Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

4 July 2024*

(Appeal – Competition – Agreements, decisions and concerted practices – European market for prestressing steel – Decision finding an infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) – Judgment annulling the decision in part and fixing a fine in an amount identical to the amount of the fine initially imposed – Application of payments made on a provisional basis – Decision of the European Commission on the outstanding balance of the fine – Due date for payment of a fine, the amount of which has been fixed by the EU judicature, in the exercise of its unlimited jurisdiction)

In Case C-70/23 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 8 February 2023,

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, Rechtsanwälte,

appellants,

the other party to the proceedings being:

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

defendant at first instance,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, Z. Csehi (Rapporteur), M. Ilešič, I. Jarukaitis and D. Gratsias, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

* Language of the case: German.

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 1 February 2024,

gives the following

Judgment

1 By their appeal, Westfälische Drahtindustrie GmbH ('WDI'), Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG and Pampus Industriebeteiligungen GmbH & Co. KG ask the Court of Justice to set aside the judgment of the General Court of the European Union of 23 November 2022 in *Westfälische Drahtindustrie and Others* v *Commission*, (T-275/20, 'the judgment under appeal', EU:T:2022:723), by which it dismissed their action seeking, principally, first, annulment, of the European Commission's letter of 2 March 2020 ('the act at issue') by which they were given formal notice to pay to the Commission the amount of EUR 12 236 931.69 corresponding, in its view, to the outstanding balance of the fine imposed on them on 30 September 2010; secondly, the appellants seek a declaration that the fine had been paid in full on 17 October 2019 by the payment of the amount of EUR 18 149 636.24; and, thirdly, they seek an order that the Commission pay WDI the sum of EUR 1 633 085.17, plus interest from that date, on account of the unjust enrichment of the Commission, and, in the alternative, an order that the Commission pay them the amount of EUR 12 236 931.69, claimed by the Commission from WDI, and an amount equivalent to the overpayment made to that institution, in the amount of EUR 1 633 085.17, plus interest from 17 October 2019 until the amount due has been reimbursed in full.

Legal context

2 Article 23(2) 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) provides:

'The Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

(a) they infringe Article [101] or Article [102 TFEU] …

…'

3 Article 31 of that regulation provides:

'The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.'

4 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'), included under the heading 'Ability to pay', provides:

'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.'

Background to the dispute

5 The background to the dispute is set out at paragraphs 2 to 26 of the judgment under appeal and may be summarised as follows.

6 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), as amended by Decision C(2010) 6676 final of 30 September 2010 ('the decision at issue'), the Commission imposed penalties on several undertakings, including the appellants, which are suppliers of prestressing steel, on account of their participation in a cartel in the prestressing steel market. The Commission imposed a fine of EUR 46 550 000 on WDI, while Westfälische Drahtindustrie Verwaltungsgesellschaft and Pampus Industriebeteiligungen were held jointly and severally liable for EUR 38 855 000 and EUR 15 485 000 respectively.

7 In accordance with the decision at issue, the fine had to be paid within three months of the date of notification of that decision. After the expiry of that period, interest was to be automatically payable, calculated at the interest rate applied by the European Central Bank (ECB) to its main financing operations, plus 3.5 percentage points. The decision at issue also 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.

8 After bringing an action in which they sought not only the annulment of the decision at issue but also the reduction of the fine imposed, the appellants submitted an application for interim measures seeking, in essence, suspension of the operation of that decision until delivery of the judgment in that action.

9 By the order of 13 April 2011, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 R, EU:T:2011:178), the President of the General Court upheld in part the application for interim measures by ordering the suspension of the obligation imposed on the appellants to provide the Commission with a bank guarantee in order to avoid immediate collection of the fine, subject to the condition that the appellants pay that institution, provisionally, first, the sum of EUR 2 000 000 and, second, monthly instalments of EUR 300 000 until delivery of the judgment in the action for annulment.

