



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

21 January 2021 *

(Reference for a preliminary ruling – Competition – Penalties imposed by the national competition authority – Limitation period – Actions interrupting the limitation period – National legislation precluding, after the initiation of an investigation, the possibility that subsequent action for the purpose of proceedings or investigation may interrupt the new limitation period – Principle that national law must be interpreted in conformity with EU law – Regulation (EC) No 1/2003 – Article 25(3) – Scope – Article 4(3) TEU – Article 101 TFEU – Principle of effectiveness)

In Case C-308/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decision of 14 February 2019, received at the Court on 15 April 2019, in the proceedings

Consiliul Concurenței

v

Whiteland Import Export SRL,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Second Chamber, A. Kumin, T. von Danwitz and P.G. Xuereb, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Consiliul Concurenței, by B. Chirițoiu, C. Butacu, I. Dăscuțu and C. Pântea, acting as Agents,
- Whiteland Import Export SRL, by D. Schroeder, Rechtsanwalt,

* Language of the case: Romanian.

- the Romanian Government, initially by C.-R. Canțăr, O.-C. Ichim and A. Rotăreanu, and subsequently by E. Gane, O.-C. Ichim and A. Rotăreanu, acting as Agents,
- the Luxembourg Government, initially by T. Uri and C. Schiltz, and subsequently by T. Uri, acting as Agents,
- the European Commission, by G. Meessen and I. Rogalski, acting as Agents,
- the EFTA Surveillance Authority, by C. Simpson, I.O. Vilhjálmsson and C. Zatschler, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2020,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(3) TEU, Article 101 TFEU and Article 25(3) 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).
- 2 The request has been made in proceedings between the Consiliul Concurenței (Competition Authority, Romania) and Whiteland Import Export SRL (‘Whiteland’) concerning a decision imposing a fine on Whiteland for infringement of the rules of competition law.

Legal context

EU law

- 3 Article 23 of Regulation No 1/2003 provides that the European Commission may impose fines on undertakings and associations of undertakings for infringements of EU competition law. For its part, Article 24 of that regulation authorises the Commission to order periodic penalty payments in particular in order to compel those undertakings and associations of undertakings to put an end to infringements of that kind.
- 4 Article 25(1) and (3) of that regulation provides:
 - ‘1. The powers conferred on the Commission by Articles 23 and 24 shall be subject to the following limitation periods:
 - (a) three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;
 - (b) five years in the case of all other infringements.

...

3. Any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:

- (a) written requests for information by the Commission or by the competition authority of a Member State;
- (b) written authorisations to conduct inspections issued to its officials by the Commission or by the competition authority of a Member State;
- (c) the initiation of proceedings by the Commission or by the competition authority of a Member State;
- (d) notification of the statement of objections of the Commission or of the competition authority of a Member State.'

5 Under Article 35(1) of Regulation No 1/2003:

'The Member States shall designate the competition authority or authorities responsible for the application of Articles [101 and 102 TFEU] in such a way that the provisions of this regulation are effectively complied with. The measures necessary to empower those authorities to apply those Articles shall be taken before 1 May 2004. The authorities designated may include courts.'

Romanian law

6 Article 5(1) of *Legea concurenței nr. 21/1996* (Law on Competition No 21/1996) of 10 April 1996 (*Monitorul Oficial al României*, Part I, No 88 of 30 April 1996), in the version prior to the entry into force of the *Ordonanța de urgență a Guvernului nr. 31/2015* (Government Emergency Order No 31/2015) ('the Law on competition'), provides:

'The following shall be prohibited: all agreements between undertakings, all decisions by associations of undertakings and all concerted practices of undertakings which have as their object or effect the prevention, restriction or distortion of competition in the Romanian market or a part thereof, in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;

...'

7 Article 61 of that law provides:

'(1) The right of the Competition Authority to impose administrative penalties for the infringement of the provisions of this law is subject to the following limitation periods:

- (a) three years for the infringements referred to in Articles 51 and 52;
- (b) five years for the other infringements provided for herein.

