Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

20 January 2021 *

(Appeal – Competition – Agreements, decisions and concerted practices – Decision finding infringement of Article 101 TFEU – Fines – Annulment – Repayment of the principal amount of the fine – Article 266 TFEU – Default interest – Distinction between default interest and compensatory interest – Calculation of interest – Article 90(4)(a), second sentence, of Delegated Regulation (EU) No 1268/2012)

In Case C-301/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 11 April 2019,

European Commission, represented by F. Dintilhac, P. Rossi and F. Jimeno Fernández, acting as Agents,

appellant,

the other party to the proceedings being:

Printeos SA, established in Alcalá de Henares (Spain), represented by H. Brokelmann and P. Martínez-Lage Sobredo, abogados,

applicant at first instance,

THE COURT (Fourth Chamber),

composed of M. Vilaras (Rapporteur), President of the Chamber, N. Piçarra, D. Šváby, S. Rodin and K. Jürimäe, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

* Language of the case: Spanish.

Judgment

1 By its appeal, the European Commission asks the Court of Justice to set aside the judgment of the General Court of the European Union of 12 February 2019, *Printeos* v *Commission* (T-201/17, EU:T:2019:81; 'the judgment under appeal'), by which the General Court, upholding in part Printeos SA's action, ordered the European Union, represented by the Commission, to compensate the loss sustained by that company because of the failure to pay to that company the EUR 184 592.95 owed to it in default interest for the period from 9 March 2015 to 1 February 2017 pursuant to the first paragraph of Article 266 TFEU, in compliance with the judgment of the General Court of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), and ordered that that compensation bear default interest, starting from the date of delivery of the judgment under appeal and continuing until full payment, at the rate set by the European Central Bank (ECB) for its principal refinancing operations ('the ECB refinancing rate'), plus 3.5 percentage points.

2 Printeos brought a cross-appeal by which it seeks the annulment in part of point 2 of the operative part of the judgment under appeal, relating to the *dies a quo* of that increase.

Legal context

Regulation (EC) No 1/2003

3 Article 31 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), entitled 'Review by the Court of Justice', provides:

'The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.'

The Financial Regulation

4 Under the heading 'Establishment of amounts receivable', Article 78 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1, 'the Financial Regulation'), read as follows:

'1. The establishment of an amount receivable is the act by which the authorising officer responsible:

(a) verifies that the debt exists;

(b) determines or verifies the reality and the amount of the debt;

(c) verifies the conditions according to which the debt is due.

2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order to

the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.

3. Amounts wrongly paid shall be recovered.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the establishment of amounts receivable, including procedures and supporting documents, and of default interest.'

5 Article 83 of the Financial Regulation, entitled 'Fines, penalties and accrued interest imposed by the Commission', provided:

'1. Amounts received by way of fines, penalties and sanctions, and any accrued interest or other income generated by them shall not be recorded as budgetary revenue as long as the decisions imposing them may be overruled by the Court of Justice of the European Union.

2. The amounts referred to in paragraph 1 shall be recorded as budgetary revenue as soon as possible and at the latest in the year following the exhaustion of all legal remedies. Amounts that are to be returned to the entity that paid them, following a judgment of the Court of Justice of the European Union, shall not be recorded as budgetary revenue.

…

4. The Commission shall be empowered to adopt delegated acts … concerning detailed rules on the amounts received by way of fines, penalties and accrued interest.'

6 Article 92 of the Financial Regulation, entitled 'Time limits', provided:

'1. Payments shall be made within:

(a) 90 calendar days for delegation agreements, contracts, grant agreements and decisions involving technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate;

(b) 60 calendar days for all other delegation agreements, contracts, grant agreements and decisions for which payment depends on the approval of a report or a certificate;

(c) 30 calendar days for all other delegation agreements, contracts, grant agreements and decisions.

…

5. Except in the case of Member States, on expiry of the time limits laid down in paragraph 1, the creditor shall be entitled to interest.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on time limits for payment and on the specification of the circumstances in which creditors in receipt of a late payment are entitled to receive default interest charged to the line from which the principal was paid.'

Delegated Regulation (EU) No 1268/2012

7 Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of the Financial Regulation (OJ 2012 L 362, p. 1) was adopted by the Commission pursuant to Article 78(4) of the Financial Regulation.

8 Article 80(3) of Delegated Regulation No 1268/2012 provided:

'The debit note shall be to inform the debtor that

…

(b) if payment of the debt is made before the deadline, no default interest will be due;

…'

9 Under Article 83 of Delegated Regulation No 1268/2012, entitled 'Default interest':

'1. Without prejudice to any specific provisions deriving from the application of sector-specific regulations, any amount receivable not repaid on the deadline referred to in Article 80(3)(b) shall bear interest in accordance with paragraphs 2 and 3 of this Article.

2. The interest rate for amounts receivable not repaid on the deadline referred to in Article 80(3)(b) shall be the [ECB refinancing rate], in force on the first calendar day of the month in which the deadline falls, increased by:

(a) eight percentage points where the obligating event is a public supply and service contract referred to in Title V;

(b) three and a half percentage points in all other cases.

3. Interest shall be calculated from the calendar day following the deadline referred to in Article 80(3)(b) and specified in the debit note up to the calendar day on which the debt is repaid in full.

The recovery order corresponding to the amount of the default interest shall be issued when this interest is actually received.

4. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer instead of payment, the interest rate applicable from the deadline referred to in Article 80(3)(b) shall be the rate referred to in paragraph 2 of this Article as in force on the first day of the month in which the decision imposing a fine has been adopted and increased only by one and a half percentage points.'

10 Article 90 of Delegated Regulation No 1268/2012, entitled 'Recovery of fines or other penalties', provided:

'1. Where an action is brought before the Court of Justice of the European Union against a Commission decision imposing a fine or other penalties under the [FEU Treaty] or Euratom Treaty and until such time as all legal remedies have been exhausted, the debtor shall either

provisionally pay the amounts concerned on the bank account designated by the accounting officer or provide a financial guarantee acceptable to the accounting officer. The guarantee shall be independent of the obligation to pay the fine or penalty payment or other penalties and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 83(4).