10 By the judgment of 15 July 2015, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10, 'the judgment of 15 July 2015', EU:T:2015:515), the General Court annulled the decision at issue in so far as it imposed a fine on the appellants. It then ordered the appellants to pay a fine in an amount identical to the amount fixed in the decision at issue. In order to reach that conclusion,

the General Court first of all found that the Commission had made errors when assessing the appellants' ability to pay. Then, exercising its unlimited jurisdiction, the General Court found that it was apparent from various indices, including, inter alia, the restructuring that the appellants had themselves carried out after the date on which that decision was adopted, that their claim for a reduction of the fine by reason of their inability to pay was not substantiated.

11 The judgment of 15 July 2015 was the subject of an appeal brought by the appellants, who challenged inter alia the fact that the General Court took into account, in the exercise of its unlimited jurisdiction, their ability to pay as it existed in 2015 and not as it existed 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).

12 After the judgment of 15 July 2015 was delivered, differences arose between the Commission and the appellants' lawyers as to the date from which interest on the fine should accrue. While the appellants' lawyers considered that the fine was payable only from the date of delivery of that judgment, the Commission took the view that interest was payable from the date laid down in the decision at issue.

13 In that context, after their appeal was dismissed, the appellants asked the General 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 had been due from the date of delivery of that judgment. In the alternative, the appellants asked the General Court to rectify or supplement that judgment by specifying the date from which the interest began to accrue.

14 By the order of 17 May 2018, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 INTP, EU:T:2018:293), the General Court declared those claims inadmissible. With regard to the request for interpretation, the General 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 fine imposed on the appellants was not addressed in the judgment of 15 July 2015. According to the General Court, the appellants' request was for an opinion on the consequences of the judgment of 15 July 2015, which was outside 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. Lastly, the General Court held that, having regard to the time limits laid down to that effect in Article 164(2) and Article 165(2) of its Rules of Procedure, the applications, submitted in the alternative and seeking that the judgment of 15 July 2015 be rectified or supplemented, had to be held to be out of time.

15 Pursuant to the order of 13 April 2011, *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 R, EU:T:2011:178), WDI paid the Commission, on a provisional basis, a total amount of EUR 16 400 000 during the period from 29 June 2011 to 16 June 2015.

16 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%.

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

18 By the act at issue, 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, calculated at a rate of 4.5%, had started to accrue not as from the judgment of 15 July 2015, but from the date laid down in the decision at issue, that is 4 January 2011. 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.

The procedure before the General Court and the judgment under appeal

19 By application lodged at the Registry of the General Court on 11 May 2020, the appellants sought, principally, first, the annulment of the act at issue; secondly, a declaration, consequently, 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), together with interest on that amount during that period (EUR 1 420 610), making a total amount of EUR 17 820 610, against the fine imposed by the General 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 the fine was fully settled by the payment made by WDI on 17 October 2019 in the amount of EUR 18 149 636.24; and, thirdly, an order that the Commission pay WDI the sum of EUR 1 633 085.17, together with interest accrued from 17 October 2019 until the sum due has been repaid in full. In the alternative, the appellants asked that the European Union, represented by the Commission, be ordered, first, to pay them compensation equal to the amount claimed in the act at issue, thus EUR 12 236 931.69, and, secondly, to pay WDI the sum of EUR 1 633 085.17, together with interest from 17 October 2019 until reimbursement in full of the amount due.

20 In the judgment under appeal, in the context of the examination of the merits of the appellants' claims referred to in paragraph 19 of the present judgment, the General Court first of all examined the appellants' claim for compensation, based on several infringements of the first paragraph of Article 266 TFEU. In that regard, the General Court held that all the alleged infringements were based on the premiss that the fine imposed by means of the decision at issue had not been 'upheld' by the General Court in the judgment of 15 July 2015, but had been annulled and replaced by a new fine that the appellants referred to as a 'court imposed fine'.

21 After declaring the claim for compensation admissible, the General Court recalled that, in paragraph 98 of the judgment under appeal, in accordance with the case-law arising from its judgment of 14 July 1995, *CB* v *Commission* (T-275/94, EU:T:1995:141), the fine fixed by the EU judicature in the exercise of its unlimited jurisdiction does not constitute a new fine which is legally distinct from that imposed by the Commission. The mere fact that the Court ultimately considered it appropriate, in its judgment of 15 July 2015, to maintain an identical fine to that fixed in the decision at issue does not preclude the application of that case-law in the present case.

