ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Tenth Chamber, Extended Composition)

2 February 2022 *

(Competition – Agreements, decisions and concerted practices – Truck manufacturers market – Decision finding an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement – Agreements and concerted practices in relation to the prices of trucks, the timing for the introduction of emission technologies and the passing on to customers of the costs relating to those technologies – 'Hybrid' procedure staggered over time – Presumption of innocence – Principle of impartiality – Charter of Fundamental Rights – Single and continuous infringement – Restriction of competition by object – Geographic scope of the infringement – Fine – Proportionality – Equal treatment – Unlimited jurisdiction)

In Case T-799/17,

Scania AB, established in Södertälje (Sweden),

Scania CV AB, established in Södertälje,

Scania Deutschland GmbH, established in Koblenz (Germany),

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

applicants,

v

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

defendant,

* Language of the case: English.

APPLICATION under Article 263 TFEU seeking annulment of Commission Decision C(2017) 6467 final of 27 September 2017, relating to proceedings under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) (Case AT.39824 – Trucks) or, in the alternative, a reduction of the fines imposed on the applicants in that decision,

THE GENERAL COURT (Tenth Chamber, Extended Composition),

composed of S. Papasavvas, President, A. Kornezov, E. Buttigieg (Rapporteur), K. Kowalik-Bańczyk and G. Hesse, Judges,

Registrar: B. Lefebvre, Administrator,

having regard to the written part of the procedure and further to the hearing on 18 June 2020,

gives the following

Judgment

I. Background to the dispute

1 The applicants, Scania AB, Scania CV AB and Scania Deutschland GmbH ('Scania DE'), are three legal entities of the undertaking Scania ('Scania'). Scania operates in the production and sales of heavy trucks (above 16 tonnes) which are used for long-haulage transport, distribution, construction haulage and specialised purposes.

2 By Decision C(2017) 6467 final of 27 September 2017 relating to a proceeding under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) (Case AT.39824 – Trucks) ('the contested decision'), the European Commission found that the applicants had infringed Article 101 TFEU and Article 53 of 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 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 (Article 1 of the contested 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 (Article 2 of the contested decision).

[1] Confidential information omitted.

A. Administrative procedure which led to the contested decision

3 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; 'the Leniency Notice'). On 17 December 2010, the Commission granted conditional immunity from fines to [*confidential*].

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

5 On 28 January 2011, [*confidential*] applied for immunity from fines in accordance with paragraph 14 of the Leniency Notice and, failing that, in the alternative, for a reduction of the fine in accordance with paragraph 27 of the Leniency Notice. [*confidential*] and [*confidential*] followed suit.

6 Over the course of the investigation, the Commission sent several requests for information to, inter alia, the applicants, pursuant to Article 18 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).

7 On 20 November 2014, the Commission initiated proceedings pursuant to Article 11(6) of Regulation No 1/2003 against the applicants and the legal entities of the undertakings referred to in paragraph 2 above and adopted a statement of objections which it notified to all those entities, including the applicants.

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

9 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). 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.

10 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 applicants did not make such a request.

11 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').

12 Since the applicants chose not to submit a formal settlement request, the Commission continued the investigation relating to them under the standard (non-settlement) procedure.

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

14 On 18 October 2016, the applicants attended a hearing.

15 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.

16 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.

17 On 27 September 2017, the Commission adopted the contested decision.

B. Contested decision

1. Structure of the truck market and the price-setting mechanism in the truck industry

18 The Commission began the contested decision by presenting, in recitals 22 to 50, the structure of the truck market and the price-setting mechanism in the truck industry, including in respect of Scania.

(a) The structure of the truck market

19 As regards the structure of the truck market, the Commission states 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 (recitals 22 and 23 of the contested decision).

20 The Commission also states 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 (recital 25 of the contested decision). The Commission notes 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 (recital 26 of the contested decision).

(b) Price-setting mechanism in the truck industry

21 As regards the price-setting mechanism, the Commission states 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 (recital 38 of the contested decision).

22 The Commission finds 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 (recital 38 of the contested decision). The Commission states that all the parties, with the exception of [*confidential*], established, between 2000 and 2006, gross price lists made up of harmonised gross prices throughout the EEA (recital 40 of the contested decision).

(c) Price-setting mechanism within Scania

23 In recitals 41 to 50 of the contested decision, the Commission described the price-setting mechanism within Scania and those involved in that setting.

24 According to that description, Scania's headquarters sets the Factory Gross Price List ('FGPL') for all the various available components of a truck (recital 44 of the contested decision). [*confidential*].

25 Each of Scania's national distributors (for example Scania DE) negotiates with Scania's headquarters a 'distributor net price' (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' which shows the difference between the FGPL and the net price for the distributor

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*] (recital 45 of the contested decision).

26 In addition, Scania's national distributor discloses to the Scania dealers in its territory its own gross price list (consisting of the net price for the distributor plus the profit margin) for all the various available components of a truck (recital 46 of the contested decision).

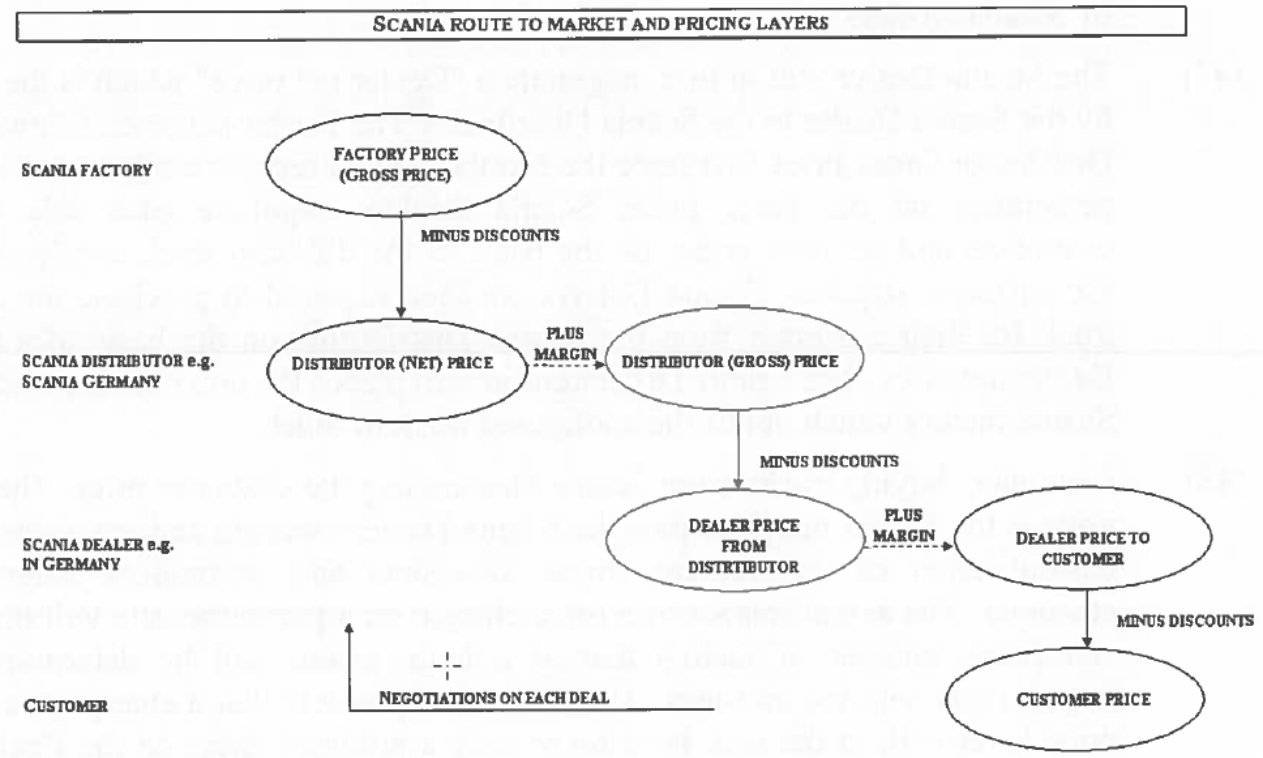
27 The Scania dealer will negotiate with the distributor a 'dealer net price' which is based on the distributor's gross price list, less a substantial reduction for the dealer (recital 47 of the contested decision).

