JUDGMENT OF THE COURT (Tenth Chamber)

1 February 2024 (*)

(Appeal – Competition – Agreements, decisions and concerted practices – Truck market – Decision finding an infringement of Article 101 TFEU and of Article 53 of the Agreement on the European Economic Area (EEA) – Agreements and concerted practices in relation to the prices of trucks, the timing for the introduction of emission technologies required by Euro 3 to Euro 6 standards and the passing on of the costs of those technologies to customers – Single and continuous infringement – Geographic scope of that infringement – 'Hybrid procedure' leading successively to the adoption of a settlement decision and a decision at the end of a standard procedure – Article 41 of the Charter of Fundamental Rights of the European Union – Right to good administration – Impartiality of the European Commission – Assessment of the geographic scope of a concerted practice – Relevant evidence – Classification of a series of acts as a 'single and continuous infringement' – Regulation (EC) No 1/2003 – Article 25 – Power of the Commission to impose a fine – Limitation)

In Case C-251/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 8 April 2022,

Scania AB, established in Södertälje (Sweden),

Scania CV AB, established in Södertälje,

Scania Deutschland GmbH, established in Coblenz (Germany),

represented by D. Arts, N. De Backer, K. Schillemans, advocaten, S. Falkner, P. Hammarskiöld, C. Langenius, L. Ulrichs, advokater, and F. Miotto, avocate,

appellants,

the other party to the proceedings being:

European Commission, represented by M. Domecq, M. Farley and L. Wildpanner, acting as Agents,

defendant at first instance,

THE COURT (Tenth Chamber),

composed of M. Ilešič, acting as President of the Tenth Chamber, I. Jarukaitis (Rapporteur) and D. Gratsias, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

Judgment

1 By their appeal, Scania AB, Scania CV AB and Scania Deutschland GmbH (‘Scania DE’), three legal entities of the undertaking Scania (together, ‘Scania’) seek to have set aside the judgment of the General Court of the European Union of 2 February 2022, *Scania and Others* v *Commission* (T-799/17, ‘the judgment under appeal’, EU:T:2022:48), by which the General Court dismissed their action seeking, principally, the annulment of Commission Decision C(2017) 6467 final of 27 September 2017 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (‘the decision at issue’), and, in the alternative, the reduction in the amount of the fines imposed on them in that decision.

Legal context

2 Article 23 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1) concerns the power of the European Commission to impose fines. Entitled ‘Limitation periods for the imposition of penalties’, Article 25 of that regulation states:

‘1. The powers conferred on the Commission by Articles 23 … shall be subject to the following limitation periods:

(a) three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;

(b) five years in the case of all other infringements.

2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

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

4. The interruption of the limitation period shall apply for all the undertakings or associations of undertakings which have participated in the infringement.

…’

3 Entitled ‘Review by the Court of Justice’, Article 31 of that regulation states:

‘The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.’

Background to the dispute

4 The background to the dispute and the decision at issue, as set out in paragraphs 1 to 61 of the judgment under appeal, may be summarised as follows.

5 By the decision at issue, the Commission found, in Article 1 thereof, that the appellants had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; ‘the EEA Agreement’) by participating, from 17 January 1997 until 18 January 2011, together with legal entities of the undertakings *[confidential]*, (1)*[confidential]*, *[confidential]*, *[confidential]* and *[confidential]*, in collusive arrangements on prices and gross price increases for medium and heavy trucks in the European Economic Area (EEA), and on the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by Euro 3 to 6 standards. In Article 2 of that decision, the Commission imposed a fine of EUR 880 523 000

jointly and severally on Scania AB and Scania CV AB, for which Scania DE is held jointly and severally liable for the amount of EUR 440 003 282.

Administrative procedure

6 On 20 September 2010, *[confidential]* applied for immunity from fines in accordance with paragraph 14 of the Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17). On 17 December 2010, the Commission granted conditional immunity from fines to *[confidential]*.

7 Between 18 and 21 January 2011, the Commission carried out inspections at the premises of, inter alia, the appellants.

8 On 28 January 2011, *[confidential]* applied for immunity from fines in accordance with paragraph 14 of the notice mentioned in paragraph 6 of this judgment and, failing that, in the alternative, for a reduction of the fine in accordance with paragraph 27 of that notice. *[Confidential]* and *[confidential]* followed suit.

9 Over the course of the investigation, the Commission sent, inter alia, the appellants several requests for information pursuant to Article 18 of Regulation No 1/2003.

10 On 20 November 2014, the Commission initiated proceedings pursuant to Article 11(6) of that regulation against the appellants and against the legal entities of the undertakings referred to in paragraph 5 of this judgment and adopted a statement of objections which it notified to all those entities, including the appellants.

11 Following notification of the statement of objections, the addressees of that statement had access to the Commission's investigation file.

12 During *[confidential]*, the addressees of the statement of objections approached the Commission informally and asked it to continue the case under the settlement procedure provided for in Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101] and [102 TFEU] (OJ 2004 L 123, p. 18), as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 (OJ 2008 L 171, p. 3) ('Regulation No 773/2004'). The Commission decided to initiate a settlement procedure after each of the addressees of the statement of objections confirmed its willingness to engage in settlement discussions.

13 Between *[confidential]* and *[confidential]*, settlement discussions took place between each addressee of the statement of objections and the Commission. Following those discussions, certain addressees of the statement of objections individually submitted to the Commission a formal settlement request pursuant to Article 10a(2) of Regulation No 773/2004 ('the settling parties'). The appellants did not make such a request.

14 On 19 July 2016, the Commission adopted, on the basis of Article 7 and of Article 23(2) of Regulation No 1/2003, Decision C(2016) 4673 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) addressed to the settling parties ('the settlement decision').

15 Since the appellants chose not to submit a formal settlement request, the Commission continued the investigation relating to them under the standard, that is to say non-settlement, procedure.

16 On 23 September 2016, the appellants, having had access to the file, submitted their written response to the statement of objections.

17 On 18 October 2016, the appellants attended a hearing.

18 On 7 April 2017, the Commission, in accordance with paragraph 111 of its Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 [TFEU] (OJ 2011 C 308, p. 6), sent Scania

AB a Letter of Facts. On 23 June 2017, the Commission also sent that Letter of Facts to Scania CV AB and Scania DE.

19 On 12 May 2017, Scania AB sent to the Commission its written observations on the evidence annexed to the Letter of Facts, which also reflected the position of Scania CV AB and Scania DE.

20 On 27 September 2017, the Commission adopted the decision at issue.

The decision at issue

Truck market structure and price-setting mechanism in the truck industry and within Scania

21 As regards the structure of the truck market, the Commission stated that it is characterised by a high level of transparency and concentration, the parties having several opportunities to meet each year and discuss the market situation. According to the Commission, through all the exchanges, the parties were able to have a precise idea of each other's competitive situation.

