Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

28 January 2025 *

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

In Case C-253/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Dortmund (Regional Court, Dortmund, Germany), made by decision of 13 March 2023, received at the Court on 20 April 2023, in the proceedings

ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH

v

Land Nordrhein-Westfalen,

other parties:

Otto Fuchs Beteiligungen KG,

Bundeskartellamt

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, F. Biltgen, K. Jürimäe (Rapporteur), C. Lycourgos, I. Jarukaitis, A. Kumin, N. Jääskinen and D. Gratsias, Presidents of Chambers, E. Regan, I. Ziemele, J. Passer, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: M. Szpunar,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 7 May 2024,

* Language of the case: German.

after considering the observations submitted on behalf of:

– ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH, by R. Lahme and A. Ruster, Rechtsanwälte,

– the Land Nordrhein-Westfalen, by J. Haereke, D. Hamburger, C. Kusulis, S.-O. Nündel, G. Schwendinger, F. Süß and K. Teitscheid, Rechtsanwälte,

– Otto Fuchs Beteiligungen KG, by J.-H. Allermann and C. Thiel von Herff, Rechtsanwälte,

– the Bundeskartellamt, by J. Nothdurft and K. Ost, acting as Agents,

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

– the European Commission, by A. Keidel and G. Meeβen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 September 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 101 TFEU, read in the light of Article 4(3) TEU and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), and Article 2(4), Article 3(1) and Article 9 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).

2 The request has been made in proceedings between ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH ('ASG 2') and the Land Nordrhein-Westfalen (*Land* of North Rhine-Westphalia, Germany) ('the *Land*') concerning a group action for damages brought by ASG 2 on the basis of compensation rights assigned to it by 32 sawmills following an infringement of Article 101 TFEU allegedly committed by the *Land* and other owners of woodland.

Legal context

European Union law

The Charter

3 Article 47 of the Charter, entitled 'Right to an effective remedy and to a fair trial', provides in the first paragraph thereof:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.'

Regulation (EC) No 1/2003

4 Recital 13 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) states:

'Where, in the course of proceedings which might lead to an agreement or practice being prohibited, undertakings offer the [European] Commission commitments such as to meet its concerns, the Commission should be able to adopt decisions which make those commitments binding on the undertakings concerned. Commitment decisions should find that there are no longer grounds for action by the Commission without concluding whether or not there has been or still is an infringement. Commitment decisions are without prejudice to the powers of competition authorities and courts of the Member States to make such a finding and decide upon the case. Commitment decisions are not appropriate in cases where the Commission intends to impose a fine.'

5 Article 9 of that regulation, entitled 'Commitments', provides, in paragraph 1 thereof:

'Where the Commission intends to adopt a decision requiring that an infringement be brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment, the Commission may by decision make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission.'

Directive 2014/104

6 Recitals 4, 12 and 13 of Directive 2014/104 state:

'(4) The right in Union law to compensation for harm resulting from infringements of Union and national competition law requires each Member State to have procedural rules ensuring the effective exercise of that right. The need for effective procedural remedies also follows from the right to effective judicial protection as laid down in the second subparagraph of Article 19(1) [TEU] and in the first paragraph of Article 47 of the [Charter]. Member States should ensure effective legal protection in the fields covered by Union law.

…

(12) This Directive reaffirms the *acquis communautaire* on the right to compensation for harm caused by infringements of Union competition law, particularly regarding standing and the definition of damage, as stated in the case-law of the Court of Justice, and does not pre-empt any further development thereof. Anyone who has suffered harm caused by such an infringement can claim compensation for actual loss (*damnum emergens*), for gain of which that person has been deprived (loss of profit or *lucrum cessans*), plus interest, irrespective of whether those categories are established separately or in combination in national law. …

(13) The right to compensation is recognised for any natural or legal person – consumers, undertakings and public authorities alike – irrespective of the existence of a direct contractual relationship with the infringing undertaking, and regardless of whether or not there has been a prior finding of an infringement by a competition authority. This

Directive should not require Member States to introduce collective redress mechanisms for the enforcement of Articles 101 and 102 TFEU. Without prejudice to compensation for loss of opportunity, full compensation under this Directive should not lead to overcompensation, whether by means of punitive, multiple or other damages.'

7 Article 1(1) of that directive provides:

'This Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association. It sets out rules fostering undistorted competition in the internal market and removing obstacles to its proper functioning, by ensuring equivalent protection throughout the [European] Union for anyone who has suffered such harm.'

