Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

25 January 2024*

(Reference for a preliminary ruling – Competition – Agreements, decisions and concerted practices – Article 101 TFEU – Setting of minimum fee amounts by a lawyers' professional organisation – Decision by an association of undertakings – Court prohibited from ordering reimbursement of fees in an amount less than those minimum amounts – Restriction of competition – Justifications – Legitimate objectives – Quality of the services provided by the lawyers – Implementation of the judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890) – Whether the *Wouters* case-law may be relied on in a situation involving a restriction of competition by object)

In Case C-438/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 4 July 2022, received at the Court on the same day, in the proceedings

Em akaunt BG EOOD

v

Zastrahovatelno aktsionerno druzhestvo Armeets AD,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl (Rapporteur), J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: L. Medina,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 6 July 2023,

after considering the observations submitted on behalf of:

– Em akaunt BG EOOD, by I. Stoeva, V. Todorova and M. Yordanova, advokati,

– Zastrahovatelno aktsionerno druzhestvo Armeets AD, by B. Dachev,

* Language of the case: Bulgarian.

– the Bulgarian Government, by T. Mitova and S. Ruseva, acting as Agents,

– the European Commission, by T. Baumé and E. Rousseva, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 101(1) and (2) TFEU, read in conjunction with Article 2 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1), and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Em akaunt BG EOOD, on the one hand, and Zastrahovatelno aktsionerno druzhestvo Armeets AD, on the other, concerning a claim for compensation under property insurance following the theft of a vehicle, and compensation for delay.

Legal context

European Union law

3 Article 2 of Regulation No 1/2003, headed 'Burden of proof', provides:

'In any national or Community proceedings for the application of Articles [101 and 102 TFEU], the burden of proving an infringement of Article [101](1) or of Article [102 TFEU] shall rest on the party or the authority alleging the infringement. The undertaking or association of undertakings claiming the benefit of Article [101(3) TFEU] shall bear the burden of proving that the conditions of that paragraph are fulfilled.'

Bulgarian law

The GPK

4 Article 78 of the Grazhdanski protsesualen kodeks (Civil Procedure Code; 'the GPK'), entitled 'Taxation of costs', provides as follows:

'1. The charges paid by the applicant, costs and lawyers' fees, if the applicant had a lawyer, shall be borne by the defendant in proportion to the part of the claim which was upheld.

…

5. If the lawyer's fees paid by a party are excessively high having regard to the actual legal and factual complexity of the case, the court may, upon application by the opposite side, order

reimbursement of a lower amount in respect of costs, provided that that amount does not fall below the minimum amount determined in accordance with Article 36 [of the Zakon za advokaturata (Law on the Legal Profession)].

…'

5 Article 162 of the GPK provides that 'when the claim is well founded but the information about the amount thereof is insufficient, the court shall determine the amount in its discretion or obtain an expert opinion'.

6 Under Article 248 of the GPK:

'1. Within the time allowed for bringing an action and, if the decision may be appealed, within one month from the time of delivery of that decision, the court may, at the request of the parties, supplement or modify the decision delivered, in the part relating to costs.

2. The court shall notify the opposite party of the claim seeking to have the judgment supplemented or modified by asking that party to respond within one week.

3. The order for taxation of costs shall be delivered by the trial chamber and shall be notified to the parties. It may be appealed in accordance with the same rules governing appeals as the decision.'

The ZAdv

7 Article 36(1) and (2) of the Zakon za advokaturata (Law on the Legal Profession) (DV No 55 of 25 June 2004; most recent amendment published in DV No 17 of 26 February 2021), in the version thereof applicable at the time of the facts of the main proceedings ('the ZAdv'), is worded as follows:

'1. A lawyer or lawyer of a Member State of the [European] Union shall be entitled to remuneration for his or her work.

2. The amount of the fee shall be determined by agreement between the lawyer or the lawyer of a Member State of the European Union and the client. That amount must be fair and justified and may not be lower than the amount provided for in the regulation issued by the Visshia advokatski savet [(Supreme Council of the Legal Profession, Bulgaria)] for the type of service concerned.'

