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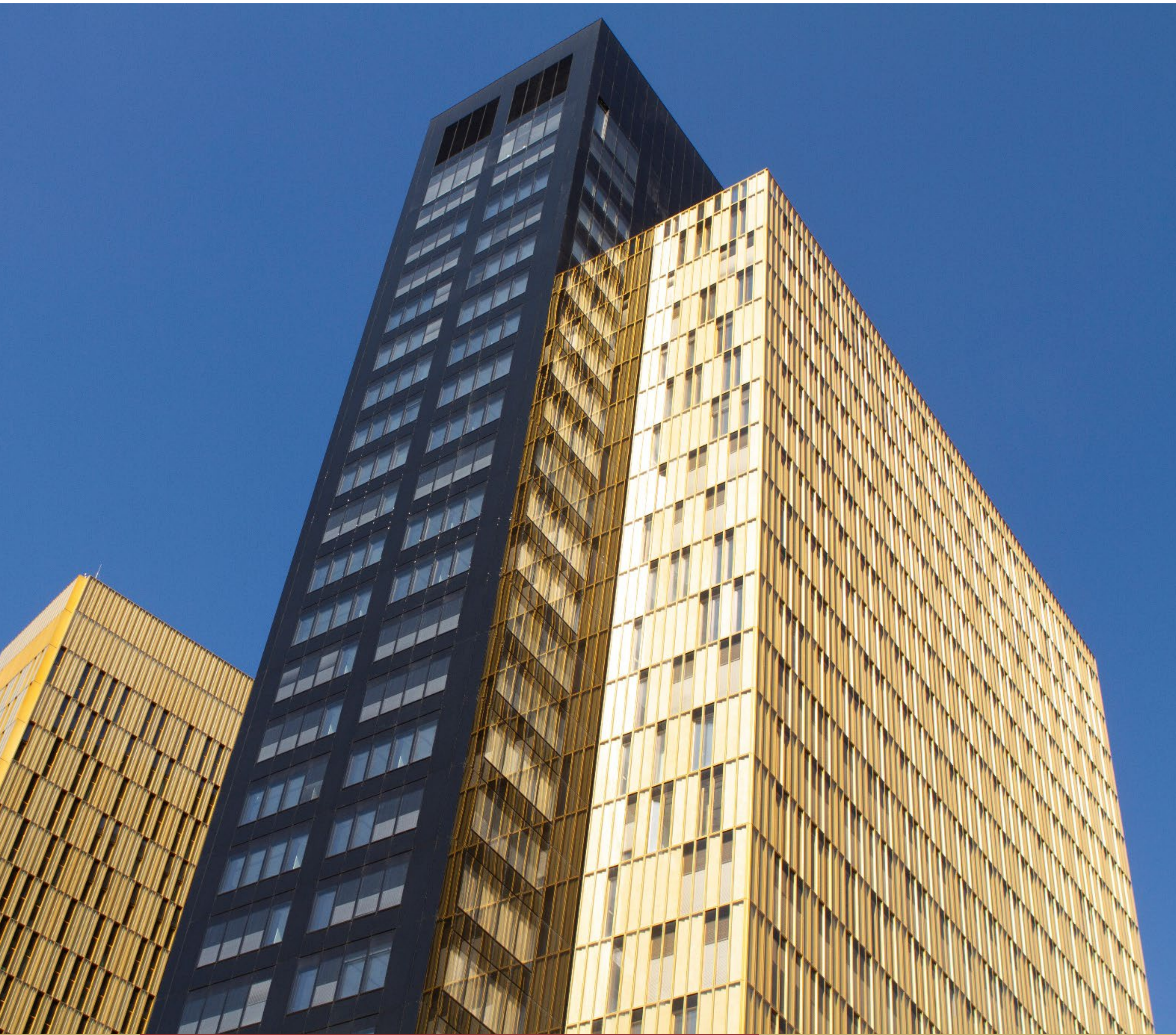

Fact Sheet

Actions for damages for infringements of the competition law provisions under Directive 2014/104/EU ('Private enforcement')

Research and Documentation Directorate

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Preface

In order to ensure the full effectiveness of Articles 101 and 102 TFEU, and in particular the practical effect of the prohibitions laid down therein, the Court of Justice of the European Union established, in two judgments handed down in 2001 [1] and 2006, [2] the right for any natural or legal person to claim full compensation for any harm caused by an infringement of these provisions. In the subsequent case-law of the Court, the conditions of this entitlement to compensation have been clarified and refined.

Since national courts have jurisdiction to hear claims for compensation for harm caused by an infringement of EU competition law, it is for the domestic legal system of each Member State to determine its own rules governing such claims, in accordance with the principle of procedural autonomy. However, given that compliance with the principles of equivalence and effectiveness limits this autonomy, the Court has also laid down minimum requirements in this regard.

Drawing on that case-law of the Court, Directive 2014/104 [3] reaffirms, first, the right to full compensation for an infringement of EU competition law and, second, extends this right to infringements of national competition law where it applies under Article 3(1) of Regulation No 1/2003. [4]

In procedural terms, Directive 2014/104 lays down a number of rules aimed at harmonising the rules for exercising the right to compensation before the national courts. Several of its provisions also seek to connect actions in damages for harm caused by infringements of competition rules (private enforcement) and the public implementation of these rules by the European Commission and national competition authorities (public enforcement).

Lastly, Directive 2014/104 sets out rules governing the temporal application of its provisions.

This fact sheet retraces the case-law of the Court interpreting the provisions of Directive 2014/104 and also outlines the judgments in *Skanska Industrial Solutions and Others* [5] and *Sumal* [6] which provide important clarifications as regards the identification of the defendant in an action for compensation for the harm caused by infringements of EU competition law. While those leading cases determine the entities liable for providing compensation under primary law, the clarifications they provide on this issue remain essential with respect to actions for damages under Directive 2014/104.

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[1] Judgment of 20 September 2001, *Courage and Crehan* (C-453/99, EU:C:2001:465).

[2] Judgment of 13 July 2006, *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461).

[3] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, (OJ 2014 L 349, p. 1).

[4] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

[5] Judgment of 14 March 2019, *Skanska Industrial Solutions and Others* (C-724/17, EU:C:2019:204).

[6] Judgment of 6 October 2021, *Sumal* (C-882/19, EU:C:2021:800).

However, the case-law prior to the entry into force of Directive 2014/104 which, in essence, was reaffirmed by that directive, is not included in this fact sheet. Nor does it cover the case-law concerning issues of interpretation of the rules of jurisdiction and the determination of the place where the damage occurred [7] contained in Regulations No 44/2001 [8] and No 1215/2012. [9]

The fact sheet only considers case-law up to 1 March 2026.

[7] Judgments of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, *EU:C:2015:335*), 24 October 2018, *Apple Sales International and Others* (C-595/17, *EU:C:2018:854*), 29 July 2019, *Tibor-Trans* (C-451/18, *EU:C:2019:635*), 15 July 2021, *AB Volvo and Others* (C-30/20, *EU:C:2021:604*), 11 November 2021, *Stichting Cartel Compensation and Equilib Netherlands* (C-819/19, *EU:C:2021:904*), 4 July 2024, MOL (C-425/22, *EU:C:2024:578*) and 2 December 2025, *Stichting Right to Consumer Justice and Stichting App Stores Claims* (C-34/24, *EU:C:2025:936*).

[8] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

[9] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (OJ 2012, L 351, p. 1)

List of the legislation considered

Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, (OJ 2014 L 349 p. 1).

I. Scope of application of Directive 2014/104

1. Material scope

Judgment of 20 April 2023, Repsol Comercial de Productos Petrolíferos, Repsol Comercial de Productos Petrolíferos (C-25/21, EU:C:2023:298) [10]

(Reference for a preliminary ruling – Competition – Vertical restrictions of competition – Article 101(1) and (2) TFEU – Principle of effectiveness – Regulation (EC) No 1/2003 – Article 2 – Directive 2014/104/EU – Article 9(1) – Binding effect of the final decisions of the national competition authorities finding an infringement of the competition law rules – Temporal and material application – Actions for damages and for a declaration of nullity for infringements of the EU competition law provisions)

In answer to a reference for a preliminary ruling, the Court holds that the material scope of Directive 2014/104 is limited solely to actions for damages brought for infringements of the competition rules and does not extend to other types of action concerning infringements of the competition law provisions.

By decisions of 11 July 2001 and 30 July 2009, the Spanish competition authorities found, in essence, that, by having fixed, in the context of its contractual relations with certain Spanish service stations, fuel retail prices, Repsol had infringed the competition law rules. As the actions seeking to challenge those decisions were unsuccessful, the decisions became final.

Following those decisions, the owners of a service station brought before the Juzgado de lo Mercantil No 2 de Madrid (Commercial Court No 2, Madrid, Spain; hereafter 'the national court'), first, an action for a declaration of nullity of the exclusive supply contracts concluded with Repsol during the period from 1987 to 2009 in connection with the operation of that service station and, second, an action for damages seeking compensation for the harm allegedly caused by those contracts. To that end, they rely on these decisions to demonstrate the existence of the infringement concerned.

In these circumstances, the national court notes from the outset that, under Article 2 of Regulation No 1/2003, the burden of proof of an infringement of Article 101 TFEU is to rest on the party alleging the infringement. It adds that, in principle, in accordance with Article 9(1) of Directive 2014/104, in an action for damages brought following a decision of a national competition authority which has become final, the applicant concerned may be able to discharge its burden of proof concerning the existence of an infringement by demonstrating that the decision relates specifically to the contractual relationship at issue.

In that context, the national court raises the question of the binding effect of the decisions of the Spanish competition authorities as regards the existence, in the present case, of an infringement of the competition law rules. In addition, the court asks what consequences

[10] This judgment is also discussed in section I.2.1.2 entitled 'Provisions establishing an irrefutable presumption as to the existence of an infringement of competition law.'

flow from the possible nullity of the exclusive supply contracts concluded between the service station owners and Repsol.

By its judgment, the Court answers those questions and rules on the temporal and material applicability of Directive 2014/104.

Findings of the Court

To the extent that the national court refers to Article 9(1) of Directive 2014/104, the Court states that this provision could be relevant to the outcome of the dispute in the main proceedings only if that dispute fell within its material and temporal scope.

In that regard, the Court holds that the material scope of Directive 2014/104 is limited solely to actions for damages brought for infringements of the competition rules and, therefore, does not extend to other types of action concerning infringements of the competition law provisions, such as actions for a declaration of nullity brought under Article 101(2) TFEU.

Judgment of 30 October 2025, FL und KM Baugesellschaft and S (C-2/23, EU:C:2025:848) [11]

(Reference for a preliminary ruling – Competition – Article 101 TFEU – Effectiveness – Directive 2014/104/EU – Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Article 6(6) and (7) – Article 7(1) – Directive 2019/1/EU – Empowering the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market – Article 31(3) – Scope – Mechanism for mutual administrative and judicial assistance between national authorities – Transfer of the file from a competition authority to an authority conducting a criminal investigation – Addition to the file of a criminal investigation of leniency statements and settlement submissions and their annexes – Access to those documents by persons under investigation and other parties to such proceedings)

In this judgment delivered under the preliminary ruling procedure, the Court states that the material scope of Directive 2014/104 is limited solely to actions for damages brought for infringements of the competition rules and, therefore, does not extend to other types of action.

The Austrian Federal Competition Authority having brought judicial proceedings against a large number of construction undertakings and their managers for having distorted competition in the tender procedures market for the award of public contracts, two companies submitted an application for leniency.

Since the Austrian public prosecutor's office had launched a concurrent criminal investigation, the court with jurisdiction in cartel cases provided it with a copy of the investigation file. The public prosecutor’s office also requested the Federal Competition Authority to provide it with certain documents relating to the administrative procedure associated with the cartel.