28 [*confidential*].

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 (recital 48 of the contested decision). The Commission finds that the change in the price at any stage of the distribution chain will have minimal, or no effect, on the final price paid by the customer (recital 48 of the contested decision).

30 The Commission states 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 (recital 49 of the contested decision).

31 Recital 50 of the contested decision contains a flowchart of the various stages of Scania's pricing mechanism, as described in paragraphs 24 to 29 above. That flowchart was provided by the applicants during the administrative procedure and is presented as follows:



(d) The impact of price increases at European level on prices at national level

32 In recitals 51 and 52 of the contested decision, the Commission examines the impact of price increases at European level on prices at national level. In that regard, the Commission notes 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 (recital 51 of the contested decision).

33 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 the 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 (recital 52 of the contested decision).

2. Collusive contacts between Scania and the settling parties

34 In the contested decision, 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 (recital 75 of the contested decision).

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

36 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 contested decision, the Commission referred to that level of collusive contacts as 'top management' level. The Commission added that, at the top management meetings, the parties to the cartel 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, on certain occasions, it was agreed not to introduce the technologies concerned before a certain date (recital 75 of the contested decision). The Commission found that the top management meetings took place between 1997 and 2004 (recital 327(a) of the contested decision).

37 In the second place, the Commission found that, for a limited period and in parallel with the top management 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 contested decision, the Commission referred to that level of collusive contacts as 'lower headquarters level' (recital 75 of the contested decision). The Commission found that the meetings at lower headquarters level had occurred between 2000 and 2008 (recital 327(a) of the contested decision).

38 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 contested decision, 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 (recital 76 of the contested decision). The Commission found that the German level meetings took place from 2004 onwards (recital 327(a) of the contested decision).

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

(a) Agreements and concerted practices

39 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 (recital 212(a) of the contested decision);

– 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 (recital 212(b) of the contested decision);

– 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 (recital 212(c) of the contested decision).

40 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 (recital 213 of the contested decision).

41 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 an agreement or a concerted practice 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 (recital 214 of the contested decision). According to the Commission, the systematic participation in the collusive contacts created a climate of mutual understanding of the parties' pricing policy (recital 215 of the contested decision).

42 The Commission found that Scania regularly participated in the various forms of collusion throughout the entire infringement period and found that the infringement in which Scania 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 (recital 229 of the contested decision).

(b) Restriction of competition

43 The Commission stated that the anticompetitive behaviour in the present case had the object of restricting competition (recital 236 of the contested decision).

44 According to the Commission, the principal aspect of all of the agreements and concerted practices, which could be classified as a restriction of competition, was

the coordination of prices and gross price increases through contacts on pricing, the coordination of the date and additional costs of the introduction into the market of new trucks complying with emission standards and the exchange of competitively sensitive information (recital 237 of the contested decision).

45 The Commission found that Scania had participated in the collusive contacts described in paragraph 39 above 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 (recitals 238 and 239 of the contested decision).

(c) Single and continuous infringement

46 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 of Article 53 of the EEA Agreement for the period between 17 January 1997 and 18 January 2011. The infringement 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 medium and heavy trucks required by Euro 3 to 6 standards (recital 315 of the contested decision).

47 More specifically, the Commission considered that, through the 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 through its actions (recital 316 of the contested decision).

48 The Commission 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 (recital 317 of the contested decision).

(d) Geographic scope of the infringement

49 The Commission considered that the geographic scope of the infringement was throughout the territory of the EEA for the entire period of the infringement (recital 386 of the contested decision).

4. Addressees

50 In the first place, the Commission addressed the contested decision 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;

– as regards Scania DE, for the period from 20 January 2004 to 18 January 2011 (recital 410 of the contested decision).

51 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 (recital 411 of the contested decision). Consequently, the Commission stated that it was also addressing the contested decision 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;

– Scania CV AB, liable for the conduct of Scania DE for the period between 20 January 2004 and 18 January 2011 (recital 412 of the contested decision).

52 The Commission concluded that the addressees of the contested decision were the entities Scania AB, Scania CV AB and Scania DE (recital 413 of the contested decision).

5. Calculation of the amount of the fine

53 In the present case, the Commission applied the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the Guidelines on the method of setting fines').

(a) Basic amount of the fine

54 As regards, in the first place, the value of sales, it was calculated on the basis of the applicants' sales of heavy trucks in the EEA (adjusted to take into account the evolution of the EEA territory) in 2010 – which was the last full year of the infringement (recitals 429 to 431 of the contested decision). The Commission calculated that value to be EUR [*confidential*].

55 The Commission took the view that, given the extent of the value of the applicants' sales, the objectives of a deterrent effect and proportionality underlying Article 23(2)(a) of Regulation No 1/2003 could be achieved without using the total value of the applicants' sales of heavy trucks in 2010. Consequently, and pursuant to paragraph 37 of the Guidelines on the method of setting fines, the Commission decided to retain only a proportion of the total value of sales for the purpose of calculating the fine, namely EUR [*confidential*] (recitals 432 and 433 of the contested decision). The Commission stated that the

percentage of the value of sales which it had retained for Scania was the same as the percentage retained for the settling parties in the settlement decision (recital 432 *in fine* of the contested decision).

