



**The EU is ordered to pay more than €50 000 in damages to the companies Gascogne Sack Deutschland and Gascogne as a result of the excessive length of the proceedings before the General Court**

*The excessive length of the proceedings caused both material harm (the payment of bank guarantee costs) and non-material harm (the state of uncertainty in which the two companies found themselves)*

The companies Gascogne Sack Deutschland (formerly Sachsa Verpackung) and Gascogne (formerly Groupe Gascogne) brought actions before the General Court on 23 February 2006, seeking the annulment of a decision adopted by the Commission in a case concerning a cartel in the industrial plastic bags sector<sup>1</sup> The General Court dismissed those actions by judgments of 16 November 2011.<sup>2</sup> On appeal, the Court of Justice, by judgments of 26 November 2013,<sup>3</sup> upheld the judgments of the General Court and, accordingly, the fines amounting to a total of €13.2 million imposed on the two companies. The Court of Justice noted however that the two companies could bring actions for damages seeking compensation for possible damage which they may have suffered as a result of the excessive length of the proceedings before the General Court.

The companies Gascogne Sack Deutschland and Gascogne now ask the General Court to order the EU to pay close to €4 million in damages for the material harm (close to €3.5 million sought) and the non-material harm (€500 000 sought) that they claim to have suffered as a result of the excessive length of the proceedings before the General Court. It is the first case on this issue to be adjudicated.<sup>4</sup>

By today's judgment, the Court, sitting in an extended formation different from that which heard the initial proceedings,<sup>5</sup> partially upheld the actions of the two companies by awarding damages of €47 064.33 to Gascogne for the material harm suffered and damages of €5 000 to each of the two companies for the non-material harm.

The Court notes, first of all, that the EU may incur non-contractual liability when three cumulative conditions are fulfilled, namely (1) the institutions' conduct must be unlawful, (2) actual damage must have been suffered and (3) there must be a causal link between the conduct and the damage pleaded.

As regards the first condition (the unlawfulness of the conduct of the Court of Justice as an EU institution), the Court considers that **the right to adjudication within a reasonable period**, enshrined in the Charter of Fundamental Rights of the European Union,<sup>6</sup> **was breached as a result of the excessive length of the proceedings in Cases T-72/06 and T-79/06**. The

<sup>1</sup> Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding under Article [101 TFEU] (Case COMP/F/38.354 - Industrial bags).

<sup>2</sup> Cases: [T-72/06](#) Groupe Gascogne v Commission and [T-79/06](#) Sachsa Verpackung v Commission, see also Press Release No [121/11](#).

<sup>3</sup> Cases: [C-40/12 P](#) Gascogne Sack Deutschland v Commission and [C-58/12 P](#) Gascogne/Commission, see also Press Release No [150/13](#).

<sup>4</sup> There are four other cases in which undertakings seek damages for the excessive length of proceedings (Aalberts Industries, [T-725/14](#), Kendrion, [T-479/14](#), ASPLA and Armando Álvarez, [T-40/15](#) and Guardian Europe, [T-673/15](#)).

<sup>5</sup> That condition was set out by the Court in the judgments of 26 November 2013 (see footnote 3).

<sup>6</sup> The second paragraph of Article 47 of the Charter.

proceedings lasted for more than five years and nine months and this cannot be justified by any of the specific circumstances of those cases.

In particular, the Court notes that, in the field of competition law (a field which is characterised by a greater degree of complexity than that of other types of cases), a period of fifteen months between the end of the written part of the procedure and the opening of the oral part of the procedure generally constitutes an appropriate period. A period of approximately 3 years and 10 months, that is to say 46 months, separated those two parts of the procedure in Cases T-72/06 and T-79/06.

Nevertheless, the Court considers that the parallel treatment of related cases may justify an increase in the length of the proceedings, by a period of one month per additional related case. Thus, in the present case, the parallel treatment of 12 actions brought against the same Commission decision justified an increase of 11 months in the length of the proceedings in Cases T-72/06 and T-79/06.

The Court thus concludes that a period of 26 months (15 months plus 11 months) between the end of the written phase of the procedure and the opening of the oral part of the procedure was appropriate in order to deal with Cases T-72/06 and T-79/06, given that the degree of factual, legal and procedural complexity of those cases does not justify a longer period. It follows that **the period of 46 months between the end of the written part of the procedure and the opening of the oral part of the procedure shows an unjustified period of inactivity of 20 months in each of the two cases mentioned above**. The rest of the procedure in those two cases, however, does not show any unjustified period of inactivity.

As regards the second condition necessary for the EU to incur non-contractual liability (actual damage suffered), the Court notes that **Gascogne suffered actual and certain material harm** as a result of the fact that, during the unjustified period of inactivity of the General Court, it suffered **losses due to the costs that it had to pay in relation to the bank guarantee** provided to the Commission.<sup>7</sup> However, the Court does not accept the other material harm invoked by Gascogne Sack Deutschland and Gascogne.<sup>8</sup>

The General Court notes that the third condition necessary for the EU to incur non-contractual liability (a causal link between the conduct and the damage pleaded) is also fulfilled: **if the proceedings in Cases T-72/06 and T-79/06 had not exceeded the reasonable period for adjudication, Gascogne would not have had to pay bank guarantee costs during the period corresponding to that excess**.

**The General Court therefore awards Gascogne damages amounting to €47 064.33<sup>9</sup> as compensation for the material harm** it suffered as a result of the failure to adjudicate within a reasonable time in Cases T-72/06 and T-79/06, consisting in the payment of additional bank guarantee costs.

The General Court also recognises that Gascogne Sack Deutschland and Gascogne suffered non-material harm as a result of the excessive length of the proceedings in Cases T-72/06 and T-79/06: **the failure to adjudicate within a reasonable period in those cases placed the two companies in a situation of uncertainty which went beyond the degree of uncertainty usually caused by litigation**. That state of prolonged uncertainty necessarily had an influence on the planning of decisions to be taken and on the management of those companies and therefore constituted non-material harm.

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<sup>7</sup> Since Gascogne paid the bank guarantee costs, the Court considers that Gascogne Sack Deutschland did not suffer any harm in that respect.

<sup>8</sup> The two companies also invoked the fact that they had to pay, beyond a reasonable period, statutory interest applied to the amount of the fine imposed by the Commission and that they were deprived of the opportunity of finding an investor earlier. The Court rejects that alleged harm for lack of evidence.

<sup>9</sup> That amount does not correspond to the amount paid over the course of the unjustified 20-month period of inactivity of the General Court, but solely to the period between 30 May 2011 and 16 November 2011 (the date on which the judgments in Cases T-72/06 and T-79/06 were delivered). In its action, Gascogne seeks only compensation for the losses suffered after 30 May 2011 as a result of bank guarantee costs.

The Court deems it appropriate to **award each of the two companies damages of €5 000 as compensation for the non-material harm.**

In addition, the Court holds that the damages of €47 064.33 awarded to Gascogne must be increased by **compensatory interest**, as from 4 August 2014 until the delivery of the judgment today, at the annual rate of inflation reported by Eurostat for the period concerned in France (the Member State in which Gascogne is established). Likewise, **late payment interest** must be added to both the damages of €47 064.33 and the damages of €5 000 awarded to each of the two companies, as from the delivery of the judgment today until the damages are paid in full, at the rate set by the European Central Bank for its main refinancing operations, increased by two percentage points.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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