2. The Commission shall secure the provisionally cashed amounts by having them invested in financial assets thus ensuring the security and liquidity of the monies whilst also aiming at yielding a positive return.

…

4. After all legal remedies have been exhausted and where the fine or penalty has been cancelled or reduced any of the following measures shall be taken:

(a) the amounts unduly collected together with the interest yielded shall be repaid to the third party concerned. In cases where the overall return yielded for the relevant period has been negative, the nominal value of the amounts unduly collected shall be repaid;

(b) where a financial guarantee has been lodged, the latter shall be released accordingly.'

11 Article 111(4) of Delegated Regulation No 1268/2012 provided:

'On expiry of the time limits laid down in Article 92(1) of the Financial Regulation, the creditor shall be entitled to interest in accordance with the following conditions:

(a) the interest rates shall be those referred to in Article 83(2) of this Regulation;

(b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment laid down in Article 92(1) of the Financial Regulation up to the day of payment.

…'

Background to the dispute

12 The background to the dispute, as set out in paragraphs 1 to 27 of the judgment under appeal, may, for the purposes of the present proceedings, be summarised as follows.

13 By Article 1(5)(a) of Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (AT.39780 – Envelopes) ('the 2014 Decision'), the Commission found that Printeos had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) by participating, from 8 October 2003 to 22 April 2008, in an agreement concluded and implemented on the European stock/catalogue and special printed envelopes market covering, inter alia, Denmark, Germany, France, Sweden, the United Kingdom and Norway.

14 In Article 2(1)(e) of the 2014 Decision, the Commission imposed on Printeos, jointly and severally with certain of its subsidiaries, a fine of EUR 4 729 000 for the infringement found.

15 Article 2(2) of the 2014 Decision stated that the fine imposed had to be paid within 3 months of the date of notification of the decision.

16 Article 2(3) of the 2014 Decision provided as follows:

'After expiry of that period, interest shall automatically be payable at [the ECB refinancing rate] on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable financial guarantee or making a provisional payment of the fine in accordance with Article 90 of [Delegated Regulation No 1268/2012].'

17 Printeos was notified of the 2014 Decision on 11 December 2014. By email of 16 February 2015, the Commission reminded Printeos that the fine imposed in the 2014 Decision had to be covered within 3 months of notification of the 2014 Decision and that, if Printeos decided to bring an action for annulment before the General Court, it had either to provide an adequate bank guarantee or to make provisional payment of the fine.

18 The Commission attached a note to that email entitled 'Information Note on Provisionally Paid or Guaranteed Fines' of 20 July 2002, which stated inter alia as follows:

'… the Accounting Officer shall provisionally collect the amounts of fines contested before the Court of Justice of the European Union from the company concerned or request it to provide a guarantee. After all legal remedies have been exhausted, the provisionally collected amounts and the interest they have yielded shall be entered into the budget or fully or partially repaid to the company concerned.

…

As regards fines decided by the Commission as from 2010, the Commission will invest the provisionally paid amounts in a fund composed of a portfolio of assets with an exposure limited to high quality sovereign credit risk and a residual maturity of up to [2] years. The fund shall be managed by Commission services.

In case the Court annuls the fine, fully or in part, the Commission will accordingly reimburse the amount of the fine in full or in part, together with a guaranteed return thereon.

The guaranteed return is based on the performance of the specific benchmark, calculated for the period of investment. …'

19 Printeos brought an action before the General Court on 20 February 2015 seeking, as its main claim, annulment of the 2014 Decision as far as it concerned it and then, on 9 March 2015, Printeos made provisional payment of the fine imposed by the 2014 Decision.

20 The amount of the fine paid by Printeos was paid into a financial asset fund ('the BUFI Fund') created pursuant to Commission Decision C(2009) 4264 final of 15 June 2009 concerning the reduction in the risks of management of fines provisionally cashed, a fund which is managed by the Directorate-General for Economic and Financial Affairs. That decision was based on Article 74 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), replaced by Article 83 of the Financial Regulation.

21 By judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), the General Court annulled Article 2(1)(e) of the 2014 Decision. Since no appeal was brought against that judgment within the prescribed period, it became final.

22 An exchange of emails between the Commission and Printeos took place on 26 January 2017. The Commission informed Printeos that, following the annulment by the General Court of the 2014 Decision in so far as it imposed a fine on Printeos, it was going to repay the fine provisionally paid. Printeos claimed that the repayment should include interest on the amount of that fine from the date of its provisional payment, 9 March 2015, at the ECB refinancing rate, plus 3.5 percentage points, corresponding to the same interest rate as specified in Article 2(3) of the 2014 Decision in the event of late payment of a fine. By two emails of the same date, the Commission rejected that claim, reiterating, as stated in the information note in the attachment to its email of 16 February 2015, provisionally cashed fines are invested in a fund and if annulled are repaid together with a guaranteed return thereon, based on the benchmark performance. It was claimed that since that performance was negative for the period during which the amount of the fine paid by Printeos was invested in the BUFI Fund only the principal was required to be repaid.

23 On 27 January 2017, Printeos, relying on Article 266 TFEU and on the judgment of 10 October 2001, *Corus UK* v *Commission* (T-171/99, EU:T:2001:249), reiterated its claim for payment of interest.

24 On 1 February 2017, the Commission repaid Printeos the fine it had paid on 9 March 2015. However, by email of 3 February 2017, the Commission rejected Printeos's arguments in support of its claim for the payment of interest, stating that it was Printeos's decision to provide a provisional payment of the fine rather than a financial guarantee and that, additionally, Printeos was perfectly aware that a provisional payment of the fine would be invested in a fund, the working of which and the concept of the guaranteed return were explained in detail in the information note in the attachment to the email of 16 February 2015.

