Limitation periods in EU Antitrust private enforcement

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Contents

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Abstract

This paper discusses the impact of EU law on limitation periods for the exercise of the right to damages arising from infringements of Art. 101 and 102 TFEU, as it stands after *Heureka*. It distinguishes that which is imposed by EU secondary law, specifically the Antitrust Damages Directive, and that which is imposed by EU primary law, especially the principle of effectiveness, as clarified by the CJEU. It also delves into the interplay with national law, and the dynamics which have emerged between European and national case-law on limitation periods, and provides some examples from national case-law.

Keywords: Directive 2014/104/EU; Private enforcement; Competition Law; Actions for damages; Limitation Period; Time-barring

A. Introduction

Typically, a long time goes by between the beginning of an antitrust infringement and the filing of an action for damages in court.

The reasons for this are numerous. Infringements often last many years. They are often secret. They can take a long time to be discovered. Even after indicia of them are discovered, they take a long time to investigate and to determine that they are indeed infringements. After one knows an infringement exists, it can take a long time to obtain the evidence and adequately prepare a claim. One may need a damage assessment and economic report before knowing there was harm.

Concluding that the requirements of Art. 101 or 102 TFEU are met is extremely complex. It bears little or no resemblance to identifying a right to damages from a car accident or from a neighbour's tree falling on one's house. It typically requires access to confidential information in possession only of the infringing undertakings and/or third parties. And it may ultimately be dependent on complex legal and economic assessments. Indeed, such investigation and analysis may be so difficult (without NCA's investigative powers), costly, complex and uncertain, that it may not be reasonable to require injured persons to carry them out themselves, even in the presence of indicia.

This is why it was assumed, by many, that private enforcement would be almost exclusively follow-on actions. Reality has shown this not to be the case, but only to the extent that large undertakings with deep pockets or opt-out regimes and third-party funding have allowed the filing of stand-alone or mixed claims, seeking

evidence to prove alleged infringements, often starting without access to definitive evidence of their existence.

Unsurprisingly, therefore, determining whether an injured person still has the right to claim damages for an infringement is, typically, a crucial issue which courts must decide, before knowing whether claims can proceed, in full or in part. So far, homogenously throughout the EU, it seems to be almost unheard of for antitrust private enforcement actions not to include (at least partial) challenges to the time-barring of the rights being exercised.

From the outset, this issue was identified by the European Commission as one of the most important challenges faced by claimants, requiring harmonizing intervention by the EU legislator. This led to the introduction of special rules for time-barring of rights to damages for infringements of Art. 101 and 102 TFEU in Directive 2024/104/EU (Damages Directive).

Time-barring arguments have been put forward, and legal debates on limitation periods raised, by Defendants in thousands of actions throughout Europe. Most of these claims still relate to infringements that occurred prior to the Damages Directive. Not only has the CJEU had several opportunities to clarify the impact of EU Law (primary law and Directive) on limitation periods in these types of claims, but it has had a strong motivation to do so in a way that creates conditions amenable to putting an end to legal (not factual) disputes around these issues in national proceedings, for the benefit of legal certainty, uniform application of EU Law, and peace and efficiency of judicial systems throughout the EU.

B. Law applicable to limitation periods

Art. 101 and 102 TFEU have direct horizontal effect and grant injured parties a right to damages. The conditions (requirements) of this right are governed by EU Law.[1]

The exercise of the right to damages, including rules on limitation periods, is subject to national rules, within the limits imposed by primary EU Law (principles

1 See, e.g.: ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019, ECLI:ECLI:EU:C:2019:263, paras. 38–40; Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 58; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 38; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 53; Case C-253/23, *ASG 2*, judgement of 28 January 2025, ECLI:EU:C:2025:40, paras. 60–62 and 64.

of equivalence and effectiveness) and, since 26 December 2014, subject to the harmonization carried out by the Damages Directive.[2]

The determination of the national law applicable to claims for damages based on Art. 101 and 102 TFEU depends on conflict of law rules. Under Art. 6 para. 3 of the Rome II Regulation (Regulation (EC) 864/2007), the limitation period shall be governed by:

a) the law of the Member State whose market was affected; or
b) if more than one MS' market was (or is likely to be) affected, the law of the jurisdiction of the seat of the Defendant(s) where the action is brought, if the claimant so chooses and if that MS' market was directly and substantially affected.

Seemingly (subject to clarification by the CJEU), this feature (b) of the Rome II Regulation significantly diminishes the injured persons' and infringing undertakings' legal certainty about when the limitation period has expired.

The results can be rather counterintuitive. A Spanish person injured by an EU-wide infringement whose right to damages is time-barred if the follow-on claim is filed in Spain (e.g., because it had become time-barred still under the old 1 year limitation period rule),[3] will have a non-time-barred right to damages if the claim is filed in a Member State (where one of the Defendants is based) that had a longer limitation period.

In other words, one's right to damages will be time-barred or not depending on where you (legitimately) file your claim.

This is hardly conducive to clarity and predictability.

This also means, namely in what concerns the limitation period, that EU (Private International) Law is – seemingly – more protective of the effectiveness of the right to claim damages when it comes to some infringements than others (e.g., higher degree of protection for an EU-wide infringement with an anchor defendant available in a jurisdiction with longer limitation period).

Art. 6 para. 3 Rome II creates the potential for the setting by national legislators of more permissive limitation period rules for antitrust (e.g., longer than 5 years, or interruption instead of suspension), or for more permissive interpretations by national courts, to render the jurisdiction more attractive to forum shoppers.[4]

2 Opinion AG *Geelhoed*, Case C-295/04 etc., *Manfredi*, ECLI:EU:C:2006:67, para. 61; Case C-295/04 etc., *Manfredi*, judgment of 13 July 2006, ECLI:EU:C:2006:461, para. 77; Case C-637/17, *Cogeco*, judgment of 28 March 2019, ECLI:EU:C:2019:263, paras. 42–45; Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 50; Case C-605/21, Heureka, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 51; Case C-253/23, *ASG 2*, judgement of 28 January 2025, ECLI:EU:C:2025:40, para. 71; Case C-21/24 Nissan Iberia ECLI:EU:C:2025:659, para. 48.

3 Setting aside for now discussions on whether such a limitation period would have been compatible with the principle of effectiveness.

4 Arguing for the avoidance of forum shopping as a factor to consider when interpreting EU law applicable to antitrust private enforcement, see Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, para. 61.

Given the broad scope of liability of legal persons within the undertaking (resulting from *Skanska* and *Sumal*),[5] time-barring rules and their interpretation by national courts may become a significant concern for multinationals when designing their corporate structure and deciding in which countries to establish subsidiaries with certain economic activities.

In the Netherlands, Art. 6 para. 3 Rome II has already been applied in various large cartel cases where injured persons from various Member States were bundled in the same action against several Defendants (one of which headquartered in the Netherlands). Rather than assessing whether each person's right was time-barred according to their own law, the Dutch courts simply applied Dutch law to every claimant.[6]

The CJEU may soon have a chance to clarify this issue in a referral.[7]

The potential practical impact of this issue has been significantly reduced by the MS options in the transposition of the Directive's rules on time-barring, as well as by the CJEU case-law on what was already required by the principle of effectiveness. Nonetheless, the problem remains and merits a legislative response, ideally taking the shape of an amendment to Rome II that promotes legal certainty and removes incentive for forum shopping. It would, however, be difficult to justify the need for a different rule specifically for antitrust private enforcement, when the same problem arises in any other tort involving various EU juridictions.

C. New regime of the Damages Directive

Under Art. 10 and 18 para. 1 of the Damages Directive, national limitation periods for infringements of Art. 101 and 102 TFEU:

1) shall not begin to run before the infringement has ceased;
2) shall not begin to run before the claimant knows, or can reasonably be expected to know, the information necessary to exercise the right to damages, specifically:
    a) the behaviour in question;
    b) that it is an infringement of Art. 101 / 102 TFEU;
    c) that it caused harm to it;
    d) the identity of the infringer;
3) must allow minimum 5 years after *dies a quo*;

5 ECJ, Case C-724/17, *Skanska*, judgment of 14 March 2019, ECLI:EU:C:2019:204; Case C-882/19, *Sumal*, judgment of 12 November 2021, ECLI:EU:C:2021:800.

6 See, e.g.: Amsterdam District Court, judgment of 27 July 2022, Retail Cartel Damage Claims, S.A. et al v DAF Trucks et al (C/13/639718 / HA ZA 17-1255 etc.).

7 Dutch Supreme Court, order of 21 March 2025, *Truck Cartel Recovery Foundation et al v CNH Industrial NV et al* (23/04362), ECLI:NL:HR:2025:414. For a view from a different legal order, see: Merricks v Mastercard [2024] EWCA Civ 759.

4) must be suspended or interrupted (MS can choose which) during public enforcement investigations of the infringement in question, until at least 1 year after final decision or investigation is otherwise terminated; and
5) must be suspended during consensual dispute resolution procedures (for parties involved in them).

The first requirement was not present in most Member States. It significantly pushes back the *dies a quo* for lengthy antitrust infringements[8] (especially because claimants can add stand-alone claims alongside follow-on claims, e,g,, alleging that the infringement or its effects continued beyond the moment identified in the public enforcement decision).[9] It renders the existence of a single continuous infringement very impactful. It also means actions concerning ongoing infringements are always filed before the *dies a quo*.

The second requirement also implied changing classic tort perspectives in some Member States. A particularly impactful novel aspect was the requirement of "legal", not merely "factual" knowledge.

The third requirement led to a broad harmonization of the time-barring deadline.

The fourth requirement means the suspension/interruption is only lifted 1 year after, e.g., the: (i) deadline to appeal a (non-appealed) EC/NCA decision; (ii) final judgment confirming the infringement decision; (iii) deadline to appeal a (non-appealed) 1st instance judgment annulling an infringement decision; etc.[10]

D. Ratione temporis scope of Art. 10 Damages Directive

Under Art. 22 of the Damages Directive, its substantive provisions do not apply retroactively, and procedural provisions cannot apply to actions of which a court was seized prior to the adoption of the Directive (26 December 2014). A rather ambiguous and incomplete provision, it led to contradictory choices of legislators transposing the Directive, and to diverging interpretations before the national courts. This expressed itself particularly loudly when it came to the limitation period.

It is up to the CJEU to determine whether a given rule of the Directive is substantive or procedural in nature, for the purposes of Art. 22 (otherwise, the consistent and uniform application of EU Law would be jeopardized).[11]

It is settled case-law that Art. 10 is a substantive provision for the purposes of Art. 22 para. 1 of the Damages Directive. According to the Court, this is so because

8 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, paras. 86–88.
9 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 85 (this was alleged by the claimant in the *Heureka* claim).
10 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 91, 94.
11 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 39–41. Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, paras. 55–63.

the limitation period results in the extinction of the legal action, it affects the enforceability of a subjective right before the courts.[12]

The CJEU has not yet clarified whether Art. 18 para. 1 (suspension during, e.g., mediation) is substantive or procedural.

The Directive's new rules on limitation periods – at least Art. 10 – must not apply retroactively.[13] The CJEU's interpretation of retroactivity was neither maximalist nor minimalist,[14] corresponding to the French transposition's option.

The Court noted that *"in principle, a new rule of law applies from the entry into force of the act introducing it. While it does not apply to legal situations that have arisen and become definitive under the old law, it applies to the future effects of a situation which arose under the old rule, as well as to new legal situations"*.[15] And substantive rules of the Directive apply to legal situations *"acquises"* (consolidated) after the transposition deadline, even if the situation arose under the old rule, as long as it continued to produce effects after that deadline.[16]

Thus, the temporal applicability of Art. 10 depends on when the situation at issue in the action for damages arose and when it produced (or continued to produce) effects (before or after the transposition deadline).[17]

In the case of rules on limitation periods (given their features, nature and arrangements regarding their operation, in this specific context), the "situation at issue" is

12 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 36, 43–47 and 79; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 63; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 47; Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, paras. 64–67. Opinion AG *Kokott*, Case C-637/17, *Cogeco*, ECLI:EU:C:2019:32, para. 61. The same qualification had already been affirmed by the CAT in *Deutsche Bahn AG et al v MasterCard et al* (1240/5/7/15) and in *Peugeot Citroën Automobiles UK LTD et al v Pilkington Group Limited et al* (1244/5/7/15).

13 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 36; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 47; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 44.

14 AG *Rantos* argued for a minimalist approach, siding with the reasoning of infringing undertakings that time-barring rules, as substantive provisions, should not apply to infringements that happened prior before the Directive entered into force – Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, para. 69.

15 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 32; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 55.

16 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 33–34; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 56–57.

17 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 48 and 73–75; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 64. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 49 and 87–88; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 46 and 79–80. Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 17.

the right to (still) claim damages. Therefore, to assess the applicability of Art. 10, we must determine when the limitation period began to run and if it elapsed prior to the transposition deadline.[18]

There is no real (or ordinary) retroactivity in applying new time-barring rules for the future, if the situation arose prior to the transposition deadline but continued to produce effects thereafter.[19]

The new rules do not apply if the right to damages became time-barred prior to the transposition deadline, under the old rules.[20] This is true as long as these were compatible with EU primary law, particularly the principle of effectiveness, or if the right would have been time-barred even in an interpretation compatible with EU Law. There are no *zombie* actions: rights do not come back to life after they (lawfully) died.

