Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

14 September 2016*

(Appeal — Competition — Agreements, decisions and concerted practices — European prestressing steel market — Fines — Setting of the fines — 2006 Guidelines for the setting of fines — Point 35 — Unlimited jurisdiction — Obligation to state reasons — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy within a reasonable time)

In Case C-519/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 September 2015,

Trafilerie Meridionali SpA, established at Pescara (Italy), represented by P.M. Ferrari and G. Lamicela, avvocati,

applicant,

the other party to the proceedings being:

European Commission, represented by V. Bottka, G. Conte and P. Rossi, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Sixth Chamber),

composed of A. Arabadjiev, President of the Chamber, J.C. Bonichot and E. Regan (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Italian.

Judgment

1 By its appeal, Trafilerie Meridionali SpA ('Trame') seeks the annulment of the judgment of the General Court of the European Union of 15 July 2015 in *Trafilerie Meridionali* v *Commission* (T-422/10, 'the judgment under appeal', EU:T:2015:512), by which the General Court dismissed its action seeking the annulment and alteration of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38344 — prestressing steel), amended by Commission Decision C(2010) 6676 final of 30 September 2010 and by Commission Decision C(2011) 2269 of 4 April 2011 ('the contested decision').

Legal context

2 The Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2) ('the 2006 Guidelines') provide, as regards the 'Ability to pay', as follows:

> '35. In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.'

Background to the dispute

3 The sector concerned by the present case is that of prestressing steel ('PS'). That expression refers to metal wires and strands made of wire rod and, in particular, steel used for prestressed concrete, which is used in making balconies, foundation piles and pipes, and steel used for post-tensioned concrete, which is used in structural engineering, underground engineering and bridge-building.

4 Trame is an Italian producer of three to seven-wire strands and of other types of steel. Since at least the beginning of 1997 and until the end of 2002, during which period that company was called 'Trafilerie Meridionali SpA', the majority of its capital was held by one family. On 28 April 2008, that company changed its name, becoming Emme Holding SpA, and created a subsidiary called 'Trafilerie Meridionali Srl', which took over the manufacturing activities of the parent company. On 11 November 2013, Emme Holding absorbed that subsidiary and reacquired the name 'Trafilerie Meridionali SpA'.

5 On 19 and 20 September 2002, having received information from the Bundeskartellamt (Federal Competition Authority, Germany) and a PS manufacturer concerning an infringement of Article 101 TFEU, the Commission carried out inspections at the premises of a number of undertakings.

6 At the conclusion of its inquiry, on 30 September 2008 the Commission adopted a statement of objections involving a number of companies, including Trame. All the addressees of that statement submitted written observations on the objections raised by the Commission. A hearing was held on 11 and 12 February 2009, in which Trame participated.

7 By the contested decision, the Commission took the view that a number of PS suppliers had infringed Article 101(1) TFEU and, from 1 January 1994, Article 53(1) of the European Economic Area Agreement of 2 May 1992 (OJ 1994 L 1, p. 3), by participating in a concerted practice at a European, national and regional level between 1 January 1984 and 19 September 2002.

8 That concerted practice comprised, in particular, the following arrangements:

— a national arrangement that lasted from 5 December 1995 to 19 September 2002 and which concerned the fixing of quotas for Italy and also exports from Italy to the rest of Europe ('Club Italia');

— a pan-European arrangement which was concluded in May 1997 and ended in September 2002 and which concerned, in particular, the sharing of quotas and clients and the fixing of prices ('Club Europe'); and

— discussions between Club Europe and Club Italia between, at least, September 2000 and September 2002, the permanent members of Club Europe, Italcables SpA, CB Trafilati Acciai SpA ('CB'), Redaelli Tecna SpA, Industria Trafileria Applicazioni Speciali SpA ('Itas') and Siderurgica Latina Martin SpA met regularly with the aim of integrating the Italian undertakings in Club Europe as permanent members.

9 In the contested decision, the Commission took the view that Trame had participated in Club Italia from 4 March 1997 to 19 September 2002 and that, with effect from 15 May 2000, Trame 'was aware or should reasonably have been aware of the different levels of the cartel' and particular of Club Europe. The Commission thus held Trame liable for its participation in the cartel between 4 March 1997 and 19 September 2002.

