Reports of Cases

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

23 November 2022 *

(Action for annulment and for damages – Competition – Agreements, decisions and concerted practices – European market for prestressing steel – Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement – Suspension of the obligation to provide a bank guarantee – Payment by instalments on a provisional basis – Judgment annulling the decision in part and setting a fine in an amount identical to the amount of the fine originally imposed – Application of payments made on a provisional basis – Default interest – First paragraph of Article 266 TFEU – Unjust enrichment – Sufficiently serious breach of a rule of law intended to confer rights on individuals – Recovery of undue payments – No legal basis – Unlawfulness)

In Case T-275/20,

Westfälische Drahtindustrie GmbH, established in Hamm (Germany),

Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG, established in Hamm,

Pampus Industriebeteiligungen GmbH & Co. KG, established in Iserlohn (Germany),

represented by O. Duys and N. Tkatchenko, lawyers,

applicants,

v

European Commission, represented by P. Rossi and L. Mantl, acting as Agents,

defendant,

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed, at the time of the deliberations, of R. da Silva Passos, President, V. Valančius, I. Reine, L. Truchot and M. Sampol Pucurull (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure, inter alia:

– the application lodged at the Registry of the General Court on 11 May 2020,

* Language of the case: German.

– the plea of inadmissibility and of lack of competence raised under Article 130 of the Rules of Procedure of the General Court by the Commission in a separate document lodged at the Registry of the General Court on 13 August 2020,

– the order of 1 February 2021 reserving the decision on the plea of inadmissibility for the final judgment,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure,

gives the following

Judgment

1 By their action, the applicants, Westfälische Drahtindustrie GmbH ('WDI'), Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG ('WDV') and Pampus Industriebeteiligungen GmbH & Co. KG ('Pampus'), seek, principally, first, annulment, on the basis of Article 263 TFEU, of the European Commission's letter of 2 March 2020 by which it gave them formal notice to pay it the sum of EUR 12 236 931.69 corresponding, in its view, to the outstanding balance of the fine imposed on them on 30 September 2010; second, a declaration that the fine had been paid in full on 17 October 2019 by the payment of EUR 18 149 636.24 and, third, an order that the Commission pay WDI the sum of EUR 1 633 085.17, plus interest from the latter date, on account of the Commission's unjust enrichment. The applicants seek, in the alternative, on the basis of Article 268 TFEU, an order that the Commission pay them the sum of EUR 12 236 931.69, claimed by the Commission from WDI and a sum equivalent to the overpayment made to that institution, in the amount of EUR 1 633 085.17, plus interest from 17 October 2019 until reimbursement in full of the amount due.

I. Background to the dispute

2 The applicants are suppliers of prestressing steel.

3 By Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (COMP/38.344 – Prestressing Steel) ('the PS decision'), the Commission sanctioned several undertakings, including the applicants, for their participation in a cartel in the prestressing steel market. The Commission imposed a fine of EUR 56 050 000 on WDI. WDV and Pampus were held jointly and severally liable for EUR 45 600 000 and EUR 15 485 000 respectively.

4 That penalty was imposed in Article 2, first paragraph, point 8 of the PS decision.

5 During the administrative procedure, the applicants had applied for a reduction of the fine on the ground of inability to pay, based on point 35 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines'). That point provides as follows:

'In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.'

6 In the PS decision, the Commission did not grant the applicants' request for an exceptional reduction in the fine on the ground of inability to pay.

7 By application lodged at the Registry of the General Court on 14 September 2010, the applicants brought an action for annulment and variation of the PS decision. The case was registered under number T-393/10.

8 By Decision C(2010) 6676 final of 30 September 2010 ('the decision of 30 September 2010'), the Commission amended the PS decision and in particular Article 2, first paragraph, point 8 thereof, with the aim of reducing the amount of the fines imposed on certain undertakings (together, 'the contested decision'). The fine imposed on WDI was thus set at EUR 46 550 000. WDV and Pampus were held jointly and severally liable for EUR 38 855 000 and EUR 15 485 000 respectively.

9 The decision of 30 September 2010 established that, by way of derogation from the second paragraph of Article 2 of the PS decision, the fines imposed in Article 2, first paragraph, point 8 of the contested decision had to be paid within three months of the date of notification of the decision of 30 September 2010 and that, after the expiry of that period, interest would automatically be payable at the interest rate applied by the European Central Bank (ECB) to its main refinancing operations on the first day of the month in which the decision of 30 September 2010 was adopted, plus 3.5 percentage points. It was also provided that, in the event of an appeal being lodged by an undertaking which had been fined, that undertaking may cover the fine by the due date either by providing a bank guarantee or making a provisional payment of the fine, in accordance with Article 85a(1) 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).

10 On 3 December 2010, the applicants lodged an application for interim measures in Case T-393/10 at the Registry of the General Court seeking, in essence, the suspension of operation of the contested decision until delivery of the judgment in the main proceedings.

11 By letter of 14 February 2011, the Director-General of the Commission's Directorate-General (DG) for Competition rejected a further request by the applicants for a reduction in the fine on account of their ability to pay ('the letter of 14 February 2011').

12 By order of 13 April 2011, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 R, EU:T:2011:178; 'the interim order'), the President of the General Court upheld in part the application for interim measures lodged by the applicants by ordering the suspension of the

obligation imposed on them to provide the Commission with a bank guarantee in order to avoid immediate collection of the fines, subject to the condition that the applicants pay that institution, provisionally, first, the sum of EUR 2 000 000 before 30 June 2011 and, second, monthly instalments of EUR 300 000 on the 15th of each month from 15 July 2011 until further notice, but not beyond delivery of judgment in the main proceedings.

13 By judgment of 15 July 2015, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10, EU:T:2015:515; 'the judgment of 15 July 2015'), the Court held that the Commission had not erred when it found in the contested decision, in respect of the applicants, the existence of an infringement of Article 101 TFEU.

14 However, the Court annulled the contested decision in so far as it imposed a fine on the applicants and the letter of 14 February 2011, on the ground that the Commission had erred when assessing their ability to pay.

15 In the exercise of its unlimited jurisdiction, the Court ordered the applicants to pay a fine in an amount identical to the amount of the fine imposed on them in the contested decision, which is reflected in the operative part of the judgment of 15 July 2015.