56 As regards, in the second place, the gravity of the infringement, the Commission found that, given, first, the fact that price coordination agreements were, by their very nature, among the most serious infringements of Article 101 TFEU and of Article 53 of the EEA Agreement, secondly, the fact that the cartel covered the entire EEA and, thirdly, the high combined market share of the undertakings involved in the cartel (which was over 90%), the gravity coefficient used in the present case (that is to say the percentage of the retained value of sales) was 17% (recitals 434 to 437 of the contested decision).

57 In the third place, the Commission, taking into account the duration of Scania's participation in the infringement, multiplied the amount arrived at in paragraph 56 above by 14, that figure being the number of years of that participation (recitals 438 and 439 of the contested decision).

58 In the fourth place, the Commission, in accordance with paragraph 25 of the Guidelines on the method of setting fines, increased the basic amount by an additional amount (entry fee) of 17% of the retained value of sales (recitals 440 and 441 of the contested decision).

59 On the basis of those calculations, the Commission concluded that the basic amount of the fine was EUR 880 523 000 (recital 442 of the contested decision).

(b) Final amount of the fine

60 The Commission considered that, in the present case, there were no aggravating or mitigating circumstances which could alter the basic amount of the fine imposed on Scania (recital 444 of the contested decision). It therefore concluded that the final amount of the fine was EUR 880 523 000 and that that amount did not exceed the maximum statutory threshold of 10% of Scania's turnover (recitals 445 to 447 of the contested decision).

6. Operative part of the contested decision

61 The operative part of the contested decision reads as follows:

'*Article 1*

By colluding on pricing and gross price increases in the EEA for medium and heavy trucks; and 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, the following legal entities of Scania infringed Article 101 of the Treaty and Article 53 of the EEA Agreement during the periods indicated:

(a) Scania AB (publ) from 17 January 1997 until 18 January 2011;

(b) Scania CV AB (publ) from 17 January 1997 until 18 January 2011;

(c) Scania Deutschland GmbH from 20 January 2004 until 18 January 2011.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

EUR 880 523 000 jointly and severally on Scania AB (publ) and Scania CV AB (publ) of which Scania Deutschland GmbH is held jointly and severally responsible for the amount of EUR 440 003 282.

…’

II. Procedure and forms of order sought

62 By application lodged at the Registry of the General Court on 11 December 2017, the applicants brought the present action.

63 By letter of 20 February 2019, the Court Registry informed the parties that the written part of the procedure had been closed.

64 By document lodged at the Court Registry on 11 March 2019, the applicants requested that a hearing be held. The Commission did not express a view within the period prescribed as to whether there should be a hearing.

65 Following a change in the composition of the Chambers of the General Court, pursuant to Article 27(5) of the Rules of Procedure of the General Court, the Judge-Rapporteur was assigned to the Tenth Chamber, to which the present case was accordingly allocated.

66 Acting upon a proposal of the Judge-Rapporteur, the Court (Tenth Chamber) decided to open the oral part of the procedure.

67 Acting on a proposal from the Tenth Chamber, the Court decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a chamber sitting in extended composition.

68 In the context of the health crisis linked to COVID-19, the hearing scheduled for 2 April 2020 was postponed.

69 As a member of the Tenth Chamber (Extended Composition) was unable to sit in the present case, the President of the General Court designated the Vice-President of the General Court to complete the Tenth Chamber (Extended Composition) and thus to act as President of that chamber.

70 By letter of 5 June 2020, the applicants, on the basis of Article 66 of the Rules of Procedure, requested that certain information in the report for the hearing not be made public. By letter of the same date, the Commission, on the same basis, requested that certain information contained in, inter alia, the report for the hearing and in the final judgment not be made public.

71 By letter of 5 June 2020, the Commission, on the basis of Article 109(2) of the Rules of Procedure, requested that the hearing be held in closed session. The applicants submitted their observations on that request on 9 June 2020.

72 On 12 June 2020, the Court decided to hold the hearing in closed session.

73 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 18 June 2020.

74 At the hearing, the Court informed the parties that, in order to resolve the dispute, it considered that it was necessary to examine certain documents referred to in the contested decision.

75 Following clarifications provided by the Commission in a letter of 23 June 2020 on the content and legal rules governing the documents referred to in paragraph 74 above, the Court, by order of 14 July 2020, adopted a measure of inquiry and a measure of organisation of procedure requesting the Commission to produce those documents. The Commission complied with the Court's request within the prescribed period.

76 The oral part of the procedure was closed on 26 October 2020.

77 The applicants claim that the Court should:

– annul the contested decision;

– failing that, partially annul the contested decision and reduce the fine imposed on the applicants pursuant to Article 261 TFEU and Article 31 of Regulation No 1/2003;

– in any event, substitute its own appraisal for that of the Commission as regards the amount of the fine imposed on the applicants and reduce that fine in accordance with Article 261 TFEU and Article 31 of Regulation No 1/2003;

– order the Commission to pay the costs.

78 The Commission contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

III. Law

A. The omission of certain information vis-à-vis the public

79 The Commission, in its letter of 5 June 2020 (see paragraph 70 above), requested the omission vis-à-vis the public of, inter alia, the information which the settling parties had requested it to omit from the non-confidential version of the contested decision. The Commission informed the Court that, as regards the latter requests, the settling parties had referred the matter to the Hearing Officer on the basis of Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011 L 275, p. 29) and that, as of that date, the Hearing Officer had not yet adjudicated on the abovementioned requests of the settling parties.

80 The Court, in the context of the application of Article 66 of the Rules of Procedure, must reconcile the principle that court rulings are made public with the right to the protection of personal data and the right to the protection of professional secrecy, regard also being had to the public's right of access, in accordance with the principles laid down in Article 15 TFEU, to court rulings (see, to that effect and by analogy, judgment of 5 October 2020, *Broughton* v *Eurojust*, T-87/19, not published, EU:T:2020:464, paragraph 49).

81 When carrying out that reconciliation, the Court decided, in the present case, as regards the non-confidential version of the present judgment, to anonymise the names of the natural persons and to conceal the names of the legal persons other than the applicants. 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 the judgment.

82 By contrast, the Court decided not to conceal, in the non-confidential version of the judgment, the information referred to in the settling parties' requests sent to the Commission (see paragraph 79 above). Some of that information may be inferred from the content of the documents published on the website of the Commission's Directorate-General for Competition and therefore is in the public domain. Certain other information merely constitutes legal classifications of the conduct of the settling parties and Scania or provides factual details relating to that conduct. The concealment of that information would affect the public's understanding of the Court's judgment.