22 The Commission also stated that the parties, including Scania, have subsidiaries in key national markets acting as distributors of their products. Those national distributors have their own network of dealers. The Commission noted that Scania sells its trucks through national distributors, which are wholly owned subsidiaries of Scania, in all the EEA States with the exception of *[confidential]*. Scania's national distributors sell the trucks that are bought from the headquarters to dealers which are either wholly owned subsidiaries or independent companies. The Commission states that, in Germany, Scania has *[confidential]* dealers which are wholly owned subsidiaries.

23 As regards the price-setting mechanism, the Commission stated that it comprises the same steps for all the parties and begins, generally, in the first stage, with the setting of an initial gross price list by the headquarters. In addition, according to the Commission, in the second stage, transfer prices are set for the sale of trucks in the different national markets between the headquarters of the manufacturers and national distributors which are independent undertakings or wholly owned by the headquarters. Furthermore, according to the Commission, in the third stage, the prices paid by dealers to the distributors are set and, in the fourth stage, the final net price paid by customers, which is negotiated by the dealers or by the manufacturers themselves when they sell directly to dealers or to fleet customers, is set.

24 The Commission found that, although the final price paid by customers may vary, for example, because of the application of different rebates at different levels of the distribution chain, all the prices applicable at each stage of the distribution chain derive directly, in the case of the transfer price between the headquarters and the distributor, or indirectly, in the case of the price paid by the dealer to the distributor or in the case of the price paid by the end customer, from the initial gross price. It is thus apparent, according to the Commission, that the initial gross price lists set by the headquarters are a common and fundamental component of the calculation of the prices applicable at each stage of the national distribution channels throughout Europe. The Commission stated that all the parties, with the exception of *[confidential]*, drew up, between 2000 and 2006, gross price lists made up of harmonised gross prices throughout the EEA.

25 As regards specifically the price-setting mechanism within Scania and the actors involved in that price-setting, the Commission described that Scania's headquarters sets the Factory Gross Price List ('FGPL') for all the various available components of a truck.

26 Each of Scania's national distributors, for example Scania DE, negotiates with Scania's headquarters a 'distributor net price', that is to say the price paid by the distributor to the headquarters for each component, on the basis of the FGPL which it has received. The net price for the distributor is indicated in a document called 'RPU' (from *Representantuppgift* in Swedish), which represents the difference between the FGPL and the distributor net price in terms of discount. The discounts granted to the distributor are set by *[confidential]* at Scania's headquarters, but they are also discussed within the Price Decision Group. The final decision on the net price for the Scania distributor rests with *[confidential]*.

27 In addition, Scania's national distributor discloses to the Scania dealers in its territory its own gross price list, consisting of the distributor net price plus the profit margin, for all the various available components of a truck.

28 Subsequently, the Scania dealer negotiates with the distributor a 'dealer net price' which is based on the distributor's gross price list, less a substantial reduction for the dealer.

29 Customers who purchase trucks from Scania's dealers pay the 'customer price'. The 'customer price' consists of the dealer net price plus the dealer's profit margin and any costs arising from the customisation of the truck, less discounts and promotions offered to the customer. The Commission found that the change in the price at any stage of the distribution chain has minimal, or no effect, on the final price paid by the customer.

30 The Commission also stated that the FGPL applies at a global level, whereas the distributor net price and the distributor gross price list apply to the region in which the distributor operates. Similarly, the price negotiated by the dealer is applied to the region in which the dealer operates.

31 As regards the impact of price increases at European level on prices at national level, the Commission noted that manufacturers' national distributors such as Scania DE are not independent in the setting of gross prices and gross price lists and that all the prices applied at each stage of the distribution chain up to the end customer derive from the European-wide gross price lists set at headquarters level.

32 It follows, according to the Commission, that an increase in prices in the European-wide gross price list, decided at headquarters level, determines the movement of the 'distributor net price', that is to say, the price which the distributor pays to the headquarters for the purchase of a truck. Consequently, according to the Commission, the increase by the headquarters of the abovementioned gross prices also influences the level of the distributor's gross price, namely the price which the dealer pays to the distributor, even though the price for the end customer is not necessarily altered in the same proportion or is not altered at all.

Collusive contacts between Scania and the settling parties

33 In the decision at issue, the Commission found that Scania had participated in collusive meetings and contacts with the settling parties within different forums and on different levels which evolved over time, whereas the participating undertakings, the objectives and the products concerned had remained the same.

34 Three levels of collusive contacts were identified by the Commission.

35 In the first place, the Commission found that, in the early years of the infringement, the senior managers of the parties to the cartel discussed their pricing intentions, future gross price increases, sometimes also changes in net consumer prices and, occasionally, agreed on their gross price increases. In the decision at issue, the Commission referred to that level of collusive contacts as 'top management level'. The Commission added that, at the top management level meetings, the parties to the cartel had agreed, in addition, on the timing and passing on of costs relating to the introduction of truck models complying with Euro 3 to 5 standards and that, on certain occasions, it had been agreed not to introduce the technologies concerned before a certain date. The Commission found that the top management level meetings took place between 1997 and 2004.

36 In the second place, the Commission found that, for a limited period and in parallel with the top management level meetings, intermediary-level employees of the headquarters of the parties to the cartel held discussions which included, in addition to the exchange of technical information, exchanges on prices and gross price increases. In the decision at issue, the Commission referred to that level of collusive contacts as 'lower headquarters level'. The Commission found that the meetings at lower headquarters level had occurred between 2000 and 2008.

37 In the third place, the Commission found that, following the introduction of the euro and the introduction of the European-wide gross price lists by almost all truck manufacturers, the parties to the cartel had continued the systematic coordination of their future pricing intentions through their German

subsidiaries. In the decision at issue, the Commission referred to that level of collusive contacts as ‘German level meetings’. The Commission stated that, in a similar manner to the contacts of the early years of the cartel, the representatives of the German subsidiaries discussed future gross price increases as well as the timing and the passing on of costs related to the introduction of emission technologies for medium and heavy trucks required by the Euro 5 and 6 standards. They also exchanged other commercially sensitive information. The Commission found that the German level meetings had taken place from 2004 onwards.

Application of Article 101 TFEU and Article 53 of the EEA Agreement

38 The Commission considered that the documentary evidence in the file showed that the abovementioned contacts concerned:

– the cartel participants’ intended changes to gross prices, gross price lists, the timing of those changes and, occasionally, exchanges relating to intended changes to net prices or changes to rebates offered to customers;

– the date of introduction of emission technologies for medium and heavy trucks required by Euro 3 to 6 standards, and the passing on of the costs relating to the introduction of those technologies; and

– the sharing of other competitively sensitive information such as target market shares, current net prices and rebates, gross price lists, even before they entered into force, truck configurators, orders and stock levels.

39 The Commission stated that the parties had multilateral contacts at various levels and that, sometimes, they had joint contacts and meetings at different levels. According to the Commission, those contacts were linked to each other by their subject matter, by their timing, through open references to each other and by the transmission between them of the information gathered.