The procedure before the General Court and the judgment under appeal

25 By application lodged at the Registry of the General Court on 31 March 2017, Printeos brought an action seeking, in the principal, that the General Court order the Commission to pay it, first, compensation of EUR 184 592.95, corresponding to compensatory interest on the amount of EUR 4 729 000 at the ECB refinancing rate increased by 2 percentage points for the period from 9 March 2015 to 1 February 2017 or, failing that, at the interest rate deemed appropriate by the General Court and, second, compensatory interest on EUR 184 592.95 for the period from 1 February 2017 to the date on which the Commission actually paid that amount, at the ECB refinancing rate increased by 3.5 percentage points, or, failing that, at the interest rate deemed appropriate by the General Court and, in the alternative, annul the two emails of the Commission of 26 January 2017.

26 Printeos's first two heads of claim were based, in the principal, on the first paragraph of Article 266 TFEU and, in the alternative, on the first paragraph of Article 266 TFEU, Article 268 TFEU and the second paragraph of Article 340 TFEU and on Article 41(3) of the Charter of Fundamental Rights of the European Union.

27 At the hearing before the General Court, in response to questions put by that court, Printeos, first, stated that it no longer wished to maintain the first paragraph of Article 266 TFEU as the main legal basis, by way of an independent form of action, of the first head of claim of its application and, second, confirmed that the term 'compensatory interest' referred to in its application should be understood as meaning 'default interest' within the meaning of paragraph 30 of the judgment of 12 February 2015, *Commission* v *IPK International*, (C-336/13 P, EU:C:2015:83). Furthermore, Printeos requested, at the same time, an increase in the ECB refinancing rate, as referred to in the first head of claim of its action, to 3.5 percentage points.

28 By the judgment under appeal, the General Court upheld Printeos's action in part and ordered the European Union, represented by the Commission, to redress the harm sustained by Printeos because of the failure to pay Printeos EUR 184 592.95 in default interest for the period from 9 March 2015 to 1 February 2017 pursuant to the first paragraph of Article 266 TFEU, in compliance with the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722). It also stated that the compensation owed to Printeos was to bear default interest, starting from the date of delivery of the judgment under appeal and would continue until full payment, at the ECB refinancing rate, plus 3.5 percentage points, and dismissed the action as to the remainder.

29 The General Court considered, in paragraphs 55 to 68 of the judgment under appeal, whether there had been a sufficiently serious breach of the first paragraph of Article 266 TFEU.

30 In that context, referring, in particular, to the judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83, paragraphs 29 and 30), the General Court stated, in paragraph 56 of the judgment under appeal, that, in the event of the annulment of a decision imposing a fine or of a decision ordering repayment of sums unduly received, the case-law has recognised the right of the party concerned to be restored to the situation which it was in before that decision, which involves, inter alia, repayment of the principal sum that was unduly paid because of the annulled decision and the payment of default interest, since payment of default interest constitutes a measure giving effect to a judgment annulling a measure for the purposes of the first paragraph of Article 266 TFEU in that it is designed to provide compensation at a standard rate for the loss of use of the monies owed and to encourage the debtor to comply with that judgment as soon as possible.

31 In paragraphs 60 to 65 of the judgment under appeal, the General Court examined whether the Commission's failure to pay default interest to Printeos and the application of Article 90(4)(a) of Delegated Regulation No 1268/2012 constituted compliance with the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722) in accordance with the requirements arising from the first paragraph of Article 266 TFEU. Following that examination, the General Court noted, in paragraph 66 of the judgment under appeal, that the Commission had erred in taking the view that that provision prevented it from fulfilling its absolute and unconditional obligation to pay default interest pursuant to the first paragraph of Article 266 TFEU. It added that the term 'interest yielded', within the meaning of Article 90(4)(a), could not be characterised as 'default interest' or compensation at a standard rate, but denoted only a real positive return on the investment of the amount in question.

32 The General Court therefore held, in paragraph 67 of the judgment under appeal, that, pursuant to the first paragraph of Article 266 TFEU as interpreted in the case-law, the Commission was required, in terms of measures to comply with the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), not only to repay Printeos the principal amount of the fine in question but also to pay Printeos default interest.

33 In paragraph 68 of the judgment under appeal, the General Court rejected the Commission's arguments that Printeos might have been unjustly enriched, given the negative return on the principal amount of the fine in question in the period during which it was placed in the BUFI Fund, on the ground that those arguments were directly at odds with the principle of compensation at a standard rate through the payment of default interest laid down in the case-law.

34 Accordingly, the General Court found, in paragraph 69 of the judgment under appeal, that there had been a sufficiently serious breach of the first paragraph of Article 266 TFEU which may render the European Union non-contractually liable pursuant to the second paragraph of that article, read in conjunction with the second paragraph of Article 340 TFEU.

35 As regards the other conditions for the European Union's non-contractual liability, the General Court noted, in paragraph 71 of the judgment under appeal, that the infringement by the Commission of its obligation to pay default interest under the first paragraph of Article 266 TFEU had a sufficiently direct causal link with the harm sustained by Printeos, which was equivalent to the loss of default interest.

36 As regards the amount of loss to be compensated, the General Court set, in paragraph 75 of the judgment under appeal, the principal amount of recoverable compensation at EUR 184 592.95, that sum corresponding to default interest, at the ECB refinancing rate, plus two percentage points, incurred during the period from 9 March 2015 to 1 February 2017. The General Court observed, in paragraph 73 of that judgment, that Printeos had referred to that amount in the first head of claim in its application, without being challenged on that point by the Commission.

37 The General Court dismissed Printeos's claim, at the hearing, that the ECB refinancing rate be increased to 3.5 percentage points, taking the view, in paragraph 74 of the judgment under appeal, that that claim was belated and contrary to the principle that the forms of order sought by the parties may not be altered and that the *ultra petita* rule prohibited the General Court from going beyond Printeos's claim as set out in the first head of claim in its application.