8 Article 2 of that directive provides:

'For the purposes of this Directive, the following definitions apply:

…

(4) "action for damages" means an action under national law by which a claim for damages is brought before a national court by an alleged injured party, or by someone acting on behalf of one or more alleged injured parties where Union or national law provides for that possibility, or by a natural or legal person that succeeded in the right of the alleged injured party, including the person that acquired the claim;

…

(12) "final infringement decision" means an infringement decision that cannot be, or that can no longer be, appealed by ordinary means;

…'

9 Article 3 of that directive, which is entitled 'Right to full compensation', provides in paragraph 1:

'Member States shall ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm.'

10 Under Article 4 of Directive 2014/104, which is entitled 'Principles of effectiveness and equivalence':

'In accordance with the principle of effectiveness, Member States shall ensure that all national rules and procedures relating to the exercise of claims for damages are designed and applied in such a way that they do not render practically impossible or excessively difficult the exercise of the Union right to full compensation for harm caused by an infringement of competition law. In accordance with the principle of equivalence, national rules and procedures relating to actions for damages resulting from infringements of Article 101 or 102 TFEU shall not be less favourable to the alleged injured parties than those governing similar actions for damages resulting from infringements of national law.'

11 Article 9(1) of that directive is worded as follows:

‘Member States shall ensure that an infringement of competition law found by a final decision of a national competition authority or by a review court is deemed to be irrefutably established for the purposes of an action for damages brought before their national courts under Article 101 or 102 TFEU or under national competition law.’

German law

12 Paragraph 1(1) of the Gesetz über außergerichtliche Rechtsdienstleistungen (Rechtsdienstleistungsgesetz) (Law on out-of-court legal services) of 12 December 2007 (BGBl. 2007 I, p. 2840), in the version applicable to the main proceedings (‘the RDG’), provides:

‘This Law regulates the authorisation to provide out-of-court legal services in the Federal Republic of Germany. It serves to protect litigants, legal relations and the legal system against unqualified legal services.’

13 Paragraph 2 of the RDG, which is entitled ‘Definition of legal service’, provides:

‘(1) “Legal service” means any activity related to the specific affairs of others which requires a legal assessment of the individual case.

(2) Regardless of whether the conditions set out in subparagraph 1 are met, the collection of third-party claims or claims assigned for the purpose of collection on behalf of a third party shall constitute a legal service where collection of claims is conducted as a stand-alone business, including the legal assessment and advice relating to such collection (collection service). Assigned claims shall not be regarded as third-party claims in respect of the previous creditor.

…’

14 Under Paragraph 3 of the RDG, which is entitled ‘Authorisation to provide out-of-court legal services’:

‘The independent provision of out-of-court legal services shall be permitted only to the extent authorised under this Law or by or pursuant to other laws.’

15 Paragraph 10 of the RDG reads as follows:

‘(1) Natural and legal persons and partnerships without legal personality registered with the competent authority (registered persons) may provide legal services in the following fields on the basis of special expertise:

1. collection services …

…’

16 Paragraph 11 of the RDG, which is entitled ‘Special expertise, professional titles’, provides in subparagraph 1:

‘Collection services shall require special expertise in the fields of law relevant to the requested collection activity, in particular in civil law, commercial law, securities law and company law, the law of civil procedure, including enforcement and insolvency law, and the law on costs.’

17 Paragraph 12 of the RDG lays down the conditions for registration for the purposes of the provision of legal services and provides for regulatory authorisation in respect of the detailed requirements, including the proof of theoretical expertise laid down in Paragraph 10 of that law.

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

18 On 31 March 2020, ASG 2 brought a group action for damages before the Landgericht Dortmund (Regional Court, Dortmund, Germany) against the *Land* in respect of harm caused by a cartel, on the basis of the rights assigned to it by 32 sawmills established in Germany, Belgium and Luxembourg (‘the sawmills concerned’).

19 The *Land* was accused of having, at least during the period from 28 June 2005 to 30 June 2019, harmonised the prices of unwrought coniferous timber (‘roundwood’) for itself and other owners of woodland established in that *Land*, in contravention of Article 101 TFEU (‘the cartel in question’).

20 The Bundeskartellamt (Federal Competition Office, Germany) carried out an investigation into that practice and, in 2009, adopted a commitment decision under Paragraph 32b of the Gesetz gegen Wettbewerbsbeschränkungen (Law against restrictions on competition) and Article 101 TFEU in respect of the *Land* and other *Länder* similarly involved in the marketing of roundwood (‘the 2009 decision’).

21 The sawmills concerned seek to obtain compensation from the *Land* for the harm they claim to have suffered during the cartel in question on account of the allegedly inflated prices at which they purchased roundwood originating from that *Land*, as a result of that cartel.

