Court, when it held in paragraphs 326 to 342 of the judgment under appeal that the *ne bis in idem* principle did not preclude the adoption of the contested decision, wrongly applied that principle.

215 According to the appellant, it is true that the *ne bis in idem* principle does not preclude the adoption of a new decision where the previous one had been annulled for procedural irregularities. However, it is apparent from the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582), that that possibility is subject to the condition that a ruling has not been given on the substance of the facts alleged. Since the General Court ruled on the merits of the case in the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), that condition is not met in the present case.

216 The appellant observes that the General Court considered that the *ne bis in idem* principle applies only in the event that a second penalty is imposed, which is not so in the present case, since the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), and the 2009 decision and the penalty imposed therein, were annulled by the Court. However, according to the appellant, that principle also precludes a duplication of procedures a fortiori where such duplication leads, like in the present case, to liability being established a second time in respect of the same actions.

217 Furthermore, the General Court wrongly considered that the *ne bis in idem* principle applies only in the event that a second penalty is imposed. Accordingly, it follows from Article 50 of the Charter that that principle also applies in the event that liability is established a second time. Liability may be established on the grounds of unlawful conduct without a penalty being enforced.

218 While acknowledging that Article 50 of the Charter refers to a final judgment, the appellant points out that the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), although set aside by the Court, should be considered, on the merits, as being final. It is apparent from the Opinion of Advocate General Wahl in *Feralpi and Others* v *Commission* (C-85/15 P, C-86/16 P and C-87/15 P, C-88/15 P and C-89/15 P, EU:C:2016:940), that the appeal brought against that judgment should have been declared inadmissible.

219 In any event, not all of the 2014 judgments are the subject of appeals. Accordingly, the assessment of the facts pertaining to the infringement in question – common to all the undertakings concerned – has become final. The General Court's finding, according to which the judgments would have no impact on the undertakings which were not parties to the disputes decided by those judgments, is too formalistic and fails to take into account the very essence of the *ne bis in idem* principle.

220 The wording of Article 50 of the Charter should not, moreover, be interpreted too literally. The appellant observes, in that regard, that it is apparent from the judgment of 29 June 2016, *Kossowski* (C-486/14, EU:C:2016:483), that, if a decision to take no further action is taken by a prosecution service which has nevertheless examined the facts, the principle *ne be in idem* is applicable despite there being no 'acquittal' by means of a judicial decision.

221 The Commission disputes the arguments put forward by the appellant.

Findings of the Court

222 Article 50 of the Charter provides that 'no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.' Thus, the *ne bis in idem* principle prohibits a duplication both of proceedings and of penalties of a criminal nature, for the purposes of that article, for the same acts and against the same person (judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 44 and the case-law cited).

223 Furthermore, the Court has already held that the principle *ne bis in idem* must be observed in proceedings for the imposition of fines under competition law. That principle thus precludes, in competition law matters, an undertaking's being found liable or the bringing of proceedings against it afresh on the grounds of anti-competitive conduct for which it has been penalised or declared not to be liable by a prior decision that can no longer be challenged (judgment of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 32 and the case-law cited).

224 In the present case, it should be noted that, at the time of the adoption of the decision, there was no decision concerning the anti-competitive conduct covered by the contested decision which was no longer open to challenge, and which had therefore become final. While it is true that the General Court ruled, in the judgment of 9 December 2014, *Ferriere Nord* v *Commission* (T-90/10, EU:T:2014:1035), in depth, with regard to whether the appellant could be held liable for that conduct, which was the subject of the 2009 decision, in so far as that judgment – which was the subject of an appeal before the Court of Justice – has not become final and was subsequently set aside by the Court in its entirety, in the same way as the 2009 decision.

225 Contrary to what the appellant claims, the resumption of the procedure and the adoption of the contested decision are not inconsistent with the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582).

226 Is its apparent from that judgment, as the General Court noted in paragraph 331 of the judgment under appeal, that the *ne bis in idem* principle prohibits only a fresh assessment in depth of the alleged commission of an offence where that assessment would result in the imposition of either a second penalty, in addition to the first, in the event that liability is established a second time or a first penalty in the event that liability not established by the first decision is established by the second (judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 61). However, neither of those two situations are present in the current case.

