



Court of Justice of the European Union

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Judgments in Joined Cases C-138/17 P European Union v Gascogne Sack Deutschland and Gascogne and C-146/17 P Gascogne Sack Deutschland and Gascogne v European Union, in Case C-150/17 P European Union v Kendrion and in Joined Cases C-174/17 P European Union v ASPLA and Armando Álvarez and C-222/17 P ASPLA and Armando Álvarez v European Union

Press and Information

The Court sets aside the damages imposed on the EU by the General Court on account of bank guarantee charges incurred by several undertakings in the context of excessively long proceedings before the General Court

The EU is not liable for the costs that those undertakings incurred as a result of maintaining, of their own choosing, bank guarantees in favour of the Commission for the payment of fines at a time when it was obvious to them that the proceedings before the General Court in relation to those fines would be excessively long

In February 2006, Gascogne Sack Deutschland (formerly Sacha Verpackung), Gascogne (formerly Group Gascogne), Kendrion, ASPLA and Armando Álvarez brought actions before the General Court for the annulment of the Commission Decision made in respect of them concerning a cartel in the industrial bags sector.¹

In 2011, the General Court dismissed the actions of those companies.² On appeal, the Court of Justice, by judgments in 2013,³ upheld the judgments of the General Court and, accordingly, the fines imposed upon the companies. However, in its judgments, the Court of Justice found that the length of the proceedings before the General Court had been excessive, so that the companies concerned were entitled to bring actions for damages aimed at compensating any damage suffered as a result of the delay in dealing with the cases.

In 2014 and 2015, the companies each brought actions before the General Court against the EU for compensation for the damage allegedly suffered as a result of the length of the proceedings before the General Court.

In 2017, the General Court gave its judgments in those cases and ordered the EU to pay compensation to those companies for (i) the material damage resulting from the fact that they had been required to maintain longer than initially foreseen the bank guarantees provided to the Commission for the future payment of the fines that had been imposed on them on account of the abovementioned cartel and (ii) the non-material damage arising from the state of uncertainty in which those companies found themselves because of the delay by the General Court in ruling on their cases:

Company	General Court	Material damage	Non-material damage
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¹ 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).

² Cases [T-72/06](#) Groupe Gascogne v Commission, [T-79/06](#) Sascha Verpackung v Commission, [T-54/06](#) Kendrion v Commission, [T-76/06](#) ASPLA v Commission and [T-78/06](#) Armando-Álvarez v Commission.

³ Cases [C-40/12 P](#) Gascogne Sack Deutschland v Commission and [C-58/12 P](#) Gascogne v Commission, [C-50/12 P](#) Kendrion v Commission, see also Press Release No [150/13](#), and [C-35/12 P](#) ASPLA v Commission and [C-36/12](#) Armando Álvarez v Commission.

	Judgment	(the payment of bank guarantee costs)	(the state of uncertainty for the company)
Gascogne Sack Deutschland	T-577/14 (see also PR No 1/17)	€0	€5 000
Gascogne	T-577/14	€47 064.33	€5 000
Kendrion	T-479/14	€588 769.18	€6 000
ASPLA	T-40/15	€44 951.24	€0
Armando Álvarez	T-40/15	€111 042.48	€0

In 2017, the EU and the companies concerned, with the exception of Kendrion, brought appeals against the judgments of the General Court.

By today's judgments, the Court rebuts, first of all, Kendrion's argument that, in view of the fact that the EU is represented by the Court of Justice of the European Union, conferring on the Court responsibility for dealing with its case constitutes a conflict of interests harming its right to an independent and impartial tribunal as set out in the Charter of Fundamental Rights of the European Union. In that regard, the Court finds that **that situation results not from a choice by the European Union as appellant, but from the strict application of the EU law rules concerning proceedings relating to compensation for damage caused by the EU and from the rules relating to appeals with regard to this area of disputes**, which unequivocally designate the Court of Justice as having jurisdiction.

The Court observes, next, that the failure by the General Court to adjudicate within a reasonable time constitutes a sufficiently serious breach of EU law which could trigger the EU's financial liability for damage suffered in that context by economic operators on condition that there is a causal link between the breach of law and the damage established.

As regards the causal link, the Court recalls its case-law⁴ that, when a Commission decision requiring the payment of a fine is coupled with the option of lodging a security intended to ensure that payment, pending the outcome of an action brought against that decision, **the damage consisting of the guarantee fees results, not from that decision, but from the interested party's own choice to lodge a security rather than to pay the fine immediately. The existence of such an option for the interested party severs the causal link between the breach of law and the damage allegedly suffered, so that the conduct alleged against the European Union can no longer be considered to be the determining cause of the damage.**

In those circumstances, the Court finds that **the General Court was wrong to take the view that the link between the fact that the reasonable time for adjudicating in the cases in question was exceeded and the payment of bank guarantee charges during that excess period cannot have been severed by the decision of the companies concerned not to effect immediate payment of the fine imposed and to provide a bank guarantee.**

In that context, the Court finds that that conclusion is not called into question by the circumstance that, at the time when those companies provided their bank guarantees, the breach of the obligation to adjudicate within a reasonable time was unforeseeable. Like the provision of bank guarantees, **the maintenance of those guarantees is optional for the undertakings concerned**, which are thus free, at any time, to terminate the bank guarantee that they have provided and to pay the fine imposed. That possibility was also open to the companies concerned

⁴ Case [C-460/09 P](#) Inalca and Cremonini v Commission.

in the present case when they realised that, in view of the slow progression of their cases before the General Court, the cost of their bank guarantees would be greater than the cost that they had initially envisaged when providing those guarantees.

Accordingly, **the Court sets aside the judgments under appeal in so far as the General Court awarded the companies concerned compensation for the material damage resulting from maintaining bank guarantees, and dismisses the claims of those companies for compensation in this respect.**

Lastly, the Court dismisses the appeals brought by the companies in question in their entirety and upholds the compensation granted by the General Court to those companies in respect of non-material damage.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The full text of the judgments [C-138/17 P](#), [C-150/17 P](#) and [C-174/17 P](#) are published on the CURIA website on the day of delivery.

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