16 That operative part reads as follows:

'1. Declares that there is no longer any need to adjudicate in the present action in respect of the reduction of the fine granted to [WDI] and [WDV] in [the decision] of 30 September 2010;

2. Annuls Article 2[, first paragraph, point 8] of [the contested decision];

3. Annuls the letter of 14 February 2011 …;

4. Orders [WDI], [WDV] and Pampus … to pay a fine of EUR 15 485 000, for which they are jointly and severally liable;

5. Orders [WDI] and [WDV] to pay a fine of EUR 23 370 000, for which they are jointly and severally liable;

6. Orders Westfälische Drahtindustrie to pay a fine of EUR 7 695 000;

7. Dismisses the action as to the remainder;

8. Orders [WDI], [WDV] and Pampus … to bear one half of their own costs, including those relating to the interlocutory proceedings, and orders the Commission to bear its own costs and to pay one half of the costs incurred by [WDI], [WDV] and Pampus …, including those relating to the interlocutory proceedings.'

17 Pursuant to the interim order, WDI had provisionally paid the Commission a total of EUR 16 400 000 during the period from 29 June 2011 to 16 June 2015.

18 After the judgment of 15 July 2015 was delivered, the applicants' lawyers contacted the Commission's DG Budget in order to agree amicably on a payment schedule for the fines set out in points 4 to 6 of the operative part of that judgment. Differences of opinion then arose as to the date from which interest on those fine should accrue. The applicants considered that interest

should start to accrue as from the delivery of the judgment of 15 July 2015, whereas, according to the DG Budget, the interest was due from the date set out in the second and third paragraphs of Article 2 of the contested decision, namely, in respect of the applicants, within three months of the notification of the decision of 30 September 2010. That position was reflected in an email from the DG for Budget of 12 August 2015 in response to an email from the applicants' representative dated 5 August 2015 and was repeated at a meeting held on 4 September 2015 between the Commission and WDI.

19 On 17 November 2015, WDI sent the Commission a proposal for a plan for payment of the fine in monthly instalments of EUR 300 000 until 15 December 2029 on the basis of default interest payable from 15 January 2011 and calculated at the rate of 4.5%.

20 On 27 November 2015, the Commission sent WDI a plan for payment of the fine in instalments until 15 March 2030. That plan was also based on monthly instalments of EUR 300 000 and assumed that the debt had been due since 4 January 2011 and had to be increased by default interest at the rate of 4.5%.

21 The judgment of 15 July 2015 was the subject of an appeal brought by the applicants, who had challenged inter alia the fact that the Court took into account, in the exercise of its unlimited jurisdiction, their ability to pay in 2015 and not in 2010. That appeal was dismissed by order of 7 July 2016, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen* v *Commission* (C-523/15 P, EU:C:2016:541).

22 After the appeal was dismissed, the applicants asked the Court to interpret the judgment of 15 July 2015 as meaning that the interest applied to the amount of the fine imposed in that judgment was due from the date of delivery of that judgment. In the alternative, the applicants asked the Court to rectify or supplement that judgment by specifying the date from which the interest began to accrue.

23 By order of 17 May 2018, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 INTP, not published, EU:T:2018:293), the Court declared those claims inadmissible. With regard to the request for interpretation, the Court recalled that, in order to be admissible, that request had to concern a point decided in the judgment to be interpreted. However, the question of the starting point for the default interest due in the event of deferred payment of the fines imposed on the applicants was not addressed in the judgment of 15 July 2015. According to the Court, the applicants' request was for an opinion on the consequences of the judgment of 15 July 2015, which did not fall within the scope of an application for interpretation made on the basis of Article 168(1) of its Rules of Procedure. As regards the other two applications, they were considered to have been submitted out of time.

24 On 16 October 2019, WDI informed the Commission, first, that it had already paid EUR 31 700 000 and, second, that it intended to pay the balance of the fine due, in capital and interest, which it estimated at EUR 18 149 636.24. For the purposes of that calculation, WDI took into account the interest accrued as from 15 October 2015, thus three months after the delivery of the judgment of 15 July 2015, and applied an interest rate of 3.48%.

25 On 17 October 2019, WDI transferred that sum of EUR 18 149 636.24 into the Commission's bank account, thus bringing the total amount of payments made since 29 June 2011, in settlement of the fine, to EUR 49 849 636.24.

26 By letter of 2 March 2020 ('the contested measure'), the Commission expressed its disagreement with the position set out by WDI in its letter of 16 October 2019. The Commission stated that, in accordance with the criteria established in the judgment of 14 July 1995, *CB* v *Commission* (T-275/94, EU:T:1995:141), the interest had started to accrue not as from the judgment of 15 July 2015, but from the date laid down in the contested decision, that is 4 January 2011, and at the rate of 4.5%. Consequently, the Commission gave WDI formal notice to pay it the sum of EUR 12 236 931.69 corresponding to the outstanding balance, taking into account the value date of 31 March 2020.

II. Forms of order sought

27 In the application, the applicants claim that the General Court should:

– annul the contested measure;

– accordingly, hold that the Commission should offset the payments made by WDI during the period from 29 June 2011 to 16 June 2015 (EUR 16 400 000), plus interest relating to that amount during that period (EUR 1 420 610), thus a total of EUR 17 820 610, against the fine imposed by the Court in the exercise of its unlimited jurisdiction in the judgment of 15 July 2015, with effect from that date, and that, as a result, that fine has been paid in full by the payment made by WDI on 17 October 2019 in the amount of EUR 18 149 636.24;

– order the Commission to pay WDI the sum of EUR 1 633 085.17, together with interest as from 17 October 2019 until reimbursement in full of the amount owed;

– in the alternative, in the event that the Court does not uphold the first three heads of claim, order the European Union, represented by the Commission, first, to pay them compensation equal to the amount claimed in the contested measure, thus EUR 12 236 931.69, and, second, to pay WDI the sum of EUR 1 633 085.17, together with interest as from 17 October 2019 until reimbursement in full of the amount owed;

– order the Commission to pay the costs.

28 In their observations on the plea of inadmissibility and of lack of competence, the applicants claim that the Court should:

– grant the forms of order sought in the application by a judgment by default within the meaning of Article 123 of the Rules of Procedure;

– in the alternative, reject the pleas of inadmissibility and of lack of competence;

– in the further alternative, reserve its decision on that plea until the final judgment;

– order the Commission to pay the costs.

