

Appeal brought on 28 March 2022 by the European Commission against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 19 January 2022 in Case T-610/19, Deutsche Telekom AG v European Commission

(Case C-221/22 P)

(2022/C 198/39)

Language of the case: German

Parties

Appellant: European Commission (represented by: D. Calleja Crespo, B. Martenczuk, N. Khan, P. Rossi, L. Wildpanner, acting as Agents)

Other party to the proceedings: Deutsche Telekom AG

Form of order sought

The appellant claims that the Court of Justice should:

- set aside the judgment of the General Court of 19 January 2022 in Case T-610/19, in so far as it upholds Deutsche Telekom AG's action;
- rule itself on the outstanding issues; or
- in the alternative, in so far as it has not yet been resolved, refer the case back to the General Court for reconsideration;
- order Deutsche Telekom AG to pay all the costs arising from the present proceedings and the proceedings before the General Court.

Pleas in law and main arguments

In essence, the present appeal, to which the European Commission attaches fundamental importance for the interpretation and application of Article 266 TFEU, concerns the Commission's obligation to pay default interest on a fine under competition law in case of its reimbursement. Pursuant to a decision of the Commission, Deutsche Telekom AG provisionally paid a fine for abuse of its dominant position under Article 102 TFEU, which was however subsequently reduced by the General Court of the European Union. ⁽¹⁾ The Commission now contests the obligation imposed on it by the General Court in the judgment under appeal to pay default interest of a penal nature on the part of the fine to be reimbursed, within the meaning of the *Printeos* case-law. ⁽²⁾

By its first ground of appeal, the Commission claims that the General Court erred in law in finding that pursuant to Article 266 TFEU, in case of a reduction of a fine by the EU Courts in the context of the law governing competition, the Commission is under an absolute and unconditional obligation to pay default interest of a penal nature from the date of the provisional payment of the fine.

In particular, the Commission argues that:

The General Court erred in finding that the Commission infringed Article 266 TFEU by not paying any default interest in the amount claimed by Deutsche Telekom AG (first part of the first ground of appeal).

The judgment under appeal contradicts the case-law of the EU judiciary prior to the *Commission v Printeos* judgment (second part of the first ground of appeal).

Furthermore, EU secondary law governs the interest payable for the implementation of judgments and the General Court should have either applied or declared that secondary law invalid (third part of first ground of appeal).

The conditions for an action for damages pursuant to Article 340 TFEU are not met with the result that the General Court erred in law in awarding default interest by way of compensation (fourth part of the first ground of appeal).

The *ex tunc* effect of judgments does not entail the payment of default interest from the date on which the undertaking concerned provisionally paid the fine (fifth part of the first ground of appeal).

The payment of default interest within the meaning of the judgment under appeal runs counter to the deterrent effect of fines (sixth part of the first ground of appeal).

By its second ground of appeal, the Commission submits, in the event that its first ground of appeal is dismissed, that the General Court erred in law in holding that the interest rate to be paid by the Commission, by analogy with Article 83(2)(b) of Delegated Regulation (EU) No 1268/2012, ⁽²⁾ is the refinancing rate of the European Central Bank increased by three and a half percentage points.

⁽¹⁾ Judgment of 13 December 2018, *Deutsche Telekom v Commission* (T-827/14, EU:T:2018:930).

⁽²⁾ Judgment of 20 January 2021, *Commission v Printeos* (C-301/19 P, EU:C:2021:39).

⁽³⁾ Commission Delegated Regulation of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

Order of the President of the Court of 8 December 2021 (request for a preliminary ruling from the Svea Hovrätt — Sweden) — Republiken Italien v Athena Investments A/S (formerly Greentech Energy Systems A/S) and Others

(Case C-155/21) ⁽¹⁾

(2022/C 198/40)

Language of the case: Swedish

The President of the Court has ordered that the case be removed from the register.

⁽¹⁾ OJ C 206, 31.5.2021.