227 It is true, the Court added, in paragraph 62 of that judgment, that the *ne bis in idem* principle does not preclude in itself the resumption of proceedings in respect of the same anti-competitive conduct where the first decision was annulled for procedural reasons without any in depth ruling having been given on the facts alleged.

228 However, in doing so, the Court has not stated that the *ne bis in idem* principle precludes the adoption of a new decision after the judgment by which the General Court ruled in depth on a first decision and the annulment of that first decision is set aside on appeal. As is apparent from paragraph 62 of that judgment, the *ne bis in idem* principle can be breached only if there is already a final decision on the substance of the case. As was noted in paragraph 224 above, there was no such final decision at the time of the adoption of the contested decision.

229 The case-law cited in paragraph 227 above confirms, moreover, that the resumption of a procedure concerning the application of EU competition rules, after the annulment of a first decision closing that procedure, does not amount to a duplication of procedures.

230 It follows that the General Court rightly considered that the adoption of the contested decision did not disregard the *ne bis in idem* principle.

231 It is true that some of the 2014 judgments, concerning other undertakings, have become final since they were not the subject of appeals before the Court of Justice. However, those judgments, although they concern the same anti-competitive conduct as that in respect of which the appellant has been tried, do not amount, in the light of the latter, a final judgment.

232 Likewise, contrary to what the appellant claims, the possibility that a decision taken by a prosecution service may be relevant to the application of the *ne bis in idem* principle is not such as to call that finding into question, the Court having stated that, for the purposes of applying that principle, such a decision must be final (judgment of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraphs 52 to 54).

233 In the light of the foregoing, the fourth ground of appeal must be dismissed as unfounded.

The sixth ground of appeal

Arguments of the parties

234 By its sixth ground of appeal, the appellant submits, in essence, that the General Court, by failing to find that the infringement of the rights of the defence resulted from the fact that the Commission had not expressly stated its intention to invoke repeated infringement against it as an aggravating circumstance in the statement of objections, in the supplementary statement of objections or in another act from the procedure resumed in 2017, thus depriving it of the possibility to submit its observations in that regard in the course of the administrative procedure, erred in law in paragraphs 535 to 551 of the judgment under appeal.

235 First, the General Court failed to take into account the case-law of the Court of the Justice, in particular the judgment of 5 March 2015, *Commission and Others* v *Versalis and Others* (C-93/13 P and C-123/13 P, EU:C:2015:150), and that of the European Court of Human Rights relating to Article 6 ECHR. Second, it infringed the relevant provisions of soft law instruments that the Commission imposed on itself, namely points 84, 86 and 109 of the 2011 Commission Notice. Third, the General Court failed to take into account or distorted the transcript of certain passages of the recording of the hearing in the case giving rise to the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716). Fourth, the facts referred to in paragraphs 547 and 548 of the judgment under appeal are, like those referred to in paragraphs 543 to 546 of that judgment, irrelevant, in so far as the statement of objections and the

2002 and 2009 decisions contain no statement of reasons relating to repeated infringement. In any event, those facts should have been updated on account of the exceptionally long duration of the procedure. The fact noted in paragraph 549 of the judgment under appeal is irrelevant, because the content of the letter of 15 December 2017 was manifestly inconsistent with the criteria established by the case-law.

236 The Commission considers that ground to be inadmissible and, in any event, unfounded.

Findings of the Court

237 The General Court sets out, in paragraphs 538 to 542 of the judgment under appeal, the criteria for ascertaining the existence of a possible infringement of the appellant's rights of the defence in taking repeated infringements into account.

238 In paragraph 538 of that judgment, the General Court held, with reference to the judgment of 5 March 2015, *Commission and Others* v *Versalis and Others* (C-93/13 P and C-123/13 P, EU:C:2015:150), that, where the Commission intends to impute an infringement of competition law to a legal person and seeks, in that context, to invoke repeated infringement against it as an aggravating circumstance, the statement of objections addressed to that person must contain all the information enabling it to defend itself, in particular the information demonstrating that the conditions for a finding of repeated infringement are satisfied. In paragraph 539 of that judgment, the General Court pointed out that it was for that purpose that the Commission undertook, in paragraph 84 of the 2011 Commission Notice, to mention in the statement of objections, 'in a sufficiently precise manner', the facts which may give rise to aggravating circumstances, and added, in paragraph 540 of that judgment, that repeated infringement must be viewed, according to settled case-law, as a circumstance that may be in the nature of an aggravating circumstance.