Art. 10 of the Damages Directive applies if the right to damages arose from an infringement (including a single and continuous infringement) which:

a) started and ended before the transposition deadline;
b) started before and ended after the transposition deadline;

if, in the cases of (a) and (b):

(i) the action for damages was filed before the right to damages expired (or the limitation period was suspended / interrupted in some other way);
(ii) the limitation period under the applicable old rules (compatible with EU Law) did not expire prior to the transposition deadline;

18 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 49; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 65. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 50 and 87–88. Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 47 and 79–80.

19 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 48, 73–75 and 79; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 64. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 49. See also: Case C-334/07 P, *Freistaat Sachsen*, judgment of 11 December 2008, ECLI:EU:C:2008:709, paras. 43–44; Case 212/80 etc., *Salumi*, judgment of 12 November 1981, ECLI:EU:C:1981:270, para. 9; Case C-72/12, *Gemeinde Altrip*, judgment of 7 November 2013, ECLI:EU:C:2013:712, para. 22; Case C-428/08, *Monsanto Technology*, judgment of 6 July 2010, ECLI:EU:C:2010:402, para. 66; Case C-266/09, *Stichting Natuur*, judgment of 16 December 2010, ECLI:EU:C:2010:779, para. 32; Case T-584/08, *Cantiere navale De Poli*, judgment of 3 February 2011, ECLI:EU:T:2011:26, para. 35; Case T-92/11, *RENV Jorgen Andersen*, judgment of 20 March 2013, ECLI:EU:T:2013:143, para. 36.

20 But see section B., on the choice of law applicable to the determination of the limitation period. The "old rules" will not always be the ones of the Member State of the injured person. In some cases, they will depend on which the jurisdiction the action is filed in.

or

c) started after the transposition deadline.[21]

Thus, when it comes to follow-on actions to the trucks cartel, the Euro interest rate derivatives cartel, the Google Shopping abuse of dominance and the Spanish car cartel, the CJEU found that the 5 years limitation period applied (from its entry into force), to the extent that, when the transposition of the Directive came into force in the respective Member State, the right to damages (under old rules) had not yet expired.[22]

As I see it, these case-law clarifications apply to Art. 10 as a whole. This was confirmed by the CJEU in Nissan Iberia, when it affirmed the temporal applicability of Art. 10 as a whole.[23]

There is nothing in the Court's reasoning (*ratione decidendi*) that allows differentiating the *ratione temporis* scope of clause 3 and of the other clauses of Art. 10.[24] All of the requirements paras. 1 to 4, mentioned in the previous section, apply when Art. 10 is applicable. If the right is not yet time-barred when the transposition dead-

21 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 79; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 87–88; Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 78; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 79–80. The Court arrived at the same outcome which it had already affirmed in other areas of EU Law – see, e.g., Case C-278/07 etc., *Schlacht*, judgment of 21 March 2009, ECLI:EU:C:2009:38, paras. 30–31; Case C-255/00, *Grundig Italiana,* judgment of 24 September 2002, ECLI:EU:C:2002:525, paras. 37–40; Case T-375/05, *Le Canne*, judgment of 11 December 2008, ECLI:EU:T:2008:441, paras. 63 and 68; and Case T-50/06, *RENV II etc. Ireland v Commission*, judgment of 20 May 2016, ECLI:EU:T:2016:227, paras. 172–173. In the field of consumer protection (collective redress), in an example of EU legislation tilting more to the side of protecting infringing undertakings than injured parties, in stark contrast with CJEU case law, Directive (EU) 2020/1828 (Representative Actions Directive, "RAD") adopted a different drafting from the Damages Directive, setting out a special *ratione temporis* scope for its limitation period rules. Under Art. 22 para. 3 (see recital 66), the new time-barring rules only apply to infringements that occurred on or after the Directive's deadline for transposition (25 June 2023). National choices may be more protective than this. This choice of the EU legislator is especially enlightening and revealing (policy and motivation-wise), when one considers that what is at stake is not the duration of the limitation period, but a right to suspend or interrupt it, for the future.

22 Several trucks cartel follow-on actions had, by then, been deemed time-barred in Spain, on the basis of a finding that the 5 years limitation period did not apply – see, e.g., *Sousa Ferrero/Marcos*, in: Rodger/Sousa Ferrero/Marcos (eds.).

23 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 80.

24 In the cases that came before the ECJ so far, it has been unnecessary to discuss the *ratione temporis* scope of the other clauses of Art. 10 of the Damages Directive (other than clause 3), because the actions in question were filed before 5 years elapsed since the publication of the EC Decision.

line expires, then the 5-years deadline kicks in (deadline is extended),[25] as do the other rules as well.

Requirements (1) and (2) concern the *dies a quo* and, thus, are no longer relevant if the limitation period had already started to run.

Even then, requirement (4) remains relevant: whatever is left of the limitation period, extended to 5 years, must be suspended / interrupted during public enforcement investigations, and until at least one year after a final decision. That being said, *Heureka* (see below) made it clear that this specific *ratione temporis* discussion is sterile, because the principle of effectiveness already imposed a rule identical to requirement (4).

So far, this section has discussed the applicability of Art. 10 of the Damages Directive. However, Directives' provisions do not have direct horizontal effect.[26] So the time-barring of an injured person's right to claim damages from the infringer, to the extent that the claim is not against the State (*lato sensu*), is dependent on the transposition of the Directive in the respective Member State.

The Damages Directive was transposed past its deadline in several Member States. And the *ratione temporis* scope rule of some national transposition laws, specifically in what concerns limitation periods, may not allow an interpretation in accordance with Art. 22 of the Damages Directive, as clarified by the CJEU. Therefore, in theory, courts may be confronted with cases in which the right to damages would not have been time-barred if the Directive had been duly transposed in a timely manner.

When discussing private enforcement limitation periods, the CJEU has repeatedly reminded national courts that, after the transposition deadline, they must interpret the old national rules in conformity with the Directive, but also with EU primary law. It is for the national court "*to interpret the national provisions, so far as possible, in the light of EU law and, in particular, the wording and purpose of Article 101 TFEU, without, however, interpreting those national provisions contra legem*".[27]

25 In other contexts, the Court concluded that the limitation period could also be reduced and the new rule would apply immediately for the future, but in this case transitional provisions were necessary to ensure that persons have sufficient time, after the change of the deadline, to exercise their right – see, e.g., Case C-62/00, *Marks & Spencer*, judgment of 28 September 2002, ECLI:EU:C:2002:435, paras. 37–40; Case C-255/00, *Grundig Italiana,* judgment of 24 September 2002, ECLI:EU:C:2002:525, paras. 37–40. See also Case C-228/96, *Aprile*, judgment of 17 November 1998, ECLI:EU:C:1998:544; and Case C-343/96, *Dilexport*, judgment of 9 February 1999, ECLI:EU:C:1999:59.

26 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 76; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 70; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 92.

27 ECJ, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2022:494, para. 52 (and para. 77); Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 71; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 48 and 93. Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 45.

In such cases, the national court must first assess whether the national time-barring rules prior to the transposition of the Damages Directive allow for an interpretation that achieves the result envisaged by Art. 10 of the Directive. If it does, it is required by EU Law to interpret the provision in that way, even if this runs counter to settled national case-law on the interpretation of that provision.[28]

Only if this is not possible is the national court required to check whether the national rules in question comply with the principle of effectiveness (see section E.).

E. Introduction to the restrictions imposed by the principle of effectiveness (guiding principles)

As noted above, both prior to and after the transposition deadline of the Damages Directive, national rules on limitation periods for the right to damages from infringements of Art. 101 and 102 TFEU are subject to the limits deriving from the principles of equivalence and effectiveness of EU Law.[29]

In other words, whether the Directive is applicable, national rules are always subject to the limits described in the present section. If the Directive is applicable, they will be subject, simultaneously, to those described in section III.

This section discusses the case law on the consequences arising from the principle of effectiveness. However, this is not always distinguishable from case law on the interpretation of Art. 10 of the Directive. The Court has discussed cases in which the Directive already applied. Given – as will be seen – the identity of most of the obligations for limitation periods arising from the Directive and from the principle of effectiveness, clarifications provided for one likely apply to both, or were provided by the Court already thinking of both legal sources. This was best evidenced in Nissan Iberia.[30]

Thus, this section brings together case law clarifications and open-ended questions, most of which apply both to the principle of effectiveness and to Art. 10 of the Damages Directive.

When the principle of effectiveness of EU Law is infringed, the national rule must be set aside, due to the primacy of EU Law. For example, if the national rule sets a *dies a quo* which breaches that principle, the national court must use as *dies a quo* the first moment in which, according to the principle of effectiveness, the limitation period could have started to run.[31] In an example provided by the Court: *"it is by disregarding the elements of those rules on limitation which are*

28 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 81.

29 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 88, 90 and 94. Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 95. Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 37. See also EFTA Court, Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018.

30 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 81.

31 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 72.

incompatible with Article 102 TFEU and the principle of effectiveness that it is necessary [for the national court] *to examine whether, on the date the time limit for transposing Directive 2014/104 expired, namely 27 December 2016, the limitation period laid down by national law, applicable to the situation at issue in the main proceedings until that date, had expired"*.[32]

The principle of effectiveness requires that the rules on limitation periods applicable to actions for safeguarding rights which individuals derive from the direct effect of EU law not make it practically impossible or excessively difficult to exercise rights to damages conferred by Art. 101 and 102 TFEU.[33]

The case-law provides us with general guidelines for interpretation of antitrust limitation period rules.

The aim of the limitation period is, *"inter alia, first, of ensuring protection of the rights of the injured party, who must have sufficient time in which to gather the appropriate information with a view to a possible action, and, second, of preventing the injured party from being able to delay indefinitely the exercise of his or her right to damages to the detriment of the person responsible for the harm"*.[34] Limitations periods thus *"thus definitively protect both the injured party and the party responsible for the harm"*.[35]

The also means that, from a legal certainty perspective, limitation periods are meant to protect infringers from abusive delayed enforcement by injured persons, not from situations of delayed enforcement created by the infringer itself (principle of *estoppel* or *venire contra factum proprium*). Accordingly, for example, if an infringer decides to appeal the public enforcement decision, it cannot rely on legal certainty to exclude the suspension of the limitation period.

In addition, when interpreting time-barring rules and assessing national rules' compatibility with the principle of effectiveness, one must take into account:[36]

(i) *"all elements"* of the applicable national limitation period regime[37] (no rule should be viewed in isolation);
(ii) "the *specificities of competition law cases and in particular of the fact that the bringing of actions for damages on account of infringements of EU competition law requires, in principle, a complex factual and economic analysis"* (general

32 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 82.
33 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 50.
34 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 45. Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 55.
35 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 55.
36 For a similar approach by the EFTA Court, see Case E-10-/17, *Nye Kystlink AS*, judgment of 17 September 2018, e.g. paras. 111–113 and 117–118.
37 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019 ECLI:EU:C:2019:263, paras. 45 and 48. Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, para. 101.

rules for time-barring of torts will tend not to be well suited to antitrust claims),[38] and that such cases are *"characterised, in principle, by information asymmetry to the detriment of the injured party"*;[39]

(iii) that private enforcement of EU Competition Law is, like public enforcement, *"an integral part of the system for enforcement of those rules, which are intended to punish anticompetitive behaviour on the part of undertakings and to deter them from engaging in such behaviour"*.[40]

This requires adapting the limitation period rules (the "legislation laying down the date from which the limitation period starts to run, the duration and the rules for suspension or interruption of that period") "to the specificities of competition law and the objectives of the implementation of the rules of that law by the persons concerned, so as not to undermine completely the full effectiveness" of Art. 101 and 102 TFEU.[41]

As private enforcement is viewed by both the EU legislator and the CJEU as a complement to public enforcement and an important tool in the pursuit of the EU's competition policy objectives,[42] the struggle to make sure that the exercise of the right to damages for infringements of Art. 101 and 102 TFEU is effective (including in what concerns time-barring) must also be understood as part of the broader fight to empower private subjects to be proactive agents of EU Law and policy, and to

38 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019 ECLI:EU:C:2019:263, para. 46; Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 54; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 34; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 56; Case C-253/23, *ASG 2*, judgement of 28 January 2025, ECLI:EU:C:2025:40, para. 74; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 49; Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 39–40.

39 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 55; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 35. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 57 (see also para. 60). Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 40 and 60.

40 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 61. Case C-882/19, *Sumal*, judgment of 21 November 2021, ECLI:EU:C:2021:800, para. 37.

41 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019 ECLI:EU:C:2019:263, para. 47; Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 53; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 33; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 52. Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 49.

42 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019 ECLI:EU:C:2019:263, para. 41. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 54 and 61. Case C-253/23, *ASG 2*, judgement of 28 January 2025, ECLI:EU:C:2025:40, para. 63.

create deterrence. The Court has used this as part of the justification for an interpretation which expanded the limitation period.[43]

Because private enforcement claims are hampered by asymmetry of information and by the absence of powers of authority, the CJEU distinguished Regulation 1/2003's limitation period rule for public enforcement from the solutions required by the principle of effectiveness for limitation periods in private enforcement.[44]

F. What is imposed by the principle of effectiveness

The case-law tells us that Art. 10 is neither a full codification, nor a provision limited to codifying the rules which already derived from the principle of effectiveness of EU Law.

