Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber, Extended Composition)

10 January 2017*

(Non-contractual liability — Precision of the application — Limitation of actions — Admissibility — Article 47 of the Charter of Fundamental Rights — Obligation to adjudicate within a reasonable time — Material damage — Losses incurred — Interest on the amount of the outstanding fine — Bank guarantee charges — Loss of opportunity — Non-material damage — Causal link)

In Case T-577/14,

Gascogne Sack Deutschland GmbH, established in Wieda (Germany),

Gascogne, established in Saint-Paul-les-Dax (France),

represented by F. Puel, E. Durand and L. Marchal, lawyers,

applicants,

v

European Union, represented by the Court of Justice of the European Union, represented initially by A. Placco, and subsequently by J. Inghelram and S. Chantre, acting as Agents,

defendant,

supported by

European Commission, represented by N. Khan, V. Bottka and P. van Nuffel, acting as Agents,

intervener,

APPLICATION pursuant to Article 268 TFEU for compensation for the damage allegedly suffered by the applicants as a result of the length of the proceedings before the General Court 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),

THE GENERAL COURT (Third Chamber, Extended Composition)

composed of S. Papasavvas, President, I. Labucka, E. Bieliūnas (Rapporteur), V. Kreuschitz and I.S. Forrester, Judges,

Registrar: G. Predonzani, Administrator,

* Language of the case: French.

having regard to the written stage of the procedure and further to the hearing on 28 June 2016,

gives the following

Judgment

Background to the dispute

1 By applications lodged at the General Court Registry on 23 February 2006, Sachsa Verpackung GmbH, now Gascogne Sack Deutschland GmbH, on the one hand, and Groupe Gascogne SA, now Gascogne, on the other hand, 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 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.

2 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.

3 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).

4 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.

Procedure and forms of order sought

5 By application lodged at the General Court Registry on 4 August 2014, the applicants, Gascogne Sack Deutschland and Gascogne, brought the present action against the European Union, represented by the Court of Justice of the European Union.

6 By separate document, lodged at the General Court Registry on 17 November 2014, the Court of Justice of the European Union raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991.

7 By order of 2 February 2015, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, not published, EU:T:2015:80), the General Court rejected the objection of inadmissibility raised by the Court of Justice of the European Union and reserved the costs.

8 By application lodged at the Registry of the Court of Justice on 11 March 2015, the Court of Justice of the European Union brought an appeal, registered as Case C-125/15 P, against the order of 2 February 2015, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, not published, EU:T:2015:80).

9 By order of 14 April 2015, the President of the Third Chamber of the General Court, at the request of the Court of Justice of the European Union, suspended the proceedings in the present case pending the final decision of the Court of Justice in Case C-125/15 P, *Court of Justice* v *Gascogne Sack Deutschland and Gascogne*.

10 By order of 18 December 2015, *Court of Justice* v *Gascogne Sack Deutschland and Gascogne* (C-125/15 P, not published, EU:C:2015:859), the case was removed from the register of the Court of Justice.

11 Following the resumption of the proceedings in the present case, the European Commission, by document lodged at the General Court Registry on 15 January 2016, applied for leave to intervene in support of the form of order sought by the Court of Justice of the European Union.

12 On 17 February 2016, the Court of Justice of the European Union lodged its defence.

13 On the same date, the General Court assigned the present case to the Third Chamber (Extended Composition).

14 On 2 March 2016, the General Court decided that a second exchange of pleadings was unnecessary. Furthermore, by way of a measure of organisation of procedure as provided for in Article 89 of the Rules of Procedure, the General Court asked the Court of Justice of the European Union to indicate whether it had requested and obtained permission from the applicants and the Commission in order to be able to produce certain documents in the annexes to the defence that related to the case which had given rise to the judgment of 16 November 2011, *Groupe Gascogne* v *Commission* (T-72/06, not published, EU:T:2011:671, 'Case T-72/06') and the case which had given rise to the judgment of 16 November 2011, *Sachsa Verpackung* v *Commission* (T-79/06, not published, EU:T:2011:674, 'Case T-79/06').

15 By order of 15 March 2016, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, not published, EU:T:2016:189), the President of the Third Chamber (Extended Composition) of the General Court granted the Commission's application for leave to intervene in support of the form of order sought by the Court of Justice of the European Union and stated that the rights enjoyed by the Commission would be those provided for in Article 116(6) of the Rules of Procedure of 2 May 1991.

16 On 18 March 2016, the Court of Justice of the European Union answered the question referred to in paragraph 14 above. It contended that the General Court should take the view, principally, that the Court of Justice of the European Union was under no duty to seek and obtain permission from the applicants and the Commission in order to be able to produce the documents relating to Cases T-72/06 and T-79/06 and, in the alternative, that the applicants and the Commission had given that permission implicitly. In the further alternative, the Court of Justice of the European Union requested that its response be treated as an application for a measure of organisation of procedure aimed at seeking from the General Court, in the present action, an order requiring the production of the documents constituting the case files in Cases T-72/06 and T-79/06 and, in particular, the documents annexed to the defence.

17 On 4 April 2016, the President of the Third Chamber (Extended Composition) of the General Court decided, first, to remove from the file the documents in the annexes to the defence lodged in the present case that related to Cases T-72/06 and T-79/06. That decision was justified by the fact, on the one hand, that the Court of Justice of the European Union had neither sought nor obtained permission from the parties in Cases T-72/06 and T-79/06 in order to be able to produce the documents in question and, on the other hand, that it had not requested access to the files in those cases pursuant to Article 38(2) of the Rules of Procedure. Secondly, the President of the Third Chamber (Extended Composition) decided, pursuant to Article 88(3) of the Rules of Procedure, to invite the applicants to comment on the application for a measure of organisation of procedure which had been made in the further alternative by the Court of Justice of the European Union in its reply of 18 March 2016, referred to in paragraph 16 above.

18 On 20 April 2016, the applicants claimed that the General Court should refuse the application for a measure of organisation of procedure made by the Court of Justice of the European Union, on the ground that that application did not satisfy the conditions laid down in Article 88 of the Rules of Procedure and would have had the effect of circumventing the rules on the production of evidence and access to the case file contained in those provisions.

19 On 27 April 2016, the General Court held that the preparation and settlement of the present case made it necessary, in the light of its subject matter, for the files in Cases T-72/06 and T-79/06 to be made available to it. Thus, by way of a measure of organisation of procedure as provided for in Article 89 of the Rules of Procedure, the Court decided to enter in the file in the present case the files in Cases T-72/06 and T-79/06.

20 On 8 and 20 June 2016 respectively, the Court of Justice of the European Union and the applicants requested service of the files in Cases T-72/06 and T-79/06.

21 The parties presented oral argument and answered the questions put to them by the General Court at the hearing on 28 June 2016.

22 The applicants claim that the General Court should:

— declare that the European Union is non-contractually liable for the proceedings before the General Court which failed to have regard to the requirements linked to compliance with the obligation to adjudicate within a reasonable time;

— order the European Union to pay full and sufficient compensation for the material and non-material damage which they suffered as a result of its unlawful conduct, corresponding to payment of the following amounts, together with compensatory and default interest at the rate applied by the European Central Bank (ECB) to its main refinancing operations, increased by two percentage points, starting from the date when the application was submitted:

  — EUR 1 193 467 for losses suffered as a result of paying the additional legal interest applied to the nominal amount of the fine imposed by the Commission beyond a reasonable period;

  — EUR 187 571 for losses suffered as a result of making additional bank guarantee payments beyond a reasonable period;

  — EUR 2 000 000 for profits lost or losses suffered as a result of ‘the throes of uncertainty’;

  — EUR 500 000 for the non-material damage suffered;

— In the alternative, if the Court finds that the amount of damage suffered needs to be re-assessed, it should order the commissioning of an expert’s report in accordance with Article 65(d), Article 66(1) and Article 70 of the Rules of Procedure of the General Court of 2 May 1991;

— order the European Union to pay the costs.

