

2. Second plea in law, alleging that the Commission erred in finding that the aid measures granted to Femern A/S for the Fixed Link are compatible with the internal market pursuant to Article 107(3)(b) TFEU. The Commission erred in law and made a manifest error of assessment in finding that the Fehmarn Belt Fixed Link project was of common European interest and in finding that the aid was necessary and proportionate. The Commission also erred in law and made a manifest error of assessment regarding the prevention of undue distortions of competition and balancing test and regarding the mobilisation of the State guarantees.
3. Third plea in law, alleging that the Commission infringed its obligation to initiate the formal investigation procedure. The applicant alleges that there are evidence of serious difficulties relating to the length and the circumstances of the preliminary investigation procedure. In addition, the applicant alleges an insufficient and incomplete analysis regarding the funding granted to Femern A/S for the Danish rail hinterland connections, regarding the common European interest of the Fehmarn Belt Fixed Link project, regarding the necessity and proportionality of the aid and regarding the prevention of undue distortions of competition and balancing test.
4. Fourth plea in law, alleging that the Commission failed to fulfil its duty to state reasons. The Commission failed to provide reasons in relation to the Danish rail hinterland connections, in relation to the common European interest of the Fehmarn Belt Fixed Link project, in relation to the necessity and proportionality of the aid and in relation to the undue distortions of competition and balancing test.

Action brought on 19 November 2015 — Guardian Europe v European Union

(Case T-673/15)

(2016/C 059/26)

Language of the case: English

Parties

Applicant: Guardian Europe Sàrl (Bertrange, Luxembourg) (represented by: F. Louis, lawyer, and C. O'Daly, Solicitor)

Defendants: European Union represented by the European Commission and the Court of Justice of the European

Form of order sought

The applicant claims that the Court should:

- (1) order that the applicant be compensated for the following damages caused as a result of the General Court's failure to rule within a reasonable time: (a) guarantee costs of EUR 936 000; (b) opportunity costs/loss of profit of EUR 1 671 000; and (c) non-pecuniary losses of EUR 14,8 million;
- (2) award interest on the amounts sought under (1) above, in so far as relevant, at the average rate applied by the European Central Bank at the relevant time to its main refinancing operations, increased by two percentage points;
- (3) order that the applicant be compensated for damages caused as a result of the Commission and the General Court's infringement of the principle of equal treatment namely the following amounts: (a) guarantee costs of EUR 1 547 000; (b) opportunity costs/loss of profit of EUR 9 292 000; and (c) non-pecuniary losses of EUR 14,8 million;
- (4) award interest on the amounts sought under (3) above, in so far as relevant, at the average rate applied by the European Central Bank at the relevant time to its main refinancing operations, increased by two percentage points; and

- (5) order the defendants to pay the applicant's costs relating to its application.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging that the applicant has a right to damages against the European Union under Article 268 and Article 340 second paragraph of the TFEU due to the General Court's infringement of its rights under Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms to a judgment within a reasonable time. The failure to rule within a reasonable time period caused the applicant three types of loss between 12 February 2010 and 27 September 2012: (1) increased costs related to a bank guarantee for the amount of the fine that the applicant did not immediately pay to the Commission following the adoption of decision No C(2007)5791 final of 28 November 2007 in Case COMP/39165 — Flat glass; (2) opportunity costs because the low rate of interest on the amount of the fine belatedly returned to the applicant following the Court of Justice's judgment in 2014 was much lower than the potential return that the applicant could have achieved if, instead of paying this money to the Commission in 2008, it had invested it in its business; and (3) non-pecuniary damages due to the decision wrongly having imposed the highest fine on the applicant in November 2007 and, due to the General Court's failure to adjudicate within a reasonable time, this only being belatedly remedied by the Court of Justice in November 2014.
2. Second plea in law, alleging that the applicant has a right to damages against the European Union under Article 268 and Article 340 second paragraph of the TFEU because the European Commission and the General Court both manifestly breached the principle of equal treatment and discriminated against the applicant. Decision No C(2007)5791 final of 28 November 2007 in Case COMP/39165 — Flat glass, wrongly excluded captive sales when calculating the fines imposed on the decision's other addressees and failed to rectify the ensuing discrimination against the applicant, which as a non-integrated producer did not have any captive sales. The General Court compounded the Commission's mistake by upholding the decision's exclusion of these captive sales. This error was only corrected by the Court of Justice in November 2014 when it reduced the decision's fine by EUR 44,4 million. However, this reduction did not compensate for the damage to the applicant from November 2007 to November 2014, which was caused by it wrongfully having received an inflated fine, which suggested that it bore a particular responsibility for the flat glass cartel and also resulted in additional financial costs. The Commission's and General Court's unlawful act caused the applicant the same three types of loss as those outlined under the first plea in law but over the longer period from November 2007 to November 2014.

**Appeal brought on 26 November 2015 by Patrick Wanègue against the order of the Civil Service
Tribunal of 15 September 2015 in Case F-21/15, Wanègue v Committee of the Regions**

(Case T-682/15 P)

(2016/C 059/27)

Language of the case: French

Parties

Appellant: Patrick Wanègue (Dilbeek, Belgium) (represented by M.-A. Lucas, lawyer)

Other party to the proceedings: Committee of the Regions of the European Union