[11] This judgment is also discussed in section III.4 entitled 'Limits on the use of evidence and information in the files of a competition authority: leniency statements and settlement submissions.'

In this context, the two applicants for leniency requested the public prosecutor's office not to add their leniency statements or settlement submissions to the file and, in any event, to bar access to the file for the long-term.

When the public prosecutor's office refused to accede to this request, the leniency applicants challenged that refusal decision. The Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria) is hearing an appeal in that regard.

In these circumstances, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria) decided to question the Court on the issue of whether EU law – in particular Article 6(6) and (7), and Article 7(1) of Directive 2014/104, and also Article 31(3) of Directive 2019/1 – precludes national legislation under which, in the context of criminal proceedings which do not concern an infringement of competition law, other parties to these criminal proceedings, including persons harmed by the infringement of competition law concerned who are seeking compensation for the harm caused by that infringement, have a right of access to leniency statements and settlement submissions drawn up for the purposes of proceedings before a national competition authority and transmitted to national criminal authorities.

Findings of the Court

In so far as the national court refers in its request for a preliminary ruling to Article 6(6) and (7), and to Article 7(1) of Directive 2014/104, the Court holds that these provisions could be relevant to the outcome of the dispute in the main proceedings only if that dispute falls within its material scope.

On this point, the Court states that the material scope of Directive 2014/104 is limited solely to actions for damages brought for infringements of the competition rules. It follows that the material scope of this directive, including that of its Articles 6 and 7, which govern, respectively, the disclosure of evidence in the file of a competition authority and the limits on the use of evidence obtained through access to that file, is limited solely to actions for damages brought for infringements of the competition rules and, therefore, does not extend to other types of action. Thus, that directive does not govern either the issue of the transfer of the file from one competition authority to another authority or that of access to that file other than in the actions for damages.

Judgment of 29 January 2026, Meliá Hotels International (C-286/24, EU:C:2026:49) [12]

(Reference for a preliminary ruling – Actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Directive 2014/104/EU – Article 5(1) – Scope – Special declaratory action for the disclosure of documents preceding a potential action for damages – Assessment of the plausibility of the claim for damages)

In this judgment, given in answer to a reference for a preliminary ruling, the Court confirms that the provisions of Directive 2014/104 which govern the disclosure, before national

12 This judgment is also discussed in section III.3 entitled 'Obligation for the applicant for an injunction to substantiate the plausibility of its claim for damages.'

courts, of evidence in the control of the defendant or a third party, apply in the context of a special declaratory action for the disclosure of documents prior to bringing an action for damages.

On 21 February 2020, the European Commission imposed a fine on the hotel company Meliá Hotels International, S.A. ('Meliá') for having infringed Article 101 TFEU and Article 53 of the EEA Agreement [13] by implementing, by means of contracts, vertical practices that differentiated between consumers on the basis of their nationality or country of residence. [14]

Associação Ius Omnibus, a consumer protection association, brought a special declaratory action before the Portuguese court with jurisdiction seeking from Meliá the disclosure of documents that were relevant to a potential collective action for damages brought on behalf of consumers residing in Portugal who were harmed by the anti-competitive practice identified by the Commission.

The courts of first and second instance upheld the special declaratory action, and Meliá subsequently appealed to the Portuguese Supreme Court.

In these circumstances, the Supremo Tribunal de Justiça (Supreme Court, Portugal) decided to refer a number of questions to the Court for a preliminary ruling concerning Article 5(1) of Directive 2014/104, which requires Member States to ensure that, in proceedings relating to compensation for the harm caused by infringements of the competition rules, the claimant can obtain from the national court an order requiring the defendant or a third party to disclose relevant evidence, provided that it has substantiated the plausibility of its claim for damages by presenting sufficient and reasonably available facts and evidence.

In this context, the Portuguese Supreme Court asks, in essence, whether Article 5(1) of Directive 2014/104 is to be interpreted as meaning that:

- it applies to an action under national law seeking the disclosure of evidence prior to the bringing of an action for compensation for damage caused by infringements of competition rules;
- the claimant's demonstration that its claim for damages is plausible requires proof that it is more likely than not that the conditions for liability for an infringement of competition law are met; and
- a Commission decision finding an infringement of EU competition law in the form of a vertical restriction by object is sufficient to establish the plausibility of the claim for damages, and whether the answer to that question is affected by the fact that the decision was adopted at the end of a settlement procedure.

[13] Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; 'the EEA Agreement').

[14] Decision C(2020) 893 final relating to a proceeding under Article 101 (TFEU) and Article 53 of the EEA Agreement (Case AT.40528 - Meliá (Holiday Pricing)).

Findings of the Court

Following a literal, systematic and teleological interpretation, the Court confirms that Article 5(1) of Directive 2014/104 is applicable to a prior action such as that provided for in the present case by Portuguese law, which allows persons harmed by an infringement of the competition rules to obtain access to the relevant evidence before bringing an action for damages on that basis.

According to the Court, this interpretation is supported, in particular, by the objectives of Directive 2014/104, which are to facilitate the exercise of the right to damages, in view of the need to remedy the information asymmetry characterising these disputes, and thus to ensure the effectiveness of the private enforcement of competition law.

Judgment of 16 February 2023, Tráficos Manuel Ferrer (C-312/21, [EU:C:2023:99](EU:C:2023:99)) [15]

(Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – Decision of the Commission finding the existence of collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA) – National rule of civil procedure under which, in the event that the claim is upheld in part, costs are to be borne by each party, except in cases of wrongful conduct – Procedural autonomy of the Member States – Principles of effectiveness and equivalence – Directive 2014/104/EU – Objectives and overall balance – Article 3 – Right to full compensation for the harm suffered – Article 11(1) – Joint and several liability of the undertakings that infringe competition law – Article 17(1) – Possibility for national courts to estimate the harm – Conditions – Impossibility or unreasonable difficulties in quantifying harm – Article 22 – Temporal application)

In this preliminary ruling, the Court states that the rules concerning the allocation of costs in judicial proceedings to enforce the right to compensation for the harm suffered as a result of anticompetitive conduct are excluded from the scope of Directive 2014/104.

By a decision of 19 July 2016, [16] the European Commission found that Daimler AG had infringed the EU law rules prohibiting cartels [17] in that Daimler had concluded, between January 1997 and January 2011, arrangements with fourteen other European truck manufacturers on pricing and gross price increases for trucks in the European Economic Area (EEA).

Following that decision, the Spanish undertakings Tráficos Manuel Ferrer SL and D. Ignacio ('the applicants in the main proceedings'), which had, inter alia, purchased lorries manufactured by Daimler during the infringement period, brought an action for damages before the Juzgado de lo Mercantil no 3 de Valencia (Commercial Court No 3, Valencia, Spain) against that company on the basis of the wrongful conduct found by the Commission.

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[15] This judgment is also discussed in section I.2.1.2 entitled 'Temporal application of the provisions of the directive reaffirming existing case-law' and IV entitled 'Estimation of the harm.'

[16] Commission Decision C(2016) 4673 final of 19 July 2016 relating to an application procedure under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks).

[17] Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3).

In order to quantify the harm suffered, the applicants in the main proceedings produced an expert report finding an average overcharge of 16.35% on the market affected by the cartel.

Daimler disputed the merits of the action for damages, in particular by producing its own expert report. Following a preliminary hearing, the applicants in the main proceedings were given access to the data taken into consideration in the expert report submitted by Daimler, with the twofold aim of allowing a more thorough criticism of the data and of leading to a possible reformulation of their own expert report.

After hearing the parties to the main proceedings discuss their respective expert reports, Commercial Court No 3, Valencia, decided to refer the matter to the Court in order to determine, in essence, whether, in the light of EU law, it was entitled and, if so, under what conditions, to estimate the amount of the harm caused to the applicants in the main proceedings as a result of the cartel. The referring court also asks whether EU law allows it, pursuant to Spanish procedural law, to require the applicants in the main proceedings to bear half of the legal costs if they are only partially successful.

In its judgment, the Court answers these questions in the light of Article 101 TFEU, Directive 2014/104 and its relevant case-law.

Findings of the Court

The Court rules on the question whether the right to full compensation for harm suffered as a result of anticompetitive conduct, as recognised in Article 3(1) and (2) of Directive 2014/104 and arising from Article 101 TFEU, precludes Spanish rules of civil procedure which provide that, in the event that an action for compensation in respect of such harm is upheld in part, costs are to be borne by each party and each party bears half of the common costs, except in cases of wrongful conduct.

In accordance with the case-law of the Court, it follows from the principle of effectiveness and the right, arising from Article 101 TFEU of any person to seek full compensation for loss caused by anticompetitive conduct that injured parties must be able to seek compensation not only for actual loss, but also for loss of profit plus interest. In so far as Article 3(1) and (2) of Directive 2014/104 reaffirms that case-law, the national measures transposing those provisions must apply with immediate effect to all actions for damages falling within the scope of the directive.

However, the right to compensation does not concern the rules on the allocation of costs in the context of judicial proceedings, as shown by the exclusion of the issue of costs from the scope of Directive 2014/104.

2. Temporal scope

2.1. Substantive provisions of the directive

2.1.1. Provisions governing the limitation period for actions for damages

Judgment of 22 June 2022, Volvo and DAF Trucks (C-267/20, EU:C:2022:494) [18]

(Reference for a preliminary ruling – Agreements, decisions and concerted practices – Article 101 TFEU – Directive 2014/104/EU – Articles 10, 17 and 22 – Actions for damages for infringements of the provisions of EU competition law – Limitation period – Rebuttable presumption of harm – Quantification of harm suffered – Late transposition of the directive – Temporal application – Substantive and procedural provisions)

In answer to a reference for a preliminary ruling, the Court holds that Article 10 of Directive 2014/104, which establishes the rules relating to the time-barring of actions for damages for infringements of competition law, is a substantive provision which does not apply retroactively.

By decision of 19 July 2016, [19] the European Commission found that, by agreeing, first, on the prices of trucks in the European Economic Area (EEA) from 1997 to 2011 and, second, on the timing and the passing on of costs for the introduction of emission technologies required by EURO 3 to EURO 6 standards, Volvo and DAF Trucks participated, with a number of other truck manufacturers, in a cartel contrary to the EU law rules prohibiting cartels. [20] A press release was issued on the day this decision was adopted and a summary was published in the *Official Journal of the European Union* on 6 April 2017. [21]

Having purchased, during 2006 and 2007, three trucks manufactured by Volvo and DAF Trucks, RM brought an action before the Juzgado de lo Mercantil de León (Commercial Court, León, Spain) seeking compensation for the harm suffered as a result of the cartel found by the Commission. This action, brought on 1 April 2018, was declared admissible by the Commercial Court, León, inter alia having regard to the five-year limitation period provided for by the Spanish legislation transposing Directive 2014/104 and relating to the compensation of victims of anti-competitive practices. The Commercial Court, León also relied on the presumption established by that transposing legislation according to which it is presumed that all cartels cause harm and it exercised the discretion, provided for by that same legislation, to estimate the amount of the harm caused to RM. Volvo and DAF Trucks were thus ordered to pay RM compensation corresponding to 15% of the purchase price of the trucks in question.

[18] This judgment is also discussed in section I.2.1.3 entitled 'Provisions establishing an irrefutable presumption as to the existence of harm resulting from a cartel,' section I.2.2.2 entitled 'Provisions governing the quantification of harm' and section V "Rules governing limitation periods.'

[19] Commission Decision C(2016) 4673 final of 19 July 2016 relating to an application procedure under Article 101 (TFEU) and Article 53 of the EEA Agreement (Case AT.39824 – Trucks).

[20] Article 101 TFEU and Article 53 of the EEA Agreement.