40 The Commission considered that those activities constituted a form of coordination and cooperation by which the parties knowingly substituted practical cooperation between them for the risks of competition. According to the Commission, the conduct in question took the form of either a concerted practice or an agreement in which the competing undertakings refrained from determining independently the commercial policy which they intended to adopt on the market, but instead coordinated their pricing behaviour through direct contacts and engaged in the coordinated delay of the introduction of the technologies. In addition, according to the Commission, the systematic participation in the collusive contacts created a climate of mutual understanding of the parties’ pricing policy.

41 The Commission found that Scania had regularly participated in the various forms of collusion throughout the entire infringement period and found that the infringement in which Scania had participated took the form of an agreement and/or a concerted practice within the meaning of Article 101 TFEU and of Article 53 of the EEA Agreement.

42 As regards the restriction of competition, the Commission found that Scania had participated in the collusive contacts described in paragraph 38 38of this judgment and that the object of all the agreements and concerted practices in which it had participated was the restriction of competition within the meaning of Article 101 TFEU.

43 As regards the single and continuous infringement, the Commission considered that the agreements and/or concerted practices between Scania and the settling parties constituted a single and continuous infringement of Article 101(1) TFEU and Article 53 of the EEA Agreement for the period between 17 January 1997 and 18 January 2011. According to the Commission, the infringement had consisted of collusion with respect to pricing and gross price increases in the EEA for medium and heavy trucks and the timing and passing on of costs for the introduction of emission technologies for those trucks, required by Euro 3 to 6 standards.

44 More specifically, the Commission considered that, through their anticompetitive contacts, the parties had pursued a common plan with a single anticompetitive aim and that Scania was aware, or ought to

have been aware, of the general scope and the essential characteristics of the network of collusive contacts and intended to contribute to the cartel at issue through its actions.

45 The Commission also found that the single anticompetitive aim was to restrict competition on the market for medium and heavy trucks in the EEA. That aim was achieved through practices that reduced the levels of strategic uncertainty between the parties as regards future prices and gross price increases and as regards the timing and the passing on of costs in relation to the introduction of trucks complying with environmental standards.

Addressees of the decision at issue

46 In the first place, the Commission addressed the decision at issue to Scania CV AB and Scania DE, which it considered to be directly liable for the infringement during the following periods:

– as regards Scania CV AB, for the period from 17 January 1997 to 27 February 2009; and

– as regards Scania DE, for the period from 20 January 2004 to 18 January 2011.

47 In the second place, the Commission also found that, during the period between 17 January 1997 and 18 January 2011, Scania AB directly or indirectly held all the shares in Scania CV AB, which, in turn, directly or indirectly held all the shares in Scania DE. Consequently, the Commission stated that it was also addressing the decision at issue to the following entities, which are held jointly and severally liable in their capacity as parent companies:

– Scania AB, liable, first, for the conduct of Scania CV AB for the period between 17 January 1997 and 27 February 2009 and, secondly, for the conduct of Scania DE between 20 January 2004 and 18 January 2011; and

– Scania CV AB, liable for the conduct of Scania DE for the period between 20 January 2004 and 18 January 2011.

Amount of the fine

48 The Commission set the fine at EUR 880 523 000.

The action before the General Court and the judgment under appeal

49 By application lodged at the Registry of the General Court on 11 December 2017, the appellants brought an action seeking, principally, the annulment of the decision at issue and, in the alternative, the partial annulment of that decision and the reduction of the fines imposed on them and, in any event, the reduction of those fines, in accordance with Article 261 TFEU and Article 31 of Regulation No 1/2003.

50 By letter of 5 June 2020, the appellants requested that certain information in the report for the hearing not be made public. By letter of the same date, the Commission also requested that certain information contained in, inter alia, the report for the hearing and in the judgment under appeal not be made public.

51 In response to the latter request, the General Court decided, in the judgment under appeal, as regards the non-confidential version of that judgment, to anonymise the names of the natural persons and to conceal the names of the legal persons other than the appellants. It also decided to conceal certain data relating, inter alia, to the price-setting mechanism within Scania and the calculation of the fine imposed on Scania, the concealment of which does not affect the understanding of the non-confidential version of that judgment.

52 In support of their action, the appellants raised nine pleas in law.

53 The first plea in law alleged infringement of the rights of the defence, the principle of good administration and the presumption of innocence. The second plea in law alleged infringement of Article 48(2) of the Charter of Fundamental Rights of the European Union (‘the Charter’) and Article 27(1) and (2) of Regulation No 1/2003.

54 The third to seventh pleas in law were essentially directed against the Commission's conclusion relating to the existence of a single and continuous infringement and that it was attributable to Scania. More specifically, by their third plea in law, the appellants claimed that Article 101 TFEU and Article 53 of the EEA Agreement had been misapplied in that the exchanges of information at lower headquarters level had been regarded as constituting an infringement of those articles. By their fourth plea in law, they argued that there had been an infringement of the duty to state reasons and that the Commission had misapplied those articles in so far as it had found that they had concluded an agreement or engaged in a concerted practice concerning the timing of the introduction of emission technologies. Their fifth plea in law alleged misapplication of the same articles in that the Commission had described the exchanges of information at the German level meetings as an infringement 'by object'. By their sixth plea, they argued that Article 101 TFEU and Article 53 of the EEA Agreement had been misapplied in that the Commission had considered that the geographic scope of the infringement relating to the German level meetings extended to the entire territory of the EEA. Their seventh plea in law alleged misapplication of those articles in that the Commission had considered that the identified conduct constituted a single and continuous infringement and that the appellants were liable in that regard.

55 The eighth plea in law alleged misapplication of those articles and of Article 25 of Regulation No 1/2003 in that the Commission had imposed a fine in respect of conduct that was time-barred and, in any event, failed to take into consideration the fact that that conduct was not continuous. By their ninth and final plea in law, the appellants alleged infringement of the principle of proportionality and the principle of equal treatment with respect to the level of the fine and, in any event, the need for a reduction in the amount of the fine by application of Article 261 TFEU and Article 31 of Regulation No 1/2003.

56 In the judgment under appeal, the General Court dismissed all of the pleas in law as unfounded. With regard to the request seeking the exercise of its unlimited jurisdiction, the General Court noted that nothing in the complaints, the arguments and the matters of law and of fact put forward by the appellants in all of the pleas in law examined supported the conclusion that the amount of the fines imposed by the decision at issue should be amended. It therefore dismissed the action in its entirety and ordered the appellants to pay the costs.

Procedure before the Court of Justice and forms of order sought

57 By application lodged on 8 April 2022, the appellants brought the present appeal. On the same day, they also asked the Court of Justice to treat the material referred to in paragraph 51 of this judgment as confidential in the same way as the General Court had treated that material.

58 By a measure of 29 April 2022, the Commission also requested that certain data be treated as confidential in relation to the public.

59 By a decision of 12 July 2022, the President of the Court of Justice granted those requests for confidential treatment.