22 To that end, each of the sawmills concerned assigned to ASG 2 its right to compensation for the harm caused to it by the cartel in question. ASG 2, which has, as a ‘provider of legal services’ within the meaning of the RDG, authorisation under that law, thus seeks, before the referring court, consolidated compensation for that harm, in its own name and at its own expense, but on behalf of the assignors, in return for fees in the event of success.

23 The claim for compensation for harm caused by the cartel in question allegedly concerns several hundred thousand roundwood purchases by the sawmills concerned. For each assignor, those purchases amounted to several thousand or even tens of thousands of transactions.

24 Before the referring court, the *Land* challenges the action as regards both the merits and ASG 2’s legal standing to bring proceedings. In the latter respect, it claims that the sawmills concerned assigned their rights to compensation to ASG 2 in contravention of the RDG with the result that those assignments are invalid. It claims that ASG 2’s authorisation under the RDG does not allow it to pursue the recovery of claims based on damages resulting from an alleged infringement of competition law.

25 The referring court points out that, in German law, as regards collective or low-value damages concerning a large number of persons, actions of individuals may be grouped together through the claim assignment model ('Abtretungsmodell'), also known as 'collection by group action' ('Sammelklage-Inkasso') ('group action for collection'). Under this model, alleged injured persons assign their alleged claims to a provider of legal services licensed under the RDG, which authorises, in principle, the pursuit of group recovery of those claims in its own name and at its own expense, on behalf of the assignors, in return for a fee contingent on success.

26 According to the referring court, that practice has been accepted in the case-law of the Bundesgerichtshof (Federal Court of Justice, Germany) for different types of actions for damages, in particular in the context of property rental disputes or air passenger compensation. By contrast, lower courts interpret the RDG to the effect that the group action for collection is not accepted in the field of compensation for harm caused by an alleged infringement of competition law, in particular where it concerns a 'stand-alone' action, that is to say an action for damages that does not follow a decision of a competition authority finding such an infringement that is final and binding, in particular with regard to the establishment of the facts ('a stand-alone action for damages'). The Bundesgerichtshof (Federal Court of Justice) has not yet had an opportunity to settle that question.

27 In the view of the referring court, German law does not provide for any remedy equivalent to the group action for collection which could ensure the effective implementation of the right to compensation in cartel cases.

28 Accordingly, in the view of the referring court, the effectiveness of the right to compensation for harm caused by a cartel is not guaranteed, in particular as regards low-value damages concerning a large number of injured persons. In such a situation, the individual amount of compensation is so low as to encourage individuals not to assert the right to compensation conferred on them by EU law.

29 In those circumstances, a group action for collection is the only economically rational and practical way to claim such compensation. The referring court considers, however, that, in accordance with the provisions of the RDG, as interpreted by certain national courts, it must regard the assignments at issue in the main proceedings as invalid, with the result that the action before it must be dismissed.

30 It nevertheless raises the question whether EU law precludes such an interpretation of the RDG, in so far as, by preventing persons harmed by the cartel in question from having recourse to a group action for collection, that interpretation of national law is liable to be incompatible both with Directive 2014/104 and with the principle of effectiveness of EU law and the right to effective judicial protection.

31 First, the referring court asks whether such incompatibility can be inferred from Article 3(1) of Directive 2014/104, which, in its view, sets out the right, enshrined in the settled case-law of the Court, of persons harmed by a cartel to obtain full compensation for the harm caused by that cartel, read together with point 4 of Article 2 of that directive. The latter provision expressly covers a group action for collection, given that the concept of an 'action for damages', within the meaning of that provision, encompasses an action brought by 'a natural or legal person that succeeded in the right of the alleged injured party, including the person that acquired the claim'.

32 Second, the referring court is uncertain as to whether the fact that it is impossible for injured persons to have recourse to a group action for collection resulting from the interpretation of national law referred to in paragraph 29 of the present judgment is compatible with Article 4(3) TEU and Article 101 TFEU. In its view, as is apparent from the case-law of the Court and from the provisions of Directive 2014/104, any person may claim full compensation for the harm which he or she has suffered as a result of an infringement of competition law. Member States should thus ensure that the right to compensation for such harm is effective by not making its exercise impossible or excessively difficult. This contributes to the protection of the public interest in ensuring effective competition in the European Union.

33 Third, the referring court asks whether the fact that it is impossible for injured persons to have recourse to a group action for collection resulting from the interpretation of national law referred to in paragraph 29 of the present judgment infringes the right of those persons to effective judicial protection enshrined in the first paragraph of Article 47 of the Charter, in Article 6(3) TEU and in Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. In a situation such as that at issue in the case before it, which concerns collective or low-value damages concerning a large number of persons, injured persons would be deprived of the possibility of having recourse to the only effective legal remedy provided for by national law in order to assert their right to compensation.