10 A fine of EUR 3.249 million was imposed on Trame in respect of that infringement. In that regard, the Commission first set the basic amount of the fine at EUR 10 million, then reduced that basic amount to EUR 9.5 million in order to take account of the minor role played by that company in the cartel at issue. Finally, given that that amount exceeded the ceiling of 10% of Trame's total turnover for 2009, namely around EUR 32.5 million, the Commission set the final amount of the fine at EUR 3.249 million.

The procedure before the General Court and the judgment under appeal

11 By application lodged at the Registry of the General Court on 15 September 2010, Trame brought an action for the annulment and amendment of the contested decision.

12 In support of its action, Trame put forward five pleas in law relating to its participation in the cartel and the impact which that may have had on the amount of the fine. In particular, the first plea in law alleged that the Commission had wrongfully accused it of participating in a single infringement. Following the adoption of Decision C(2011) 2269 final, Trame amended its pleas and also claimed breach of the principles of proportionality and equal treatment in the setting of the amount of the fine, owing to the difference in the treatment afforded to ArcelorMittal SA and Ori Martin SA by comparison with that afforded to the applicant. Finally, Trame raised a sixth plea, claiming that it was unable to pay the fine.

13 By the judgment under appeal, the General Court annulled the contested decision in so far as the Commission had thereby, firstly, found that Trame participated in the pan-European aspect of the infringement at issue between 4 March 1997 and 9 October 2000, considered that its participation related to three-wire strand from 4 March 1997 until 28 February 2000, and found that it participated in the anticompetitive practices during the period from 30 August 2001 until 10 June 2002 and, secondly, imposed a disproportionate fine on Trame to penalise its participation in the single infringement between 4 March 1997 and 19 September 2002.

14 Exercising its unlimited jurisdiction, the General Court considered that a fine of EUR 5 million permitted effective punishment for Trame's unlawful conduct. Nevertheless, because of the legal threshold of 10% of the total turnover, laid down in Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), the General Court held that the final amount of the fine imposed on Trame could not exceed EUR 3.2 million and so set that fine at that amount.

15 The General Court dismissed the remainder of the action.

16 Following a request from the Commission, the General Court, by order of 10 November 2015, *Trafilerie Meridionali* v *Commission* (T-422/10 REC, EU:T:2015:857), made a rectification to the judgment under appeal in order, in the light of the data set out in that regard in the contested decision and repeated in paragraph 20 of that judgment, to round the final amount of the fine imposed on Trame more exactly. The General Court thus ordered that paragraphs 407 and 408 of the judgment under appeal and paragraph 3 of the operative part thereof should be read as setting that fine at EUR 3.249 million.

Forms of order sought

17 By its appeal, the appellant claims that the Court should:

— annul the parts of the judgment under appeal concerning, firstly, the rejection of the plea according to which Club Europe cannot be imputed to Trame and, secondly, the fine imposed on Trame and uphold, in consequence, the form of order sought before the General Court in that regard; in the alternative, annul those parts and refer the case back to the General Court;

— annul the parts of the judgment under appeal concerning, firstly, the rejection of the plea concerning Trame's inability to pay the fine and, secondly, the fine imposed on Trame and uphold, in consequence, the form of order sought before the General Court in that regard; in the alternative, annul those parts and refer the case back to the General Court;

— annul the part of the judgment under appeal concerning the setting of the fine imposed on Trame and adjudicate in the matter; in the alternative, annul that part and refer the case back to the General Court;

— annul the judgment under appeal in so far as it orders Trame to bear its own costs of the main proceedings at first instance and order the Commission to pay those costs or, at least, part thereof;

— order the Commission to pay the costs of the present proceedings;

— declare that the General Court has failed in its obligation to adjudicate in the case which gave rise to the judgment under appeal within a reasonable time, in accordance with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'); and

— take any other measures that this Court considers appropriate.

18 The Commission contends that the Court should:

— dismiss the appeal; and

— order the appellant to pay the costs.

The appeal

19 In support of its appeal, the appellant puts forward five grounds of appeal. The first ground alleges an error of law in that the General Court imputed to the appellant participation in Club Europe. The second ground alleges an error of law committed by the General Court in its assessment of whether the appellant ought to have benefited from a reduction in the fine because of its inability to pay. The third ground concerns the methodology used by the General Court to re-examine the fine imposed. The fourth ground relates to the costs of the proceedings at first instance. The fifth ground alleges an infringement of the second paragraph of Article 47 of the Charter, in that the General Court did not deliver the judgment under appeal within a reasonable time.