60 By their appeal, the appellants claim that the Court of Justice should:

– set aside, in whole or in part, the judgment under appeal;

– annul, in whole or in part, the decision at issue and/or cancel or reduce the amount of the fines imposed on them;

– in the alternative, refer the case back to the General Court; and

– order the Commission to pay the costs of the proceedings, including those incurred in the present appeal.

61 The Commission contends that the Court of Justice should:

– dismiss the appeal; and

– order the appellants to pay the costs.

The appeal

62 In support of their appeal, the appellants put forward four grounds of appeal. The first ground of appeal alleges, in essence, infringement of the right to good administration enshrined in Article 41(1) of the Charter. The second ground of appeal alleges infringement of Article 101 TFEU and Article 53 of the EEA Agreement on the ground that the General Court classified the geographic scope of the conduct at the German level meetings as extending to the entire territory of the EEA. By their third ground of appeal, the appellants essentially claim that the General Court infringed the latter two articles, on the ground that it classified as a single infringement the series of acts comprising three different levels of contacts. The fourth ground of appeal alleges infringement of the same articles and of Article 25 of Regulation No 1/2003 on the ground that the General Court upheld a fine in respect of conduct that was time-barred.

The first ground of appeal

Arguments of the parties

63 By their first ground of appeal, the appellants submit that the General Court erred in law by rejecting their argument that, by adopting the settlement decision and continuing its investigation against the appellants without entrusting that investigation to a team other than the one which had been responsible for the file which gave rise to that decision, the Commission infringed Article 41(1) of the Charter.

64 In the first place, the appellants submit that the General Court failed to assess whether the administrative procedure resumed against Scania after the adoption of the settlement decision complied with the principle of objective impartiality. They refer to the considerations set out in particular in paragraphs 129, 147 and 151 of the judgment under appeal, concerning compliance with the principle of impartiality in the context of a staggered ‘hybrid’ procedure such as that at issue in the present case. They submit that the adoption of that decision placed an additional burden on the Commission, which should have ensured compliance not only with the ‘tabula rasa’ principle, but also with its perception of impartiality. Although, in paragraph 151 of the judgment under appeal, the General Court essentially recognised that, in such circumstances, it could be justified to allocate the file to two different teams, it did not draw the correct legal conclusion and approached the question of impartiality solely from the point of view of subjective impartiality.

65 In that regard, they observe more particularly that, in paragraph 151 of the judgment under appeal, the General Court held that Scania had not shown how the fact of having involved the same Commission services in the adoption of both the settlement decision and the decision at issue would have been ‘in itself’ capable of proving that there was no impartial examination of the case with regard to the appellants, and then held, in paragraph 152 of the judgment under appeal, that Scania had not demonstrated that the Commission had ‘[shown] bias or personal prejudice towards Scania … in infringement of the principle of subjective impartiality’. In so doing, the General Court erred in law by limiting its assessment to ‘subjective’ impartiality and failing to examine the legally separate principle of ‘objective’ impartiality.

66 In the second place, the appellants submit that, even if the Court of Justice were to hold that the General Court assessed that principle of objective impartiality, the General Court’s assessment in that regard is, in any event, wrong in law. The judgment under appeal contains no justification for concluding that the Commission complied with that principle of objective impartiality, despite the fact that the same Commission services were involved in the adoption of the settlement decision and the decision at issue, whilst the General Court nevertheless explicitly acknowledged, in paragraph 151 of the judgment under appeal, that that circumstance ‘makes it more difficult to ensure that the examination of facts and evidence concerning an undertaking after the settlement decision has been adopted will be carried out in accordance with the “tabula rasa” principle’.

67 According to the appellants, such an acknowledgement casts doubt on the Commission's impartiality. In paragraph 151 of the judgment under appeal, the General Court also indicates how the Commission could have acted to remove such doubt, namely by 'allocating the file to two different teams', that is to say, by involving in the standard procedure which led to the adoption of the decision at issue a team other than the one involved in the settlement procedure. Thus, it follows from the General Court's own reasoning in that judgment that, by adopting the settlement decision and continuing its investigation against Scania by relying on the same Commission services, the Commission infringed Article 41(1) of the Charter. The appellants submit that the General Court, however, failed to acknowledge that the Commission had not offered guarantees sufficient to rule out any legitimate doubt as to its objective impartiality in the conduct of that standard procedure, thereby committing an error of law.

68 The Commission disputes the merits of that line of argument.

Findings of the Court

69 As regards, in the first place, the appellants' argument that the General Court failed to assess whether the administrative procedure, resumed against Scania after the adoption of the settlement decision, complied with the principle of objective impartiality, it should be recalled that, in accordance with the case-law of the Court of Justice, the Commission is required, during the administrative procedure, to respect the fundamental rights of the undertakings concerned. On that basis, the principle of impartiality, which is part of the right to good administration, must be distinguished from the presumption of innocence (judgment of 12 January 2023, *HSBC Holdings and Others* v *Commission*, C-883/19 P, EU:C:2023:11, paragraph 76 and the case-law cited).

70 The right to good administration, enshrined in Article 41 of the Charter, provides that every person has the right, inter alia, to have his or her affairs handled impartially by the institutions of the European Union. That requirement of impartiality encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the institution concerned (judgment of 12 January 2023, *HSBC Holdings and Others* v *Commission*, C-883/19 P, EU:C:2023:11, paragraph 77 and the case-law cited).

71 In the present case, in paragraphs 144 and 145 of the judgment under appeal, the General Court recalled what that right to good administration entails, in accordance with the case-law referred to in the two preceding paragraphs of this judgment.

72 Subsequently, in paragraph 147 of the judgment under appeal, the General Court rejected the Commission's argument that, in circumstances such as those of the present case, an infringement of the principle of impartiality should be assessed solely as a potential consequence of an infringement of the principle of the presumption of innocence when the settlement decision is adopted, and noted that such an infringement could result from other failures on the part of the Commission to offer guarantees sufficient to rule out any legitimate doubt, within the meaning of the case-law, as to its impartiality in the conduct of the standard administrative procedure.

73 The General Court nevertheless found, in paragraph 148 of that judgment, that none of the arguments put forward by the appellants made it possible to establish that, in the present case, the Commission had not offered, during that procedure, all the guarantees to exclude any legitimate doubt as regards its impartiality in the examination of the case concerning Scania. The General Court gave reasons for that finding in an analysis of those arguments in paragraphs 149 to 164 of the same judgment.

74 More particularly, it found, in paragraph 151 of the judgment under appeal, that the involvement of the same services in the adoption of both the settlement decision and the decision at issue made it more difficult to ensure that the examination of facts and evidence concerning an undertaking after the adoption of the settlement decision '[would] be carried out in accordance with the "tabula rasa" principle', and that that could justify, in order to dispel doubt in that regard, allocating the file to two different teams. Nevertheless, in paragraph 152 of that judgment, the General Court found that the appellants had not demonstrated that a member of the Commission or of the services involved in the adoption of the decision at issue had shown bias or personal prejudice towards Scania, in particular as a

result of having participated in the adoption of the settlement decision, ‘in infringement of the principle of subjective impartiality’.