23 The Court of Justice of the European Union, supported by the Commission, contends that the General Court should:

— principally, dismiss the action as inadmissible;

— in the alternative, dismiss the claim for compensation for the alleged material and non-material damage as unfounded;

— in the further alternative, dismiss as unfounded the claim for compensation in so far as it relates to the material damage alleged and award the applicants compensation for the non-material damage alleged of EUR 5 000 at most;

— order the applicants to pay the costs.

Law

A – Admissibility

24 The Court of Justice of the European Union raises two pleas of inadmissibility, the first alleging that the application lacks clarity and precision, and the second alleging that the claim for compensation for non-material damage is time-barred.

1. The principal plea of inadmissibility, alleging that the application lacks clarity and precision

25 Under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, read with the first paragraph of Article 53 thereof, and Article 44(1) of the Rules of Procedure of 2 May 1991, an application must set out the subject matter of the proceedings and a summary of the pleas in law on which it is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary, without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for a plea to be admissible, that the essential matters of law and fact relied on are stated, at least in summary form, coherently and intelligibly in the application itself. More specifically, in order to satisfy those requirements, an application for compensation for damage said to have been caused by an EU institution must indicate the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers that there is a causal link between the conduct and the damage which it claims to have sustained, and the nature and extent of that damage (see judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 53 and the case-law cited).

26 The arguments put forward by the Court of Justice of the European Union must be assessed in the light of those considerations.

a) The identity of the victim of the material and non-material damage alleged

27 The Court of Justice of the European Union submits that the action must be declared inadmissible on the ground that the application lacks clarity and precision with respect to the identity of the victim of the material and non-material damage alleged.

28 In that regard, in the first place, it is apparent from the presentation of the application and the documents accompanying it that the action was brought by both Gascogne and Gascogne Sack Deutschland. Furthermore, the application seeks an order awarding compensation for the material and non-material damage suffered by the applicants as a result of the time taken to adjudicate in Cases T-72/06 and T-79/06, which concerned Gascogne and Gascogne Sack Deutschland respectively.

29 In the second place, as regards the material damage alleged, the Court of Justice of the European Union simply submits that the applicants do no demonstrate that they have each suffered such damage. The arguments put forward by the Court of Justice of the European Union with respect to the identification of the victim of the material damage alleged will therefore have to be examined, if appropriate, when it comes to assessing whether the present action is well founded.

30 In the third place, as regards the non-material damage alleged, it is true that the wording of the application is not without its ambiguities. However, in the light of the content of the application as a whole, and taking into account the explanations provided by the applicants at the hearing, on which the Court of Justice of the European Union had an opportunity to comment, it is appropriate to find that the application seeks compensation for the non-material damage suffered by each of the two applicants.

31 Thus, as regards the victim of the damage alleged, the content of the application allowed the Court of Justice of the European Union to prepare its defence and enables the General Court to rule on the action.

32 The allegation made by the Court of Justice of the European Union to the effect that the application lacks clarity and precision in relation to the identity of the victim of the damage claimed must therefore be rejected. Furthermore, and for the same reasons, the allegation made by the Court of Justice of the European Union to the effect that Gascogne Sack Deutschland has no interest in bringing proceedings must also be rejected.

b) The cause, substance and extent of the non-material damage alleged

33 The Court of Justice of the European Union submits that the action must be declared inadmissible on the ground that the application lacks clarity and precision in relation to the cause, substance and extent of the non-material damage alleged.

34 In that regard, it should be noted, in the first place, that the argument put forward by the Court of Justice of the European Union to the effect that the application suggests that the non-material damage claimed might be the consequence of the general economic context or the difficulty experienced by the applicants in finding a buyer, falls to be considered as part of the assessment of the merits of the action, and, more specifically, the question as to whether there is a causal link between the breach claimed and the non-material damage alleged.

35 In the second place, as regards the substance of the non-material damage claimed, it is true that the applicants' line of argument is brief when it comes to listing the forms of non-material damage they say they have suffered. That line of argument nonetheless appears to be sufficient in the light of the explanations and references contained in the application. Moreover, the confusion which the Court of Justice of the European Union claims to exist between the material damage alleged, consisting in a loss of opportunity, and the non-material damage alleged, and the risk that the same damage will be compensated for twice, fall to be considered as part of the assessment of the merits of the action.

36 In the third place, as regards the extent of the non-material damage alleged, the applicants are correct in submitting that, by definition, the non-material damage they claim to have suffered does not lend itself to precise calculation. Furthermore, they provide contextual information which, in their contention, justifies the amount of compensation sought. They also assess the amount of the damage caused to them. Lastly, at the hearing, the applicants specified the period during which they suffered the non-material damage they allege. That fact did not prevent the Court of Justice of the European Union from defending itself. First, the latter had an opportunity to comment on that question at the hearing. Secondly, it has raised a plea of inadmissibility to the effect that the claim for compensation for the non-material damage alleged is time-barred. Thirdly, it contends that the applicants have not provided proof of the existence of non-material damage or of a causal link. Fourthly, that institution submits, in the alternative, that the non-material damage suffered by the applicant should be assessed at EUR 5 000 at most.

37 The applicants thus provided enough information to make it possible to assess the cause, substance and extent of the non-material damage they claim to have suffered, and, therefore, allowed the Court of Justice of the European Union to defend itself. That information also enables the General Court to give a ruling.

38 The argument put forward by the Court of Justice of the European Union to the effect that the application lacks clarity and precision in relation to the cause, substance and extent of the non-material damage alleged must therefore be rejected.

39 In the light of all of the foregoing, the first plea of inadmissibility must be dismissed in its entirety.

2. The plea of inadmissibility raised in the alternative, alleging that the claim for compensation for the non-material damage claimed is time-barred

40 The Court of Justice of the European Union submits that the action is inadmissible in that it seeks compensation for non-material damage suffered more than five years before the present action was brought, that is to say prior to 4 August 2009.

41 In that regard, it should be recalled that Article 46 of the Statute of the Court of Justice of the European Union, applicable to proceedings before the General Court pursuant to the first paragraph of Article 53 of that same Statute, provides as follows:

‘Proceedings against the Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Union …’

42 It follows from the case-law that the function of the limitation period is to reconcile protection of the rights of the aggrieved person and the principle of legal certainty. The length of the limitation period was determined by taking into account, in particular, the time that the party which has allegedly suffered harm needs to gather the appropriate information for the purpose of a possible action and to verify the facts likely to provide the basis of that action (judgment of 8 November 2012, *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraph 33; see also, to that effect, order of 18 July 2002, *Autosalone Ispra dei Fratelli Rossi* v *Commission*, C-136/01 P, EU:C:2002:458, paragraph 28).

43 In accordance with settled case-law, the limitation period begins to run once the requirements governing the obligation to provide compensation for damage are satisfied (see judgment of 8 November 2012, *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraph 34 and the case-law cited).

44 It is, admittedly, appropriate to interpret Article 46 of the Statute of the Court of Justice of the European Union as meaning that limitation cannot constitute a valid defence to a claim by a person who has suffered damage in the case where that person only belatedly became aware of the event giving rise to it and thus could not have had a reasonable time in which to submit his application before the expiry of the limitation period. However, the conditions to which the obligation to pay compensation for damage referred to in the second paragraph of Article 340 TFEU is subject and, therefore, the rules on limitation periods which govern actions relating to that compensation for such damage may be based only on strictly objective criteria (see judgment of 8 November 2012, *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraphs 35 and 36 and the case-law cited).

45 Furthermore, in accordance with settled case-law, the subjective appraisal of the reality of the damage by the victim cannot be taken into consideration for the purpose of determining the moment at which the limitation period begins to run in proceedings brought against the European Union for non-contractual liability (see judgment of 8 November 2012, *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraph 37 and the case-law cited; judgment of 28 February 2013, *Inalca and Cremonini* v *Commission*, C-460/09 P, EU:C:2013:111, paragraph 70).