22 Nor would that assessment be called into question by the appellants' arguments alleging, inter alia, that the General Court had annulled the fine initially imposed before fixing a new amount on the basis of factors subsequent to the decision at issue and that the President of the General Court had ordered, by his order of 13 April 2011, in *Westfälische Drahtindustrie and Others* v *Commission* (T-393/10 R, EU:T:2011:178), the suspension of the obligation to provide a bank guarantee.

23 The General Court also stated that, where the EU Courts maintain part of or the full amount of the fine in the exercise of their 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.

24 In the light of those considerations, the Court held that there was no sufficiently serious breach of the Commission's obligations under Article 266 TFEU and rejected the appellants' claim for compensation. Given that the other claims brought by the appellants were, in essence, also based on the premiss that the Commission infringed that provision, the General Court dismissed the action in its entirety without examining the plea of inadmissibility raised by the Commission against the application to annul the act at issue.

Forms of order sought

25 The appellants submit that the Court of Justice should:

– set aside the judgment under appeal;

– annul the act at issue;

– consequently, declare that the Commission must offset the payments made by WDI during the period from 29 June 2011 to 16 June 2015 in the amount of EUR 16 400 000, plus compensatory interest totalling EUR 1 420 610, making a total of EUR 17 820 610, against the fine imposed independently by the General Court in the judgment of 15 July 2015, with effect from 15 July 2015, and that that fine was settled in its entirety by the payment of 17 October 2019 in the amount of EUR 18 149 636.24;

– order the Commission to pay to WDI an amount of EUR 1 633 085.17 together with compensatory interest with effect from 17 October 2019 until reimbursement in full of the corresponding amount due;

– in the alternative, set aside the judgment under appeal and order the Commission to pay compensation to all three appellants in the amount of EUR 12 236 931.69 in settlement of the amount claimed from WDI by the Commission, by the act at issue, in the amount of EUR 12 236 931.36 and to pay to WDI the amount of the overpayment being EUR 1 633 085.17 together with compensatory interest from 17 October 2019 until reimbursement in full of the amount due;

– in the alternative to the heads of claim appearing in indents 1 to 5, refer the case back to the General Court for a ruling;

and in any event

– order the Commission the pay the costs incurred in the proceedings at first instance and on appeal.

26 The Commission contends that the Court should:

– dismiss the appeal and

– order the appellants to pay the costs.

The appeal

27 In support of their appeal, the appellants rely on three grounds.

The first and second grounds of appeal

28 By their first ground of appeal, the appellants criticise the General Court for erring in law by not complying with the judgment of 15 July 2015 and for providing an erroneous and contradictory statement of reasons in relation to that judgment in the judgment under appeal. The second ground of appeal alleges infringement of Article 266 TFEU by reason of the failure to comply with the rule of law resulting from the combination of the annulment effect of the judgment of 15 July 2015 and the substitutive legal nature of the decision adopted in that judgment.

29 That said, it is apparent from the appellants' pleadings that, by those two grounds of appeal, they claim, in essence, that the General Court's exercise of its unlimited jurisdiction, in the context of the judgment of 15 July 2015, led it to fix a fine which had to be characterised as new and legally distinct from the fine that the Commission had imposed on the appellants by the decision at issue. In particular, although the appellants put forward their first ground of appeal as alleging, in part, that the reasoning was contradictory and erroneous, a reading of the various arguments put forward in support of that ground of appeal shows that, on that basis, they are in fact seeking to challenge not the adequacy of the reasoning of the judgment under appeal, but rather the legal consequences which the General Court drew from the fact that it had exercised, in the judgment of 15 July 2015, its unlimited jurisdiction. Consequently, it is appropriate to deal with those two pleas together and to examine first of all the merits of that premiss.