38 As regards the claim for the award of default interest under the second head of claim, the General Court awarded Printeos, in paragraph 76 of the judgment under appeal, default interest from the date of delivery of that judgment until full payment by the Commission and at the ECB refinancing rate plus 3.5 percentage points. By contrast, the General Court rejected that claim in so far as it sought payment of default interest from 1 February 2017.

Forms of order sought by the parties before the Court of Justice

39 The Commission claims that the Court should:

– set aside the judgment under appeal;

– rule on the substance of the case, dismiss Printeos's claim for compensation and the plea of illegality it raised in respect of Article 90(4)(a) of Delegated Regulation No 1268/2012 as unfounded and dismiss the claim for annulment of the two emails of 26 January 2017 as inadmissible or, in the alternative, unfounded; and

– order Printeos to pay the costs of both sets of proceedings.

40 Printeos contends that the Court should:

– dismiss the appeal;

– in the alternative, ruling on the substance, uphold its claim for damages by ordering the Commission to pay compensation in the amount of EUR 184 592.95 plus default interest from the date on which the action in Case T-201/17 was brought, namely 31 March 2017, until the date on which that interest was actually paid;

– in the further alternative, in the event that its claim for damages is dismissed, annul the Commission's decision as contained in the two emails of 26 January 2017; and

– order the Commission to pay the costs of both sets of proceedings.

41 By its cross-appeal, Printeos claims that the Court should:

– set aside in part point 2 of the operative part of the judgment under appeal, relating to the increase in compensation of EUR 184 592.95 in default interest from the date of delivery of that judgment, and, ruling on the substance, order the Commission to pay default interest on that compensation, calculated at the ECB refinancing rate, plus 3.5 percentage points, from the date on which the action was brought, namely 31 March 2017, until the date on which that interest is actually paid; and

– order the Commission to pay the costs of both sets of proceedings.

42 The Commission contends that the cross-appeal should be dismissed as inadmissible or, in the alternative, unfounded and that Printeos should be ordered to pay the costs relating thereto.

The appeal

43 In support of its appeal, the Commission relies on five grounds of appeal, alleging (i) infringement by the General Court of the rights of the defence and of the principle of *ne ultra petita*; (ii) incorrect interpretation of Article 266 TFEU; (iii) failure by the General Court to take account of the new regulatory framework in the field of competition; (iv) an error of law as regards the conditions for establishing non-contractual liability of the European Union; and (v) infringement of the principles of legality and legal certainty.

44 The Court considers it appropriate to examine, first of all, the first ground of appeal, then, the second together with the third grounds of appeal, followed by the fifth ground of appeal and, lastly, the fourth ground of appeal.

The first ground of appeal: infringement of the rights of the defence and of the principle of ne ultra petita

Arguments of the parties

45 By its first ground of appeal, the Commission claims that the General Court erred in law and infringed its rights of defence in allowing Printeos to change the nature of the dispute. It recalls that, throughout the proceedings before the General Court and until the stage of the questions at the hearing, Printeos requested that the Commission be ordered to pay it an amount which it characterised as 'compensatory interest'. It was only in response to a question to that effect from the General Court that Printeos recharacterised that amount as 'default interest'.

46 The Commission therefore considers that, by proceeding in that way, the General Court failed to have regard to the case-law of the Court of Justice relating to the EU judicature's obligation to examine the heads of claim of a party as formulated in its written pleadings, without altering their nature or substance and ruled *ultra petita*.

47 Printeos acknowledges that it reclassified the interest claimed in its action at the General Court's express request, but points out that this was merely a change in the legal classification of the interest which it claimed and did not affect the form of order sought in its application, seeking the payment of EUR 184 592.95, namely the exact amount set out in the operative part of the judgment under appeal.

Findings of the Court

48 The Court of Justice finds that, by its action before the General Court, Printeos sought an order that the Commission pay it in the amount of EUR 184 592.95 by way of interest, which it termed 'compensatory', to which it claimed to be entitled for the period from the date of provisional payment of the fine imposed on it by the 2014 Decision to the date on which the amount of that fine was repaid by the Commission.

49 However, as is apparent from paragraph 32 of the judgment under appeal, in response to an oral question from the General Court at the hearing, Printeos confirmed that the term 'compensatory interest', used in its action, must be understood as referring to 'default interest' within the meaning of the judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83, paragraph 30).

50 According to the Commission, which relies in that regard, in particular, on the judgment of 7 June 2018, *Ori Martin* v *Court of Justice of the European Union* (C-463/17 P, EU:C:2018:411, paragraph 18), by admitting Printeos's recharacterisation of the interest which it claimed, the General Court endorsed an unlawful change in the nature of the dispute, in breach of the Commission's rights of defence, and therefore ruled *ultra petita*.

51 That line of argument cannot succeed. It is apparent from the judgment under appeal that the General Court did indeed comply with the obligation, to which paragraph 18 of the judgment of 7 June 2018, *Ori Martin* v *Court of Justice of the European Union* (C-463/17 P, EU:C:2018:411) refers, to examine the various heads of claim and pleas in law submitted by Printeos, as formulated in its written pleadings, without altering their nature or substance.

52 In awarding Printeos interest which it characterised as 'default', the General Court relied solely on the facts alleged by Printeos in its application, namely the provisional payment of the fine at issue, the annulment of the 2014 Decision in the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), and the Commission's obligation to repay, on the date of delivery of that judgment, the provisionally paid fine.

53 The General Court also awarded Printeos, by way of interest, the exact amount claimed by Printeos in its application. As is apparent from paragraph 74 of the judgment under appeal, it rejected, as belated and contrary to the principle that the forms of order sought by the parties may not be altered, Printeos's request that the interest rate claimed be increased from the interest rate claimed in its application.

54 It is true that the General Court characterised the interest claimed by Printeos differently from Printeos. However, in doing so, it merely applied the legal characterisation which seemed to it to be appropriate to the facts alleged by Printeos, in accordance with the principle *iura novit curia*.

