

The Commission has been informed by the Polish authorities only that Articles 6(1) and 23 of the CAFE Directive have been partially implemented by Articles 13 and 15 of the Law of 17 June 2009 on the system for the management of emissions of greenhouse gases and other substances, through the creation of a system for the management of emissions of sulphur dioxide (SO₂) and nitrogen oxides and the obligation to draw up a draft national reduction plan.

Appeal brought on 1 February 2012 by Kendrion NV against the judgment of the General Court (Fourth Chamber) delivered on 16 November 2011 in Case T-54/06 *Kendrion v Commission*

(Case C-50/12 P)

(2012/C 80/20)

Language of the case: Dutch

Parties

Appellant: Kendrion NV (represented by: P. Glazener and T. Ottervanger, advocaten)

Other party to the proceedings: European Commission

Form of order sought

- Set aside the judgment, in whole or in part, in accordance with the pleas in law put forward in this appeal;
- annul the decision, in whole or in part, in so far as it concerns the appellant;
- annul or reduce the fine imposed on the appellant;
- in the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice;
- order the Commission to pay the costs of these proceedings as well as the costs of the proceedings before the General Court.

Pleas in law and main arguments

1. According to the **first plea in law**, the General Court misconstrued Union law and provided contradictory and insufficient grounds for its judgment in ruling that the Commission had explained to the requisite legal standard why it had imposed a fine on Kendrion that is higher than the fine imposed on Fardem.
2. According to the **second plea in law**, the General Court made an error of assessment in its determination of the question whether the Commission was entitled to deem Kendrion jointly and severally liable for the fine to be imposed on its former subsidiary Fardem, and made mistakes in its specific examination of the evidence, thereby committing procedural errors. In its judgment, the General Court erred in its allocation of the burden of proof, manifestly misconstrued the facts and clearly erred in its assessment of the evidence. Moreover, the General Court failed to provide sufficient grounds for its findings and did not sufficiently address the arguments put forward by Kendrion.
3. By the **third plea in law** Kendrion challenges the considerations in the judgment under appeal in which the General Court addresses and dismisses the second, fourth and fifth pleas in law put forward by Kendrion at first instance. In Kendrion's view, the General Court proceeded on the basis of a misconstruction of Union law in assuming that the parent company Kendrion, which did not participate in the infringement, could itself be subject to a fine higher than the fine imposed on the subsidiary undertaking Fardem, which carried out the infringement. Furthermore, the General Court infringed the principle of equal treatment, and gave reasons for its findings that were contradictory and inadequate.
4. By the **fourth plea in law** Kendrion submits that the General Court was wrong to reject as irrelevant Kendrion's argument regarding the excessive duration of the proceedings in the General Court. The General Court thus appears to take the view that it has no jurisdiction to adjudicate on procedural irregularities in General Court proceedings. Even if it were the case that the General Court does not itself have the power to reduce fines on account of the excessive duration of its own proceedings, the Court of Justice is in any event obliged to rule on this point, which is one that is essential for legal certainty, and to draw the appropriate conclusions from it.