46 In the present case, it is important to note that 'the event giving rise' to the present 'proceedings against the European Union' is a procedural irregularity in the form of an alleged failure to comply with the requirements linked to compliance with the obligation to adjudicate within a reasonable time ('obligation to adjudicate within a reasonable time') that is incumbent on an EU court. That fact must therefore be taken into account when it comes to determining the starting point of the five-year limitation period provided for in Article 46 of the Statute of the Court of Justice of the European Union. In particular, the limitation period cannot start to run from a date on which the event giving rise to the proceedings is still ongoing and the starting point for that period must be set as a date on which the event giving rise to the proceedings has fully materialised.

47 Thus, in the specific case of an action for damages aimed at securing compensation for damage allegedly suffered as a result of a possible 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 contested 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. This, after all, is a definite date determined on the basis of objective criteria. It guarantees compliance with the principle of legal certainty and serves to protect the rights of the applicants.

48 In the present case, the applicants seek compensation for the damage they claim to have suffered as a result of the time taken to adjudicate in Cases T-72/06 and T-79/06. Those cases were closed 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 limitation period therefore started to run on 16 November 2011.

49 Furthermore, the applicants brought their action in the present case and thus interrupted the limitation period on 4 August 2014, that is to say before the expiry of the five-year period provided for in Article 46 of the Statute of the Court of Justice of the European Union. The present action is therefore not time-barred.

50 In the light of the foregoing, the second plea of inadmissibility must be dismissed.

B – Substance

51 Under the second paragraph of Article 340 TFEU, in the case of non-contractual liability, the Union must, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

52 It is settled case-law that the second paragraph of Article 340 TFEU is to be interpreted as meaning that the non-contractual liability of the European Union and the exercise of the right to compensation for damage suffered depend on the satisfaction of a number of conditions, namely the unlawfulness of the conduct of which the institutions are accused, the fact of damage and the existence of a causal link between that conduct and the damage complained of (judgments of 29 September 1989, *Oleifici Mediterranei* v *EEC*, 26/81, EU:C:1982:318, paragraph 16, and of 9 September 2008, *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 106).

53 If any one of those conditions is not satisfied, the entire 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; see also, to that effect, judgment of 15 September 1994, *KYDEP* v *Council and Commission*, C-146/91, EU:C:1994:329, paragraph 81). 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; see also, to that effect, judgment of 9 September 1999, *Lucaccioni* v *Commission*, C-257/98 P, EU:C:1999:402, paragraph 13).

54 In the present case, the applicants submit, first, that the length of the proceedings in Cases T-72/06 and T-79/06 was in breach of the obligation to adjudicate within a reasonable time. Secondly, they claim that that breach caused them damage for which they must be compensated.

1. The alleged breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06

55 The applicants claim that the length of the proceedings in Cases T-72/06 and T-79/06 was in breach of the obligation to adjudicate within a reasonable time, which constitutes a sufficiently serious infringement of a rule of EU law intended to confer rights upon individuals. They go on to say that the length of the proceedings in each of those cases exceeded the reasonable time for adjudication by 30 months, given the average time it takes the General Court to deal with cases relating to the application of competition law, on the one hand, and the specific circumstances of those cases, on the other.

56 The Court of Justice of the European Union disputes those allegations.

57 In its contention, it cannot be claimed that the reasonable time for adjudication in Cases T-72/06 and T-79/06 was exceeded solely on the basis of a comparison between the length of the proceedings in each of those two cases and the average length of proceedings before the General Court between 2006 and 2010. In any event, an examination of the relevant statistics shows that the total length of the proceedings in Cases T-72/06 and T-79/06 exceeded by only 16 months the average length of proceedings in cases relating to the application of competition law between 2006 and 2015. Similarly, the time that elapsed between the end of the written part of the procedure and the opening of the oral part of the procedure in Cases T-72/06 and T-79/06 exceeded by only 16 months the average length of that stage of the procedure in cases relating to the application of competition law between 2007 and 2010.

58 It further contends that the total length of the proceedings in Cases T-72/06 and T-79/06 and the period between the end of the written part of the procedure and the opening of the oral part of the procedure in those cases are justified by the complexity of the latter, the limited importance of the dispute to the applicants, the conduct of the applicants, the limited term of office of the judges and the long period of sickness of one of the members of the chamber to which the two cases at issue had been allocated.

59 In that regard, it should be noted that the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union provides in particular that ‘everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law’.

60 Such a right, the existence of which had been affirmed before the entry into force of the Charter of Fundamental Rights as a general principle of EU law, was held to be applicable in the context of proceedings brought against a Commission decision (see judgment of 16 July 2009, *Der Grüne Punkt — Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 178 and the case-law cited).

61 In the present case, it follows from a detailed examination of the files in Cases T-72/06 and T-79/06 respectively that, as the Court of Justice rightly pointed out in 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 length of the proceedings in Cases T-72/06 and T-79/06, which ran to almost five years and nine months, cannot be justified by any of the specific circumstances of those cases.

62 In the first place, it is important to observe that Cases T-72/06 and T-79/06 concerned disputes relating to the existence of an infringement of the competition rules and that, in accordance with case-law, the fundamental requirement of legal certainty on which economic operators must be able to rely and the aim of ensuring that competition is not distorted in the internal market are of considerable importance not only for an applicant himself and his competitors but also for third parties, in view of the large number of persons concerned and the financial interests involved (judgment of 16 July 2009, *Der Grüne Punkt — Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 186).

63 In the second place, it should be noted that, in both Case T-72/06 and Case T-79/06, a period of some three years and 10 months, that is to say 46 months, elapsed between the end of the written part of the procedure as marked by the lodgement of the rejoinder on 20 February 2007, on the one hand, and the opening of the oral part of the procedure in December 2010, on the other.

64 The steps taken during that period include summarising the arguments of the parties, preparing the cases, analysing the facts and law of the disputes and preparing the oral part of the procedure. The length of that period depends, in particular, on the complexity of the dispute, the conduct of the parties and the occurrence of any procedural incidents.

65 As regards the complexity of the dispute, it should be recalled that Cases T-72/06 and T-79/06 concerned actions brought against a Commission decision relating to a proceeding under Article 101 TFEU.

66 As is apparent from the files in Cases T-72/06 and T-79/06 respectively, actions concerning the application of competition law by the Commission exhibit a greater degree of complexity than other types of case, given, in particular, the length of the contested decision, the size of the case file and the need to carry out a detailed assessment of many complex facts which are often spread over long periods and distances.

67 Thus, 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 such as Cases T-72/06 and T-79/06.

68 Next, account must be taken of the fact that several actions had been brought against Decision C(2005) 4634.

69 Actions brought against a single decision adopted by the Commission pursuant to EU competition law need, in principle, to be dealt with in parallel, including where those actions are not joined. The parallel processing of such actions is justified in particular by the connection between them and the need to ensure consistency in their analysis and in the response to be given to them.

70 Thus, the parallel processing of connected cases may be a justification for extending by a period of one month for each additional connected case the interval between the end of the written part of the procedure and the opening of the oral part of that procedure.

71 In the present case, 15 actions had been brought against Decision C(2005) 4634. However, one applicant had withdrawn its action against that decision (order of 6 July 2006, *Cofira-Sac* v *Commission*, T-43/06, not published, EU:T:2006:192), and two actions brought against Decision C(2005) 4634 had culminated in the delivery of the judgments of 13 September 2010, *Trioplast Wittenheim* v *Commission* (T-26/06, not published, EU:T:2010:387), and of 13 September 2010, *Trioplast Industrier* v *Commission* (T-40/06, EU:T:2010:388).

72 In those circumstances, the need to deal with the other 12 cases relating to actions brought against Decision C(2005) 4634 justified an extension of the proceedings by 11 months in Case T-72/06 and Case T-79/06.

