



## Reports of Cases

Case T-673/15

Guardian Europe Sàrl

v

European Union, represented by the European Commission and the Court of Justice of the European Union

(Non-contractual liability - Representation of the European Union - Barring of actions - Nullification of the legal effects of a decision which has become final - Precision of the application - Admissibility - Article 47 of the Charter of Fundamental Rights - Obligation to adjudicate within a reasonable time - Equal treatment - Material damage - Losses sustained - Loss of profit - Non-material damage - Causal link)

Summary — Judgment of the General Court (Third Chamber, Extended Composition), 7 June 2017

- European Union — Representation before the EU judicature — Action for compensation against the EU in respect of damage allegedly suffered through unreasonable duration of the procedure before the General Court — Representation of the Union by the Court of Justice of the European Union*  
*(Arts 13 TEU, 17(1) TEU and 19 TEU; Arts 256(1) TFEU, 268 TFEU, 335 TFEU and 340, second para., TFEU)*
- Actions for damages — Limitation period — Point from which time starts to run — Liability through infringement of the duty of the EU judicature to adjudicate within a reasonable time — Date on which the judgment in question delivered*  
*(Art. 340, second para., TFEU; Statute of the Court of Justice, Arts 46 and 53, first para.)*
- Actions for damages — Limitation period — Point from which time starts to run — Liability for an individual measure — Date of appearance of the prejudicial effects of the act*  
*(Art. 340, second para., TFEU; Statute of the Court of Justice, Art. 46)*
- Actions for damages — Limitation period — Interruption — Non-material damage in the form of damage to reputation — Damage of a continuing nature — Dates to be taken into consideration*  
*(Art. 340, second para., TFEU; Statute of the Court of Justice, Art. 46)*
- Actions for damages — Autonomy in relation to the annulment action — Limits — Claim for compensation in respect of additional damage arising from a Commission decision annulled by the EU judicature and different in character from that capable of arising from failure to comply with that judgment — Admissibility*  
*(Arts 263 TFEU, 266 TFEU and 340, second para., TFEU)*

6. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — One of the conditions not satisfied — Claim for compensation dismissed in its entirety*  
*(Art. 340, second para., TFEU)*
7. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — Burden of proof*  
*(Art. 340, second para., TFEU)*
8. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — Concept — Bank guarantee charges arising from the choice of an undertaking not to pay the fine imposed by the Commission — No direct causal link*  
*(Art. 340, second para., TFEU)*
9. *Non-contractual liability — Conditions — Real and certain damage caused by an illegal measure — Material damage arising from an unlawful decision of the Commission imposing a fine for anti-competitive conduct — Burden linked to payment of the fine not incurred by the applicant — No real damage*  
*(Art. 340, second para., TFEU)*
10. *Non-contractual liability — Conditions — Unlawfulness — Sufficiently serious breach of EU law — Infringement by the EU judicature committed in the context of a decision open to appeal — Exclusion — Exception — Existence of serious failures in the functioning of the judicial process*  
*(Art. 340, second para., TFEU)*
11. *Non-contractual liability — Conditions — Sufficiently serious breach of a rule of law intended to confer rights on individuals — Rule of law intended to confer rights on individuals — Concept — Infringement by the EU judicature of the duty to adjudicate within a reasonable time — Inclusion — Criteria for assessment*  
*(Art. 340, second para., TFEU; Charter of Fundamental Rights of the European Union, Art. 47, second para.)*
12. *Non-contractual liability — Conditions — Causal link — Concept — Bank guarantee charges arising from the choice of an undertaking not to pay the fine imposed by the Commission — Infringement by the EU judicature of the duty to adjudicate within a reasonable time on the occasion of the action by that undertaking — Existence of a causal link — Conditions*  
*(Art. 340, second para., TFEU)*
13. *Non-contractual liability — Damage — Compensation — Account taken of inflation — Compensatory interest and interest for delay — Rules for calculation*  
*(Art. 340, second para., TFEU)*
1. See the text of the decision.

(see para. 18)

2. In the specific case of an action for damages aimed at securing compensation for damage allegedly sustained because of a failure to adjudicate within a reasonable time, the starting point for the five-year limitation period referred to in Article 46 of the Statute of the Court of Justice of the European Union must, in the event that the time taken to adjudicate has been brought to an end by a decision, be determined as being the date on which that decision was adopted. That constitutes a definite date determined on the basis of objective criteria. It guarantees compliance with the principle of legal certainty and serves to protect the applicant's rights.

(see para. 26)

3. See the text of the decision.

(see paras 32, 35)

4. In the case of continuing damage, the limitation period referred to in Article 46 of the Statute of the Court of Justice applies, with the date of the event which interrupted the limitation period as reference point, to the period preceding that date by more than five years and does not affect rights which arose during subsequent periods. The non-material damage in the form of damage to reputation is continuing in nature. Although it may take different forms, damage to reputation is in general damage which recurs on a daily basis and continues as long as the alleged cause of such damage has not been brought to an end. That is the case, in particular, when the alleged damage to reputation is said to derive from a Commission decision which is initially adopted and made public by means of a press release and is subsequently published in the *Official Journal of the European Union* in the form of a summary.