(2) The limitation period for the adoption of measures by the Competition Authority shall begin to run on the day on which the infringement ceases. In the case of continuing or repeated infringements, time shall begin to run on the day on which the final anticompetitive action or conduct in question ceases.’

8 Article 62 of the Law on competition provides:

‘(1) Any action taken by the Competition Authority for the purpose of the preliminary examination or for the purpose of initiating an investigation into any infringement of the law shall interrupt the limitation periods provided for in Article 61. The interruption of the limitation period shall take effect on the day on which the measure adopted by the Competition Authority is notified to at least one economic operator or to an association of economic operators which participated in the infringement.

(2) The measures which may be taken by the Competition Authority and which interrupt the limitation period are mainly as follows:

- (a) written requests for information;
- (b) the decision of the President of the Competition Authority to initiate an investigation;
- (c) the initiation of legal proceedings.

(3) The interruption of the limitation period shall apply for all economic operators or associations of economic operators which participated in the infringement.

(4) In the event of interruption of the limitation period, a new limitation period of a similar duration shall begin to run on the day on which the Competition Authority adopts one of the measures referred to in paragraph 2. The limitation period shall expire at the latest on the day on which a period equal to twice the limitation period applicable to the infringement in question has elapsed without the Competition Authority having imposed one of the penalties provided for in this law.’

9 Article 64 of Law No 21/1996 on competition, in the version resulting from Government Emergency Order No 31/2015 (‘the amended Law on competition’), which replaced Article 62 of the Law on Competition, provides:

‘(1) Any action taken by the Competition Authority for the purpose of a preliminary examination or for the prosecution of an infringement of the law shall interrupt the limitation periods provided for in Article 63 [ex Article 61]. The interruption of the limitation period shall take effect on the day on which the measure adopted by the Competition Authority is notified to at least one economic operator or to an association of economic operators which participated in the infringement.

(2) Measures which may be taken by the Competition Authority which interrupt the limitation period are mainly the following:

- (a) written requests for information;
- (b) the decision of the President of the Competition Authority to initiate an investigation;

(c) the conduct of inspections;

(d) the communication of the investigation report.

(3) The interruption of the limitation period shall apply to all economic operators or associations of economic operators which participated in the infringement.

(4) In the event of interruption of the limitation period, a new limitation period of a similar duration shall begin to run on the day on which the Competition Authority adopts one of the measures referred to in paragraph 2. The limitation period shall expire at the latest on the day on which a period equal to twice the limitation period applicable to the infringement in question has elapsed without the Competition Authority having imposed one of the penalties provided for in this law.

(5) The limitation period for the imposition of penalties shall be suspended for as long as the decision of the Competition Authority is the subject of proceedings before a court.'

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

- 10 By decision of 7 September 2009, the Competition Authority on its own initiative commenced investigations on the retail food market against several economic operators and their suppliers, including Whiteland, in order to ascertain whether those undertakings had infringed the rules of competition law. On 18 July 2012, those various investigations were joined.
- 11 On 12 August 2014, the Competition Authority communicated its investigation report to Whiteland. On 23 October 2014, hearings were held before that authority sitting in plenary session.
- 12 On 9 December 2014, following its deliberation, the Competition Authority drew up the minutes for the decision finding that the undertakings under investigation had infringed the rules of national competition law and Article 101 TFEU. They were accused of having concluded anticompetitive agreements between 2006 and 2009 aimed at distorting and impeding competition on the relevant market, by fixing the selling and resale price of the suppliers' products.
- 13 By Decision No 13 of 14 April 2015, the Competition Authority imposed fines on those undertakings ('Decision 13/2015'). The fine imposed on Whiteland was set at 2 324 484 Romanian lei (RON) (approximately EUR 513 000), representing 0.55% of its turnover in 2013.
- 14 Whiteland brought an action for annulment of Decision 13/2015 before the Curtea de Apel București (Court of Appeal, Bucharest, Romania), in so far as that decision concerned it.
- 15 In support of its action, Whiteland argued, inter alia, that the Competition Authority's power to impose a penalty on it was subject to the five-year limitation period referred to in Article 61(1) of the Law on competition and that, in the present case, the limitation period had expired when that national authority adopted Decision 13/2015.
- 16 By judgment of 19 January 2016, the Curtea de Apel București (Court of Appeal, Bucharest) upheld Whiteland's action and annulled Decision 13/2015 in so far as it concerned that company.

