



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

13 December 2018*

(Appeal — Actions for damages — Second paragraph of Article 340 TFEU — Excessive duration of the proceedings in two cases before the General Court of the European Union — Damage allegedly suffered by the applicants — Material damage — Bank guarantee charges — Causal link — Default interest — Non-material damage)

In Joined Cases C-138/17 P and C-146/17 P,

TWO APPEALS pursuant to Article 56 of the Statute of the Court of Justice of the European Union, brought, respectively, on 17 and 22 March 2017,

European Union, represented by the Court of Justice of the European Union, represented by J. Inghelram and Á.M. Almendros Manzano, acting as Agents (C-138/17 P),

appellant,

the other parties to the proceedings being:

Gascogne Sack Deutschland GmbH, formerly Sachsa Verpackung GmbH, established in Wieda (Germany),

Gascogne SA, established in Saint-Paul-lès-Dax (France),

represented by F. Puel and E. Durand, avocats,

applicants at first instance,

European Commission, represented by C. Urraca Caviedes, S. Noë and F. Erlbacher, acting as Agents,

intervener at first instance,

and

Gascogne Sack Deutschland GmbH, established in Wieda,

Gascogne SA, established in Saint-Paul-lès-Dax,

represented by F. Puel and E. Durand, avocats (C-146/17 P),

appellants,

* Language of the case: French.

the other parties to the proceedings being:

European Union, represented by the Court of Justice of the European Union, represented by J. Inghelram and Á.M. Almendros Manzano, acting as Agents,

defendant at first instance,

European Commission,

intervener at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), Vice-President, acting as President of the First Chamber, J.-C. Bonichot, E. Regan, C.G. Fernlund and S. Rodin, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 25 July 2018,

gives the following

Judgment

- 1 By their respective appeals, the European Union, on the one hand, and Gascogne Sack Deutschland GmbH and Gascogne SA, on the other hand, seek the partial setting aside of the judgment of the General Court of the European Union of 10 January 2017, *Gascogne Sack Deutschland and Gascogne v European Union* (T-577/14, ‘the judgment under appeal’, EU:T:2017:1), by which the General Court ordered the European Union to pay Gascogne compensation in the amount of EUR 47 064.33 for the material damage suffered by that company as a result of the breach of the obligation to adjudicate within a reasonable time in the cases which gave rise to the judgments of 16 November 2011, *Groupe Gascogne v Commission* (T-72/06, not published, EU:T:2011:671), and of 16 November 2011, *Sachsa Verpackung v Commission* (T-79/06, not published, EU:T:2011:674) (‘Cases T-72/06 and T-79/06’), and compensation of EUR 5 000 to Gascogne Sack Deutschland and compensation of EUR 5 000 to Gascogne for the non-material damage that those companies each suffered as a result of that breach, and dismissed the action as to the remainder.

Background to the disputes

- 2 By applications lodged at the Registry of the General Court on 23 February 2006, on the one hand, Sachsa Verpackung GmbH, now Gascogne Sack Deutschland, and, on the other hand, Groupe Gascogne SA, now Gascogne, each brought an action against Commission Decision C(2005) 4634 of 30 November 2005 relating to a proceeding pursuant to Article [101 TFEU] (Case COMP/F/38.354 — Industrial bags) (‘Decision C(2005) 4634’). In their applications, they claimed, in essence, that the General Court should annul that decision in so far as it applied to them or, in the alternative, reduce the amount of the fine which had been imposed on them.

- 3 By judgments of 16 November 2011, *Groupe Gascogne v Commission* (T-72/06, not published, EU:T:2011:671), and of 16 November 2011, *Sachsa Verpackung v Commission* (T-79/06, not published, EU:T:2011:674), the General Court dismissed those actions.
- 4 By applications lodged on 27 January 2012, Gascogne Sack Deutschland and Groupe Gascogne brought appeals against the judgments of 16 November 2011, *Groupe Gascogne v Commission* (T-72/06, not published, EU:T:2011:671), and of 16 November 2011 *Sachsa Verpackung v Commission* (T-79/06, not published, EU:T:2011:674).
- 5 By judgments of 26 November 2013, *Gascogne Sack Deutschland v Commission* (C-40/12 P, EU:C:2013:768), and of 26 November 2013 *Groupe Gascogne v Commission* (C-58/12 P, EU:C:2013:770), the Court of Justice dismissed those appeals.