34 Lastly, the referring court states that if it were to be concluded that the national law is not consistent with EU law, it would not be possible for it to interpret that law in a way that complies with EU law, since such an interpretation would be *contra legem*.

35 In those circumstances, the Landgericht Dortmund (Regional Court, Dortmund) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) ‘Is EU law, particularly Article 101 TFEU, Article 4(3) TEU, Article 47 of the [Charter], and [point 4 of Article 2] and [Article 3(1)] of [Directive 2014/104] to be interpreted as precluding an interpretation and application of the law of a Member State which has the effect of prohibiting a person who may have suffered harm by an infringement of Article 101 TFEU – established, with binding effect, on the basis of Article 9 of [Directive 2014/104] or the national provisions transposing that article – from assigning on a fiduciary basis his or her claims for compensation – particularly in cases of collective or scattered harm – to a licensed provider of legal services, so that that provider can claim together with the claims of other alleged injured parties, by means of a follow-on action if other equivalent legal or contractual possibilities for consolidating claims for damages do not exist, in particular because they do not allow a judgment requiring performance [of payment of damages] to be sought, [or] if they are not practicable for other procedural reasons or are objectively unreasonable for economic reasons, with the consequence, in particular, that it would be practically impossible, or in any event excessively difficult, to bring an action for damages for a small amount?

(2) Is EU law in any event [to] be interpreted in this way if the claims for damages at issue have to be pursued without a prior decision on the alleged infringement from the European Commission or national authorities that has a binding effect within the meaning of national provisions based on Article 9 of [Directive 2014/104] (known as a “stand-alone action”), if other equivalent legal or contractual possibilities for consolidating civil law claims for

damages do not exist for the reasons already set out in question 1, and, in particular, on the contrary, an action based on an infringement of Article 101 TFEU would not be brought, either via public enforcement [or] via private enforcement?

(3) If at least one of those two questions is answered in the affirmative, must the relevant provisions of German law remain unapplied if an interpretation which complies with EU law is ruled out, which would have the consequence that assignments [of claims for compensation] are in any event effective from that point of view and would render effective enforcement of law possible?'

Consideration of the questions referred

Admissibility of the first question

36 By its first question, the referring court asks, in essence, whether Article 101 TFEU, read in conjunction with point 4 of Article 2, Article 3(1), Article 4 and Article 9(1) of Directive 2014/104 and the first paragraph of Article 47 of the Charter, must be interpreted as precluding an interpretation of national legislation which has the effect of preventing persons allegedly harmed by an infringement of competition law from assigning their rights to compensation to a provider of legal services in order for it to assert them, collectively, in a 'follow-on' action, that is to say, an action for damages following a final decision of a competition authority finding such an infringement ('a follow-on action for damages').

37 Otto Fuchs Beteiligungen, the *Land* and the Commission consider that this question is inadmissible. The action in the main proceedings should be regarded as an action for damages which is not a follow-on action but rather a stand-alone action.

38 In that regard, it should be recalled that, in accordance with settled case-law, the question referred to the Court for a preliminary ruling must involve an interpretation of EU law which meets an objective need of the decision that the national court must take (judgments of 12 January 2023, *DOBELES HES*, C-702/20 and C-17/21, EU:C:2023:1, paragraph 81, and of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 65).

39 It is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions put by national courts concern the interpretation of a rule of EU law, the Court is, in principle, bound to give a ruling (judgments of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 27, and of 19 September 2024, *Booking.com and Booking.com (Deutschland)*, C-264/23, EU:C:2024:764, paragraph 34).

40 It follows that, since questions concerning EU law enjoy a presumption of relevance, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the

questions submitted to it (judgments of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 28, and of 19 September 2024, *Booking.com and Booking.com (Deutschland)*, C-264/23, EU:C:2024:764, paragraph 35).

41 In the present case, it is apparent from the request for a preliminary ruling that the first question, in so far as it concerns a situation concerning a follow-on action for damages, clearly bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

42 The referring court states that the case before it concerns an action for damages brought by ASG 2 for compensation for the harm allegedly suffered by the sawmills concerned as a result of the cartel in question. That court states that, in the case in the main proceedings, there is no decision other than the 2009 decision.

43 As the Advocate General observed in point 55 of his Opinion, that decision was adopted on the basis of Article 32b of the Gesetz gegen Wettbewerbsbeschränkungen (Law against restrictions of competition), the wording of which corresponds to that of Article 9 of Regulation No 1/2003, as confirmed by the Federal Competition Office in its written observations.