- 17 After finding that the limitation period had started to run on 15 July 2009, the date on which the infringement of which Whiteland was accused had ended, that court held that the decision of 7 September 2009 to initiate the investigation had interrupted the limitation period and, therefore, caused a new limitation period to start to run, expiring on 7 September 2014, with the result the limitation period had expired when, on 14 April 2015, the Competition Authority adopted Decision 13/2015.
- 18 The Curtea de Apel București (Court of Appeal, Bucharest) rejected the Competition Authority's argument that the anticompetitive agreement involving Whiteland had been extended by means of an addendum until 31 December 2009, in particular because, in Decision 13/2015, the Competition Authority itself had stated that the last anticompetitive act committed by Whiteland dated back to 15 July 2009.
- 19 Lastly, that court stated that, under a strict interpretation of the national rules governing limitation periods, the measures taken by the Competition Authority after the decision to initiate the investigation were not capable of interrupting the new limitation period and, therefore, that decision is the last action of that authority which is capable of interrupting that period. In that regard, Article 25(3) of Regulation No 1/2003 applies only to the Commission and does not govern limitation periods for the imposition of fines by national competition authorities.
- 20 On 19 January 2016, the Competition Authority brought an appeal before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) against the judgment of the Curtea de Apel București (Court of Appeal, Bucharest).
- 21 The Competition Authority explained, in essence, that, contrary to what the Curtea de Apel București (Court of Appeal, Bucharest) held, any procedural step taken for the purpose of proceedings in respect of an infringement has the effect of interrupting the limitation period. In addition, the interpretation that the decision to initiate an investigation is the final action interrupting the limitation period would lead to a non-uniform application of national competition law and the competition rules of EU law since, unlike the Law on competition, Article 25(3) of Regulation 1/2003 provides that the actions interrupting the limitation period are, inter alia, those taken for the purpose of proceedings in respect of an infringement.
- 22 As a preliminary point, the referring court observes that although the amended Law on competition now provides that any measure taken by the Competition Authority for the purpose of a preliminary examination or for the prosecution of an infringement of competition law interrupts the limitation periods, the law applicable *ratione temporis* to the main proceedings is the Law on competition.
- 23 In those circumstances, that court is uncertain whether the strict interpretation of the Law on competition, as adopted by the Curtea de Apel București (Court of Appeal, Bucharest), according to which only measures taken by the Competition Authority for the purposes of a preliminary examination or the initiation of an investigation interrupts the limitation period, is compatible with Article 4(3) TEU, Article 101 TFEU and the principle of effectiveness, and whether such a strict interpretation of that national law does not lead to a non-uniform application of the provisions of competition law.
- 24 In that regard, the referring court notes that there are two lines of case-law at national level, the first favouring a strict interpretation of the national rules governing limitation periods and the second a more flexible interpretation of those rules.