The procedure before the General Court and the judgment under appeal

- 6 By application lodged at the Registry of the General Court on 4 August 2014, Gascogne Sack Deutschland and Gascogne brought an action under Article 268 TFEU against the European Union, represented by the Court of Justice of the European Union, for compensation for the damage that those companies claim to have suffered as a result of the excessive duration of the proceedings, before the General Court, in Cases T-72/06 and T-79/06.
- 7 By the judgment under appeal, the General Court:
 - ‘(1) Orders the European Union, represented by the Court of Justice of the European Union, to pay compensation of EUR 47 064.33 to Gascogne for the material damage suffered by that company as a result of the breach of the obligation to adjudicate within a reasonable time in [Cases T-72/06 and T-79/06]. That compensation is to be reassessed by applying compensatory interest, starting from 4 August 2014 and continuing up to the date of delivery of the present judgment, at the annual rate of inflation determined, for the period in question, by Eurostat (the European Union’s statistical office) in the Member State where [that company is] established;
 - (2) Orders the European Union, represented by the Court of Justice of the European Union, to pay compensation of EUR 5 000 to Gascogne Sack Deutschland and compensation of EUR 5 000 to Gascogne for the non-material damage which those companies have each suffered as a result of the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06;
 - (3) [Orders that e]ach of the compensatory sums referred to in points (1) and (2) above is to bear default interest, starting from the date of delivery of the present judgment and continuing until full payment, at the rate set by the ECB for its principal refinancing operations, increased by two percentage points;
 - (4) [Dismisses the action] as to the remainder;
 - (5) Orders the European Union, represented by the Court of Justice of the European Union, to bear not only its own costs but also the costs incurred by Gascogne Sack Deutschland and by Gascogne in connection with the objection of inadmissibility which gave rise to the order of 2 February 2015, *Gascogne Sack Deutschland and Gascogne v European Union* (T-577/14, not published, EU:T:2015:80);
 - (6) Orders Gascogne Sack Deutschland and Gascogne, on the one hand, and the European Union, represented by the Court of Justice of the European Union, on the other hand, to bear their own costs in connection with the appeal which gave rise to the present judgment;

(7) Orders the European Commission to bear its own costs.’

Forms of order sought by the parties

- 8 By its appeal in Case C-138/17 P, the European Union claims that the Court should:
- set aside point 1 of the operative part of the judgment under appeal;
 - dismiss as unfounded Gascogne Sack Deutschland’s and Gascogne’s claim at first instance, seeking a sum of EUR 187 571 for losses allegedly suffered as a result of making additional bank guarantee payments beyond a reasonable period; and
 - order Gascogne Sack Deutschland and Gascogne to pay the costs.
- 9 Gascogne Sack Deutschland and Gascogne contend that the Court of Justice should:
- dismiss the appeal; and
 - order the appellant to pay the costs.
- 10 The European Commission contends that the Court should uphold the appeal in its entirety.
- 11 By their appeal in Case C-146/17 P, Gascogne Sack Deutschland and Gascogne claim that the Court of Justice should:
- set aside in part the judgment under appeal;
 - give final judgment on the financial compensation for material and non-material damage suffered by the appellants in the exercise of its unlimited jurisdiction, in accordance with their requests at first instance; and
 - order the European Union to pay the costs.
- 12 The European Union contends that the Court of Justice should:
- dismiss the appeal as in part ineffective and in part unfounded and, in any event, as unfounded;
 - order the appellants to pay the costs.
- 13 By decision of the President of the First Chamber of 17 April 2018, Cases C-138/17 P and C-146/17 P were joined for the purposes of the Opinion and the judgment.