The first plea in law

Arguments of the parties

20 By its first ground of appeal, the appellant recalls that, in order to impute to it the pan-European dimension of the cartel at issue between 9 October 2000 and 19 September 2002, the General Court, as is apparent from paragraphs 128 to 132, 144 and 145 of the judgment under appeal, took two factors as its basis, namely, firstly, the fact that, during a meeting of Club Italia on 15 May 2000, reference was made to Club Europe and, secondly, the fact that, during another meeting of Club Italia on 9 October 2000, two undertakings involved solely in Club Europe were present, namely Westfälische Drahtindustrie GmbH and Nedri Spanstaal BV ('Nedri'), as well as producers not essentially interested in Italy, namely DWK Drahtwerk Köln GmbH and Saarstahl AG ('DWK').

21 Principally, the appellant submits that the General Court distorted the facts and adopted a manifestly incorrect interpretation of the evidence by holding that Nedri had participated only in Club Europe and not in Club Italia. As is apparent from the documents submitted to the Court of Justice, Nedri announced its intention as early as July to September 2000 of obtaining the necessary permits to trade in its products in Italy. The appellant could therefore have regarded that company not as participating in Club Europe, but as an outside company, interested in joining Club Italia, with a view to its future entry into the Italian market.

22 Similarly, the link which the General Court established between DWK and Club Europe was also the product of a distortion of the evidence. The appellant points out that it is apparent from point 816 of the contested decision that DWK operated on Italian territory, which explains the Commission's imputing the totality of Club Italia to it, at least during the period between 24 February 1997 and 6 November 2000. DWK's presence at the meeting on 9 October 2000 was thus natural.

23 The appellant submits that the mere fact that, during the Club Italia meeting on 15 May 2000, Club Europe was mentioned on two occasions during the discussions, once expressly and once impliedly, is not sufficient, as is apparent from paragraphs 133 to 135 of the judgment under appeal, to support the imputation to the appellant of participation in the latter club.

24 In the alternative, the appellant submits that the two factors on which the General Court relied to impute the pan-European dimension of the cartel to Trame, as set out in paragraph 20 of this judgment, allow at most the view to be taken that it knew of the existence of Club Europe. Thus, as follows from paragraph 63 of the judgment of 4 July 2013, *Commission* v *Aalberts Industries and Others* (C-287/11 P, EU:C:2013:445) and from paragraph 42 of the judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens* (C-441/11 P, EU:C:2012:778), in order for an infringement to be imputed to an undertaking, it must be shown that, firstly, the undertaking was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and, secondly, intended, through its own conduct, to contribute to the common objectives pursued by all the participants.

25 The applicant is of the view that the factors to which the General Court referred show neither that it was aware of nor that it could reasonably have foreseen the conduct of the other undertakings in Club Europe, nor yet that it intended to contribute to that club through its own conduct. The finding set out in paragraph 144 of the judgment under appeal, that the applicant was in a position to be aware of the nature and objectives pursued by Club Europe, thus follows, in the appellant's view, from a distortion of the evidence.

26 The appellant argues that the incorrect nature of the General Court's interpretation, in that context, is all the more marked in the light, firstly, of the fact that the markets outside Italy were of no interest to the appellant since, without the necessary permits, it marketed its products solely inside Italy and, secondly, of the fact that its role, including that within Club Italia, was marginal.

27 The appellant is of the opinion that the judgment under appeal is, accordingly, vitiated in the part concerning the fine imposed on the appellant.

28 The Commission is of the view that the first ground of appeal is manifestly inadmissible or, in any event, unfounded.

Findings of the Court

29 Firstly, as regards the principal arguments put forward by the appellant, as set out in paragraphs 21 to 23 of this judgment, it must be found that, in alleging a distortion of the evidence, the appellant is, in reality, seeking to have the Court of Justice make a fresh assessment of the facts and evidence put forward before the General Court as regards the links between, on the one hand, Nedri and Club Europe and, on the other, between DWK and that club. Since such arguments are inadmissible on appeal, they must be rejected.

30 Secondly, with regard to the arguments put forward by the appellant in the alternative, as set out in paragraphs 24 to 26 of this judgment, it must be noted that, by that line of argument, the appellant is disputing not the interpretation made by the General Court of the case-law referred to in paragraph 24 of this judgment, but the application which it made thereof to the situation in the present case.