8 Article 38 of the ZAdv provides:

'1. A lawyer or lawyer of a Member State of the European Union may provide legal aid and assistance free of charge to: …

2. In the cases referred to in paragraph 1, if, in the proceedings in question, the opposite party is ordered to pay costs, the lawyer or lawyer of a Member State of the European Union shall be entitled to lawyers' fees. The court shall fix the fees in an amount which may not be lower than the amount provided in the regulation referred to in Article 36(2) and shall order the other party to pay those fees.'

Regulation No 1 on the minimum amount of lawyers' fees

9 Article 1 of the Naredba no 1 za minimalnite razmeri na advokatskite vaznagrazhdenia (Regulation No 1 on the minimum amount of lawyers' fees) of 9 July 2004 (DV No 64 of 23 July 2004), in the wording thereof applicable to the facts of the main proceedings ('Regulation No 1 on the minimum amount of lawyers' fees'), provides:

'The amount of remuneration for legal assistance supplied by the lawyer shall be agreed freely on the basis of a written contract with the client, but may not be lower than the minimum amount laid down in this regulation for the corresponding type of assistance.'

10 Article 2(5) of that regulation provides that, for legal representation, defence and assistance in civil proceedings, the fees are to be determined according to the nature and number of claims lodged, for each of them separately, irrespective of the form in which the claims are joined.

11 Article 7(2) of that regulation fixes certain amounts of fees for legal representation, defence and assistance according to inter alia the value of the interest defended.

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

12 Em akaunt BG EOOD brought an action before the Sofiyski rayonen sad (Sofia District Court, Bulgaria) claiming property insurance compensation from Zastrahovatelno aktsionerno druzhestvo Armeets, its insurer, in the amount of 16 112.32 Bulgarian leva (BGN) (approximately EUR 8 241) following the theft of a motor vehicle, plus compensation for delay at the legal rate of interest, in the amount of BGN 1 978.24 (approximately EUR 1 012).

13 That compensation claim included lawyers' fees for the applicant in the main proceedings, calculated in accordance with an agreement concluded previously between the applicant in the main proceedings and its lawyer. Those fees totalled BGN 1 070 (approximately EUR 547). The defendant in the main proceedings contended that the fees thus claimed were excessive and asked that they be reduced.

14 By judgment of 16 February 2022, the referring court ruled on the dispute and allowed the compensation claim in part. As regards costs, it held that the amount of fees claimed was excessive and reduced it to BGN 943 (approximately EUR 482).

15 In its reasons for reducing the lawyers' fees, the referring court referred to Article 78(5) of the GPK, which allows the court hearing the case to reduce the amount of lawyers' fees owing if it seems excessive in view of the actual legal and factual complexity of the case. However, that provision does not allow the court to fix an amount lower than the minimum provided for in Article 36 of the ZAdv.

16 That court also considered that it followed from the judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890), that the rule laid down in Article 78(5) of the GPK, read in conjunction with Article 36 of the ZAdv, was not contrary to Article 101(1) TFEU, read in conjunction with Article 4(3) TEU, since it is necessary for the implementation of a legitimate objective. That court states that the legitimate objective pursued by that rule is to guarantee the provision of high-quality legal services to the public. It takes the view that the introduction of a minimum amount of fees is such as to pursue that objective and be proportionate, as it guarantees the lawyer sufficient income enabling him or

her to live a decent life, provide high-quality services and continue to develop professionally. The referring court finds that the gross fees, up to an amount which is not excessive within the meaning of the national rules on minimum fees, total BGN 42 (approximately EUR 21) per hour.

17 That court further notes that it does not agree with the findings of the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria) in its order No 28 of 21 January 2022 in Case No 2347/2021, by which it held, in essence, that 'the minimum fees fixed may not in themselves prevent a lawyer from providing mediocre-quality services', in so far as account also had to be taken of the cumulative effect with the applicable professional and ethical rules of the legal profession.

18 The decision delivered by the referring court on the compensation claim was the subject of appeals brought by both parties to the main proceedings. Subsequently, the applicant in the main proceedings brought an action for review of the decision on costs before the referring court, on the ground that the lawyers' fees had been fixed below the threshold provided for under national rules.

19 The referring court has doubts as to how it must carry out such a review, in view of the explanations provided by the Court in the judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890).

