

PARA HILO Y ENCABEZADO

Advocate General's Mr. ATHANASIOS RANTOS opinion in Case C-267/20 Volvo and DAF Trucks. AG Application *ratione temporis* of Directive 2014/104. Opinions: 1. Determining which provisions of the directive are substantive or procedural must be assessed in the light of EU law and not in the light of national law. 2. Limitation period is a matter of substantive law. 3. Five-year limitation period provided for in Directive 2014/104 does not apply to an action brought after its transposition concerning previous facts and penalties. 4. Directive's presumption that cartel infringements cause harm, is substantive. 5. Directive's provisions concerning the courts' power to assess the harm caused are procedural. 6. Dies a quo of the limitation period begins to run from the date of publication of the summary of the Commission decision in the Official Journal of the European Union. (JIRP).

Remember that Advocates General function is propose to the Court a not binding legal solution to the cases for which they are responsible.

The Advocate General considers that

1. **Autonomous European qualification of the nature of the Law:** in order to ensure a consistent and uniform application of EU competition law, determining which provisions of the directive are substantive or procedural must be assessed in the light of EU law and not in the light of national law.
2. **Limitation period is a material matter:** the rule of the directive concerning the limitation period is a matter of substantive law, since that period has the function of ensuring the protection both of the injured party, who must have sufficient time in which to gather the appropriate information with a view to a possible action, and the person liable for the damage, by preventing the injured party from being able to delay indefinitely the exercise of his or her right to damages.
3. **Non-retroactivity of the Directive's five years' limitation period:** the five-year limitation period provided for in Directive 2014/104 does not apply to an action such as that at issue which, although it was brought after that directive and the national transposing measures entered into force (26 May 2017), concerns facts occurring and penalties imposed before the latter entered into force.
4. **Presumption that cartel infringements cause harm, is substantive:** Allocation of the burden of proof to the infringer and thus the correlative exemption for the injured party from the obligation of proving the existence of the harm suffered on account of the cartel, affects the latter's legal situation. The fact that the presumption of harm provided for in the directive is not to apply in the present case would not preclude national courts from applying presumptions relating to the burden of proof, concerning the presence of harm, which existed prior to the respective national implementing measures, whose conformity with the requirements of EU law

must be assessed having regard in particular to the general principles of effectiveness and equivalence.

5. **Directive's provisions concerning the courts' power to assess the harm caused are procedural:** They can apply to harm suffered as a result of an infringement of competition law which ceased before the entry into force of the national transposing legislation in the context of an action for damages brought after the entry into force of the national transposing measure.

6. ***Dies a quo* of the limitation period begins to run from the date of publication of the summary of the Commission decision in the Official Journal of the European Union:** In the case of *Trucks* case Commission decision C(2016) 4673 final that is to say, 6 April 2017. The Advocate General rules out that that period may begin to run from the date of publication of the Commission press release on its decision finding the infringement at issue. Indeed, the mere publication of that document does not enable the injured party concerned to know all the information required to exercise his or her right to bring an action for damages. In addition, the Advocate General points out that the victims of infringements of competition law are not subject to «a duty of due diligence» requiring them to monitor the publication of those press releases.

See full Court of Justice of the European Union PRESS RELEASE No 193/21 Luxembourg, 28 October 2021 at

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-10/cp210193en.pdf>