[21] OJ 2017 C 108, p. 6.

Volvo and DAF Trucks brought an appeal against that judgment before the Audiencia Provincial de Léon (Provincial Court, Léon, Spain), disputing the applicability of Directive 2014/104 and of the Spanish transposing legislation, on the ground that the cartel had ceased before the entry into force of the directive.

In this context, the Audiencia Provincial de Léon (Provincial Court, Léon) referred a number of questions to the Court for a preliminary ruling with a view to ascertaining whether Article 10 and Article 17(1) and (2) of Directive 2014/104, which establish, respectively, the rules:

- on the time-barring of actions for damages for infringements of competition law;
- on the quantification of harm resulting from such infringements; and
- on the presumption of the existence of that harm;

are applicable to an action for damages which, although relating to a cartel which ceased before the entry into force of the directive, was brought after the entry into force of the provisions transposing it into national law.

Findings of the Court

As far as the temporal scope of Directive 2014/104 is concerned, the Court recalls first of all that the directive prohibits, first, the retroactive application of any national legislation transposing the substantive provisions laid down therein and, secondly, the application of any national legislation transposing the non-substantive provisions of the directive to actions for damages brought before 26 December 2014.

Regarding the temporal applicability of Article 10 of Directive 2014/104, which establishes the rules relating to the time-barring of actions for damages for infringements of competition law, the Court notes, next, that such rules protect both the injured party and the person responsible for the harm. It is apparent, additionally, from the case-law of the Court that a limitation period, by resulting in the extinction of the legal action, is a matter of substantive law. Therefore, Article 10 of Directive 2014/104 is a substantive provision, in respect of which the retroactive application of the transposing provisions is excluded under the directive.

Judgment of 18 April 2024 (Grand Chamber), Heureka Group (Online price comparison services) (C-605/21, EU:C:2024:324)) [22]

(Reference for a preliminary ruling – Article 102 TFEU – Principle of effectiveness – Actions for damages under national law for infringements of competition law provisions – Directive 2014/104/EU – Late transposition of the directive – Temporal application – Article 10 – Limitation period – Detailed rules for the dies a quo – Cessation of the infringement – Knowledge of the information necessary for bringing an action for damages – Publication in the Official Journal of the European Union of the summary of the European Commission’s decision finding an infringement of the competition rules – Binding effect of a Commission decision that is not yet

[22] This judgment is also discussed in section V 'Rules governing limitation periods.'

final – Suspension or interruption of the limitation period for the duration of the Commission's investigation or until the date when its decision becomes final)

In this preliminary ruling, the Court confirms that Article 10 of Directive 2014/104 is a substantive provision which does not apply retroactively.

By decision of 27 June 2017, [23] the European Commission found that, since February 2013, Google had infringed Article 102 TFEU by abusing its dominant position in thirteen national markets for general search services, including that of the Czech Republic, by decreasing traffic from its general search results pages to competing comparison shopping services and increasing this traffic to its own comparison shopping service. A summary of this decision was published on 12 January 2018 in the *Official Journal of the European Union.* [24]

In June 2020, Heureka Group a.s. ('Heureka'), a Czech company active on the market for sales price comparison services, brought an action before the Městský soud v Praze (Prague City Court, Czech Republic) seeking an order that Google pay compensation for the harm resulting from the infringement of Article 102 TFEU found in the Commission's decision and committed in the Czech Republic during the period from February 2013 to 27 June 2017. In Heureka's submission, Google's anticompetitive conduct reduced the number of visits to its portal, Heureka.cz.

In its defence, Google claimed that Heureka's right to compensation was, at least in part, time-barred.

In this regard, the Prague City Court states that the national rules applicable to Heureka's action provide for a limitation period of three years which starts running, independently and separately for each partial occurrence of harm resulting from an infringement of the competition rules, from the moment when the injured party knew, or is deemed to have known, of the fact that it suffered such partial harm and the identity of the party liable to pay compensation for that harm. However, in order for that period to start running, the injured party is not required to know of the fact that the conduct concerned constitutes an infringement of competition law or that this infringement has come to an end. In addition, the applicable national rules do not require the suspension or interruption of that period during the Commission's investigation of the infringement. Nor can that limitation period be suspended, at the very least, until one year after the date on which the Commission's decision finding the infringement becomes final.

According to the Prague City Court, it follows that, in the present case, every general search on Google's web page which led to a positioning and display of results more favourable to Google's price comparison service would have set a new and separate limitation period running.

Furthermore, since Directive 2014/104 was transposed belatedly into Czech law, the Prague City Court notes that the infringement alleged against Google ceased after the expiry of the

[23] Commission Decision C(2017) 4444 final of 27 June 2017 relating to proceedings under Article 102 (TFEU) and Article 54 of the EEA Agreement (Case AT.39740 - Google Search (Shopping)).

[24] OJ 2018 C 9, p. 11.

period for transposition of the directive, namely 27 December 2016, but apparently before the date of entry into force of the transposing legislation on 1 September 2017.

In the light of the foregoing, the Prague City Court referred a number of questions to the Court for a preliminary ruling seeking to ascertain, in essence, whether Article 10 of Directive 2014/104 and/or Article 102 TFEU and the principle of effectiveness preclude national legislation on limitation, such as that at issue in the main proceedings, in actions for damages relating to continuing infringements of EU competition law rules.

Findings of the Court

In order to answer the questions referred for a preliminary ruling, the Court examines the temporal applicability of Article 10 of Directive 2014/104, which determines the minimum duration of the limitation period applicable to actions for damages for infringements of competition law and the earliest point in time at which it may begin running, and the circumstances in which that limitation period must be suspended or interrupted.

In this regard, the Court recalls that Article 10 of Directive 2014/104 is a substantive provision, so that, in accordance with Article 22(1) of the directive, Member States must ensure that the measures transposing the article do not apply retroactively.

2.1.2. Provisions establishing an irrefutable presumption as to the existence of an infringement of competition law

Judgment of 20 April 2023, Repsol Comercial de Productos Petrolíferos (C-25/21, EU:C:2023:298)

(Reference for a preliminary ruling – Competition – Vertical restrictions of competition – Article 101(1) and (2) TFEU – Principle of effectiveness – Regulation (EC) No 1/2003 – Article 2 – Directive 2014/104/EU – Article 9(1) – Binding effect of the final decisions of the national competition authorities finding an infringement of the competition law rules – Temporal and material application – Actions for damages and for a declaration of nullity for infringements of the EU competition law provisions)

In this judgment, the factual and legal context of which have been outlined above, [25] the Court finds that Article 9(1) of Directive 2014/104, which establishes an irrefutable presumption as to the existence of a competition law infringement, should be classified as a substantive rule within the meaning of Article 22 of the directive, which does not apply retroactively, since it concerns the existence of one of the constituent elements of civil liability for infringements of the competition law rules.

Given the substantive nature of Article 9 of Directive 2014/104 and the operational arrangements of that provision, the Court emphasises that the point in time at which it is necessary to determine whether the irrefutable presumption referred to in that provision is applicable *ratione temporis* is that corresponding to the date on which the decision of the national competition authority concerned became final. In the present case, however,

[25] For the factual and legal context of the dispute, see section I.1 entitled 'Material scope.'

Directive 2014/104 was not transposed into Spanish law within the time limit for its transposition. Thus, as the decisions of the Spanish competition authorities became final before the date of expiry of that time limit, the situations at issue in the main proceedings are established. It follows that, in the case in question, Article 9(1) of the directive is not applicable *ratione temporis*. In these circumstances, the Court considers that, in the present case, the national legislation needs to be examined in the light of Article 101 TFEU, as implemented by Article 2 of Regulation No 1/2003.

2.1.3. Provisions establishing a rebuttal presumption as to the existence of harm resulting from a cartel

Judgment of 22 June 2022, Volvo and DAF Trucks (C-267/20, EU:C:2022:494)

(Reference for a preliminary ruling – Agreements, decisions and concerted practices – Article 101 TFEU – Directive 2014/104/EU – Articles 10, 17 and 22 – Actions for damages for infringements of the provisions of EU competition law – Limitation period – Rebuttable presumption of harm – Quantification of harm suffered – Late transposition of the directive – Temporal application – Substantive and procedural provisions)

In this judgment, the factual and legal context of which have been outlined above, [26] the Court emphasises that Article 17(2) of Directive 2014/104, establishing a rebuttable presumption as to the existence of harm resulting from a cartel, is directly linked to the incurrence of the non-contractual civil liability of the perpetrator of the infringement concerned and, consequently, directly affects that person's legal situation. As such a rule may be classified as a substantive rule, the Court considers that Article 17(2) of Directive 2014/104 is substantive in nature for the purposes of the directive, such that a retroactive application of the provisions transposing it into Spanish law is prohibited.

Since the fact identified by the EU legislature as giving rise to a presumption of the existence of harm under Article 17(2) of Directive 2014/104 is the existence of a cartel, the prohibition of retroactive application of that provision and of the transposing legislation means that neither that provision nor the legislation transposing it can be applicable to an action for damages which, although brought after the entry into force of the provisions belatedly transposing that directive into Spanish law, pertains to an infringement of competition law which ceased before the expiry of the time limit for transposing the directive.

[26] For the factual and legal context of the dispute, see section I.2.1.1 entitled 'Provisions governing the limitation period in actions for damages.' This judgment is also discussed in section I.2.2.2 entitled 'Provisions governing the quantification of harm' and section V 'Rules governing limitation periods.'

2.2. Non-substantive provisions of the directive

2.2.1. Provisions granting national courts the power to order the disclosure of evidence

Judgment of 10 November 2022, PACCAR and Others (C-163/21, EU:C:2022:863) [27]

(Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – Collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA) – Directive 2014/104/EU – Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Article 22(2) – Applicability ratione temporis – First subparagraph of Article 5(1) – Concept of relevant evidence which lies in the control of the defendant or a third party – Article 5(2) – Disclosure of specified items of evidence or relevant categories of evidence on the basis of reasonably available facts – Article 5(3) – Review of the proportionality of the request to disclose evidence – Balancing the legitimate interests of the parties and third parties – Scope of the obligations resulting from those provisions)

In answer to a reference for a preliminary ruling, the Court states that Article 5 of Directive 2014/104, governing the disclosure of relevant evidence which lies in the control of the defendant or a third party, is a non-substantive provision within the meaning of Article 22(2) of the directive, the national transposition measures of which do not, consequently, apply to actions for damages brought before 26 December 2014.

By decision of 19 July 2016, [28] the European Commission found that, by agreeing, first, on the prices of trucks in the European Economic Area (EEA) from 1997 to 2011 and, second, on the timing and the passing on of costs for the introduction of emission technologies required by EURO 3 to EURO 6 standards, PACCAR, DAF Trucks and DAF Trucks Deutschland ('the manufacturers in question') participated, with a number of other truck manufacturers, in a cartel contrary to the EU law rules prohibiting cartels. [29]

On 25 March 2019, 45 parties claiming to have acquired trucks which fall within the scope of the infringement established by the decision of 19 July 2016 brought an action before the Juzgado de lo Mercantil no 7 de Barcelona (Commercial Court No 7, Barcelona, Spain) seeking access to various items of evidence held by the manufacturers in question in order to seek compensation for the damage resulting from the infringement established by the decision of 19 July 2016. In this regard, the parties argued that it was necessary to obtain certain types or means of proof in order to quantify the artificial price increase, in particular to carry out a comparison of recommended prices before, during and after the cartel period concerned. The manufacturers in question challenged this request, arguing, inter alia, that some of the documents requested had to be drawn up on an ad hoc basis.

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[27] This judgment is also discussed in section III.1 entitled 'Injunction to disclose evidence that lies in the control of the defendant or a third party.'