239 In paragraph 541 of the judgment under appeal, the General Court stated that the obligation described in paragraphs 538 to 540 of that judgment derives from the obligation to respect the rights of the defence, which is subject to a general principle that, in any procedure in which sanctions, especially fines or penalty payments, may be imposed, the undertakings and associations of undertakings concerned must be afforded the opportunity, from the stage of the administrative procedure, to make known their views on the truth and relevance of the facts, objections and circumstances alleged against them.

240 Lastly, the General Court considered, in paragraph 542 of the judgment under appeal that, when reviewing whether the rights of the defence have been respected, the EU Courts must take into account all the circumstances of the case in order to ensure that the Commission's intention to find that an infringement was committed or that a given circumstance existed was sufficiently foreseeable from the point of view of the undertaking concerned, so that the latter can be regarded as having been afforded the opportunity to submit its comments on the matter under consideration.

241 Those explanations put forward by the General Court are not disputed by the appellant.

242 By contrast, the appellant submits, in essence, that the General Court erred in law in considering that, in the present case, the fact that the Commission intended to invoke repeated infringement against it as an aggravating circumstance was sufficiently foreseeable.

243 For the purposes of rejecting that claim, the General Court relied, on the one hand, on the content of the statement of objections, referred to in paragraphs 543 to 546 of the judgment under appeal, and, on the other, on the Commission's letter of 15 December 2017 in which it announced the resumption of the administrative procedure, referred to in paragraphs 547 to 549 of that judgment.

244 Although the appellant states that it is not requesting the Court to carry out a new assessment of the facts, its argument is almost exclusively focused on the content of the statement of objections.

245 It is clear from paragraphs 547 and 548 of the judgment under appeal that the Commission informed the appellant, in its letter of 15 December 2017 announcing the resumption of the administrative procedure, that it would base the decision to be taken at the end of the procedure on the objections set out in the statement of objections, which had led to the adoption of the 2002 and 2009 decisions and that repeated infringement had been taken into account in those decisions in order to calculate the amount of the appellant's fine, under the head of aggravating circumstances.

246 In those circumstances, even though the statement of objections was lacking in clarity, the General Court was entitled to consider, in paragraph 550 of the judgment under appeal, that the Commission's intention to invoke, in the contested decision, repeated infringement against the appellant as an aggravating circumstance was sufficiently foreseeable.

247 Furthermore, the Commission made a finding of repeated infringement in respect of the appellant on the basis of an earlier decision finding an infringement in respect of the appellant, which was taken into account for the same purposes in the 2002 and 2009 decisions. In those circumstances, contrary to what the appellant claims, the General Court was not required to consider that the Commission should have updated the evidence in the light of which it invoked repeated infringement.

248 The appellant also claims that certain passages of the recording of the hearing in the case giving rise to the judgment of 21 September 2017, *Ferriere Nord* v *Commission* (C-88/15 P, EU:C:2017:716), confirm the plausible nature of the reasons why it did not submit observations on repeated infringement after the resumption of the administrative procedure. However, the appellant does not specify the legal reasons why those passages demonstrate that it rightly considered that the Commission, after the resumption of the procedure, could not take into account repeated infringement as an aggravating circumstance without expressly informing it in advance.

249 Therefore, the objection alleging a failure to adjudicate, or a distortion of those passages, must be dismissed as inadmissible, having regard to the requirements set out in paragraph 51 above.

250 Accordingly, the sixth ground of appeal must be dismissed as partly inadmissible and partly unfounded.

The seventh ground of appeal

The first part

– *Arguments of the parties*

251 By the first part of the seventh ground of appeal, the appellant submits that the General Court, by rejecting, in paragraphs 565 to 579 of the judgment under appeal, its complaint that taking repeated infringement into account under the head of aggravating circumstances is contrary to the principle of proportionality on account of the excessively long duration of the procedure, erred in law.