The assessment of the principle of effectiveness is indissociable from the implications of the fundamental right to effective judicial protection, under Art. 47 of the Charter of Fundamental Rights.[45]

I. What is not imposed

In short, of the requirements of Art. 10 of the Damages Directive described in section III, only the following did not already derive from primary EU Law:

a) the third requirement: EU primary Law does not require Member States to set a specific 5-years limitation period, but it does require them to set a period which is not so short as to render the exercise of the right too difficult (seen in combination with the rest of the time-barring regime);[46] and
b) part of the fourth requirement: EU primary law requires suspension/interruption of limitation period during public enforcement investigations, but not until one year after the decision is final.

The Court has not yet addressed if EU primary law imposes the fifth requirement (suspension during mediation).

43 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 63.

44 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 55–57; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 36.

45 ECJ, Case C-253/23, *ASG 2*, judgement of 28 January 2025, ECLI:EU:C:2025:40, paras. 65 and 75. Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 36.

46 As case-law from other areas of EU Law shows, a 3-year limitation period, by itself, does not infringe the principle of effectiveness – Case C-228/96, *Aprile*, judgment of 17 November 1998, ECLI:EU:C:1998:544, para. 28; Case C-343/96, *Dilexport*, judgment of 9 February 1999, ECLI:EU:C:1999:59, paras. 41–42. And limitation periods which are too long may also be incompatible with EU Law – see: Case C-201/10, *Ze Fu Fleischhandel*, judgment of 5 May 2011, ECLI:EU:C:2011:282, paras. 43–47; Case C-465/10, *CCII*, judgment of 21 December 2011, ECLI:EU:C:2011:867, paras. 65–66; Case C-341/13, *Cruz & Companhia*, judgment of 17 September 2014, ECLI:EU:C:2014:2230.

II. Dies a quo not before infringement ceases (objective element)

Under EU primary law – Art. 101 and 102, together with the principle of effectiveness –, the limitation period of the right to claim damages for antitrust infringements cannot begin to run before the infringement has ceased, even if the injured party knew all essential information before then.[47]

Regardless of whether one characterizes it as a "single and continuous" infringement (this expression is typically reserved for Art. 101),[48] an abuse of dominance declared to have existed continuously over a given period only ends, and the *dies a quo* only occurs, when the abuse is terminated.[49] In the case of continuous infringements – e.g. made up of multiple sales –, allowing the *"limitation period to be divided up into several successive dies a quo"* can cause *"the limitation periods to expire for a certain part of the harm caused by the infringement concerned"*.[50]

A similar rule applies to the limitation period for antitrust fines by the European Commission. It would be counter-sensical for a private injured party to be in a less favourable position than the Commission in this regard, especially given its absence of powers of authority.[51]

Only after the infringement is over can the right to full compensation be effectively exercised, as only then can the injured party *"identify and prove its existence, its scope and its duration, the extent of the harm caused by the infringement and the causal link between that harm and that infringement"*. Quantifying harm for

47 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 56–57 and 61; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 66; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 55, 78–79, 86 and 89. Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 56. Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, paras. 87 et ss., and para. 117 (*"it would be cynical to enforce a limitation period as against an injured party whilst the infringement is still ongoing"*). Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 41. The Court had already shown concern with the likeliness of the principle of effectiveness being infringed in the case of *"continuous or repeated infringements"*, and with the possibility of the limitation period expiring *"even before the infringement is brought to an end"* (Case C-295/04 etc., *Manfredi*, judgment of 13 July 2006, ECLI:EU:C:2006:461, para. 79). For a similar approach by the EFTA Court, see Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, para. 114.

48 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 94; Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, paras. 90–91.

49 For an example of the case-law approach to a continuous infringement, outside the realm of antitrust, see Case C-279/05, *Vonk Dairy Products*, judgment of 11 January 2007, ECLI:EU:C:2007:18, para. 41.

50 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 63 (also para. 94).

51 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 122.

ongoing infringements would require gradually increasing the damages sought and make it practically impossible or excessively difficult to achieve full compensation.[52]

This setting of the *dies a quo* contributes to the "*deterrent effect*", as it can "*lead the perpetrator of that infringement to bring that infringement to an end sooner*".[53]

As noted by AG Kokott, if it were possible for infringers to show knowledge by the claimant of the essential information prior to the infringement ending, this could "*cause injured parties to hesitate to report an infringement to the Commission or to a competition authority and thus impair the effective enforcement of competition law*".[54]

An infringement may end (and the *dies a quo* may start) only sometime after the Decision declaring it is adopted.[55]

III. Dies a quo not before claimant knows/should know necessary information (subjective element)

1. Basic rules

Due to the principle of effectiveness, the limitation period cannot begin to run before the injured person knows, or can reasonably be expected to know, the information necessary to exercise the right to damages.[56] This refers, specifically, to the following information:

52 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 58–60. Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, paras. 113–114.

53 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 63. See also: Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 118.

54 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 117. This was exactly what happened in the Portuguese case that led to the Cogeco referral, where the claim was ultimately deem time-barred because the injured undertaking had submitted a complaint to the NCA (Lisbon Appeal Court, *Cogeco v Sport TV*, judgment of 5 November 2020 (5754/15.7T8LSB)).

55 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 84–85 (the infringement had to end, per the Decision, 90 days after its adoption).

56 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019 ECLI:EU:C:2019:263, para. 50; Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 56–57; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 36–37 and 66; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 55, 64–65, 89 and 94. Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 56 and 59. Opinion AG *Medina*, Case C-21/24, Nissan Iberia, ECLI:EU:C:2025:248, paras. 41, 50 and 61.

a) the existence of the behaviour in question;[57]
b) that it is an infringement of Art. 101 / 102 TFEU;[58]
c) that it caused harm to him/her/it;[59] and
d) the identity of the infringer.[60]

Perhaps not wanting to presume to foresee all possible scenarios, the Court seemed to leave space for the possibility that, at least in some cases, knowledge of other aspects might be required by the injured party before it could be able to bring an action for damages (and the limitation period could start to run).[61]

2. Knowledge of existence of infringement

Requiring knowledge of the existence of an infringement was revolutionary in various Member States, where the general rules applicable to torts only require knowledge of the facts (the behaviour in question), but do not require "legal" knowledge (knowing that a legal provision was infringed). Some antitrust private enforcement precedents had emphasized that, under national law, the *dies a quo* began to run

57 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 60–61; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 40–41; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 64–65, 89 and 94; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 58–59; Opinion AG *Medina*, Case C-21/24, *Nissan Iberia,* ECLI:EU:C:2025:248, paras. 51 and 61.

58 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 60–61; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 40–41; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 64-65, 89 and 94; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 58–59; Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 51 and 61.

59 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 60–61; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 40–41; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 64–65, 89 and 94; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 58-59; Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 51 and 61.

60 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019, ECLI:EU:C:2019:263, para. 50; Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 59 and 61; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 39 and 41; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 64–65, 89 and 94; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 58–59; Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 51 and 61.

61 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 60 (saying that those elements are "*among the necessary elements*"). Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 58 (those elements "*form part of that information*").

without the need to show awareness (or reasonable requirement of awareness) that the behaviour violated Art. 101 or 102 TFEU.[62]

Such a national rule may make sense for the right to damages arising from a car accident. But to impose on a person injured by an anticompetitive behaviour the duty to act, without checking whether that person was (or it was reasonable for it to be) aware that the behaviour infringed Art. 101 or 102 TFEU, is to ignore the particularly complex factual and economic analysis required to identify an infringement of competition law, as well as the information asymmetry underlying such determinations.

This discussion becomes relevant only when the behaviour itself is not secret.[63] If the injured person does not know about the existence of the behaviour, it can also not know that there was an illegal behaviour. Thus, e.g. for secret cartels, these shall be publicly known, usually, only when a competition authority adopts a decision identifying it.

But even if the behaviour itself is known, in the absence of a public enforcement decision (i.e., in stand-alone situations), the injured person is not necessarily aware that it is illegal.

For example, in order to determine whether an undertaking is practicing discriminatory prices prohibited by Art. 102 TFEU, an injured person needs to know, at least:

(i) that the practice in question had an effect on trade between Member States;
(ii) that the undertaking in question has a dominant position, which implies being relatively sure of a market definition, and being aware of the undertakings' market share in the market thus defined, as well as of all factors with a potential impact on the restriction of market power throughout the relevant period (even with high market shares, there may be sensible reasons for why the undertaking does not have a dominant position);
(iii) the prices (and other conditions) that are being practiced to it and to other clients;

62 See, e.g., Lisbon Appeal Court, *Onitelecom v PT*, judgment of 31 October 2013 (2271/11.8TVLSB.L1-8).

63 The secrecy of the behaviour depends on the identity of the injured person and the availability of public information about the behaviour to that person. In the case of vertical restrictive agreements, a certain contractual clause may be known between a manufacturer and its distributors, who entered into the contracts in question (which need not necessarily mean that the distributor is aware that the same clause is present in contracts with other distributors), but not be known to the final consumers. An example of this was identified in the *Portuguese Observatório da Concorrência v Sport TV* case. In this consumer representative action, the 1st instance court deemed time-barred one of the class representative's claims, concerning the imposition of pure bundling of sports channels on distributors (and rejected the relevance of a continuous infringement and of suspension during the investigation – Lisbon District Court, order of 17 September 2021, case no. 7074/15.8T8LSB). In its judgment of 23 June 2022 (case no. 7074/15.8T8LSB-C.L1), the Lisbon Appeal Court reversed that ruling, as the consumers were not privy to the content of the upstream distribution agreements.

(iv) whether there is an economic justification for the discrimination, which may require, *inter alia*, knowing the details of the sales under comparison (e.g. different volumes of purchases) and features of the various clients (e.g., history of timely payments or historic favourable terms); and
(v) whether concerns are being effectively pursued based on overriding principles which could lead to setting aside competition law, subject to proportionality.

A competition authority can use its powers of authority to obtain such information and collect evidence thereof. An injured private individual or undertaking cannot. This injured person may suspect that discriminatory prices are being practiced, but it will typically need access to a broad range of confidential information to be able to make that assessment beyond mere suspicions or beliefs.

In another example, looking at damage caused to downstream clients by resale price maintenance clauses in distribution agreements, to know that Art. 101 TFEU was infringed, the indirectly injured person needs to know, at least:

(i) that the practice in question had an effect on trade between Member States;
(ii) the content of the upstream distribution agreements, and that they include a resale price maintenance clause (or clauses whose combined effect is the same);[64]
(iii) how many of these agreements were entered into, when and for how long, and with whom (maybe also similar agreements of other manufacturers), and being relatively sure of a market definition, namely in order to determine whether the practice had a significant impact on the market, i.e. is not *de minimis*;
(iv) that the conditions of a category exemption are not met;
(v) that the conditions of an individual exemption are not met;[65] and
(vi) whether concerns are being effectively pursued based on overriding principles which could lead to setting aside competition law, subject to proportionality.

In short, as the CJEU has noted, there is an inherent special nature, complexity and asymmetry of information, associated to antitrust private enforcement, which must be considered when assessing whether the requirements of the *dies a quo*,

64 In this case, the practice in question would, in principle, be an object restriction. In the case of effects restrictions, even more information and more complex assessment is required.

65 In Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, para. 120, the EFTA Court ruled that it was reasonable to require a party to be aware of their right to damages (and for the *dies a quo* to occur) without the claimant having procured information about the possible grounds of justification of the practice under Art. 53 para. 3 EEA (i.e., individual exemption). It would be a surprising stance to take for Art. 101 para. 3 TFEU, which has direct horizontal effect, because it would imply saying an injured person should be expected to know that a violation of Art. 101 occurred, when no infringement may have occurred at all. If the requirements of 101 para. 3 are met, there is no infringement, regardless of prior declaration. Yes, the burden of proof of 101 para. 3 is on the Defendant, but that doesn't change the fact that, in order to know whether they have a right to damages, an injured person must assess whether the requisites of that provision are met.

including knowledge of the existence of an infringement, comply with the principle of effectiveness.

Identifying an infringement of Art. 101 or 102 TFEU typically requires access to confidential information in possession only of the infringing undertakings and/or third parties, and is ultimately dependent on complex legal and economic assessments. Such investigation and analysis may be so costly, complex and uncertain (without powers given to competition authorities), that it may not be reasonable to require injured persons to carry it out themselves, even in the presence of indicia.

No matter how much access to information an injured person obtains, and how much analysis it carries out, the extreme complexity of competition law infringements means that, in the end, it may still not be entirely clear whether there was an infringement. Most likely, it will still face many arguments from defendants arguing there was no infringement. That being said, this problem is not specific to antitrust. It cannot be necessary to be sure of the existence of the infringement (free from all doubt) for the limitation period to start running.

This point was stressed by AG Kokott, who added: *"knowledge merely of isolated facts or information, which could raise suspicions of an infringement of competition law, cannot be enough to establish the injured party's knowledge of the existence of the infringement. There must be a body of precise and consistent evidence on the basis of which it can be assumed that a diligent party could not reasonably have been unaware that the facts known to it, or which could have been known to it, equated to an infringement of competition law"*.[66]

This ties into the duty of due diligence (or due care). After someone is aware of certain facts, it may become reasonable to require it to seek additional information and to carry out its own assessment to determine whether it has a right to damages (i.e., to investigate).[67]

What constitutes knowledge, and how much diligence is required of any given person, must be assessed on a case-by-case basis. In the words of the EFTA Court: *"the principle of effectiveness must be interpreted as requiring that a national limitation rule entailing a duty of investigation must enable national courts to take into account the individual facts and circumstances of each case"*.[68]

Effectiveness requires one considers, in this assessment, the information and evidence available to the injured party and the special features of competition law, especially in complex cases, as well as the need and possibility for the claimant to *"conduct economic analysis to the extent necessary and sufficient to bring an action with the prospect of a positive outcome"*.[69] Costs, their judicial recoverability, and the impact on the economic rationality of pursuing a claim, are an important consideration in this assessment.