29 The Commission contends that the Court should:

– dismiss the action, primarily as inadmissible and, in the alternative, as unfounded;

– order the applicants to pay the costs.

III. Law

A. The applicants' request that the General Court give judgment in their favour in a judgment by default

30 In their observations on the plea of inadmissibility and of lack of competence, the applicants request that the Court give judgment in their favour in a judgment by default, in accordance with Article 123 of the Rules of Procedure, since the Commission lodged its plea out of time.

31 In that regard, the applicants note that, by email dated 26 May 2020, the Court informed them that the application had been served on the Commission. In those circumstances, the time limit for lodging the plea of inadmissibility and of lack of competence would have expired on 5 August 2020. However, that plea was not lodged until 13 August 2020.

32 Article 123(1) of the Rules of Procedure provides that, where the Court finds that a defendant on whom an application initiating proceedings has been duly served has failed to respond to the application in the proper form or within the time limit prescribed in Article 81 thereof, without prejudice to the application of the provisions of the second paragraph of Article 45 of the Statute of the Court of Justice of the European Union, the applicant may apply to the General Court for judgment by default.

33 It follows from a combined reading of Article 81 and Article 130(1) of the Rules of Procedure that a plea of inadmissibility or of lack of competence raised by the defendant by separate document must be submitted within two months of service of the application. Under Article 60 of those rules, that time limit is to be extended on account of distance by a single period of 10 days.

34 The second paragraph of Article 6 of the decision of the General Court of 11 July 2018 on the lodging and service of procedural documents by means of e-Curia (OJ 2018 L 240, p. 72) provides that the intended recipients of the documents served referred to in that decision are to be notified by email of any document served on them by means of e-Curia. The third paragraph of Article 6 of that decision states that a procedural document is to be served at the time when the intended recipient (representative or assistant) requests access to that document in e-Curia. Moreover, in the absence of any request for access, the document is to be deemed to have been served on the expiry of the seventh day following the day on which the email notifying the intended recipient that service has been effected was sent.

35 In the present case, as the plea of inadmissibility and of lack of competence was lodged by the Commission within the prescribed period, the Court did not invite the applicants to submit observations, in accordance with Article 123(1) of the Rules of Procedure, on the possibility of giving judgment in their favour by a judgment by default.

36 As is apparent from the e-Curia report, by email of 2 June 2020, the Registry notified the applicants of the service by the e-Curia system of the email dated 26 May 2020, mentioned in paragraph 31 above. By email of 2 June 2020, the Registry also notified the Commission of the transmission by e-Curia of an email, also dated 26 May 2020, as service of the application and the accompanying annexes. The Commission accessed those documents on the e-Curia system on 3 June 2020. In accordance with the third paragraph of Article 6 of the decision of the General

Court of 11 July 2018 on the lodging and service of procedural documents by means of e-Curia, recalled in paragraph 34 above, the date of 3 June 2020 is the *dies a quo* of the period of two months and ten days available to that institution to submit the plea of inadmissibility and of lack of competence. As that plea was lodged on 13 August 2020, that time limit was observed.

37 It follows that the applicants' claim that the Court give judgment in their favour in a judgment by default must be dismissed.

B. Subject matter of the action

38 The action concerns an application for annulment, an application for a declaration and a claim for payment in respect of unjust enrichment and, in the alternative, a claim for compensation for the damage suffered as a result of the unlawfulness of the Commission's conduct. Those claims were made in the applicants' first four heads of claim referred to in paragraph 27 above.

39 Those four claims made by the applicants are based on the allegation that, by the judgment of 15 July 2015, the General Court, first, annulled *ex tunc* the fine imposed by the Commission in the contested decision. That annulment has given rise to a claim in favour of the applicants corresponding to the amount paid by them, on a provisional basis, between 29 June 2011 and 16 June 2015, pursuant to the interim order (EUR 16 400 000), plus interest (EUR 1 420 610). That interest was said to be due, in accordance with the judgment of 12 February 2019, *Printeos* v *Commission* (T-201/17, EU:T:2019:81). Second, the Court imposed a new separate fine, with effect from the date of delivery of the judgment of 15 July 2015. The applicants refer to the latter as the 'court imposed fine', as opposed to the 2010 'annulled fine'.

40 The application for annulment, contained in the applicants' first head of claim, concerns the contested measure, by which the Commission gave the applicants formal notice to pay it the sum of EUR 12 236 931.69, corresponding, in its view, to the outstanding balance of the fine, taking into account the value date of 31 March 2020.

41 The application for a declaration, in the applicants' second head of claim, seeks a declaration by the Court that, in compliance with the judgment of 15 July 2015, the Commission had to offset the payments made by WDI during the period from 29 June 2011 to 16 June 2015 (EUR 16 400 000), plus interest (EUR 1 420 610), against the fine imposed by the Court and that, as a result, that fine had been paid in full on 17 October 2019 by the payment made by WDI in the amount of EUR 18 149 636.24.

42 The claim alleging unjust enrichment, in the applicants' third head of claim, seeks reimbursement by the Commission to WDI of the sum of EUR 1 633 085.17, plus interest since 17 October 2019.

43 The reason for that claim is a calculation error which the applicants claim to have made in their previous requests to the Commission.

44 In its email of 5 August 2015 and in its letter of 16 October 2019, WDI had requested only that the Commission offset against the fine the amount paid pursuant to the interim order (EUR 16 400 000), without adding to it the interest relating to that amount during the period from 29 June 2011 to 16 June 2015 (EUR 1 420 610), or compound interest since 15 July 2015. The applicants state, in accordance with a new calculation dated 7 May 2020 which they submitted to the Court and taking account of that interest, that the amount still owed by them on

17 October 2019 for the purpose of settling the balance of the 'court imposed fine' was only EUR 16 516 551.07, and not EUR 18 149 636.24 as had been calculated on 16 October 2019, which resulted in an overpayment to the Commission of EUR 1 633 085.17.

45 Finally, the claim for compensation, submitted in the alternative to the other three claims and contained in the fourth head of claim, asks the Court to order the Commission to pay compensation for the damage allegedly suffered in the course of enforcing the judgment of 15 July 2015 in the amount claimed by the Commission in the contested measure (EUR 12 236 931.69) and the amount of the overpayment to that institution on 17 October 2019 (EUR 1 633 085.17), plus interest from that date. According to the applicants, the incorrect enforcement of the judgment of 15 July 2015 constitutes a sufficiently serious breach of the Commission's obligations under the first paragraph of Article 266 TFEU. The damage suffered corresponds to the loss resulting from the claim of the amount wrongly paid in execution of that judgment.