73 Consequently, a period of 26 months (15 months plus 11 months) between the end of the written part of the procedure and the opening of the oral part of the procedure was an appropriate length of time for dealing with Cases T-72/06 and T-79/06.

74 Finally, the degree of factual, legal and procedural complexity in Cases T-72/06 and T-79/06 is no justification for longer proceedings in this instance. In that regard, it should be noted in particular that, between the end of the written part of the procedure and the opening of the oral part of the procedure in Cases T-72/06 and T-79/06, the procedure was neither interrupted nor delayed by the Court's adoption of any measure in respect of its organisation.

75 As regards the conduct of the parties and the occurrence of procedural incidents in Cases T-72/06 and T-79/06, the fact that, in October 2010, the applicants requested the reopening of the oral part of the procedure is no justification for the three years and eight months which had already elapsed since the rejoinder was lodged. Furthermore, the fact that the applicants were notified in December 2010 that a hearing would be held in February 2011 indicates that that incident can have had only minimal effect on the length of time between the end of the written part of the procedure and the opening of the oral part of the procedure in those cases.

76 Consequently, in the light of the circumstances of Cases T-72/06 and T-79/06, the fact that 46 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 20 months in each of those cases.

77 In the third place, an examination of the files in Cases T-72/06 and T-79/06 respectively has not revealed anything that would support the conclusion that there was a period of unjustified inactivity between the date of lodging the applications and the date of lodging the rejoinders, or between the opening of the oral part of the procedure and the delivery of 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).

78 It follows that the procedure followed in Cases T-72/06 and T-79/06, which culminated in the delivery of 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), infringed the second paragraph of Article 47 of the Charter of Fundamental Rights in that it exceeded by 20 months the reasonable time for adjudicating, which constitutes a sufficiently serious breach of a rule of EU law intended to confer rights on individuals.

2. The damage alleged and the purported causal link

79 It is settled case-law that the damage for which compensation is sought in an action to establish non-contractual liability on the part of the European Union must be actual and certain, which it is for the applicant to prove (see judgment of 9 November 2006, *Agraz and Others* v *Commission*, C-243/05 P, EU:C:2006:708, paragraph 27 and the case-law cited). It falls to the applicant to adduce conclusive proof both of the existence and of the extent of the damage he alleges (see judgment of 16 September 1997, *Blackspur DIY and Others* v *Council and Commission*, C-362/95 P, EU:C:1997:401, paragraph 31 and the case-law cited).

80 It is also settled case-law that 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 institutions and the damage (judgments of 18 March 2010, *Trubowest Handel and Makarov* v *Council and Commission*, C-419/08 P, EU:C:2010:147, paragraph 53, and of 14 December 2005, *Beamglow* v *Parliament and Others*, T-383/00, EU:T:2005:453, paragraph 193; see also, to that effect, judgment of 4 October 1979, *Dumortier and Others* v *Council*, 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79, EU:C:1979:223, paragraph 21). It is for the applicant to adduce proof of the existence of a causal link between the conduct complained of and the damage alleged (see judgment of 30 September 1998, *Coldiretti and Others* v *Council and Commission*, T-149/96, EU:T:1998:228, paragraph 101 and the case-law cited).

81 In the present case, the applicants submit that the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 caused them material and non-material damage.

a) The material damage alleged and the purported causal link

82 The applicants claim that the serious breach of the obligation to adjudicate within a reasonable time caused them material damage on two counts. First, they suffered losses both as a result of paying, beyond a reasonable period, the charges connected with the bank guarantee which they had provided so as not to have to effect immediate settlement of the amount of the fine imposed by Decision C(2005) 4634 ('the bank guarantee charges'), and as a result of paying, beyond a reasonable period, legal interest applied to the nominal amount of the fine imposed by Decision C(2005) 4634 ('the interest on the amount of the fine'). Secondly, the 'throes of uncertainty' deprived them of the opportunity to find an investor sooner and, therefore, the opportunity to make a profit or avoid a loss.

83 It is appropriate to examine, as a first step, the damage claimed and the purported causal link in relation to the alleged loss of the opportunity to find an investor sooner, and, as a second step, the damage claimed and the purported causal link in relation to the alleged losses sustained as a result of paying interest on the amount of the fine and as a result of paying bank guarantee charges.

The alleged loss of the opportunity to find an investor sooner

84 The applicants submit that the group had been experiencing financial difficulties since 2011. Having made representations to its creditors which proved fruitless, the group began to look for new investors. If Decision C(2005) 4634 had become final sooner, the climate of uncertainty with respect to the final amount of the fine, and, more specifically, the risk that the fine would be increased, would not have existed and an investor could have been found more quickly. In that regard, the fact that an agreement in principle was concluded between Groupe Gascogne and a consortium of investors led by the company Biolandes Technologies only a few days after 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) were delivered shows that the uncertainty with respect to the amount of the fine had a negative impact on the conduct of the group's affairs.

Lastly, the chronology of events makes unambiguously apparent the crucial link between the allegedly unreasonable time taken to adjudicate and the difficulties experienced by the Gascogne group in finding investors whose contribution was key to resolving the company's financial predicament.

85 The Court of Justice of the European Union disputes those allegations.

86 In the present case, it is important to assess whether the applicants have demonstrated, with a sufficient degree of probability, that Gascogne had an opportunity to find an investor 'sooner'. In other words, it must be examined whether the applicants have demonstrated that Gascogne had an actual and serious opportunity to find an investor sooner.

87 In that regard, first of all, it is apparent from the documents before the Court that Gascogne received, at most, five expressions of interest when it began its search for investors. In the annex to the application, the applicants include an email of 8 November 2012 from a potential investor in the United Kingdom. Furthermore, the independent expert's report drawn up as part of Gascogne SA's reserved capital increase plan, dated 16 May 2014, referred to in the application, explains that, following a call for tenders launched by Gascogne in January and February 2013, four expressions of interest were received from investment funds. Of the five expressions of interest received by Gascogne, only two mentioned the fine imposed by Decision C(2005) 4634 as a factor to be taken into account prior to any decision to invest.

88 Secondly, as regards the two potential investors that mentioned the fine imposed by Decision C(2005) 4634, there is nothing in the documents before the Court to indicate that removal of the uncertainty with respect to a possible increase in the total amount of the fine featured among the conditions for any investment.

89 With regard to the email of 8 November 2012 from the potential UK investor, it is apparent from reading that email that it was the existence of the fine that was liable to stand in the way of any investment. More specifically, that potential investor demanded that the French Republic bear the cost of the fine or speak to the Commission with a view to persuading it to abandon the case. A condition of any investment was thus that the debt linked to that fine should be waived altogether, not that there should be certainty that the amount of the fine would not increase.

90 With regard to the other expression of interest that mentioned the existence of the fine imposed by Decision C(2005) 4634, the independent expert's report drawn up as part of Gascogne SA's reserved capital increase plan, dated 16 May 2014, explains that that expression of interest made any investment conditional upon the waiver, in particular, of the debt linked to the fine imposed by the Commission. A condition of any investment was thus, once again, the very existence of the fine, not the certainty that the amount of that fine would not increase.

91 Thirdly, the documents produced or mentioned by the applicants in the application show that the waiver of the debt linked to the fine was one of a number of conditions attached to any investment. It is apparent from the email of 8 November 2012 that agreement on the part of the potential UK investor was subject to the satisfaction of a number of conditions such as the disposal of a line of business, the waiver of loans, a restructuring process and a social plan. Similarly, each of the expressions of interest mentioned in the independent expert's report drawn up as part of Gascogne SA's reserved capital increase project, dated 16 May 2014, included a number of cumulative conditions of investment (disposal of lines of business, waiver of receivables, rescheduling or complete waiver of debt). The applicants do not seek to demonstrate that they were in a position to satisfy all of the conditions set out in those expressions of interest. It should also be noted that the opportunity to find a buyer sooner depended on Gascogne's willingness to accept the multiple conditions attached to any investment and the business plan associated with that investment.

