Reports of Cases

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

1 February 2017 *

(Non-contractual liability — Precision of the application — Admissibility — Article 47 of the Charter of Fundamental Rights — Reasonable time for adjudication — Material damage — Interest on the amount of the outstanding fine — Bank guarantee charges — Non-material damage — Causal link)

In Case T-479/14

**Kendrion NV**, established in Zeist (Netherlands), represented initially by P. Glazener and T. Ottervanger, and subsequently by T. Ottervanger, lawyers,

applicant,

v

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

defendant,

supported by

**European Commission**, represented by T. Christoforou, S. Noë and P. van Nuffel, acting as Agents,

intervener,

APPLICATION pursuant to Article 268 TFEU for compensation for the damage allegedly suffered by the applicant as a result of the length of the proceedings before the General Court in the case which gave rise to the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667),

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,

having regard to the written stage of the procedure and further to the hearing on 20 July 2016,

gives the following

* Language of the case: Dutch.

## Judgment

### I. Background to the dispute

1 By an application lodged at the Court Registry on 22 February 2006, Kendrion NV 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 its application, it claimed, in essence, that the Court should, principally, annul that decision in whole or in part or, in the alternative, annul the fine which had been imposed on it by that decision or reduce the amount of the fine.

2 By judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667), the Court dismissed that action.

3 By an application lodged on 26 January 2012, the applicant brought an appeal against the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667).

4 By judgment of 26 November 2013, *Kendrion* v *Commission* (C-50/12 P, not published, EU:C:2013:771), the Court of Justice dismissed that appeal.

### II. Procedure and forms of order sought

5 By application lodged at the Court Registry on 26 June 2014, the applicants 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 Court Registry on 8 September 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 6 January 2015, *Kendrion* v *European Union* (T-479/14, not published, EU:T:2015:2), the 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 17 February 2015, the Court of Justice of the European Union brought an appeal, registered as Case C-71/15 P, against the order of 6 January 2015, *Kendrion* v *European Union* (T-479/14, not published, EU:T:2015:2).

9 By order of 2 March 2015, the President of the Third Chamber of the General Court, at the request of the Court of Justice of the European Union, stayed the proceedings in the present case pending the final decision of the Court of Justice in Case C-71/15 P, *Court of Justice* v *Kendrion*.

10 By order of 18 December 2015, *Court of Justice* v *Kendrion* (C-71/15 P, not published, EU:C:2015:857), 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 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 16 February 2016, the Court of Justice of the European Union lodged its defence.

13 On 17 February 2016, the Court assigned the present case to the Third Chamber (Extended Composition).

14 On 2 March 2016, the 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, it asked the Court of Justice of the European Union to indicate whether the latter had requested and obtained permission from the applicant 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, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667) ('Case T-54/06').

15 By order of 15 March 2016, *Kendrion* v *European Union* (T-479/14, not published, EU:T:2016:196), 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 argued that the Court should take the view, principally, that the Court of Justice was under no duty to seek and obtain permission from the applicant and the Commission in order to be able to produce the documents relating to Case T-54/06 and, in the alternative, that the applicant 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 Court, in the present action, an order requiring the production of the documents constituting the case file in Case T-54/06 and, in particular, the documents annexed to the defence.

17 On 4 April 2016, the President of the Third Chamber (Extended Composition) decided, first, to remove from the file the documents relating to Case T-54/06 which were contained in the annexes to the defence lodged in the present case. 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 Case T-54/06 in order to be able to produce the documents in question and, on the other hand, that it had not requested access to the file in that case 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 applicant 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 12 April 2016, the applicant claimed that the Court should rule equitably, taking into account the interests of both parties and the procedural complexity of the application made by the Court of Justice of the European Union.

19 On 11 May 2016, the Court held that the preparation and settlement of the present case made it necessary, in the light of its subject matter, for the file in Case T-54/06 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 file in Case T-54/06.