252 First, paragraph 575 of the judgment under appeal is vitiated by an inadequate statement of reasons. While the appellant referred to the abnormal duration of the procedure in question, the General Court maintained, in paragraph 575, that the time which elapsed between the earlier infringement and the infringement penalised in the contested decision was short.

253 Second, the General Court considered that the Commission could invoke repeated infringement on account of an infringement established more than 30 years before the adoption of the contested decision. In so doing, the General Court took as a basis a manifestly disproportionate interpretation of the concept of repeated infringement. That interpretation cannot be justified by the objective to ensure the deterrent effect of that decision, in so far as, since 2000, the appellant has not committed further infringements of the competition rules. The General Court failed to take into account the deterrent effect of the legal and administrative procedures in which the appellant was involved.

254 The General Court also failed to take account of the fact that the objective to ensure the deterrent effect had been taken into account both in order to impose penalties in respect of the conduct at issue and to increase the amount of the fine imposed for repeated infringement, thus leading to a duplication of penalties contrary to the principle of proportionality.

255 Furthermore, the assessment of the General Court is difficult to reconcile with the principle laid down in the judgment of 17 June 2010, *Lafarge* v *Commission* (C-413/08 P, EU:C:2010:346, paragraphs 70 and 73), according to which EU competition law does not authorise the Commission to take account of repeated infringement without any limitation in time. The taking into account, under the head of repeated infringement, of conduct which had taken place more than 30 years before the adoption of the contested decision is therefore manifestly disproportionate and constitutes, in practice, a negation of the principle laid down by the Court.

256 The Commission contends that that line of argument is inadmissible and, in any event, manifestly unfounded.

– *Findings of the Court*

257 By that part, the appellant complains the General Court failed to state reasons and misinterpreted the principle of proportionality. Contrary to what the Commission argues, that branch must therefore be found to be admissible.

258 However, the appellant's argument is unfounded.

259 In the first place, so far as concerns the reasoning in paragraph 575 of the judgment under appeal, it is apparent from that paragraph that, in order to assess whether the Commission was right to rely on repeated infringement against the appellant, the General Court considered that the time which elapsed between the earlier infringement committed by that undertaking and the infringement penalised in the contested decision was short. Contrary to the appellant's submissions the General Court did not disregard the fact that the complaint before it concerned not that period but the time which elapsed between the earlier infringement and the date on which the contested decision was adopted. Not only did the General Court summarise that complaint in paragraph 566 of that judgment, but it also held, in paragraph 575 of that judgment, that the Commission was right to rely on repeated infringement against the appellant as an aggravating circumstance 'despite the fact that the investigation lasted some time due to the judicial uncertainties surrounding it'. It follows from those factors that the appellant's complaints that the Commission failed to state reasons and failed to adjudicate are based on a misreading of the judgment under appeal.

260 In the second place, so far as concerns the complaint alleging breach of the principle of proportionality, it must be noted that, according to settled case-law, the principle of proportionality requires that acts of the EU institutions should be suitable for attaining the legitimate objectives pursued by the legislation at issue and should not go beyond what is necessary to achieve those objectives (judgment of 9 December 2020, *Groupe Canal +* v *Commission*, C-132/19 P, EU:C:2020:1007, paragraph 104 and the case-law cited).

261 As for increasing the fine for repeated infringement, it is important to point out that such increases meet the imperative of punishing repeated infringements of the competition rules by the same undertaking (judgment of 17 June 2010, *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraph 61).

262 It that regard, it must be recalled that the appellant does not dispute the General Court's finding, in paragraph 553 of the judgment under appeal, that, in the context of deterrence, repeated infringement justifies, according to the case-law, a significant increase in the basic amount of the fine. It is evidence that the penalty previously imposed was not sufficiently deterrent.

263 Moreover, the appellant does not dispute the General Court's rejection, in paragraphs 557 and 564 of the judgment under appeal, of its complaint alleging that the time elapsed between the infringement previously committed and the infringement which is the subject of the contested decision was too long for repeated infringement to be invoked against it.