55 In that regard, it is clear from the case-law of the Court of Justice that the obligation to pay default interest is designed to compensate at a standard rate for the loss of enjoyment of the monies owed and to encourage the debtor to pay monies owed as soon as possible (see, to that effect, judgment of 12 February 2015, *Commission* v *IPK International*, C-336/13 P, EU:C:2015:83, paragraph 30). Such an obligation can arise only where the amount of the principal sum owed is certain or can at least be ascertained on the basis of established objective factors.

56 As far as compensatory interest is concerned, that category of interest is designed to compensate for the time that passes before the judicial assessment of the amount of the loss sustained, irrespective of any delay attributable to the debtor. It therefore belongs to the general law on the non-contractual liability of the European Union for the purposes of the second paragraph of Article 266 TFEU and Article 340 TFEU (judgment of 12 February 2015, *Commission* v *IPK International*, C-336/13 P, EU:C:2015:83, paragraph 37).

57 In so far as the General Court held that the facts alleged by Printeos in its action, if established, justified an order that the Commission pay that company the amount which it claimed as default interest, within the meaning of the case-law cited in paragraph 55 above, the General Court was, without infringing the principle of *ne ultra petita*, entitled to recharacterise the claim for payment of that amount as relating to the payment of default interest, which, moreover, Printeos itself confirmed in response to a question put by the General Court.

58 Although the EU judicature must rule only on the heads of claim put forward by the parties, whose role it is to define the framework of the dispute, it cannot confine itself to the arguments put forward by the parties in support of their claims, or it might be forced, in some circumstances, to base its decisions on erroneous legal considerations (judgment of 21 September 2010, *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 65 and the case-law cited).

59 The facts of the present case are thus different from those of the case which gave rise to the judgment of 7 June 2018, *Ori Martin* v *Court of Justice of the European Union* (C-463/17 P, EU:C:2018:411), cited by the Commission. As is apparent from paragraph 23 of that judgment, in that case the General Court examined the question whether the defendant had committed an irregularity other than that alleged by the applicant in its application.

60 However, as has already been pointed out, in the present case, the General Court relied exclusively on the facts alleged by Printeos in awarding Printeos the exact amount it claimed in its action. In so doing, it admitted no unlawful change in the nature of the dispute in the course of the proceedings and nor did it infringe the Commission's rights of defence.

61 The first ground of appeal is therefore unfounded and must be dismissed.

The second and third grounds of appeal: misinterpretation of Article 266 TFEU and failure by the General Court to take account of the new regulatory framework in the field of competition

Arguments of the parties

62 In its second ground of appeal, the Commission submits that the General Court erred in law by holding, in paragraphs 55 and 56 of the judgment under appeal, that, in the circumstances of that case, the first paragraph of Article 266 TFEU imposed on the Commission an obligation, absolute and unconditional, to pay default interest from the date of provisional payment of the fine at issue. It maintains that that interpretation is the result of a misreading of the case-law of both the Court of Justice and of the General Court.

63 In its third ground of appeal, the Commission states that it follows from Article 266 TFEU that the institution whose measure has been declared invalid is required to take the necessary measures to comply with a judgment annulling a measure. Article 90 of Delegated Regulation No 1268/2012 constitutes a mechanism for implementing that obligation in the case of fines imposed for the infringement of competition rules. Since it adopted a fresh decision following the annulment of the 2014 Decision and it applied Article 90 of that delegated regulation, as regards the repayment of the fine at issue, the Commission considers that it complied fully with its obligations under Article 266 TFEU. In its view, in the light of Article 90 of Delegated Regulation No 1268/2012, the adoption of which post-dates the facts at issue in the case giving rise to the judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83), the conclusions to be drawn from that judgment must be qualified.

64 The Commission considers that it would have been under an obligation to pay default interest to Printeos only in the event of late repayment of the fine paid by Printeos after the annulment of the 2014 Decision. It submits that the General Court therefore failed to have regard, in paragraph 67 of the judgment under appeal, to the nature and purpose of default interest, which is to encourage the debtor to perform its payment obligation promptly. It asserts that the General Court confused default interest and compensatory interest, as is apparent from paragraph 56 of the judgment under appeal, and, in paragraph 32 of that judgment, misread paragraph 30 of the judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83). In that regard, the Commission emphasises that it was required to pay compensatory interest only in the event of inflation between the date of payment of that fine and the date of its repayment. In the present case, there was no such inflation.

65 Printeos disputes the Commission's arguments and states that it maintains the plea of illegality in respect of Article 90 of Delegated Regulation No 1268/2012, which it raised before the General Court.

Findings of the Court

66 It is apparent from the case-law of the Court of Justice that, where amounts are received in breach of EU law, a right of restitution arises under EU law (see, to that effect, judgment of 19 July 2012, *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraph 26).

67 That is the case, in particular, where the amounts were received pursuant to an EU measure declared invalid or annulled by the EU judicature (see, to that effect, judgment of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraph 37 and the case-law cited).

68 As particularly regards the annulment, by the EU judicature, of an EU measure involving payment of an amount to the European Union, the Court of Justice held that the payment of default interest constitutes a measure giving effect to a judgment annulling a measure, for the purposes of the first paragraph of Article 266 TFEU, in that it is designed to compensate at a standard rate for the loss of enjoyment of the monies owed and to encourage the debtor to comply with that judgment as soon as possible (judgment of 12 February 2015, *Commission* v *IPK International*, C-336/13 P, EU:C:2015:83, paragraph 30).

69 Therefore, by setting out, in essence, in paragraphs 55 and 56 of the judgment under appeal, the same considerations as those set out in paragraphs 66 to 68 of the present judgment, the General Court did not err in law.

70 As regards the Commission's argument based on Article 90 of Delegated Regulation No 1268/2012, it must be noted, as did the General Court in paragraph 61 of the judgment under appeal, that a provision of secondary legislation must be interpreted in accordance with the provisions of the Treaties, in particular Article 266 TFEU.