92 Fourthly, it should be pointed out that the application contains several unsubstantiated assertions. In particular, the applicants simply submit that the finding that the new investors in Gascogne finalised their agreement only a matter of weeks after delivery of 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) is in itself 'sufficient' to demonstrate that, if the Court's judgments had been delivered within a normal timeframe, the applicants' situation would have been made a great deal easier and the company's take-over would have happened much sooner. It has thus not been established that the investment which did go ahead came about as a result of a clarification of the applicants' situation with respect to a possible increase in the amount of the fine.

93 It follows that the applicants have not shown that Gascogne had a serious opportunity to find an investor 'sooner'. Neither, therefore, have they shown that Gascogne lost a serious opportunity to find an investor sooner or that that loss of opportunity constitutes actual and certain damage to Gascogne.

94 In the light of the foregoing, the claim for compensation for an alleged loss of an opportunity to find an investor sooner must be dismissed.

The alleged losses sustained as a result of paying interest on the amount of the fine and as a result of paying the bank guarantee charges

95 In the first place, the applicants submit that, at the time when they brought their actions in Cases T-72/06 and T-79/06, they decided not to effect immediate payment of the fine which had been imposed on them by Decision C(2005) 4634. The applicants explain that, in return, they had to agree to pay interest at a rate of 3.65% on the amount of the fine as from 15 March 2006, and to provide a bank guarantee.

96 In the second place, they claim that, if there had not been a breach of the obligation to adjudicate within a reasonable time, 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), would have been delivered about 30 May 2011. They infer from this that the interest on the amount of the fine and the bank guarantee charges which they paid between 30 May 2011, the date when Decision C(2005) 4634 should have been final, and 12 December 2013, the date when the fine was actually paid, can be regarded as having been unduly paid and must be refunded.

97 In the third place, point 135 of the Opinion of Advocate General Sharpston in *Groupe Gascogne* v *Commission* (C-58/12 P, EU:C:2013:360) shows that there is a direct link between the breach of the obligation to adjudicate within a reasonable time and the additional costs of paying interest on the amount of the fine and paying the bank guarantee charges.

98 The Court of Justice of the European Union disputes those arguments.

99 First, it contends that the interest which the applicants had to pay for the period between 30 May 2011 and 12 December 2013 cannot be classified as damage.

100 Secondly, it considers that there is no sufficiently direct causal link between the material damage relating to the bank guarantee charges and the interest on the amount of the fine, on the one hand, and the breach of the obligation to adjudicate within a reasonable time, on the other hand. To begin with, that material damage was an outcome of the applicants' own choosing. Next, the existence of a causal link cannot be established solely on the basis of the finding that, if the reasonable time for adjudication had not been exceeded, the applicants would not have been obliged to pay bank guarantee charges and interest on the amount of the fine for the period of that overrun. Finally, the fact that the applicants did not have sufficient funds to pay the fine at the time when Decision

C(2005) 4634 was adopted renders the causal link between the material damage claimed and the alleged breach of the obligation to adjudicate within a reasonable time insufficiently direct. Moreover, the applicants did not make an application for interim measures aimed at suspending the operation of Decision C(2005) 4634.

– *Preliminary observations*

101 It should be noted that Article 2 of Decision C(2005) 4634 provided that the fines imposed by that decision had to be paid within three months of the date of its notification. Pursuant to Article 86 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1), Article 2 of that decision stated that, after expiry of that three-month period, interest was to be automatically payable at the interest rate applied by the ECB to its main refinancing operations on the first day of the month in which the Decision was adopted, plus 3.5 percentage points, namely 5.56%.

102 In accordance with the first paragraph of Article 299 TFEU, Decision C(2005) 4634 was enforceable, since Article 2 thereof imposed a pecuniary obligation on the applicants. Furthermore, the fact that an action for annulment was brought against that decision, pursuant to Article 263 TFEU, did not call into question the enforceability of that decision, in so far as, under Article 278 TFEU, actions brought before the Court of Justice of the European Union are not to have suspensory effect.

103 On 15 December 2005, the Commission notified Decision C(2005) 4634 to the applicants. In so doing, it stated that, if the applicants instituted proceedings before the General Court or the Court of Justice, no recovery measures would be taken as long as the case was pending, provided that two conditions were satisfied before the date of expiry of the time for payment. Pursuant to Article 86(5) of Regulation No 2342/2002, those two conditions were, first, that the amount receivable by the Commission was to produce interest from the date of expiry of the time for payment at a rate of 3.56%, and, secondly, that a bank guarantee acceptable to the Commission, covering both the debt and the interest on or increased amount of the debt, had to be provided before the payment deadline.

104 In their application in the present case, the applicants explain that they decided not to effect immediate payment of the amount which had been imposed on them and to provide a bank guarantee, in accordance with the option made available to them by the Commission in return for the payment of interest at a rate of 3.56%.

105 The material damage alleged and the purported causal link between that damage and the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 must be examined in the light of those observations.

– *Payment of interest on the amount of the fine*

106 In the first place, it is important to note that, as a result of the combined application of the first paragraph of Article 299 and Article 278 TFEU, referred to in paragraph 102 above, the amount of the fine imposed by Decision C(2005) 4634 was owed to the Commission despite the fact that an action for annulment had been brought against that decision. Thus, the interest on the amount of the fine, the rate of which was 3.65%, must be classified as default interest.

107 In the second place, it should be pointed out that, during the proceedings in Cases T-72/06 and T-79/06, the applicants paid neither the amount of the fine nor the default interest. Thus, during the proceedings in those cases, the applicants were in possession of the sum corresponding to the amount of that fine plus default interest.

108 The applicants have adduced no evidence to show that, during the period by which the reasonable time for adjudicating in Cases T-72/06 and T-79/06 was exceeded, the amount of the default interest that was later paid to the Commission was greater than the advantage conferred on them by possession of the sum equal to the amount of the fine plus default interest. In other words, the applicants have not demonstrated that the interest on the amount of the fine that accrued during the period by which the reasonable time for adjudication was exceeded was greater than the advantage conferred on them by not paying the fine plus the interest due on the date on which the breach of the obligation to adjudicate within a reasonable time was committed and the interest that fell due while that breach was ongoing.

109 It follows that the applicants have not demonstrated that, during the period by which the reasonable time for adjudicating in Cases T-72/06 and T-79/06 was exceeded, they suffered actual and certain damage as a result of paying default interest on the amount of the fine imposed in Decision C(2005) 4634.

110 Consequently, the claim for compensation for the alleged damage consisting in losses sustained as a result of paying interest on the amount of the fine beyond a reasonable period must be dismissed, there being no need to assess which applicant actually paid default interest or whether the causal link claimed was present.

– *Payment of the bank guarantee charges*

111 In the first place, as regards the damage, it is apparent from the documents before the Court that the guarantee of payment of the total amount of the fine plus default interest was provided by the bank of Groupe Gascogne, now Gascogne. Moreover, the documents before the Court show that Gascogne paid bank guarantee charges, in the form of quarterly commissions, during the proceedings in Cases T-72/06 and T-79/06.

112 It follows that Gascogne Sack Deutschland has not demonstrated that the damage which it claims to have suffered, consisting in losses sustained as a result of paying bank guarantee charges beyond a reasonable time, was actual and certain.

113 The claim for compensation for the alleged damage consisting in losses sustained by Gascogne Sack Deutschland as a result of paying bank guarantee charges beyond a reasonable time must therefore be dismissed.

114 However, in the light of the documents before the Court, it must be found that Gascogne has demonstrated that it suffered actual and certain damage consisting in a loss sustained as a result of paying bank guarantee charges during the period by which the reasonable time for adjudicating in Cases T-72/06 and T-79/06 was exceeded.