75 In that regard, it should be borne in mind, first, that the settlement procedure is an alternative administrative procedure distinct from the standard procedure and which has certain special features. Secondly, if the undertaking concerned does not put forward a proposal for a settlement, the procedure leading to the final decision is governed by the general provisions of Regulation No 773/2004, instead of those governing the settlement procedure. Thirdly, as regards that standard procedure, in which liabilities have yet to be determined, the Commission is only bound by the statement of objections and is required to take into consideration the new information brought to its attention during the latter procedure (see, to that effect, judgment of 12 January 2017, *Timab Industries and CFPR* v *Commission*, C-411/15 P, EU:C:2017:11, paragraph 136).

76 It follows that the ‘“tabula rasa” principle’, referred to by the General Court in paragraph 129 of the judgment under appeal, which in essence reproduces the considerations set out in the preceding paragraph of this judgment, merely reflects the finding that the presumption of innocence must be observed in relation to the undertaking or undertakings which decide not to pursue the settlement procedure with the Commission.

77 It follows that that ‘“tabula rasa” principle’ was in no way relevant to the General Court’s assessment, in the case before it, of the Commission’s compliance with the principle of impartiality and, moreover and in any event, that, contrary to what the General Court held, the involvement of the same services in the adoption of both the settlement decision and the decision at issue did not give rise to any difficulty as regards compliance with the ‘“tabula rasa” principle’. Indeed, a change in the team responsible for a file within the Commission would even run counter to the principles of good administration and the handling of the administrative procedure within a reasonable period of time.

78 It must nevertheless be held that the General Court did not draw any conclusions from the erroneous consideration contained in the second sentence of paragraph 151 of the judgment under appeal and referred to in paragraph 74 of this judgment, with the result that the appellants’ criticism of the General Court is ineffective.

79 In so far as the appellants’ argument must be understood as meaning that they submit that the General Court should have held that the fact that the same team was responsible for the case throughout the staggered ‘hybrid’ procedure in question necessarily constituted an infringement by the Commission of its obligation of objective impartiality, it should be noted that the mere fact that the same Commission team was responsible for the various successive stages of the investigation leading to the adoption of the settlement decision and then of the decision at issue cannot, by itself, give rise to doubt as to the impartiality of that institution in the absence of any other objective evidence (see, by analogy, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 56).

80 However, the appellants have failed to show that they had put forward such objective evidence before the General Court. Moreover, there is nothing in the appellants’ arguments to show that the General Court failed to assess whether, in the present case, the Commission had acted in a manner consistent with the principle of objective impartiality.

81 In paragraph 152 of the judgment under appeal, the General Court held that the appellants had not demonstrated that the team responsible for the file or any member of that team had shown any prejudice whatsoever towards Scania during the standard procedure and, contrary to what the appellants essentially claim, paragraph 152 of the judgment under appeal is not the only ground on which the General Court found that the Commission had not infringed the principle of good administration in the present case, nor does it establish that the General Court failed, in that context, to assess whether the Commission’s conduct complied with that principle of objective impartiality.

82 Thus, it is apparent from an overall reading of paragraphs 100 to 104 and 148 to 164 of the judgment under appeal that the General Court addressed not only the ‘subjective’ aspect but also the ‘objective’ aspect of the principle of impartiality, having regard to the arguments submitted to it in that regard by the appellants.

83 As regards, in particular, such objective impartiality, the General Court first of all recalled, in paragraphs 100 and 101 of the judgment under appeal, the principles of case-law governing the Commission's use of a 'hybrid' procedure and deduced from them, in paragraph 104 of that judgment, that, contrary to what was claimed, in essence, by the appellants, the use of 'hybrid' procedures in the context of the application of Article 101 TFEU, in which the adoption of the settlement decision and that of the decision following the standard procedure are staggered over time, did not, in itself and in all circumstances, entail in particular an infringement of the duty of impartiality. It concluded, in paragraph 105 of the judgment under appeal, that the Commission was entitled to use such a hybrid procedure, provided that it complied, inter alia, with that duty, which it subsequently examined in paragraph 143 et seq. of the same judgment.

84 In that regard, it drew attention in particular, in paragraph 145 of the judgment under appeal, to the principles of case-law set out in paragraph 70 of this judgment and examined, in paragraphs 148 to 164 of the judgment under appeal, the arguments put forward by the appellants in support of their contention that the Commission had not offered them, in the present case, all the guarantees to exclude any legitimate doubt as regards its impartiality in the examination of the case concerning them.

85 By observing in essence, first, in paragraph 104 of the judgment under appeal that, in itself, the Commission's use of a hybrid procedure does not make it possible to establish an infringement by that institution of its duty of impartiality, and, secondly, in paragraph 149 of that judgment, that, when examining, in the context of the standard procedure, the evidence submitted by the parties which have chosen not to settle, the Commission is in no way bound by the factual findings and legal classifications which it adopted in the settlement decision with regard to the parties which have decided to enter into a settlement, and, finally, in paragraph 159 of that judgment, that the appellants did not allege that the Commission did not respect, during the administrative procedure which led to the adoption of the decision at issue, all the procedural guarantees associated with the effective exercise of their rights of defence, as provided for, inter alia, in the general provisions of Regulation No 773/2004, the General Court at least implicitly, but necessarily, addressed the 'objective' aspect of the obligation of impartiality with which the Commission is required to comply. Those factors show that the General Court assessed whether sufficient guarantees had been offered to the appellants to exclude any legitimate doubt as to the Commission's objective impartiality.

86 As regards, in the second place, the appellants' argument in which they maintain, in essence, that the General Court in any event wrongly assessed the principle of objective impartiality in law, it should be recalled that, by that argument, the appellants criticise the General Court for failing to justify its assessment that the Commission had complied with the principle of impartiality. They thus allege, in essence, an infringement by the General Court of its duty to state reasons. However, as follows from paragraphs 80 to 85 of this judgment, the General Court did give reasons for the judgment under appeal in that regard.

87 Moreover, in so far as the appellants rely on the consideration, set out in paragraph 151 of the judgment under appeal, that the participation of the same Commission services in the adoption of both the settlement decision and the decision at issue made it more difficult to comply with the '"tabula rasa" principle', it is sufficient to note that it is apparent from paragraph 77 of this judgment that that consideration is wrong in law.

88 It is apparent from all of the above considerations that the first ground of appeal must be rejected.

The second ground of appeal

89 By their second ground of appeal, the appellants submit, in essence, that the General Court infringed Article 101 TFEU and Article 53 of the EEA Agreement by classifying the geographic scope of the conduct at the German level meetings as extending to the entire territory of the EEA. They divide that ground of appeal into four parts.