44 A commitment decision adopted on the basis of Article 9 of Regulation No 1/2003 does not contain a final finding as regards an infringement of Articles 101 and 102 TFEU.

45 Article 9 of that regulation, read in the light of recital 13 thereof, provides that, in proceedings under that provision, the Commission is not required to make a finding of an infringement, its task being confined to examining, and possibly accepting, the commitments offered by the undertakings concerned in the light of the problems identified by it in its preliminary assessment and having regard to the aims pursued. The adoption of a commitment decision thus closes infringement proceedings against those undertakings by allowing them to avoid a finding of an infringement of competition law and a possible fine (see, to that effect, judgment of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraphs 40 and 48).

46 As regards the 2009 decision, it is apparent from the information provided by the referring court that, in that decision, the Federal Competition Office determined, for the *Land*, cooperation thresholds for the marketing of roundwood and measures intended to restrict the *Land*'s position on the market concerned.

47 Accordingly, the 2009 decision cannot be regarded as a final decision of a national competition authority finding an infringement of competition law, as referred to in Article 9(1) of Directive 2014/104, read in conjunction with point 12 of Article 2 of that directive. ASG 2's action giving rise to the case in the main proceedings cannot, therefore, be regarded as a follow-on action for damages.

48 The first question is accordingly inadmissible.

The second and third questions

49 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 101 TFEU, read in conjunction with point 4 of Article 2, Article 3(1) and Article 4 of Directive 2014/104, and the first paragraph of Article 47 of the Charter, must be interpreted as precluding an interpretation of national legislation that has the

effect of preventing persons allegedly harmed by an infringement of competition law from assigning their rights to compensation to a provider of legal services so that it may assert them, collectively, in a stand-alone action for damages.

50 If the answer is in the affirmative, that court asks whether it should disapply the relevant provisions of that national legislation, in the event that it is not possible to interpret that legislation in a way that complies with EU law.

Admissibility

51 Otto Fuchs Beteiligungen and the *Land* contest the admissibility of the second and third questions.

52 In the first place, they claim that the second question is hypothetical or not necessary for the resolution of the dispute in the main proceedings and that neither that question nor the third question concerns the interpretation of EU law.

53 However, it is apparent from the information in the file before the Court that the interpretation of EU law sought by the referring court is clearly objectively required in order to settle the dispute in the main proceedings.

54 The referring court asks whether the provisions of EU law referred to in paragraph 49 of the present judgment preclude an interpretation of national legislation which has the effect of preventing persons harmed by the cartel in question from having recourse to a group action for collection. If so, it raises the question of the consequences to be drawn from such an incompatibility, in the event that it is not possible to interpret the provisions of the RDG in a way that complies with EU law.

55 In the second place, Otto Fuchs Beteiligungen and the *Land* submit, in essence, that the referring court based its questions on incorrect premisses. In particular, that court wrongly considered, first, that the provisions of the RDG should be interpreted as automatically precluding a group action for collection in the field of competition law and, second, that, if persons harmed by a cartel did not have the right to have recourse to that group action, it would be practically impossible or, in any event, excessively difficult for them to exercise the right to compensation conferred on them by EU law, in so far as German law does not provide any equally effective alternative enabling those persons to assert that right to compensation.

56 According to settled case-law of the Court, questions on the interpretation of EU law are referred by a national court in the legislative and factual context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine (see, to that effect, judgment of 26 October 2023, *EDP – Energias de Portugal and Others*, C-331/21, EU:C:2023:812, paragraph 46 and the case-law cited).

57 Since the referring court alone has jurisdiction to interpret and apply national law, the Court must take account of the legislative context, as described in the order for reference, in which the questions put to it are set (see, to that effect, judgment of 14 November 2024, *S. (Modification of the formation of the court)*, C-197/23, EU:C:2024:956, paragraph 51 and the case-law cited). Furthermore, the presumption of relevance, recalled in paragraph 40 of the present judgment, which those questions enjoy, cannot be rebutted by the mere fact that one of the parties to the main proceedings disputes certain facts, the accuracy of which is not a matter for the Court to

determine and on which the delimitation of the subject matter of the dispute in the main proceedings depends (see, to that effect, judgment of 22 September 2016, *Breitsamer und Ulrich*, C-113/15, EU:C:2016:718, paragraph 34 and the case-law cited).

58 The premisses referred to in paragraph 55 of the present judgment are based on an assessment, by the referring court, of the national context of the dispute in the main proceedings. That assessment falls exclusively within the jurisdiction of that court and it is not a matter for the Court to verify its accuracy.