66 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 129.
67 EFTA Court, Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, para. 116.
68 EFTA Court, Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, para. 116.
69 EFTA Court, Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, paras. 117–118.

The England & Wales Court of Appeal has noted: *"the question of whether or not the claimants in this case had reason to investigate and whether they could with reasonable diligence have discovered the relevant concealment requires disclosure and factual evidence to be fairly determined"*.[70]

The EFTA Court stated that the principle of effectiveness prevents national courts from requiring injured persons to obtain more information than that which *"the claimant can reasonably be expected to obtain from readily accessible sources"*.[71] This could exclude information which can only be obtained via requesting economic studies by experts.

The same Court and AG Kokott have argued that the personal characteristics of the claimant (e.g., being a large undertaking or an individual consumer) may be relevant to this assessment.[72]

A similar argument was made about requiring injured persons to carry out own assessments in new markets, less familiar to them and less analysed by competition authorities.[73]

But it is extremely difficult to know where to draw the border, how to delineate an injured person's duty of investigation. In Norwegian law, for example, investigation can only be required if it can uncover the necessary information "without unreasonable difficulty".[74]

The reasonability of an injured person knowing about the existence of the infringement can, arguably, be tested by the arguments used by the defendants against the existence of the infringement (the same reasoning applying to the existence of damage).

Defendants may argue that it is absurd to believe there was an infringement, or that it is manifestly clear that there was no infringement. They may even argue that the claimant was misinformed, or did not have access to sufficient information, and thus arrived at the wrong conclusions. In these scenarios, it is contradictory to argue, simultaneously, that (a) it is clear there was no infringement, but that (b) the claimant should have known that there was an infringement. Or to argue that the claimant knew everything it needed to know to determine the existence of the infringement, but that it doesn't know enough to make this assessment. Parties to litigation cannot have it both ways, alleging something and its opposite depending on what is convenient for a specific point of law.

Differently, if defendants' arguments rely on fine points of debatable issues, subject to complex assessment, this could arguably be seen to fall within a reasonable scope of uncertainty, and should not prevent the limitation period from starting

70 [2020] EWCA Civ 671, *DSG v Mastercard*, paras. 63–71.
71 EFTA Court, Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, para. 118.
72 Idem, para. 70; Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 130.
73 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 130.
74 EFTA Court, Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, paras. 119, 115.

to run. Otherwise, limitation period for antitrust infringements would often never start to run in the absence of a public enforcement decision.

It has sometimes been argued that, if an injured person submits a complaint to a competition authority, this is sufficient evidence that it knew about the existence of the infringement.[75]

The CJEU has not yet addressed this issue. However, it seems correct to worry that this could *"cause injured parties to hesitate to report an infringement to the Commission or to a competition authority and thus impair the effective enforcement of competition law"*.[76] Given that the case-law has taken into account the deterrent effect of private enforcement and the need for it to contribute to the competition policy objectives of the Treaty (as a complement to public enforcement),[77] this aspect may be of concern to the Court.

A case-by-case assessment may also lead to the conclusion that the information the complainant was in possession of was insufficient to establish, to the required degree, the knowledge of the existence of an infringement. For example, upon receiving all the information and evidence in the complainant's possession, a competition authority may feel it is necessary to investigate further and spend years collecting additional information and confidential documents and analysing it. In this scenario, it seems odd to argue that the injured person was already able to establish the existence of an infringement, when the specialized competition agency was not.

That being said, the practical importance of the impact of complaints has now, in part, (probably) died out, given the clarification that the limitation period had to be suspended at least until the conclusion of the public enforcement proceeding.

3. Knowledge of harm (and causality)

It is standard for Member States to require knowledge that harm was caused, before the limitation period can start to run.

The question arises whether the injured party is merely required to know that damage was caused (causality and damage), or if it is also required to know the extent of the damage caused (*quantum*).

The CJEU's case-law is unclear in this regard.

75 This approach led to the right to damages being deemed time-barred, e.g., in the following cases: Lisbon Appeal Court, *Onitelecom v PT*, judgment of 31 October 2013 (2271/11.8TVLSB.L1-8); Lisbon District Court, *Cogeco v Sport TV*, judgment of 2 September 2019 and Lisbon Appeal Court, judgment of 5 November 2020 (5754/15.7T8LSB).

76 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 117.

77 See, e.g.: ECJ, Case C-253/23, *ASG 2*, judgement of 28 January 2025, ECLI:EU:C:2025:40, para. 61. Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 34–35.

In *Volvo & DAF Trucks* and *Nissan Iberia*, it used several expressions that implied a requirement only that (some) harm was caused.[78]

But, in *Heureka*, the Grand Chamber referred to the need to be aware of *"the extent of the harm caused by the infringement"*, in order to *"be effectively able to exercise its right to claim full compensation under Articles 101 and 102 TFEU"*.[79]

The Spanish Supreme Court has also affirmed that the limitation period should only start to run the moment the injured person is able to determine the extent of the damage caused.[80]

On the other hand, in *Heureka*, the CJEU was referring to the extent of the damage in the context of justifying that the *dies a quo* should not occur before the infringement ended, as this would require claim amendments or new claims to deal with ongoing damages. And it subsequently seemed to assume that *"the extent of any harm suffered as a result of that infringement may be established by the injured party on the basis of that finding* [EC Decision declaring the infringement] *and the facts at its disposal"*.[81]

AG Medina interpreted the case-law as not requiring knowledge of extent of harm, at least in the context of follow-on actions: *"the Court has not required that the harm be known to its full extent in order to compensate for the asymmetry of the knowledge of the injured party and that of the infringer. Instead, the Court has relied on another balancing factor, namely the legal consequences which an act of an institution of the European Union produces"*.[82]

More broadly, so far, the Court has seemingly assumed that, if you have knowledge of the infringement, you can reasonably be expected to have knowledge of the harm. I believe that, in many cases, this is manifestly untrue.

That being said, the Court has never been asked to assess this question specifically. And, in all the cases it was called to clarify EU Law so far, it could point to a conclusion of non-time-barring even without being more demanding as to knowledge of harm.

Its finding (for example) that the *dies a quo* in the trucks cartel occurred when the Decision Summary was published in the OJ was not accompanied by reasoning on why, at that date, injured parties were able to understand that the cartel caused

78 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 60–61 (*"existence of harm"* and *"causal link between that harm and that infringement"*; or *"fact that it suffered harm as a result of that infringement"*). Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 58, 82.

79 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 58–60.

80 Spanish Supreme Court, *Centrica v Iberdrola*, judgment of 4 September 2013, ES:TS:2013:4739. Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 66 (*"a parallel should be drawn with cases of personal injury, where such knowledge arises not at the moment when the injury is suffered, but only after the injury has stabilised and the after-effects of the injury have been fully determined"*).

81 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 78.

82 Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 66.

harm to them, much less the extent of that harm. It notably did not carry out any assessment of whether the Decision Summary included the information necessary for potentially injured persons to determine if they were harmed by the cartel.

At the very least, it would seem that the principle of effectiveness requires the content of the published Decision to be assessed also in this light, before it can be used as the trigger for the *dies a quo*.

For example, a cartel settlement decision could be phrased in a way that does not allow identifying who was harmed (e.g., because it describes the cartel as relating to a list of clients, but the list is not provided). This example highlights that it is not enough to know that harm was caused to someone. One must know it caused claim to the specific claimant.

The particular complexity of building counterfactuals and determining harm in antitrust private enforcement cases creates additional difficulties. Here too, as for the infringement, the complexity of quantifying damage means that the *dies a quo* cannot be dependent on absolute certainty about the *quantum* of harm. What falls within the scope of the usual dispute between parties on the extent of *quantum* should not prevent the limitation period from running. But, at least, there must be a reasonable understanding that some harm was caused, based on publicly available information.

Even if a Decision includes sufficient information for a potentially injured person to assess if it was harmed, such an assessment is typically not a simple thing. Very often, carrying out that assessment requires compiling own data, obtaining market (third parties') data, and hiring economists to carry out studies. Only after all this is done will an injured person be in a position to form a reasonably grounded opinion about whether it has a right to damages.

The information required to carry out such an assessment of damage might not be publicly available. In such cases, can the *dies a quo* start to run before the claimant is in possession of the (non-public) information required for that assessment?

It is typically impossible to know if the infringement caused harm without an economic study. Indeed, claimants have failed in actions for damages because they did not produce economic studies. Especially if it was not a cartel (no presumption), can the *dies a quo* start to run before the claimant obtains (or before the time reasonably required to obtain) an economic study concluding that (e.g.) the infringement caused a surcharge?

Furthermore, the cost of obtaining/purchasing the necessary data, and of hiring economists to apply the complex economic methods necessary to determine counterfactuals and surcharges (in accordance with the European Commission's

Notice),[83] might be prohibitively high. In some legal orders, these costs might not be recoverable even in the case of a future successful action for damages.

For example, if concluding that a cartel caused damage requires an economic study that costs hundreds of thousands of EUR, and if that cost is not recoverable – even if the study concludes there was damage and you win a future action for damages –, only a potential claim of several million EUR would make it rational to investigate and obtain such a study.

Carrying out such studies, even if feasible, takes time. It is certainly not on the day the decision is published that a potentially injured party will have in its possession an economic report showing the infringement caused a surcharge. In the case of cartels (as defined in the Directive), one may circumvent this issue thanks to the legal presumption of damage (if it is applicable).

In short, it seems like a substantial over-simplification for the Court to decide that, as a rule, knowledge of the infringement is sufficient to have knowledge that harm was caused.

This is especially true when one considers that, according to defendants' positions in actions for damages, antitrust infringements in the EU hardly ever cause damage.

Trucks cartel members, for example, have argued that the Decision does not allow identifying damage because of the infringement; that their own economic studies show that no surcharge was caused; and that, if there had been a surcharge, it was not passed on to the clients. In the trucks cartel, the harm and passing-on have been the focus of intense debate and have required economic studies to determine if they exist. There are varying positions about whether a presumption that cartels cause damage applies in this case. Several claimants have been found to have failed to prove it. This means that the harm is, by no means, self-evident from the Decision.

EU and national case-law risks schizophrenia in this regard. It may be that, despite the presumption that cartels cause damage, there is insufficient evidence to presume damage just based on the trucks cartel Decision, and that claimants must produce economic reports or they will fail to meet their burden of proof that "some" harm was caused. But, if that is the case, arguably, it cannot at the same time, be found that, as soon as the Decision was published, claimants already knew that some harm was caused to them. Why should claimants be required to establish, without further analysis, a fact that a court is unable to establish without further analysis?

A different discussion is whether, in follow-on actions, it is sufficiently justified to establish a presumption of knowledge that harm was caused upon the publication of the EC Decision Summary, on the grounds that this allows a compromise with

83 *European Commission*, Communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union, OJ C 167/19 of 13 June 2013; Commission Staff Working Document: Practical Guide quantifying harm in actions for damages based on breaches of article 101 or 102 of the Treaty on the Functioning of the European Union, SWD(2013) 205, 11/06/2013.

the need for legal certainty and using an objective, well-defined moment as the *dies a quo*, homogenously throughout the EU. That is a worthwhile discussion. But it would always need to be a refutable presumption. The claimant would have to be entitled to prove that the presumption should not be applied in the specific case (just like the defendant has the right to show knowledge of the infringement at an earlier moment – see section 5. below).

I would argue that, so far, the requirement of knowledge of harm has been the weak link in the case-law reasoning on the *dies a quo*. There is a tendency for courts to focus only on one or two given requisites of when the *dies a quo* starts to run, and to neglect the others. The most often neglected requisite is knowledge of harm.

4. Presumption of knowledge in follow-on actions

For follow-on actions, the Court rejected defendants' arguments that, in general, claimants already have the necessary information on the date of the press release announcing the adoption of the EC Decision, given: (i) the reduced factual and legal information they provide; (ii) that they are not intended to produce legal effects vis-à-vis third parties; (iii) that they are aimed at the press, with no general duty of care on injured persons to monitor such press releases; and (iv) they are not published in all EU official languages.[84]

The case-law then clarified that, for follow-on actions for damages, there is a refutable presumption that the dies a quo occurs when the public enforcement decision becomes binding and (at least a summary thereof) is publicly available. Because the moment the decision becomes binding varies, there are different moments for the dies a quo for follow-on of EC and NCA decisions. The *dies a quo* must be presumed to occur when:

(i) the EC Decision summary is published in the Official Journal in all official languages;
(ii) the NCA Decision or the final judgment confirming it becomes *res judicata* and is officially published.

According to the CJEU, "the view may, in principle, reasonably be taken that the injured party has all the information necessary to enable it to bring an action for

84 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 62 and 67–69. See Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, paras. 11–121. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 68.

damages within a reasonable period" on the date the summary of the EC Decision is published in the Official Journal.[85]

This is so because the identification of an infringement in an EC Decision, under the Masterfoods case-law and Regulation (EC) 1/2003, is binding on the national court deciding a follow-on action as soon as it is adopted, even it is not final. Injured persons can immediately rely upon the EC decision to exercise their right to damages. Thus, at that moment they are, in principle, required to know they have a right to damages.