71 Accordingly, the General Court was entitled to hold, in paragraph 66 of the judgment under appeal, that Article 90 did not prevent the Commission from fulfilling its obligation to pay default interest.

72 Article 90(2) of Delegated Regulation No 1268/2012 provides that the Commission is to invest the provisionally cashed amounts in financial assets to ensure the security and liquidity of the monies whilst also aiming at yielding a positive return. Furthermore, under Article 90(4)(a), where the fine or penalty has been cancelled or reduced, after all legal remedies have been exhausted, the amounts unduly collected are to be repaid together with the interest yielded.

73 Thus, it does not follow from Article 90 of Delegated Regulation No 1268/2012 that, where the Commission is required to repay the amount of a fine provisionally collected, it is, in any event, exempted from the obligation to include default interest on that amount.

74 It is true that although the 'interest yielded' which the Commission is required, under Article 90(4) of that regulation, to pay to the party concerned at the same time as the repayment of the principal amount unduly paid by it is equal to or greater than the default interest payable in respect of the principal, the Commission is not required to pay default interest to the party concerned together with the interest yielded.

75 That is not, however, the case where the interest yielded is lower than that of the default interest payable, or even where there is no interest yielded, the return on the capital invested having been negative.

76 In that situation, in order to comply with its obligation under Article 266 TFEU, the Commission is required to pay to the party concerned the difference between the amount of 'interest yielded', within the meaning of Article 90(4) of Delegated Regulation No 1268/2012, and the amount of default interest owed for the period from the date of payment of the amount in question to the date of its repayment.

77 In the present case, since it is common ground that the investment by the Commission of the amount of the fine paid by Printeos pursuant to the 2014 Decision did not yield interest, the General Court was correct to hold that the Commission was required to repay Printeos that amount together with interest following the annulment of that decision, without that being precluded by Article 90 of Delegated Regulation No 1268/2012.

78 The General Court was also correct to characterise that interest as 'default' interest. It was interest required on the payment of a fixed amount receivable, namely that of the fine imposed on Printeos in the 2014 Decision which Printeos had paid on a provisional basis and was to be repaid to it following the annulment of that decision. As is clear from the case-law cited in paragraph 55 of the present judgment, the interest owed in such a case is default interest.

79 Thus, contrary to what the Commission claims, the General Court did not confuse, in the judgment under appeal, default interest and compensatory interest. In so far as the principal to be repaid to Printeos was certain and did not require assessment by a court, it is apparent from the case-law cited in paragraph 56 above that there can be no question, in the present case, of the payment of compensatory interest.

80 The foregoing considerations are not contradicted by the judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union* (C-447/17 P and C-479/17 P, EU:C:2019:672), relied on by the Commission in its written pleadings.

81 It is apparent from paragraph 56 of that judgment that, for the purposes of determining the amount of default interest which must be paid to an undertaking which has paid a fine imposed by the Commission, following the annulment of that fine, the Commission must apply the rate fixed for that purpose by Delegated Regulation No 1268/2012. That regulation refers not to Article 90 thereof, which does not mention any interest rate, but to Article 83 of the regulation, which sets the interest rate for amounts receivable not repaid on the deadline.

82 It must also be borne in mind that, as is apparent from paragraph 54 of the judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union* (C-447/17 P and C-479/17 P, EU:C:2019:672), in the case which gave rise to that judgment, the Commission had adopted a decision ordering the undertaking concerned to repay the part of the fine annulled by the EU judicature, together with default interest, the amount of which had not been challenged by that undertaking.

83 The Court of Justice was called upon only to determine whether that failure to challenge prevented the undertaking from bringing an action for damages in order to obtain compensation for the harm which results from loss of enjoyment of a sum wrongly paid and is not covered by the amount corresponding to the default interest to be paid by the Commission, which the Court answered in the negative (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 64).

84 The Commission's argument that its obligation to repay the provisionally paid fine arose only on the date of delivery of the judgment annulling that fine, so that default interest, calculated from the date of the provisional payment of that fine, could not constitute an incentive 'to comply with the judgment annulling that fine as soon as possible' within the meaning of paragraph 30 of the judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83), cannot succeed either.

85 First, that incentive is only one of the two objectives of the payment of default interest envisaged by the Court in that judgment. The allocation of default interest from the date of provisional payment of the fine at issue pursues the other objective envisaged by the Court, namely restitution at a standard rate for the undertaking which paid that fine for the loss of enjoyment of its funds during the period from the date of provisional payment of that fine to the date of its repayment.

86 Second, the obligation, in the event of annulment of a decision entailing the provisional payment of an amount such as a fine imposed for infringement of competition rules, to repay the amount paid together with default interest calculated from the date of payment of that amount is an incentive for the institution concerned to pay particular attention when adopting such decisions, which may entail an obligation for an individual to pay a considerable amount immediately.

87 It follows from all the foregoing considerations that the second and third grounds of appeal are unfounded and must be dismissed.

The fifth ground of appeal: breach of the principles of legality and legal certainty

Arguments of the parties

88 By its fifth ground of appeal, the Commission claims that the General Court erred in law and infringed the principles of legality and legal certainty by holding that the Commission was required to pay Printeos interest on the amount of the fine to be repaid, calculated on a different basis from that provided for in the second paragraph of Article 2(3) of the 2014 Decision. It states that that provision has not been challenged by Printeos and is therefore final. It also reiterates its arguments set out in the context of the third and fourth grounds of appeal that it is not required to pay Printeos interest in so far as, as soon as the 2014 Decision was annulled, it repaid the fine paid by Printeos promptly and there was no inflation for the period from the date of payment of that fine to the date of its repayment.

89 Printeos disputes the Commission' arguments and contends that the fifth ground of appeal must be dismissed.

Findings of the Court

90 As a preliminary point, the Court rejects, for the reasons set out in the examination of the second and third grounds of appeal, the Commission's arguments based, first, on the fact that it repaid the fine paid by Printeos promptly after the annulment of the 2014 Decision and, second, on the alleged absence of inflation between the payment and repayment dates of that fine. They are merely a repetition of arguments already examined and rejected in the context of the examination of those two grounds of appeal.