31 In fact, in paragraph 92 of the judgment under appeal, the General Court correctly recalled the case-law of the Court of Justice stating that an undertaking which has participated in such a single and complex infringement through its own conduct, which fell within the definition of an agreement or a concerted practice having an anticompetitive object for the purposes of Article 101(1) TFEU and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk (judgment of 6 December 2012 in *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, point 42).

32 Next, after having carried out, as is apparent from paragraphs 108 to 141 of the judgment under appeal, a detailed examination of the factors put forward before it as regards the appellant's participation in the single infringement at issue, the General Court concluded, in particular, in paragraphs 144 and 145 of that judgment that, having regard to those factors, the Commission was entitled to take the view that, with effect from 9 October 2000, Trame intended, through its own conduct, to contribute to the common objectives pursued by all the participants in the concerted practice and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk.

33 Clearly, by disputing the value attributed by the General Court to that evidence in order to challenge the conclusions which that Court reached in that regard, the appellant's line of argument seeks, once again, to request the Court of Justice to interpret the facts and evidence differently from the General Court in the context of that Court's assessment of the facts which is not subject to appeal.

34 It follows therefrom that the first ground of appeal is inadmissible in its entirety and must therefore be rejected.

The second ground of appeal

Arguments of the parties

35 By its second ground of appeal, the appellant submits that the General Court erred in law by failing to explain the reasons for the rejection of the plea put forward at first instance alleging infringement of the principle of equal treatment by the Commission in the context of the assessment of the reduction of the fines on the basis of an inability to pay.

36 The appellant recalls that it raised before the General Court the plea in law alleging that the Commission, by granting a reduction in the fine to CB and to Itas and by refusing to grant it such a reduction, when its financial situation was far worse than those of CB and Itas, had infringed the principle of equal treatment. Despite the specific arguments put forward before the General Court in that regard, the Court merely stated, in paragraphs 391 and 392 of the judgment under appeal, that the Commission, in order to determine whether or not the conditions necessary for the application of the criterion of inability to pay were met, had taken the financial situation of each of the undertakings into consideration and not their manner of participating in the infringement. The General Court did not make any analysis of the numerous precise pieces of financial and asset information supplied by the appellant during the proceedings.

37 The fact that the General Court did not deal with the appellant's line of argument is also apparent, in the appellant's submission, from paragraph 353 of the judgment under appeal, in which the General Court summarised, incorrectly and in part, the arguments developed in that regard in the application at first instance.

38 The appellant adds that the judgment under appeal is, accordingly, vitiated as regards the fine imposed on the appellant.

39 The Commission argues that the second ground of appeal is unfounded.

Findings of the Court

40 In so far as the appellant alleges, by the line of argument put forward under the present ground of appeal, that the General Court infringed the obligation to state reasons in that, in paragraphs 391 and 392 of the judgment under appeal, it did not respond to the requisite legal standard to the arguments submitted in support of the plea at first instance alleging infringement of the principle of equal treatment, it must be recalled that the obligation to state reasons provided for in Article 296 TFEU constitutes an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 146 and the case-law cited).

41 According to the settled case-law of the Court of Justice, the obligation incumbent upon the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal (judgment of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 38).

42 In the present case, it is clear that the reasoning set out in paragraphs 391 and 392 of the judgment under appeal enables the persons concerned, and the appellant in particular, to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review in the present appeal.

43 In so far as the appellant alleges that the General Court has erred in law by failing to take account of all the relevant factors, it is sufficient to note that, even if Trame did put forward, at first instance, the line of argument described in paragraphs 35 and 36 of this judgment and that line of argument was set out only in part in paragraph 353 of the judgment under appeal, the appellant's arguments are, in any event, unfounded.

44 The General Court having actually set out, in paragraphs 355 to 390 of the judgment under appeal, the reasons why it took the view that the appellant was able to pay the amount of the fine imposed on it, it was entitled to respond to the complaint made to it alleging infringement of the principle of equal treatment by merely finding, in paragraph 391 of the judgment under appeal, that the financial situations of CB and Itas were different and that it was in having regard to those differences, and not in the light of the manner in which those undertakings participated in the infringement, that the Commission had been of the opinion that it was appropriate to reduce the amount of the fine at issue in part, calculated to take account of each of the undertakings' inability to pay.

45 Firstly, that assessment is devoid of any errors of law and, secondly, it does not appear to be vitiated by any error which may arise from a factor allegedly not taken into account by the General Court.