83 The fact, relied on by the Commission, that the Hearing Officer has not yet adjudicated on the settling parties' requests does not affect the Court's assessment. The Hearing Officer's assessment is aimed at establishing the non-confidential version of the contested decision, whereas the assessment made by the Court in the context of Article 66 of the Rules of Procedure concerns the establishment of the non-confidential version of the judgment. Those two assessments therefore

have different purposes and, accordingly, the Court must proceed independently of the conduct of the procedure before the Hearing Officer.

B. Substance

84 In support of their actions, the applicants raised nine pleas in law.

85 In the first plea in law, the applicants allege infringement of the rights of the defence, the principle of good administration and the presumption of innocence resulting, in particular, from the adoption of the settlement decision prior to the adoption of the contested decision. In the second plea in law, alleging infringement of Article 48(2) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 27(1) and (2) of Regulation No 1/2003, the applicants complain, in essence, that the Commission refused them access to all the replies of [*confidential*] and [*confidential*] to the statement of objections.

86 The third, fourth, fifth, sixth and seventh pleas in law, alleging, inter alia, misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement, concern, in essence, the Commission's conclusion relating to the existence in the present case of a single and continuous infringement and that it was attributable to Scania.

87 In the eighth plea in law, alleging misapplication of Article 101 TFEU, Article 53 of the EEA Agreement and of Article 25 of Regulation No 1/2003, the applicants complain that the Commission imposed a fine on them in respect of conduct that was time-barred and, in any event, that the Commission failed to take into consideration the fact that that conduct was not continuous.

88 The ninth plea in law alleges infringement of the principle of proportionality and of the principle of equal treatment as regards the amount of the fine. Based on that plea in law, the applicants also ask the Court, in the alternative, to reduce the amount of the fine, pursuant to Article 261 TFEU and Article 31 of Regulation No 1/2003.

1. The first plea in law, alleging infringement of the rights of the defence, the principle of good administration and the presumption of innocence

89 In support of the first plea in law, the applicants submit, in essence, that the settlement decision and the contested decision, which were adopted on the basis of the same objections raised in the statement of objections addressed to both the settling parties and the applicants, concern the same alleged cartel and both decisions are based on the same facts and evidence.

90 Starting from that premiss, in the first place, the applicants claim that the contested decision was adopted in breach of their rights of defence as enshrined in Article 48(2) of the Charter and in Article 27(1) and (2) of Regulation No 1/2003,

since the Commission, in the settlement decision, had carried out a legal classification of the facts and classified as an infringement the conduct in which Scania had participated before the latter had had the opportunity to exercise its rights of defence effectively.

91 In the second place, the applicants submit that the Commission failed to fulfil its obligation to conduct a diligent and impartial examination stemming from the principle of good administration enshrined in Article 41(1) of the Charter, in so far as, having adopted the settlement decision prior to the adoption of the contested decision, the Commission was no longer in a position to demonstrate impartiality and to assess objectively the evidence and the arguments put forward by Scania in the procedure which led to the adoption of the contested decision.

92 The applicants add that, in those circumstances, even a comprehensive review by the Court of the evidence which was relied on by the Commission and contained in its file cannot remedy that infringement of Article 41(1) of the Charter.

93 In the third place, the applicants submit that the contested decision is vitiated by an infringement of the presumption of innocence, the observance of which is guaranteed by Article 48(1) of the Charter. More specifically, they argue that the settlement decision defines the Commission's final position with regard to the same facts as those set out in the statement of objections and concludes that those facts, in which Scania allegedly also participated, constitute an infringement. That declaration goes beyond a mere reference to Scania's potential liability and therefore constitutes an infringement of Scania's right to the presumption of innocence until evidence to the contrary is adduced by the Commission.

94 According to the applicants, to treat an infringement of the presumption of innocence as being of no significance as long as it does not lead the Commission to reach a 'wrong' decision, namely a decision in which the finding of an infringement is not duly supported by evidence, amounts in practice to 'denuding' that presumption of its content or its purpose, since, if the applicant could show that the decision was incorrect, it would not then need to invoke any infringement of due process.

95 The applicants conclude that, because the settlement decision was adopted prior to the adoption of the contested decision, the Commission could not adopt the latter decision against Scania impartially and without irreparably infringing Scania's right to be heard and the presumption of its innocence.

96 The Commission disputes the applicants' arguments and contends that the first plea in law should be rejected.

97 As a preliminary point, it should be noted, as the applicants confirmed at the hearing in response to a question put by the Court, that, in the first plea in law, the applicants dispute the 'hybrid' nature of the procedure followed by the Commission, which, in the circumstances of the present case, led to the alleged infringements, namely the infringement of the principle of the presumption of

innocence, the duty of impartiality and the rights of defence of Scania who had withdrawn from the settlement procedure. In particular, the fact that the settlement decision was adopted before the contested decision aggravates those infringements, according to the applicants.

98 In that regard, it should be noted that Article 10a of Regulation No 773/2004, entitled 'Settlement procedure in cartel cases', provides:

'1. After the initiation of proceedings pursuant to Article 11(6) of Regulation … No 1/2003, the Commission may set a time limit within which the parties may indicate in writing that they are prepared to engage in settlement discussions with a view to possibly introducing settlement submissions. The Commission shall not be obliged to take into account replies received after the expiry of that time limit.

…

2. Parties taking part in settlement discussions may be informed by the Commission of:

(a) the objections it envisages to raise against them;

(b) the evidence used to determine the envisaged objections;

(c) non-confidential versions of any specified accessible document listed in the case file at that point in time, in so far as a request by the party is justified for the purpose of enabling the party to ascertain its position regarding a time period or any other particular aspect of the cartel; and

(d) the range of potential fines.

…

Should settlement discussions progress, the Commission may set a time limit within which the parties may commit to follow the settlement procedure by introducing settlement submissions reflecting the results of the settlement discussions and acknowledging their participation in an infringement of Article 101 [TFEU] as well as their liability. … Before the Commission sets a time limit for the introduction of settlement submissions, the parties concerned shall be entitled to have the information specified in the first subparagraph, disclosed to them, upon request, in a timely manner. The Commission shall not be obliged to take into account settlement submissions received after the expiry of that time limit.

…

3. When the statement of objections notified to the parties reflects the contents of their settlement submissions, the written reply to the statement of objections by the parties concerned shall, within a time limit set by the Commission, confirm

that the statement of objections addressed to them reflects the contents of their settlement submissions. The Commission may then proceed to the adoption of a Decision pursuant to Article 7 and Article 23 of Regulation … No 1/2003 after consultation of the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 14 of Regulation … No 1/2003.

4. The Commission may decide at any time during the procedure to discontinue settlement discussions altogether in a specific case or with respect to one or more of the parties involved, if it considers that procedural efficiencies are not likely to be achieved.'