[28] Commission Decision C(2016) 4673 final of 19 July 2016 relating to an application procedure under Article 101 (TFEU) and Article 53 of the EEA Agreement (Case AT.39824 – Trucks).

[29] Article 101 TFEU and Article 53 of the EEA Agreement.

Given that access to the evidence referred to in the contested request was based on a provision of Spanish law transposing Article 5(1) of Directive 2014/104, Commercial Court No 7, Barcelona, referred a question to the Court for a preliminary ruling seeking, in essence, to ascertain whether the disclosure of relevant evidence referred to in the article only relates to documents in the control of the defendant or a third party which already exist or, in contrast, also relates to new documents that they must create by compiling or classifying data in their possession.

Findings of the Court

The Court sets out the conditions for the temporal application of Article 5(1) of Directive 2014/104, noting at the outset that Article 22 of the directive expressly lays down the conditions for the temporal application of its provisions, depending on whether or not they are substantive provisions in the light of EU law.

In the present case, the Court observes that the possibility of ordering the disclosure of relevant evidence held by the defendant or a third party, under the conditions laid down in the first subparagraph of Article 5(1) of Directive 2014/104, is one of the particular powers which the national courts must have when examining disputes relating to actions for damages seeking compensation for harm suffered as a result of infringements of competition law. By this requirement, the provision seeks to remedy the information asymmetry which characterises, in principle, those disputes to the detriment of the injured party. However, its subject matter relates only to the procedural measures applicable before national courts and does not directly affect the legal situation of the parties.

In these circumstances, the first subparagraph of Article 5(1) of Directive 2014/104 is not one of the substantive provisions of the directive, within the meaning of Article 22(1) thereof, rather it numbers amongst the 'other' provisions covered by Article 22(2) of the directive, which that provision declares applicable to actions brought after 26 December 2014. It follows that the first subparagraph of Article 5(1) of Directive 2014/104 is applicable to the action brought before the referring court, since it was brought on 25 March 2019.

Judgment of 12 January 2023, RegioJet (C-57/21, EU:C:2023:6) [30]

(Reference for a preliminary ruling – Competition – Abuse of a dominant position – Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Directive 2014/104/EU – Articles 5 and 6 – Disclosure of evidence – Evidence in a competition authority's file – Proceedings relating to an infringement of competition rules pending before the European Commission – National proceedings relating to an action for damages with regard to the same infringement – Conditions for the disclosure of evidence)

In this preliminary ruling, the Court observes that Articles 5 and 6 of Directive 2014/104, which refer, first, to the disclosure of relevant evidence which lies in the control of the defendant or a third party, and secondly, to the disclosure of evidence in the files of a

[30] This judgment is also discussed in section III.2 entitled 'Injunction to disclose evidence where proceedings are pending before the European Commission.'

competition authority, are by nature non-substantive provisions covered by Article 22(2) of that directive.

RegioJet, a rail passenger carrier on the Prague-Ostrava route, brought an action in 2015 for damages before the Městský soud v Praze (Prague City Court, Czech Republic) against České dráhy, the Czech national railway carrier, seeking compensation for damage suffered as a result of infringements of competition law allegedly committed by České dráhy.

The Czech competition authority had, in 2012, already initiated administrative proceedings concerning a possible abuse of a dominant position by České dráhy, which were stayed in 2016 after the European Commission initiated proceedings concerning the same conduct.

As part of its action for damages, RegioJet submitted a request to the Prague City Court for the disclosure of several documents which it assumed to be in the possession of České dráhy. However, the Czech competition authority stated that the requested documents that were available to it in the context of the administrative proceedings, in the same way as the other documents sought, which together with the first documents constituted a comprehensive set, could not be disclosed until those proceedings had been definitively closed.

Nevertheless, after questioning the Commission on this issue, the Prague City Court granted the request for the disclosure of documents and ordered České dráhy to place in the file documents that contained information specifically prepared by České dráhy for the purpose of the proceedings before the Czech competition authority, and information kept outside the context of those proceedings. This same court decided in addition to stay the substantive proceedings on the action for damages until the closure of the proceedings initiated by the Commission.

On appeal, the decision ordering the disclosure of the documents was upheld by the Vrchní soud v Praze (High Court, Prague, Czech Republic), which, in order to ensure the protection of the evidence disclosed, placed it under sequestration.

Called upon to rule, as the court seised of a point of law, on the lawfulness of the decision of the Prague High Court, the Nejvyšší soud (Supreme Court, Czech Republic) decided to refer questions to the Court on the interpretation of Directive 2014/104 on compensation for the victims of anticompetitive practices, Articles 5 and 6 of which lay down rules on the disclosure of evidence requested for the purpose of an action for damages under national law for infringements of the competition law provisions of the Member States and the European Union. [31]

[31] Article 5 of the directive lays down the rules which, together, form a set of general rules governing the disclosure of evidence requested for the purposes of an action for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. In conjunction with this provision, Article 6 of the directive sets out the specific rules relating to the disclosure of evidence in the files of the authorities responsible for the public enforcement of competition rules.

Findings of the Court

The Court observes that Directive 2014/104 explicitly states the conditions for the temporal application of the provisions which it lays down, depending on whether or not they are substantive provisions under EU law.

In the present case, the Court observes that the power to order the disclosure of relevant evidence held by the defendant or a third party, under the conditions laid down in Articles 5 and 6 of Directive 2014/104, relates only to the procedural measures applicable before the national courts and does not directly affect the legal situation of the parties.

In these circumstances, first, Articles 5 and 6 of Directive 2014/104 are not among the substantive provisions of that directive, within the meaning of its Article 22(1), and therefore number among the other provisions covered by Article 22(2) of the directive, which makes them applicable to actions brought after 26 December 2014. Second, since the Czech legislature decided that the national provisions intended to transpose the procedural provisions of Directive 2014/104 apply, directly and unconditionally, also to actions brought before the date of its transposition into domestic law but after 26 December 2014, it follows that Articles 5 and 6 of the directive are applicable to the action being considered by the referring court since that action was brought in 2015.

2.2.2. Provisions governing the quantification of harm

Judgment of 22 June 2022, Volvo and DAF Trucks (C-267/20, EU:C:2022:494)

(Reference for a preliminary ruling – Agreements, decisions and concerted practices – Article 101 TFEU – Directive 2014/104/EU – Articles 10, 17 and 22 – Actions for damages for infringements of the provisions of EU competition law – Limitation period – Rebuttable presumption of harm – Quantification of harm suffered – Late transposition of the directive – Temporal application – Substantive and procedural provisions)

In this judgment, the factual and legal context of which have been outlined above, [32] the Court finds that, by aiming, in particular, to empower national courts to estimate the amount of harm suffered where it is practically impossible or excessively difficult to quantify it precisely on the basis of the available evidence, Article 17(1) of Directive 2014/104 pursues the objective of relaxing the standard of proof required for the purpose of determining the amount of the harm resulting from an infringement of the competition law rules.

In the light of its case-law, according to which the rules on the burden of proof and the standard of proof are, in principle, classified as procedural rules, the Court concludes that Article 17(1) of Directive 2014/104 constitutes a procedural provision for the purposes of the directive, in which case the application of transposing provisions to actions brought before 26 December 2014 is barred.

[32] For the factual and legal context of the dispute, see section I.2.1.1 entitled 'Provisions governing the limitation period in actions for damages.' This judgment is also discussed in section I.2.1.3 entitled 'Provisions establishing an irrefutable presumption as to the existence of harm resulting from a cartel' and section V 'Rules governing limitation periods.'

RM having brought its action on 1 April 2018, this action, although relating to an infringement which ceased before the entry into force of Directive 2014/104, falls, consequently, within the temporal scope of Article 17(1) of the directive.

2.3. Temporal application of the provisions of the directive reaffirming the existing case-law

Judgment of 16 February 2023, Tráficos Manuel Ferrer (C-312/21, EU:C:2023:99)

(Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – Decision of the Commission finding the existence of collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA) – National rule of civil procedure under which, in the event that the claim is upheld in part, costs are to be borne by each party, except in cases of wrongful conduct – Procedural autonomy of the Member States – Principles of effectiveness and equivalence – Directive 2014/104/EU – Objectives and overall balance – Article 3 – Right to full compensation for the harm suffered – Article 11(1) – Joint and several liability of the undertakings that infringe competition law – Article 17(1) – Possibility for national courts to estimate the harm – Conditions – Impossibility or unreasonable difficulties in quantifying harm – Article 22 – Temporal application)

In this judgment, the factual and legal context of which have been outlined above, [33] the Court finds that, by recalling, in Article 3(1) of Directive 2014/104, the obligation on Member States to ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm and by defining the latter, in Article 3(2) of the directive, as the right to compensation for actual loss and loss of profit, plus the payment of interest, the EU legislature intended to reaffirm the existing case-law, as is apparent from recital 12 of the directive, so that national measures transposing those provisions must necessarily apply with immediate effect to all actions for damages falling within the scope of the directive, as confirmed by its Article 22(2).

Similarly, Article 11(1) of Directive 2014/104, in so far as it provides for the possibility for the party bringing a claim in damages based on the existence of harm caused by anticompetitive conduct, to direct its claim against only one of the perpetrators of this conduct, must be regarded as a provision codifying the Court's case-law and is among the provisions of the directive the national transposition measures of which apply immediately.

[33] For the factual and legal context of the dispute, see section I.1 entitled 'Material scope.' This judgment is also discussed in section IV entitled 'Estimation of the harm.'

II. Entities liable to pay compensation for the harm caused

Judgment of 14 March 2019, Skanska Industrial Solutions and Others (C-724/17, EU:C:2019:204)

(Reference for a preliminary ruling — Competition — Article 101 TFEU — Compensation for the damage caused by a cartel prohibited by that article — Determination of the undertakings liable to provide compensation — Succession of legal entities — Concept of 'undertaking' — Economic continuity test)

In this preliminary ruling, the Court provides clarifications regarding the identification of the defendant in an action for compensation for the harm caused by infringements of EU competition law where there is a succession of legal entities.

A cartel was set up in Finland between 1994 and 2002. That cartel, which agreed on dividing up contracts, prices and tendering for contracts, covered the whole of that Member State and was also liable to affect trade between Member States. Between 2000 and 2003, the defendant companies acquired all the shares in several cartel participants, which they then wound up following voluntary liquidation procedures. By judgment of 29 September 2009, the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) imposed fines on the cartel participants for infringement of the Finnish law on restrictions of competition and of the provisions of the Treaty relating to cartels.

On the basis of this judgment, the Finnish city of Vantaa sought damages from the acquiring companies for the damage caused by the cartel but was denied these damages on the ground that the rules on civil liability in Finnish law provide that only the legal entity that caused the damage is liable.

In its first and second questions, the referring court asked, in essence, whether the provisions of the Treaty relating to cartels should be interpreted as meaning, in a case such as the one at issue in the main proceedings, that the acquiring companies may be held liable for the damage caused by that cartel.

The Court held that the determination of the entity which is required to provide compensation for damage caused by a cartel is directly governed by EU law. Since the liability for damage caused by infringements of EU competition rules is personal in nature, the undertaking which infringes those rules must answer for the damage caused by the infringement. The entities which are required to compensate for the damage caused by a cartel or practice prohibited by Article 101 TFEU are the undertakings, within the meaning of that provision, which have participated in that cartel or that practice.

This interpretation is not called into question by the European Commission's argument: it is clear from Article 11(1) of Directive 2014/104 that it is for the legal system of each Member State to determine, in accordance with the principles of equivalence and effectiveness, the entity which is to compensate for the damage.

That provision of Directive 2014/104, which, moreover, does not apply *ratione temporis* to the facts of the case in the main proceedings, does not apply to the definition of entities which are required to compensate for such damage, but to the attribution of liability between those entities and, thus, does not confer on the Member States the power to carry out that determination.