20 On 17 June 2016, the Court of Justice of the European Union requested service of the file in Case T-54/06.

21 On 28 June 2016, the Court requested that the applicant produce certain documents and put a question to the applicant to be answered at the hearing.

22 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 20 July 2016.

23 The applicant claims that the Court should order the European Union:

— in respect of material damage, to pay a sum of EUR 2308463.98, or such sum that the Court considers can be reasonably granted, and

— in respect of non-material damage, to pay a sum of EUR 11 050 000 and alternatively, to pay a sum of EUR 1 700 000 and, in the further alternative, to pay a sum determined by the parties in accordance with the detailed rules laid down by the Court, or such sum which the Court considers reasonable, and

— to pay each amount increased, from 26 November 2013, by a reasonable rate of late payment interest fixed by the Court, and

— to pay the costs of the proceedings.

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

— principally, dismiss as unfounded the claim for compensation for the material damage alleged and, in any event, dismiss as unfounded the claim for compensation for the non-material damage alleged, and

— in the alternative, dismiss as unfounded the claim for compensation of the material damage alleged and award the applicant compensation for the non-material damage alleged of EUR 5 000 at most, and

— order the applicant to pay the costs.

## III. **Law**

### A. **Admissibility**

25 The Court of Justice of the European Union submits that the application lacks clarity and precision in relation to the nature and extent of the non-material damage alleged. The description of the non-material damage is particularly vague and reflects an underlying confusion between the material damage and the non-material damage.

26 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)(c) 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).

27 In the present case, it should be noted, in the first place, that it is true that the applicant's line of argument is brief as regards the nature of the non-material damage claimed. That line of argument nonetheless appears to be sufficient in the light of the explanations and references contained in the application.

28 First, the applicant submits, in particular, that it is 'a company listed on the stock exchange, whose fortunes and misfortunes receive close attention not only from its employees but also from the press, from investors and from its customers'. The applicant states that its reputation has been unreasonably besmirched.

29 Secondly, the applicant claims, in essence, that the additional years of uncertainty have had a negative impact on the company's management, investments, attractiveness and strategy. It adds that that uncertainty has also caused personal non-material damage to its employees and its executives, who have been under great strain.

30 Finally, the ambiguity of which the Court of Justice of the European Union complains as regards the relationship between the non-material damage alleged and any material damage falls to be considered as part of the assessment of the merits of the claim for compensation for the alleged non-material damage and, in particular, the assessment of the criteria for assessing and compensating that non-material damage.

31 In the second place, as regards the extent of the non-material damage alleged, the applicant is correct in submitting that, by definition, the non-material damage it claims to have suffered does not lend itself to precise calculation. Furthermore, the applicant notes that the context and, therefore, the nature of the case and of the undertaking concerned must be taken into account in order to determine the non-material damage alleged. Finally, the applicant assesses its damage using a method whose appropriateness falls to be considered as part of the assessment of the merits of the action.

32 Thus, the application was sufficiently clear and precise and the applicant provided enough information to make it possible to assess the nature and extent of the non-material damage it claims to have suffered. That information, therefore, allowed the Court of Justice of the European Union to defend itself and enables the Court to rule on the present action.

33 In the light of the foregoing, the plea of inadmissibility raised by the Court of Justice of the European Union must be rejected.

B. **Substance**

34 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.

35 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 1982, *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).

36 If any one of those conditions is not satisfied, the entire action must be dismissed 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).

37 In the present case, the applicant submits, first, that the length of the proceedings in Case T-54/06 was in breach of the requirements linked to compliance with the obligation to adjudicate within a reasonable time ('the obligation to adjudicate within a reasonable time'). Secondly, it claims that that breach caused it damage for which it must be compensated.