46 It follows that the second to fourth heads of claim referred to in paragraph 27 above are connected.

47 One of the findings referred to in the second head of claim, namely the obligation on the Commission, in compliance with the judgment of 15 July 2015, to offset against the outstanding amount of the fine not only the sums paid by WDI on a provisional basis between 29 June 2011 and 16 June 2015, but also the interest thereon, forms the basis of the claim for reimbursement of the sum of EUR 1 633 085.17, plus interest since 17 October 2019, contained in the third head of claim.

48 As regards the third head of claim, it must be recalled that actions for unjust enrichment do not fall under the rules governing non-contractual liability in the strict sense, which, to be invoked, require a number of conditions to be satisfied relating to the unlawfulness of the conduct imputed to the European Union, the fact of the damage alleged and the existence of a causal link between that conduct and the damage complained of. They differ from actions brought under those rules in that they do not require proof of unlawful conduct – indeed, of any form of conduct at all – on the part of the defendant, but merely proof of enrichment on the part of the defendant for which there is no valid legal basis and of impoverishment on the part of the applicant which is linked to that enrichment (see judgment of 16 December 2008, *Masdar (UK)* v *Commission*, C-47/07 P, EU:C:2008:726, paragraph 49 and the case-law cited).

49 However, despite those characteristics, the possibility of bringing an action for unjust enrichment against the European Union cannot be denied to a person solely on the ground that the FEU Treaty does not make express provision for a means of pursuing that type of action. If Article 268 TFEU and the second paragraph of Article 340 TFEU were to be construed as excluding that possibility, the result would be contrary to the principle of effective judicial protection (see, to that effect, judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 82 and the case-law cited).

50 In the present case, as the Commission acknowledged in the defence, it may be considered that the third and fourth heads of claim contain claims for compensation based on Article 268 and the second paragraph of Article 340 TFEU. The amount of EUR 1 633 085.17, plus interest from 17 October 2019, is claimed, in the alternative, in those two heads of claim.

51 In view of the links between the second to fourth heads of claim, which have already been noted in paragraphs 46 to 50 above, and the fact that, as is clear from paragraphs 40 and 45, there is also a link between the application for annulment which is the subject of the first head of claim and part of the claim for compensation which is the subject of the fourth head of claim, the Court considers that, in the interest of the proper administration of justice, it is necessary to examine, initially and jointly, the second to fourth heads of claim referred to in paragraph 27 above, concerning the consequences to be drawn from the judgment of 15 July 2015.

52 Second, the Court will examine the applicants' first head of claim seeking the annulment of the contested measure.

C. The applicants' second, third and fourth heads of claim, concerning the consequences to be drawn from the judgment of 15 July 2015

1. Admissibility and the jurisdiction of the General Court

53 The Commission contends that the applicants' second to fourth heads of claim are inadmissible and that the Court lacks jurisdiction to rule on the second head of claim.

54 As regards the second head of claim, the Commission submits that, in addition to the fact that it is not based on any 'provision of law or procedure', in breach of Article 76(d) of the Rules of Procedure, it seeks a declaratory judgment from the General Court which, after annulment of the contested measure, would order the Commission to offset the amounts paid before the judgment of 15 July 2015, plus interest, against the fines set out in the operative part of that judgment.

55 In that regard, it is sufficient to note that in proceedings before the courts of the European Union there is no remedy whereby the courts can adopt a position by means of a general declaration or statement of principle (see judgment of 21 March 2012, *Fulmen and Mahmoudian* v *Council*, T-439/10 and T-440/10, EU:T:2012:142, paragraph 41 and the case-law cited). Moreover, when reviewing lawfulness on the basis of Article 263 TFEU, the Court has no jurisdiction to issue directions to the institutions, bodies, offices and agencies of the European Union (see order of 26 October 1995, *Pevasa and Inpesca* v *Commission*, C-199/94 P and C-200/94 P, EU:C:1995:360, paragraph 24 and the case-law cited; see also, to that effect, judgment of 25 September 2018, *Sweden* v *Commission*, T-260/16, EU:T:2018:597, paragraph 104 and the case-law cited).

56 It follows that the second head of claim must be dismissed on the ground of lack of jurisdiction.

57 As regards the third and fourth heads of claim, the Commission considers that they are inadmissible since they seek to challenge a measure which has become final, namely the contested decision. In its view, by those heads of claim, the applicants are seeking reimbursement of sums which were already due by virtue of the fine imposed by the contested decision, the amount of which was subsequently confirmed by the judgment of 15 July 2015.

58 In its reply to a written question from the Court, the Commission did not allege that the third and fourth heads of claim were intended to call into question the other acts which it would have adopted and which would have become final in the absence of proceedings. According to the Commission, all of the emails and letters which it sent to the applicants immediately after the judgment of 15 July 2015 do not constitute acts which may be challenged on the basis of the fourth paragraph of Article 263 TFEU since they are acts implementing the contested decision.

59 In that regard, it must be held that, by their fourth head of claim, the applicants are not seeking to call into question the contested decision, but to obtain compensation for the damage caused by the allegedly incorrect enforcement of the judgment of 15 July 2015.

60 It must be observed that an action for damages, under Article 268 TFEU, may be brought in the event of a wrongful act committed by the Commission or its agents in the context of the implementation of a decision of the General Court (see, to that effect, order of 17 May 2018, *Westfälische Drahtindustrie and Others* v *Commission*, T-393/10 INTP, not published, EU:T:2018:293, paragraph 21).

61 Moreover, the existence in the present case of prior exchanges between the Commission and the applicants concerning the enforcement of the judgment of 15 July 2015 does not preclude the right to lodge a claim for compensation on the basis of Article 268 TFEU and the second paragraph of Article 340 TFEU.

62 As is clear from paragraphs 44 and 45 above, the claim for compensation made by the applicants in the fourth head of claim is broader in scope than that which was dismissed by the Commission in its email of 12 August 2015. That claim did not take into consideration the interest accruing on the amount of EUR 16 400 000 during the period from 29 June 2011 to 16 June 2015. Therefore, even if that email could have been the subject of an action on the basis of the fourth paragraph of Article 263 TFEU, which the Commission disputes, the annulment of that act would not have led to the same result as that sought by the claim for compensation submitted before the General Court (see, to that effect, 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, paragraphs 49 to 64).