Concerning the appeals

- 14 In support of its appeal in Case C-138/17 P, the European Union raises three grounds of appeal.
- 15 The appeal in Case C-146/17 P is based on seven grounds of appeal.

The first ground of appeal in Case C-138/17 P

Arguments of the parties

- 16 By its first ground of appeal, the European Union, the appellant in Case C-138/17 P, submits that, by finding that there is a sufficiently direct causal link between the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 and the loss sustained by Gascogne as a result of paying bank guarantee charges during the period by which that time was exceeded, the General Court erred in law by misinterpreting the notion of ‘causal link’.
- 17 In particular, the European Union submits that the General Court relied on the erroneous premiss that the decision to provide a bank guarantee is made at a single point in time, namely at the time of the ‘initial decision’ to provide that guarantee. However, since the obligation to pay the fine existed throughout the proceedings before the Courts of the European Union, and even beyond that period, since the fine was not annulled, the applicants at first instance had the possibility of paying the fine and thus complying with their obligation in this regard. Since the applicants at first instance had the possibility of paying the fine at any time, their own decision to replace that payment by a bank guarantee is a continuous decision, which they have maintained throughout the proceedings. Accordingly, the determining cause of the payment of the bank guarantee charges lies in their own decision not to pay the fine and to replace that payment by a bank guarantee and not in the breach of the obligation to adjudicate within a reasonable time.
- 18 The Commission supports the arguments put forward by the European Union.
- 19 Gascogne Sack Deutschland and Gascogne, respondents in the appeal in Case C-138/17 P, contend (i) that the General Court was right not to apply to the present case the case-law stemming in particular from the judgment of 21 April 2005, *Holcim (Deutschland) v Commission* (T-28/03, EU:T:2005:139, paragraphs 121 to 123), and from the order of 12 December 2007, *Atlantic Container Line and Others v Commission* (T-113/04, not published, EU:T:2007:377, paragraphs 39 and 40), since the facts of the present case differ substantially from those of the cases to which that case-law relates, as the General Court found in paragraph 121 of the judgment under appeal, and (ii) that that judgment found, to the requisite legal standard, the existence of a causal link between the fault committed by the General Court and the damage suffered by Gascogne.
- 20 Moreover, Gascogne Sack Deutschland and Gascogne state that the fact that the European Union calls into question the very principle of compensation by rejecting any head of damage suffered by them, whereas, in its judgments of 26 November 2013, *Gascogne Sack Deutschland v Commission* (C-40/12 P, EU:C:2013:768), and of 26 November 2013 *Groupe Gascogne v Commission* (C-58/12 P, EU:C:2013:770), the Court of Justice itself acknowledged both the excessive duration of the proceedings and the principle of the existence of damage resulting from that duration constitutes an ‘abuse of procedure’.
- 21 Gascogne Sack Deutschland and Gascogne thus contend that this ground of appeal should be rejected.

Findings of the Court

- 22 It should be recalled that, as the Court has previously stated, the condition under the second paragraph of Article 340 TFEU relating to a causal link concerns a sufficiently direct causal nexus between the conduct of the EU institutions and the damage, the burden of proof of which rests on the applicant, so that the conduct complained of must be the determining cause of the damage (see order of 31 March 2011, *Mauerhofer v Commission*, C-433/10 P, not published, EU:C:2011:204, paragraph 127 and the case-law cited).