### 1. *The alleged breach of the obligation to adjudicate within a reasonable time in Case T-54/06*

38 The applicant submits, first, that in the judgment of 26 November 2013, *Kendrion* v *Commission* (C-50/12 P, EU:C:2013:771), the Court of Justice held, with regard to the time taken to adjudicate in Case T-54/06, that the condition relating to the existence of a sufficiently serious breach of a rule of EU law intended to confer rights on individuals was satisfied. The applicant argues, therefore, that it will not be necessary to examine further the criteria for assessing the reasonableness of the time for adjudication, nor whether those criteria apply in the present case.

39 Secondly, the applicant claims that two years and six months was a reasonable time for adjudication in Case T-54/06 because the General Court is an international court, which leads to some complexity, particularly on account of the applicable rules on the use of languages. However, there is nothing to justify a period exceeding two years and six months to adjudicate in the present case. Accordingly, since the length of the proceedings in Case T-54/06 was five years and nine months, it exceeded the reasonable time for adjudication by three years and three months.

40 The Court of Justice of the European Union contends that the applicant's arguments must be rejected.

41 In the first place, it notes that, according to the judgment of 26 November 2013, *Kendrion* v *Commission* (C-50/12 P, EU:C:2013:771), it is for the General Court to rule on actions such as that in the present case and to determine whether the conditions governing non-contractual liability on the part of the European Union have been satisfied.

42 In the second place, the applicant's claim that the length of the proceedings in cases concerning the application of competition law is reasonable only if it does not exceed two years and six months, does not reflect the reality of proceedings before the General Court, as is demonstrated by the average length of proceedings before that court, recorded between 2006 and 2015, in cases of that type. 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 Case T-54/06 exceeded by only 16 months the average length of that stage of the procedure in cases concerning the application of competition law between 2007 and 2010.

43 In the third place, and above all, the reasonableness of the time for adjudication should be appraised in the light of the specific circumstances of each case, taking into account, in particular, whether there has been an abnormally long period of inactivity. Accordingly, the total length of the proceedings and the period between the end of the written part of the procedure and the opening of the oral part of the procedure in Case T-54/06 are justified by the size of the files in cases concerning the application of competition law, by the fact that 15 parallel actions were brought in six different languages against Decision C(2005) 4634 and by the multilingual environment in which the Court of Justice of the European Union operates. Moreover, the limited term of office of the judges and the long period of sickness of one of the members of the chamber to which Case T-54/06 had been allocated must also be taken into account.

44 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'.

45 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).

46 In the present case, it follows from a detailed examination of the file in Case T-54/06 that, as the Court of Justice rightly pointed out in the judgment of 26 November 2013, *Kendrion* v *Commission* (C-50/12 P, EU:C:2013:771), the length of the proceedings in Case T-54/06, which ran to almost five years and nine months, cannot be justified by any of the specific circumstances of that case.

47 In the first place, it is important to observe that Case T-54/06 concerned a dispute relating to the existence of an infringement of 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).

48 In the second place, it should be noted that, in Case T-54/06, 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 Commission's rejoinder on 19 February 2007, on the one hand, and the opening of the oral part of the procedure on 30 November 2010, on the other.

49 The steps to be 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 supervening procedural matters.

50 As regards the complexity of the dispute, it should be recalled that Case T-54/06 concerned an action brought against a Commission decision relating to a proceeding under Article 101 TFEU.

51 As is apparent from the file in Case T-54/06, 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 often arise over extended periods and in various places.

52 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 Case T-54/06.

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

54 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.

55 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.

56 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).

57 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-54/06.

58 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 Case T-54/06.

59 Finally, the degree of factual, legal and procedural complexity in the case 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 Case T-54/06, the procedure was neither interrupted nor delayed by the Court's adoption of any measure in respect of its organisation.

60 The conduct of the parties and supervening procedural matters in Case T-54/06 had no impact on the amount of time that elapsed between the end of the written part of the procedure and the opening of the oral part of the procedure in Case T-54/06.

61 Consequently, in the light of the circumstances of Case T-54/06, 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 that case.

62 In the third place, an examination of the file in Case T-54/06 has not revealed anything to support the conclusion that there was a period of unjustified inactivity between the date of lodging the application and the date of lodging the rejoinder, or between the opening of the oral part of the procedure and the delivery of the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667).