99 It should be noted at the outset that that provision does not preclude, and does not exclude, the possibility for the Commission to follow a 'hybrid' procedure in the context of the application of Article 101 TFEU.

100 Furthermore, the Court has already accepted that the Commission was entitled to use such a 'hybrid' procedure and to apply a settlement procedure in respect of undertakings which put forward settlement proposals, while pursuing the procedure governed by the general provisions of Regulation No 773/2004, instead of the provisions governing the settlement procedure, in respect of undertakings which do not wish to put forward such settlement proposals (see, to that effect, judgment of 20 May 2015, *Timab Industries and CFPR* v *Commission*, T-456/10, EU:T:2015:296, paragraphs 70, 71 and 104, upheld on appeal by judgment of 12 January 2017, *Timab Industries and CFPR* v *Commission*, C-411/15 P, EU:C:2017:11, paragraphs 119 and 136).

101 Furthermore, the Court has also agreed that the Commission may initially adopt a settlement decision as regards the parties which have decided to enter into a settlement and that the Commission may go on to adopt a decision following the ordinary procedure in respect of the parties which decided not to enter into a settlement, provided, however, that it ensures observance of the principle of the presumption of innocence, in particular where the adoption of the settlement decision does not require a determination of the liability of the party which did not take part in the settlement (see, to that effect, judgment of 10 November 2017, *Icap and Others* v *Commission*, T-180/15, EU:T:2017:795, paragraphs 265 to 268, upheld on appeal by judgment of 10 July 2019, *Commission* v *Icap and Others*, C-39/18 P, EU:C:2019:584).

102 As the Commission contends, to delay or abandon any settlement procedure on the ground that one of the undertakings concerned, as in the present case Scania, withdrew from that procedure would run counter to the objective pursued by the settlement procedure, as set out in recital 4 of Commission Regulation (EC) No 622/2008 of 30 June 2008 amending Regulation No 773/2004, as regards the conduct of settlement procedures in cartel cases (OJ 2008 L 171, p. 3), which is to ensure a more expeditious and efficient handling of the case with those undertakings that have chosen to settle. However, observance of that objective

must not undermine the requirements relating to observance of the principle of the presumption of innocence and the duty of impartiality.

103 The circumstances of the present case, put forward by the applicants at the hearing, namely the fact that the complete statement of objections had been sent to all the parties and that they had obtained full access to the investigation file, does not support the conclusion, contrary to what the applicants claim, that the Commission's use of the 'hybrid' procedure staggered over time did not enable such an objective of speed and efficiency to be met. That objective is also covered by other circumstances specific to a settlement procedure such as the unequivocal recognition by the settling parties of their liability for the infringement, acceptance of the limited exercise of their rights of defence and the range of fines (see paragraphs 20 and 21 of the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ 2008 C 167, p. 1)).

104 Consequently, contrary to what is claimed, in essence, by the applicants, 'hybrid' procedures in the context of the application of Article 101 TFEU, in which the adoption of the settlement decision and the decision following the standard procedure are staggered over time, do not in themselves, in all circumstances, entail an infringement of the presumption of innocence, the rights of the defence or the duty of impartiality and do not inevitably mean that those principles and those rights have been infringed, as is apparent from the case-law referred to in paragraphs 100 and 101 above.

105 It follows that the Commission is entitled to use such a 'hybrid' procedure by adopting the settlement decision before the contested decision, on condition, however, that there is full observance of those principles and rights.

106 Thus, it is necessary to examine whether, in the circumstances of the present case, the Commission observed the presumption of innocence and its duty of impartiality towards Scania and the latter's rights of defence.

107 The applicants put forward their complaints in the first plea in law primarily on the premiss that the settlement decision and the contested decision are based on the same facts and on the same evidence. They refer in that regard to the facts relating to the conduct of the settling parties, such as the facts set out in paragraph 3 of the settlement decision, but 'necessarily involving Scania', with the result that the circle of undertakings whose conduct was legally classified in the settlement decision is not limited to the addressees of that decision, but also includes Scania. The applicants also maintain that the infringement of the principle of the presumption of innocence arises from the fact that the settlement decision and the contested decision were adopted on the basis of the same objections raised in the statement of objections sent to both the settling parties and the applicants.

108 In that respect, as regards the complaint alleging infringement of the principle of the presumption of innocence, it should be noted that that principle constitutes a general principle of EU law, now laid down in Article 48(1) of the Charter, which applies to the procedures relating to infringements of the competition rules applicable to undertakings that may result in the imposition of fines or periodic penalty payments (see judgment of 22 November 2012, *E.ON Energie* v *Commission*, C-89/11 P, EU:C:2012:738, paragraphs 72 and 73 and the case-law cited).

109 Article 48 of the Charter corresponds to Article 6(2) and (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), as is apparent from the explanations to the Charter. It follows, in accordance with Article 52(3) of the Charter, that it is necessary to take account of Article 6(2) and (3) ECHR for the purposes of interpreting Article 48 of the Charter, as a minimum threshold of protection and to draw on the case-law of the European Court of Human Rights ('the ECtHR') concerning Article 6(2) ECHR (see, to that effect, judgment of 5 September 2019, *AH and Others (Presumption of innocence)*, C-377/18, EU:C:2019:670, paragraphs 41 and 42). Article 52(3) of the Charter requires rights contained in the Charter which correspond to rights guaranteed by the ECHR to be given the same meaning and scope as those laid down by the ECHR (see judgment of 18 July 2013, *Schindler Holding and Others* v *Commission*, C-501/11 P, EU:C:2013:522, paragraph 32 and the case-law cited).

110 In addition, it must be noted that, in the judgment of the ECtHR of 27 September 2011, *A. Menarini Diagnostics S.R.L. v. Italy* (CE:ECHR:2011:0927JUD004350908, §§ 39 to 44), relating to a penalty imposed by the Italian competition authority for anticompetitive practices similar to those alleged against the applicants, the ECtHR held that, given the high level of the fine imposed, the penalty was, by its severity, a criminal matter. However, the ECtHR has also held that the nature of an administrative procedure, such as that at issue in that judgment, may differ, in several respects, from the nature of criminal proceedings in the strict sense of the term. Although those differences cannot exempt the Contracting States from their obligation to respect all the safeguards offered by the criminal law aspect of Article 6 ECHR, they may nevertheless influence the arrangements for the application of those safeguards (ECtHR, 27 September 2011, *A. Menarini Diagnostics S.R.L. v. Italy*, CE:ECHR:2011:0927JUD004350908, § 62; see also, to that effect, ECtHR, 23 November 2006, *Jussila v. Finland*, CE:ECHR:2006:1123JUD007305301, § 43).