- 23 It is therefore necessary to ascertain whether the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 is the determining cause of the damage resulting from the payment of bank guarantee charges during the period by which that time was exceeded in order to establish the existence of a direct relationship of cause and effect between the conduct alleged against the Court of Justice of the European Union and the damage complained of.
- 24 In that regard, it must be observed that, in an action for damages brought against the Commission, for the purposes, in particular, of reimbursement of the guarantee charges incurred by the applicants in order to obtain the suspension of the decisions to recover the refunds at issue in the main proceedings, decisions which were subsequently withdrawn, the Court held that, when a decision requiring the payment of a fine is coupled with the option of lodging a security intended to ensure that payment along with interest on late payment, pending the outcome of an action brought against that decision, the loss consisting of the guarantee fees results, not from that decision, but from the interested party's own choice to lodge a security rather than to fulfil its repayment obligation immediately. In those circumstances, the Court established that there is no direct causal link between the conduct complained of and the damage alleged (see, to that effect, judgment of 28 February 2013, *Inalca and Cremonini v Commission*, C-460/09 P, EU:C:2013:111, paragraphs 118 and 120).
- 25 The General Court found, in paragraph 121 of the judgment under appeal, that the link between the fact that the reasonable time for adjudicating in Cases T-72/06 and T-79/06 was exceeded and the payment of bank guarantee charges during that excess period cannot have been severed by Gascogne's initial decision not to effect immediate payment of the fine imposed by Decision C(2005) 4634 and to provide a bank guarantee.
- 26 In particular, as is apparent from paragraphs 119 and 120 of the judgment under appeal, the two circumstances on which the General Court relied in reaching the conclusion set out in paragraph 121 of that judgment are (i) that at the time when Gascogne provided a bank guarantee, the breach of the obligation to adjudicate within a reasonable time was unforeseeable and that that company could legitimately expect those actions to be dealt with within a reasonable time, and (ii) that the reasonable time for adjudicating in Cases T-72/06 and T-79/06 was exceeded after Gascogne's initial decision to provide that bank guarantee.
- 27 However, the two circumstances referred to by the General Court in paragraphs 119 and 120 of the judgment under appeal cannot be relevant for finding that the causal link between the breach of the obligation to adjudicate within a reasonable time, in Cases T-72/06 and T-79/06, and the damage suffered by Gascogne as a result of paying bank guarantee charges during the period by which that time was exceeded cannot have been severed by the decision of that undertaking to provide that guarantee.
- 28 That would be the case only if it were compulsory to maintain the bank guarantee, so that the undertaking which brought an action against a Commission decision imposing a fine on it, and which chose to provide a bank guarantee in order not to comply immediately with that decision, was not entitled, before the date on which the judgment on that action was delivered, to pay that fine and put an end to the bank guarantee that it had provided.
- 29 As the Advocate General noted in points 37, 49 and 50 of his Opinion, like the provision of the bank guarantee, the maintenance of that guarantee is a matter for the discretion of the undertaking concerned in the light of its financial interests. Nothing prevents, as a matter of EU law, that undertaking from terminating, at any time, the bank guarantee that it has provided and paying the fine imposed, where, in view of the evolution of the circumstances in relation to those existing on the date when that guarantee was provided, that undertaking deems that option more advantageous for it. That might be the case, in particular, where the conduct of the proceedings before the General Court leads

the undertaking in question to take the view that the judgment will be delivered at a date later than that which it had initially envisaged and that, consequently, the cost of the bank guarantee will be higher than the cost that it had initially envisaged when providing that guarantee.