63 It follows that the procedure followed in Case T-54/06, which culminated in the delivery of the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667), 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 in those cases, 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*

64 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).

65 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).

66 In the present case, the applicant submits that the breach of the obligation to adjudicate within a reasonable time in Case T-54/06 caused it material and non-material damage.

(a) ***The material damage alleged and the purported causal link***

67 The applicant claims that it suffered material damage consisting of additional financial expenses that it had to bear during the period between 26 August 2010, which is the date on which the Court of Justice should have delivered its judgment in *Kendrion* v *Commission* (C-50/12 P, EU:C:2013:771), and 26 November 2013, which is the date on which the Court actually delivered its judgment. The amount of those expenses was EUR 2308463.98. That amount is calculated as follows. First, the charges connected with the bank guarantee which the applicant 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') should be added to the interest paid on the amount of the fine ('the interest on the amount of the fine'). Then, from the resulting figure, the charges which the applicant would have incurred if it had been obliged to pay the fine on 26 August 2010 should be deducted.

68 The Court of Justice of the European Union contends, in the first place, 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 the outcome of a choice made by the applicant. Moreover, 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 applicant would not have been obliged to pay bank guarantee charges and interest on the amount of the fine for the period of that overrun.

69 In the second place, the interest which the applicant had to pay cannot be classified as damage. That interest was compensation for the fact that the Commission did not have at its disposal a sum which it was entitled to have at its disposal and the applicant would benefit from unjust enrichment if it received compensation in an amount equivalent to that interest. In the alternative, the Court of Justice of the European Union submits that the tables annexed to the application do not provide evidence of the material damage sustained by the applicant. It states that it is not possible to determine the existence and extent of the material damage simply on an equitable basis.

(1) *Preliminary observations*

70 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 three and a half percentage points, namely 5.56%.

71 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 applicant. 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.

72 By letter of 13 December 2005, the Commission notified Decision C(2005) 4634 to the applicant. In so doing, it stated that, if the applicant 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.

73 The applicant decided not to effect immediate payment of the amount which had been imposed on it and to provide a bank guarantee in return for the payment of interest at a rate of 3.56%.

74 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 Case T-54/06 must be examined in the light of those observations.

(2) *Payment of interest on the amount of the fine*

75 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 71 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 3.56%, must be classified as default interest.

76 In the second place, it should be pointed out that, during the proceedings in Case T-54/06, the applicant paid neither the amount of the fine nor the default interest. Thus, during the proceedings in that case, the applicant was in possession of the sum corresponding to the amount of that fine plus default interest.

77 The applicant has adduced no evidence to show that, during the period by which the reasonable time for adjudicating in Case T-54/06 was exceeded, the amount of the default interest that was later paid to the Commission was greater than the advantage conferred on it by possession of the sum equal to the amount of the fine plus default interest. In other words, the applicant has 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 it 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.

78 That finding is not called into question by the method of calculation proposed by the applicant, which consisted of deducting from the amount of the alleged damage the financing costs which it would have had to bear if it had been obliged to pay the fine on 26 August 2010.

79 In the application, the applicant does not at any point claim, much less demonstrate, that it would have been obliged to rely on financing from a third party in order to pay the fine imposed in Decision C(2005) 4634.

80 In the light of the foregoing, it has not been established that, during the period by which the reasonable time for adjudicating in Case T-54/06 was exceeded, the applicant suffered actual and certain damage as a result of paying default interest on the amount of the outstanding fine. Consequently, the claim for compensation for alleged damage sustained in that respect must be rejected, there being no need to assess whether the causal link claimed was present.

(3) *Payment of the bank guarantee charges*

81 In the first place, as regards the damage, the documents before the Court show that the applicant provided a bank guarantee and that it paid bank guarantee charges in the form of quarterly commissions during the proceedings in Case T-54/06.