The Grand Chamber rejected claimants' arguments that even a published EC Decision is not enough for the injured party to know there was an infringement, if that Decision is not final.[86] This was unclear in Volvo & Daf Trucks and Deutsche Bank, since in both cases the EC Decision in question was final by the time its Summary was published.[87]

According to the rejected reasoning, a non-final public enforcement decision merely expresses the authority's opinion, which can still be overturned (for some NCAs, the percentage of annulment of NCA decisions is very high),[88] and the infringer still benefits from a presumption of innocence.[89] Thus, one would be stating that someone should know an infringement of Art. 101 or 102 TFEU existed because and when a decision was published, and then the CJEU or national review court could later declare there was no infringement or change its scope.

The CJEU disagreed. It noted that EC Decisions – like any act of an EU institution – "enjoy, in principle, a presumption of legality and, therefore, produce legal effects as long as they have not been annulled or withdrawn", with Art. 16 para. 1 of

85 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 65–68 and 71–72; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 43 and 67. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 67 and 78. Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 55–56. Prior to *Volvo & DAFTrucks*, the publication of the Summary Decision in the OJ had been the *dies a quo* predominantly chosen by various national courts (see, for Portugal and Spain, *Sousa Ferrero/Marcos*, in: Rodger/Sousa Ferrero/Marcos (eds.).

86 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 78.

87 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 72.

88 See, for Spain, Marcos, 2021. For the Netherlands, see *Outhuijse*. For a broader EU overview, see: *Rodger/Brook/Bernatt/Marcos/Outhuijse*.

89 This argument was used by the Lisbon Appeal Court in a trucks cartel case to justify why the limitation period should only begin to run after the decision became final: "only when a decision imposing a fine becomes res judicata can it be deemed shown, without margin for doubt, that an unlawful practice was carried out by the infringer, who until then benefited from a presumption of innocence (…). As noted in popular wisdom (…), all that glitters is not gold, and in these times of special effects and deep fakes, you really can have smoke with no fire" – Lisbon Appeal Court, *RNM v Daimler*, judgment of 23 September 2021, (6/19.6YQSTR-C.L1), paras. 33–37 and 42–45. The Appeal Court also warned about the risks of injured parties filing claims and then seeing the decision annulled on appeal, stating that it is neither legal nor ethically demandable for victims to take that risk (paras. 38-39).

Regulation (EC) 1/2003 and the Masterfoods case-law requiring national courts not to take decisions running counter to EC Decisions, even if they are not final.[90] Accordingly, national courts must recognize the full effectiveness of EC Decisions, even if they are being appealed, unless the CJEU stays their enforcement, or if they believe a Decision is invalid and submit a referral to the CJEU raising this issue.[91] An injured party can immediately "rely on the findings made in such a decision in order to substantiate its action for damages".[92]

Differently, under the Damages Directive and the Repsol ruling,[93] a NCA decision only becomes binding (or creates a refutable presumption) in follow-on actions when it is final.[94] To the extent the NCA decision is not yet binding, it is still too difficult to exercise the right to damages,[95] and "the injured party cannot reasonably

90 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 72 and 74; Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 64.

91 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 73 et ss; Opinion AG *Medina*, Case C-21/24, Nissan Iberia, ECLI:EU:C:2025:248, para. 68.

92 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 77. See also Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, paras. 54 and 62.

93 ECJ, C-25/21, *Repsol*, judgment of 20 April 2023, ECLI:EU:C:2023:298.

94 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 64.

95 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 65–66. The Nissan Iberia ruling was a surprise to some who emphasized the moment of publication rather than the moment the decision became binding (see *Brokelmann*, Sorprendentes Conclusiones de la AG Medina en el asunto C-21/24, Nissan Iberia, 9 April 2025, available at: https://mlab-abogados.com/es/sorprendentes-conclusiones-de-la-ag-medina-en-el-asunto-c-21-24-nissan-iberia-helmut-brokelmann/ (4/2/2026); Garcia-Perrote *Martinez*, Once more unto the breach! Setting the starting date for Limitation Periods in Competition Law Damages Claims. A comment to AG Medina's Opinion in the Nissan Iberia Case, Kluwer Competition Law Blog, 11 April 2025, available at: https://legalblogs.wolterskluwer.com/competition-blog/once-more-unto-the-breach-setting-the-starting-date-for-limitation-periods-in-competition-law-damages-claims-a-comment-to-ag-medinas-opinion-in-the-nissan-iberia-case/ (4/2/2026); and *Vidal/Guerra*. To others it was expectable. In *Heureka*, the Grand Chamber had already emphasized the crucial difference between the EU Law rules applicable to EC Decisions and to NCA decisions (Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 74; Opinion AG *Medina*, Case C-21/24, Nissan Iberia, ECLI:EU:C:2025:248, paras. 56, 62–64, 67–69). It was so expectable, indeed, that the Spanish Supreme Court deemed it unnecessary to wait, applying the solution later clarified by the Court of Justice in the Envelopes Cartel case (Spanish Supreme Court, judgment no. 889/2025 of 5 June 2025 in case no. 3699/2022). As noted by AG *Medina*, this solution is the one most favourable to legal certainty and the principle of effectiveness, benefitting both applications and defendants (Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, paras. 77–78 and 83).

be considered to have become aware of the information necessary to bring his or her action for damages on the basis of that decision".[96]

For the presumption to operate, the public enforcement decision or judgment must be "made public in an appropriate manner".[97]

In the case of EC Decisions, this requirement is met by publication of the summary of the Decision in all official languages in the EU's Official Journal.

For a final judgment confirming an NCA Decision, the requirement is met (as was the case in Nissan Iberia) when the judgment has been "officially published", such that it is "freely accessible to the general public" (e.g., on a public case-law database), and the publication must clearly set out the "date of its publication".[98]

The presumptions established in Heureka and Nissan Iberia assume that the scope of the infringement, as described in the EC or NCA Decision, is clear. That may not always be the case. And this should be considered when assessing whether to exclude the presumption. Especially in the case of settlement decisions, the infringement (e.g. the affected products or affected markets) may be described in such a way that a given claimant may not be able to understand, based on the EC Decision summary, if it purchased goods affected by that infringement.

The case-law provides examples of this. Twice already, the CJEU has been asked to interpret the EC Decision in the trucks cartel, to clarify if certain types of special trucks were included in the scope of the infringement. Defendants (addressees of the decision) argued they weren't. And courts did not think the issue was clear, otherwise there would not have been a referral before the CJEU. If the national courts have doubts about whether the EC decision declared an infringement relating to the trucks in question, how can the purchaser of those trucks be reasonably expected to have known that it had a right to damages upon the publication of the EC decision summary?

It is an oversimplification to state that "an injured party can obtain the necessary information gathered by [a competition authority] from the moment its decision is made available".[99] This assumes that all information gathered by a competition authority which was necessary to identify the infringement is included in the public version of its decision. Sometimes, that will not be the case. For example, some of the crucial features of the infringement may have been discovered via leniency

96 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 67. It seems to follow that, if a given Member State's law were to render an NCA decision immediately binding in a follow-on action (even if it is appealed), the dies a quo in that MS would, just as in the case of EC Decisions, be the moment of the official publication of the NCA Decision. This may simply be a theoretical issue, given the harmonization of this issue resulting from the Directive. Article 9 paras. 1 and 2 of the Damages Directive only requires MS to assign legal effects to final NCA Decisions, and it is unclear whether MS can anticipate those legal effects without infringing the Directive.

97 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 74.

98 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 75–78. This reasoning would seem to apply also to the follow-on part of a hybrid claim.

99 Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 62.

applications and thus be confidential (and absolutely protected) in the published decision.[100] Or the settlement negotiations can lead to a brief and unclear description of the infringement.

Nissan Iberia leaves several doubts about when to presume the dies a quo for NCA decisions, including (see also sections F.IX and F.X):

a) For now, let us focus on what absence of right of appeal leads to the type of finality that makes the decision/judgment binding.
   Under the Directive, confusingly, a "final infringement decision" is defined in Art. 2(12) as an absence of possibility of appeal by "ordinary means".[101] It is arguable that this may influence the interpretation of the consequences of the principle of effectiveness as well.[102] In Portugal, for example, constitutional or case-law uniformizing appeals are deemed "extraordinary appeals".
   Is the finding of infringement binding and does the limitation period start to run before those appeals are exhausted? Or is this an EU law concept that may include such appeals, but exclude, e.g., ECHR appeals[103]? Surely what constitute "ordinary means" must be determined uniformly by the CJEU and cannot be dependent on different national definitions (even if it is inevitably subject to varying national legal options on the right to appeal).
   Even if it is a concept of EU Law, the inevitable result of the Directive's definition seems to be that a decision is "final" (binding in follow-on actions), and you are expected to know an infringement existed, when it can still be overturned. Interpretations that delay the finality date work against defendants for limitation periods, but work for them for the binding effects of decisions.[104]
b) Is it enough, for this purpose, to publish a summary of the NCA decision or judgment?
   It may be. This judgment discussed only the publication of the full text of the judgment confirming the NCA decision (this is what occurred in this specific case). But *Heureka* set the *dies a quo* on the publication of the summary of the EC Decision in the Official Journal. It seems arguable that an official publication of a summary of a final NCA decision or judgment (with a level of detail similar to the OJ summaries of EC decisions) could be enough to start the clock. This is not the same as a press release (argument set aside in *Heureka*). But the summary must include the necessary information allowing the claimant to be aware of its right to damages.

100 See the Portuguese NCA Decisions in PRC/2017/10 Insurance Cartel. A cartel was identified splitting the market for insurance to "large companies", without defining the concept or identifying which large companies were targeted, except via a referral to absolutely protected confidential information in a leniency statement.
101 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, paras. 50–51.
102 In a "the door swings both way" approach when reading Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 80.
103 See, e.g., by analogy, ECtHR, No. 52067/10, *Howald Moor and Others v. Switzerland*, judgment of 11 March 2014.
104 *Sousa Ferrero*, in: Rodger/Sousa Ferrero/Marcos (eds.).

c) What if the official publication does not include a date of publication?
The court stated that the date of publication must be indicated in the official publication (probably so there is certainty about the date in which the deadline starts to run).[105] It seemed to believe this condition was met by the Spanish case-law database. Should the limitation period not be presumed to start to run if the decision or judgment was published, but there is no indication of when the publication occurred? In such cases, should the presumption apply only from the moment it is proven that the publication had already occurred?
What about Member States who don't publish NCA decisions or judgments? It would seem that this presumption cannot apply.

d) What if there is no public information on whether there was an appeal or what part of the decision was appealed?
In some Member States, there is no information publicly available when an NCA decision or judgment is appealed (or when it becomes final due to absence of appeal). Other times, there are news of an appeal, but no information about what was challenged in the appeal (e.g., if only the fine was challenged – see section F.IX). Requests of access to documents which would allow making these determinations are likely possible, but also likely subject to obstruction, large delays and, ultimately, discretionary decisions by courts.
In the absence of adequate public information, the claimant might, for example, know the essential information, but not know that the decision is already binding. Without knowledge of this possibility of exercising the right to damages with the infringement already proven, the difficulties identified by the case-law are still present. Thus, the presumption of the *dies a quo* should, in principle, not apply.
Ideally, Member States' NCAs and courts would now revise their practices and increase transparency and public information for these cases, in light of this case-law.

e) What if the binding public enforcement decision is available only in the Member State's language?
In *Nissan Iberia*, the Court was faced with a follow-on action by Spanish claimants based on a Spanish NCA decision. What if the person injured by the cartel had been a citizen and resident of another Member State, and did not speak Spanish?
In *Heureka*, the CJEU seemed to value the fact that EC Decisions are published in *"all the official EU languages"*, which *"guarantees that both natural and legal persons have the opportunity to be aware of it"*.[106]
That being said, given the phrasing of *Nissan Iberia* and the apparent goal of simplification, it would seem that the absence of publication of NCA decisions / national judgments in other EU official languages does not prevent the

105 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 75–78.
106 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 68.

presumption from applying. But it may be an argument, alongside others (for example, the absence of news about the decision in its own Member State), for an injured person to prove that it was not reasonable to expect awareness of the right to damages (i.e., to refute the presumption).

5. Refutability of presumption of knowledge in follow-on

Despite the imperfect phrasing of the final reply to the national court in *Nissan Iberia*, I do not believe, as some have argued,[107] that *Heureka* and *Nissan Iberia* mean that the limitation period in follow-on actions can never start to run before there is a published binding decision or judgment. The reasoning of the case law implies otherwise.

The presumptions established by *Heureka* and *Nissan Iberia* do not change the requirements of the *dies a quo*. The *dies a quo* is when the injured person becomes (or should become) aware of the information necessary to exercise the right to damages. Parties can exclude the presumptions by demonstrating knowledge of the essential elements prior to or only after that moment.

In *Heureka*, the Court clarified that the *dies a quo* presumption – discussed in (iv) – may be refuted by the defendant.[108] Defendants can always try to prove (and bear the burden of proving) that the essential information was or should have been known by a given injured person at an earlier time.[109] Such arguments could arise, for example, when the injured person submitted a complaint to the competition authority, showing it already possessed all the essential information (but consider the suspension / interruption of the limitation period during the investigation).