First part of the second ground of appeal

– *Arguments of the parties*

90 By the first part of their second ground of appeal, the appellants, referring to paragraph 421 of the judgment under appeal, submit that the General Court erred in law, first, by concluding that, in order to establish the geographic scope of a concerted practice, it could take into account only the scope of the information obtained and, secondly, by failing, in so doing, to take into account, in its legal assessment, the intention of the undertakings participating in that concerted practice, which is nevertheless a constituent element of such a practice.

91 The General Court could not therefore rely solely on the content and nature of the information exchanged to characterise that geographic scope. The General Court's failure to take that 'intention' into account led it to wrongly confirm that Scania had participated in exchanges at the German level meetings, which formed part of a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement, with an EEA-wide scope for the entire period of the infringement, namely from 17 January 1997 to 18 January 2011.

92 The Commission contests that line of argument.

– *Findings of the Court*

93 In paragraph 421 of the judgment under appeal, the General Court held that, on the basis of the evidence concerning the geographic scope of the information obtained by Scania DE, which it had analysed in paragraphs 405 to 420 of that judgment, assessed as a whole, it was appropriate to conclude that Scania DE, by means of the participation of its employees in exchanges of information at the German level meetings, obtained information the scope of which went beyond the German market. On the basis of that finding, the General Court rejected the sixth plea raised by the appellants before it, alleging infringement of Article 101 TFEU and Article 53 of the EEA Agreement in that the Commission had considered that the geographic scope of the infringement relating to the German level meetings extended to the entire territory of the EEA. The General Court went on to state, in paragraph 421 of the judgment under appeal, that those findings were sufficient to reject that plea irrespective of whether Scania DE also provided information the scope of which went beyond the German market.

94 It is clear from well-established case-law that an infringement of Article 101(1) TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an 'overall plan', because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole (judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 41 and the case-law cited).

95 It is also clear from well-established case-law that, in order to establish the participation of an undertaking in the implementation of such a single infringement, the Commission must prove that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen such conduct and was prepared to take the risk (judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraphs 42 and 60 and the case-law cited).

96 An undertaking may thus have participated directly in all the forms of anticompetitive conduct comprising the single and continuous infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the forms of that conduct, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anticompetitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole (judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 43).

97 It follows from the foregoing that, in order to conclude that the exchanges of information at issue went beyond the German market and concerned the territory of the EEA, it was sufficient for the General Court to find that such a conclusion was apparent from the content of the information obtained by Scania DE from the other participants.

98 Thus, the appellants' contention that the General Court could not rely solely on the fact that the exchanges at the German level meetings concerned the territory of the EEA in order to confirm their participation in the infringement stems from a confusion between, on the one hand, the conditions required to establish and define the scope of a single and continuous infringement and, on the other hand, the conditions which must be satisfied in order to attribute to an undertaking liability for such an infringement as a whole.

99 In accordance with the settled case-law of the Court of Justice, it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anticompetitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anticompetitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs (see, to that effect, judgment of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 142 and the case-law cited).

100 It is also apparent from the case-law that, subject to proof to the contrary, which the economic operators concerned must adduce, it must be presumed that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors in determining their conduct on that market (judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 127 and the case-law cited).

101 It follows from that case-law that, where the Commission shows that the undertaking concerned participated in meetings at which anticompetitive agreements were concluded, without manifestly opposing them, the Commission does not in addition have to prove that that undertaking intended to take part in the infringement, but that it is for that undertaking to provide evidence of its distancing itself from those agreements, and in particular, as in the present case, from their geographic scope.

102 Thus, the General Court did not err in law in concluding, after analysing the evidence submitted for its assessment, that the Commission was entitled to conclude that, by means of the exchanges of information at the German level meetings, Scania DE obtained information the scope of which went beyond the German market, without requiring the Commission to show, in addition, that, by participating in those exchanges, Scania DE intended to obtain that information and to take it into account in determining its conduct.

103 Consequently, the first part of the second ground of appeal must be rejected as unfounded.

Second part of the second ground of appeal

– *Arguments of the parties*

104 By the second part of their second ground of appeal, the appellants submit that the General Court erred in law by finding that the scope of the information obtained by Scania DE during the exchanges at the German level meetings went beyond the German market.

105 In that regard, the appellants criticise, in essence, the reasoning of the General Court set out in paragraphs 405 to 414 of the judgment under appeal, in which the General Court analysed the evidence in the file and concluded, in paragraph 414 of that judgment, that, in the light of that evidence taken together, it had to be held that the scope of the information obtained by Scania DE during the exchanges at the German level meetings went beyond the German market. They allege, in essence, that the five grounds put forward in those paragraphs are not only insufficient to support that conclusion adequately, but are also inconsistent and even contradictory, despite the fact that, in order to establish

the existence of an infringement of Article 101 TFEU and Article 53 of the EEA Agreement, the case-law requires the Commission to produce firm, precise and consistent evidence.

106 The Commission submits that that line of argument must be rejected.

– *Findings of the Court*

107 It should be observed that, by the second part of their second ground of appeal, the appellants are in fact seeking a fresh assessment of the facts and evidence by the Court of Justice, without, however, alleging that they have been distorted by the General Court. In their arguments in support of that second part, the appellants confine themselves to setting out the reasons why, in their view, the General Court should have adopted a different interpretation of the various factors identified in the paragraphs of the judgment under appeal which they mention, and refer, moreover, to numerous passages in their application before the General Court.

108 Admittedly, the question whether the General Court observed the rules relating to the burden of proof and the taking of evidence in its examination of the evidence relied on by the Commission to support the existence of an infringement of the competition rules of the European Union constitutes a question of law which is amenable to judicial review on appeal. However, the appraisal by the General Court of the probative value of the documents in the case file submitted to it cannot, save where the rules on the burden of proof and the taking of evidence have not been observed or the evidence has been distorted, be challenged before the Court of Justice (see, to that effect, judgment of 26 January 2017, *Commission* v *Keramag Keramische Werke and Others*, C-613/13 P, EU:C:2017:49, paragraphs 26 and 27 and the case-law cited). The appellants make no claim to that effect.

109 Accordingly, the second part of the second ground of appeal must be rejected as inadmissible.

Third part of the second ground of appeal

– *Arguments of the parties*

110 By the third part of their second ground of appeal, the appellants submit that the General Court erred in so far as it implicitly held that Scania DE ‘intended’ to participate in an exchange of information at the German level meetings the scope of which extended to the territory of the EEA.

111 In that regard, referring to and criticising the reasoning of the General Court in paragraphs 415 to 420 of the judgment under appeal, the appellants submit, in essence, that, in so far as the assessment of the General Court must be regarded as an assessment of Scania DE’s intention to participate in an exchange of information at the German level meetings the scope of which extended to the territory of the EEA, the General Court erred in law in that, in paragraphs 416 and 418 of that judgment, it based that assessment on insufficient, inconsistent and contradictory reasoning and in that, in paragraph 419 of that judgment, it neither examined nor addressed to the requisite legal standard the specific arguments raised or evidence put forward by Scania, thereby also failing to fulfil its duty to state reasons. The General Court also disregarded the case-law requiring the Commission to produce firm, precise and consistent evidence in order to establish an infringement of Article 101 TFEU and Article 53 of the EEA Agreement, the appellants referring in that regard to paragraph 417 of that judgment.