- 30 In this case, given that (i) in September 2009, namely 43 months after the applications in Cases T-72/06 and T-79/06 were brought, the oral proceedings in those cases had still not begun, as is apparent from the General Court's findings in paragraph 63 of the judgment under appeal, and that (ii) the period which Gascogne itself considered, in its application at first instance, as being the normal period for dealing with actions for annulment in competition matters, is indeed 43 months, it must be held that, by September 2009 at the latest, Gascogne could not have been unaware that the duration of the proceedings in those cases would considerably exceed that which it had initially envisaged, and that it could have reconsidered the appropriateness of maintaining the bank guarantee, having regard to the extra costs that maintaining that guarantee might entail.
- 31 In those circumstances, the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 cannot be the determining cause of the damage suffered by Gascogne as a result of paying bank guarantee charges during the period by which that time was exceeded. As the Advocate General noted in point 58 of his Opinion, such damage is the consequence of Gascogne's own decision to maintain the bank guarantee throughout the proceedings in those cases, despite the financial consequences which that entailed.
- 32 It follows from the foregoing considerations that, by finding that there is a sufficiently direct causal link between the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 and the loss sustained by Gascogne as a result of paying bank guarantee charges during the period by which that time was exceeded, the General Court erred in law by misinterpreting the notion of 'causal link'.
- 33 Lastly, the respondents' line of argument that, in Case C-138/17 P, the appellant's action could be classified as an 'abuse of procedure' cannot call that finding into question.
- 34 Although, in its judgments of 26 November 2013, *Gascogne Sack Deutschland v Commission* (C-40/12 P, EU:C:2013:768, paragraph 102), and of 26 November 2013, *Groupe Gascogne v Commission* (C-58/12 P, EU:C:2013:770, paragraph 96), the Court of Justice found that the General Court failed to have regard to the requirement that the case be dealt with within a reasonable time in Cases T-72/06 and T-79/06, the fact remains that, as the Advocate General observed in point 60 of his Opinion, and contrary to what the respondents contend, in those judgments, the Court of Justice did not however acknowledge the existence of any damage deriving from such a breach.
- 35 On the contrary, the Court of Justice held that a claim for compensation for the damage caused by the failure by the General Court to adjudicate within a reasonable time has to be brought before the General Court itself, and that it is for the General Court to assess both the actual existence of the harm alleged and the causal connection between that harm and the excessive length of the legal proceedings in dispute by examining the evidence submitted for that purpose (see, to that effect, judgments of 26 November 2013, *Gascogne Sack Deutschland v Commission*, C-40/12 P, EU:C:2013:768, paragraphs 90 and 94, and of 26 November 2013, *Groupe Gascogne v Commission*, C-58/12 P, EU:C:2013:770, paragraphs 84 and 88).
- 36 Consequently, since this ground of appeal must be upheld, point 1 of the operative part of the judgment under appeal must be set aside, without there being any need to rule on the second and third grounds of appeal put forward by the European Union in support of its appeal in Case C-138/17 P.

The first three grounds of appeal in Case C-146/17 P

- 37 By the first to third grounds of appeal in Case C-146/17 P, it is submitted that the General Court erred in law when interpreting and applying the prohibition of ruling *ultra petita*, set out two contradictory grounds as regards compensation for the material damage suffered, and infringed the appellants' rights of defence.
- 38 Since those grounds of appeal relate to the amount of compensation awarded by the General Court for the material damage suffered as a result of Gascogne's paying bank guarantee charges during the period by which the reasonable time for adjudicating was exceeded, and, as is apparent from paragraph 36 of this judgment, point 1 of the operative part of the judgment under appeal has been set aside, it is no longer necessary to examine those grounds of appeal.

The fourth and fifth grounds of appeal in Case C-146/17 P

Arguments of the parties

- 39 By their fourth ground of appeal, Gascogne Sack Deutschland and Gascogne, the appellants in Case C-146/17 P, submit that, by finding that it was not appropriate to grant their claim for compensation for the non-material damage suffered on the ground that, according to the case-law of the Court of Justice stemming from the judgments of 26 November 2013, *Gascogne Sack Deutschland v Commission* (C-40/12 P, EU:C:2013:768), and of 26 November 2013 *Groupe Gascogne v Commission* (C-58/12 P, EU:C:2013:770), the European Union Courts, hearing an action for damages, cannot call in question the amount of the fine as a result of the failure to adjudicate within a reasonable time, the General Court manifestly erred in law in interpreting that case-law.
- 40 In the appellants' submission, it is apparent from the judgments of the Court of Justice referred to in paragraph 39 of this judgment that the excessive duration of the proceedings before the General Court is not such as to permit annulment or reduction of the fine in an action in which unlimited jurisdiction is exercised, since compensation for the damage arising from that duration must be the subject of ad hoc proceedings, in so far as the excessive duration is independent of what formed the basis of the sanction. Those judgments therefore make no link between the amount of the compensation which may be awarded as a result of damage suffered on account of the excessive duration of the proceedings before the General Court, in the action for damages, and the amount of the fine imposed on account of the anticompetitive practices. On the contrary, the very basis of the position adopted in those judgments by the Court of Justice lies in the 'absolute imperviousness' between those two elements.
- 41 By their fifth ground of appeal, Gascogne Sack Deutschland and Gascogne submit that, by refusing to grant their claim for compensation for the non-material damage suffered on the ground that, given the extent of it, such compensation would, if awarded, have the effect of reopening the question of the amount of the fine imposed on them, the General Court deprived of effectiveness and infringed Articles 256(1) and 340(2) TFEU, which are intended specifically to establish an effective remedy for victims of damage caused by the EU institutions, and, in particular, those resulting from the excessive duration of proceedings before a European Union Court, and to enable them to obtain full and adequate reparation for the damage suffered, as well as the right to an effective remedy.
- 42 The European Union, the respondent in Case C-146/17 P, contends that those grounds of appeal are ineffective and, in any event, unfounded.