264 The appellant merely argues that, given that the objective of taking repeated infringement into account is to deter the undertakings involved from committing further infringements of competition law, the principle of proportionality has been breached in the present case since, on the one hand, it has not committed further infringements since 2000 and, on the other, the administrative and legal procedures that have already taken place relating to the cartel which is the subject of the contested decision inevitably had a deterrent effect.

265 It should be borne in mind that, in paragraph 577 of the judgment under appeal, the General Court held that it was conceivable that the threat of penalty faced by the appellant throughout the investigation and the imposition of a penalty on two occasions may have had some deterrent effect. The General Court nonetheless considered, without erring in law, that 'it is the penalty,

namely the act of paying the fine imposed by the Commission, as increased for repeated infringement, which actually deters undertakings from committing further infringements of the competition rules'.

266 In any event, the appellant has not demonstrated that the mere fact that a considerable period of time has elapsed between the infringements taken into account under the head of repeated infringement and the adoption of the contested decision by the Commission renders disproportionate the taking into account of such infringements.

267 That finding is not called into question by the other arguments put forward by the appellant.

268 First, the General Court did not err in law in finding that the Commission was right to consider, on the one hand, that the adoption of a new decision finding that the appellant had participated in the cartel was justified, inter alia, by the objective of deterring undertakings from committing further infringements of competition law and, on the other, that it was necessary to strengthen that deterrent effect by invoking repeated infringement against the appellant. Contrary to the appellant's submissions, the fact that repeated infringement was taken into account, both in order to determine the appropriateness of adopting a new decision establishing the appellant's involvement in a cartel and to calculate the amount of the fine imposed on the appellant, does not constitute a 'duplication' contrary to the principle of proportionality.

269 Second, it is true that the principle of proportionality requires that the time elapsed between the infringement in question and a previous breach of the competition rules be taken into account in assessing the undertaking's tendency to infringe those rules (judgment of 17 June 2010, *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraphs 70 and 73). However, that period is not the one invoked by the appellant in support of its complaint alleging breach of the principle of proportionality.

270 It follows that the first part of the seventh ground of appeal must be dismissed as unfounded.

The second part

– *Arguments of the parties*

271 By the second part of the seventh ground of appeal, the appellant submits, first, that paragraphs 580 to 595 of the judgment under appeal are vitiated by an inadequate statement of reasons. It states that it argued, at first instance, that the increase in the amount of the fine imposed for repeated infringement was disproportionate in the light, first, of the fact that the lapse of time was exceptionally long and, second, of the 'minor' nature of repeated infringement. The General Court examined only the second of those arguments.

272 Second, the 50% increase in the amount of the fine imposed for repeated infringement is clearly out of proportion, given that the contested decision was adopted more than 30 years after the decision finding the previous infringement. In that regard, the General Court should have noted the contradictory nature of the contested decision. The Commission reduced the basic amount of the fine by 50%, having regard to the duration of the procedure, but failed to take that period into account for the purposes of applying the increase in the amount of the fine imposed for repeated infringement. For reasons of consistency, moreover, the Commission should have reduced, on account of the time factor, the 50% increase for repeated infringement by at least

half. Furthermore, that increase cannot, by its very nature, exceed the amount of the fine. However, in the present case, the amount of that increase is approximately equal to twice the amount of the fine which would have been imposed on the appellant if the Commission had not invoked repeated infringement against it as an aggravating circumstance.

273 The Commission contends that the appellant is merely repeating the arguments that it put forward before the General Court and is thus asking the Court to carry out a new examination of the application at first instance. The appellant's line of argument is therefore inadmissible and, in any event, unfounded.

– *Findings of the Court*

274 By the second part of the seventh ground of appeal, the appellant submits that the General Court breached the duty to state the reasons for its judgments and misinterpreted the principle of proportionality. Contrary to what the Commission argued, that part must therefore be held to be admissible.

275 However, the argument put forward by the appellant is unfounded.

276 In the first place, the appellant criticises the General Court for having failed to respond to its argument that the increase applied to it by the Commission, under the head of repeated infringement, was disproportionate, having regard to the duration of the procedure. In that regard, it should be borne in mind that the General Court rejected, in paragraphs 565 to 579 of the judgment under appeal, the appellant's argument that the finding of repeated infringement against it was not in line with the principle of proportionality. Thus, the General Court was no longer required to respond to the argument put forward by the appellant that the principle of proportionality also precludes the increase in the amount of the fine imposed for repeated infringement.