20 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 101(1) TFEU, as interpreted in the judgment [of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890)], be understood as meaning that national courts may disapply a rule of national law under which the court is not entitled to order the unsuccessful party to pay the costs for lawyers' remuneration in an amount which is less than a minimum amount set by a regulation adopted only by a professional association of lawyers, such as the [Supreme Council of the Legal Profession], where that regulation is not limited to the attainment of legitimate objectives, not only in relation to the contracting parties but also in relation to third parties who would be ordered to pay the costs of the proceedings?

(2) Must Article 101(1) TFEU, as interpreted in the judgment [of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890)], be understood as meaning that the legitimate objectives justifying the application of a rule of national law under which the court is not entitled to order the unsuccessful party to pay the costs for lawyers' remuneration in an amount which is less than a minimum amount set by a regulation adopted by a professional association of lawyers, such as the [Supreme Council of the Legal Profession], are to be regarded as having been defined by law, and the court may disapply the national rule where it does not find that those objectives are exceeded in the specific case, or, conversely, must it be assumed that the rule of national law is inapplicable unless it is found that those objectives have been attained?

(3) Under Article 101(1) TFEU, in conjunction with Article 2 of Regulation No 1/2003, which party, in a civil dispute in which the unsuccessful party is ordered to pay the costs, is required to establish the existence of a legitimate objective and the proportionality of pursuing it by means of a regulation concerning the lowest possible level of lawyers'

remuneration adopted by a professional association of lawyers where a reduction in the lawyers' remuneration is sought on the ground of excessiveness – the party seeking the award of costs or the unsuccessful party seeking a reduction in the remuneration?

(4) Must Article 101(1) TFEU, as interpreted in the judgment [of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890)], be understood as meaning that a public authority, such as the Narodno sabranie (National Assembly, Bulgaria), when delegating the adoption of minimum prices to a professional association of lawyers by way of a regulation, must expressly specify the specific methods by which the proportionality of the restriction is to be determined, or must it instruct the professional association to discuss them when adopting the regulation (for example in the explanatory memorandum to the draft or in other preparatory documents), and, if such methods are not taken into account, must the court, where appropriate, disapply the regulation without examining the specific amounts, and is the existence of a reasoned discussion of such methods sufficient to presume that the rule is limited to what is necessary to achieve the legitimate objectives set?

(5) If Question 4 is answered in the negative, must Article 101(1) TFEU, as interpreted in the judgment [of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890)], be understood as meaning that the court must assess the legitimate objectives justifying the application of a rule of national law under which the court is not entitled to order the unsuccessful party to pay the costs for lawyers' remuneration in an amount which is less than a minimum amount set by a regulation adopted by a professional association of lawyers, such as the [Supreme Council of the Legal Profession], and the proportionality of those objectives, with regard to the effect on the amount specifically provided for in respect of the case concerned, and to disapply that amount where it exceeds what is necessary to achieve the objectives, or must the court investigate, in principle, the nature of the criteria provided for in the regulation for the determination of the amount and the manner in which those criteria manifest themselves, and, if it finds that in certain cases they might exceed what is necessary to achieve the objectives, to disapply the rule in question in all cases?

(6) If the guarantee of high-quality legal services is regarded as a legitimate objective of the minimum remuneration, does Article 101(1) TFEU then allow the minimum amounts to be set solely on the basis of the nature of the case (subject matter of the claim), the material interest in the case and, in part, the number of hearings held, without taking into account other criteria such as the existence of factual complexity, the applicable national and international rules, and so forth?

(7) If the answer to Question 5 is that the national court is to assess, separately for each case, whether the legitimate objectives of ensuring effective legal protection may justify the application of the legal rule for the minimum amount of remuneration, what criteria must the court use to assess the proportionality of the minimum amount of remuneration in the specific case if it considers that a minimum amount is regulated with the objective of ensuring effective legal protection at national level?

(8) Must Article 101(1) TFEU, in conjunction with the third paragraph of Article 47 of [the Charter], be interpreted as meaning that, for the purpose of assessing Question 7, account must be taken of rules, approved by the executive, on the remuneration payable by the State to court-appointed lawyers which constitutes – by virtue of a statutory reference – the maximum amount that can be reimbursed to successful parties represented by an in-house legal adviser?

(9) Must Article 101(1) TFEU, in conjunction with Article 47 of [the Charter], be interpreted as meaning that the national court, for the purpose of assessing Question 7, is required to specify a level of remuneration which is sufficient to achieve the objective of ensuring high-quality legal protection and which it must compare with the level of remuneration resulting from the legal rule, and to state the reasons for the level which it has determined using its discretion?