Findings of the Court

- 43 By its fourth and fifth grounds of appeal, the appellants dispute the General Court's finding in paragraph 163 of the judgment under appeal.
- 44 However, as is apparent from paragraphs 155 to 165 of the judgment under appeal, that finding constitutes a ground included for the sake of completeness in that judgment, since the decision of the General Court not to grant the claim for compensation in the amount of EUR 500 000 for the non-material damage suffered is adequately reasoned by paragraph 160 of that judgment, whose content is not challenged by the appellants.
- 45 In that regard, it should be borne in mind that, according to settled case-law, arguments directed against grounds included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and are therefore ineffective *ab initio* (judgment of 14 December 2016, *SV Capital v ABE*, C-577/15 P, EU:C:2016:947, paragraph 65 and the case-law cited).
- 46 Consequently, the fourth and fifth grounds of appeal must be rejected as ineffective.

The sixth ground of appeal in Case C-146/17 P

Arguments of the parties

- 47 By their sixth ground of appeal, Gascogne Sack Deutschland and Gascogne submit that that, by awarding each of them compensation in the amount of EUR 5 000 for the non-material damage suffered, whereas the General Court (i) found that compensation for non-material damage could not have the effect of reopening the question, even partially, of the amount of the fine imposed by the Commission, and (ii) expressly acknowledged the existence of non-material damage suffered by the appellants that it was necessary, as was stated in paragraph 165 of the judgment under appeal, to compensate in the light of 'the extent of the failure to adjudicate within a reasonable time' and of the need to ensure that 'the present action is effective', the General Court formally contradicted itself.
- 48 The European Union contends that this ground of appeal is ineffective and, in any event, unfounded.

Findings of the Court

- 49 By their sixth ground of appeal, the appellants submit that the statement of reasons for the judgment under appeal is contradictory on two counts.
- 50 As regards, in the first place, the line of argument that there is a contradiction between, on the one hand, paragraphs 161 to 164 of the judgment under appeal, and, on the other hand, paragraph 165 of that judgment, it is sufficient to note that the operative part thereof, so far as concerns the award to the appellants of compensation in an amount less than EUR 500 000 is, as is apparent from paragraph 44 of this judgment, adequately reasoned by paragraph 160 of the judgment under appeal. Accordingly, that line of argument, which seeks to challenge paragraphs 161 to 165 of the judgment under appeal, is ineffective, and must, therefore, in accordance with the case-law referred to in paragraph 45 of this judgment, be rejected.
- 51 As regards, in the second place, the line of argument that there is a contradiction in paragraph 165 of the judgment under appeal, it must be pointed out that the fact that the compensation awarded by the General Court, for the non-material damage suffered by the appellants because of uncertainty in

decision-making and in the management of the companies, amounts only to EUR 5 000 does not mean that the General Court failed to take into account the extent of the failure to adjudicate within a reasonable time and the effectiveness of the present action.