59 In those circumstances, and without prejudice to such verification by the referring court (see, to that effect, judgment of 27 June 2018, *Altiner and Ravn*, C-230/17, EU:C:2018:497, paragraph 23), it must be held that the second and third questions are admissible.

Substance

60 Article 101(1) TFEU produces direct legal effects in relations between individuals and directly creates rights for individuals which national courts must protect (judgments of 30 January 1974, *BRT and Société belge des auteurs, compositeurs et éditeurs*, 127/73, EU:C:1974:6, paragraph 16, and of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 32 and the case-law cited).

61 In that regard, the full effectiveness of Article 101 TFEU and, in particular, the practical effect of the prohibition laid down in paragraph 1 thereof would be put at risk if it were not open to any individual to claim damages for loss caused to him or her by an infringement of competition law (see, to that effect, judgments of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraph 26, and of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 33 and the case-law cited).

62 Consequently, any person is entitled to claim compensation for the harm suffered where there is a causal link between that harm and such an infringement (see, to that effect, judgments of 13 July 2006, *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 61, and of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 34 and the case-law cited).

63 The right for any person to seek compensation for such harm strengthens the working of the EU competition rules, since it discourages conduct, frequently covert, which is liable to restrict or distort competition, thereby contributing to the maintenance of effective competition in the European Union (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 35 and the case-law cited).

64 As is apparent from recital 12 of Directive 2014/104, that right to compensation for the harm caused by an infringement of competition law was codified in Article 3(1) of that directive, which provides that Member States are to ensure that any natural or legal person who has suffered such harm is able to claim and to obtain full compensation for that harm.

65 Recital 4 of that directive states that that right to compensation requires each Member State to have procedural rules ensuring the effective exercise of that right. Under that recital, the need for effective procedural remedies also follows from the right to effective judicial protection as laid down in the first paragraph of Article 47 of the Charter, which corresponds to the obligation laid down in the second subparagraph of Article 19(1) TEU to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law (see, to that effect, judgments of

16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 44, and of 6 October 2020, *État Luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 47).

66 In that regard, as provided in Article 1(1) thereof, Directive 2014/104 sets out certain rules relating to actions for damages which the EU legislature considered necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association.

67 In that context, point 4 of Article 2 of that directive defines the concept of an 'action for damages' as an action under national law by which a claim for damages is brought before a national court by an alleged injured party, or by someone acting on behalf of one or more alleged injured parties, where that possibility is provided for inter alia under national law, or by a natural or legal person that succeeded in the right of the alleged injured party, including the person that acquired the claim.

68 Thus, that directive envisages the possibility that an action for damages may be brought either directly by the natural or legal person who enjoys the right to compensation conferred by EU law or by a third person to whom the right of the alleged injured party to seek compensation has been assigned.

69 That said, as the Advocate General observed, in essence, in points 100 and 101 of his Opinion, point 4 of Article 2 of Directive 2014/104 does not impose any obligation on the Member States to establish a mechanism for a group action for collection, such as that at issue in the main proceedings, nor does it govern the conditions to which the validity of an assignment by the injured party, in view of such a group action, of its right to compensation for the harm caused by an infringement of competition law is subject.

70 It follows that both the establishment of a mechanism for a group action for damages and the conditions governing the validity of a transfer of the right to compensation for harm allegedly linked to an infringement of competition law to a natural or legal person with a view to that person bringing such a group action before a national court fall within the rules governing the exercise of that right to compensation, which are not governed by Directive 2014/104.

71 In accordance with the Court's settled case-law, in the absence of EU rules governing the matter, it is for the domestic 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 infringements of competition law, in compliance with the principles of equivalence and effectiveness (see, to that effect, judgments of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraph 29, and of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 42 and the case-law cited).

72 The principles of effectiveness and equivalence are reflected, in the field covered by Directive 2014/104, in Article 4 thereof, which reproduces, in essence, the wording of the Court's case-law. However, for the purposes of examining the second and third questions, regard should be had only to the principle of effectiveness, which is the only principle referred to by the referring court.

73 Under that provision, in accordance with the latter principle, Member States shall ensure that all national rules and procedures relating to the exercise of claims for damages are designed and applied in such a way that they do not render practically impossible or excessively difficult the exercise of the Union right to full compensation for harm caused by an infringement of competition law.

74 The Court has held, in particular, that the national rules applicable in the field of competition law must not jeopardise the effective application of Articles 101 TFEU and 102 TFEU and must be adapted to the specificities of cases in that field, which require, in principle, a complex factual and economic analysis (see, to that effect, judgment of 20 April 2023, *Repsol Comercial de Productos Petrolíferos*, C-25/21, EU:C:2023:298, paragraph 60 and the case-law cited).