115 In the second place, as regards the causal link, it should be noted that, if the length of the proceedings in Cases T-72/06 and T-79/06 had not exceeded the reasonable time for adjudication, Gascogne would not have had to pay any bank guarantee charges during that excess period.

116 Thus, there is a 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 occurrence of the damage suffered by Gascogne in the form of a loss sustained as a result of its having paid bank guarantee charges during the period by which the reasonable time for adjudication was exceeded.

117 It should also be noted that the conduct complained of must, it is true, be the determining cause of the damage (order of 31 March 2011, *Mauerhofer* v *Commission*, C-433/10 P, not published, EU:C:2011:204, paragraph 127, and judgment of 10 May 2006, *Galileo International Technology and Others* v *Commission*, T-279/03, EU:T:2006:121, paragraph 130; see also, to that effect, judgment of

18 March 2010, *Trubowest Handel and Makarov* v *Council and Commission*, C-419/08 P, EU:C:2010:147, paragraph 61). In other words, even in the case of a possible contribution by the institutions to the damage for which compensation is sought, that contribution might be too remote because of some responsibility resting on others, possibly the applicant (judgment of 18 March 2010, *Trubowest Handel and Makarov* v *Council and Commission*, C-419/08 P, EU:C:2010:147, paragraph 59, and order of 31 March 2011, *Mauerhofer* v *Commission*, C-433/10 P, not published, EU:C:2011:204, paragraph 132).

118 Furthermore, it has already been held that alleged damage consisting in bank guarantee charges incurred by a company penalised by a Commission decision later annulled by the General Court was not the direct consequence of the unlawfulness of that decision, on the ground that that damage was the consequence of that company's own decision to provide a bank guarantee so as not to comply with the obligation to pay the fine within the period stipulated in the contested decision [see, to that effect, judgment of 21 April 20015, *Holcim (Deutschland)* v *Commission*, T-28/03, EU:T:2005:139, paragraph 123, and order of 12 December 2007, *Atlantic Container Line and Others* v *Commission*, T-113/04, not published, EU:T:2007:377, paragraph 38].

119 In the present case, however, it should be noted, first, that, at the time when the applicants brought their actions in Cases T-72/06 and T-79/06, on 23 February 2006, and at the time when Gascogne provided a bank guarantee, in March 2006, the breach of the obligation to adjudicate within a reasonable time was unforeseeable. Furthermore, Gascogne could legitimately expect those actions to be dealt with within a reasonable time.

120 Secondly, the reasonable time for adjudicating in Cases T-72/06 and T-79/06 was exceeded after Gascogne's initial decision to provide a bank guarantee.

121 Thus, the facts of the present case differ substantially from those established in the judgment of 21 April 2005, *Holcim (Deutschland)* v *Commission* (T-28/03, EU:T:2005:139), and the order of 12 December 2007, *Atlantic Container Line and Others* v *Commission* (T-113/04, not published, EU:T:2007:377), referred to in paragraph 118 above. 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, therefore, contrary to the claim made by the Court of Justice of the European Union, 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.

122 It follows 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.

123 In the third place, the applicants submit that they suffered damage during the period between 30 May 2011, the date on which Decision C(2005) 4634 should have been final, and 12 December, the date on which the fine was actually paid.

124 In that regard, first of all, it should be noted that, in their action, the applicants allege a breach of the obligation to adjudicate within a reasonable time only in Cases T-72/06 and T-79/06. They do not therefore allege a breach of the obligation to adjudicate within a reasonable time as a result of the total length of the proceedings, in Case T-72/06 inasmuch as that case gave rise to the judgment of 26 November 2013, *Groupe Gascogne* v *Commission* (C-58/12 P, EU:C:2013:770), and in Case T-79/06 inasmuch as that case gave rise to the judgment of 26 November 2013, *Gascogne Sack Deutschland* v *Commission* (C-40/12 P, EU:C:2013:768).

125 Thus, in the present case, it has been established only that the proceedings in Cases T-72/06 and T-79/06 breached the obligation to adjudicate within a reasonable time (see paragraph 78 above).

126 Next, the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 came to an end with the delivery of 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).

127 Thus, from 16 November 2011 onwards, the applicants were in a position to assess both the existence of a breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 and the damage which Gascogne had suffered in the form of a loss sustained as a result of paying bank guarantee charges during the period by which that time was exceeded.

128 Furthermore, in the appeals which they brought on 27 January 2012 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), the applicants claimed that the excessive length of the proceedings in Cases T-72/06 and T-79/06 had had onerous financial repercussions for them and, on that account, sought, a reduction of the fine for which they were jointly and severally liable.

129 Lastly, Decision C(2005) 4634, which imposed a fine on the applicants, did not become final until 26 November 2013 and the option given by the Commission of providing a bank guarantee expired on that date because the applicants decided to appeal 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).

130 It follows that payment of the bank guarantee charges after the delivery of 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), which brought to an end the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06, does not exhibit a sufficiently direct causal link with that breach, since the payment of such charges is the consequence of the personal and independent decision which the applicants took, after that breach, not to pay the fine, not to request suspension of the operation of Decision C(2005) 4634 and to appeal against the aforementioned judgments.

131 It follows from all of the foregoing 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, on the one hand, and the damage suffered by Gascogne before the delivery of 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), consisting in the payment of bank guarantee charges during the period by which that reasonable time was exceeded, on the other hand.

Assessment of the material damage suffered

132 In the first place, it is important to recall that the length of the proceedings in Cases T-72/06 and T-79/06 exceeded by 20 months the reasonable time for adjudicating in each of those cases (see paragraph 78 above).

133 In the second place, the applicants claim that they suffered damage during the period between 30 May 2011, the date on which Decision C(2005) 4634 should have been final, and 12 December 2013, the date on which the fine was actually paid.

134 In that regard, the applicants state in the application that all of the bank guarantee charges which they paid ‘beyond 30 May 2011’ must be regarded as losses sustained. In support of their claim for compensation, they produce bank transaction notices starting from the second quarter of 2011.

135 Thus, when read in the light of the grounds of the application, the request for compensation made by the applicants under their second head of claim, in the amount of EUR 184 571, relates to the payment of the bank guarantee charges incurred from 30 May 2011.

136 It follows from the rules governing the procedure before the Courts of the European Union, in particular Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1) of the Rules of Procedure of 2 May 1991, that the dispute is in principle determined and circumscribed by the parties and that the Courts of the European Union may not rule *ultra petita* (judgments of 10 December 2013, *Commission* v *Ireland and Others*, C-272/12 P, EU:C:2013:812, paragraph 27, and of 3 July 2014, *Electrabel* v *Commission*, C-84/13 P, not published, EU:C:2014:2040, paragraph 49).

137 Thus, the Court cannot deviate from the applicants' claim and decide of its own motion to make good damage suffered before 30 May 2011, that is to say damage suffered during a period chronologically different from that during which they claim to have suffered damage.

138 Moreover, the bank guarantee charges paid by Gascogne after 16 November 2011 do not exhibit a sufficiently direct causal link with the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 (see paragraph 130 above).

139 In the present case, therefore, the compensable damage corresponds to the bank guarantee charges paid by Gascogne between 30 May 2011 and 16 November 2011.

140 In the third place, it is apparent from the documents produced by the applicants that the bank guarantee charges were paid by Gascogne on a quarterly basis and that a quarterly commission was payable in full if the bank guarantee continued into a new quarter. Those documents also show that, for the second, third and fourth quarters of 2011, the bank guarantee charges paid by Gascogne amounted to EUR 19 945.21, EUR 20 120.38 and EUR 20 295.55 respectively.

141 The bank guarantee charges incurred by Gascogne were therefore EUR 6 648.40 in June 2011, EUR 20 120.38 for the third quarter of 2011 and EUR 20 295.55 for the fourth quarter of 2011.

142 It follows that the bank guarantee charges paid by Gascogne during the period between 30 May 2011 and 16 November 2011 amounted to EUR 47 064.33.

