Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

22 June 2022 *

(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 Case C-267/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Provincial de León (Provincial Court, Léon, Spain), made by decision of 12 June 2020, received at the Court on 15 June 2020, in the proceedings

Volvo AB (publ.),

DAF Trucks NV

v

RM,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, I. Ziemele, T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Volvo AB (publ.), by N. Gómez Bernardo and R. Murillo Tapia, abogados,

– DAF Trucks NV, by C. Gual Grau, abogado, M. de Monchy and J.K. de Pree, advocaten, D. Sarmiento Ramírez-Escudero and P. Vidal Martínez, abogados,

* Language of the case: Spanish.

– RM, by M. Picón González, procuradora, and I. San Primitivo Arias, abogado,

– the Spanish Government, by L. Aguilera Ruiz and S. Centeno Huerta, acting as Agents,

– the Estonian Government, by A. Kalbus, acting as Agent,

– the European Commission, by S. Baches Opi, M. Farley and G. Meessen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 October 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 101 TFEU, of Articles 10 and 17 and Article 22(2) of 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), and of the principle of effectiveness.

2 The request has been made in proceedings between Volvo AB (publ.) and DAF Trucks NV, on the one hand, and RM, on the other, concerning an action for damages brought by RM seeking compensation for the harm resulting from an infringement of Article 101 TFEU, found by the European Commission, which was committed by several truck manufacturers, including Volvo and DAF Trucks.

Legal context

European Union law

3 Recital 47 of Directive 2014/104 states:

‘To remedy the information asymmetry and some of the difficulties associated with quantifying harm in competition law cases, and to ensure the effectiveness of claims for damages, it is appropriate to presume that cartel infringements result in harm, in particular via an effect on prices. Depending on the facts of the case, cartels result in a rise in prices, or prevent a lowering of prices which would otherwise have occurred but for the cartel. This presumption should not cover the concrete amount of harm. Infringers should be allowed to rebut the presumption. It is appropriate to limit this rebuttable presumption to cartels, given their secret nature, which increases the information asymmetry and makes it more difficult for claimants to obtain the evidence necessary to prove the harm.’

4 Article 10 of that directive, entitled ‘Limitation periods’, provides:

‘1. Member States shall, in accordance with this Article, lay down rules applicable to limitation periods for bringing actions for damages. Those rules shall determine when the limitation period begins to run, the duration thereof and the circumstances under which it is interrupted or suspended.

2. Limitation periods shall not begin to run before the infringement of competition law has ceased and the claimant knows, or can reasonably be expected to know:

(a) of the behaviour and the fact that it constitutes an infringement of competition law;

(b) of the fact that the infringement of competition law caused harm to it; and

(c) the identity of the infringer.

3. Member States shall ensure that the limitation periods for bringing actions for damages are at least five years.

4. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, if a competition authority takes action for the purpose of the investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension shall end at the earliest one year after the infringement decision has become final or after the proceedings are otherwise terminated.'

5 Article 17 of that directive, entitled 'Quantification of harm', provides:

'1. Member States shall ensure that neither the burden nor the standard of proof required for the quantification of harm renders the exercise of the right to damages practically impossible or excessively difficult. Member States shall ensure that the national courts are empowered, in accordance with national procedures, to estimate the amount of harm if it is established that a claimant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available.

2. It shall be presumed that cartel infringements cause harm. The infringer shall have the right to rebut that presumption.

3. Member States shall ensure that, in proceedings relating to an action for damages, a national competition authority may, upon request of a national court, assist that national court with respect to the determination of the quantum of damages where that national competition authority considers such assistance to be appropriate.'

6 Article 21(1) of the same directive is worded as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 December 2016. They shall forthwith communicate to the Commission the text thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.'

7 Article 22 of Directive 2014/104, entitled 'Temporal application', states:

'1. Member States shall ensure that the national measures adopted pursuant to Article 21 in order to comply with substantive provisions of this Directive do not apply retroactively.

2. Member States shall ensure that any national measures adopted pursuant to Article 21, other than those referred to in paragraph 1, do not apply to actions for damages of which a national court was seised prior to 26 December 2014.'

8 Article 25(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1) provides:

'Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.'

9 Under Article 30 of that regulation, entitled 'Publication of decisions':

'1. The Commission shall publish the decisions, which it takes pursuant to Articles 7 to 10, 23 and 24.