75 Furthermore, when there are no EU rules governing the matter, although it is for the domestic legal system of every Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, the Member States are, however, responsible for ensuring that, pursuant to the first paragraph of Article 47 of the Charter, the right to effective judicial protection is effectively protected in every case (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 115 and the case-law cited). As has been observed in paragraph 65 of the present judgment, recital 4 of Directive 2014/104 refers to the right to such protection.

76 In the present case, and as is apparent from paragraphs 28 to 33 of the present judgment, the referring court has doubts as to the conformity with the principle of effectiveness and the right to effective judicial protection of national case-law which interprets the RDG as preventing persons harmed by an infringement of competition law from having recourse to a group action for collection.

77 In that regard, that court states, first, that that action is the only legal remedy that enables those persons effectively to assert, collectively, their right to compensation. Second, although those persons have the possibility of bringing an action for damages in their own name and on their own behalf, such a possibility does not, however, enable them to exercise that right effectively. In the light of the particularly complex, long and costly nature of an individual action concerning an infringement of competition law, injured persons would tend to refrain from bringing such an individual action, in particular where harm equating to a low value is at issue.

78 All the parties to the main proceedings, with the exception of ASG 2, and the other interested parties referred to in the first paragraph of Article 23 of the Statute of the Court of Justice of the European Union have, however, provided, in their observations submitted to the Court, certain information designed to qualify the statements contained in the order for reference.

79 Thus, first, those parties and interested parties call into question the referring court's assertion that national law automatically precludes persons harmed by an infringement of competition law from having recourse to a group action for collection. That action was considered inappropriate only in the context of specific cases relating to competition law, in which recourse to that action led in practice to an infringement of the RDG provisions prohibiting the intervention of a provider of legal services in the event of a conflict of interest.

80 Second, they assert that it is necessary to qualify the finding that national law does not offer any alternative to that action enabling injured persons to assert, collectively, their right to compensation. The assignment of claims in the form of genuine factoring, that is to say, not a simply fiduciary transfer, but a full transfer of a third-party claim in return for immediate payment of financial consideration by that person to the assignor, and the *litis consortium*, in the form of a joint action brought by a number of applicants which enables them, inter alia, to have joint evaluations and expert opinions carried out in order to establish the amount of their respective loss, are, in that regard, conceivable alternatives accepted by German judicial practice in competition law disputes.

81 Third, they submit that the referring court's finding that injured parties would be inclined to waive their right to compensation if they were able to assert it only by means of an individual action is called into question, in the present case, by the number of individual claims of the sawmills concerned, which puts into perspective the reluctance those sawmills might demonstrate in relation to such an action.

82 In that regard, it should be noted that it is for the referring court alone to determine whether the interpretation of national law excluding, in disputes relating to competition law, a group action for collection has the effect of making it impossible or excessively difficult to exercise the right to compensation which EU law confers on persons harmed by an infringement of competition law and of depriving them of effective judicial protection.

83 However, that court must, to that end, take account of all the relevant factors relating to the detailed rules laid down by national law governing the exercise of the right to compensation for the harm resulting from such an infringement (see, by analogy, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 45).

84 It is thus only if, following that verification, the referring court were to conclude, first, that none of the collective mechanisms provided for by national law as an alternative to a group action for collection makes it possible to assert, effectively, the right of persons or groups of persons seeking compensation for the harm allegedly caused by an infringement of competition law, namely, in the present case, the sawmills concerned and, second, that the conditions for bringing an individual action laid down by national law make it impossible or excessively difficult to exercise that right to compensation and thus undermine their right to effective judicial protection, that that court should conclude that national law, interpreted to the effect that it precludes such an action for collection, does not satisfy the requirements of EU law set out in paragraphs 71 to 75 of the present judgment.

85 In that regard, it should be noted that, admittedly, in view of the specific features of competition law cases and, more specifically, the fact, recalled in paragraph 74 of the present judgment, that the bringing of actions for damages for an infringement of that law requires, in principle, a complex factual and economic analysis, the existence, in national law, of mechanisms enabling individual claims to be grouped together is likely to facilitate the exercise of the right to compensation by the injured persons. In particular, such mechanisms may facilitate the bringing of stand-alone actions for damages, in support of which there is no final finding of an infringement by a competition authority.