63 As regards the third head of claim, this is also of a compensatory nature (see paragraphs 49 and 50 above). It does not seek to challenge an act of the Commission which has become final, but to denounce the absence of a legal basis for the collection by that institution of an excess amount of EUR 1 633 085.17. That overpayment can be explained by an error committed by WDI on 17 October 2019 when it calculated the outstanding balance of the fine at issue without taking into account the interest accruing on the amount of EUR 16 400 000 during the period from 29 June 2011 to 16 June 2015.

64 Accordingly, the third and fourth heads of claim are admissible.

65 It follows from the foregoing that the objection raised by the Commission is well founded only with regard to the applicants' second head of claim.

2. Substance

66 The Court considers it justified, with regard to the proper administration of justice, to examine first the applicants' fourth head of claim, concerning a claim for compensation based on the unlawfulness of the Commission's conduct, before examining the third head of claim, alleging the existence of unjust enrichment on the part of the Commission.

(a) The claim for compensation based on the unlawfulness of the Commission's conduct

67 As a preliminary point, it must be recalled that the European Union's non-contractual liability requires three conditions to be satisfied cumulatively, namely the rule of law infringed must be intended to confer rights on individuals and the breach must be sufficiently serious, actual damage must be established and, finally, there must be a causal link between the breach of the obligation resting on the perpetrator of the act and the damage sustained by the injured parties (see, to that effect, judgments of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraphs 39 to 42, and of 6 September 2018, *Klein* v *Commission*, C-346/17 P, EU:C:2018:679, paragraphs 60 and 61 and the case-law cited). 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 (see judgment of 20 January 2021, *Commission* v *Printeos*, C-301/19 P, EU:C:2021:39, paragraph 103 and the case-law cited).

68 The applicants submit that the Commission did not enforce the judgment of 15 July 2015 correctly, which constitutes a sufficiently serious breach of the Commission's obligations under the first paragraph of Article 266 TFEU. The damage suffered, for which they seek compensation, corresponds to the amount claimed by the Commission in the contested measure, thus EUR 12 236 931.69, and the amount of the overpayment made to that institution on 17 October 2019, thus EUR 1 633 085.17, plus interest from that date.

69 In support of their claim for compensation based on the unlawfulness of the Commission's conduct, the applicants put forward, in essence, four pleas in law.

70 In the context of the first plea, alleging infringement of the first paragraph of Article 266 TFEU, the applicants claim that the fine imposed on them by the contested decision was annulled *ex tunc* by the judgment of 15 July 2015 and was replaced by a 'court imposed fine', payable only from the date of delivery of that judgment.

71 By the second plea, the applicants submit, in essence, that, in compliance with the judgment of 15 July 2015 and by reason of the annulment *ex tunc* of the fine originally imposed, the amounts paid provisionally between 29 June 2011 and 16 June 2015 pursuant to the interim order were not due, and that WDI was entitled to the reimbursement of those amounts, plus interest corresponding to that period. Since the annulled fine had been replaced by the 'court imposed fine', the applicants state that those amounts had to be offset against the payment of the latter in 2015. In the context of that plea, the applicants allege infringement not only of the first paragraph of Article 266 TFEU but also of Article 98(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

72 By the third plea, the applicants allege that the obligation, on which the Commission relies, to pay default interest since 4 January 2011 infringes the first paragraph of Article 266 TFEU as well as Article 99(4) and Article 98(1)(b) of Regulation 2018/1046. They state that the fine has been payable only since 15 July 2015.

73 The fourth plea, also alleging infringement of the first paragraph of Article 266 TFEU and of Article 99(4)(d) of Regulation 2018/1046, concerns the interest rate set by the Commission, which corresponds to that set out in the decision of 30 September 2010. According to the applicants, a new and lower rate should have been set for the 'court imposed fine', calculated by reference to the average rate set by the ECB in August 2015 for its main refinancing operations.

74 As a preliminary point, it must be observed that the consequences alleged by the applicants in the context of the second to fourth pleas in law can be drawn from the judgment of 15 July 2015 only if the premiss set out in the context of the first plea in law is correct.

75 All of the unlawful conduct complained of by the applicants is based on the premiss that the fine imposed in the contested decision was not 'upheld' by the Court, but was annulled and replaced by a 'court imposed fine'.

76 That premiss follows from the first plea in law, which concerns the effects of the annulment by the judgment of 15 July 2015 of the fine imposed by the contested decision, which were not expunged by the fact that the Court, when exercising its unlimited jurisdiction, set a fine in an identical amount.

77 Moreover, the Court notes that, in the context of the second and third pleas in law, the applicants have put forward a number of arguments in support of the premiss set out in the first plea in law. Those arguments will also be examined below, together with the first plea in law.

(1) The first plea in law, alleging a failure to have regard to the effects of the annulment of the fine imposed by the contested decision by the judgment of 15 July 2015

78 In support of the first plea in law, the applicants submit that the Commission breached its obligations under the first paragraph of Article 266 TFEU after the delivery of the judgment of 15 July 2015, which annulled the fine imposed by the contested decision. Those obligations arise both from the operative part of that judgment and the grounds on which it is based.

79 In the first place, as regards the operative part of the judgment of 15 July 2015, the fine imposed in Article 2, first paragraph, point 8 of the contested decision was annulled, without the Court having decided to limit the temporal effects of such an annulment. Article 2, first paragraph, point 8 of the contested decision could therefore no longer serve as the basis for a claim.

80 The applicants were then 'order[ed]', in accordance with the judgment of 15 July 2015, to pay a new fine, the amount of which is identical to that of the fine imposed in Article 2, first paragraph, point 8 of the contested decision. That is a second autonomous decision, which was delivered after the annulment of the initial fine and which does not affect that annulment.

81 Finally, the Court ordered the Commission to bear, in addition to its own costs, one half of the costs incurred by the applicants, including those in connection with the interlocutory proceedings. That order demonstrates that the applicants' action was successful, since the annulled fine was necessarily replaced by the 'court imposed fine' due to the illegality found. They state that the Commission's argument amounts to imposing two sentences on the applicants, in breach of the *ne bis in idem* principle.