143 In the light of the foregoing, it is appropriate to award Gascogne compensation in the amount of EUR 47 064.33 by way of reparation for the material damage caused to it by the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 and consisting in the payment of additional bank guarantee charges.

b) The non-material damage alleged and the purported causal link

144 The applicants claim that the breach of the obligation to adjudicate within a reasonable time gave rise to non-material damage of several kinds, namely harm to the company's reputation, uncertainty in decision-making, difficulties in managing the business itself and, lastly, anxiety and inconvenience experienced by the members of the company's executive bodies and employees. In their submission, moreover, there is a direct causal link between the breach of the obligation to adjudicate within a reasonable time and the non-material damage alleged. The applicants estimate the non-material damage caused to them to be EUR 500 000 at least.

145 In response, the Court of Justice of the European Union contends, in the first place, that the applicants have not spelled out the constituent elements of the non-material damage caused to them and have not shown that they suffered actual and certain damage. In the second place and in the alternative,

the applicants have not proved the existence of a causal link between the breach of the obligation to adjudicate within a reasonable time and the non-material damage which they allege. In the third place and in the further alternative, the non-material damage should be assessed at EUR 5 000 at most.

146 It is appropriate to assess, first, the non-material damage allegedly suffered by the members of the applicants' executive bodies and employees and, secondly, the non-material damage allegedly suffered by the applicants themselves.

The non-material damage allegedly suffered by the members of the applicants' executive bodies and employees

147 It should be noted that the relief sought in the application relates only to the applicants' own interests, not to the personal interests of their executives or employees. Furthermore, the applicants do not cite any transfer of rights or explicit authority that would entitle them to assert a claim for compensation for the damage suffered by their executives and employees.

148 Thus, the claim for compensation for the non-material damage allegedly suffered by the applicants' executives and employees must be rejected as inadmissible, on the ground that there is nothing in the documents before the Court to indicate that the applicants were authorised by their executives and employees to bring an action for damages on their behalf (see, to that effect, order of 12 May 2010, *CPEM* v *Commission*, C-350/09 P, not published, EU:C:2010:267, paragraph 61, and judgment of 30 June 2009, *CPEM* v *Commission*, T-444/07, EU:T:2009:227, paragraphs 39 and 40).

149 In any event, the existence of damage suffered by the applicants' executives or employees has not been established. For one thing, the applicants argue by way of assertion only and do not adduce any specific evidence of the anxiety and inconvenience experienced by their executives and employees as a result of the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06. What is more, the applicants have not demonstrated that their executives and employees suffered direct personal harm separate from the damage which they themselves claim to have suffered.

150 Consequently, the claim for compensation for the non-material damage allegedly suffered by the members of the applicants' executive bodies and employees must be rejected as inadmissible and, in any event, unfounded.

The non-material damage allegedly suffered by the applicants

151 It follows from case-law that, where an applicant has put forward nothing to show the existence of its non-material damage or to establish its extent, it falls to it, at the very least, to prove that the conduct of which it complains was, by reason of its gravity, such as to cause it damage of that kind (see, to that effect, judgments of 16 July 2009, *SELEX Sistemi Integrati* v *Commission*, C-481/07 P, not published, EU:C:2009:461, paragraph 38; of 28 February 1999, *BAI* v *Commission*, T-230/95, EU:T:1999:11, paragraph 39; and of 16 October 2014, *Evropaïki Dynamiki* v *Commission*, T-297/12, not published, EU:T:2014:888, paragraphs 31, 46 and 63).

152 In that regard, it should be noted in the first place that the application simply refers to damage to the applicants' reputation, without providing any further details.

153 Consequently, the applicants have not demonstrated that the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 was such as to harm their reputation.

154 In any event, in the present case, the finding in paragraph 78 above that there has been a breach of the obligation to adjudicate within a reasonable time would, in the light of the gravity of that breach, be sufficient to make good the reputational harm alleged by the applicants.

155 In the second place, the fact that the applicants were put in a position of uncertainty, in particular as regards whether their actions against Decision C(2005) 4634 would be successful, is an inherent feature of any court proceedings. Moreover, the applicants were necessarily aware that Cases T-72/06 and T-79/06 involved some degree of complexity and that that complexity was linked both to the number of parallel actions brought in succession before the Court, in different procedural languages, against Decision C(2005) 4634, and to the need for that Court to carry out a detailed preliminary analysis of large case files, in particular the need to establish the facts and undertake a material examination of the dispute.

156 However, the proceedings in Cases T-72/06 and T-79/06, which lasted five years and nine months, were longer than the applicants could have anticipated that they would be, in particular at the time when they brought their actions. Furthermore, it is apparent from the proceedings in Cases T-72.06 and T-79/06 that a period of three years and 10 months elapsed between the end of the written part of the procedure and the opening of the oral part of the procedure. Those periods are not in any way justified by the adoption of measures of organisation of procedure or measures of inquiry or the occurrence of procedural incidents.

157 In those circumstances, the failure to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 was such as to put the applicants in a position of uncertainty greater than that normally engendered by court proceedings. That prolonged state of uncertainty inevitably had an impact on decision-making and the running of those businesses and therefore constituted non-material damage.

158 In the third place, in the circumstances of the present case, the non-material damage suffered by the applicants as a result of the prolonged state of uncertainty in which they were placed is not fully compensated by the finding of a breach of the obligation to adjudicate within a reasonable time.

159 In that regard, the applicants claim that the non-material damage caused to them must be assessed at EUR 500 000 ‘at least’, in the light of the circumstances.

160 However, first, the applicants have not adduced any evidence to justify a claim in the amount of EUR 500 000 ‘at least’ by way of compensation for the non-material damage caused to them. It should also be noted that the amount sought by the applicants is intended as reparation for several heads of non-material damage, in particular for reputational harm, which has not been demonstrated and which, in any event, is sufficiently compensated by the finding of a breach of the obligation to adjudicate within a reasonable time (see paragraphs 152 to 154 above).

161 Secondly, the Court of Justice has held that, having regard to the need to ensure that the competition rules of EU law are complied with, the Court of Justice cannot allow an appellant to reopen the question of the validity or amount of a fine, on the sole ground that there was a failure to adjudicate within a reasonable time, where all of its pleas directed against the findings concerning the amount of that fine and the conduct that it penalises have been rejected (judgment of 26 November 2013, *Groupe Gascogne* v *Commission*, C-58/12 P, EU:C:2013:770, paragraph 78; see also, to that effect, judgments of 16 July 2009, *Der Grüne Punkt — Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 194, and of 8 May 2014, *Bolloré* v *Commission*, C-414/12 P, not published, EU:C:2014:301, paragraph 105).

162 It follows that the failure to adjudicate within a reasonable time when examining a legal action brought against a Commission decision imposing a fine on an undertaking for infringing the EU law competition rules cannot lead to the annulment, in whole or in part, of the fine imposed by that decision (judgments of 26 November 2013, *Groupe Gascogne* v *Commission*, C-58/12 P, EU:C:2013:770, paragraph 7[9], and of 26 November 2013, *Kendrion* v *Commission*, C-50/12 P, EU:C:2013:771, paragraph 88; see also, to that effect, judgment of 8 May 2014, *Bolloré* v *Commission*, C-414/12 P, not published, EU:C:2014:301, paragraph 107).

163 Given the extent of it, the compensation sought by the applicants as reparation for the non-material damage they have suffered would, if awarded, have the effect of reopening the question of the amount of the fine imposed on the applicants by Decision C(2005) 4634, even though it has not been established that the failure to adjudicate within a reasonable time in Cases T-72/06 and T-79/06 had any bearing on the amount of that fine.

164 Thus, the amount sought by the applicants cannot be regarded as a relevant criterion for the purposes of assessing the amount of compensation that they are entitled to claim.