(10) Must Article 101(2) TFEU, in conjunction with the principles of the effectiveness of domestic procedural remedies and the prohibition of abuse of rights, be interpreted as meaning that, where a national court finds that a decision of an association of undertakings infringes the prohibitions on the restriction of competition by fixing minimum tariffs for its members, without there being any valid reasons for allowing such interference, it is obliged to apply the minimum tariff rates laid down in that decision, since they reflect the actual market prices of the services to which the decision relates, because all persons providing the service in question are required to be members of that association?'

Consideration of the questions referred

Preliminary observations

21 By its questions, the referring court seeks to ascertain whether and to what extent national courts, when called upon to define the amount of recoverable costs by way of lawyers' fees, are bound by a scale setting out minimum amounts of fees adopted by a professional association of lawyers of which they are mandatorily members by law.

22 That court seeks, in essence, clarification as to the scope and nature of the review it is called upon to carry out, in the main proceedings, of the validity of such a scale in view of the prohibition on agreements, decisions or concerted practices laid down in Article 101(1) TFEU, as interpreted, inter alia, in the judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890).

23 By that judgment, delivered further to two references for preliminary rulings concerning the interpretation of Article 101 TFEU made by the referring court itself, the Court held, first, that national legislation such as the Bulgarian legislation on lawyers' fees at issue in the case that gave rise to that judgment, which (i) does not allow a lawyer and his or her client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by an association of undertakings made up of a professional organisation of lawyers, and (ii) does not authorise national courts hearing a case to order reimbursement of fees in an amount less than that minimum amount, was capable of restricting competition in the internal market for the purposes of Article 101(1) TFEU (judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 49 and 52).

24 Secondly, after referring to the case-law relating to the possibility of considering certain conduct whose restrictive effects on competition are inherent in the pursuit of legitimate objectives as not coming within the scope of Article 101(1) TFEU, as held inter alia in the judgment of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98; 'the *Wouters* case-law'), the Court held that, having regard to the file before it, it was not entitled to assess whether that national legislation could be deemed necessary for the implementation of a legitimate objective. Thus, it held that it was for the referring court to assess, in the light of the overall context in which the regulation issued by the Supreme Council of the Legal Profession had been taken or applied, whether, in the light of all the relevant material before it, the rules imposing the restrictions at issue in the main proceedings could be regarded as necessary for the implementation of that objective (judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 53 to 57).

25 It is that second branch of the Court's assessment that is at the heart of the referring court's questions. That court considers, in essence, that the Court leaves it to the national court to decide whether it is possible to have minimum price thresholds for services fixed by a body of an association of undertakings providing those services and having an anticompetitive interest, namely in formulating exceptions to the prohibition in principle laid down in Article 101 TFEU. It notes that the case-law and national provisions give rise to numerous doubts as to how Regulation No 1 should be applied in relation to minimum amounts of lawyers' fees and how it should be determined whether fees which are to be covered by the unsuccessful party are unreasonable.

26 It should be borne in mind in that regard that, in the context of the procedure referred to in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the role of the latter is limited to interpreting the provisions of EU law referred to it, in this case Article 101(1) TFEU. Therefore, it is not for the Court of Justice, but for the referring court to determine in the end whether, taking account of all of the information relevant to the situation in the main proceedings and the economic and legal context of which it forms a part, the agreement at issue has as its object the restriction of competition (judgments of 18 November 2021, *Visma Enterprise*, C-306/20, EU:C:2021:935, paragraph 51 and the case-law cited, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 28).

27 However, the Court, when giving a preliminary ruling, may, on the basis of the information available to it, provide clarification designed to give the national court guidance in its interpretation in order to enable it to decide the case before it (judgments of 18 November 2021, *Visma Enterprise*, C-306/20, EU:C:2021:935, paragraph 52 and the case-law cited, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 29).

28 In the present case, it seems that clarification is required of the scope of the Court's reference, in paragraphs 53 to 55 of the judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890), to the *Wouters* case-law.