82 It follows that the applicant has shown that it suffered actual and certain damage as a result of paying bank guarantee charges during the period by which the reasonable time for adjudicating in Case T-54/06 was exceeded.

83 In the second place, as regards the causal link, it should be noted that, if the duration of the proceedings in Case T-54/06 had not exceeded the reasonable time for adjudication, the applicant would not have had to pay any bank guarantee charges during the period of that overrun.

84 Thus, there is a causal link between the breach of the obligation to adjudicate within a reasonable time in Case T-54/06 and the occurrence of the damage suffered by the applicant as a result of its having paid bank guarantee charges during the period by which the reasonable time for adjudication was exceeded.

85 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).

86 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 2005, *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).

87 In the present case, however, it should be noted, first, that, at the time when the applicant brought its action in Case T-54/06, on 22 February 2006, and at the time when it provided a bank guarantee, the breach of the obligation to adjudicate within a reasonable time was unforeseeable. Furthermore, the applicant could legitimately expect its action to be dealt with within a reasonable time.

88 Secondly, the reasonable time for adjudicating in Case T-54/06 was exceeded after the applicant's initial decision to provide a bank guarantee.

89 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 86 above. The link between the fact that the reasonable time for adjudicating in Case T-54/06 was exceeded and the payment of bank guarantee charges during that overrun period cannot, therefore, contrary to the claim made by the Court of Justice of the European Union, have been severed by the applicant's initial decision not to effect immediate payment of the fine imposed by Decision C(2005) 4634 and to provide a bank guarantee.

90 It follows that there is a sufficiently direct causal link between the breach of the obligation to adjudicate within a reasonable time in Case T-54/06 and the damage sustained by the applicant as a result of paying bank guarantee charges during the period by which that time was exceeded.

91 In the third place, the applicant claims that it suffered material damage consisting of additional financial expenses that it had to bear for the period starting on 26 August 2010 and ending on 26 November 2013, which was the date on which the Court of Justice delivered its judgment in *Kendrion* v *Commission* (C-50/12 P, EU:C:2013:771) (see paragraph 67 above).

92 In that regard, first of all, it should be noted that, in its action, the applicant alleges a breach of the obligation to adjudicate within a reasonable time only in Case T-54/06. It does not therefore allege a breach of the obligation to adjudicate within a reasonable time as regards the combined length of the proceedings in Case T-54/06 and in the case which gave rise to the judgment of 26 November 2013, *Kendrion* v *Commission* (C-50/12 P, EU:C:2013:771).

93 Thus, in the present case, it has been established only that the proceedings in Case T-54/06 were in breach of the obligation to adjudicate within a reasonable time (see paragraph 63 above).

94 Secondly, the breach of the obligation to adjudicate within a reasonable time in Case T-54/06 was brought to an end with the delivery of the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667).

95 Thus, from 16 November 2011 onwards, the applicant was in a position to assess both the existence of a breach of the obligation to adjudicate within a reasonable time in Case T-54/06 and the damage which it had suffered as a result of paying bank guarantee charges during the period by which that time was exceeded.

96 Furthermore, in the appeal which it brought on 26 January 2012 against the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667), the applicant claimed that the excessive length of the proceedings in Case T-54/06 had had onerous financial repercussions for it and, on that account, sought a reduction of the amount of the fine which had been imposed on it.

97 Lastly, Decision C(2005) 4634, which imposed a fine on the applicant, 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 applicant decided to appeal against the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667).

98 It follows that payment of the bank guarantee charges after the delivery of the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667), which brought to an end the breach of the obligation to adjudicate within a reasonable time in Case T-54/06, 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 applicant 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 judgment.

99 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 Case T-54/06, on the one hand, and the damage suffered by the applicant before the delivery of the judgment of 16 November 2011, *Kendrion* v *Commission* (T-54/06, not published, EU:T:2011:667), consisting in the payment of bank guarantee charges during the period by which that reasonable time was exceeded, on the other hand.