277 In the second place, the appellant has not established that the General Court erred in law in ruling that the Commission, by setting the rate of the increase for repeated infringement at 50% of the amount of the basic fine, had not breached the principle of proportionality.

278 It must be added that the fact that, in the contested decision, the Commission reduced by 50% the amount of the basic fine in the light of the duration of the procedure, while applying an increase for repeated infringement, does not reveal any contradiction sine those two factors are independent from each other.

279 Lastly, the appellant, by maintaining that the amount of the increase for repeated infringement cannot exceed the amount of the fine, does not set out any legal rule in support of that claim and carries out a calculation which is not only incorrect, but is also based on a hypothetical situation.

280 In the light of the foregoing, the second part of the seventh ground of appeal and, therefore, that ground in its entirety must be dismissed as unfounded.

The eighth ground of appeal

Arguments of the parties

281 The eighth ground of appeal is in two parts.

282 By the first part of that ground, the appellant submits that the General Court erred in law in finding, in paragraphs 611 to 628 of the judgment under appeal, that the Commission did not breach the principle of equal treatment by applying a reduction in the amount of the fine to the appellant that was proportionally less than that applied to Riva.

283 According to the appellant, it is apparent from the contested decision that Riva, which had participated in the cartel referred to in that decision for a total period of 10 years and 6 months, received a 3% reduction of the fine on the ground that it had not participated, for a period of one year, in the part of the cartel concerned with limiting or controlling output or sales. By contrast, the appellant, which had participated in the cartel for a period of seven years, received a 6% reduction of the fine in respect of the period of three years that it had not participated in that part of the cartel, that it to say a 2% reduction for each of those years.

284 By the second part of the eighth ground of appeal, the appellant argues that the General Court erred in law by failing to find that the Commission's statement of reasons to justify its choice of applying different reductions in the amount of the fine imposed for identical conduct was submitted out of time.

285 The Commission contends that that those arguments are inadmissible. The appellant merely repeats, in essence, the arguments put forward at first instance. It is thus asking the Court to carry out a new examination of the application at first instance. The appellant's line of argument is, in any event, manifestly unfounded.

Findings of the Court

286 Contrary to what the Commission submits, the two parts of the eighth ground of appeal, in so far as they concern errors of law allegedly committed by the General Court, are admissible.

287 With regard to the first part, it should be borne in mind that the principle of equal treatment, enshrined in Article 20 of the Charter, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment of 18 April 2024, *Dumitrescu and Others* v *Commission and Court of Justice*, C-567/22 P to C-570/22 P, EU:C:2024:336, paragraphs 65 and 67 and the case-law cited).

288 In the present case, it is clear from the judgment under appeal that, in the contested decision, the Commission found, on the one hand, that both the appellant and Riva had participated in the cartel referred to in that decision and, on the other, that those two undertakings had not participated in a certain part of that cartel for a period of three years, in respect of the appellant, and for a period of one year, in respect of Riva.

289 As the General Court pointed out in paragraph 613 of the judgment under appeal, when calculating the fines imposed on undertakings which have participated in a cartel, applying differential treatment to the undertakings concerned is inherent to the powers held by the Commission in that respect. In the context of its discretion, the Commission is required to tailor the penalty according to the conduct and characteristics of those undertakings in order to ensure, in each case, the full efficiency of the European Union competition rules (judgment of 13 June 2013, *Versalis* v *Commission*, C-511/11 P, EU:C:2013:386, paragraph 104 and the case-law cited).

290 It is clear from paragraphs 615 to 617 of the judgment under appeal that the Commission justified the difference between the respective rates of reduction by the need to apply weightings to the reduction granted for not participating in a part of the cartel in accordance with the duration of the overall participation of each of those undertakings in the entire cartel. The participation of the appellant and Riva in the entire cartel was an important factor which had to be taken into account for the purposes of assessing the mitigating circumstance in question. Since Riva's overall participation in the cartel was longer, the effect of its non-participation in that aspect of the cartel was more significant.

