

Appeal brought on 8 August 2017 by Guardian Europe Sàrl against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 7 June 2017 in Case T-673/15: Guardian Europe v European Union

(Case C-479/17 P)

(2017/C 369/05)

Language of the case: English

Parties

Appellant: Guardian Europe Sàrl (represented by: C. O'Daly, Solicitor, F. Louis, avocat)

Other parties to the proceedings: European Union, represented by (1) the Court of Justice of the European Union and (2) the European Commission

Form of order sought

The appellant claims that the Court should:

- 1) set aside the judgment in so far as point 3 of the operative part rejected part of Guardian Europe's claim for damages based on Article 268 and Article 340, second paragraph, of the Treaty on the Functioning of the European Union;
- 2) determine that the Court itself can adjudicate on the merits of the appellant's claims for damages and accordingly
 - a) order the EU, represented by the Court of Justice of the European Union, to compensate Guardian Europe for the damages caused as a result of the General Court's failure to rule within a reasonable time, in accordance with 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, namely the following amounts: (i) opportunity costs/loss of profit of € 1 388 000; (ii) additional guarantee costs of € 143 675,78; and (iii) non-pecuniary losses expressed as an appropriate percentage of the fine imposed on Guardian in the decision;
 - b) order the EU, represented by the Commission and the Court of Justice of the European Union, to compensate Guardian for damages caused because of the Commission and the General Court's infringement of the principle of equal treatment, namely the following amounts: (i) opportunity costs/loss of profit of € 7 712 000; and (ii) nonpecuniary losses expressed as an appropriate percentage of the fine imposed on Guardian in the Decision;
 - c) award compensatory interest on the amounts in (a) (starting from 27 July 2010 up to the date of this Court's judgment on this appeal) and (b) (starting from 19 November 2010 up to the date of this Court's judgment on this appeal), at the annual rate of inflation determined, for the period in question, by Eurostat in the Member State (Luxembourg) where Guardian Europe is established;
 - d) award default interest on the amounts in (a) and (b), starting from the date of this Court's judgment on this appeal until full payment, at the rate set by the European Central Bank (ECB) for its main refinancing operations, increased by two percentage points;
- 3) in so far as relevant, as an alternative to any of (2)(a) to (d), refer the case back to the General Court for a ruling on the merits of the action; and
- 4) order the defendants to pay the appellant's costs relating to this appeal and before the General Court.

Pleas in law and main arguments

- 1) In its judgment the General Court violated Article 268 and Article 340, second paragraph, of the TFEU and failed to apply the concept of 'undertaking' in EU law when it concluded that Guardian Europe did not suffer any loss of profits because of the General Court's failure to rule within a reasonable time in Case T-82/08, Guardian Industries Corp. and Guardian Europe Sàrl v Commission;

- 2) In its judgment the General Court violated Article 268 and Article 340, second paragraph, of the TFEU, failed to apply the concept of ‘undertaking’ in EU law and reached substantively inaccurate findings, this inaccuracy being apparent from the documents submitted to the General Court, when it held that Guardian Europe only incurred 82 % of the losses related to the guarantee costs payable during the period of the General Court’s unreasonable delay in Case T-82/08, Guardian Industries Corp. and Guardian Europe Sàrl v Commission;
- 3) In its judgment the General Court violated Article 268 and Article 340, second paragraph, of the TFEU when it concluded that Guardian Europe did not suffer non-material damage because of the failure to rule within a reasonable time in Case T-82/08, Guardian Industries Corp. and Guardian Europe Sàrl v Commission;
- 4) In its judgment the General Court violated Article 268 and Article 340, second paragraph, of the TFEU and failed to apply the concept of ‘undertaking’ in EU law when it ruled that the breach of the principle of equal treatment in Commission Decision No C(2007) 5791 final ⁽¹⁾ — Flat glass, and in the General Court judgment in Case T-82/08, Guardian Industries Corp. and Guardian Europe Sàrl v Commission, did not cause Guardian Europe loss of profits;
- 5) In its judgment the General Court violated Article 268 and Article 340, second paragraph, of the TFEU when it ruled that the breach of the principle of equal treatment in Commission Decision No C(2007) 5791 final — Flat glass and in the General Court judgment in Case T-82/08, Guardian Industries Corp. and Guardian Europe Sàrl v Commission, did not cause Guardian Europe non-material losses; and
- 6) In its judgment the General Court violated Article 268 and Article 340 second paragraph of the TFEU when it held that only a judgment by a court of last instance — and not therefore the General Court — can trigger liability for damages for breach of EU law.

⁽¹⁾ Commission Decision C(2007) 5791 final of 28 November 2007 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39165 — Flat glass).

**Request for a preliminary ruling from the Administrativen sad Veliko Tarnovo (Bulgaria) lodged on
9 August 2017 — Nikolay Yanchev v Direktor na direksia ‘Obzhalvane i danachno-osiguritelna
praktika’ — Veliko Tarnovo pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite**

(Case C-481/17)

(2017/C 369/06)

Language of the case: Bulgarian

Referring court

Administrativen sad Veliko Tarnovo

Parties to the main proceedings

Applicant: Nikolay Yanchev

Defendant: Direktor na direksia ‘Obzhalvane i danachno-osiguritelna praktika’ — Veliko Tarnovo pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Questions referred

1. Is paragraph 16 of Decision C(2011) 863 final of the European Commission of 11 February 2011, adopted pursuant to Article 108(3) TFEU, declaring State aid No 546/2010 of the Republic of Bulgaria for investment in agricultural holdings in the form of corporate tax relief to be compatible with Article 107(3) TFEU to be interpreted as meaning that, in the light of the Commission’s powers, on the one hand, and of the principles of procedural autonomy and legal certainty, on the other, it is permissible to apply a national rule under which the period laid down in that paragraph for reviewing whether the conditions governing the State aid granted have been met is to be construed only as being indicative and not as being an exclusionary period?