52 Paragraph 165 of the judgment under appeal does not therefore contain any contradiction.

53 Consequently, the sixth ground of appeal must be rejected as in part ineffective and in part unfounded.

The seventh ground of appeal in Case C-146/17 P

Arguments of the parties

54 By their seventh ground of appeal, Gascogne Sack Deutschland and Gascogne submit that, by merely asserting, without any supporting evidence, in the first place, in paragraph 154 of the judgment under appeal, that ‘the finding ... that there has been a breach of the obligation to adjudicate within a reasonable time would, in the light of the [object and] gravity of that breach, be sufficient to make good the reputational harm alleged’, and, in the second place, in paragraph 165 of the judgment under appeal, that an ‘an award of compensation of EUR 5 000 to each of the applicants constitutes adequate reparation for the damage they suffered as a result of the prolonged state of uncertainty in which they each found themselves during the proceedings’, the General Court unquestionably failed to comply with its duty to state reasons.

55 The European Union contends that this ground of appeal should be rejected.

Findings of the Court

56 By their seventh ground of appeal, the appellants complain that the General Court failed to provide a sufficient statement of reasons for the judgment under appeal.

57 As regards, in the first place, the complaint intended to dispute paragraph 154 of the judgment under appeal, it is apparent from paragraphs 151 to 154 of that judgment, relating to alleged damage to reputation pleaded by the appellants, and, in particular the words ‘in any event’ in paragraph 154 of that judgment, that the finding set out in that latter paragraph constitutes a ground included for the sake of completeness, since the ground set out in paragraph 153 of the judgment under appeal is sufficient to reject the claim for compensation so far as concerns such alleged harm to reputation.

58 In accordance with the case-law referred to in paragraph 45 of this judgment, that complaint is therefore ineffective and must accordingly be rejected.

59 As regards, in the second place, the complaint intended to dispute paragraph 165 of the judgment under appeal, it should be borne in mind that, according to settled case-law, the statement of the reasons on which a judgment is based must clearly and unequivocally disclose the General Court’s reasoning, so that the persons concerned can ascertain the reasons for the decision taken and the Court of Justice can exercise its power of review (judgment of 2 April 2009, *France Télécom v Commission*, C-202/07 P, EU:C:2009:214, paragraph 29 and the case-law cited).

60 Moreover, it should be recalled that, in the particular context of actions for damages, the Court has repeatedly held that, once the General Court has found the existence of damage, it alone has jurisdiction to assess, within the confines of the claim, the means and extent of compensation for the damage. However, in order for the Court of Justice to be able to review the judgments of the General Court, those judgments must be sufficiently reasoned and, as regards the assessment of the damage,

indicate the criteria taken into account for the purposes of determining the amount decided upon (see judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraphs 50 and 51 and the case-law cited).

- 61 As the Advocate General noted, in point 100 of his Opinion, the General Court first of all adequately set out, in paragraphs 147 to 157 of the judgment under appeal, the reasons which led it to find that certain heads of non-material damage alleged by the appellants had been sufficiently established by them whereas other heads had not. Next, in paragraph 158 of the judgment under appeal, the General Court observed that, having regard to the circumstances of the case, the non-material damage established, namely the damage suffered as a result of the prolonged state of uncertainty in which the appellants each found themselves in Cases T-72/06 and T-79/06, could not be fully compensated by the finding of a breach of the obligation to adjudicate within a reasonable time. Lastly, in paragraphs 159 to 164 of the judgment under appeal, the General Court set out the criteria taken into account in order to determine the amount of the compensation.
- 62 In those circumstances, the appellants cannot complain that the General Court failed to comply with its obligation to state reasons when it held, in paragraph 165 of the judgment under appeal, that compensation in the amount of EUR 5 000, awarded to each of the appellants, constitutes, given, in particular, the extent of the failure to adjudicate within a reasonable time, their conduct, the need to ensure that the rules of competition law are complied with and that the action at first instance is effective, adequate reparation for the damage they suffered as a result of the prolonged state of uncertainty in which they each found themselves during the proceedings in Cases T-72/06 and T-79/06.
- 63 Consequently, the seventh ground of appeal must be rejected as in part ineffective and in part unfounded.
- 64 It follows from all the foregoing considerations that the appeal in Case C-146/17 P must be dismissed in its entirety.