29 Such a reference could convey the impression that even conduct by an undertaking giving rise to a restriction of competition 'by object' within the meaning of Article 101(1) TFEU, such as the imposition of horizontal price-fixing of minimum rates, may escape the prohibition laid down in that provision, potentially read in conjunction with Article 4(3) TEU, when the restrictive effects on competition arising therefrom are inherent in the pursuit of legitimate objectives.

30 According to settled case-law, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; secondly, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, thirdly, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 183).

31 That case-law applies in particular in cases involving agreements or decisions taking the form of rules adopted by an association such as a professional association or a sporting association, with a view to pursuing certain ethical or principled objectives and, more broadly, to regulate the exercise of a professional activity if the association concerned demonstrates that the aforementioned conditions are satisfied (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 97; of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 42 to 48; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 93, 96 and 97).

32 However, that case-law does not apply in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm in relation to that competition that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition. Thus, it is only if, following an examination of the conduct at issue in a given case, that conduct proves not to have as its object the prevention, restriction or distortion of competition, that it must then be determined whether it may come within the scope of that case-law (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 186 and the case-law cited).

33 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU. In a situation where the conduct infringing Article 101(1) TFEU is anticompetitive by object, that is to say, it presents a sufficient degree of harm to competition and is such as to affect different categories of users or consumers, it must be determined whether and, if so, to what extent, that conduct, notwithstanding its harmfulness, has a favourable impact on each of them (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 187 and 194 and the case-law cited).

34 It follows from all of those considerations that, although the Court also referred to paragraphs 51 and 53 of the judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890), to the *Wouters* case-law in a situation involving national legislation providing for a horizontal pricing agreement, it did so only to guide the referring court in the event that it found, at the end of an assessment of all the facts of the case, that that national legislation made it mandatory to have a decision by an association of undertakings that had only the 'effect' of restricting competition. It is apparent from paragraphs 56 and 57 of the judgment of 23 November 2017, *CHEZ Elektro Bulgaria and*

FrontEx International (C-427/16 and C-428/16, EU:C:2017:890), that the Court had found that it did not have all the information relating to the overall context in which the regulation issued by the Supreme Council of the Legal Profession had been taken or applied.

35 It is in the light of those preliminary remarks that it is necessary to answer the questions put by the referring court.

The first question

36 By its first question, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that, where a national court finds that a regulation fixing minimum amounts for lawyers' fees, made mandatory by national legislation, is contrary to that provision, it may disapply that national legislation in respect of the party ordered to pay the costs of lawyers' fees, including when that party did not sign any agreement for lawyers' services and lawyers' fees.

37 According to settled case-law, 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 the requirements of EU law in the dispute brought before it, by disapplying, as required, of its own motion, any national rule or practice, even if adopted subsequently, that 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 (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 53 and the case-law cited).

38 Moreover, it must be borne in mind that Article 101(1) TFEU produces direct effects in relations between individuals and creates rights for individuals which national courts must protect (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 32 and the case-law cited).

39 Thus, were a national court to find that the restrictions on competition arising from the regulation on minimum amounts of lawyers' fees could not be considered to be inherent in the pursuit of legitimate objectives, the national legislation making it mandatory would be incompatible with Article 101(1) TFEU, read in conjunction with Article 4(3) TEU.

40 In such a scenario, that court will be under an obligation to disapply the national rule at issue. Although Article 101 TFEU is concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, that article, read in conjunction with Article 4(3) TEU, which lays down a duty of cooperation between the European Union and the Member States, nonetheless requires the latter not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings (judgment of 21 September 2016, *Etablissements Fr. Colruyt*, C-221/15, EU:C:2016:704, paragraph 43 and the case-law cited).

41 In the light of the foregoing considerations, the answer to the first question is that Article 101(1) TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that, where a national court finds that a regulation fixing minimum amounts for lawyers' fees, made mandatory by national legislation, is contrary to Article 101(1) TFEU, it is required to disapply that national legislation in respect of the party ordered to pay the costs of lawyers' fees, including when that party did not sign any agreement for lawyers' services and lawyers' fees.

The second to ninth questions

42 By its second to ninth questions, which it is appropriate to examine together, the referring court seeks clarification regarding, in the first place, the 'legitimate objectives' which must be pursued by national legislation which, first, does not allow a lawyer and his or her client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by a professional organisation of lawyers such as the Supreme Council of the Legal Profession and, secondly, does not authorise the courts to order reimbursement of fees in an amount less than that minimum amount in order to be compatible with Article 101(1) TFEU and, in the second place, the review that court is called upon to carry out in that context.