82 As regards, in the second place, the grounds of the judgment of 15 July 2015, the applicants submit, first, that the Court stated unequivocally that the Commission was not entitled to impose a fine on them in 2010 or in 2011.

83 Second, the applicants submit that, in the exercise of its unlimited jurisdiction and unlike in the situation which arose in the case giving rise to the judgment of 14 July 1995, *CB* v *Commission* (T-275/94, EU:T:1995:141), the Court did not intend to 'order the continuity' of the annulled fine imposed by the Commission.

84 The reference, in paragraph 335 of the judgment of 15 July 2015, to the 'situation prevailing on the date on which it adopts its decision' highlights the independence and autonomy of the 'court imposed fine' set by the Court.

85 Moreover, the applicants observe that, in paragraph 346 of the judgment of 15 July 2015, the Court held that, following the provisional payment of more than EUR 15 000 000, 'the question whether their financial situation allow[ed] them to pay the fine now concern[ed] a sum representing only around two thirds of the amount initially imposed on WDI', thus EUR 46 550 000. That statement is evidence that the Court started from principle that the amounts paid provisionally would be offset directly against the 'court imposed fine' which it imposed, ruling out the accrual of interest retroactively as from 4 January 2011.

86 It also follows from paragraph 356 of the judgment of 15 July 2015 that the fine was not regarded as payable before 15 July 2015. The applicants point out that the Court recalled in that paragraph that the order allowing in part their application for interim relief 'had the effect of suspending payment of the entire fine imposed on them pending delivery of [that] judgment'.

87 Furthermore, they state that it is clear from the order of 17 May 2018, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 INTP, not published, EU:T:2018:293), that the Court did not examine the question of interest in the judgment of 15 July 2015, which confirms that it was not due as a consequence of the annulment of the fine imposed by the contested decision.

88 Third, in reply to a written question from the Court, the applicants stated that, in the judgment of 15 July 2015, the General Court had not decided on a *reformatio in pejus*. On the contrary, the adjustment of the amount of the fine, mentioned by the Court of Justice in paragraph 42 of the order of 7 July 2016, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen* v *Commission* (C-523/15 P, EU:C:2016:541), is necessarily in their favour.

89 The Commission disputes the applicants' arguments.

90 In that regard, it must be recalled that the Commission's power, under Article 23(2)(a) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1), to impose fines by decision entails the power to require payment of default interest in the event that fines are not paid within the period prescribed in the decision (see, by analogy, judgment of 14 July 1995, *CB* v *Commission*, T-275/94, EU:T:1995:141, paragraph 81). Pursuant to Article 299 TFEU, that decision is enforceable.

91 The second and third paragraphs of Article 2 of the contested decision provided that the fines were to be paid within three months of the date of notification of that decision and that, after the expiry of that period, interest was automatically payable at the interest rate applied by the ECB to

its main refinancing operations on the first day of the month in which that decision had been adopted, plus 3.5 percentage points. The fourth paragraph of Article 2 of the contested decision provided that, in the event of an appeal being lodged by an undertaking which had been fined, that undertaking could cover the fine by the due date by either providing a bank guarantee or making a provisional payment of the fine.

92 Alleging, inter alia, their inability to pay the fine imposed by the contested decision, the applicants applied to the Court for a suspension of operation of that decision, under Article 278 TFEU.

93 In the interim order, that application was granted by the President of the General Court only in part. The President ordered only the suspension of the obligation imposed on the applicants to provide the Commission with a bank guarantee in order to avoid immediate collection of the fines, subject to the condition that they pay the Commission, before 30 June 2011, the sum of EUR 2 000 000 and monthly instalments of EUR 300 000 on the 15th of each month from 15 July 2011 until further notice, but not beyond delivery of judgment in the main proceedings.

94 The suspension of the obligation to provide a bank guarantee did not entail suspending the debt from being due, such debt continuing to accrue interest (see, to that effect, order of 15 December 1999, *Cho Yang Shipping* v *Commission*, T-191/98 RII, EU:T:1999:332, paragraph 46).

95 By the judgment of 15 July 2015, the Court first, in point 2 of the operative part of that judgment, annulled Article 2, first paragraph, point 8 of the contested decision, which imposed on the applicants a fine of EUR 46 550 000, and then 'order[ed]' them, in points 4 to 6 of the operative part of that judgment, to pay a fine in the same amount. The Court considered, on the basis of the evidence adduced by the parties in respect of the applicants' financial situation, such as it had evolved subsequent to the adoption of the contested decision, that the applicants were not justified in submitting that a reduction of the fine should be granted to them by reason of their inability to pay, on grounds analogous to those set out in point 35 of the 2006 Guidelines.

96 As is clear from the order of 17 May 2018, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 INTP, not published, EU:T:2018:293, paragraph 14), the question of the starting point for the default interest due on the amount of the fine was not the subject of any exchange between the parties during the court proceedings and was not explicitly addressed in the judgment of 15 July 2015, either in the grounds or in the operative part of that judgment.

97 In the absence of explicit consideration of the question of interest in the judgment of 15 July 2015, it must be determined whether it can be inferred from that judgment that the fine set by the Court was legally distinct from that imposed by the Commission in the contested decision.

98 It must be observed that it is already clear from the wording of Article 31 of Regulation No 1/2003 that the unlimited jurisdiction conferred on the Courts of the European Union in relation to competition, which allows them to cancel, reduce or increase the fine imposed by the Commission, relates to and is limited to the fine initially imposed by the Commission. Thus, the fine set by the EU Courts does not constitute a new fine which is legally distinct from that imposed by the Commission (see, to that effect, judgment of 14 July 1995, *CB* v *Commission*, T-275/94, EU:T:1995:141, paragraphs 58 and 60).

99 Where an EU Court substitutes its own assessment for that of the Commission and reduces the amount of a fine in the exercise of its unlimited jurisdiction, it replaces, in the Commission's decision, the amount initially set in that decision with the amount resulting from its own assessment. The Commission's decision is therefore deemed, on account of the substitution effect of a judgment by the EU judicature, to have always been the decision that results from the latter's assessment (see, to that effect, judgment of 14 July 1995, *CB* v *Commission*, T-275/94, EU:T:1995:141, paragraphs 60 to 65 and 85 to 87).