Arguments of the parties

30 The appellants submit that, by the judgment of 15 July 2015, the General Court, first, annulled *ex tunc* the fine imposed by the Commission, which gave rise to a debt owed to them corresponding to the sum paid by them, provisionally, pursuant to the interim order, plus interest, and, secondly, fixed a new separate fine, with effect from the date of delivery of the judgment of 15 July 2015, which they refer to as the 'court-imposed fine', as opposed to the 'annulled fine' imposed by the Commission in 2010.

31 To that end, they emphasise in particular the fact that, in the operative part of the judgment of 15 July 2015, the General Court annulled Article 2(8) of the decision at issue in its entirety, with the consequence that, by reason of the effect of annulment that that judgment had, the fine imposed by the Commission was cancelled in its entirety with retroactive effect.

32 Furthermore, in view of the seriousness of the errors found by the General Court in that judgment and given that it did not seem possible retroactively to fix the amount of a reduced fine because of the incorrect assessment of the ability to pay made in the decision at issue, the General Court departed from its previous judicial practice. Thus, instead of fixing directly, as in other judgments, the amount of the annulled fine at a reduced amount with retroactive effect, it decided, in the exercise of its unlimited jurisdiction, to combine the annulment of that decision with a decision imposing a penalty on the appellants. That combination enabled the General Court, as a first step, to cancel that decision completely and, as a second step, to substitute it with its own assessment.

33 Similarly, the fact that, in the judgment of 15 July 2015, the General Court considered that it was permitted to take account of payments already made by the appellants over a period of almost five years and the improvement in their ability to pay at the date of delivery of that judgment, is revealing.

34 Therefore, the reasoning of the judgment under appeal is contradictory since it fails to take account of the novel and distinct nature of the fine imposed in the judgment of 15 July 2015. In particular, in paragraph 99 of the judgment under appeal, the General Court held that the decision at issue was deemed, by reason of the substitution effect of the judgment of 15 July 2015, to have always been that resulting from the assessment in that judgment. According to the appellants, the General Court should have determined the scope of that substitution effect arising from the exercise of its unlimited jurisdiction in the light of the operative part and the reasoning of the judgment from which such an effect follows. In the present case, however, it follows from the twofold effect of the annulment of the decision at issue and of the appellants being ordered to pay a fine that a new fine, legally distinct from the fine initially imposed on them, was adopted. Moreover, from a textual point of view, that substitution effect necessarily implies at the very least an amendment of the initial fine, and therefore, in essence, the adoption of a new, legally distinct fine.

35 In short, the operative part of the judgment of 15 July 2015 and the overall assessment made by the General Court in that judgment show that the decision at issue was varied in its entirety. The substitution effect related both to the statement of reasons and to the overstated amount of the fine. It led to an amendment which makes it necessary to draw a clear distinction between the initial annulled fine and the court imposed fine replacing it, as well as the legal consequences associated with it.

36 The Commission contends that the first and second grounds of appeal are unfounded.

Findings of the Court

37 At the outset, it should be recalled that the system of judicial review of Commission decisions relating to proceedings under Articles 101 and 102 TFEU consists in a review of the legality of the acts of the institutions for which provision is made in Article 263 TFEU, which may be supplemented, pursuant to Article 261 TFEU and at the request of applicants, by the General Court's exercise of unlimited jurisdiction with regard to the penalties imposed in that regard by the Commission (judgment of 25 July 2018, *Orange Polska* v *Commission*, C-123/16 P, EU:C:2018:590, paragraph 104 and the case-law cited).

38 The scope of judicial review provided for in Article 263 TFEU extends to all the elements of Commission decisions relating to proceedings under Articles 101 and 102 TFEU, which are subject to in-depth review by the General Court, in law and in fact, in the light of the pleas raised by the applicant at first instance and taking into account all the elements submitted by the latter. However, in the context of that review, the EU Courts may in no circumstances substitute their own reasoning for that of the author of the contested act (judgment of 25 July 2018, *Orange Polska* v *Commission*, C-123/16 P, EU:C:2018:590, paragraph 105 and the case-law cited).