111 The principle of the presumption of innocence implies that every person accused is presumed to be innocent until his or her guilt has been established according to law. That principle thus precludes any formal finding and even any allusion to the liability of an accused person for a particular infringement in a final decision unless that person has enjoyed all the usual guarantees accorded for the exercise of the rights of defence in the normal course of proceedings resulting in a decision

on the merits of the case (see judgment of 10 November 2017, *Icap and Others* v *Commission*, T-180/15, EU:T:2017:795, paragraph 257 and the case-law cited, upheld on appeal by judgment of 10 July 2019, *Commission* v *Icap and Others*, C-39/18 P, EU:C:2019:584).

112 In that regard, the ECtHR has held that premature expressions of a suspect's guilt made in a judgment against separately prosecuted co-suspects may in theory also infringe the principle of the presumption of innocence (see ECtHR, 27 February 2014, *Karaman v. Germany*, CE:ECHR:2014:0227JUD001710310, § 42 and the case-law cited).

113 According to the ECtHR, the principle of the presumption of innocence will be infringed if a judicial decision or an official statement concerning a person charged contains a clear declaration, made in the absence of a final conviction, that the person concerned has committed the offence in question. In that context, that court has emphasised the importance of, first, the choice of words used by the judicial authorities and the particular circumstances in which they are expressed and, secondly, the nature and context of the proceedings in question (see, to that effect, ECtHR, 27 February 2014, *Karaman v. Germany*, CE:ECHR:2014:0227JUD001710310, § 63).

114 The ECtHR has recognised that, in complex criminal proceedings involving several suspects who cannot be tried together, it is essential for the national court, in the assessment of the guilt of the accused, to refer to the participation of third persons who may later be tried separately. It stated, however, that if facts related to the involvement of third parties have to be introduced, the relevant court should avoid giving more information than necessary for the assessment of the legal responsibility of those accused in the trial before it. In addition, that court stated that the reasoning of judicial decisions must be worded in such a way as to avoid a potential prejudgment about the guilt of the third parties concerned, which could jeopardise the fair examination of the charges brought against them in the separate proceedings (see, to that effect, ECtHR, 27 February 2014, *Karaman v. Germany*, CE:ECHR:2014:0227JUD001710310, §§ 64 and 65, and 23 February 2016, *Navalnyy and Ofitrov v. Russia*, CE:ECHR:2016:0223JUD004663213, § 99).

115 According to the case-law of the ECtHR, an infringement of the presumption of innocence may arise not only from a court or tribunal but also from other public authorities (see ECtHR, 15 March 2011, *Begu v. Romania*, CE:ECHR:2011:0315JUD002044802, § 126 and the case-law cited).

116 In the present case, it should be noted that, as the Commission submits, none of the passages of the settlement decision referred to by the applicants contains any reference to or allusion to Scania from which it would be apparent that the Commission had, at the time of adopting that decision, already prejudged Scania's liability in the context of an infringement of Article 101 TFEU.

117 In that regard, first, it is necessary to note the wording of recital 4 of the settlement decision, which provides as follows:

> ‘On 20 November 2014, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this decision and a number of entities of an additional undertaking. This undertaking did not submit a request to settle the proceedings pursuant to Article 10a(2) of Regulation (EC) No 773/2004. As at the date of this [Settlement] Decision, the administrative proceedings under Article 7 of Regulation (EC) No 1/2003 against this undertaking are pending. For the avoidance of doubt, this [Settlement] Decision does not make any findings concerning this undertaking with respect to an infringement of EU competition law.’

118 Thus, in recital 4 of the settlement decision, the Commission was implicitly referring to Scania (i) as being an undertaking against which the administrative procedure based on Article 7 of Regulation No 1/2003 was pending and (ii) by stating that the settlement decision made no conclusion concerning Scania as regards an infringement of EU competition law. Such a reference must be classified at the very most as being a suspicion of Scania’s liability, which would still have to be established, and does not constitute an infringement of the presumption of innocence (see, to that effect and by analogy, ECtHR, 27 February 2014, *Karaman v. Germany*, CE:ECHR:2014:0227JUD001710310, § 63, and 31 October 2017, *Bauras v. Lithuania*, CE:ECHR:2017:1031JUD005679513, § 51 and the case-law cited).

119 However, secondly, even though the existence of such an express reference in the settlement decision to the absence, at that stage, of a conclusion on Scania’s liability under Article 101 TFEU demonstrates the Commission’s willingness to comply with its obligation to observe the principle of the presumption of innocence, as set out in the case-law of the ECtHR (see, to that effect, ECtHR, 27 February 2014, *Karaman v. Germany*, CE:ECHR:2014:0227JUD001710310, §§ 67, 69 and 70, and 31 October 2017, *Bauras v. Lithuania*, CE:ECHR:2017:1031JUD005679513, § 54), namely to indicate clearly that there were separate pending proceedings relating to Scania and that its liability had not yet been legally established (see, to that effect, judgment of 5 September 2019, *AH and Others (Presumption of innocence)*, C-377/18, EU:C:2019:670, paragraph 45), it is not sufficient, in itself, to exclude infringement of that principle, as the Commission acknowledged, in essence, at the hearing.

120 Thus, in order to review compliance with the presumption of innocence, it is still necessary to analyse the reasoning of the settlement decision as a whole in the light of the particular circumstances in which that decision was adopted in order to ascertain that other parts of that decision which are likely to be understood as a premature expression of Scania’s liability for the infringement of EU competition law do not render meaningless the explicit reference to the absence of a finding on Scania’s liability (see, to that effect, judgment of 5 September 2019, *AH and Others (Presumption of innocence)*, C-377/18, EU:C:2019:670, paragraph 46).

121 In that regard, the applicants refer to paragraph 3 of the settlement decision, which deals with the description of the conduct of the addressees of that decision, and more particularly to certain passages in which the Commission described the conduct in which, 'amongst others', the addressees of that decision participated (recitals 47 and 60 of the settlement decision).

122 The Commission submitted, at the hearing, that those references should not be understood as referring implicitly to Scania, even if they were read in conjunction with recital 4 of the settlement decision. The applicants have not put forward any arguments to refute that interpretation of recitals 47 and 60 of the settlement decision.

123 In any event, even if, by referring in the settlement decision to the conduct of, 'amongst others', the addressees of that decision, the Commission was referring implicitly to, inter alia, Scania, such a reference does not concern its liability for the infringement at issue for the purposes of the case-law referred to in paragraph 111 above, but, at most, its participation in certain conduct found against the settling parties. It is therefore not a 'clear' declaration, made in the absence of a final finding of liability, that Scania committed the infringement at issue for the purposes of the case-law referred to in paragraph 113 above.