(4) *Assessment of the material damage suffered*

100 In the first place, it is important to recall that the length of the proceedings in Case T-54/06 exceeded by 20 months the reasonable time for adjudicating in that case (see paragraph 63 above).

101 In the second place, the applicant submits in the application that the material damage it has suffered consists of 'the additional financial expenses that it had to bear for the period concerned, namely the period from 26 August 2010 to 26 November 2013' (see paragraph 67 above). Moreover, in support of its claim for compensation, it provides information on the bank guarantee charges which it paid over that period.

102 Thus, when read in the light of the grounds of the application, the claim for compensation made by the applicant under its first head of claim relates to the charges incurred from 26 August 2010.

103 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).

104 Thus, the Court cannot deviate from the applicant's claim and decide of its own motion to make good damage suffered before 26 August 2010, that is to say damage suffered during a period chronologically different from that during which they claim to have suffered damage.

105 Moreover, the bank guarantee charges paid by the applicant 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 Case T-54/06 (see paragraph 98 above).

106 In the present case, therefore, the compensable damage corresponds to the bank guarantee charges paid by the applicant between 26 August 2010 and 16 November 2011.

107 In the third place, it is apparent from the documents produced by the applicant that the bank guarantee charges were paid on a quarterly basis. Those documents also show that, between 26 August 2010 and 31 December 2011, the bank guarantee charges paid by the applicant were as follows:

| Period | Charges (euros) |
|---|---|
| 26.8.2010-31.12.2010 | 175709.87 |
| 31.12.2010-14.3.2011 | 81382.15 |
| 14.3.2011-31.3.2011 | 18983.87 |
| 31.3.2011-30.6.2011 | 102533.99 |
| 30.6.2011-30.9.2011 | 104603.82 |
| 30.9.2011-31.12.2011 | 105555.48 |
| Total: | 588769.18 |

108 It follows that the bank guarantee charges paid by the applicant during the period between 26 August 2010 and 16 November 2011 amounted to EUR 588769.18.

109 In the light of the foregoing, it is appropriate to award the applicant compensation in the amount of EUR 588769.18 by way of reparation for the material damage caused to it by the breach of the obligation to adjudicate within a reasonable time in Case T-54/06 and consisting in the payment of additional bank guarantee charges.

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

110 The applicant claims, in the first place, that according to the case-law of the European Court of Human Rights, there is a strong, though rebuttable, presumption that excessively long proceedings cause non-material damage. Moreover, the applicant is 'a company listed on the stock exchange, whose fortunes and misfortunes receive close attention not only from its employees but also from the press, from investors and from its customers'. Accordingly, the applicant's reputation has been unreasonably besmirched. Finally, the additional years of uncertainty have had a negative impact on the company's management, investments, attractiveness and strategy. Furthermore, the prolonged period of uncertainty has also caused personal non-material damage to its employees and executives.

111 In the second place, the applicant submits that it is difficult to give a precise assessment of the non-material damage alleged on account of the nature of that damage. However, the European Court of Human Rights emphasises the importance of similar cases when assessing damage. Accordingly, the best points of reference for assessing the non-material damage sustained in this case are cases where the General Court or the Court of Justice have made a finding of a breach of the obligation to adjudicate within a reasonable time and reduced a fine for an infringement of EU competition rules, imposed by a Commission decision, so that the amount constitutes 'just satisfaction'.

112 Consequently, the applicant claims, principally, compensation in the amount of EUR 11 050 000 for the period between 26 August 2010 and 26 November 2013, which equates to 10% of the fine imposed on it by Decision C(2005) 4634 for each year of delay. In the alternative, the applicant claims compensation in the amount of EUR 1 700 000, which equates to 5% of the amount of the fine imposed on it by Decision C(2005) 4634. In the further alternative, the applicant claims compensation in an amount determined by the parties on the basis of detailed rules laid down by the Court and, in the further alternative, in an amount which the Court itself considers reasonable.