Although the issue remains to be clarified by the Court, it seems to follow from the reasoning in the case-law that claimants can try to prove that the decision or judgment did not include the essential information, so that the limitation period did not start to run at that moment. This could be the case with settlement decisions, where the content of the decision is negotiated and may omit information crucial to understand who was injured or whether any damage occurred. In a specific example, if the public version of the trucks cartel Decision did not allow purchasers

107 In the opposite sense, see *Barennes/Lelouche*, Nissan Iberia (C-21/24): The Clock for Damages Actions Only Starts Ticking Once the National Competition Authority's Decision is Final, The Thicket, 8 September 2025, available at: https://thethicket.blog/2025/09/08/nissan-iberia-c-21-24-the-clock-for-damages-actions-only-starts-ticking-once-the-national-competition-authoritys-decision-is-final/ (4/2/2026).

108 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 70–71 and 83.

109 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, para. 64; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 44. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 70–71 and 83. Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, para. 57. But see the unfortunate phrasing in Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 67 ("limitation period cannot begin to run before that decision has become final").

of certain trucks to understand if those trucks were caught by the infringement, the *dies a quo* should not start to run before this has been clarified by the CJEU.

The Grand Chamber did not describe the presumption as an absolute rule (an irrefutable presumption). To do so would run counter to the idea that the principle of effectiveness opposes absolute prohibitions and the impossibility of showing special circumstances.[110]

Rather, it set out this presumption as a rule *"in principle"*, about something that *"generally"* occurs.[111] It also stressed that it was *"subject to verification by the referring court"*, *"in the present case"*, whether *"Heureka knew all the information necessary to enable it to bring an action for damages"* on the date the EC Decision summary was published.[112] And it reemphasized that, despite the presumption, *"it is for the referring court to ascertain the exact date on which that infringement ceased"*.[113]

In practice, however, the presumption will be very difficult to set aside, for both parties.

6. Same standard for companies and consumers

The *Volvo & DAF Trucks* judgment[114] implicitly excluded attempts to distinguish between "professional" injured parties (e.g. large undertakings) and "ordinary" injured parties (e.g. consumers), and the trigger of the *dies a quo* or the imposition of a greater duty of due diligence on the first as compared to the second.[115]

This was subsequently confirmed, albeit in an Order, rather than a Judgment. The CJEU Order in *Deutsche Bank* set the *dies a quo* from the publication of the (final) EC Decision in the OJ in a case where the injured parties were individual consumers.[116] It specifically noted that the rules to determine the *dies a quo* should

110 ECJ, Case C-360/09, *Pfleiderer*, judgment of 14 Jun 2011, ECLI:EU:C:2011:389; Case C-536/11, *Donau Chemie*, judgment of 6 June 2013, ECLI:EU:C:2013:366.

111 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 78.

112 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 83.

113 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 86. See also Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, :EU:C:2023:166, para. 67; and Opinion AG *Kokott*, Case C-312/21, *Tráficos Manuel Ferrer*, ECLI:EU:C:2022:712, para. 42.

114 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 62 and 67–69. See Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, paras. 118–121. Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 68.

115 As suggested in Opinion AG *Rantos*, Case C-267/20, *Volvo & DAF Trucks*, ECLI:EU:C:2021:884, paras. 121–123.

116 ECJ, Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 47–49.

be identical for consumers and professionals or undertakings, and that to do otherwise would create legal uncertainty.[117]

This has been partly reaffirmed by the Grand Chamber.[118]

AG Kokott argued that, at least when it comes to national courts assessing the claimant's subjective knowledge in the given case, the difference between "professional consumers" (with legal advisers) and "ordinary consumers" should be taken into account.[119] This seems to be in line with the Court's reasoning. It is one thing to set the same requirements for *dies a quo* and presumption for professional and non-professional injured persons. Quite another is to consider the person's specific characteristics when assessing that person's subjective knowledge. In this perspective, it is not so much that a strict differentiation must always be made between professional and non-professional injured persons, but that the degree of expertise and sophistication of each injured person should be considered (and perhaps certain presumptions can be made based on whether the injured person is or is not a professional).

IV. Limitation period must be suspended/interrupted during public enforcement procedure

The Court's Grand Chamber has now clarified that Art. 101 and 102 TFEU, together with the principle of effectiveness, require the suspension/interruption of the limitation period of the right to damages during investigations by the European Commission, but do not require it until the decision is final (pending appeal).[120]

This requirement of suspension/interruption is independent of, and unaffected by, the claimant's knowledge of the existence of the infringement, because this knowledge only determines the *dies a quo* (see section F. III.), whereas here the Court decides the suspension/interruption, which necessarily occurs after the *dies a quo*. Its reasoning does not have to do only with knowledge, but also with evidence and legal certainty (existence of binding effect of a declaration of infringement).

To arrive at its conclusion, the CJEU noted it *"is generally difficult for that* [injured] *party to adduce evidence of an infringement of Article 101(1) or Article 102 TFEU in the absence of a decision by the Commission or by a national authority"*. So, allowing the limitation period to expire before the adoption of a public enforcement decision *"would render the exercise of its right to seek full compensation exces-*

117 ECJ, Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 50–51.

118 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 68.

119 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 130.

120 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 79–80, 89 and 94 (unfortunately, the operative part of the judgment was closer to the phrasing of the *Cogeco* judgment, not incorporating the new clarifications provided in the body of the judgment). This differed from the position taken by the EFTA Court in Case E-10/17, *Nye Kystlink AS*, judgment of 17 September 2018, para. 119.

sively difficult".[121] Furthermore, the *"suspension or the interruption of the limitation period for the duration of a Commission investigation are, in principle, necessary to enable the injured party, in particular following that investigation, to assess whether an infringement of competition law has been committed, to know its scope and duration, and to rely on that finding in a subsequent action for damages"*.[122]

Nissan Iberia did not explicitly address this issue. It didn't have to. By setting the *dies a quo* at the time of the binding effect of the final NCA decision / confirming judgment and clarifying that Art. 10 of the Damages Directive applies for the future, it didn't need to address suspension prior to the *dies a quo* in that case. By the time of the *dies a quo*, the suspensive rule of Art. 10 was already applicable.

Thus, *Heureka* clarified that the principle of effectiveness requires the effect of interruption / suspension of the limitation period for EC decisions to apply until there is a final decision, and made the discussion unnecessary for most (if not all) NCA decisions which might today serve as a basis for a follow-on action.

The Belgian Constitutional Court had already arrived at the *Heureka* solution, namely taking into account fundamental rights as interpreted by the ECHR.[123]

From a historical perspective, although now clear, doubts remained about this issue following *Cogeco* (see further on this in section F. VIII).

V. Same end result for EC and NCA decisions

Given the *ratione temporis* scope of Art. 10 of the Damages Directive, Art. 10 para. 4 is applicable in follow-on actions when the decision became binding after the transposition deadline[124] (unless, in a given case, the defendant proves earlier knowledge of the essential information by the claimant).

The consequence of *Heureka* and *Nissan Iberia* for such actions (applying the presumption) is that the deadline to file the action for damages is immediately suspended and only starts running one year after the decision is *res judicata*.

Accordingly, despite the *dies a quo* difference (different moment of presumption for EC and NCA decisions), the result is the same for both EC and NCA decisions: the deadline only truly starts running 1 year after publication of binding decision.

VI. Filing before a binding decision

As noted in the previous section, for both EC and NCA decisions, claimants may, as a rule, without fear of time barring, wait until there is a binding decision to use

121 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 62.
122 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 79.
123 Belgian Constitutional Court judgment no. 38/2016 of 10 March 2016.
124 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 91.

in their follow-on claim.[125] This assumes that the issue of the absolute limitation period will be clarified as expected (see section F. VII).

However, in both cases, they also have the right to file the claim before the decision is final and binding upon the national court. And there are reasons to expect that victims, in some cases, will not, in practice, be able or willing to wait.

Claimants will still have the burden of proving the *quantum* of harm. Waiting several years could mean that even less evidence (if any) relating to the relevant period will be available by the time the action for damages is filed. Often, at the very least, actions for pre-filing access or for preservation of evidence will need to be filed. These may not be available in some MS. Even if they are available, pre-filing access tends to be complex and lengthy, requiring significant investment in legal fees. Such investment may be impossible without funding. And funders are very unlikely to invest if the action for damages will only be filed years in the future, and then take several years to resolve.

A similar problem arises in (consumer or SME) representative actions. Here, we may see a "race to file". Qualified entities may not be able to wait until the decision is final if the national regime is "first to file", or if it sets a deadline for other potential representatives to file after a first claim has been submitted. Also, the longer one waits to file the claim, the smaller the opt in or distribution rate will be at the end. With the passage of time, injured consumers die, documents identifying purchases are lost, etc.

Claimants may thus, in some circumstances, feel they need to move ahead and assume the risk of the decision being annulled. They will also assume the risk of the national courts suspending the follow-on proceedings (even if the CJEU affirms that they are already bound by the EC decision, even if it being appealed).

VII. Absolute limitation period

It seems reasonable to say that, based on the requirements of EU Law concerning the *dies a quo*, as clarified by the Court, in the absence of a public enforcement decision, for some antitrust infringements, limitation periods may never start to run.

They won't start to run for secret practices that remain secret, because the behaviour itself is not known.

125 Follow-on actions based on EC Decisions prior to 26 December 2016 are now already quite rare, and will disappear entirely with the passage of time. Thus, in most cases likely to come before national courts, the EC or NCA Decision (or its confirming judgment) was adopted and published when the Damages Directive was applicable. At that moment, the 4th requirement of Art. 10 (see section C) is already applicable ratione temporis. In other words, the limitation period will be suspended from between the transposition of the Directive (or later, if the EC Decision is adopted at a later moment) until one year after a final public enforcement decision. This significantly protects injured persons' right to damages, ensuring they do not become time-barred, even if they prefer to wait for the EC Decision to be final before filing their claim. Their right will be protected by the suspension imposed by the Directive and its transposition.

They won't start to run when the practice is known, but the injured persons do not have sufficient information to assess whether the practice infringes Art. 101 or 102 TFEU.

They won't start to run when the potentially injured person knows about the practice and that it was illegal, but doesn't have sufficient information to assess if it caused harm (e.g., if it led to a surcharge on the market), and it's not possible or not reasonable to require it to collect that information and to carry out the economic analysis necessary to make that assessment.

In light of this, should infringers be liable *ad eternum*?

This problem is sometimes dealt with by the imposition of an absolute limitation period (whose length varies between Member States, e.g. 10 or 20 years).

According to recital 36 of the Damages Directive, "*Member States should be able to maintain or introduce absolute limitation periods that are of general application, provided that the duration of such absolute limitation periods does not render practically impossible or excessively difficult the exercise of the right to full compensation*". While absolute limitation periods are permissible, they must not infringe the principle of effectiveness. If a right could become (absolutely) time-barred before an injured person could reasonably be aware of the essential requisites of the right to damages, this would make it impossible to exercise that right.

So far, the CJEU has not (explicitly) discussed national absolute limitation periods for the right to damages arising from infringements of Art. 101 and 102 TFEU, and how they may be impacted by EU Law. But it has certainly provided hints and laid out principles which seem to point in one direction. For example, the continuous infringements in *Heureka* and *Nissan Iberia* started in 2006, long enough to lead to absolute limitation. Thus, it would have been strange for the Court to affirm the absence of time-barring if it did not believe that its clarifications also applied to the absolute limitation period.

It would be advantageous to clarify that the limits imposed by the principle of effectiveness and the Directive (including that the limitation period cannot start to run before the infringement has ceased or the injured person is aware of the essential information) apply both to the subjective and to the absolute limitation period.[126]

Some authors argue that it already derives from CJEU's case-law that the German absolute limitation period rule is incompatible with EU Competition Law.[127] In a ruling after *Heureka*, a German court determined that the absolute limitation

126 *Mora/Seegers*, The CJEU strengthens cartel victims' rights: a landmark ruling on limitation periods, CDC Blog, 5 September 2025, available at: https://carteldamageclaims.com/de/2025/09/05/the-cjeu-strengthens-cartel-victims-rights-a-landmark-ruling-on-limitation-periods/ (4/2/2026).

127 *Horn*, After Heureka (ECJ, C-605/21) – on the knowledge-independent limitation period for cartel damages claims under German law, available at: https://www.taylorwessing.com/en/insights-and-events/insights/2024/09/after-heureka (4/2/2026).

period only starts to run when the infringement ends.[128] We are likely to soon see a referral from a German court to the CJEU on this topic.

The absolute limitation period will be an issue in many of the private enforcement actions that are being, and will be, discussed by national courts. Indeed, very often, more than 20 years elapse between the beginning of an antitrust infringement and the moment when a claim is filed. Not only because some infringements are particularly lengthy, but also because they tend to be identified only in public enforcement proceedings that last many years (and even more years if the decisions are appealed).

An injured person should not benefit from its own (unreasonable) inaction. Nor should an infringer be left in limbo *ad eternum*, subject to the whim of when the injured person decides to exercise its rights. Thus, a limitation period, and in particular an absolute limitation period, protects the infringer. But infringers do not merit protection if they kept the infringement or associated essential facts hidden from the injured persons (including by making it difficult to investigate and uncover, refusing access to documents, etc.), preventing them from knowing about their rights.