2. The publication shall state the names of the parties and the main content of the decision, including any penalties imposed. It shall have regard to the legitimate interest of undertakings in the protection of their business secrets.'

Spanish law

10 Under Article 74(1) of Ley 15/2007 de Defensa de la Competencia (Law No 15/2007 on the Protection of Competition) of 3 July 2007 (BOE No 159 of 4 July 2007, p. 28848), as amended by Real Decreto-ley 9/2017, por el que se transponen directivas de la Unión Europea en los ámbitos financiero, mercantil y sanitario, y sobre el desplazamiento de trabajadores (Royal Decree-Law No 9/2017 transposing European Union directives in the fields of finance, business and health, and on the posting of workers) of 26 May 2017 (BOE No 126 of 27 May 2017, p. 42820) ('Law No 15/2007, as amended by Royal Decree-Law No 9/2017'):

'The limitation period for bringing an action to establish liability for the harm resulting from an infringement of competition law shall be five years.'

11 Article 76(2) and (3) of Law No 15/2007, as amended by Royal Decree-Law No 9/2017, provides:

'2. If it is established that an applicant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available, the courts are empowered to estimate the amount of compensation for the harm.

3. It shall be presumed that, in the absence of evidence to the contrary, cartel infringements cause harm.'

12 The first transitional provision of Royal Decree-Law No 9/2017 transposing Directive 2014/104 into Spanish law, entitled 'Transitional arrangements for actions for damages resulting from infringements of the competition law of the Member States and of the European Union', provides:

'1. The provisions of Article 3 of this Royal Decree-Law shall not apply retroactively.

2. Article 4 of this Royal Decree-Law shall apply only to proceedings initiated after its entry into force.'

13 Article 1902 of the Código Civil (Civil Code) states:

'A person who, as a result of an action or omission, causes damage to another through his or her fault or negligence, shall be obliged to make good the damage caused.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 During 2006 and 2007, RM purchased from Volvo and from DAF Trucks three trucks manufactured by those companies.

15 On 19 July 2016, the Commission adopted Decision C(2016) 4673 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) and published a press release in that regard. On 6 April 2017, in accordance with Article 30 of Regulation No 1/2003, that institution published the summary of that decision in the *Official Journal of the European Union*.

16 By that decision, the Commission found that a number of truck manufacturers, including Volvo and DAF Trucks, had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 1), by agreeing, first, on the setting of prices and the increase of gross prices of trucks weighing between 6 tonnes and 16 tonnes, namely medium trucks, or more than 16 tonnes, namely heavy trucks, in the European Economic Area 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. In respect of Volvo and DAF Trucks, the infringement lasted from 17 January 1997 to 18 January 2011.

17 On 27 May 2017, that is to say, five months after the expiry of the time limit for the transposition of Directive 2014/104, Royal Decree-Law No 9/2017 transposing that directive into Spanish law entered into force.

18 On 1 April 2018, RM brought an action against Volvo and DAF Trucks before the Juzgado de lo Mercantil de León (Commercial Court, León, Spain). That action seeks compensation for the harm allegedly suffered by RM as a result of the anticompetitive practices engaged in by those two companies. That action is based, primarily, on the relevant provisions of Law No 15/2007, as amended by Royal Decree-Law No 9/2017, and, in the alternative, on the general regime of non-contractual civil liability, in particular on Article 1902 of the Civil Code. The same action constitutes an action for damages brought following a final decision of the Commission finding an infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area.

19 Volvo and DAF Trucks objected to that action, arguing, inter alia, that it was time-barred and that RM had not proved that there was a causal link between the infringement found in Decision C(2016) 4673 final and the increase in truck prices.

20 By judgment of 15 October 2019, the Juzgado de lo Mercantil de León (Commercial Court, León) upheld RM's action in part and ordered Volvo and DAF Trucks to pay RM compensation corresponding to 15% of the purchase price of the trucks, plus statutory interest, without however ordering those companies to pay the costs. It rejected the limitation defence relied on by Volvo and DAF Trucks, on the ground, inter alia, that the five-year period provided for in Article 74 of Law No 15/2007, as amended by Royal Decree-Law No 9/2017, which transposes Article 10(3) of Directive 2014/104, was in force at the time the action was brought and was

therefore applicable in the case at hand. Moreover, in taking the view that Article 76(2) and (3) of that law, which transposes Article 17(1) and (2) of that directive, is a procedural provision, that court relied, in the first place, on the presumption of harm established in Article 76(3) of Law No 15/2007, as amended by Royal Decree-Law No 9/2017, to find the existence of harm caused to RM and, in the second place, on Article 76(2) of that law to quantify the amount of that harm.