112 In addition, the appellants submit that, in paragraph 420 of the judgment under appeal, the General Court unlawfully disregarded and failed to take proper account of the probative value of the affidavits submitted by Scania. According to the appellants, in the absence of any direct evidence of the fact that information obtained at the German level meetings was transmitted to Scania’s headquarters, the statements made by the individuals directly involved in the alleged conduct could not be regarded as being of ‘limited probative value’, simply on the ground that they had been produced after the relevant events, for the purpose of Scania’s defence in the administrative procedure.

113 The Commission contests that line of argument.

– *Findings of the Court*

114 It should be observed that the appellants' argument in support of the third part of their second ground of appeal is based on the premiss that, in paragraphs 415 to 420 of the judgment under appeal, the General Court found that it was Scania DE's intention to participate in an exchange of information at the German level meetings the scope of which extended to the territory of the EEA.

115 However, it is apparent from those paragraphs, read in conjunction with paragraphs 405 to 414 and 421 of that judgment, that the General Court confined itself to finding that Scania DE obtained, through the participation of its employees in exchanges of information at the German level meetings, information the scope of which went beyond the German market. Paragraphs 415 to 420 of that judgment are devoted more specifically to rejecting the appellants' claim before the General Court that the Scania DE employees who participated in the exchanges at the German level meetings had never assumed that the information received from the representatives of the subsidiaries of the other truck manufacturers related to European prices or could reduce uncertainty as to the European strategy of those other manufacturers.

116 Without it being necessary to determine whether the third part of the second ground of appeal actually seeks to call into question the assessment of the evidence by the General Court and, consequently, whether it must be rejected as inadmissible in accordance with the case-law cited in paragraph 108 of this judgment, it must be dismissed as unfounded, since it is based on the premiss referred to in paragraph 114 of this judgment, which is incorrect.

Fourth part of the second ground of appeal

– *Arguments of the parties*

117 By the fourth part of their second ground of appeal, the appellants submit that the General Court erred in law in determining the scope of the information provided by Scania DE. In that regard, the appellants state that the General Court's finding that, by means of the contacts at the German level meetings, Scania DE provided information the scope of which extended to the whole of the EEA is insufficiently reasoned and based on inadequate grounds. In particular, the General Court erred in its assessment of the significance of the evidence contained in the economic reports prepared by a firm of economics consultants when it rejected the relevance of those reports in paragraphs 439 and 440 of the judgment under appeal.

118 The Commission contests that line of argument.

– *Findings of the Court*

119 As in the case of the second part of the second ground of appeal, it should be noted that, by the fourth part of that ground of appeal, the appellants seek to obtain from the Court of Justice a fresh assessment of the facts and evidence, without alleging that they have been distorted by the General Court. Accordingly, for the same reasons as those set out in relation to the second part of the second ground of appeal, the fourth part of that ground of appeal must also be dismissed as inadmissible.

120 Accordingly, the second ground of appeal must be rejected in its entirety as being partly inadmissible and partly unfounded.

The third ground of appeal

Arguments of the parties

121 By their third ground of appeal, the appellants submit that the factual elements on the basis of which the General Court considered the Commission's finding that, in the present case, there was a single infringement to be well founded cannot serve as a basis for the finding that each of the measures at issue pursued an identical anticompetitive objective and, consequently, formed part of an overall plan with a single anticompetitive objective or contributed to the implementation of that plan. Moreover, the General Court does not provide any reasoning in that regard. Consequently, the General Court was wrong to characterise as a 'single infringement' the conduct which took place at the three different levels of contacts referred to in paragraphs 33 to 36 of this judgment.

122 The appellants divide that ground of appeal into three parts.

123 By the first part of that ground of appeal, the appellants submit that the General Court erred in law by classifying as a ‘single infringement’ the conduct at the three levels of contacts referred to in paragraphs 33 to 36 of this judgment and by failing to state how the factual elements on which it relied justify that classification.

124 Thus, in paragraphs 464 to 469 of the judgment under appeal, the General Court relied on a number of factors in order to make that classification, but none of those factors, taken individually or together, was capable of supporting the conclusion that those three levels of contacts constituted a single infringement. In that regard, the appellants essentially criticise the fact that the General Court relied on the fact that the contacts at issue concerned the same products and had been conducted by the same group of truck manufacturers and on the fact that the conduct at issue involved a small group of employees within each level, the composition of which remained relatively stable. Moreover, the appellants challenge various findings of the General Court that there were factual links between those three levels of contacts, as well as its conclusion that the lower headquarters level and the German level meetings contributed to the implementation of a common plan.

125 By the second part of their third ground of appeal, the appellants submit that the General Court erred in law in concluding that exchanges of information which are not anticompetitive form part of a single infringement. In that regard, referring to the findings of the General Court set out in paragraphs 223, 235 and 236 of the judgment under appeal, which concern three exchanges of information which occurred in the course of 2004 and 2005 and which took place at lower headquarters level, the appellants submit, in essence, that the General Court classified those three exchanges of information, which were perfectly legitimate, as exchanges which pursued an anticompetitive objective identical to that of other separate exchanges which took place at different levels. It therefore wrongly found that those three exchanges were all part of a single infringement. In this respect, the General Court did not provide any reasoning explaining how such legitimate acts could contribute to an anticompetitive objective. The General Court therefore erred in law by characterising non-collusive information exchanges at lower headquarters level as forming part of a single infringement of Article 101 TFEU and Article 53 of the EEA Agreement.

126 By the third part of their third ground of appeal, the appellants submit that the General Court erred in law in holding that the conduct at the German level meetings pursued an objective identical to that pursued at top management level and, in so far as relevant, at lower headquarters level. The scope of the conduct at the German level meetings did not extend to the territory of the EEA. Paragraph 467 of the judgment under appeal, in which the General Court found that the Commission was entitled to take the view that the geographic scope of the anticompetitive exchanges at the German level meetings and at top management level extended to the whole of the EEA, is therefore incorrect.

127 In that regard, the appellants refer to their second ground of appeal, in which they submit that the General Court erred in law in characterising the exchanges of information at the German level meetings as being EEA-wide in scope. It follows from that error that the conduct at the German level meetings could not be characterised as pursuing an objective identical to that pursued at top management level and at lower headquarters level, it being specified that, in the case of the latter, only the period relating to the years 2004 and 2005 is concerned.