To reward such behaviour with the application of an absolute limitation period would be to incentivize and reward it. As noted above (Section V), limitation periods are meant to protect infringers from abusive delayed enforcement by injured persons, not from situations of delayed enforcement created by the infringer itself (principle of *estoppel*). This is also an important consideration to the extent that *Heureka* has established that rules on limitation periods should be interpreted taking into account what contributes to the "deterrent effect".[129]

This exception is recognized, for example, in English law (section 32 para. 1 lit. b of the Limitation Act 1980) and Scottish law (sections 6 and 11 para. 3 of Prescription and Limitation Act 1973). If the defendant deliberately concealed the infringement from the claimant, the time limit does not start to run until the claimant has discovered the concealment or could have done so with reasonable diligence.[130]

In trucks cartel litigation, claims have been filed more than 20 years later (going back to the start of the infringement), in jurisdictions with a 20-years absolute limitation period. It seems that, generally, courts have recognized the right to damages in such situations, since it was impossible to know about the right to damages prior to the EC Decision.[131]

It seems beyond dispute that national rules on absolute limitation periods are permissible, but subject to the principle of effectiveness.[132]

128 Regional Court of Dortmund, judgment of 19 June 2024 (8 O 34/22 (Kart)).

129 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 63. See also: Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 118.

130 See *Arcadia Group Brands and others v Visa Inc and others* [2015] EWCA Civ 883.

131 See, e.g.: Lisbon Appeal Court decision of 24 May 2021, *Campicarn v Volvo* (5/19.8YQSTR-D.L1).

132 See recital 36 of the Damages Directive.

At least when it comes to continuous infringements, *Heureka* suggests that, if a right were to become (absolutely) time-barred before the injured persons were aware, or reasonably should have been aware, of their right to damages, this would render the exercise of that right impossible or excessively difficult.

Heureka also tells us that only after the infringement is over can the right to full compensation be effectively exercised. If so, an absolute limitation period which starts running before an infringement is over is clearly incompatible with the principle of effectiveness.

But there are many details which need to be clarified. Does the principle of effectiveness prevent the absolute limitation period from starting to run before the *dies a quo*? Can it start to run from the day of the infringement (or when the infringement ceased), as long as its expiry does not happen before the *dies a quo* and the claimant has a reasonable amount of time after the *dies a quo* to file the action for damages? What would a reasonable amount of time be, considering the complexity of these cases and how long it could take to prepare a claim and economic report for filing (especially in jurisdictions that require the claimant to allege all facts and submit all evidence when filing the claim).

Does the effect of suspension/interruption of the limitation period, deriving from the principle of effectiveness and Art. 10 of the Damages Directive, also impact the absolute limitation period? It could be argued that, if the *dies a quo* has already occurred, it's the injured person's choice to wait any further to file the claim.

But this raises serious concerns, namely identified by AG Kokott.[133] If this is the case, injured parties, faced with infringements that started years enough ago that the absolute limitation period is about to expire, wouldn't be able to wait for the EC Decision to become final before filing their claim for damages. They would have to take the chance and file the action for damages while an appeal of the EC Decision is pending, and likely see the outcome of their claim suspended by the national court until the EC Decision is confirmed. Then if the Decision were annulled (e.g., if the Court were to conclude that there was no infringement), there would retroactively be no EC decision on which to base the presumption of the *dies a quo*, but it would be too late: the action was already filed, and the claimant will bear its costs and adverse costs if it is unsuccessful.

According to AG Kokott, national courts must take the risk of the absolute limitation period expiring into account in their decision to suspend such a claim.[134] The language of the Court in *Heureka* subtly suggests it may share this perspective.[135] Especially given the binding effect and presumption of validity of EC Decisions (*Heureka*), if the absolute limitation period runs despite the filing of the claim, it may make it impossible for the claimant to obtain compensation for "old" damage if the national court suspends the action to await the outcome of the appeal.

133 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 62.
134 Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 63.
135 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 80.

That being said, this reasoning seems to assume that the absolute limitation period can run even after the action for damages has been filed. If this is a solution present in the legal orders of some Member States, it seems manifestly contrary to the principle of effectiveness, in the special context of antitrust actions for damages. If the action takes longer than the absolute limitation period (which is not unheard of), it would be impossible for the claimant to be compensated.

Another crucial aspect of this discussion is that some rules on, and interpretations of, the absolute limitation period might infringe fundamental rights. The European Court of Human Rights noted that, in the case of health problems arising from a practice with a very long latency period, where injured persons only become aware that they have been damaged many years later, the Swiss rules on the absolute limitation period would deprive the right to damages of its effectiveness and infringe Art. 6 para. 1 of the European Convention on Human Rights.[136] A parallel reasoning seems applicable to damages antitrust actions.

VIII. Interruption of limitation period by claimant

In Cogeco, the Court declared that "a limitation period (…) such as that at issue in the main proceedings (…) renders the exercise of the right to full compensation practically impossible or excessively difficult".[137] In other words, it affirmed that the applicable Portuguese rules, as described by the national court, infringed the principle of effectiveness.

Courts of some Member States interpreted this ruling as meaning that the limitation period should be suspended during the public enforcement investigation.[138] Other national courts, namely using ECHR jurisprudence, had arrived at a similar position even earlier.[139] This is what would come to be confirmed by the CJEU (see section F. IV).

By contrast, the referring and appeal Portuguese courts concluded that the CJEU had expressed its views based on an erroneous understanding of the Portuguese limitation period regime. In their view, the CJEU had believed that it was impossible, in Portugal, to interrupt or suspend the limitation period during the public

136 ECtHR, No. 52067/10 and 41072/11, *Howald Moor and Others v. Switzerland*, judgment of 11 March 2014.

137 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019 ECLI:EU:C:2019:263, paras. 53 and 55.

138 Amsterdam Appeal Court judgment of 4 February 2020 (ECLI:NL:GHAMS:2020:194), para. 3.5.6, 3.5.9 and 3.6.6; Scottish Outer House Court of Session judgment of 11 November 2020, Glasgow City Council v Volvo et al [2020] CSOH 92, para. 56. See also Portuguese Supreme Court, *RNM v Daimler*, judgment of 8 March 2022, (6/19.6YQSTR-C.L1.S1), para. 23–24: "Imposing on the claimant the duty to file a claim before waiting for the outcome of the [public enforcement] procedure, would be to condemn its claim to failure…)".

139 Belgian Constitutional Court, judgment no. 38/2016 of 10 March 2016.

enforcement investigation.[140] This was not the case, because claimants in Portugal had judicial mechanisms available to do so.[141] Crucially, they believed no further clarifications from the CJEU were required, as the Court had, in their view, sufficiently indicated that, if it was somehow possible to suspend or interrupt, then there was no infringement of the principle of effectiveness. The Portuguese courts applied the national rule, and the claimant's right in this case was deemed time-barred. An outcome which, in light of Heureka and Nissan Iberia, now seems to have been a misinterpretation of the CJEU's clarifications of EU Law.

By clarifying that the limitation period must be suspended during the public enforcement investigation, regardless of possibility of interruption, Heureka has seemingly done away with the relevance of that element discussed by the national court in Cogeco.

This was consolidated in Nissan Iberia, when the Court rejected the relevance of the options for suspension/interruption of limitation period foreseen in Spanish law. In the absence of a legally mandated automatic suspension while NCA decision appeal is pending, the possibilities for injured persons to act themselves to stop or restart the clock (extrajudicial letter, starting mediation, pre-filing request of access to evidence, or filing action for damages and asking for suspension) are insufficient to ensure effectiveness.[142]

This is probably for the best. Trying to determine whether the possibility of interrupting the limitation period would preserve the effectiveness of the right to damages would lead, at the very least, to legal uncertainty and heterogeneity.

The mere abstract possibility of interruption is no guarantee of effectiveness. One would further need to consider, inter alia:

(i) What must be done to interrupt the limitation period, e.g. does a simple communication suffice or must it be done via a court order? If a court order is required, is there discretionary margin or legal uncertainty in its issuance? What if there are problems delivering the letter or court order to the Defendant?

140 Lisbon District Court, *Cogeco v Sport TV,* judgment of 2 September 2019 and Lisbon Appeal Court judgment of 5 November 2020 (5754/15.7T8LSB).

141 In Portugal, limitation periods can be interrupted by filing a request before a court to serve an "autonomous judicial notification" – see Supreme Court case-law uniformizing judgment of 26 March 1998 (97A519). These proceedings have costs under general rules (plus legal fees). There is legal uncertainty on the requirements for the interruption to be successful (e.g., the degree of detail with which the infringement and damage must be described), as well as on the duration of interruption and on whether successive interruptions are allowed, with some case-law suggesting only one interruption is allowed (see Supreme Court judgment of 5 November 2013 (7624/12.1TBMAI.S1)). See, by contrast, the situation in Spain, described in Martí Miravalls 2022: 329-330.

142 Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, paras. 68-73. This seems to mean that, if national law does foresee an automatic suspension while the appeal is pending, the dies a quo can occur on the publication of the NCA decision. But since the clock is stopped until 1 year after the decision becomes final, the practical result is the same.

(ii) How much does it cost to interrupt the limitation period[143]? Not just the sending of the letter or seeking of the court order, but the fees of the lawyers who will surely need to be consulted to ensure the interruption is adequately carried out, and the opportunity cost associated to the gathering of documents and other necessary steps. If the interruptions cost more than the right to damages being claimed, and can never be recovered under national rules on costs, even in case of a successful action for damages, it is not an instrument for effectiveness of the right to damages.

(iii) Is it possible to interrupt the limitation period more than once (successively)? If not, since a public enforcement appeal often lasts more than 5 years, the interruption of the limitation period is not a tool the claimant can use to wait until a final decision before filing the claim.

This means, necessarily, that, without the simplifying approach of requiring an automatic suspension pending public enforcement, it would be impossible to provide a single uniform answer for whether the limitation period could start to run at a given moment, under the principle of effectiveness, even for a given MS. It would inevitably require an analysis of specific circumstances of each case and claimant. That is not conducive to legal certain or foreseeability of when the limitation period begins to run.

Foreseeability is further rendered impossible because of Art. 6 para. 3 lit. b of the Rome II Regulation. In many cases, the right to damages could be exercised in several MS, and be subject, under that provision, to the time-barring rules of that jurisdiction. So which MS' limitation period interruption rules should be considered in the assessment? Of the State of residence of the injured person? Why, if that is not necessarily the one whose substantive law will apply to the claim for damages. Of all the Member States in which the action could theoretically be filed? Obviously not. Which is why this cannot be a relevant criterion.

IX. Material scope

Sometimes, EC and NCA decisions are appealed, but not in what concerns the existence of the infringement.

In such cases, should it be presumed that the dies a quo occurs when the NCA decision has become final in what concerns the existence of the infringement? Even if an appeal is pending concerning, e.g., the amount of the fine? Even if, under national law, the fine applied by the NCA decision could still be deemed time-barred pending the appeal on its amount?

143 See Opinion AG *Medina*, Case C-21/24, *Nissan Iberia*, ECLI:EU:C:2025:248, footnote 38, quoting claimant to the effect that interrupting the limitation period in that case until a final decision would have cost (non-recoverable) EUR 4 800 (plus legal fees), in order to seek damages of just EUR 1 400. Lawyers for defendants have argued that it would cost merely EUR 32 (see *Vidal/Guerra*).

Does the suspension required by Art. 10 para. 4 of the Damages Directive end at least one year after the conclusion of the appeal on the fine? Or 1 year after the finding of infringement has become res judicata, because that part of the decision was not appealed? Is it up to national law or EU Law to decide, for this purpose, if the declaration of infringement has become final?

The Court has stressed that the *dies a quo* cannot be presumed to start to run when the addressee of an NCA decision appeals the "*the nature and the material, personal, temporal and territorial scope of that infringement with the result that the court hearing an action for damages relating to that infringement is not bound by those findings*".[144]

The fact that the Court went out of its way to specify the issues the appeal should concern, in order to stop the finding of infringement from being binding in follow-on actions suggests, a contrario, that if the appeal does not concern any of those issues, the decision becomes binding.[145] However, further clarification is needed.

Should an injured person not be reasonably expected to know that the infringement occurred if the addressee did not appeal the finding of infringement? It would seem difficult to argue otherwise. But, if so, coherence requires that the same interpretation be applied, not only to the determination of the dies a quo, but also to when the decision becomes binding for the national court.

X. Subjective scope

When EC or NCA decisions have more than one addressee, or several decisions are adopted for different addressees relating to the same infringement, some addressees appeal the finding of the infringement, and others do not.

Is the limitation period assessed independently for each defendant?[146]

Is this a matter of EU Law, when interpreting Art. 10 of the Damages Directive or the implications of the principle of effectiveness?

The case-law already establishes that limitation periods are personal when it comes to claimants (e.g., a Defendant can exclude the presumption by showing that a specific claimant was in possession of all necessary information at an earlier date). It makes sense for this personal nature to apply also to defendants.

An undertaking must be free to make its own decisions about whether to appeal or not, namely in light of its goal of achieving legal certainty (time-barring of

144 ECJ, Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 65.

145 In this sense, *Barennes/Lelouche*, Nissan Iberia (C-21/24): The Clock for Damages Actions Only Starts Ticking Once the National Competition Authority's Decision is Final, The Thicket, 8 September 2025, available at: https://thethicket.blog/2025/09/08/nissan-iberia-c-21-24-the-clock-for-damages-actions-only-starts-ticking-once-the-national-competition-authoritys-decision-is-final/ (4/2/2026).

146 The ECJ almost got a chance to clarify this issue, but the referral was withdrawn after a settlement was reached in the national proceedings – see: Judgment no. 109/2023 of the Commercial Court of Valencia of 05/12/2023, ES:JMV:2023:5623.

injured persons' rights) sooner or later. If limitation periods were not personal, this would cease to be in each addressee undertaking's control. It would also disincentivize settlements by only some cartel members, which is contrary to the interests of public enforcement.