39 By contrast, when they exercise their unlimited jurisdiction laid down in Article 261 TFEU and Article 31 of Regulation No 1/2003, the EU Courts are empowered, in addition to merely reviewing the legality of the penalty, to substitute their own assessment in relation to the determination of the amount of that penalty for that of the Commission, the author of the act in which that amount was initially fixed. Consequently, the EU judicature may vary the contested act, even without annulling it, in order to cancel, reduce or increase the amount of the fine imposed, that jurisdiction being exercised by taking into account all the factual circumstances (judgment of 25 July 2018, *Orange Polska* v *Commission*, C-123/16 P, EU:C:2018:590, paragraph 106 and the case-law cited).

40 Accordingly, it is apparent from the case-law of the Court of Justice that the unlimited jurisdiction enjoyed by the General Court on the basis of Article 31 of Regulation No 1/2003, which allows it to cancel, reduce or increase the fine imposed by the Commission, relates and is limited to the amount of the fine initially imposed by the Commission (see, to that effect, judgment of 16 June 2022, *Sony Optiarc and Sony Optiarc America* v *Commission*, C-698/19 P, EU:C:2022:480, paragraph 92).

41 In addition, unlike Article 23 of Regulation No 1/2003, which confers on the Commission the power to impose fines for infringement of the competition rules, Article 31 of that regulation endows the General Court with unlimited jurisdiction which forms an integral part of its power to rule on actions brought against decisions by which the Commission has imposed such a fine. Consequently, the purpose of Article 31 of Regulation No 1/2003 is not to empower the General Court to impose a new fine which is legally distinct from that fixed by the Commission, but to supplement the judicial review by allowing the General Court to vary the amount of the fine initially imposed.

42 Accordingly, it must be emphasised, as the General Court did in paragraph 99 of the judgment under appeal, that where the EU judicature substitutes its own assessment for that of the Commission, it replaces, within the Commission decision, the amount initially fixed 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.

43 In the present case, in the judgment of 15 July 2015, the General Court first of all held that the Commission erred in the assessment of the appellants' ability to pay, within the meaning of point 35 of the 2006 Guidelines. Next, in the exercise of its unlimited jurisdiction and upon the request of the appellants, since they had contended that the Court should not only set aside the decision at issue but also reduce the fine imposed, the Court held, on the basis of the evidence adduced by the parties in respect of the appellants' financial situation, such as it had evolved subsequent to the adoption of the decision at issue, that the appellants' submission that a reduction of that 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, was not well founded.

44 Given that, in the judgment of 15 July 2015, the General Court thus exercised its unlimited jurisdiction, the General Court was therefore correct in law, in paragraph 98 of the judgment under appeal, to follow its judgment of 14 July 1995, *CB* v *Commission* (T-275/94, EU:T:1995:141, paragraphs 58 and 60), which held that the EU judicature does not have the power, when exercising its unlimited jurisdiction, to replace the fine imposed by the Commission with a new, legally distinct fine, and to infer from this, in paragraph 102 of the judgment under appeal, that, in the present case, given that the fine as varied by the General Court in the judgment of 15 July 2015 was not a new fine, that fine had been due since 4 January 2011.

45 It should be noted in that regard that neither the way in which the General Court fixed the amount of the fine nor the nature of the factors which it took into account when it substituted its own assessment for that of the Commission in the judgment of 15 July 2015 can lead to the conclusion that that fine, thus varied, constitutes a new fine which is legally distinct from that imposed by the Commission in the decision at issue.

46 It is true that the General Court annulled, in point 2 of the operative part of the judgment of 15 July 2015, Article 2(8) of the decision at issue, which imposed a fine on the appellants, and fixed, in points 4 to 6 of that operative part, the various amounts constituting the varied fine, which corresponded to those of the fine imposed in the decision at issue. However, that fact cannot be understood, as the Advocate General observed in point 55 of his Opinion, as an expression of the General Court's intention to impose a new fine which is legally distinct from that fixed by the Commission.