165 Consequently, taking into account the findings made in paragraphs 155 to 164 above, in particular the extent of the failure to adjudicate within a reasonable time, the applicants' conduct and the need to ensure that the rules of EU competition law are complied with and the present action is effective, it must be decided *ex aequo et bono* that 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 in Cases T-72/06 and T-79/06.

c) Interest

166 The applicants have asked the Court to order that any amount of compensation that it may award to them bear compensatory and default interest at the rate applied by the ECB to its main refinancing operations, increased by two percentage points, starting from the date when the application was made.

167 In that regard, a distinction must be drawn between compensatory interest and default interest (judgment of 27 January 2000, *Mulder and Others* v *Council and Commission*, C-104/89 and C-37/90, EU:C:2000:38, paragraph 55).

168 In the first place, as regards compensatory interest, it should be recalled that the adverse consequences of a lapse of time between the occurrence of the actionable event and the assessment of the compensation cannot be disregarded, inasmuch as the effects of inflation must be taken into account (see, to that effect, judgments of 3 February 1994, *Grifoni* v *Commission*, C-308/87, EU:C:1994:38, paragraph 40, and of 13 July 2005, *Camar* v *Council and Commission*, T-260/97, EU:T:2005:283, paragraph 138). Compensatory interest is designed to compensate for the time that passes before the judicial assessment of the amount of damage, irrespective of any delay attributable to the debtor (judgment of 12 February 2015, *Commission* v *IPK International*, C-336/13 P, EU:C:2015:83, paragraph 37).

169 The end of the period for which such monetary revaluation is available must, in principle, coincide with the date of delivery of the judgment establishing the obligation to make good the damage suffered by the applicant (see, to that effect, judgments of 19 May 1992, *Mulder and Others* v *Council and Commission*, C-104/89 and C-37/90, EU:C:1992:217, paragraph 35; of 13 July 2005, *Camar* v *Council and Commission*, T-260/97, EU:T:2005:283, paragraphs 142 and 143; and of 26 November 2008, *Agraz and Others* v *Commission*, T-285/03, not published, EU:T:2008:526, paragraphs 54 and 55).

170 In the present case, the compensation awarded to each of the applicants as reparation for the non-material damage which they have each suffered covers the period prior to the date of delivery of the present judgment and there is therefore no need to award compensatory interest for the period preceding that date.

171 Moreover, as regards the compensation due to Gascogne as reparation for the material damage which that company has suffered, it follows from the case-law cited in paragraph 168 above that the applicants would be entitled to request that that compensation bear compensatory interest from 30 May 2011.

172 However, by their second head of claim, the applicants ask, as they confirmed at the hearing, that the amount of compensation to which they are entitled bear compensatory interest 'from the date when the application was made' in the present case.

173 Consequently, the compensatory interest to be borne by the compensation due to Gascogne as reparation for the material damage which it suffered, runs from 4 August 2014, in accordance with the claim in the application.

174 Furthermore, the applicants claim to have sustained a loss but do not supply any evidence to show that the bank guarantee charges paid by Gascogne between 30 May 2011 and 16 November 2011 could have produced interest at the rate applied by the ECB to its main refinancing operations, increased by two percentage points (see, to that effect, judgments of 27 January 2000, *Mulder and Others* v *Council and Commission*, C-104/89 and C-37/90, EU:C:2000:38, paragraph 219, and of 26 November 2008, *Agraz and Others* v *Commission*, T-285/03, not published, EU:T:2008:526, paragraph 49).

175 Thus, Gascogne cannot seek the application of compensatory interest calculated on the basis of the rate applied by the ECB to its main refinancing operations, increased by two percentage points.

176 The monetary depreciation linked to the passage of time, on the other hand, is reflected by the annual rate of inflation determined, for the period in question, by Eurostat (the European Union's statistical office) in the Member State where Gascogne is established (see, to that effect, judgments of 27 January 2000, *Mulder and Others* v *Council and Commission*, C-104/89 and C-37/90, EU:C:2000:38, paragraphs 220 and 221; of 13 July 2005, *Camar* v *Council and Commission*, T-260/97, EU:T:2005:283, paragraph 139; and of 26 November 2008, *Agraz and Others* v *Commission*, T-285/03, not published, EU:T:2008:526, paragraph 50).

177 Consequently, the rate of compensatory interest to be borne by the compensation due to Gascogne as reparation for the material damage which it suffered corresponds to the annual rate of inflation determined by Eurostat in the Member State where that company is established, for the period between 4 August 2014 and the date of delivery of the present judgment, up to a value not exceeding that claimed by the applicants.

178 In the second place, as regards the default interest, it follows from case-law that the obligation to pay such interest arises, in principle, on the date of the judgment establishing the obligation to make good the damage (see, to that effect, judgment of 26 June 1990, *Sofrimpor*t v *Commission*, C-152/88, EU:C:1990:259, paragraph 32 and the case-law cited).

179 For the purposes of determining the default interest rate, it is appropriate to take into account Article 83(2)(b) and Article 111(4)(a) of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1). Pursuant to those provisions, the interest rate for amounts receivable not repaid within the periods stipulated is to be the rate applied by the ECB to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by three and a half percentage points.

180 In the present case, the compensation referred to in paragraphs 143 and 165 above, including the compensatory interest borne by the compensation due as reparation for the material damage suffered by Gascogne, must be increased by default interest, starting from the date of delivery of the present judgment until full payment.

181 Moreover, the rate of that increase must not exceed that claimed by the applicants (see, to that effect, judgments of 19 May 1992, *Mulder and Others* v *Council and Commission*, C-104/89 and C-37/90, EU:C:1992:217, paragraph 35, and of 8 May 2007, *Citymo* v *Commission*, T-271/04, EU:T:2007:128, paragraph 184).

182 The rate of the default interest will therefore be that set by the ECB for its main refinancing operations, increased by two percentage points, in accordance with the applicants' claim.

d) Conclusion with respect to the amount of compensation and the interest

183 In the light of all of the foregoing, the present action must be partially upheld in so far as it seeks compensation for the damage suffered by the applicants as a result of the breach of the obligation to adjudicate within a reasonable time in Cases T-72/06 and T-79/06, there being no need to order the commissioning of the expert's report sought by the applicants in the alternative.

184 The compensation due to Gascogne as reparation for the damage which it suffered as a result of paying additional bank guarantee charges amounts to EUR 47 064.33, increased by compensatory interest, starting from 4 August 2014 until delivery of the present judgment, at the annual rate of inflation determined by Eurostat in the Member State where that company is established.

185 The compensation due to each applicant as reparation for the non-material damage caused to it amounts to the sum of EUR 5 000.

186 The amount of the compensation referred to in paragraphs 184 and 185 above, including the compensatory interest borne by the compensation due as reparation for the material damage suffered by Gascogne, will be increased by default interest in the manner defined in paragraphs 180 and 182 above.

187 The action is dismissed as to the remainder.

Costs

188 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In the order of 2 February 2015, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, not published, EU:T:2015:80), the objection of inadmissibility raised by the Court of Justice of the European Union was rejected and the costs were reserved. The European Union, represented by the Court of Justice of the European Union, must therefore be ordered to bear not only its own costs but also those incurred by the applicants in connection with the objection of inadmissibility that 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).

189 Under Article 134(3) of the Rules of Procedure, the parties are to bear their own costs where each party succeeds on some and fails on other heads. However, if it appears justified in the circumstances of the case, the General Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

190 In the present case, the applicants have been successful in their heads of claim on the substance of the case. However, they have largely failed in their claim for compensation. For that reason, and taking into account all of the circumstances of the case, it is appropriate to decide that each party is to bear its own costs.

191 In accordance with Article 138(1) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs. It is appropriate to decide that the Commission must bear its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

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 the cases giving 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). 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 they are 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 GmbH 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. **Each 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. **The action is dismissed 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.**

Papasavvas Labucka Bieliūnas

Kreuschitz Forrester

Delivered in open court in Luxembourg on 10 January 2017.

[Signatures]