124 In the settlement decision, as the Commission submits, it carried out a legal classification of the facts, as acknowledged by the addressees of that decision as constituting an infringement of Article 101 TFEU, and, in paragraph 4 of the settlement decision, set out findings as to liability for that infringement only with regard to the addressees of that decision.

125 The applicants submit, however, that an infringement of the presumption of Scania's innocence results from the fact that the settlement decision defines the Commission's final position with respect to the same facts as those set out in the statement of objections and concludes that those facts, in which Scania allegedly also participated, constitute an infringement. According to the applicants, that statement goes beyond the mere reference to Scania's potential liability.

126 In that regard, it must be noted that the facts set out in the settlement decision are accepted by the settling parties, as is apparent from recital 3 of that decision.

127 The mere fact that the addressees of the settlement decision acknowledged their involvement in the infringement and admitted their guilt cannot lead to the implicit acknowledgement of Scania's liability on account of its possible participation in those same facts, thereby automatically converting, de facto and *de jure*, the conclusions reached with regard to the settling parties into a form of 'disguised verdict' by the Commission as regards Scania (see, to that effect, judgment of 28 March 2019, *Pometon* v *Commission*, T-433/16, EU:T:2019:201, paragraph 68).

128 However, an admission of guilt by the parties to the cartel who participated in the settlement procedure is a factor capable of having an impact on the facts relating

to the participation of 'another undertaking' suspected of having been a party to the same cartel, in this case Scania (see, to that effect, judgment of 28 March 2019, *Pometon* v *Commission*, T-433/16, EU:T:2019:201, paragraph 92; see, to that effect and by analogy, ECtHR, 23 February 2016, *Navalnyy and Ofitserov v. Russia*, CE:ECHR:2016:0223JUD004663213, § 103). Consequently, the Commission must ensure that the facts admitted by the settling parties are not accepted in respect of a party that has not taken part in that procedure, such as Scania, without a full and proper examination during the standard procedure in the light of the arguments and evidence submitted by Scania (see, to that effect and by analogy, ECtHR, 23 February 2016, *Navalnyy and Ofitserov v. Russia*, CE:ECHR:2016:0223JUD004663213, §§ 103 to 105, and 31 October 2017, *Bauras v. Lithuania*, CE:ECHR:2017:1031JUD005679513, § 53).

129 In that context, it should be noted that, in the context of the standard administrative procedure, the undertaking concerned and the Commission are, in relation to the settlement procedure, in a situation known as 'tabula rasa', where liabilities have yet to be determined. Thus, when the decision in respect of Scania was adopted following the standard administrative procedure, first, the Commission was bound solely by the statement of objections and, secondly, it was required, in observance of the principle of *audi alteram partem*, to take account of all the relevant circumstances, including all the information and arguments that had been put forward by Scania during the exercise of its right to be heard, with the result that the Commission was required to review the file in the light of those elements (see, to that effect, judgment of 20 May 2015, *Timab Industries and CFPR* v *Commission*, T-456/10, EU:T:2015:296, paragraphs 90, 96 and 107, upheld on appeal by judgment of 12 January 2017, *Timab Industries and CFPR* v *Commission*, C-411/15 P, EU:C:2017:11, paragraphs 119 and 136).

130 Moreover, the Commission's legal classification of the facts with regard to the settling parties does not in itself presuppose that the same legal classification of the facts was necessarily adopted by the Commission with respect to Scania at the conclusion of the separate procedure concerning Scania, as the Commission stated in recital 366 of the contested decision and confirmed at the hearing in response to a question put by the Court. As is apparent from the case-law, there is nothing to prevent the Commission from finding that one party to an agreement or concerted practice is liable under Article 101 TFEU, whereas the other party is not (see, to that effect, judgment of 12 July 2018, *ABB* v *Commission*, T-445/14, not published, EU:T:2018:449, paragraphs 177 to 179 and the case-law cited).

131 As regards the applicants' argument that the infringement of the presumption of innocence results from the fact that the settlement decision and the contested decision are based on the same evidence, the Commission accepts that there is a certain overlap between the evidence on which it relied in both decisions.

132 However, such an overlap between the evidence does not in itself support the conclusion that the presumption of innocence was not observed in the present case with regard to the applicants. The mere fact of having relied on the same evidence

in both decisions does not in any way presume the conclusion which the Commission could draw from that as regards Scania's liability.

133 Moreover, as the Commission rightly submits, whereas the principle of the presumption of innocence precludes a formal finding of an infringement or any allusion to the applicants' liability in the settlement decision, in so far as they did not enjoy all the usual guarantees for the purposes of exercising the rights of the defence in the context of the adoption of that decision, that principle does not preclude the possibility of relying on the same evidence, provided that the applicants have had the opportunity to challenge before the EU Courts the findings made on the basis of that evidence (see, to that effect, judgment of 12 October 2007, *Pergan Hilfsstoffe für industrielle Prozesse* v *Commission*, T-474/04, EU:T:2007:306, paragraphs 76 and 77), which is the case here.

134 Similarly, the applicants' argument, namely that the infringement of the principle of the presumption of innocence results from the fact that the settlement decision and the contested decision were adopted on the basis of the same objections raised in the statement of objections addressed to both the settling parties and the applicants, cannot succeed.

135 In that regard, first, it should be noted that, even though the Commission set out conclusions concerning Scania's role and liability with respect to the infringement in question in the statement of objections sent both to Scania and to the parties who ultimately participated in the settlement procedure, contrary to what the applicants claim, the settlement decision is not based directly on that statement of objections, but on the common understanding of the settling parties and the Commission in respect of the objections following the settlement meetings, in accordance with Article 10a(2) of Regulation No 773/2004 and paragraphs 16 and 17 of the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases, as the Commission stated in recital 367 of the contested decision.

136 Secondly, it must be noted that there was nothing to prevent the applicants from rebutting, during the procedure which led to the adoption of the contested decision and in observance of their rights of defence, the objections raised against them in the statement of objections.

137 Observance of the rights of the defence obliges the Commission, before taking a decision in connection with fines, to give the persons concerned the opportunity of effectively putting forward their point of view with regard to the complaints made against them, in particular on the truth and relevance of the facts and circumstances alleged and on the documents used to support its claim that there has been an infringement of Article 101 TFEU (see, to that effect, judgment of 13 February 1979, *Hoffmann-La Roche* v *Commission*, 85/76, EU:C:1979:36, paragraphs 9 and 11).

138 In proceedings for infringement of the competition rules, it is the statement of objections which constitutes the essential procedural safeguard in this respect (see judgment of 5 March 2015, *Commission and Others* v *Versalis and Others*, C-93/13 P and C-123/13 P, EU:C:2015:150, paragraph 95 and the case-law cited).