113 The Court of Justice of the European Union contends, in the first place, that the applicant does not prove that it has suffered non-material damage. It points out that it falls to the applicant to provide evidence of the alleged damage. The damage alleged is described in extremely vague terms, reflects an underlying confusion between the non-material damage and the material damage, and is not substantiated by any evidence at all. Moreover, the applicant is claiming punitive damages.

114 In the second place and in the alternative, the Court of Justice of the European Union submits that the applicant does not prove the existence of a causal link between the non-material damage alleged and the claimed failure to adjudicate within a reasonable time. The non-material damage alleged stems solely from the applicant's infringement of competition rules. The allegedly unreasonable time taken to adjudicate did not exacerbate the non-material consequences of the Commission's finding of an infringement in so far as the Court confirmed that finding of infringement and the amount of the fine imposed.

115 In the third place and in the further alternative, the Court of Justice of the European Union contends that the non-material damage should be assessed at EUR 5 000 at most.

116 It is appropriate to assess, first, the non-material damage allegedly suffered by the applicant's executives and employees and, secondly, the non-material damage allegedly suffered by the applicant itself.

(1) *The non-material damage allegedly suffered by the applicant's executives and employees*

117 It should be noted that the relief sought in the application relates only to the applicant's own interests, not to the personal interests of its executives or employees. Furthermore, the applicant does not cite any transfer of rights or explicit authority that would entitle it to assert a claim for compensation for the damage suffered by its executives and employees.

118 Thus, the claim for compensation for the non-material damage suffered by the applicant's 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 applicant was authorised by its 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).

119 In any event, the existence of damage suffered by the applicant's executives or employees has not been established. For one thing, the applicant argues by way of assertion only and does not adduce any specific evidence of the anxiety and inconvenience experienced by its executives and employees as a result of the breach of the obligation to adjudicate within a reasonable time in Case T-54/06. What is more, the applicant does not demonstrate that its executives and employees suffered direct personal harm separate from the damage which it claims to have suffered itself.

120 Consequently, the claim for compensation for the non-material damage allegedly suffered by the applicant's executives and employees must be rejected as inadmissible and, in any event, unfounded.

(2) *The non-material damage allegedly suffered by the applicant*

121 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 January 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).

122 It should be noted, in the first place, that the applicant alleges reputational harm, particularly with regard to investors and to its customers.

123 However, the applicant's line of argument is not substantiated by evidence showing that the breach of the obligation to adjudicate within a reasonable time was, by reason of its gravity, likely to have an effect on the applicant's reputation beyond the impact of Decision C(2005) 4634.

124 Consequently, it should be found that the applicant does not demonstrate that the breach of the obligation to adjudicate within a reasonable time in Case T-54/06 was such as to harm its reputation.

125 In any event, in the present case, the finding in paragraph 63 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 applicant.

126 In the second place, the fact that the applicant was put in a position of uncertainty, in particular as regards whether its action against Decision C(2005) 4634 would be successful, is an inherent feature of any court proceedings. Moreover, the applicant was necessarily aware that Case T-54/06 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.

127 However, the proceedings in Case T-54/06, which lasted five years and nine months, were longer than the applicant could have anticipated that they would be, in particular at the time when it brought its action. Furthermore, it is apparent from the proceedings in Case T-54/06 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. Finally, the applicant's conduct did not have any impact on the time taken to adjudicate. On the contrary, on at least two occasions, the applicant made the Court aware of the delay it was experiencing, and it requested that Case T-54/06 be dealt with as a matter of urgency.

128 In those circumstances, the failure to adjudicate within a reasonable time in Case T-54/06 was such as to put the applicant 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 that business and therefore constituted non-material damage.

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

130 In that regard, it should be noted, first, that the compensation sought by the applicant, and referred to in paragraph 112 above, 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 122 to 125 above).

131 Secondly, the Court of Justice has held that, having regard to the need to ensure that the competition rules of European Union 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, *Kendrion* v *Commission*, C-50/12 P, EU:C:2013:771, paragraph 87; 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).