47 Where, in the exercise of its unlimited jurisdiction, the EU judicature substitutes its own assessment, in relation to the determination of the amount of the fine, for that of the Commission, by imposing a new amount, that substitution necessarily entails the annulment of the amount of the initial fine, as fixed by the Commission, whether or not that annulment is expressly referred to in the judgment.

48 Consequently, while it would indeed be preferable for the General Court to follow a uniform drafting practice as far as possible, the fact remains that no particular legal consequence can be drawn from the fact that, following the exercise of its unlimited jurisdiction, the General Court chose to refer, in the operative part, not to the fact that a new amount of the fine was substituted, possibly in identical terms, for that previously fixed, but, first of all, to the fact that the amount of the fine imposed by the Commission was annulled and then that a fine of the same amount was imposed on the appellants.

49 It follows from the foregoing that, since the premiss on which the first and second grounds of appeal are based is incorrect, those grounds must be rejected as unfounded, without it being necessary to examine in more detail the various complaints put forward by the appellants in the context of those grounds.

The third ground of appeal

50 By their third ground of appeal, the appellants submit that the General Court infringed their right to a fair hearing.

Arguments of the parties

51 According to the appellants, the General Court rejected all the pleas submitted to it on the basis of a single ground, namely that the fine resulting from the judgment of 15 July 2015 is not a 'new' fine.

52 While accepting that there is a link between those pleas, the appellants submit that that fact should not, however, have been sufficient to enable the General Court to reject all of those pleas in that way. In order to ensure effective judicial protection, the General Court should have subjected all the pleas in law to an individual and careful examination. It is not apparent from the statement of reasons of the judgment under appeal that the General Court carried out such an examination.

53 The Commission contends that the third ground of appeal is also wholly unfounded.

Findings of the Court

54 In paragraphs 129 and 130 of the judgment under appeal, the General Court observed that the second to fourth pleas submitted to it were based on the premiss, set out in the context of the first plea submitted before it, that the fine imposed by the Commission had been annulled and replaced by a 'court imposed fine'. Taking the view that that premiss had been demonstrated to be false in the context of the examination of the first plea, the General Court rejected the second to fourth pleas as unfounded without examining the arguments in support of them.

55 In so doing, the General Court did not in any way infringe the right to a fair hearing or, in so far as the appellants may be understood to have raised such a complaint, provide an insufficient statement of reasons for the conclusion which it reached.

56 As in the present appeal, the appellants' arguments relating to the second to fifth pleas submitted before the General Court were all based on the premiss that the fine imposed by the Commission had been annulled and replaced by a 'court imposed fine'. Since that premiss is incorrect, as has also been confirmed in the examination of the first and second grounds of appeal put forward in the context of the present appeal, it was unnecessary for the General Court to provide more detailed reasons for rejecting the second, third and fourth pleas relied on before it.

57 It must be recalled, in addition, that, in accordance with the Court of Justice's settled case-law, the duty incumbent upon the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know the grounds of the judgment under appeal which the appellants seek to have set aside and provides the Court of Justice with sufficient material for it to exercise its powers of review on appeal (judgment of 7 March 2024, *Nevinnomysskiy Azot and NAK 'Azot'* v *Commission*, C-725/22 P, EU:C:2024:217, paragraph 131 and the case-law cited).

58 By the line of argument summarised in paragraph 52 of the present judgment, the appellants have neither established nor even alleged that they could not have been aware of the reasons for the judgment under appeal. On the contrary, that line of argument shows that the statement of reasons of the judgment under appeal made it possible for the appellants to know the grounds

upon which the General Court had based its decision. It also provides the Court with sufficient material for it to exercise its power of review in the context of the examination of the present appeal.

59 Accordingly, the third ground of appeal must be rejected as unfounded.

60 Since none of the grounds relied on by the appellants in support of their appeal has been upheld, that appeal must be dismissed in its entirety.

Costs

61 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

62 In accordance with Article 138(1) of those rules, which applies to appeal proceedings by virtue of Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

63 Since the appellants have been unsuccessful and the Commission has applied for costs, they must be ordered to pay the costs.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Dismisses the appeal;**

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

[Signatures]