To the contrary, the provision confirms, like Article 1 of Directive 2014/104, entitled 'Subject matter, scope and definitions', paragraph 1, first sentence, that those responsible for damage caused by an infringement of EU competition law are specifically the 'undertakings' which committed that infringement.

That being said, the Court recalls that the concept of an 'undertaking', within the meaning of Article 101 TFEU, covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed, and designates an economic unit even if in law that unit consists of several persons, natural or legal.

Therefore, when an entity that has infringed EU competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor that infringed the competition rules, when, from an economic point of view, the two are identical. Therefore, if the undertakings responsible for damage caused by such an infringement could escape liability by simply changing their identity through restructurings, sales or other legal or organisational changes, the objective pursued by this system and the effectiveness of the rules would be jeopardised.

In the present case, it appears that there is economic continuity between the acquiring companies, on the one hand, and the companies which participated in the cartel, on the other. Therefore, the acquiring companies have assumed the liability of the participating companies for the harm caused by the cartel.

Judgment of 6 October 2021 (Grand Chamber), Sumal (C-882/19, EU:C:2021:800)

(Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – Determination of the undertakings liable to provide compensation – Action for compensation directed against the subsidiary of a parent company and brought following a decision finding only that the parent company participated in a cartel – Concept of an 'undertaking' – Concept of 'economic unit')

Interpreting the concept of 'undertaking' used in Article 101 TFEU, the Court sets out the conditions under which the victims of a cartel prohibited by that article have a right to bring an action for compensation for harm caused to the subsidiary of a parent company whose participation in the infringement has been established by a decision of the Commission.

Between 1997 and 1999, the company Sumal SL acquired two trucks from Mercedes Benz Trucks España ('MBTE'), which is a subsidiary of the Daimler group, whose parent company is Daimler AG.

By a decision of 19 July 2016, [34] the Commission found an infringement, by Daimler AG, of EU law rules prohibiting cartels [35] in that Daimler had concluded, between January 1997 and January 2011, arrangements with fourteen other European truck producers on pricing and gross price increases for trucks in the European Economic Area (EEA).

Following that decision, Sumal brought an action for damages against MBTE, seeking payment of the sum of EUR 22 204.35 for loss resulting from that cartel. Sumal's action was nevertheless rejected by the Juzgado de lo Mercantil no 07 de Barcelona (Commercial Court No 7, Barcelona, Spain) on the ground that MBTE was not referred to in the Commission's decision.

Sumal brought an appeal against this judgment before the Audiencia Provincial de Barcelona (Provincial Court of Barcelona, Spain). In this context, the court questions whether and, if so, under what conditions, an action for damages may be brought against a subsidiary following a Commission decision finding anticompetitive practices by its parent company. Accordingly, the court decided to stay the proceedings and refer the question to the Court for a preliminary ruling.

Findings of the Court

In accordance with settled case-law, any person is entitled to claim compensation from 'undertakings' which have participated in a cartel or practices prohibited under Article 101 TFEU for harm caused by such anticompetitive practices.

Given that such actions for damages are an integral part of the system for the enforcement of EU competition rules, just as in the case for their implementation by public authorities, the concept of an 'undertaking', within the meaning of Article 101 TFEU, cannot have a different scope with regard to the imposition of fines by the Commission on 'undertakings' (public enforcement) and in actions for damages brought against such 'undertakings' before the national courts (private enforcement).

In this regard, it is clear from the wording of Article 101(1) TFEU that the authors of the Treaties chose to use the concept of an 'undertaking' to designate the perpetrator of an infringement of competition law, who is liable to be punished by application of that provision, rather than other concepts such as those of a 'company' or 'legal person'.

In the same way, it follows from Directive 2014/104, in particular, its Article 2(2), that the legislature defined the 'infringer' upon whom it is incumbent, in accordance with that directive, to provide compensation for loss caused by the infringements of competition law attributable to that 'infringer', as being 'an undertaking or association of undertakings which has committed an infringement of competition law.'

According to the Court's case-law, the concept of an 'undertaking', within the meaning of Article 101 TFEU, covers any entity engaged in an economic activity, irrespective of its legal

[34] Decision C(2016) 4673 final of the Commission, of 19 July 2016, relating to a proceeding under Article 101 (TFEU) and Article 53 of the EEA Agreement (Case AT.39824 – Trucks), a summary of which was published in the *Official Journal of the European Union* of 6 April 2017 (OJ 2017 C 108, p. 6).

[35] Article 101 TFEU and Article 53 of the EEA Agreement.

status and the way in which it is financed, and thus designates an economic unit even if, in law, that unit consists of several persons, natural or legal.

Where it is established that a company belonging to that economic unit has infringed Article 101(1) TFEU so that the 'undertaking' of which it is part has committed an infringement of that provision, the concept of an 'undertaking' and, through it, that of 'economic unit', give rise to the joint and several liability across the entities that make up the economic unit at the time the infringement was committed.

In this regard, the Court observes, moreover, that the concept of an 'undertaking' used in Article 101 TFEU is a functional concept, in that the economic unit of which it is constituted must be identified having regard to the subject matter of the agreement at issue.

Consequently, where the existence of an infringement of Article 101(1) TFEU has been established as regards the parent company, it is possible for the victim of that infringement to seek to invoke the civil liability of a subsidiary of that parent company unless that the victim proves, having regard, first, to the economic, organisational and legal links that connect the two legal entities and, second, to the existence of a specific link between the economic activity of that subsidiary and the subject matter of the infringement for which the parent company was held to be responsible, that subsidiary, together with its parent company, constituted an economic unit.

III. Disclosure of evidence in national proceedings

1. Injunction to disclose evidence that lies in the control of the defendant or a third party

Judgment of 10 November 2022, PACCAR and Others (C-163/21, EU:C:2022:863)

(Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – Collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA) – Directive 2014/104/EU – Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Article 22(2) – Applicability ratione temporis – First subparagraph of Article 5(1) – Concept of relevant evidence which lies in the control of the defendant or a third party – Article 5(2) – Disclosure of specified items of evidence or relevant categories of evidence on the basis of reasonably available facts – Article 5(3) – Review of the proportionality of the request to disclose evidence – Balancing the legitimate interests of the parties and third parties – Scope of the obligations resulting from these provisions)

In this judgment, the factual and legal context of which have been outlined above, [36] the Court interpreted the first subparagraph of Article 5(1) of Directive 2014/104 to mean that a request for the disclosure of evidence may, under certain conditions, cover evidence to be

[36] For the factual and legal context of the dispute, see section I.2.2.1 entitled 'Provisions granting national courts the power to order the disclosure of evidence.'

created ex novo by compiling or classifying information in the possession of the party to whom that request is addressed.

In that regard, the Court observes, first of all, that, while the wording of that provision suggests that a request to disclose evidence concerns only pre-existing evidence, the interpretation of that provision must also take account of its context and the objectives of the legislation of which it forms part.

As regards, first, the context of the first subparagraph of Article 5(1) of Directive 2014/104, the Court observes that the definition of the term 'evidence' in Article 2(13) of the directive, which refers to 'all types of means of proof admissible before the national court seised, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored,' does not mean that the evidence to be disclosed necessarily comprises pre-existing 'documents'. In that regard, the Court considers that the reference to evidence 'in [the] control' of the defendant or a third party merely reflects a factual situation, relating to the information asymmetry referred to above, which the EU legislature intends to remedy.

According to the Court, that analysis is supported by a reading of the first subparagraph of Article 5(1) of Directive 2014/104 in the light of paragraphs 2 and 3 of that article, which require the national courts, respectively, to ensure that the request to disclose evidence is specific and the principle of proportionality is observed.

As regards, secondly, the purpose of the first subparagraph of Article 5(1) of Directive 2014/104, the Court recalls that the adoption of Directive 2014/104 started from the finding, by the EU legislature, that combating anticompetitive conduct on an initiative taken by the Commission and national competition authorities was not sufficient to ensure full compliance with EU competition rules and, therefore, that it was important to facilitate the possibility, for the private sphere, to participate in the financial penalisation and, therefore, in the prevention of such conduct. The particular powers which the national courts must have to remedy the information asymmetry between the parties concerned help to achieve that objective.

From that point of view, the Court considers that to restrict at the outset evidence, the disclosure of which may be sought, only to pre-existing documents in the control of the defendant or a third party could, in certain cases, run counter to the primary objective pursued by Directive 2014/104.

Nevertheless, the Court emphasises, finally, that this interpretation of the first subparagraph of Article 5(1) of Directive 2014/104 does not in any way affect the application of the balancing mechanism for the interests involved, as is clear from paragraphs 2 and 3 of that article. Given that the provisions of the directive must be implemented in compliance with the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, it is for the national courts, when they receive a request to disclose evidence, to restrict the disclosure of evidence to that which is relevant, proportionate and necessary, taking into account the legitimate interests and fundamental rights of the party to whom that request is addressed, in accordance with Article 5(2) and (3) of the directive.

Thus, the Court concludes that the first subparagraph of Article 5(1) of Directive 2014/104 must be interpreted as meaning that the relevant evidence in the control of the defendant or a third party, the disclosure of which may be ordered by the national courts, is not limited to documents in their possession which already exist, but also covers those documents which the party to whom the request to disclose evidence is addressed must create ex novo by compiling or classifying information, knowledge or data in its possession, subject to strict compliance by these courts with their obligation under paragraphs 2 and 3 of that article to restrict the disclosure of evidence to that which is relevant, proportionate and necessary, taking into account the legitimate interests and fundamental rights of the party to which the request is addressed.

2. Injunction to disclose evidence where proceedings are pending before the European Commission

Judgment of 12 January 2023, RegioJet (C-57/21, EU:C:2023:6)

(Reference for a preliminary ruling – Competition – Abuse of a dominant position – Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Directive 2014/104/EU – Articles 5 and 6 – Disclosure of evidence – Evidence in a competition authority's file – Proceedings relating to an infringement of competition rules pending before the European Commission – National proceedings relating to an action for damages with regard to the same infringement – Conditions for the disclosure of evidence)

In this judgment, the factual and legal context of which have been outlined above, [37] the Court clarifies the rules according to which a national court hearing an action for compensation for damage caused by a cartel may order the disclosure of relevant evidence despite the suspension of the judicial proceedings in the light of proceedings pending before the Commission relating to that cartel.

In this regard, the Court recalls that the provisions applicable to the disclosure of documents set out in Articles 5 to 8 of Directive 2014/104 reflect a balance between the effectiveness of actions pursued by the competition authorities, and the effectiveness of actions for compensation brought by persons who consider that they have suffered injury as a result of anticompetitive practices.

Accordingly, while Directive 2014/104, given the asymmetry of information which often characterises litigation on actions for damages to compensate the injury suffered as a result of infringements of competition law, seeks to improve access to evidence for the victims of anticompetitive conduct, it also clearly defines that access.

[37] For the factual and legal context of the dispute, see section I.2.2.1 entitled 'Provisions granting national courts the power to order the disclosure of evidence.'

In the first place, Article 5 of Directive 2014/104 sets out a number of general rules on the disclosure of evidence in proceedings relating to actions for damages for infringements of competition law.

In the second place, Article 6 of the directive lays down rules specific to the disclosure of evidence contained in the file of a competition authority which, in particular, demonstrate a level of protection that differs according to the information requested and the need to preserve the effectiveness of proceedings conducted in the public sphere. This provision distinguishes between several categories of evidence.