132 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 competition rules of European Union law 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 78, 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).

133 If, as requested by the applicant, the compensation for the non-material damage caused by a failure to adjudicate within a reasonable time were calculated by applying a certain percentage to the amount of the fine imposed by the Commission, this would have the effect of calling that fine into question, even though it has not been established that the failure to adjudicate within a reasonable time in Case T-54/06 had any bearing on the amount of that fine.

134 The applicant's claims for compensation for the non-material damage alleged by means of a reduction of the amount of the fine imposed by Decision C(2005) 4634 must therefore be rejected.

135 Thirdly, taking into account the findings made in paragraphs 126 to 134 above and, in particular the extent of the failure to adjudicate within a reasonable time, the applicant's conduct and the delay it reported during the proceedings 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 6 000 to the applicant constitutes adequate reparation for the damage it suffered as a result of the prolonged state of uncertainty in which it found itself during the proceedings in Case T-54/06.

(c) ***Interest***

136 By its third head of claim, the applicant asks the Court to order that any amount of compensation that the applicant may be awarded should bear interest as from 26 November 2013.

137 It follows from case-law that the obligation to pay default 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, *Sofrimport* v *Commission*, C-152/88, EU:C:1990:259, paragraph 32 and the case-law cited).

138 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.

139 In the present case, the compensation referred to in paragraphs 109 and 135 above must be increased by default interest, from the date of delivery of the present judgment until full payment.

140 The rate of the default interest will be that set by the ECB for its main refinancing operations, increased by three and a half percentage points.

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

141 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 applicant as a result of the breach of the obligation to adjudicate within a reasonable time in Case T-54/06.

142 The compensation payable to the applicant by way of reparation for the damage which it suffered as a result of paying additional bank guarantee charges amounts to EUR 588769.18.

143 The compensation payable to the applicant by way of reparation for the non-material damage caused to it amounts to the sum of EUR 6 000.

144 The amount of the compensation referred to in paragraphs 142 and 143 above will be increased by default interest in the manner defined in paragraphs 139 and 140 above.

145 The action is dismissed as to the remainder.

IV. **Costs**

146 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 6 January 2015, *Kendrion* v *European Union* (T-479/14, not published, EU:T:2015:2), 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 pay, in addition to its own costs, the costs incurred by the applicant in connection with the inadmissibility claim which gave rise to the order of 6 January 2015, *Kendrion* v *European Union* (T-479/14, not published, EU:T:2015:2).

147 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 its own costs, pay a proportion of the costs of the other party.

148 In the present case, the applicant has been successful in its heads of claim on the substance of the case. However, it has largely failed in its 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.

149 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 damages of EUR 588769.18 to Kendrion NV by way of compensation for the material damage sustained by that company as a result of the breach of the obligation to adjudicate within a reasonable time in the case which gave rise to the judgment of 16 November 2011,** *Kendrion* **v** *Commission* **(T-54/06, not published, EU:T:2011:667);**

2. **Orders the European Union, represented by the Court of Justice of the European Union, to pay damages of EUR 6 000 to Kendrion by way of compensation for the non-material damage sustained by that company as a result of the breach of the obligation to adjudicate within a reasonable time in Case T-54/06;**

3. **Orders that each award of compensation referred to in points 1 and 2 above be increased by default interest, as from the delivery of the present judgment up to the date of full payment, at the rate set by the European Central Bank (ECB) for its principal refinancing operations, increased by three and a half percentage points;**

4. **Dismisses the action as to the remainder;**

5. **Orders the European Union, represented by the Court of Justice of the European Union, to pay, in addition to its own costs, the costs incurred by Kendrion in connection with the inadmissibility claim which gave rise to the order of 6 January 2015,** *Kendrion* **v** *European Union* **(T-479/14, not published, EU:T:2015:2);**

6. **Orders Kendrion, 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 relating to the action giving 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 1 February 2017.

[Signatures]

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