291 More specifically, the General Court observed, in paragraph 622 of the judgment under appeal, that, in determining the rate of reduction to grant to Riva, the Commission took account of the relative gravity of the participation of each of those two undertakings in the infringement, in accordance with the principle that penalties must fit the offence set out in paragraph 289 above. It thus considered that in so far as Riva's overall participation in the cartel was longer than the appellant's, it was necessarily more serious, and that the effect of its non-participation in a certain part of the cartel was all the more significant.

292 In ruling, in paragraph 323 of the judgment under appeal, that that approach was in line with the principle of equal treatment, the General Court erred in law.

293 It is common ground that the Commission granted a 2% reduction per year to the appellant, in respect of the period during which it was not involved in the part of the cartel at issue, whereas Riva was granted a 3% reduction.

294 It is true that, in the absence of other evidence which differentiate between the participation of those two undertakings in the cartel, the fact that Riva participated in that cartel for a period of 10 years and 6 months meant that Riva's participation had a more serious effect on competition than that of the appellant, which participated in the cartel for a period of only seven years. However, that finding cannot be extended to periods during which the undertakings had not participated in a certain part of that cartel, because their non-participation in that part had, in principle, the same effect on competition.

295 Admittedly, it is possible to apply weightings to the reduction granted on account of their non-participation in a part of the cartel in accordance with the total duration of participation of each of the undertakings in that cartel. However, in the present case, the appellant, for a period of three years – that is to say nearly half the duration of its participation in that cartel – did not participate in that part of the cartel, whereas Riva, during the ten years and 6 months of its participation in that same cartel, had not participated in that part of the cartel for a period of one year only.

296 In those circumstances, it must be found that the Commission treated comparable situations differently, without providing valid justification for that difference in treatment.

297 It follows that the first part of the eighth ground of appeal must be upheld. It is therefore necessary to set aside the judgment under appeal, without it being necessary to rule on the second part of the eighth ground of appeal.

The action before the General Court

298 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may then itself give final judgment in the matter, where the state of the proceedings so permits.

299 In the present case, it is appropriate for the Court to give final judgment in the matter, as the state of the proceedings so permits.

300 It is clear from paragraphs 286 to 297 above that the contested decision is incompatible with the principle of equal treatment, in so far as it granted the appellant a reduction of 2% per year in the amount of the fine for the period during which it had not participated in part of the cartel at issue, even though it granted, for the same reasons, a reduction of 3% to Riva. Having found that the decision at issue is unlawful, the Court may, in the exercise of its unlimited jurisdiction, substitute its own appraisal for the Commission's and, consequently, cancel, reduce or increase the fine imposed. That power is exercised by taking into account all of the factual circumstances (judgment of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 78 and the case-law cited). In the present case, the Court considers, in the exercise of its unlimited jurisdiction, that the rate of reduction of 3% per year of the amount of the fine should also be applied to the appellant.

301 It follows that the amount of the fine imposed on the appellant in the contested decision is set at EUR 2 165 000.

Costs

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

303 Under Article 138(3) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) of those rules, where each party succeeds on some and fails on other heads, the parties are to bear their own costs.

304 Since the appellant and the Commission have both succeeded on some and failed on other heads, they must be ordered to bear their own costs at first instance and on appeal.

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

1. **Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 9 November 2022, *Ferriere Nord* v *Commission* (T-667/19, EU:T:2022:692), in so far as it rejects the complaints of the ninth plea at first instance of Ferriere Nord SpA alleging breach of the principle of equal treatment;**

2. **Dismisses the appeal as to the remainder;**

3. **Annuls Article 2(3) of Commission Decision C(2019) 4969 final of 4 July 2019 relating to an infringement of Article 65 of the ECSC Treaty (Case AT.37956 – Reinforcing bars);**

4. **Sets the amount of the fine imposed on Ferriere Nord SpA, in Article 2(3) of Decision C(2019) 4969 final at EUR 2 165 000;**

5. **Orders Ferriere Nord SpA and the European Commission to bear their own costs of the proceedings at first instance and of the appeal.**

[Signatures]