In the third place, it is important to observe that, as is apparent from Article 5(3) and Article 6(4), Directive 2014/104 establishes a specific set of rules applicable to requests for the disclosure of evidence, meaning that such requests are not automatically granted but are assessed in the context of the principle of proportionality, taking into account the circumstances and legitimate interests involved. The national court dealing with the matter is therefore called upon to carry out a rigorous review of proportionality, while taking account, as appropriate, of the views which the competition authority concerned may submit to that court, in accordance with Article 6(11) of Directive 2014/104.

In the light of these details, the Court examines, first, the question referred for a preliminary ruling as to whether a national court deliberating on an action for damages for an infringement of competition law may order the disclosure of evidence at the same time as it stays the judicial proceedings on account of administrative proceedings conducted by the Commission which have not yet been closed.

In this regard, the Court observes that Article 16(1) of Regulation No 1/2003 requires national courts to refrain from making decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated and, to that effect, to assess whether it is necessary to stay the proceedings. However, it is clear from a reading of the provisions of Directive 2014/104 as a whole that this directive does not require the national courts to stay proceedings brought before them in actions for damages for infringements of the competition rules due to the initiation of proceedings by the Commission for the same infringements.

On this issue, the Court specifies that when a court orders the disclosure of evidence by the parties or third parties in an action for damages which has been stayed as a result of the initiation of proceedings by the Commission, that court is not, in principle, making a decision which may conflict with the decision contemplated by the Commission.

Nevertheless, the national court must limit the disclosure of evidence to that which is strictly relevant, proportionate and necessary, while ensuring that such disclosure does not unduly interfere with the ongoing investigation by the Commission. To that end, it must carry out a thorough examination of the relevance of the requested evidence, the link between that evidence and the claim for damages submitted, the level of detail of that evidence and its proportionality. In this context, the national court must also take into account whether or not the proceedings relating to the action for damages have been stayed.

The Court then states that staying national administrative proceedings until the Commission has closed its investigation in that case is merely an interim measure which cannot be equated to closing the proceedings.

The Court also states that national legislation that temporarily limits the disclosure of all information submitted in the course of administrative proceedings in competition matters is not compliant with Article 6(5)(a) and Article 6(9) of Directive 2014/104.

It is unambiguously clear from the wording of Article 6(5) of Directive 2014/104, read in the light of its recital 25, that the temporary protection granted under this provision does not apply to all information submitted to a competition authority but only to information specifically prepared for the purpose of proceedings initiated by that authority.

This finding is upheld by a systemic interpretation of Directive 2014/104. Speaking of which, the Court emphasises, in particular, that allowing Member States to extend the scope of the information whose disclosure can be ordered only after the closure of the proceedings, within the meaning of Article 6(5) of the directive, would lead to a more limited disclosure of evidence, contrary to the logic of Article 5(8) of the directive, which explicitly allows Member States to adopt rules leading to a wider disclosure of evidence.

Lastly, the Court finds that Directive 2014/104 does not preclude a national court, pursuant to a procedural instrument of national law, from ordering the disclosure of evidence solely in order to place it under sequestration and not disclose it until the court has ascertained whether the release of such information should await the closure of ongoing administrative proceedings. Provided that it complies with the requirements arising from the principle of proportionality, such a procedural instrument is capable of contributing to the effectiveness of claims for damages for infringement of the competition rules while maintaining the protection to be afforded to certain kinds of evidence under Article 6(5) of Directive 2014/104.

3. Obligation for the applicant for an injunction to substantiate the plausibility of its claim for damages

Judgment of 29 January 2026, Meliá Hotels International (C-286/24, EU:C:2026:49)

(Reference for a preliminary ruling – Actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Directive 2014/104/EU – Article 5(1) – Scope – Special declaratory action for the disclosure of documents preceding a potential action for damages – Assessment of the plausibility of the claim for damages)

In this judgment, the factual and legal context of which have been outlined above, [38] the Court examines the question referred for a preliminary ruling asking whether the condition laid down in the first subparagraph of Article 5(1) of Directive 2014/104, which makes the gathering of requested evidence dependent on the claimant submitting a reasoned

[38] For the factual and legal context of the dispute, see section I.1 entitled 'Material scope.'

justification supporting the plausibility of its claim for damages, is met where there is a Commission decision finding an infringement of EU competition law in the form of a vertical restriction by object.

In this regard, the Court observes, first of all, that Article 5(1) of Directive 2014/104 requires, in essence, that the party injured by an infringement of competition law put forward, in support of its request for the disclosure of evidence, a reasoned justification containing reasonably available facts and evidence sufficient to establish the plausibility of its claim for damages, that is to say, the plausibility of the existence of an infringement, of harm and of a causal link between that infringement and that harm.

On the issue of proving the plausibility of the infringement, the Court notes, next, that a Commission decision finding an infringement of Article 101 TFEU enables a national court to find that the infringement does indeed exist and, a fortiori, that it is plausible, since a national court cannot make decisions running counter to a Commission decision. By contrast, the Commission decision is not sufficient, per se, to support the plausibility of a claim for damages in all circumstances. To that end, it is still necessary to prove the plausibility of the harm and the causal link.

As for proving the plausibility of the harm, the Court also recalls that Article 17(2) of Directive 2014/104 establishes a rebuttable presumption of the existence of harm brought about by a cartel which, as is made clear by Article 2(14) of the directive, should be understood as a horizontal restriction of competition between two or more competitors. Accordingly, this precludes the application of such a rebuttable presumption to a vertical restriction of competition involving non-competing undertakings which operate at different levels of the production or distribution chain.

Consequently, where a Commission decision finds a prohibited cartel, the plausibility of the harm caused by the infringement is deemed proven, unless the defendant can otherwise rebut the presumption. However, this is not the case where there is a Commission decision finding an infringement of Article 101 TFEU in the form of a vertical restriction, even a restriction of competition by object. That being said, that decision may include relevant indicia that will assist in assessing the plausibility of the harm and the causal link.

In the light of the foregoing, the Court concludes that Article 5(1) of Directive 2014/104 must be interpreted as meaning that a Commission decision finding an infringement of EU competition law in the form of a vertical restriction by object is not sufficient to establish the plausibility of a claim for damages, since that claim requires proof not only of the plausibility of such an infringement, as established by such a decision, but also of damage and of the causal link between that damage and the infringement. The fact that this decision was made at the end of a settlement procedure makes no difference to the answer to that question.

Lastly, the Court finds that, in order to demonstrate the plausibility of a claim for damages within the meaning of Article 5(1) of Directive 2014/104, it is not necessary to establish that it is more likely than not that the conditions for liability for an infringement of competition law are met. It is sufficient for the claimant to demonstrate that the assumption that those conditions are met is reasonably acceptable.

Emphasising that the concept of plausibility within the meaning of Article 5(1) of Directive 2014/104 must be given an autonomous interpretation in EU law, the Court notes that, according to its usual meaning, the concept of the plausibility of a claim for damages does not require a particularly high degree of probability that the conditions for liability are met, but rather suggests that it is necessary and sufficient to convince the national court ruling on the request for disclosure of evidence that the assumption that the three conditions are met is reasonably acceptable.

This interpretation is supported by a contextual analysis of the concept of plausibility of the claim for damages laid down in Article 5(1) of Directive 2014/104. First, in the general scheme of this provision, read in the light, in particular, of recitals 6, 14 and 15 of the directive, the demonstration of the plausibility of the claim for does not lead to compensation being awarded in an action on the merits but rather to the issuance of an order for the prior disclosure of evidence necessary to the effectiveness of such an action. The standard of proof required to obtain the evidence necessary for the purposes of the main action should therefore be lower than that required to establish that the conditions for incurring substantive liability are met.

Second, it is apparent from Article 5(1) of Directive 2014/104 and recital 16 of the directive that the plausibility of the claim for damages must be established solely on the basis of facts and evidence reasonably available to the claimant, reflecting the intention of the EU legislature not to impose an excessive burden of proof on the claimant but merely to require it to make a plausible assertion that an infringement of competition law has caused it harm.

According to the Court, this interpretation is also the only interpretation compatible with the objectives of Directive 2014/104, seeking, in particular, to remedy the information asymmetry which characterises actions for damages for infringing competition law. The evidence necessary to prove a claim for damages is often held exclusively by the opposing party or by third parties, and is not sufficiently known by, or accessible to, the claimant.

Compelling the claimant to prove, in support of its request for the disclosure of evidence necessary for the purposes of an action for damages, that it is more likely than not that the conditions for liability for an infringement of competition law have been met, would constitute such a strict legal requirement that it might unduly prevent the effective exercise of the right to compensation. Such an evidentiary requirement would be incompatible with the objective of facilitating actions for damages because the required standard of proof would make it virtually impossible or excessively difficult for the claimant to bring an action for damages.

Accordingly, the objectives of Directive 2014/104 support the view that the concept of plausibility of the claim for damages and of the claimant's burden of proof should be interpreted as meaning that the claimant must, on the basis of the information reasonably available to it, convince the national court ruling on its request for the disclosure of evidence that it is reasonably acceptable to presume that the three cumulative conditions for liability for an infringement of competition law have been met.

4. Limits on the use of evidence and information in the file of a competition authority: leniency statements and settlement submissions

Judgment of 30 October 2025, FL und KM Baugesellschaft and S (C-2/23, EU:C:2025:848)

(Reference for a preliminary ruling – Competition – Article 101 TFEU – Effectiveness – Directive 2014/104/EU – Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Article 6(6) and (7) – Article 7(1) – Directive 2019/1/EU – Empowering the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market – Article 31(3) – Scope – Mechanism for mutual administrative and judicial assistance between national authorities – Transfer of the file from a competition authority to an authority conducting a criminal investigation – Addition to the file of a criminal investigation of leniency statements and settlement submissions and their annexes – Access to those documents by persons under investigation and other parties to such proceedings)

In this judgment, the factual and legal context of which have been outlined above, [39] the Court specifies the boundaries of the protection against disclosure from which leniency statements or settlement submissions made by undertakings benefit in relation to cartels in which they have participated and which have caused harm to third parties.

In this regard, the Court emphasises that Article 31(3) of Directive 2019/1 affords protection to leniency statements and settlement submissions which must be ensured irrespective of the context in which those statements and submissions are used.

It is apparent, particularly from Article 31(3) of Directive 2019/1 that EU competition law allows access to leniency statements and settlement submissions drawn up in the context of enforcement proceedings initiated by the national competition authority only to the parties subject to those proceedings and for the sole purpose of exercising their rights of defence.

The expression 'parties subject to the relevant proceedings' in that provision cannot be understood as covering injured parties who may bring an action for damages.

Accordingly, that provision would be rendered meaningless if national law did not afford leniency statements and settlement submissions, after their transfer to the criminal authorities in the context of criminal investigation proceedings conducted by those authorities, pursuant to a mutual administrative assistance mechanism, protection equivalent to that afforded to them by EU competition law and, in particular, if any party to those proceedings, including injured parties who could bring an action for damages, had access to those statements and submissions.

Since such access is liable to undermine the effectiveness of Article 31(3) of Directive 2019/1 and cannot therefore be granted to the parties to criminal investigation proceedings other than the persons under investigation and, in particular, to the persons harmed by the

[39] For the factual and legal context of the dispute, see section I.1 entitled 'Material scope.'

infringement of competition law concerned who seek compensation for the harm caused by that infringement.

In the light of all the foregoing considerations, the Court concludes that Article 31(3) of Directive 2019/1, read in the light of the first and second paragraphs of Article 47 and the second paragraph of Article 48(2) of the Charter, must be interpreted as not precluding national legislation under which, in the context of criminal proceedings which do not concern an infringement of competition law, the other parties to those criminal proceedings have the right of access to leniency statements and settlement submissions, drawn up for the purposes of proceedings before a national competition authority and transmitted to national criminal authorities, in particular the persons harmed by the competition law infringement concerned, who are seeking compensation for the harm caused by that infringement.