46 The second ground of appeal is therefore unfounded and must be rejected.

The third plea in law

Arguments of the parties

47 By its third ground of appeal, the appellant submits that the judgment under appeal is devoid of reasoning in the part concerning the calculation of the fine. In particular, it is not possible to deduce from the wording of that judgment which calculation method the General Court has used to determine the amount of that fine. Having regard to the findings set out in paragraph 398 of that judgment, it is, nonetheless sensible to consider that that method is not the one used by the Commission itself.

48 The lack of adequate reasoning, in particular as regards the 'weighting' attributed to each of the relevant facts, prevents the appellant from comparing, firstly, the calculations of the fine as made by the Commission with respect to the other undertakings to which the contested decision was addressed which have not brought actions before the General Court or which, having brought such an action, saw their arguments concerning the fine rejected by the General Court and, secondly, the calculations of the fine as made by the General Court itself, when the arguments of other

undertakings to which that decision was addressed, analogous to those submitted by the appellant, were upheld, entailing review of the fine. The obligation to state reasons is of particular importance where a number of undertakings are penalised in respect of the same infringement.

49 Relying, in particular, on the case-law arising from the judgments of 16 November 2000, *Weig* v *Commission* (C-280/98 P, EU:C:2000:627, paragraphs 52 to 68), and of 16 November 2000, *Sarrió* v *Commission* (C-291/98 P, EU:C:2000:631, paragraphs 91 to 100), the appellant submits that there are numerous precedents in which the Court of Justice considered that it had to set aside the judgment of the General Court in so far as it had used a different calculation method, when reviewing fines, from that used by the Commission or by the General Court itself with regard to other undertakings implicated in the infringement at issue. Although it is true that the Court of Justice has already held, in particular in paragraph 181 of its judgment of 10 July 2014, *Telefónica and Telefónica de España* v *Commission* (C-295/12 P, EU:C:2014:2062), that the Commission is not required to indicate the figures relating to the method of calculating the fines, it nevertheless pointed out that it is, at the very least, 'preferable' that the mechanism used to set the amount of the fine be given.

50 The brief reference, in paragraph 399 of the judgment under appeal, to the criteria relating to the seriousness and duration of the infringement and the principle that fines must be specific to the offender and the offence is not sufficient to bridge that gap having regard, in particular, to the complexity of the present case and to the number of factors to be taken into consideration.

51 The Commission contends that the third ground of appeal is unfounded.

Findings of the Court

52 It is appropriate to note that, having regard to the case-law referred to in paragraphs 40 and 41 of this judgment, the judgment under appeal meets the standard as regards reasoning required of the General Court since, in paragraphs 401 to 407 of that judgment, the General Court set out in detail the factors which it took into account in its decision on the setting of the amount of the fine (see, to that effect, judgment of 22 November 2012, *E.ON Energie* v *Commission*, C-89/11 P, EU:C:2012:738, paragraph 133).

53 In particular, the General Court determined, in paragraphs 398 to 408 of the judgment under appeal, in the context of the exercise of its unlimited jurisdiction, the amount of the fine imposed on Trame taking into account its participation in the single infringement. In paragraphs 401 to 405 of that judgment, the General Court set out the facts of the appellant's situation which it considered relevant concerning, in particular, the seriousness and duration of its participation in that infringement. It is clear from paragraph 406 of that judgment that, when determining the amount of that fine, the General Court also took account of the need to ensure that it was a sufficient deterrent and of the principle of proportionality.

54 It is also apparent from paragraphs 398 to 406 of the judgment under appeal that the General Court did not regard itself as bound by either the Commission's calculations or its guidelines, but that it carried out its own assessment of the amount of the fine by taking account of all the facts of the case.

55 In those circumstances, the appellant cannot claim that the General Court failed to state sufficient reasons on the ground that it did not specify the calculation method which it used nor, in particular, state the 'weighting' it gave to each of the relevant facts of which it took account in that regard.

56 It is appropriate to bear in mind that it is only inasmuch as the Court of Justice considers that the level of the penalty is not merely inappropriate, but also excessive to the point of being disproportionate, that it would have to find that the General Court erred in law, on account of the inappropriateness of the amount of a fine (see judgment of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 205 and the case-law cited).