43 That court states that, notwithstanding the lack of reference to the objective pursued by the Bulgarian legislature, there is no doubt that that objective consists in ensuring the quality of the services provided by lawyers. It is uncertain, however, as to how and on the basis of which parameters the legitimate nature of that objective and the suitability and proportionality of the measure at issue, being the scale fixing the minimum amounts of fees, should be examined in relation to that same objective.

44 On that point, it should be borne in mind that it has been held previously that, given the lack of any review by public authorities and of provisions capable of ensuring that it conducts itself as an arm of the State, the Supreme Council of the Legal Profession, all of whose members are lawyers elected by their peers, acts as an association of undertakings within the meaning of Article 101 TFEU when it issues regulations fixing minimum amounts of lawyers' fees (judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 47 to 49).

45 Thus, in so far as the second to ninth questions relate to the conditions of application of the *Wouters* case-law, it is appropriate to begin by ascertaining, in the light of the considerations set out in paragraphs 30 to 33 of the present judgment, whether that case-law is applicable to a decision by an association of undertakings fixing minimum amounts of lawyers' fees, such as that at issue in the main proceedings.

46 To that end, it must be determined whether that decision merely has the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, or whether it reveals a degree of harm in relation to that competition that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of that competition.

47 In that regard, it should be noted that, in order to be caught by the prohibition laid down in Article 101(1) TFEU, an agreement must have as its 'object or effect' the prevention, restriction or distortion of competition in the internal market. According to settled case-law since the judgment of 30 June 1966, *LTM* (56/65, EU:C:1966:38), the alternative nature of that requirement, as shown by the conjunction 'or', leads, first of all, to the need to consider the precise object of the agreement. Thus, where the anticompetitive object of an agreement is established, it is not necessary to examine its effects on competition (judgment of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 31 and the case-law cited).

48 It is well established that the essential legal criterion for ascertaining whether an agreement, be it horizontal or vertical, involves a 'restriction of competition by object' is the finding that such an agreement reveals in itself a sufficient degree of harm to competition (see, to that effect,

judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 57, and of 18 November 2021, *Visma Enterprise*, C-306/20, EU:C:2021:935, paragraph 59 and the case-law cited).

49 In order to determine whether that criterion is met, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 12 January 2023, *HSBC Holdings and Others* v *Commission*, C-883/19 P, EU:C:2023:11, paragraph 107 and the case-law cited).

50 As regards a decision by an association of undertakings fixing minimum amounts of lawyers' fees, the Court has held previously that the fixing of minimum amounts for lawyers' remuneration, which are made mandatory by national legislation such as that at issue in the main proceedings, amounts to the horizontal fixing of mandatory minimum tariffs prohibited by Article 101(1) TFEU (judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraph 51 and the case-law cited).

51 It is established that certain collusive behaviour, such as that leading to horizontal price-fixing, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) TFEU, to prove that it has actual effects on the market. Experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers (see judgment of 2 April 2020, *Budapest Bank and Others*, C-228/18, EU:C:2020:265, paragraph 36 and the case-law cited).

52 That behaviour must accordingly be categorised as a 'restriction by object' since it reveals a sufficient degree of harm in relation to competition, irrespective of the level at which minimum prices are fixed.

53 Consequently, in accordance with the case-law referred to in paragraph 32 of the present judgment, such restrictions may not in any event be justified by the pursuit of 'legitimate objectives' such as those allegedly pursued by the rules on minimum amounts of lawyers' fees at issue in the main proceedings.

54 In the light of all the foregoing considerations, the answer to the second to ninth questions is that Article 101(1) TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that national legislation which, first, does not allow a lawyer and his or her client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by a professional organisation of lawyers such as the Supreme Council of the Legal Profession and, secondly, does not authorise the courts to order reimbursement of fees in an amount less than that minimum amount, must be deemed to constitute a restriction on competition 'by object' within the meaning of Article 101(1) TFEU. Where there is such a restriction, the legitimate objectives allegedly pursued by that national legislation may not be relied on in order to bring the conduct in question outside the scope of the prohibition on agreements, decisions and concerted practices which are restrictive of competition, laid down in Article 101(1) TFEU.