128 The Commission contests that line of argument.

Findings of the Court

129 First, it should be observed that, in paragraph 479 of the judgment under appeal, the General Court rejected the appellants’ argument that the Commission should have assessed separately the three levels of collusive contacts referred to in paragraphs 33 to 36 of this judgment, owing, inter alia, to the existence of links between those three levels of contacts, and that, in paragraph 229 of that judgment, the General Court found that the appellants had not succeeded in calling into question the Commission’s findings relating to those links. More specifically, in paragraph 229 of the judgment under appeal, the General Court stated that the Commission had relied on a number of elements, listed in paragraph 218 of that judgment, demonstrating the existence of those links, which had not been

contested, namely the fact that the participants were employees of the same undertakings and the fact that there was a temporal overlap between the meetings held at those three levels. The General Court based its conclusion that the same three levels were interlinked and did not act separately and independently from each other on all the factors taken into account by the Commission in the decision at issue.

130 Secondly, it must be observed that the third ground of appeal as a whole is based on the premiss that each isolated act which the Commission considers to be part of a single and continuous infringement must, in itself, constitute an infringement of Article 101 TFEU and Article 53 of the EEA Agreement.

131 As recalled in paragraph 94 of this judgment, it is clear from well-established case-law that an infringement of Article 101(1) TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an 'overall plan' because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole (judgment of 16 June 2022, *Sony Optiarc and Sony Optiarc America* v *Commission*, C-698/19 P, EU:C:2022:480, paragraph 59 and the case-law cited).

132 An undertaking which has participated in such a single and continuous infringement through its own conduct, which fell within the definition of an 'agreement' or a 'concerted practice' having an anticompetitive object for the purposes of Article 101(1) TFEU and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of that infringement throughout the period of its participation in the infringement (judgment of 16 June 2022, *Sony Optiarc and Sony Optiarc America* v *Commission*, C-698/19 P, EU:C:2022:480, paragraph 60 and the case-law cited).

133 However, the Court of Justice has already made it clear that, while a set of conduct may be classified, subject to the conditions set out in the two preceding paragraphs of this judgment, as a 'single and continuous infringement', it cannot be inferred from that that each of those forms of conduct must, in itself and taken in isolation, necessarily be classified as a separate infringement of that provision (judgment of 16 June 2022, *Sony Optiarc and Sony Optiarc America* v *Commission*, C-698/19 P, EU:C:2022:480, paragraph 64).

134 For the purposes of establishing a single and continuous infringement, it is usual to take into account the various links existing between the different elements making up the infringement in question. Thus, a contact between undertakings which, taken in isolation, would not in itself constitute an infringement of Article 101(1) TFEU may nevertheless be relevant in demonstrating the existence of a single and continuous infringement of that provision, having regard to the context in which that contact took place. In such a situation, that contact forms part of the body of evidence on which the Commission may legitimately rely in order to establish the existence of a single and continuous infringement of that provision (see, to that effect, judgment of 26 January 2017, *Commission* v *Keramag Keramische Werke and Others*, C-613/13 P, EU:C:2017:49, paragraph 52 and the case-law cited).

135 It therefore follows from the case-law referred to in paragraphs 131 to 134 of this judgment that, in order to establish the existence of a single and continuous infringement, it is sufficient for the Commission to show that the various forms of conduct in question form part of an 'overall plan', without it being necessary for each of those forms of conduct, in itself and taken in isolation, to be capable of being classified as a separate infringement of Article 101(1) TFEU.

136 Accordingly, since the third ground of appeal is based on the erroneous premiss that, in order to be able to establish the existence of such a single and continuous infringement, the General Court should have required the Commission also to establish that each of those acts taken in isolation constituted in itself an infringement of Article 101(1) TFEU and Article 53 of the EEA Agreement, that ground of appeal must be rejected as unfounded.

The fourth plea in law

Arguments of the parties

137 By their fourth ground of appeal, the appellants submit that the General Court erred in law in holding, in paragraphs 516 and 532 of the judgment under appeal, that the eighth plea in law in their action for annulment before that court, alleging misapplication of Article 25 of Regulation No 1/2003, had to be dismissed since the conduct at top management level formed part of a single infringement, which ended on 18 January 2011, so that the five-year limitation period provided for in Article 25(1)(b) of Regulation No 1/2003 only began to run from that date and the Commission's power to impose a fine was therefore not time-barred.

138 According to the appellants, that limitation period had in fact expired on 20 September 2010, which was, without doubt, the date of the first action taken by the Commission, within the meaning of Article 25(3) of Regulation No 1/2003, which interrupted that limitation period. However, since the conduct at top management level ended on 23 September 2004, the Commission's power to impose a fine in respect of that conduct would have been time-barred. Furthermore, in the event that the Court of Justice were to set aside the judgment under appeal, consider the action for annulment before the General Court and decide to annul the decision at issue only in part, the appellants submit that the last potentially collusive conduct at lower headquarters level took place more than five years before 20 September 2010, so that the Commission no longer had jurisdiction to impose a fine in respect of that conduct, in the event that it were considered to form part of a single infringement at top management level and lower headquarters level. Since the plea of lack of competence may be raised by the Court of Justice of its own motion, the Court should consider that the Commission's power to impose a fine for that conduct was time-barred, pursuant to Article 25 of Regulation No 1/2003.

139 The Commission contests that line of argument.

Findings of the Court

140 It is sufficient to note that the fourth plea is based on the assumption that the Court of Justice would set aside the judgment under appeal, consider the appellants' action before the General Court and decide to annul part of the findings in the decision at issue relating to the existence of a single and continuous infringement. In essence, the appellants submit that the General Court infringed Article 25 of Regulation No 1/2003 by upholding the fine imposed by the Commission in that decision, even though the anticompetitive conduct at top management level had ceased on 23 September 2004 and was therefore time-barred and could no longer be the subject of a fine, the first action taken by the Commission, within the meaning of Article 25(3) of Regulation No 1/2003, dating from 20 September 2010.

141 As the first three grounds of appeal have been rejected, the Commission's conclusion, and subsequently that of the General Court, that the cartel at issue constituted a single and continuous infringement extending to the whole of the EEA and lasting until 18 January 2011 must be taken as read. Accordingly, given the date of the first action taken by the Commission, within the meaning of Article 25(3) of Regulation No 1/2003, it cannot be held that, on 18 January 2011, the Commission's power to impose a fine was time-barred.

142 Consequently, the fourth ground of appeal must be rejected as unfounded.

143 Since none of the grounds of appeal in the present appeal have succeeded, it must be dismissed in its entirety as being, in part, inadmissible, in part, ineffective and, in part, unfounded.

Costs

144 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

145 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

146 In the present case, since Scania AB, Scania CV AB and Scania Deutschland GmbH have been unsuccessful and the Commission has applied for costs, they must be ordered to bear their own costs and to pay those incurred by the Commission.

On those grounds, the Court (Tenth Chamber) hereby:

1. Dismisses the appeal;

2. Orders Scania AB, Scania CV AB and Scania Deutschland GmbH to bear their own costs and to pay those incurred by the European Commission.

[Signatures]

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* Language of the case: English.

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1 Confidential information redacted.