21 Volvo and DAF Trucks have brought an appeal against that judgment before the Audiencia Provincial de Léon (Provincial Court, Léon, Spain). Those two undertakings claim that Directive 2014/104 is not applicable in the present case because it was not in force at the time the infringement at issue was committed, that infringement having ceased on 18 January 2011. According to those undertakings, it is the date of commission of that infringement that is relevant for determining the rules applicable to RM's action for damages.

22 Volvo and DAF Trucks therefore maintain that RM's action for damages is time-barred. In that regard, DAF Trucks submits that it is not the five-year limitation period provided for in Article 10 of Directive 2014/104, transposed in Article 74(1) of Law No 15/2007, as amended by Royal Decree-Law No 9/2017, which is applicable, but the one-year limitation period provided for in Article 1968 of the Civil Code. Moreover, that one-year limitation period began to run from the publication of the Commission's press release concerning Decision C(2016) 4673 final. For that reason, that company submits that, on the date on which RM brought his action for damages, namely 1 April 2018, the limitation period had expired.

23 Volvo and DAF Trucks add that, as that directive is not applicable, both the existence and the amount of the harm must be proved in this instance, failing which that action must be dismissed.

24 In that context, the referring court raises the question of the temporal scope of Article 10 and Article 17(1) and (2) of Directive 2014/104. In its view, that scope is specified in Article 22 of that directive.

25 In order to determine whether Article 10 and Article 17(1) and (2) of that directive – which establish the rules governing the limitation period, the existence of harm resulting from a cartel and the quantification of that harm, respectively – are applicable to the dispute in the main proceedings, the referring court asks, first, whether those provisions are substantive or procedural in nature.

26 Second, the referring court asks what is the relevant point in time in relation to which the temporal application of those provisions should be examined in order to determine whether they are applicable in this instance.

27 In those circumstances the Audiencia Provincial de León (Provincial Court, Léon) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 101 TFEU and the principle of effectiveness be interpreted as precluding an interpretation of national legislation according to which neither the 5-year limitation period established in Article 10 of [Directive 2014/104] nor Article 17 thereof, concerning judicial estimation of harm, is retroactively applicable, and which establishes retroactive effect by reference to the date of the penalty rather than the date on which the action is brought?

(2) Must Article 22(2) of Directive 2014/104 and the term "retroactively" be interpreted as meaning that Article 10 of the directive is applicable to a claim such as that brought in the main proceedings, which, although lodged after the directive and the transposing legislation entered into force, refers to prior facts or penalties?

(3) When applying a provision such as that of Article 76 of [Law No 15/2007], must Article 17 of Directive 2014/104, concerning judicial estimation of harm, be interpreted as a procedural provision that will apply to main proceedings in which an action is brought after the entry into force of the national transposing legislation?'

Consideration of the questions referred

28 According to the settled case-law of the Court, in the procedure laid down in Article 267 TFEU, which provides for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. With that in mind, the Court may have to reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 35 and the case-law cited).

29 In the present case, in the light of all the information provided by the referring court, it is necessary, with a view to providing that court with a useful answer, to reformulate the questions referred for a preliminary ruling.

30 It is apparent from the order for reference that, by its three questions, which it is appropriate to examine together, the referring court is raising the question, in essence, of the temporal application of Article 10 and Article 17(1) and (2) of Directive 2014/104, in accordance with Article 22 thereof, to an action for damages which, although relating to an infringement of competition law which ceased before the entry into force of that directive, was brought after the entry into force of the provisions transposing it into national law.

Preliminary observations

31 It should be borne in mind that, unlike procedural rules, which are generally taken to apply from the date on which they enter into force (judgment of 3 June 2021, *Jumbocarry Trading*, C-39/20, EU:C:2021:435, paragraph 28 and the case-law cited), in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, the substantive rules of EU law must be interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such effect must be given to them (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 33 and the case-law cited).

32 It is also apparent from the case-law of the Court that, in principle, a new rule of law applies from the entry into force of the act introducing it. While it does not apply to legal situations that have arisen and become definitive under the old law, it applies to the future effects of a situation which arose under the old rule, as well as to new legal situations. It is otherwise – subject to the principle of the non-retroactivity of legal acts – only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 31 and the case-law cited).