100 In the judgment of 15 July 2015, the Court, first, annulled the contested decision in so far as it set the amount of the fine imposed on the applicants and, second, in the exercise of its unlimited jurisdiction, set the amount of that fine at the same level.

101 In that regard, the Court of Justice held that, although the General Court's exercise of its review of the legality of the contested decision had led to the annulment of that decision in so far as a fine was imposed on the applicants by the Commission, that circumstance did not in any way mean that the General Court had, for that reason, no power to exercise its unlimited jurisdiction (order of 7 July 2016, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen* v *Commission*, C-523/15 P, EU:C:2016:541, paragraph 38). The Court of Justice also noted that the fact that the General Court had ultimately considered it appropriate to maintain the same amount of fine as that which had been fixed in the contested decision did not affect the propriety of the exercise of its unlimited jurisdiction (see, to that effect, order of 7 July 2016, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen* v *Commission*, C-523/15 P, EU:C:2016:541, paragraph 40).

102 Therefore, the fact that, in the judgment of 15 July 2015, the Court exercised its unlimited jurisdiction to set the amount of the fine at the same level as that adopted by the Commission in the contested decision does not preclude the application of the principles referred to in paragraphs 98 and 99 above. Thus, in the present case, the Commission was entitled to take the view that, since the fine set by the General Court was not a new fine, it had been due since 4 January 2011.

103 The arguments put forward by the applicants do not call that assessment into question.

104 In the first place, in point 2 of the operative part of the judgment of 15 July 2015, the Court did indeed annul Article 2, first paragraph, point 8 of the contested decision, which imposed a fine on the applicants, unlike the operative part of the judgment of 23 February 1994, *CB and Europay* v *Commission* (T-39/92 and T-40/92, EU:T:1994:20), which merely set the fine at a lower amount without first annulling the fine originally imposed by the Commission.

105 However, a substitution effect similar to that referred to in paragraph 99 above has already been recognised where there is a decision in which the Court had first annulled the limit up to which a parent company had been held jointly and severally liable for payment of a fine imposed by the Commission and then sets that amount again in the exercise of its unlimited jurisdiction (see, to that effect, judgment of 12 May 2016, *Trioplast Industrier* v *Commission*, T-669/14, not published, EU:T:2016:285, paragraphs 15 and 56 to 62).

106 Moreover, it is important to note that, contrary to the applicants' submissions, the annulment of the fine imposed by the contested decision was not justified by the consideration that the Commission was not entitled to impose a fine on the applicants in 2010 or in 2011 on account of their inability to pay at that time.

107 In its review of the lawfulness of the decision, the Court merely held that the Commission had made errors when assessing the applicants' ability to pay, but did not hold that no fine could be imposed on them in 2010 and 2011. Nor, as a result of that finding of unlawful conduct, does the Court do more than, first, order the annulment of Article 2, first paragraph, point 8 of the contested decision and, second, rely on that finding as justification for the exercise, at the applicants' request, of its unlimited jurisdiction. That is clear from paragraphs 324 and 332 of the judgment of 15 July 2015.

108 In its own examination of the applicants' ability to pay in 2015, the Court held in paragraph 346 of the judgment of 15 July 2015, that, on the basis of the provisional payment plan set out in the interim order, the applicants had already been able to pay an amount of more than EUR 15 000 000 since 2011.

109 Accordingly, the existence of some ability to pay on the part of the applicants in 2010 and 2011 was established by the Court in the judgment of 15 July 2015, contrary to the applicant's submissions.

110 It follows that the inferences drawn by the applicants from the annulment by the Court of Article 2, first paragraph, point 8 of the contested decision are baseless.

111 In the second place, as regards the use of the word 'orders' in points 4 to 6 of the operative part of the judgment of 15 July 2015, it is settled case-law that the operative part of a judgment must be read in the light of the grounds which have led to it and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what was held in the operative part (see judgment of 14 July 1995, *CB* v *Commission*, T-275/94, EU:T:1995:141, paragraph 62 and the case-law cited).

112 In the present case, as the Court of Justice has already held, it is made clear to the requisite legal standard in the grounds of the judgment of 15 July 2015 that the General Court exercised its unlimited jurisdiction (see, to that effect, order of 7 July 2016, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen* v *Commission*, C-523/15 P, EU:C:2016:541, paragraph 41).

113 As set out in paragraph 99 above, in the exercise of its unlimited jurisdiction, the Court made a retroactive amendment to the contested decision.

114 Consequently, the word 'orders' in the operative part of the judgment of 15 July 2015 cannot have the meaning which the applicants attach to it.

115 In the third place, it cannot be inferred from paragraphs 335, 346 and 356 of the judgment of 15 July 2015 that the Court limited the retroactive effect of the amendment made to the contested decision.

116 First, as regards the reference in paragraph 335 of the judgment of 15 July 2015 to the applicants' ability to pay at the time of the Court's ruling, it has already been held that it is open to that court to take account of matters arising subsequent to the Commission's decision in the exercise of its unlimited jurisdiction, without that rendering the fine set by the Court legally different from that imposed by the Commission (see, to that effect, judgment of 14 July 1995, *CB* v *Commission*, T-275/94, EU:T:1995:141, paragraph 64 and the case-law cited).

117 Second, as regards the estimate, in paragraph 346 of the judgment of 15 July 2015, that the amount of the fine remaining due on that date represented 'around two thirds' of the fine imposed by the Commission, the amounts included by the Court in its calculation admittedly related only to the capital of the fines.

118 However, the Court has already held that such an estimate does not constitute a position on the date on which the interest payable by the applicants began to run (order of 17 May 2018, *Westfälische Drahtindustrie and Others* v *Commission*, T-393/10 INTP, not published, EU:T:2018:293, paragraph 17).

119 Moreover, contrary to the applicants' assertions, such an estimate does not call into question the retroactive effect of the exercise by the Court of its unlimited jurisdiction, recalled in paragraph 99 above.

120 In paragraph 346 of the judgment of 15 July 2015, the Court merely held that, pursuant to the interim order, the applicants had already paid on that date an amount of over EUR 15 000 000, which represented approximately one third of the amount of the fine imposed in 2010 (EUR 46 550 000).