- 25 According to the first of those two lines of case-law, Article 25 of Regulation No 1/2003 concerns only the power conferred on the Commission to impose penalties for infringements of the rules of EU competition law and, consequently, is not applicable to the Competition Authority. By contrast, according to the second line of case-law, there should be a correlation between Article 25 of Regulation No 1/2003 and the rules of national law on limitation, in view of the need for consistency between the rules of EU law and national rules, in particular where the national provisions on limitation periods transpose the EU *acquis* in the field of competition.
- 26 The referring court infers from this that it must ascertain, definitively, whether the strict interpretation of Articles 61 and 62 of the Law on competition, adopted by the Curtea de Apel București (Court of Appeal, Bucharest), must be accepted or whether it is appropriate, in the light of Article 4(3) TEU and Article 101(1) TFEU, that the national provisions should be interpreted more broadly and in accordance with the requirements of EU law.
- 27 In that context, the referring court observes that Regulation No 1/2003 does not govern limitation periods for the imposition of fines by national competition authorities and that, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the procedural rules governing actions for safeguarding rights which individuals derive from EU law.
- 28 However, the referring court notes that national legislation should not prejudice the effective application of Articles 101 and 102 TFEU by the national competition authorities.
- 29 In those circumstances the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘Must Articles 4(3) TEU and 101 TFEU be interpreted as:

- (1) requiring the courts of the Member States to interpret the provisions of national law governing the time limit on the Competition Authority’s right to impose administrative penalties in accordance with the provisions of Article 25(3) of Regulation No 1/2003, and
- (2) precluding the interpretation of a provision of national law as meaning that an action interrupting the limitation period means only the formal action of initiating the investigation into an anticompetitive practice, without the subsequent actions taken for the purpose of such investigation falling within the same scope of the actions interrupting the limitation period?’

Consideration of the questions referred

The first question

- 30 It should be noted, as a preliminary point, that although certain acts of secondary EU law, such as framework decisions, and in certain circumstances directives, do not entail direct effect, their binding character nevertheless places on national courts an obligation to interpret national law in conformity with EU law (see, to that effect, judgments of 13 November 1990, *Marleasing*, C-106/89, EU:C:1990:395, paragraphs 6 and 8, and of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 58).

- 31 By contrast, under the second paragraph of Article 288 TFEU, an EU regulation is to be directly applicable in all Member States. It is settled case-law that any national court, hearing a case within its jurisdiction, has, as an organ of a Member State, the obligation pursuant to the principle of cooperation set out in Article 4(3) TEU, fully to apply the directly applicable law of the Union and to protect the rights which the latter confers upon individuals, disapplying any provision of national law which may be to the contrary, whether the latter is prior to or subsequent to the EU legal rule (judgment of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraph 55).
- 32 Consequently, the possible relevance to the present preliminary ruling proceedings of Article 25(3) of Regulation No 1/2003 – according to which any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement is to interrupt the limitation period for the imposition of fines or periodic penalty payments – depends entirely on whether that provision is applicable to the factual situation in the main proceedings.
- 33 It must, therefore, be found that by its first question the referring court asks, in essence, whether EU law must be interpreted as meaning that national courts are required to apply Article 25(3) of Regulation No 1/2003 to the time-barring of a national competition authority's powers to impose penalties for infringements of EU competition law.
- 34 In that regard, according to settled case-law, in interpreting a provision of EU law, where its wording does not expressly delimit the provision's scope, as is true of Article 25(3) of Regulation No 1/2003 in the present case, account must be taken of the context of the provision and the objectives pursued by the rules of which it forms part (see, to that effect, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 113).
- 35 As regards the context of which Article 25(3) of Regulation No 1/2003 forms part, it should be borne in mind that Article 25(1) of that regulation makes the Commission's power to impose fines and periodic penalty payments for infringements of the competition rules subject to a five-year limitation period (see, to that effect, judgment of 29 March 2011, *ThyssenKrupp Nirosta v Commission*, C-352/09 P, EU:C:2011:191, paragraph 166).
- 36 Since the wording of Article 25(1) of Regulation No 1/2003 refers exclusively to the powers conferred on the Commission by Articles 23 and 24 of that regulation, and since those articles govern only the powers available to the Commission in relation to penalties, it does not follow from the context of which Article 25(3) of that regulation forms part that Article 25(3) is applicable to national competition authorities.
- 37 In addition, as the Advocate General observed in points 50 and 51 of his Opinion, in the decentralised system for the application of the rules of EU competition law, in which national competition authorities directly apply those rules, the determination of the limitation rules for the imposition of penalties by those authorities is a matter for Member States, subject to compliance with the principles of equivalence and effectiveness. In that context, those authorities are subject to the national rules on limitation, with the result that it is not necessary, in principle, to apply to them the limitation rules laid down at EU level and applicable to the Commission.