86 However, the complexity and the procedural costs inherent in such actions for damages do not in themselves support the conclusion that the exercise of the right to compensation in an individual action would be rendered practically impossible or excessively difficult, so that, in the absence of

mechanisms for grouping together the individual claims of persons harmed by an infringement of competition law, those persons would be deprived of their right to effective judicial protection. It is only if, following an assessment of all the legal and factual elements of the case, the referring court were to identify that specific elements of national law preclude the bringing of those individual actions that the referring court could, as the case may be, reach such a conclusion.

87 It should be added that, if that court were to find that the mechanism for a group action for collection constitutes, in the case in the main proceedings, the only procedural means enabling the sawmills concerned effectively to assert their right to compensation for the harm allegedly linked to the cartel in question, such a finding would be without prejudice to the application of national provisions governing, in the interests of the protection of individuals, the activity of the providers of such collection services in order, in particular, to guarantee the quality of those services and the objective and proportionate nature of the remuneration received by such providers, and to prevent conflicts of interest and abusive procedural conduct.

88 As regards, lastly, the consequences to be drawn from any finding, by the referring court, of failure to observe the right to effective judicial protection, it is apparent from paragraphs 60 and 64 of the present judgment that the right to full compensation for the harm caused by an infringement of competition law, which has been codified in Article 3(1) of Directive 2014/104, derives from the direct effect recognised in Article 101(1) TFEU.

89 In addition, the Court has stated that Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right on which they may rely as such (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 78, and of 20 February 2024, *X (Lack of reasons for termination)*, C-715/20, EU:C:2024:139, paragraph 80 and the case-law cited).

90 Under the principle of the primacy of EU law, the national court called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty, where it is unable to interpret national law in compliance with the requirements of EU law, to give full effect to those requirements in the dispute brought before it, by disapplying as required, of its own motion, any national rule or practice, even if adopted subsequently, which is contrary to a provision of EU law with direct effect, without it having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means (see, to that effect, judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 57 and 58, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 37 and the case-law cited).

91 Therefore, in the situation referred to in paragraph 84 of the present judgment, the referring court will first have to determine, taking the whole body of national law into consideration and applying the interpretative methods recognised by that law, whether it is possible for it to interpret the relevant provisions of the RDG in a manner consistent with the requirements of EU law, without, however, interpreting those provisions *contra legem* (see, by analogy, judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 52 and the case-law cited).

92 In that regard, as has been noted in paragraph 79 of the present judgment, some of the parties to the proceedings before the Court stated that the national provisions at issue in the main proceedings did not automatically preclude recourse to the mechanism for a group action for collection in competition law disputes and were interpreted by certain national courts as making

recourse to that mechanism in a specific case subject to compliance with conditions intended to ensure the quality of the services provided, the appropriate level of remuneration of the service provider and the absence of a conflict of interest on the part of that provider.

93 It is only if no interpretation of those provisions in conformity with EU law proves possible that they should be disapplied by the referring court (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 63 and the case-law cited).

94 In the light of all the foregoing considerations, the answer to the second and third questions is that Article 101 TFEU, read in conjunction with point 4 of Article 2, Article 3(1) and Article 4 of Directive 2014/104, and the first paragraph of Article 47 of the Charter, must be interpreted as precluding an interpretation of national legislation which has the effect of preventing persons allegedly harmed by an infringement of competition law from assigning their rights to compensation to a provider of legal services so that it may assert them, collectively, in a stand-alone action for damages, provided that

– national law does not provide for any other possibility of grouping together the individual claims of those injured persons that would ensure the effectiveness of the exercise of those rights to compensation, and

– the bringing of an individual action for damages is, having regard to all the circumstances of the case, impossible or excessively difficult for those persons, with the result that they are deprived of their right to effective judicial protection.

Should it not be possible to interpret that national legislation in a way that complies with the requirements of EU law, those provisions of EU law require the national court to disapply that national legislation.

Costs

95 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

Article 101 TFEU, read in conjunction with point 4 of Article 2, Article 3(1) and Article 4 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, and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding an interpretation of national legislation which has the effect of preventing persons allegedly harmed by an infringement of competition law from assigning their rights to compensation to a provider of legal services so that it may assert them, collectively, in an action for damages that does not follow the decision of a competition authority finding such an infringement that is final and binding, in particular with regard to the establishment of the facts, provided that

– **national law does not provide for any other possibility of grouping together the individual claims of those injured persons that would ensure the effectiveness of the exercise of those rights to compensation, and**

– **the bringing of an individual action for damages is, having regard to all the circumstances of the case, impossible or excessively difficult for those persons, with the result that they are deprived of their right to effective judicial protection.**

Should it not be possible to interpret that national legislation in a way that complies with the requirements of EU law, those provisions of EU law require the national court to disapply that national legislation.

[Signatures]