121 Since it was examining the applicants' ability to pay, the Court could not disregard the provisional partial payment of the fine when exercising its unlimited jurisdiction. The mere estimation of the order of magnitude of the outstanding balance, expressed as capital, on the date on which it gave judgment does not imply that the Commission, in the course of enforcing the judgment of 15 July 2015, had to offset the amounts paid on a provisional basis, plus interest, against an alleged 'court imposed fine' imposed by the Court, which would have been legally distinct from the fine imposed by the Commission.

122 Third, as regards paragraph 356 of the judgment of 15 July 2015, it does not call into question the fact that interest is due on the amount of the fine set by the Court from 4 January 2011.

123 In paragraph 356 of the judgment of 15 July 2015, the Court merely responded to an argument raised by the applicants alleging breach of the principle of equal treatment. In that regard, the Court held that the initiation of the action by the applicants against the contested decision and the order allowing in part their application for interim relief had the effect of suspending payment of the entire fine imposed on them pending delivery of that judgment, unlike the other undertakings which had not brought proceedings.

124 As recalled in paragraphs 92 and 93 above, in the interim order, the President of the General Court ordered only the suspension of the applicants' obligation to provide the Commission with a bank guarantee in order to avoid immediate collection of the fines, establishing a provisional payment plan that was favourable to the applicants until, but not beyond, the date of delivery of the judgment in the main proceedings. As stated in paragraph 94 above, the suspension of the obligation to provide a bank guarantee did not entail suspending the debt from being due, such debt continuing to accrue default interest during the judicial proceedings.

125 Fourth and finally, the order that the Commission pay half of the costs incurred by the applicants was made on the basis of Article 134(3) of the Rules of Procedure and can be explained by the annulment of Article 2, first paragraph, point 8 of the contested decision.

126 However, as stated in paragraphs 104 to 110 above, the inferences which the applicants draw from that annulment are unfounded.

127 Moreover, it has already been held that, where the Court maintains part of the amount of the fine in the exercise of its unlimited jurisdiction, the obligation to pay default interest from the outset does not constitute a penalty in addition to the fine initially imposed by the Commission, which would have a dissuasive effect on the exercise of the right to bring an action. Both the fact that a fine is not legally different when revised by the EU judicature and the principle that actions do not have a suspensory effect preclude the Commission from releasing an undertaking which has not paid that fine immediately and whose action has been upheld in part from its obligation to pay, as from the date on which the fine imposed by the Commission is due, from interest on the amount of the fine set by the EU judicature (see, to that effect, judgment of 14 July 1995, *CB* v *Commission*, T-275/94, EU:T:1995:141, paragraphs 86 and 87).

128 It follows from the foregoing that the first plea in law must be dismissed.

(2) The second to fourth pleas in law, relating to the consequences of the annulment of the fine imposed by the contested decision

129 As stated in paragraphs 74 and 75 above, the second to fourth pleas in law are based on the premiss, set out in the first plea in law, that the fine imposed by the Commission was annulled and replaced by a 'court imposed fine'.

130 Since that premiss was rebutted in the examination of the first plea in law, the second to fourth pleas in law are unfounded and must therefore be dismissed.

(3) Conclusion

131 Since the pleas in law put forward by the applicants are unfounded, it must be concluded that there is no unlawful conduct and, a fortiori, no sufficiently serious breach of the Commission's obligations under the first paragraph of Article 266 TFEU, and that the applicants' fourth head of claim must be dismissed, without there being any need to rule on the other conditions for establishing non-contractual liability on the part of the European Union, recalled in paragraph 67 above.

(b) The claim alleging unjust enrichment

132 By their third head of claim, the applicants ask the Court to order the Commission to repay to WDI the sum of EUR 1 633 085.17, plus interest since 17 October 2019, on account of the Commission's unjust enrichment.

133 That enrichment is due to a calculation error which the applicants made when WDI paid the Commission the sum of EUR 18 149 636.24 on 17 October 2019, without taking into account the interest accruing on the sum of EUR 16 400 000 during the period from 29 June 2011 to 16 June 2015.

134 The Commission disputes the applicants' arguments.

135 As the Commission points out, the arguments put forward by the applicants in support of their claim that the claim of unjust enrichment should be upheld merely repeat the arguments already set out in support of the fourth head of claim, which was examined and dismissed in paragraphs 67 to 131 above, based on allegedly unlawful conduct on the part of the Commission.

136 It is clear from the reasons for the dismissal of the fourth head of claim that the Commission did not benefit from an overpayment of EUR 1 633 085.17.

137 It follows that the applicants' third head of claim is unfounded and must therefore also be dismissed.

D. The applicants' first head of claim, seeking annulment of the contested measure

138 By their first head of claim, the applicants seek annulment of the contested measure, by which the Commission gave WDI formal notice to pay it the sum of EUR 12 236 931.69 corresponding, in its view, to the outstanding balance of the debt, taking into account the value date of 31 March 2020.

139 In support of that head of claim, the applicants rely on the four pleas in law examined in paragraphs 78 to 130 above and a fifth plea in law alleging infringements of the first paragraph of Article 266 TFEU and breach of the principle of sound administration. In the context of the latter plea in law, the applicants repeat the arguments already put forward in support of the first four pleas in law.

140 The Commission contends that the first head of claim is inadmissible. It states that the contested measure is merely an update of the original debit note of 2010. That measure is therefore not the basis of a new claim against the applicants, but a formal notice within the meaning of Article 103(2) of Regulation 2018/1046. The judgment of 15 July 2015 does not impose new fines and does not affect the question of default interest. That judgment is limited to the annulment of Article 2, first paragraph, point 8 of the contested decision. However, the third paragraph of Article 2 of that decision, relating to the payment of default interest, has remained unchanged and therefore fully applicable. Since the contested measure is preparatory and purely confirmatory, it is not open to challenge.

141 As is clear from paragraphs 128 and 130 above, the first four pleas in law raised by the applicants are unfounded and must be dismissed. Since the fifth plea in law is based on the same arguments, it must also be dismissed.

142 In those circumstances, the applicants' first head of claim must be dismissed as unfounded, without there being any need to examine the plea of inadmissibility raised by the Commission in that regard.

IV. Costs

143 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. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those of the Commission in accordance with the forms of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG and Pampus Industriebeteiligungen GmbH & Co. KG to pay the costs.**

da Silva Passos Valančius Reine

Truchot Sampol Pucurull

Delivered in open court in Luxembourg on 23 November 2022.

[Signatures]

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