The action before the General Court

- 65 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 itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.
- 66 In the present case, the Court considers that it should give final judgment on the action for damages brought by Gascogne Sack Deutschland and Gascogne before the General Court inasmuch as it is intended to obtain compensation for the damage allegedly suffered as a result of paying bank guarantee charges beyond a reasonable time for adjudicating in Cases T-72/06 and T-79/06.
- 67 In that regard, it should be recalled that, in accordance with settled case-law, the European Union may incur non-contractual liability under the second paragraph of Article 340 TFEU only if a number of conditions are fulfilled, namely the unlawfulness of the conduct alleged against the EU institution, the fact of damage and the existence of a causal link between the conduct of the institution and the damage complained of (judgment of 20 September 2016, *Ledra Advertising and Others v Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 64 and the case-law cited).
- 68 As the General Court pointed out in paragraph 53 of the judgment under appeal, if any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for non-contractual liability on the part of the European Union (judgment of 14 October 1999, *Atlanta v European Community*, C-104/97 P, EU:C:1999:498,

paragraph 65 and the case-law cited). Moreover, the EU judicature is not required to examine those conditions in any particular order (judgment of 18 March 2010, *Trubowest Handel and Makarov v Council and Commission*, C-419/08 P, EU:C:2010:147, paragraph 42 and the case-law cited).

- 69 For the reasons set out in paragraphs 22 to 32 of this judgment, the action for damages brought by Gascogne Sack Deutschland and Gascogne before the General Court, inasmuch as it is intended to obtain compensation in the amount of EUR 187 571 for the alleged material damage consisting in the payment of bank guarantee charges beyond a reasonable time for adjudicating in Cases T-72/06 and T-79/06, must be dismissed.

Costs

- 70 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where an appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs.
- 71 Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings.
- 72 Since the European Union has applied for costs against Gascogne Sack Deutschland and Gascogne and the latter have been unsuccessful, both in the appeal in Case C-138/17 P and in that in Case C-146/17 P, those companies must be ordered to bear their own costs and to pay all the costs incurred by the European Union in those appeals.
- 73 Under Article 138(3) of the Rules of Procedure, on the one hand, the European Union, and, on the other hand, Gascogne Sack Deutschland and Gascogne must be ordered to bear their own costs in relation to the proceedings at first instance.
- 74 Article 140(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, provides that the Member States and institutions which intervene in the proceedings are to bear their own costs. Moreover, in accordance with Article 184(4) of the Rules of Procedure, where, without having brought the appeal itself, an intervener at first instance has participated in the written or oral part of the proceedings before the Court of Justice, the latter may decide that he is to bear his own costs.
- 75 The Commission, which was an intervener at first instance and which participated in the written part of the proceedings of the appeal in Case C-138/17 P, is to bear its own costs both at first instance and in the appeal in Case C-138/17 P.

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

1. **Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 10 January 2017, *Gascogne Sack Deutschland and Gascogne v European Union* (T-577/14, EU:T:2017:1);**
2. **Dismisses the appeal in Case C-146/17 P brought by Gascogne Sack Deutschland GmbH and Gascogne SA;**
3. **Dismisses the claim for damages brought by Gascogne Sack Deutschland GmbH and Gascogne SA inasmuch as it seeks to obtain compensation in the amount of EUR 187 571 for the alleged material damage consisting in the payment of bank guarantee charges beyond a reasonable time for adjudicating in the cases which gave rise to the judgments of**

16 November 2011, *Groupe Gascogne v Commission* (T-72/06, not published, EU:T:2011:671), and of 16 November 2011, *Sachsa Verpackung v Commission* (T-79/06, not published, EU:T:2011:674);

- 4. Orders Gascogne Sack Deutschland GmbH and Gascogne SA to bear their own costs and to pay all the costs incurred by the European Union, represented by the Court of Justice of the European Union, in relation to the present appeals, and to bear their own costs at first instance;**
- 5. Orders the European Union, represented by the Court of Justice of the European Union, to bear its own costs incurred at first instance;**
- 6. Orders the Commission to bear its own costs of both the proceedings at first instance and of the appeal in Case C-138/17 P.**

[Signatures]