The tenth question

55 By its tenth question, the referring court asks, in essence, whether Article 101(2) TFEU must be interpreted as meaning that, where a national court finds that a regulation fixing minimum amounts of lawyers' fees, made mandatory by national legislation, disregards the prohibition laid down in Article 101(1) TFEU, it nevertheless is required to use the minimum amounts provided for by that regulation, in so far as those amounts reflect actual market prices for lawyers' services.

56 In that regard and as is apparent from the answer to the first question, where a national court finds that a regulation fixing minimum amounts for lawyers' fees infringes Article 101(1) TFEU, it is required to disapply the national legislation making that regulation mandatory.

57 Furthermore, it should be borne in mind that since Article 101 TFEU constitutes a fundamental provision which is essential for the accomplishment of the tasks entrusted to the European Union and, in particular, for the functioning of the internal market, the framers of the Treaty provided expressly, in Article 101(2) TFEU, that any agreements or decisions prohibited pursuant to that article are to be automatically void (see, to that effect, judgments of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, paragraph 36, and of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraphs 20 and 21).

58 That principle of automatic nullity can be relied on by anyone, and the courts are bound by it once the conditions for the application of Article 101(1) TFEU are met and so long as the agreement concerned does not justify the grant of an exemption under Article 101(3) TFEU. Since the nullity referred to in Article 101(2) TFEU is absolute, an agreement which is null and void by virtue of that provision has no effect as between the contracting parties and cannot be set up against third parties. Moreover, it is capable of having a bearing on all the effects, either past or future, of the agreement or decision concerned (see, to that effect, judgment of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraph 22 and the case-law cited).

59 In the present case, the referring court asks whether it should, in any event, be required to apply the amounts provided for in Regulation No 1 on the minimum amount of lawyers' fees, that is to say, even if that regulation is held to be null and void under Article 101(2) TFEU. It bases that question on the fact that the amounts provided for by that regulation reflect actual market prices for lawyers' services, since all lawyers are required to be members of the association that adopted that same regulation.

60 It should be borne in mind, however, that the price of a service which is fixed in an agreement or decision adopted by all of the market operators cannot be considered to be an actual market price. On the contrary, concertation on prices for services by all of the market operators, which constitutes a serious distortion of competition under Article 101(1) TFEU, hinders the application of none other than actual market prices.

61 In the light of all the foregoing considerations, the answer to the tenth question is that Article 101(2) TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that, where a national court finds that a regulation fixing minimum amounts of lawyers' fees, made mandatory by national legislation, disregards the prohibition laid down in Article 101(1) TFEU, it is required to disapply that national legislation, including when the minimum amounts provided for by that regulation reflect actual market prices for lawyers' services.

Costs

62 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 (Second Chamber) hereby rules:

1. **Article 101(1) TFEU, read in conjunction with Article 4(3) TEU,**

   must be interpreted as meaning that, where a national court finds that a regulation fixing minimum amounts for lawyers' fees, made mandatory by national legislation, is contrary to Article 101(1) TFEU, it is required to disapply that national regulation in respect of the party ordered to pay the costs of lawyers' fees, including when that party did not sign any agreement for lawyers' services and lawyers' fees.

2. **Article 101(1) TFEU, read in conjunction with Article 4(3) TEU,**

   must be interpreted as meaning that national legislation which, first, does not allow a lawyer and his client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by a professional organisation of lawyers such as the Visshia advokatski savet (Supreme Council of the Legal Profession) and, secondly, does not authorise the courts to order reimbursement of fees in an amount less than that minimum amount, must be deemed to constitute a restriction on competition 'by object' within the meaning of Article 101(1) TFEU. Where there is such a restriction, the legitimate objectives allegedly pursued by that national legislation may not be relied on in order to bring the conduct in question outside the scope of the prohibition on agreements, decisions and concerted practices which are restrictive of competition, laid down in Article 101(1) TFEU.

3. **Article 101(2) TFEU, read in conjunction with Article 4(3) TEU,**

   must be interpreted as meaning that, where a national court finds that a regulation fixing minimum amounts of lawyers' fees, made mandatory by national legislation, disregards the prohibition laid down in Article 101(1) TFEU, it is required to disapply that national legislation, including when the minimum amounts provided for by that regulation reflect actual market prices for lawyers' services.

[Signatures]