33 As regards, more specifically, directives, it is, as a general rule, only legal situations existing after the expiry of the time limit for the transposition of a directive which may be brought within the scope *ratione temporis* of that directive (order of 16 May 2019, *Luminor Bank*, C-8/18, not published, EU:C:2019:429, paragraph 32 and the case-law cited).

34 That applies a fortiori to legal situations which arose under the old rule and which continue to produce effects after the entry into force of the national measures taken to transpose a directive after the expiry of the time limit for its transposition.

35 In that context, as regards the application *ratione temporis* of Directive 2014/104, it should be pointed out that that directive contains a special provision which explicitly states the conditions for the temporal application of its substantive and non-substantive provisions (see, to that effect, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 25).

36 In particular, first, under Article 22(1) of Directive 2014/104, Member States had to ensure that the national measures adopted pursuant to Article 21 thereof in order to comply with substantive provisions of that directive do not apply retroactively (judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 26).

37 Second, under Article 22(2) of Directive 2014/104, Member States had to ensure that any national measures adopted in order to comply with non-substantive provisions of that directive do not apply to actions for damages of which a national court was seised prior to 26 December 2014 (see, to that effect, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 27).

38 Therefore, in order to determine the temporal applicability of the provisions of Directive 2014/104, it is necessary to establish, in the first place, whether or not the provision concerned constitutes a substantive provision.

39 In that regard, it should be made clear that the question as to which provisions of that directive are substantive and which are not must, in the absence of a reference to national law in Article 22 of Directive 2014/104, be assessed in the light of EU law and not in the light of the applicable national law.

40 Moreover, although that article does not specify for each provision whether it is substantive or not, it is unequivocally clear from the wording of that article – paragraph 1 of which refers to the 'substantive provisions of this Directive' – that it is the provisions of that directive and not the national measures adopted to comply with it which are referred to as being either substantive or non-substantive.

41 Furthermore, granting a margin of discretion to the Member States as regards the determination of whether or not the provisions of Directive 2014/104 are substantive could undermine the effective, consistent and uniform application of those provisions throughout the European Union.

42 Once it has been determined whether the provision concerned is substantive or not, it is necessary to ascertain, in the second place, whether, in circumstances such as those at issue in the main proceedings, in which that directive was transposed late, the situation at issue, in so far as it cannot be described as new, arose before the expiry of the time limit for the transposition of that directive or whether it continued to produce effects after the expiry of that time limit.

The temporal applicability of Article 10 of Directive 2014/104

43 As regards, in the first place, whether or not Article 10 of Directive 2014/104 is substantive, it should be recalled that, under paragraph 1 thereof, that article lays down rules applicable to limitation periods for bringing actions for damages for infringements of competition law. Paragraphs 2 and 4 of that article determine, in particular, the time at which the limitation period begins to run and the circumstances in which it may be interrupted or suspended.

44 Article 10(3) of that directive specifies the minimum duration of the limitation period. According to that provision, Member States are to ensure that the limitation periods for bringing actions for damages for infringements of competition law are at least five years.

45 The limitation period provided for in Article 10(3) of Directive 2014/104 has the function, inter alia, first, of ensuring protection of the rights of the injured party, who must have sufficient time in which to gather the appropriate information with a view to a possible action, and, second, of preventing the injured party from being able to delay indefinitely the exercise of his or her right to damages to the detriment of the person responsible for the harm. That period thus definitively protects both the injured party and the person responsible for the harm (see, by analogy, judgment of 8 November 2012, *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraph 53).

46 In that context, it should be noted that it is apparent from the case-law of the Court that, unlike procedural time limits, the limitation period, by resulting in the extinction of the legal action, is a matter of substantive law since it affects the enforceability of a subjective right which the person concerned can no longer effectively assert before the courts (see, by analogy, judgment of 8 November 2012, *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraph 52).

47 Therefore, as the Advocate General observed, in essence, in points 66 and 67 of his Opinion, it must be held that Article 10 of Directive 2014/104 is a substantive provision for the purposes of Article 22(1) of that directive.

48 In the second place, since, in this instance, it is common ground that Directive 2014/104 was transposed into Spanish law five months after the expiry of the time limit for transposition provided for in Article 21 thereof, as Royal Decree-Law No 9/2017 transposing that directive entered into force on 27 May 2017, it is necessary, in order to determine the temporal applicability of Article 10 of that directive, to ascertain whether the 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 that time limit.