IV. Estimation of harm

Judgment of 16 February 2023, Tráficos Manuel Ferrer (C-312/21, EU:C:2023:99)

(Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – Decision of the Commission finding the existence of collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA) – National rule of civil procedure under which, in the event that the claim is upheld in part, costs are to be borne by each party, except in cases of wrongful conduct – Procedural autonomy of the Member States – Principles of effectiveness and equivalence – Directive 2014/104/EU – Objectives and overall balance – Article 3 – Right to full compensation for the harm suffered – Article 11(1) – Joint and several liability of the undertakings that infringe competition law – Article 17(1) – Possibility for national courts to estimate the harm – Conditions – Impossibility or unreasonable difficulties in quantifying harm – Article 22 – Temporal application)

In this judgment, the factual and legal context of which have been outlined above, [40] the Court interprets Article 17(1) of Directive 2014/104 under which the Member States must ensure that the national courts are empowered, in accordance with national procedures, to carry out an estimation of the amount of the harm suffered as a result of anticompetitive conduct, if it is established that a claimant suffered harm but it is practically impossible or excessively difficult to quantify that harm precisely on the basis of the evidence available.

In this regard, the referring court asks, in essence, whether the judicial estimation of the harm provided for in that provision is permitted in circumstances such as those of the present case, in which, first, the defendant has given the claimant access to the information on the basis of which it had itself drawn up its expert report in order to rule out the existence of harm in relation to which compensation may be claimed and, second, the claim for damages is brought against only one of the addressees of the decision finding an

[40] For the factual and legal context of the dispute, see section I.1 entitled 'Material scope.' This judgment is also discussed in section I.2.3 entitled 'Temporal application of the provisions of the directive reaffirming existing case-law.'

infringement of Article 101 TFEU, which marketed only part of the goods implicated in the cartel and acquired by the claimant.

Findings of the Court

The Court begins by pointing out that the wording of Article 17(1) of Directive 2014/104 limits the scope of the judicial estimation of the harm to situations in which it is practically impossible or excessively difficult to quantify it, once it has been established that the claimant suffered that harm.

Noting that Article 17(1) of Directive 2014/104 is one of the measures intended to remedy the asymmetry of information between persons affected by anticompetitive conduct and undertakings which have infringed competition law, the Court also holds that this measure may interact with the other corrective measures provided for by the directive. Thus, the need to undertake a judicial estimation of the harm suffered owing to anticompetitive conduct may depend, in particular on the result obtained by the claimant following a request for the disclosure of evidence pursuant to the first subparagraph of Article 5(1) of Directive 2014/104.

In this context, the Court states that, because of the key role of that provision within Directive 2014/104, it is for the national court, before proceeding to estimate the harm, to determine whether the claimant has made use of it. If the practical impossibility of quantifying the harm is the result of inaction on the part of the claimant, it is not for the national court to take the claimant's place or to remedy its shortcomings.

In contrast, the circumstances characterising the situation at issue in the main proceedings and referred to by the referring court in its questions, namely, first, that Daimler made available to the claimant the data on which it relied in order to refute the claimants' expert report and, second, that the applicants in the main proceedings addressed their claim to only one of the perpetrators of the conduct found by the Commission, are not, in themselves, relevant for the purpose of assessing whether it is permissible for the national court to undertake an estimation of the harm pursuant to Article 17(1) of Directive 2014/104. Lastly, the Court recalls in particular the case-law principle, confirmed by Article 11 of Directive 2014/104, according to which an infringement of competition law involves, in principle, the joint and several liability of the infringers.

V. Rules governing limitation periods

Judgment of 22 June 2022, Volvo and DAF Trucks (C-267/20, EU:C:2022:494)

(Reference for a preliminary ruling – Agreements, decisions and concerted practices – Article 101 TFEU – Directive 2014/104/EU – Articles 10, 17 and 22 – Actions for damages for infringements of the provisions of EU competition law – Limitation period – Rebuttable presumption of harm – Quantification of harm suffered – Late transposition of the directive – Temporal application – Substantive and procedural provisions)

Examining the temporal applicability of Article 10 of Directive 2014/104, which establishes the rules relating to the time-barring of actions for damages for infringements of competition law, the Court clarifies, in this judgment, the factual and legal context of which have been outlined above, [41] the requirements arising from Article 101 TFEU concerning the determination of the starting point of national limitation periods for actions for damages for infringements that ended before the entry into force of Directive 2014/104.

Since Directive 2014/104 was transposed into Spanish law five months after the expiry of the time limit for its transposition, set at 27 December 2016, the Court considers that, it is necessary, in order to determine the temporal applicability of Article 10 of the directive, to ascertain whether the legal situation at issue in the main proceedings arose before the expiry of the time limit for the transposition of the directive or whether it continued to produce effects after the expiry of the time limit. In particular, the Court considers it necessary to ascertain whether, at the date of expiry of the time limit for the transposition of Directive 2014/104, namely 27 December 2016, the limitation period applicable to the situation at issue in the main proceedings had elapsed, which means determining the time when that limitation period began to run. The Spanish legislation then in force provided that the one-year limitation period began to run from the moment the circumstances giving rise to liability became known to the injured party.

While it is for the referring court to determine the date on which RM came by that knowledge in the present case, it is obliged to interpret the applicable national provisions, so far as possible, in the light of EU law and, in particular, the wording and purpose of Article 101 TFEU.

In this context, the Court emphasises that it is apparent from the principle of effectiveness that national limitation periods applicable to actions for damages for infringements of competition law cannot begin to run before the infringement has ceased and the injured party knows, or can reasonably be expected to know, of the information necessary to bring its action, namely (i) the existence of harm, (ii) the causal link between that harm and the infringement of competition law committed and (iii) the identity of the perpetrator of that infringement.

In this regard, the Court notes that the press release of the Commission's cartel decision, issued on 19 July 2016, does not appear to identify with the precision of the summary, published on 6 April 2017, the identity of the perpetrators of the infringement, its exact duration and the products concerned. In these circumstances, the full effectiveness of Article 101 TFEU requires it to be held that, in this instance, the limitation period for the action for compensation brought by RM began running on the day of publication of the summary of the Commission decision.

In so far as this is the case, it appears, therefore, that the period had not elapsed before the expiry of the time limit for the transposition of Directive 2014/104. This period continued running even after the date of entry into force of the Spanish transposing legislation. Accordingly, the Court held that, in so far as the limitation period applicable to RM's action for damages under the old rules had not elapsed before the date of expiry of the time

[41] For the factual and legal context of the dispute, see section I.2.1.1 entitled 'Provisions governing the limitation period in actions for damages.' This judgment is also discussed in section I.2.1.3 entitled 'Provisions establishing an irrefutable presumption as to the existence of harm resulting from a cartel' and section I.2.2.2 entitled 'Provisions governing the quantification of harm.'

limit for the transposition of the directive, the action falls within the temporal scope of Article 10 of the directive.

Judgment of 18 April 2024 (Grand Chamber), Heureka Group (Online price comparison services) (C-605/21, EU:C:2024:324))

(Reference for a preliminary ruling – Article 102 TFEU – Principle of effectiveness – Actions for damages under national law for infringements of competition law provisions – Directive 2014/104/EU – Late transposition of the directive – Temporal application – Article 10 – Limitation period – Detailed rules for the dies a quo – Cessation of the infringement – Knowledge of the information necessary for bringing an action for damages – Publication in the Official Journal of the European Union of the summary of the European Commission's decision finding an infringement of the competition rules – Binding effect of a Commission decision that is not yet final – Suspension or interruption of the limitation period for the duration of the Commission's investigation or until the date when its decision becomes final)

In this judgment, the factual and legal context of which have been outlined above, [42] the Court specifies the requirements arising from both Article 102 TFEU and Directive 2014/104 in terms of setting the starting point of national limitation periods for actions for damages for ongoing infringements of EU competition law.

In order to determine the temporal applicability of Article 10 of Directive 2014/104 in the present case, the Court ascertains whether the legal situation at issue in the main proceedings arose before 27 December 2016 or whether it continued to produce effects thereafter.

To that end, it is necessary to examine whether, on 27 December 2016, the national limitation period applicable to the situation at issue in the main proceedings had elapsed. In this context, however, account must be taken of the fact that, even before the expiry of the time limit for transposition of Directive 2014/104, the applicable national limitation rules had to comply with the principles of equivalence and effectiveness and should not completely undermine the full effectiveness of Article 102 TFEU.

The full effectiveness of Article 102 TFEU and, in particular, the effectiveness of the prohibition that it lays down require that the national limitation periods applicable to actions for damages for infringements of this article do not begin running before the infringement has come to an end and the injured party does not know, or cannot reasonably be expected to know, the necessary information to bring its action for damages.

Although it is for the referring court to determine, in the present case, the date on which Heureka knew the information, the Court nevertheless considers it appropriate to point out that, in principle, the moment when the information is known coincides with the date of publication in the *Official Journal of the European Union* of the summary of the Commission's

[42] For the factual and legal context of the dispute, see section I.2.1.1 entitled 'Provisions governing the limitation period in actions for damages.'

decision finding the infringement, irrespective of whether or not that decision has become final.

The Court also stipulates that Article 102 TFEU and the principle of effectiveness require the suspension or interruption of the limitation period for the duration of an investigation conducted by the Commission. However, Article 102 TFEU and the principle do not require the continued suspension of the limitation period until the moment the Commission's decision becomes final. An injured party may, in order to support its action for damages, rely on the findings in a Commission decision which is not yet final, where that decision has binding effect for as long as it has not been annulled.

In view of the foregoing, the Court finds that national rules on limitation, such as those at issue in the main proceedings, under which, first, the three-year limitation period begins running independently and separately for each partial occurrence of harm resulting from an infringement of Article 102 TFEU, from the moment the injured party knows, or can reasonably be expected to know, of the fact that it suffered partial harm and the identity of the party liable to pay compensation for that harm, without it being necessary for the infringement to have come to an end and for that party to have knowledge of the fact that the conduct in question concerned constitutes an infringement of the competition rules, and, secondly, the period may not be suspended or interrupted during the Commission's investigation into such an infringement, are incompatible with Article 102 TFEU and the principle of effectiveness, in that they make the exercise of the right to claim compensation for the harm suffered as a result of the infringement practically impossible or excessively difficult.

Accordingly, it is by disregarding the elements of those rules on limitation which are incompatible with Article 102 TFEU and the principle of effectiveness that it is necessary to examine whether, on the date the time limit for transposing Directive 2014/104 expired, namely 27 December 2016, the limitation period laid down by national law, applicable to the situation at issue in the main proceedings until that date, had expired.

In this regard, it is apparent from the Commission's decision finding Google's abuse of a dominant position that the infringement had not yet come to an end on the date the decision was adopted, namely 27 June 2017. It follows that, on the date on which the period for transposing Directive 2014/104 expired, not only had the limitation period not expired but it had not even started running.

Since the situation at issue in the main proceedings had not arisen before the expiry of the period for transposing Directive 2014/104, Article 10 of the directive is applicable *ratione temporis* in the present case. However, the Court holds that it is apparent from the clear wording of Article 10(2) and (4) of the directive that the national rules on limitation at issue are also incompatible with Article 10. It states, in particular, that Article 10(4) of the directive now requires that the suspension of the limitation period following action taken by a competition authority to investigate or bring proceedings for an infringement of competition law to which the action for damages relates, ends at the earliest one year after the date on which the decision finding the infringement became final or after the proceedings were otherwise terminated. This provision therefore exceeds the requirements under Article 102 TFEU and the principle of effectiveness.