91 Nor can the argument of the Commission succeed that, since the second paragraph of Article 2(3) of the 2014 Decision was neither contested by Printeos nor annulled by the General Court, it is required to pay that company interest only in accordance with the conditions laid down in Article 90 of Delegated Regulation No 1268/2012, referred to in the second paragraph of Article 2(3) of that decision.

92 The Court notes that the second paragraph of Article 2(3) of the 2014 Decision relates only to the conditions under which, where an action is brought by an undertaking subject to that decision, that undertaking must cover the fine by the due date by either providing an acceptable financial guarantee or making a provisional payment of the fine in accordance with Article 90 of Delegated Regulation No 1268/2012. That provision does not therefore concern the conditions under which, in the event of the annulment of the decision, the Commission will repay, together with interest, the amount of the fine provisionally paid by that undertaking.

93 Furthermore, the second paragraph of Article 2(3) of the 2014 Decision merely reiterates what follows already from Article 90 of Delegated Regulation No 1268/2012. As is apparent from paragraph 71 above, that article cannot relieve the Commission of its obligation to pay default interest to an undertaking in Printeos's situation.

94 As is apparent from paragraph 68 above, the Commission's obligation, in the event of annulment of a decision imposing a fine for the infringement of competition rules, to repay the amount of the provisionally paid fine with default interest for the period from the date of provisional payment of that fine until the date of its repayment follows directly from Article 266 TFEU.

95 It follows that the Commission does not have the power to adopt, in an individual decision, the conditions under which it will pay default interest in the event of annulment of a decision imposing a fine which has been provisionally paid.

96 The fifth ground of appeal must therefore be dismissed as unfounded.

The fourth ground of appeal: error of law as regards the constituent elements of the European Union's non-contractual liability

Arguments of the parties

97 By its fourth ground of appeal, the Commission claims that the General Court erred in law in finding that the refusal to pay interest on the amount of the fine imposed on Printeos, for the period from the date of payment of that fine provisionally to the date of repayment of that fine, constituted a sufficiently serious breach of Article 266 TFEU, causing Printeos specific and quantifiable loss which it was required to compensate.

98 The Commission reiterates, in that context, its line of argument set out in the other grounds of appeal, according to which, first, the General Court relied on a misinterpretation of Article 266 TFEU and failed to take sufficient account of Article 90 of Delegated Regulation No 1268/2012 and of the second paragraph of Article 2(3) of the 2014 Decision, which has not been disputed by Printeos, and, second, there was no inflation between the payment and repayment dates of that fine.

99 It adds that, in any event, Printeos has not shown that it suffered harm as a result of provisionally paying the fine imposed on it by the 2014 Decision. In particular, according to the Commission, Printeos did not claim, during the administrative procedure, that it was unable to pay that fine, or establish that it was for that reason that it had to resort to external financing. The Commission maintains, in that regard, that, contrary to what is stated in paragraph 73 of the judgment under appeal, it did not at any time accept the amount of compensation claimed by Printeos nor, still less, the basis on which that amount was claimed by Printeos.

100 Printeos disputes the Commission' arguments and contends that the fourth ground of appeal must be dismissed.

Findings of the Court

101 As a preliminary point, it should be noted that, in so far as, in its fourth ground of appeal, the Commission reiterates arguments which it has already put forward in the context of the other grounds of appeal which have already been examined, those arguments must be rejected for the same reasons as those justifying the dismissal of those grounds of appeal.

102 Only the Commission's argument that its failure to pay default interest to Printeos does not constitute a sufficiently serious breach of Article 266 TFEU, and did not cause Printeos any harm, need therefore be examined.

103 In that regard, it must be borne in mind that, according to settled case-law of the Court, where an EU institution has only considerably reduced, or even no, discretion, the mere infringement of EU law may be sufficient to establish the existence of a sufficiently serious breach of EU law capable of giving rise to the European Union's non-contractual liability (judgments of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 44, and of 19 April 2007, *Holcim (Deutschland)* v *Commission*, C-282/05 P, EU:C:2007:226, paragraph 47).

104 It is apparent from paragraphs 67 and 68 above that, following the annulment of the 2014 Decision, the Commission was required to repay Printeos the amount of the fine provisionally paid, together with default interest, and had no discretion as to whether it would be appropriate to pay such interest.

105 Moreover, in so far as the Commission failed to pay such interest to Printeos, it is clear that Printeos suffered loss equal to the amount of the interest not received. The General Court did not therefore err in law in ordering the Commission to pay that amount.

106 It follows from the foregoing considerations that the fourth ground of appeal must be dismissed as not well founded and equally that the appeal must be dismissed in its entirety.

The cross-appeal

Arguments of the parties

107 Printeos notes that, in ruling on its second head of claim, the General Court, in paragraphs 76 and 77 of the judgment under appeal, decided to award it default interest, calculated at the ECB refinancing rate, increased by 3.5 percentage points, on the amount of EUR 184 592.95, only from the date of delivery of that judgment until full payment by the Commission, and not, as it claimed, from 1 February 2017, the date on which the fine at issue was repaid.

108 Printeos maintains, for the same reasons as those set out in the judgment under appeal concerning the default interest applicable to the amount of the fine to be repaid, that the General Court should have ordered the Commission to pay default interest on the damages in the amount of EUR 184 592.95 from the date of repayment of the fine unduly paid or, at the latest, from the date on which the action was brought, namely 31 March 2017.

109 Printeos therefore requests the Court to award it default interest at the ECB refinancing rate, increased by 3.5 percentage points, on the amount of EUR 184 592.95 from the date on which the application in Case T-201/17 was lodged, namely 31 March 2017.

110 The Commission contends that the cross-appeal is inadmissible, since it entails an amendment of the form of order sought by Printeos before the General Court.