49 To that end, in view of the specific features of the limitation rules, the nature of those rules and the arrangements regarding their operation, in particular in the context of an action for damages brought following a final decision finding an infringement of EU competition law, it is necessary to ascertain whether, on 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.

50 With regard to the time when that limitation period began to run, it must be recalled that, according to the case-law of the Court, where none of the EU rules governing the matter are applicable *ratione temporis*, it is for the legal system of each Member State to lay down the detailed rules governing the exercise of the right to claim compensation for the harm resulting from an infringement of Articles 101 and 102 TFEU, including those on limitation periods, provided that the principles of equivalence and effectiveness are observed, that latter principle requiring that the rules applicable to actions for safeguarding rights which individuals derive from the direct effect of EU law not make it practically impossible or excessively difficult to exercise rights conferred by EU law (see, to that effect, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraphs 42 and 43).

51 In this instance, it is apparent from the file before the Court that, prior to that directive's transposition into Spanish law, the limitation period for bringing actions for damages for infringements of competition law was governed by the general regime of non-contractual civil liability and that, under Article 1968(2) of the Civil Code, that one-year limitation period began to run only from the moment when the circumstances giving rise to liability became known to the claimant concerned. Although it is not expressly stated in the order for reference what, under Spanish law, are the circumstances giving rise to liability the knowledge of which causes the limitation period to begin to run, the file before the Court seems to indicate that those circumstances involve knowledge of the information necessary for bringing an action for damages. It is for the referring court to determine whether that is the case.

52 The fact remains that, where a national court has to determine a dispute between individuals, it is for that court, where appropriate, to interpret the national provisions at issue in the main proceedings, so far as possible, in the light of EU law and, in particular, the wording and purpose of Article 101 TFEU, without, however, interpreting those national provisions *contra legem* (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraphs 60 to 62).

53 In that regard, it must be recalled that national legislation laying down the date on which the limitation period 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 (see, to that effect, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 47).

54 The bringing of actions for damages on account of infringements of EU competition law requires, in principle, a complex factual and economic analysis (judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 46).

55 Account should also be taken of the fact that disputes concerning infringements of EU competition law and national competition law are characterised, in principle, by information asymmetry to the detriment of the injured party, as is stated in recital 47 of Directive 2014/104, which makes it more difficult for that person to obtain the information necessary to bring an action for damages than for the competition authorities to obtain the information necessary for exercising their powers to apply competition law.

56 In that context, it must be considered that, unlike the rule applicable to the Commission, set out in Article 25(2) of Regulation No 1/2003, according to which the limitation period for the imposition of penalties begins to run on the day on which the infringement is committed or, in the case of continuing or repeated infringements, on the day on which the infringement ceases, the limitation periods applicable to actions for damages for infringements of the competition law provisions of the Member States and of the European Union cannot begin to run before the infringement has ceased and the injured party knows, or can reasonably be expected to know, the information necessary to bring his or her action for damages.

57 Otherwise, the exercise of the right to claim compensation would be rendered practically impossible or excessively difficult.

58 As regards the information necessary for bringing an action for damages, it should be recalled that it is apparent from the settled case-law of the Court that any person is entitled to claim compensation for the harm suffered where there is a causal relationship between that harm and an infringement of EU competition law (see, to that effect, judgments of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 22 and the case-law cited, and of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 40).

59 What is more, it is apparent from the case-law of the Court that it is indispensable, in order for the injured party to be able to bring an action for damages, for it to know who is liable for the infringement of competition law (judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 50).

60 It follows that the existence of an infringement of competition law, the existence of harm, the causal link between that harm and that infringement, and the identity of the perpetrator of the infringement are among the necessary elements which the injured party must have in order to bring an action for damages.

61 In those circumstances, it must be considered that the limitation periods applicable to actions for damages for infringements of the competition law provisions of the Member States and of the European Union cannot begin to run before the infringement has ceased and the injured party knows, or can reasonably be expected to know, (i) the fact that it had suffered harm as a result of that infringement and (ii) the identity of the perpetrator of the infringement.

62 In this instance, the infringement ceased on 18 January 2011. So far as concerns the date on which the elements necessary to enable RM to bring an action for damages can reasonably be considered to have become known to him, Volvo and DAF Trucks are of the view that the relevant date is the date of publication of the press release relating to Decision C(2016) 4673 final, namely 19 July 2016, and that, consequently, the limitation period provided for in Article 1968 of the Civil Code began to run on the day of that publication.