- 38 As regards the purpose of Article 25(3) of Regulation No 1/2003, it should be noted that the object of Article 25 of that regulation is to introduce rules governing the time limits within which the Commission is entitled, without undermining the fundamental requirement of legal certainty, to impose fines and periodic penalty payments on undertakings which are the subject of procedures for the application of the EU competition rules.
- 39 In those circumstances, it must be held that Article 25(3) of Regulation No 1/2003 does not lay down limitation rules relating to the national competition authorities' powers to impose penalties.
- 40 In the present case, the main proceedings concern the limitation rules applicable to such a national competition authority vested with the power to impose penalties in the event of an infringement, inter alia, of the rules of EU competition law, with the result that Article 25(3) of Regulation No 1/2003 is not applicable to that case.
- 41 In the light of the foregoing considerations, the answer to the first question is that EU law must be interpreted as meaning that national courts are not required to apply Article 25(3) of Regulation No 1/2003 to the time-barring of a national competition authority's powers to impose penalties for infringements of EU competition law.

The second question

- 42 By its second question, the referring court asks, in essence, whether Article 4(3) TEU and Article 101 TFEU, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation, as interpreted by the national courts having jurisdiction, according to which the decision to initiate an investigation, adopted by the national competition authority, concerning an infringement of EU competition law rules, is the final action of that authority which may have the effect of interrupting the limitation period relating to its power to impose penalties and excludes any subsequent action, for the purpose of proceedings or the investigation, from interrupting that period.
- 43 It should be noted at the outset that neither the FEU Treaty provisions on competition nor, as is apparent from the answer to the first question referred for a ruling, the provisions of Regulation No 1/2003, lay down limitation rules in relation to the imposition of penalties by national competition authorities, whether under EU law or their national law.
- 44 Moreover, Article 35(1) of Regulation No 1/2003 expressly states that it is for each Member State to take the measures necessary to empower the national competition authorities to apply Articles 101 and 102 TFEU.
- 45 Thus, it is, in the absence of binding regulation under EU law on the subject, for Member States to establish and apply national rules on limitation periods for the imposition of penalties by national competition authorities, including the procedures for suspension and/or interruption (see, by analogy, judgment of 14 June 2011, *Pfleiderer*, C-360/09, EU:C:2011:389, paragraph 23).
- 46 However, as the Advocate General noted in point 49 of his Opinion, while the establishment and application of those rules falls within the competence of the Member States, the latter must exercise that competence in accordance with EU law, and in particular the principle of effectiveness. Accordingly, they may not render the implementation of EU law impossible in practice or excessively difficult and, specifically, in the area of competition law, they must ensure that the rules which they establish or apply do not jeopardise the effective application of

Articles 101 TFEU and 102 TFEU (see, to that effect, judgment of 14 June 2011, *Pfleiderer*, C-360/09, EU:C:2011:389, paragraph 24). The authorities designated under Article 35(1) of Regulation No 1/2003 must ensure that those Treaty articles are applied effectively in the general interest (judgment of 7 December 2010, *VEBIC*, C-439/08, EU:C:2010:739, paragraph 56).

