



Press and Information

General Court of the European Union
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Judgment in Case T-610/19
Deutsche Telekom v Commission

The General Court awards Deutsche Telekom compensation in the amount of approximately € 1.8 million for the harm which it suffered as a result of the European Commission's refusal to pay it default interest on the amount of the fine which it had unduly paid for an infringement of competition rules

By decision of 15 October 2014,¹ the European Commission imposed on Deutsche Telekom AG a fine of € 31 070 000 for abuse of its dominant position on the Slovak market for broadband telecommunications services, in infringement of Article 102 TFEU and Article 54 of the EEA Agreement.

Deutsche Telekom brought an action for annulment of that decision but paid the fine on 16 January 2015. By its judgment of 13 December 2018,² the General Court upheld Deutsche Telekom's action in part and, exercising its unlimited jurisdiction, reduced the amount of the fine by € 12 039 019. On 19 February 2019 the Commission repaid that amount to Deutsche Telekom.

However, by letter of 28 June 2019 ('the contested decision'), the Commission refused to pay default interest to Deutsche Telekom for the period between the date of payment of the fine and the date of reimbursement of the portion of the fine held not to be due ('the period in question').

Deutsche Telekom accordingly brought an action before the General Court seeking annulment of the contested decision and an order directing the Commission to pay compensation for lost revenue as a result of the loss of use, during the period in question, of the principal amount of the portion of the fine unduly paid or, in the alternative, compensation for the harm suffered as a result of the Commission's refusal to pay default interest on that amount.

By its judgment, the Seventh Chamber, Extended Composition, of the General Court upholds in part Deutsche Telekom's action for annulment and compensation. In that respect, it provides clarifications with regard to the Commission's obligation to pay default interest on the portion of a fine which, following a judgment of the EU Courts, must be reimbursed to the undertaking concerned.

Findings of the General Court

In the first place, the General Court rejects Deutsche Telekom's claim for compensation, on the basis of the non-contractual liability of the European Union, for the alleged loss of revenue which it claims resulted from the loss of use, during the period in question, of the portion of the fine that had been unduly paid and which corresponds to the annual return on its invested capital or to the weighted average cost of its capital.

¹ Decision C(2014) 7465 final relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.39523 – Slovak Telekom), rectified by Commission Decision C(2014) 10119 final of 16 December 2014, and also by Commission Decision C(2015) 2484 final of 17 April 2015.

² Judgment of 13 December 2018, *Deutsche Telekom v Commission*, [T-827/14](#), (also see [PR No 196/18](#)).

In that regard, the General Court notes that, in order for the European Union to incur non-contractual liability, a number of cumulative conditions must be satisfied: there must be a sufficiently serious breach of a rule of law conferring rights on individuals; the damage must actually have occurred; and there must be a causal link between the breach and the harm suffered, these being matters which the applicant must prove.

In the present case, however, Deutsche Telekom failed to adduce conclusive proof of the actual and certain nature of the harm alleged. More specifically, Deutsche Telekom demonstrated neither that it would necessarily have invested the amount of the fine that had been unduly paid in its business nor that the loss of the use of that amount led it to abandon specific and actual projects. Deutsche Telekom had also failed in this context to demonstrate that it did not have the necessary funds to take advantage of an investment opportunity.

In the second place, the General Court addresses Deutsche Telekom's claim, put forward in the alternative, for compensation for infringement of Article 266 TFEU, the first paragraph of which provides for the obligation on institutions whose act has been declared void by a judgment of the EU Courts to take all necessary measures to comply with that judgment.

The General Court notes, first, that, by imposing on the institutions the obligation to take all necessary measures to comply with the judgments of the EU Courts, the first paragraph of Article 266 TFEU confers rights on the individuals who have been successful in their actions before those Courts. Second, the General Court notes that default interest represents an essential component of the obligation on the institutions under that provision to restore an applicant to his, her or its original position. It therefore follows from that provision that, in the event of cancellation and reduction of a fine imposed on an undertaking for infringement of competition rules, there is **an obligation on the Commission to repay the amount of the fine unduly paid together with default interest.**

The General Court clarifies that, since the applicable financial legislation³ gives companies which have provisionally paid a fine that is later cancelled and reduced a right to claim restitution, and since the cancellation and reduction of the amount of the fine made by the EU Courts have retroactive effect, **Deutsche Telekom's claim existed and certain as to its maximum amount at the date of the provisional payment of the fine.** The Commission was therefore required, under the first paragraph of Article 266 TFEU, to pay default interest on the portion of the fine held not to be due by the General Court, for the entire period in question. That obligation is designed to provide compensation at a standard rate for the loss of use of the monies owed in connection with an objective delay and to encourage the Commission to exercise particular care when adopting a decision involving the payment of a fine.

The General Court adds that, contrary to what the Commission has submitted, the obligation to pay default interest does not conflict with the deterrent function of fines in competition cases, since that deterrent function is necessarily taken into account by the EU Courts when exercising their unlimited jurisdiction to reduce, with retroactive effect, the amount of a fine. Moreover, the deterrent function of fines must be reconciled with the principle of effective judicial protection set out in Article 47 of the Charter of Fundamental Rights of the European Union, compliance with which is ensured by means of judicial review as provided for in Article 263 TFEU, supplemented by the unlimited jurisdiction in respect of the amount of the fine.

The General Court also rejects the other arguments put forward by the Commission.

First, **even if the amount of the fine paid by the applicant did not yield interest while it was in the Commission's possession, the Commission was required**, following the judgment of the General Court of 13 December 2018, **to reimburse to the applicant the portion of the fine held**

³ 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) and 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).

to have been unduly paid, together with default interest, without this being precluded by Article 90 of Delegated Regulation No 1268/2012, which deals with the recovery of fines. In addition, the obligation to pay default interest follows directly from the first paragraph of Article 266 TFEU and **the Commission is not entitled to determine**, by way of an individual decision, **the conditions under which it will pay default interest** in the event of annulment of a decision imposing a fine and a reduction in the amount of that fine.

Second, the interest due in the present case is default interest, not compensatory interest. Deutsche Telekom's principal claim was a claim for restitution, relating to the payment of a fine that had been made provisionally. That claim existed and was certain as to its maximum amount or at least could be determined on the basis of established objective factors at the date of that payment.

Since the Commission was required to repay to Deutsche Telekom the portion of the fine that had been unduly paid, together with default interest, and since **the Commission had no discretion in that regard**, the General Court concludes that **the refusal to pay that interest to Deutsche Telekom constitutes a serious breach of the first paragraph of Article 266 TFEU, which results in the European Union incurring non-contractual liability**. Given the direct link between the infringement that occurred and the harm consisting in the loss, during the period in question, of default interest on the portion of the fine that had been unduly paid, **the General Court awards Deutsche Telekom compensation in the amount of € 1 750 522.38**, calculated by application, by analogy, of the rate provided for in Article 83(2)(b) of Delegated Regulation No 1268/2012, namely the rate applied by the European Central Bank in January 2015 to its principal refinancing operations, that being 0.05%, increased by three and a half percentage points.

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

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

Unofficial document for media use, not binding on the General Court.

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

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