63 By contrast, RM, the Spanish Government and the Commission maintain that the relevant date is the day on which the summary of Decision C(2016) 4673 final was published in the *Official Journal of the European Union*, namely 6 April 2017.

64 While it cannot be ruled out that the elements necessary for bringing an action for damages may be known to the injured party well before the publication in the *Official Journal of the European Union* of the summary of a Commission decision, or even before the publication of the press release concerning that decision, even in a cartel case, it is not apparent from the file before the Court that that is the case here.

65 It is therefore appropriate to determine which of the two publications is the one from which RM can reasonably be expected to know the elements necessary to enable him to bring an action for damages.

66 To that end, account must be taken of the purpose and nature of the press releases concerning Commission decisions and of the summaries of those decisions published in the *Official Journal of the European Union*.

67 As the Advocate General observed, in essence, in points 125 to 127 of his Opinion, first of all, press releases generally contain less detailed information about the circumstances of the case concerned and the reasons why anticompetitive conduct may be characterised as an infringement than the summaries of Commission decisions published in the *Official Journal of the European Union* which, according to Article 30 of Regulation No 1/2003, are to state the names of the parties and the main content of the decision in question, including any penalties imposed.

68 Next, press releases are not intended to produce legal effects vis-à-vis third parties, in particular injured parties. On the contrary, they are short documents intended, in principle, for the press and the media. It cannot therefore be considered that there is a general duty of care on the part of the persons injured by an infringement of competition law requiring them to monitor the publication of such press releases.

69 Lastly, unlike summaries of Commission decisions, which, according to paragraph 148 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, are to be published in the *Official Journal of the European Union* in all official languages of the European Union shortly after the adoption of the decision in question, press releases are not necessarily published in all official languages of the European Union.

70 In this instance, as the Advocate General observed, in essence, in points 129 to 131 of his Opinion, the press release does not appear to identify with the precision of the summary of Decision C(2016) 4673 final the identity of the perpetrators of the infringement at issue, its exact duration and the products concerned by that infringement.

71 In those circumstances, it cannot reasonably be considered that, in this instance, the elements necessary to enable RM to bring his action for damages became known to him on the date of publication of the press release relating to Decision C(2016) 4673 final, namely 19 July 2016. On the contrary, RM may reasonably be considered to have gained such knowledge on the date of publication of the summary of Decision C(2016) 4673 final in the *Official Journal of the European Union*, namely 6 April 2017.

72 Consequently, the full effectiveness of Article 101 TFEU requires it to be considered that, in this instance, the limitation period began to run on the day of that publication.

73 Thus, in so far as the limitation period began to run after the date of expiry of the time limit for the transposition of Directive 2014/104, that is to say, after 27 December 2016, and continued to run even after the date of entry into force of Royal Decree-Law No 9/2017, adopted to transpose that directive, that is to say, after 27 May 2017, that period necessarily elapsed after those two dates.

74 It therefore appears that the situation at issue in the main proceedings continued to produce effects after the date of expiry of the time limit for the transposition of Directive 2014/104, and even after the date of entry into force of Royal Decree-Law No 9/2017 transposing that directive.

75 In so far as that is the case in the dispute in the main proceedings, which it is for the referring court to verify, Article 10 of that directive is applicable *ratione temporis* in this instance.

76 It should be borne in mind in that context that, according to settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. If the possibility of relying on a provision of a directive that has not been transposed, or has been incorrectly transposed, were to be extended to the sphere of relations between individuals, that would amount to recognising a power in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 42 and the case-law cited).

77 It is also apparent from the case-law of the Court that, in a dispute between individuals such as that at issue in the main proceedings, the national court is required, where appropriate, to interpret national law, as soon as the time limit for the transposition of an untransposed directive expires, so as to render the situation at issue immediately compatible with the provisions of that directive, without however interpreting national law *contra legem* (see, to that effect, judgment of 17 October 2018, *Klohn*, C-167/17, EU:C:2018:833, paragraphs 45 and 65).

78 In any event, given that fewer than 12 months elapsed between the date of publication of the summary of Decision C(2016) 4673 final in the *Official Journal of the European Union* and the bringing of RM's action for damages, that action does not appear, subject to verification by the referring court, to have been time-barred at the time when it was brought.

