

Distinction between default interest and compensatory interest. Default interest shall be paid from the date on which the fine at issue was repaid and not from the date of delivery of that judgment until full payment by the Commission. Compound interest compensate for the loss of enjoyment, during the period from the date on which the actor 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.

(JIRP)

Tags: Annulment of fines. Dies a quo for the period for the award of default interests. Legitimacy of compound interest.

Judgment of the Court (Fourth Chamber) of 20th January 2021, in Case C-301/19 P. European Commission v Printeos, SA. ECLI identifier: ECLI:EU:C:2021:39

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Context:

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 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), 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 after an annulment sentence of the fine by the Court.

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.

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.

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.

The Court of Justice 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) and 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.

Doctrine of the Court:

55 ... 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.

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 judiciary (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 judiciary, 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).

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.

86 ...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.

95 ...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.

103 ...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).

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.