If a cartel member does not settle, and the decision addressed to it is adopted sometime after the decision addressed to the group who reached a settlement with the EC, does the *dies a quo* start running from the date of publication of the first or second EC decision relating to the same cartel? This happened in the trucks cartel, which can be used as an example.

The case-law reasoning is developed around when the decision becomes binding in follow-on actions. The infringement cannot be deemed proven against Scania before an EC decision is addressed to Scania. It follows that an injured person cannot be required to be aware of the participation by Scania in this infringement before the EC had adopted a decision saying that Scania participated in it. Until such a time, there will be no binding declaration of the infringement against Scania and the *dies a quo* cannot be presumed to have occurred.

What if a cartel member appeals an NCA decision's finding of infringement, and the other addressees do not? Extrapolating from the case-law, an injured person cannot reasonably be presumed to have all the information necessary to exercise the right to damages against the undertaking who appealed (against whom there is no binding decision) but must be presumed to have it against the ones who didn't. The inherently subjective nature of the limitation period for each cartel member does not change their joint and several liability for all the damage caused by the cartel.

In some MS, Defendants are arguing that the effects of an appeal extend to the addressees of the decision who did not appeal (non-personal causes of appeal).[147] Such arguments rest on specific features of national misdemeanor or administrative law.

The consequence would be that, if 5 cartel members settle and 1 appeals, and then the decision is deemed invalid, the follow-on action against the other 5 cartel members would no longer have a decision to stand on. In other words, the decision would no longer be binding against the cartel members who did not appeal it. And the *dies a quo* would had not have occurred against those cartel members. The uncertainty created by such national law rules is possibly circumvented by the realization that the need to apply concepts of EU Law in this regard, and/or to interpret national law in accordance with EU Law.

Defendants cannot have the best of both worlds. Either the *dies a quo* starts to run for the cartel member who did not appeal, allowing it to achieve legal certainty sooner, but then the decision is also binding in the follow-on action. Or an appeal by another cartel member means that there is no binding effect and the limitation period does not start to run, even for the cartel member who did not appeal.

How does this case-law combine with *Skanska* and *Sumal*, on the liability of the economic unit?

147 See, e.g., Portuguese Competition Court, *Ius Omnibus v Nowo* (7/23.0YQSTR).

Usually, EC and NCA decisions are addressed to some, but not all, the legal persons within the undertaking in question. Unless there is some hidden shareholder or control structure (or hidden economic activity) –, it would seem that an injured person can reasonably be required to be aware of the essential information to file a claim for damages against a legal person belonging to the same undertaking, even if that legal person was not an addressee of the binding public enforcement decision.

If it were otherwise, limitation periods would not start to run against a subsidiary, who is also liable, simply because the decision was not addressed to it. But this requires the coherent and harmonious finding that the decision is also binding in a follow-on action against the non-addressee subsidiary, otherwise the *ratio* for the *dies a quo* presumption does not apply.

Another argument in favour of this interpretation is that the same solution has been put in place for public enforcement by Directive (EU) 2019/1 (ECN+ Directive), arguably requiring the suspension / interruption of the limited period to be valid for the entire undertaking.[148]

XI. Do longer limitation periods make settlements harder?

Somewhat ironically, the downside of greater protection of claimants, via longer limitation periods or later *dies a quo*, may be slower access to compensation.

The result of the case law is that follow-on claims for damages will be time-barred only 6 years after the publication of the binding decision / judgment. Even if claimants wait until the publication of the binding decision to file the claim, they are unlikely to find willingness on the other side to settle before rights are time-barred. This will largely depend on economic incentives. Several Member States foresee rules which could create incentives to settle (for example, higher interest rate after filing the claim).

XII. Assessing infringements of effectiveness: the national rule or the case?

It is sometimes argued that violations of the principle of effectiveness should be identified, by the national court, in light of the circumstances of the specific case. Under this reasoning, claimants can only benefit from the protection of this principle, to set aside the application of a national time-barring rule, if they show that, in their specific situation, the rule made it impossible or excessively difficult to exercise the right to damages. So far, the case-law does not seem to provide support for such an approach.

The case-law identifies situations in which a national rule infringes Art. 101 or 102 together with the principle of effectiveness. And it identifies these situations in the abstract, considering the characteristics of the legal order, without making any reference to a need to assess the features of the specific case. It affirms that it is for

148 *Sousa Ferro*, section 8.6.

the national court to determine whether the national rule infringes the principle of effectiveness. Or the Court even concludes that a national rule with certain features infringes the principle of effectiveness. It does not state it is for the national court to assess whether the principle of effectiveness was infringed in a specific situation, given a certain factual context.[149]

When the Court allows for the assessment of a specific situation, such as when it allows the Defendant to prove subjective knowledge by the claimant of all the relevant information to exercise the right to damages prior to the publication of the EC Decision's Summary in the OJ,[150] this merely provides the possibility of meeting a burden of proof to show when the *dies a quo* occurred, as defined by the rule. It does not affect the determination of the applicable rule itself, or the assessment of whether that rule infringes the principle of effectiveness.

G. Time-barring of right of contribution

The Directive and the case-law are silent on the time-barring of the right of contribution. Understandably so, perhaps, given that both have been focused on protecting the right to damages, and this protection does not require harmonizing the conditions for the time-barring of the right of contribution.

A broader right of contribution, arguably, does not extend the injured person's chances of being compensated beyond the options already available to that person, originally, under the joint and several liability. The principle of effectiveness, together with Art. 101 and 102 TFEU, should, thus, have little to say in this regard.

There is, in principle, nothing to prevent infringers (e.g., who appeal decisions) from interrupting or suspending the time-barring of the right of contribution against other cartel members (e.g. who did not appeal).

H. Tension between CJEU and national courts and possible broader lessons

The case-law on the application of the principle of effectiveness to limitation periods has shown tension, and occasionally a difficult relationship, between the CJEU and national courts (not only in antitrust, recalling, e.g., the famous *Taricco I* and *II* judgments).[151]

149 ECJ, Case C-295/04 etc., *Manfredi*, judgment of 13 July 2006, ECLI:EU:C:2006:461, paras. 80 and 82; Case C-637/17, *Cogeco*, judgment of 28 March 2019, ECLI:EU:C:2019:263, paras. 43, 44, 47, 53 and 55; Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 51–61; Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, para. 52; Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, e.g. paras. 79, 81 and 94.

150 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 62 et seq.

151 ECJ, Case C-105/14, *Taricco*, judgment of 8 September 2015, ECLI:EU:C:2015:555; Case C-42/17, *M.A.S.,* judgment of 5 December 2017, ECLI:EU:C:2017:936.

National courts' (especially higher courts') tendency to confirm the effectiveness of their national general rules risks depriving the CJEU's clarifications of EU principles of their *effet utile*.

As reaffirmed by the Grand Chamber in *Heureka*, *"it is for the national court before which an action for damages has been brought to determine the moment from which it may reasonably be expected that the injured party knew of that information. It should be borne in mind that the national court alone has jurisdiction to determine and assess the facts of the main proceedings"*.[152] It is also *"for the referring court to ascertain the exact date on which that infringement ceased"*.[153] And added that is still *"open to the Court, when giving a preliminary ruling on a reference, to give clarifications to guide the national court in that determination"*.[154]

A similar division exists for interpretation of national and EU rules. The CJEU can only clarify whether certain provisions of national law, as described, would infringe EU Law, but it is up to the national courts to interpret the national law and apply those clarifications.

Judgments sometimes seem to meander from one side to the other of this fine line.

Manfredi seemed to make it inevitable that the national law infringed EU Law, but left the decision up to the national court.[155]

Cogeco went further and concluded that the national law, as described by the national court, infringed the principle of effectiveness. Only for the national courts to disagree and say that the national rules did comply with EU Law.[156]

In *Volvo & Daf Trucks*, rather than simply observing that, as a rule, one can reasonably conclude that injured parties know all they need to know upon the publication of the Summary EC Decisions in the OJ, the judgment rendered what sounds like a determination applying the law to the facts in the specific case.[157] That part contrasts with the more careful phrasing in *Deutsche Bank.*[158]

152 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 66, see also para. 83; Case C-21/24, *Nissan Iberia* judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 60; Opinion AG *Kokott*, Case C-605/21, *Heureka*, ECLI:EU:C:2023:695, para. 85.

153 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 86.

154 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 66; see also Case C-21/24, *Nissan Iberia*, judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 60.

155 ECJ, Case C-295/04 etc., *Manfredi*, judgment of 13 July 2006, ECLI:EU:C:2006:461, paras. 78–80;.

156 ECJ, Case C-637/17, *Cogeco*, judgment of 28 March 2019 ECLI:EU:C:2019:263, paras. 53 and 55. Lisbon District Court judgment of 2 September 2019 and Lisbon Appeal Court judgment of 5 November 2020, *Cogeco v Sport TV* (5754/15.7T8LSB).

157 ECJ, Case C-267/20, *Volvo & DAF Trucks*, judgement of 22 July 2022, ECLI:EU:C:2022:494, paras. 71-72 ("*RM may reasonably be considered to have gained such knowledge on the date of publication of the summary of Decision* [in the OJ]"; *"in this instance, the limitation period began to run on the day of that publication"*).

158 ECJ, Joined Cases C-198/22 and C-199/22, *Deutsche Bank*, judgement of 6 March 2023, ECLI:EU:C:2023:166, paras. 67–69.

In *Heureka*, since the infringement in question had manifestly not ceased (as indicated by the national court), and given the limits imposed by the principle of effectiveness, the CJEU felt at ease to apply the law to the facts of the case (rendering the safeguard about the national court's competence merely theoretical).[159] When it came to determining that the national rules infringed the principle of effectiveness, it used language that left even less room for assessment by the national court. In that regard, it stated: "*rules on limitation, such as those at issue in the main proceedings* (…) *make the exercise of the right to claim compensation for the harm suffered as a result of that infringement practically impossible or excessively difficult*".[160]

Finally, in *Nissan Iberia*, despite language affirming the need for "verification" by the national court, the Court essentially affirmed that the *dies a quo* should be presumed to begin to run when the Supreme Court judgment was published on the official case-law database.[161]

The track record of the Court's assessment of national rules on limitation periods, applied to antitrust claims for damages, is impressive. It has been asked to look at such national rules in this context six times, and six times it concluded that the principle of effectiveness was or could be infringed.

Granted, the sample is vitiated by the fact that referrals occur only when there are doubts about effectiveness. Nonetheless, the case-law stands as a criticism of national legislators' options of general civil law rules governing time-barring of tort claims.

It begs the question: is it only for antitrust private enforcement that such national rules are unfit to guarantee access to justice and the effectiveness of rights? Or shouldn't this assessment by the CJEU trigger a broader debate? And, perhaps, a reform of national limitation period regimes, at least when the exercise of the right to damages requires complex factual and legal assessments?

As often happens with CJEU case-law, the reasons for the criticism in one very specific field might apply to many other fields, including areas governed exclusively by national law, and serve to expose broader problems and frailties that undermine the rule of law.

I. Consumer collective redress

Consumer representative actions raise special issues for limitation periods. Unfortunately, the Damages Directive contained no provision on collective redress. Even more unfortunately, the Representative Actions Directive (RAD) did not include Art. 101 and 102 in the extensive list of provisions in its Annex I, and thus EU antitrust law falls outside its scope. Some Member States went beyond a minimalistic

159 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, paras. 86–87.

160 ECJ, Case C-605/21, *Heureka*, judgement of 18 April 2024, ECLI:EU:C:2024:324, para. 81.

161 ECJ, Case C-21/24, *Nissan Iberia,* judgment of 4 September 2025, ECLI:EU:C:2025:659, para. 78.

transposition and extended the material scope of the new consumer collective redress provisions to competition law.

Under the RAD, Member States must ensure that the filing of a representative injunctive action suspends/interrupts the limitation periods for subsequent redress claims for the represented consumers (Art. 16 para. 1). Naturally, an action for damages has the same effect for the represented consumers (Art. 16 para. 2; recital 65).

What happens, for example, if consumers are notified by a court that they are represented in an action for damages, and an appeal court later concludes the claimant did not have legitimacy to file it?[162] Was there no interruption of the limitation period?

The RAD requires no further harmonization of limitation periods for the protection of consumers, in general or in the context of consumer redress. This matches the CJEU's approach, described above, according to which the criteria for determining the limitation period should not vary depending on whether the injured parties are professionals or consumers.

J. Conclusion

CJEU case-law on limitation periods in antitrust actions for damages developed quickly and already provides broad clarity on the implications of EU Law (principle of effectiveness) for the *dies a quo* and suspension/interruption of the limitation period, as well as on the applicability *ratione temporis* of the Directive 2014/104/EU.

The end result of these clarifications has been the creation of a regime which ensures that the right to damages is not time-barred before it can reasonably be required to be exercise. This regime collides with the general rules for tort limitation periods in most EU Member States. This could motivate a broader reflection about the appropriateness of such general rules. The root causes of the obstacles to access to justice identified by this case-law are not limited to the field of competition law.

In practice, today claimants and defendants are faced with long limitation periods, which start to run usually many years after the end of the infringement (if it is declared via public enforcement) or may never start to run (for certain stand alone cases). In the case of collective practices, with joint and several liability, a participant could be dependent on the options of other participating undertakings in order to be fully and completely "off the hook" for damages (via right of contribution).

162 Although not an antitrust case, this happened, e.g., in the case ending with Portuguese Supreme Court Judgment of 6 July 2023, *Deco v Volkswagen*, 26412/16.0T8LSB.

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