79 In the light of the foregoing, Article 10 of Directive 2014/104 must be interpreted as constituting a substantive provision for the purposes of Article 22(1) of that directive, and as meaning that an action for damages for an infringement of competition law which, although relating to an infringement of competition law 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 falls within the temporal scope of that directive, in so far as the limitation period for bringing that action under the old rules had not elapsed before the date of expiry of the time limit for the transposition of the directive.

The temporal applicability of Article 17(1) and (2) of Directive 2014/104

80 As regards, in the first place, the temporal applicability of Article 17(1) of Directive 2014/104 in this instance, it should be recalled that it is apparent from the wording of that provision that Member States are to ensure that neither the burden nor the standard of proof required for the

quantification of harm renders the exercise of the right to damages practically impossible or excessively difficult. Those States are also to ensure that the national courts are empowered, in accordance with national procedures, to estimate the harm resulting from an infringement of the competition rules if it is established that a claimant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available.

81 Thus, that provision seeks to ensure the effectiveness of actions for damages for infringements of competition law, in particular in specific situations in which it would be practically impossible or excessively difficult precisely to quantify the exact amount of harm suffered.

82 The objective of that provision is to relax the standard of proof required for the purpose of determining the amount of harm suffered and to remedy the information asymmetry existing to the detriment of the applicant concerned and the difficulties resulting from the fact that quantifying the harm suffered means assessing how the market in question would have evolved had there been no infringement.

83 As the Advocate General observed in point 73 of his Opinion, Article 17(1) of Directive 2014/104 does not impose new substantive obligations on any of the parties to the dispute concerned. That provision and, more specifically, its second sentence, is intended, by contrast, in accordance with the 'national procedures' to which it refers, to confer on national courts a special power in disputes relating to actions for damages for infringements of competition law.

84 In that context, it should be recalled that it is apparent from the case-law of the Court that the rules on the burden of proof and the standard of proof are, in principle, classified as procedural rules (see, to that effect, judgment of 21 January 2016, *Eturas and Others*, C-74/14, EU:C:2016:42, paragraphs 30 to 32).

85 Article 17(1) of Directive 2014/104 must therefore be regarded as constituting a procedural provision for the purposes of Article 22(2) of that directive.

86 In that regard, as is apparent from the case-law cited in paragraph 31 above, procedural rules are generally taken to apply from the date on which they enter into force.

87 It should also be recalled that, under Article 22(2) of Directive 2014/104, Member States had to ensure that any national measures adopted in order to comply with non-substantive provisions of that directive do not apply to actions for damages of which a national court was seised prior to 26 December 2014.

88 In this instance, the action for damages was brought on 1 April 2018, that is to say, after 26 December 2014, and after the date of the transposition of Directive 2014/104 into Spanish law. Consequently, without prejudice to the considerations set out in paragraphs 76 and 77 above, Article 17(1) of that directive is applicable *ratione temporis* to such an action.

89 In those circumstances, Article 17(1) of Directive 2014/104 must be interpreted as constituting a procedural provision for the purposes of Article 22(2) of that directive, and as meaning that an action for damages which, although relating to an infringement of competition law which ceased before the entry into force of the directive, was brought after 26 December 2014 and after the entry into force of the national provisions transposing it into national law falls within the temporal scope of that directive.

90 As regards, in the second place, the temporal applicability of Article 17(2) of Directive 2014/104, it must be recalled at the outset that, according to the wording of that provision, it is to be presumed that cartel infringements cause harm. The infringer has the right, however, to rebut that presumption.

91 It is apparent from the wording of that provision that it establishes a rebuttable presumption as to the existence of harm resulting from a cartel. As is apparent from recital 47 of Directive 2014/104, the EU legislature limited that presumption to cartel cases, given the secret nature of cartels, which increases the information asymmetry and makes it more difficult for injured parties to obtain the evidence necessary to prove the harm.

92 As the Advocate General observed, in essence, in points 78, 79 and 81 of his Opinion, although Article 17(2) of Directive 2014/104 necessarily governs the allocation of the burden of proof since it establishes a presumption, that provision does not have a purely evidentiary purpose.

93 In that regard, as is apparent from paragraphs 58 to 60 above, the existence of harm, the causal link between that harm and the infringement of competition law committed, and the identity of the perpetrator of that infringement are among the necessary elements which the injured party must have in order to bring an action for damages.