111 In the alternative, the Commission submits that, in any event, the cross-appeal is unfounded and must be dismissed, since, for the reasons set out in its appeal, Printeos has no right to interest. It adds that Printeos is wrong to claim that the sum of EUR 184 592.95 was of a fixed amount, since the only amount that was fixed and ascertained before the action was brought before the General Court was that of the fine provisionally paid by Printeos. Accordingly, it contends that the interest which that amount could have yielded was fixed only in the judgment under appeal, which was, in any event, incorrect.

112 According to the Commission, the interest claimed by Printeos under its second head of claim before the General Court is interest on interest. It maintains that, according to the judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83, paragraphs 54 and 76), compounding interest is not justified.

Findings of the Court

113 First of all, the Commission's plea that the cross-appeal is inadmissible must be rejected.

114 As is apparent from the judgment under appeal, by its second head of claim before the General Court, Printeos sought an order that the Commission pay it interest on the amount of EUR 184 592.95 for the period from 1 February 2017 until the date of actual payment of that amount.

115 That period includes the period from 31 March 2017, the date on which Printeos brought its action before the General Court, until the date of actual payment of the principal amount sought in that action.

116 It follows that, by requesting the Court, after setting aside in part the judgment under appeal, to order the Commission to pay interest on the amount of EUR 184 592.95 for the period referred to in the preceding paragraph, Printeos has not altered the nature of the dispute before the General Court. It simply withdrew part of its second head of claim before the Court, namely the part relating to the payment of interest for the period from 1 February to 31 March 2017.

117 The cross-appeal is therefore admissible and must be examined as to its substance. However, in so far as Printeos disputes the Court's rejection of its claim for payment of interest on the principal claimed by its action only in respect of the period from 31 March 2017, the date on which its action was brought before the General Court, it is necessary to refer only to that period.

118 It should be noted that, in paragraph 76 of the judgment under appeal, the General Court stated that default interest should be awarded to Printeos at the ECB refinancing rate, increased by 3.5 percentage points, from the date of delivery of that judgment until the date of payment in full by the Commission, citing the judgment of 10 January 2017, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, EU:T:2017:1, paragraphs 178 and 179).

119 In paragraph 77 of the judgment under appeal, the General Court added that Printeos's second head of claim must be rejected in so far as it concerned the award of default interest from 1 February 2017.

120 It must therefore be held that, aside from the reference to paragraphs 178 and 179 of the judgment of 10 January 2017, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, EU:T:2017:1), the General Court did not provide any reasons for rejecting Printeos' claim referred to in the preceding paragraph of this judgment. As is apparent from paragraphs 171 to 173 of the judgment of 10 January 2017, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, EU:T:2017:1), that judgment is of a different nature to the present case in so far as it granted compensatory interest from the date on which the action was brought so that the award of default interest for the same period was not justified.

121 Moreover, contrary to what the Commission claims, in paragraphs 54 and 76 of the judgment of 12 February 2015, *Commission* v *IPK* International (C-336/13 P, EU:C:2015:83), the Court of Justice did not exclude compound interest from every case in which an EU institution must pay, but confined itself to finding that no particular circumstance of the case that gave rise to that judgment justified interest being compounded.

122 In the present case, it should be noted, first, that the Commission's obligation to include default interest on the repayment of the amount of the fine provisionally paid by Printeos follows from Article 266 TFEU and the case-law of the Court of Justice interpreting that provision, in particular the judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83, paragraphs 31 and 71).

123 Second, according to paragraphs 22 and 25 of the judgment under appeal, Printeos had clearly reminded the Commission of its obligations under Article 266 TFEU and the related case-law and requested not only repayment of the amount of the fine which it had provisionally paid, but also the payment of interest on that amount, from the date of payment of that amount until the date of its repayment. The Commission refused, however, to pay such interest and confined itself to repayment of the amount of that fine.

124 Those particular circumstances of the present case justified the interest claimed by Printeos in its action before the Court being compounded. In the absence of such compound interest, Printeos would not be compensated for the loss of enjoyment, during the period from the date on which it brought its action until the date of delivery of the judgment under appeal, of the amount of interest which it was entitled, in accordance with Article 266 TFEU, to receive at the same time as repayment of the amount of the fine which it had provisionally paid to the Commission, despite the fact that it had clearly requested the Commission to pay such interest, which it refused unlawfully to pay.

125 It follows that, by rejecting, in paragraph 77 of the judgment under appeal, Printeos's second head of claim, in respect of the period from 31 March 2017, the General Court erred in law.

126 The Court of Justice therefore upholds the cross-appeal and sets aside point 2 of the operative part of the judgment under appeal.

The action before the General Court

127 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

128 That is the case in the present proceedings as far as concerns Printeos's second head of claim.

129 For the reasons set out in paragraphs 122 to 124 above, the Court of Justice upholds Printeos's second head of claim and awards it default interest in the amount of EUR 184 592.95 from 31 March 2017 until the date of full payment by the Commission, at the ECB refinancing rate, increased by 3.5 percentage points, by analogy with Article 83(2)(b) of Delegated Regulation No 1268/2012.

Costs

130 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 138(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

131 In the present case, since Printeos has applied for costs and the Commission has been unsuccessful, the latter must be ordered to pay, in addition to its own costs, those incurred by Printeos relating both to the proceedings at first instance in Case T-201/17 and to the appeal proceedings before the Court of Justice.

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

1. Dismisses the appeal;

2. Sets aside point 2 of the operative part of the judgment of the General Court of the European Union of 12 February 2019, *Printeos* v *Commission* (T-201/17, EU:T:2019:81);

3. Orders the European Commission to pay Printeos SA interest at the rate set by the European Central Bank for its principal refinancing operations, plus 3.5 percentage points, on the amount of EUR 184 592.95 for the period from 31 March 2017 until the date of payment in full;

4. Orders the European Commission to bear its own costs and pay those of Printeos SA relating both to the proceedings at first instance in Case T-201/17 and the proceedings before the Court of Justice.

[Signatures]