- 47 In addition, it should be noted that, under Article 4(3) TEU, Member States are obliged not to detract, by means of national legislation, from the full and uniform application of EU law; nor may they introduce or maintain in force measures which may render ineffective the competition rules applicable to undertakings (see, to that effect, judgment of 19 March 1992, *Batista Morais*, C-60/91, EU:C:1992:140, paragraph 11 and the case-law cited).
- 48 That being so, it is compatible with EU law to lay down reasonable time limits for the imposition of penalties by national competition authorities in the interests of legal certainty, which protects both the undertakings concerned and those authorities. Such time limits are not liable to make it in practice impossible or excessively difficult to apply EU law (see, by analogy, judgment of 17 November 2016, *Stadt Wiener Neustadt*, C-348/15, EU:C:2016:882, paragraph 41).
- 49 Thus, national rules laying down limitation periods must be devised in such a way as to strike a balance between, on the one hand, the objectives of providing legal certainty and ensuring that cases are dealt with within a reasonable time as general principles of EU law and, on the other, the effective and efficient application of Articles 101 and 102 TFEU, in order to safeguard the public interest in preventing the operation of the internal market being distorted by agreements or practices harmful to competition.
- 50 In order to determine whether national rules on limitation strike such a balance, all elements of those rules must be taken into consideration (see, by analogy, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 45), which may include, inter alia, the date from which the limitation period begins to run, the duration of that period and the rules for suspending or interrupting it.
- 51 Account must also be taken of the specific features of competition law cases and in particular of the fact that those cases require, in principle, a complex factual and economic analysis (see, by analogy, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 46).
- 52 Consequently, national legislation laying down the date from which the limitation period starts to run, the duration of that period and the rules for suspending or interrupting it must be adapted to the specific features of competition law and the objectives of applying the rules of that law by the persons concerned, so as not to prejudice the full effectiveness of the EU competition law rules (see, by analogy, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 47).
- 53 National rules on limitation which, for reasons inherent to them, are systematically an obstacle to the imposition of effective and dissuasive penalties for infringements of EU competition law are liable to render application of the rules of that law impossible in practice or excessively difficult (see, by analogy, judgment of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraph 31 and the case-law cited).

- 54 In the present case, the national legislation at issue in the main proceedings provides that the limitation period for penalties for infringements of competition law is five years, that that period runs from the day on which the infringement ceased, that it may be interrupted by certain actions of the national competition authority and that the limitation period is to expire at the latest on the day on which a period equal to twice the limitation period applicable to the infringement has elapsed without a penalty having been imposed.
- 55 In addition, it is apparent from the order for reference that, according to a strict interpretation of the national rules governing limitation periods at the material time – adopted in some of the national case-law, and in particular by the Curtea de Apel București (Court of Appeal, Bucharest) in the context of the main proceedings – the decision to initiate an investigation for the purpose of proceedings or investigation in respect of an infringement of the rules of competition law is the final action of the national competition authority which may have the effect of interrupting the limitation period relating to its power to impose penalties; none of the actions subsequently taken for the purpose of the investigation or proceedings in respect of the infringement can interrupt that period, even if the taking of such forms of action would constitute an important stage in the investigation and show that authority's willingness to prosecute the infringement.
- 56 Such a strict interpretation of the national legislation, totally prohibiting the limitation period from being interrupted by action taken subsequently in the course of the investigation, appears likely to compromise the effective application of the rules of EU competition law by national competition authorities, in that that interpretation could present a systemic risk that acts constituting infringements of that law may go unpunished. It should be recalled in that regard, as pointed out in paragraph 51 above, that EU competition law cases require, in principle, a complex factual and economic analysis. Thus, in a significant number of cases involving a high degree of complexity, such subsequent action, which necessarily extends the duration of the proceedings, might prove necessary.
- 57 It is for the national court, in the light of the principle of effectiveness, to determine whether the interpretation of the national limitation rules at issue in the main proceedings, referred to in paragraph 55 above, presents, in the light of all elements of the national limitation rules at issue in the main proceedings, a systemic risk that acts constituting infringements of EU competition law may go unpunished.
- 58 If that should prove to be the case, it would in principle be for the referring court, without waiting until the national legislation at issue is amended by legislation or by any other constitutional procedure, to give full effect to the obligations referred to in paragraph 47 above by interpreting that legislation so far as at all possible in the light of EU law, and particularly the rules of EU competition law, as interpreted by the Court in particular in paragraph 56 above, or, as necessary, by disapplying that legislation (see, see, by analogy, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 66, and the case-law cited).
- 59 In the present case, although the amended Law on competition now provides that any measure taken by the Competition Authority for the purposes of a preliminary examination or proceedings in respect of an infringement of competition law interrupts the limitation periods, it is apparent from the order for reference that that law is not applicable *ratione temporis* to the main proceedings and that they remain subject to the Law on competition.