Judgment of 4 September 2025, Nissan Iberia (C-21/24, EU:C:2025:659)

(Reference for a preliminary ruling – Article 101 TFEU – Principle of effectiveness – Actions for damages for infringements of the competition law provisions of the Member States and of the European Union – Limitation period – Determination of the dies a quo – Knowledge of the information necessary for bringing an action for damages – Publication on the website of a national competition authority of its decision finding an infringement of the competition rules – Binding effect of a decision of a national competition authority which is not yet final – Suspension or interruption of the limitation period – Stay of the main proceedings before the court hearing an action for damages – Directive 2014/104/EU – Article 10 – Temporal application)

In this preliminary ruling, first, the Court outlines the requirements arising from Article 101 TFEU as regards the determination of the starting point of national limitation periods for actions for damages for infringements of competition law which began before the entry into force of Directive 2014/104. Second, it examines the starting point of the limitation period provided for in Article 10 of Directive 2014/104.

In 2015, the Comisión Nacional de los Mercados y la Competencia (National Commission for Markets and Competition, Spain, 'the CNMC') adopted a decision finding that a number of undertakings, including Nissan Iberia SA, had infringed Article 101 TFEU and the Spanish competition law rules. This decision was the subject of a press release, published on the CNMC's website on 28 July 2015. On 15 September 2015, the decision was published in its entirety on that website.

A number of actions for annulment were brought against the decision of the CNMC by the alleged infringers, including Nissan, but it was upheld, as regards Nissan, by the Tribunal Supremo (Supreme Court, Spain) in 2021.

In March 2023, CP brought an action for damages before the Juzgado de lo Mercantil nº 1 Zaragoza (Commercial Court No 1, Saragossa, Spain) seeking an order for Nissan to pay compensation for the losses which CP allegedly suffered as a result of the purchase of a vehicle, the price of which had been affected by the infringement found by the CNMC.

In its defence, Nissan argued that the action for damages was time-barred.

In this regard, Commercial Court No 1, Saragossa explains that, under national law, the limitation periods applicable to actions for damages for infringements of the competition rules cannot begin to run before the infringement has ceased and before the injured party knew, or could reasonably have known, of the information necessary for bringing its action for damages.

In cases where the infringement was established by a decision of the CNMC, it is this court's view that the injured parties may be considered aware of the relevant information at the time the decision of the CNMC was published on its website, irrespective of whether that decision was final. According to this interpretation, the action for damages brought by CP is time-barred in the present case.

Commercial Court No 1, Saragossa observes, however, that there is also a line of national case-law according to which the limitation period applicable to actions for damages for anticompetitive conduct established by a decision of the CNMC which is the subject of an action for annulment does not begin to run until the moment that decision becomes final following judicial review.

In these circumstances, Commercial Court No 1, Saragossa referred three questions for a preliminary ruling asking, in essence, whether Article 101 TFEU, read in the light of the principle of effectiveness, and as the case may be, Article 10(2) of Directive 2014/104, [43] preclude national legislation, as interpreted by the national courts having jurisdiction, and according to which, for the purposes of determining the starting point of the limitation period applicable to actions for damages for infringements of the competition rules following a decision of the national competition authority finding an infringement of those rules, it may be concluded that a party considering itself to have been harmed, was aware of the information necessary to enable it to bring an action for damages before that decision became final.

Findings of the Court

First, the Court reviews the temporal applicability of Article 10 of Directive 2014/104 to the main proceedings. This article provides that the national limitation periods applicable to actions for damages for infringements of competition law do not begin to run before the infringement has ceased and before the applicant knew, or could reasonably be expected to have known, the information necessary for bringing its action for damages.

In order to determine whether this provision applies to the case in the main proceedings, the Court examines whether, on the date of expiry of the period for transposing Directive 2014/104, namely 27 December 2016, the national limitation period applicable to the action for damages brought by CP had expired.

On this issue, the Court emphasises that, even before the expiry of the period for transposition of Directive 2014/104, national legislation setting the date on which the limitation period applicable to actions for damages for infringements of competition law starts to run, the duration of that period and the rules for its suspension or interruption must be adapted to the specificities of competition law and the objectives of the implementation of the rules of that law by the persons concerned, so as not to undermine completely the full effectiveness of Articles 101 and 102 TFEU.

The Court also points out that the practical effect of the prohibition laid down in Article 101(1) TFEU would be put at risk if it were not open to any individuals to claim damages for losses caused to them by an infringement of competition law. It follows that any person can claim compensation for harm suffered where there is a causal link between that harm and an agreement or practice prohibited under Article 101 TFEU.

In accordance with the case-law, the exercise of the right to claim compensation would be rendered practically impossible or excessively difficult if the limitation periods began to run before the infringement came to an end and the injured party did not know, or could not reasonably have been expected to know, the information necessary for bringing its action for damages, which includes the existence of an infringement of competition law, the

[43] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014, L 349 p.1).

existence of harm, a causal link between that harm and the infringement, and the identity of the infringer.

In this context, it is apparent from explanations provided by the referring court that a decision of the CNMC finding an infringement of the competition rules, the validity of which has been called into question by judicial means, is not binding on the court hearing an action for damages subsequent to that decision. Accordingly, a party harmed by an infringement could not effectively rely on that decision to substantiate its action for damages. It follows that, since the court hearing the action for damages is only bound by a finding of infringement once the decision has become final, the injured party can reasonably be expected to have become aware of the information necessary for bringing its action only when the CNMC's decision is final after judicial review. Accordingly, the limitation period for the injured party's action for damages cannot begin running before the date on which that decision is final.

That being said, the Court also states that the condition requiring knowledge of the information necessary to bring an action for damages following a decision of a national competition authority demands not only that the decision is final but also that the information arising from the final decision has been made public in an appropriate manner. For these purposes, the judgment definitively upholding the decision of the national competition authority must be officially published and be freely accessible to the general public, and the date of its publication must be clearly set out in the judgment.

In the light of the foregoing, the Court recalls that, in the main proceedings, CP brought an action for damages in March 2023 following a decision of the CNMC which became final, as regards Nissan, pursuant to a judgment of the Tribunal Supremo (Supreme Court). Since that judgment was not handed down until 2021, it may reasonably be supposed that, on the date on which the period for transposing Directive 2014/104 expired, namely 27 December 2016, not only had the limitation period applicable to the action for damages brought by CP not expired, but it had not even started to run.

Secondly, the Court considers that the content of Article 10(2) of Directive 2014/104, as regards the determination of the time from which the limitation period starts to run, essentially reflects its case-law relating to Articles 101 and 102 TFEU and the principle of effectiveness.

Thus, the Court finds that its concerns regarding the starting point of the limitation period for actions for damages for infringements of the competition rules before the entry into force of Directive 2014/104 are also applicable to the interpretation of Article 10(2) of the directive.

Under these conditions, the Court's answer to the questions referred is that Article 101 TFEU, read in the light of the principle of effectiveness and Article 10(2) of Directive 2014/104, must be interpreted as meaning that they preclude national legislation, as interpreted by the national courts having jurisdiction, and according to which, for the purposes of determining the starting point of the limitation period applicable to actions for damages for infringements of the competition rules following a decision of the national competition authority finding an infringement of those rules, it may be concluded that a party which considers itself harmed, was aware of the information necessary to enable it to bring an action for damages before that decision became final.

VI. Rules for exercising the right to compensation before the national courts – Compliance with the principles of equivalence and effectiveness

Judgment of 28 January 2025 (Grand Chamber), ASG 2 (C-253/23, EU:C:2025:40)

(Reference for a preliminary ruling – Competition – Article 101 TFEU – Directive 2014/104/EU – Actions for damages for infringements of competition law – Point 4 of Article 2 – Concept of 'action for damages' – Article 3(1) – Right to full compensation for harm suffered – Assignment of compensation claims to a provider of legal services – National law precluding recognition of the standing of such a provider with a view to group collection of those claims – Article 4 – Principle of effectiveness – First paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Right to effective judicial protection)

As regards the rules for bringing actions for damages for the infringement of competition law, the Court points out that, in so far as these rules are not governed by Directive 2014/104, it is for Member States to define them in compliance with the principles of equivalence and effectiveness.

In 2009, the German competition authority adopted a commitment decision relating, inter alia, to Land North Rhine-Westphalia, Germany, regarding a cartel on prices in the round wood sector.

A group of sawmills established in Germany, Belgium and Luxembourg considered that they had suffered harm as a result of this cartel and assigned their compensation rights to a legal services provider, which brought a group action for damages before the Landgericht Dortmund (Regional Court, Dortmund, Germany) in its own name but on their behalf. However, in accordance with a judicial interpretation of the applicable German legislation, such a group action is not admissible in compensation claims for harm caused by an alleged infringement of competition law.

However, the referring court considers that the group action for collection is the only remedy available under German law which could ensure the effective implementation of the right to compensation in cartel cases.

In this context, the referring court referred three questions for a preliminary ruling concerning, in essence, whether national law can preclude a group action for collection in disputes relating to competition law where the lack of an equivalent remedy would render it practically impossible or excessively difficult to bring an action for damages, in particular for low-value damages, for a large number of injured parties.

Findings of the Court

The Court examines whether EU law precludes an interpretation of national legislation which has the effect of preventing persons allegedly harmed by an infringement of competition law from assigning their rights to compensation to a provider of legal services so that it may assert them, collectively, in an independent action for damages, that is to say an action for damages following a final decision of a competition authority not following a final and binding decision, in particular with regard to the proof of facts, finding such an infringement ('a stand-alone action').

However, the Court observes that Directive 2014/104 does not impose any obligation on the Member States to establish a mechanism for a group action for collection, such as that at issue in the main proceedings, nor does it govern the conditions to which the validity of an assignment by the injured party, in view of such a group action, of its right to compensation for the harm caused by an infringement of competition law is subject. Consequently, both the establishment of such a mechanism and the conditions governing the validity of such a transfer fall within the detailed rules governing the exercise of that right to compensation, which are not governed by Directive 2014/104, but are a matter for the domestic legal system of each Member State, in accordance with the principles of equivalence and effectiveness.

In the present case, the referring court has doubts as to the conformity with the principle of effectiveness and the right to effective judicial protection of a judicial interpretation of national law which prevents persons harmed by an infringement of competition law from having recourse to a group action for collection.

The Court considers, in this regard, that the interpretation of German law that precludes the group action for collection for the harm caused by an infringement of competition law would only be contrary to EU law if the referring court were to conclude, first, that other collective mechanisms laid down by national law would not make it possible to assert in an effective manner the right to compensation of injured persons and, second, the conditions for bringing an individual action laid down by national law render the exercise of that right to compensation impossible or excessively difficult, thus undermining their right to effective judicial protection.

The Court nevertheless states that the procedural costs inherent in an individual action for damages do not in themselves support the conclusion that the exercise of the right to compensation in an individual action would be rendered practically impossible or excessively difficult in the context of such an action. In order to reach that conclusion, the referring court should identify the specific elements of national law that present an obstacle to the exercise of these individual actions.

The Court adds that, if that court were to find that the mechanism for a group action for collection constitutes, in the case in the main proceedings, the only procedural means enabling the sawmills concerned effectively to assert their right to compensation, such a finding would be without prejudice to the application of national provisions governing the activity of the providers of legal services in order, in particular, to guarantee the quality of those services and the objective and proportionate nature of the remuneration received by such providers, and to prevent conflicts of interest and abusive procedural conduct.

As regards, lastly, the consequences to be drawn from any finding, by the referring court, to the effect that the national provisions at issue do not comply with the right to effective judicial protection, that court will first have to determine, taking the whole body of national law into consideration and applying the interpretative methods recognised by that law, whether it is possible for it to interpret the relevant provisions in a manner consistent with the requirements of EU law, without, however, interpreting those provisions contra legem. It is only in the event that no interpretation that is consistent with EU law is possible that those provisions should be disapplied by the referring court.

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