(see paras 39, 42, 43)

5. The action for damages relating to the European Union's non-contractual liability for actions or omissions on the part of its institutions was established as an independent form of judicial remedy, having its own particular place in the system of means of redress and subject to conditions for its use formulated in the light of its specific purpose.

In the case of an action for compensation in respect of profit allegedly lost by reason of a sufficiently serious breach of the equal treatment principle committed by the Commission in a judgment annulled by a judgment of the EU judicature, where the applicant seeks compensation for damage which, first, is different from that stemming from a failure to comply with the judgment, and which, secondly, is additional to the sums repaid by the Commission in implementation thereof, that claim has neither the same object nor effect as an action for annulment brought against the implementing measure taken by the Commission, and cannot, therefore, be held inadmissible by virtue of misuse of powers.

(see paras 53, 63, 64)

6. See the text of the decision.

(see paras 75, 76, 154)

7. See the text of the decision.

(see paras 81, 82)

8. In the case of a claim for compensation for damage allegedly suffered by reason of a sufficiently serious breach of the equal treatment principle committed through a Commission decision imposing a fine for anti-competitive conduct, an applicant cannot validly maintain that the bank guarantee costs which it paid are the direct consequence of the unlawfulness of that decision, where it has decided,

after the adoption of the said decision, not to comply with its obligation to pay the fine in full, but to provide a bank guarantee for part of the amount of the fine, in line with the option offered by the Commission.

In that regard, the damage which it alleges results directly and decisively from its own choice not immediately to fulfil its obligation to pay the fine in full. If the applicant had chosen to pay the fine immediately in full, it would have avoided having to pay the bank guarantee costs on the unpaid amount of the fine. Accordingly, the existence of a sufficiently direct causal link between the alleged sufficiently serious infringement of the principle of equal treatment in committed in the contested decision and the payment of bank guarantee costs must be rejected.

(see paras 91-93)

9. In the case of a claim for compensation for damage allegedly suffered by reason of a sufficiently serious breach of the equal treatment principle committed through a Commission decision imposing a fine for anti-competitive conduct, an applicant which has not itself incurred the burden linked to the payment of that fine cannot claim to have sustained actual and certain damage consisting in the difference between, on the one hand, the interest repaid by the Commission on the part of the fine ultimately held by the EU judicature not to be due, and, on the other, the income which it could have earned if, instead of paying the sum at issue to the Commission, it had invested it in its business.

(see para. 103)

10. The European Union cannot incur liability for the content of a judicial decision that has not been delivered by an EU court adjudicating at last instance and could, therefore, be subject to an appeal. That observation is without prejudice to the possibility for an applicant to seek, in exceptional cases, a finding that the European Union is liable on account of serious failures in the functioning of the judicial process, in particular of a procedural or administrative nature, affecting the activity of an EU court.

(see paras 122, 124)

11. For a procedure in competition matters before the General Court to exceed by 26 months the time reasonably necessary for adjudicating in such cases, which constitutes a sufficiently serious breach of a rule of EU law intended to confer rights on individuals, constitutes an infringement of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

Whether the length of the period elapsing between the end of the written part of the procedure and the opening of the oral part of the procedure is reasonable depends, in particular, on the complexity of the dispute, the conduct of the parties and supervening procedural matters. As regards the complexity of the dispute, first, a period of 15 months between the end of the written part of the procedure and the opening of the oral part of the procedure is, in principle, an appropriate length of time for dealing with cases concerning the application of competition law. Next, the parallel processing of connected cases cannot justify, in the present case, extending the interval between the end of the written part of the procedure and the opening of the oral part of that procedure. Lastly, the degree of factual, legal and procedural complexity of the case in question is no justification for longer proceedings. In that regard, between the end of the written part of the procedure and the opening of the oral part of the procedure, the procedure was neither interrupted nor delayed by the Court's adoption of any measure of organisation of procedure. The conduct of the parties and supervening procedural matters had no impact on the amount of time that elapsed between the end of the written part of the procedure and the opening of the oral part of the procedure.

Consequently, the fact that 41 months elapsed between the end of the written part of the procedure and the opening of the oral part of the procedure shows that there was a period of unjustified inactivity of 26 months.

(see paras 133-137, 139)

12. In the context of a case concerning a Commission decision imposing a fine for anti-competitive conduct, there is a causal link between the infringement of the obligation to adjudicate within a reasonable time and the occurrence of the damage sustained by an applicant as a result of its having paid bank guarantee costs during the period by which the reasonable time for adjudication was exceeded. First, at the time when the applicant brought its action in the case in question and at the time when it provided a bank guarantee, the infringement of the obligation to adjudicate within a reasonable time was not foreseeable. Furthermore, the applicant could legitimately expect its action to be dealt with within a reasonable time. Secondly, the reasonable time for adjudicating was exceeded after the applicant's initial decision to provide a bank guarantee. Consequently, the link between the exceeding of a reasonable time for adjudication and the payment of bank guarantee costs during that excess period cannot have been severed by the applicant's initial decision not to effect immediate payment in part of the fine imposed by the Commission's decision and to provide a bank guarantee.

(see para. 160)

13. See the text of the decision.

(see paras 167-169)