- 60 In those circumstances, it is for the referring court, taking the whole body of national law into consideration and applying the interpretative methods recognised by that law, to interpret the national provisions at issue in the main proceedings, so far as is possible, in the light of the EU law and, in particular, the wording and the purpose of Article 101 TFEU (see, to that effect, judgments of 11 January 2007, *ITC*, C-208/05, EU:C:2007:16, paragraph 68, and of 13 July 2016, *Pöpperl*, C-187/15, EU:C:2016:550, paragraph 43).
- 61 The principle that national law must be interpreted in conformity with EU law, by virtue of which the national court is required, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law, is inherent in the system of the Treaties, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of EU law when it determines the dispute before it (judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 159).
- 62 However, the principle of interpreting national law in conformity with EU law has certain limits. Thus, the obligation on a national court to refer to the content of EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law, including the principle of legal certainty, and cannot serve as the basis for an interpretation of national law *contra legem* (see, to that effect, judgment of 13 July 2016, *Pöpperl*, C-187/15, EU:C:2016:550, paragraph 44 and the case-law cited).
- 63 The question whether a national provision must be disapplied in so far as it conflicts with EU law arises only if no interpretation of that provision in conformity with EU law proves possible (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 41).
- 64 However, in the present case, it is apparent from the order for reference that such an interpretation appears possible, which it is, however, for the referring court ultimately to ascertain. Since, as has been pointed out in paragraph 24 above, that court itself has stated that there were two lines of case-law at national level, the first favouring a strict interpretation of the national rules governing limitation periods and the second a flexible interpretation of those rules, it follows that that court has a sufficiently broad discretion as regards the interpretation which it may give to the national provisions at issue in the main proceedings.
- 65 In the light of the foregoing considerations, the answer to the second question is that Article 4(3) TEU and Article 101 TFEU, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation, as interpreted by the national courts having jurisdiction, according to which the decision to initiate an investigation, adopted by the national competition authority, concerning an infringement of EU competition law rules, is the final action of that authority which may have the effect of interrupting the limitation period relating to its power to impose penalties and excludes any subsequent action, for the purpose of proceedings or investigation, from interrupting that period, where it becomes apparent, having regard to all elements of the limitation rules at issue, that such an exclusion presents a systemic risk that acts constituting such infringements may go unpunished, which it is for the referring court to verify.

Costs

- 66 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 (Second Chamber) hereby rules:

- 1. EU law must be interpreted as meaning that national courts are not required to apply Article 25(3) 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] to the time-barring of a national competition authority's powers to impose penalties for infringements of EU competition law.**
- 2. Article 4(3) TEU and Article 101 TFEU, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation, as interpreted by the national courts having jurisdiction, according to which the decision to initiate an investigation, adopted by the national competition authority, concerning an infringement of EU competition law rules, is the final action of that authority which may have the effect of interrupting the limitation period relating to its power to impose penalties and excludes any subsequent action, for the purpose of proceedings or investigation, from interrupting that period, where it becomes apparent, having regard to all elements of the limitation rules at issue, that such an exclusion presents a systemic risk that acts constituting such infringements may go unpunished, which it is for the referring court to verify.**

[Signatures]