94 Furthermore, since Article 17(2) of Directive 2014/104 provides that it is not necessary for the parties injured by an cartel prohibited by Article 101 TFEU to prove the harm resulting from such an infringement and/or a causal link between that harm and that cartel, that provision must be regarded as pertaining to the constituent elements of non-contractual civil liability.

95 By presuming the existence of harm suffered as a result of a cartel, the rebuttable presumption established by that provision 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.

96 Article 17(2) of Directive 2014/104 must therefore be regarded as constituting a rule closely linked to the emergence, incurrence and scope of the non-contractual civil liability of undertakings which have infringed Article 101 TFEU by their participation in a cartel.

97 As the Advocate General observed in point 81 of his Opinion, such a rule may be classified as a substantive rule.

98 Article 17(2) of Directive 2014/104 must therefore be held to be substantive in nature for the purposes of Article 22(1) of that directive.

99 As is apparent from paragraph 42 above, in order to determine the temporal applicability of Article 17(2) of Directive 2014/104, it is necessary to ascertain, in this instance, whether the situation at issue in the main proceedings arose before the expiry of the time limit for the transposition of that directive or whether it continued to produce effects after the expiry of that time limit.

100 To that end, it is necessary to take account of the nature of Article 17(2) of Directive 2014/104 and the arrangements regarding its operation.

101 That provision establishes a rebuttable presumption that, as long as there is a cartel, the existence of harm resulting from that cartel is automatically presumed.

102 Since the fact identified by the EU legislature as giving rise to a presumption of the existence of harm is the existence of a cartel, it is necessary to verify whether the date on which the cartel at issue ceased precedes the date of expiry of the time limit for the transposition of Directive 2014/104, that directive not having been transposed into Spanish law within that time limit.

103 In this instance, the cartel lasted from 17 January 1997 to 18 January 2011. Thus, that infringement ceased before the date of expiry of the time limit for the transposition of Directive 2014/104.

104 In those circumstances, having regard to Article 22(1) of Directive 2014/104, it must be held that the rebuttable presumption which is established in Article 17(2) of that directive cannot be applicable *ratione temporis* to an action for damages which, although brought after the entry into force of the national provisions belatedly transposing the directive into national law, pertains to an infringement of competition law which ceased before the date of expiry of the time limit for the transposition of that directive.

105 In the light of the foregoing considerations, the questions referred must be answered as follows:

– Article 10 of Directive 2014/104 must be interpreted as constituting a substantive provision for the purposes of Article 22(1) of that directive, and as meaning that an action for damages which, although relating to an infringement of competition law 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 falls within the temporal scope of that directive, in so far as the limitation period for bringing that action under the old rules had not elapsed before the date of expiry of the time limit for the transposition of the directive.

– Article 17(1) of Directive 2014/104 must be interpreted as constituting a procedural provision for the purposes of Article 22(2) of that directive, and as meaning that an action for damages which, although relating to an infringement of competition law which ceased before the entry into force of the directive, was brought after 26 December 2014 and after the entry into force of the provisions transposing it into national law falls within the temporal scope of that directive.

– Article 17(2) of Directive 2014/104 must be interpreted as constituting a substantive provision for the purposes of Article 22(1) of that directive, and as meaning that an action for damages which, although brought after the entry into force of the provisions belatedly transposing the directive into national law, pertains to an infringement of competition law which ceased before the date of expiry of the time limit for its transposition does not fall within the temporal scope of that directive.

Costs

106 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 10 of 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 must be interpreted as constituting a substantive provision for the purposes of Article 22(1) of that directive, and as meaning that an action for damages which, although relating to an infringement of competition law 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 falls within the temporal scope of that directive, in so far as the limitation period for bringing that action under the old rules had not elapsed before the date of expiry of the time limit for the transposition of the directive.

Article 17(1) of Directive 2014/104 must be interpreted as constituting a procedural provision for the purposes of Article 22(2) of that directive, and as meaning that an action for damages which, although relating to an infringement of competition law which ceased before the entry into force of the directive, was brought after 26 December 2014 and after the entry into force of the provisions transposing it into national law falls within the temporal scope of that directive.

Article 17(2) of Directive 2014/104 must be interpreted as constituting a substantive provision for the purposes of Article 22(1) of that directive, and as meaning that an action for damages which, although brought after the entry into force of the provisions belatedly transposing the directive into national law, pertains to an infringement of competition law which ceased before the date of expiry of the time limit for its transposition does not fall within the temporal scope of that directive.

[Signatures]