57 The reasoning provided by the General Court in its assessment of the amount of the fine in the present case enabled the appellant to claim before the Court of Justice that it is disproportionate within the meaning of the case-law referred to in the preceding paragraph of this judgment and the Court of Justice to exercise its power of review.

58 In the light of the foregoing considerations, the third ground of appeal must be rejected as unfounded.

The fourth plea in law

Arguments of the parties

59 The appellant submits that the errors of law committed by the General Court and complained of in the first two grounds of appeal vitiate the conclusion reached by the General Court, in paragraphs 411 and 412 of the judgment under appeal, that each of the parties must bear its own costs.

60 The Commission is of the opinion that there is no reason to vary the judgment under appeal on that point, since neither the first nor the second ground of appeal should be upheld.

Findings of the Court

61 Since this ground of appeal depends on the success of the first and second grounds of appeal or on one thereof, and since those two grounds have been rejected, it is appropriate to reject this ground of appeal.

The fifth plea in law

Arguments of the parties

62 By relying on the case-law arising from the judgment of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission* (C-580/12 P, EU:C:2014:2363), the appellant argues that, when it is clear that the General Court has sufficiently seriously failed to fulfil the obligation on it, by virtue of the second paragraph of Article 47 of the Charter, to adjudicate on the case before it within a reasonable time, the Court of Justice may hear an application for compensation.

63 The appellant considers that those conditions are satisfied in the present case. In particular, between the date on which the application was lodged, namely 15 September 2010, and the date of notification of the judgment under appeal, namely 23 July 2015, almost five years elapsed, including a period of inaction of more than two years between the date on which the Commission lodged its rejoinder and the date on which the General Court sent measures of organisation of the procedure to the parties. The appellant is of the view that those delays are excessive and unjustified.

64 The Commission submits that the fifth ground of appeal is manifestly inadmissible, since, by requesting that the Court of Justice find that the General Court failed to fulfil the obligation arising from the second paragraph of Article 47 of the Charter, the appellant does not seek to have the judgment under appeal set aside. Although the Court of Justice has sometimes held, in certain

judgments, in the form of an obiter dictum, that the duration of the proceedings before the General Court was excessive, those statements did not give rise to independent findings appearing in the operative part of those judgments. Furthermore, the situation in the present case is different, given that the appellant, in support of such a request for an independent finding, has formulated a specific head of claim and put forward an equally specific ground of appeal.

Findings of the Court

65 In so far as the appellant claims that the Court should hear its claim for compensation for the harm suffered as a result of the alleged infringement by the General Court of the second paragraph of Article 47 of the Charter, it should be recalled that the sanction for a breach, by a court of the European Union, of its obligation under that provision to adjudicate on the cases before it within a reasonable time must be an action for damages brought before the General Court, since such an action constitutes an effective remedy. It follows that a claim for compensation in respect of the damage caused by the General Court's failure to adjudicate within a reasonable period may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself (see judgments of 26 November 2013, *Gascogne Sack Deutschland* v *Commission*, C-40/12 P, EU:C:2013:768, paragraphs 89 and 90; of 26 November 2013, *Groupe Gascogne* v *Commission*, C-58/12 P, EU:C:2013:770, paragraphs 83 and 84, and of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 66).

66 Where a claim for damages is brought before the General Court, which has jurisdiction under Article 256(1) TFEU, it must determine such a claim sitting in a different composition from that which heard the dispute giving rise to the procedure whose duration is criticised (judgments of 26 November 2013, *Groupe Gascogne* v *Commission*, C-58/12 P, EU:C:2013:770, paragraph 90, and of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 67).

67 That said, where it is clear, without any need for the parties to adduce additional evidence in that regard, that the General Court infringed, in a sufficiently serious manner, its obligation to adjudicate on the case within a reasonable time, the Court of Justice may note that fact (judgment of 9 June 2016, *Repsol Lubricantes y Especialidades and Others* v *Commission*, C-617/13 P, EU:C:2016:416, paragraph 100 and the case-law cited).

68 That is not the situation here. In the present case, the production by the parties of additional evidence would be necessary to enable the Court of Justice to adjudicate on whether the duration of the procedure before the General Court was unreasonable.

69 Having regard to the foregoing, the fifth ground of appeal must therefore be rejected.

70 It follows from all the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

71 Pursuant to Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

72 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. Since the appellant has been unsuccessful and the Commission applied for costs against it, the appellant must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders Trafilerie Meridionali SpA to pay the costs.

[Signatures]