139 It follows that, by arguing that the Commission infringed the presumption of Scania's innocence because the contested decision and the settlement decision were based on the same facts and evidence as well as on the same objections as set out in the statement of objections, both vis-à-vis the settling parties and Scania, the applicants disregard their right to submit, in the exercise of their right to be heard in the standard administrative procedure, all the evidence intended to challenge the facts and the evidence on which the Commission intends to rely, which, where applicable, were taken into account by the Commission when the settlement decision was adopted, and disregard the Commission's obligation to review the file in the light of that new evidence.

140 In the present case, the applicants do not deny that they had the opportunity to exercise effectively their rights of defence in the standard administrative procedure before the adoption of the contested decision, both in writing and orally, and therefore to challenge the facts and evidence identified by the Commission in order to support the objections against the applicants. In particular, as is apparent in particular from recital 379 of the contested decision, and is not disputed by the applicants, they had the opportunity to present their views on the evidence on which the Commission relied, in particular the evidence which was added to the investigation file after the statement of objections, such as extracts from the responses of certain settling parties to the statement of objections or additional facts identified by the Commission during the standard administrative procedure, supporting its provisional findings in the statement of objections, which were communicated to Scania with the Letter of Facts of 7 April 2017.

141 However, the applicants submit that the arguments and evidence which they put forward were futile, since the Commission had already reached a decision on the legal classification of the conduct in which Scania allegedly participated as an infringement of Article 101 TFEU.

142 Thus, they claim, in essence, that, having classified the facts in the settlement decision as constituting an infringement of Article 101 TFEU, the Commission was no longer in a position to go back on that assessment and to assess objectively the evidence and arguments submitted by Scania, or to adopt other investigative measures that might have called into question or weakened those assessments made in the settlement decision. Thus, they argue, the settlement decision influenced the Commission's investigation strategy and, ultimately, the content of the evidence on which the Commission based the contested decision. In that regard, the applicants rely on certain circumstances in relation to the conduct of the procedure which led to the adoption of the contested decision, from which the Commission's lack of impartiality is apparent.

143 Accordingly, they submit, in a second complaint in the first plea in law, that the Commission infringed its obligation to conduct an impartial investigation in breach of Article 41(1) of the Charter.

144 In that regard, it should be noted that it follows from settled case-law that the Commission is required, during the administrative procedure relating to cartels, to respect the right to good administration enshrined in Article 41 of the Charter (see, to that effect, judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 154 and the case-law cited).

145 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 (see judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 155 and the case-law cited).

146 The guarantees afforded by EU law, in administrative proceedings, relating to the principle of good administration include the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgment of 27 September 2012, *Shell Petroleum and Others* v *Commission*, T-343/06, EU:T:2012:478, paragraph 170 and the case-law cited).

147 As a preliminary point, it should be noted that, contrary to what the Commission contends, an infringement of the principle of impartiality in circumstances similar to those of the present case is not assessed solely as a potential consequence of an infringement of the principle of the presumption of innocence when the settlement decision is adopted, but may 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 referred to in paragraph 145 above, as to its impartiality in the conduct of the standard procedure.

148 However, none of the arguments put forward by the applicants establishes that the Commission did not offer, in the present case, all the guarantees to exclude any legitimate doubt as regards its impartiality in the examination of the case concerning Scania, and in particular in the examination of the arguments and evidence which Scania was able to submit in the context of the exercise of its rights of defence during the standard administrative procedure.

149 First, it must be pointed out in that regard that, when examining the evidence submitted, in the context of the standard procedure, 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 who decided to enter into a settlement. Thus, in accordance with the

principle of the presumption of innocence and its duty of impartiality, the Commission may make findings of fact or legal classifications which differ from those made in the settlement decision, if its *de novo* review of the evidence at its disposal, in accordance with the 'tabula rasa' principle, justifies this.

150 Secondly, the applicants' argument, namely that the doubt as to the Commission's impartiality stems from the fact that the member of the Commission responsible for competition announced, at a press conference, the adoption of the settlement decision, with the result that the Commission could no longer depart from the conclusions of that decision in the context of the contested decision, cannot succeed. In the press release in question, it is clearly stated, as in recital 4 of the settlement decision (see paragraph 117 above), that the abovementioned member of the Commission did not set out any conclusion regarding Scania's liability in respect of whom the standard procedure was still ongoing. The member of the Commission responsible for competition matters thus, in that press release, merely informed the public of the adoption of the settlement decision, with discretion and circumspection as regards Scania's liability in the infringement in question, as is required when observing the presumption of innocence, and therefore did not fail to comply with his duty of impartiality (see, to that effect, and by analogy, judgment of 12 December 2018, *Servier and Others* v *Commission*, T-691/14, under appeal, EU:T:2018:922, paragraphs 132 and 134).

151 Thirdly, the applicants do not demonstrate how the fact of having involved the same Commission services, in particular those of the Directorate-General for Competition, in the adoption of both the settlement decision and the contested decision is capable, in itself, of proving that there was no impartial examination of the case with regard to the applicants. It is true that the involvement of the same services in the adoption of both decisions 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 imposed by the case-law (see paragraph 129 above), which could justify, in order to dispel doubt in that regard, allocating the file to two different teams.

152 However, in the present case, the applicants have not demonstrated that a member of the Commission or of the services involved in the adoption of the contested decision showed 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, which could be such as to affect the impartial examination of the facts and evidence concerning Scania.

153 Fourthly, as regards the applicants' argument that the Commission was not prepared to adopt new investigative measures, which could have led it to call into question the position it adopted in the settlement decision, it should be noted that the principle which prevails in EU law is that the evidence may be freely adduced (see judgment of 29 February 2016, *Schenker* v *Commission*, T-265/12, EU:T:2016:111, paragraph 40 and the case-law cited).

154 It should also be noted, as the Commission submits, that it has discretion as to whether it is appropriate to adopt investigative measures. Thus, contrary to what is argued by the applicants, an expression of the Commission's bias in respect of the applicants cannot be inferred in an abstract manner from the existence of such a discretion as to how to conduct the investigation. On the contrary, the failure to adopt other investigative measures can be explained above all by the Commission's exercise of its discretion as regards the appropriateness of adopting such measures. It was therefore for the applicants to put forward arguments specifically to demonstrate that the absence of additional investigative measures could be explained only by the Commission's bias and not by the Commission's legitimate exercise of its discretion in conducting the investigation.

155 In that regard, the applicants submit that the Commission relied, in its assessment of the nature and scope (temporal and geographic) of the alleged conduct, in particular in recitals 144 and 339 of the contested decision, on an assessment of the facts, which Scania rejected and refuted in detail. There is nothing in the file to indicate that the Commission continued the investigation in order to verify Scania's conclusions, for example by sending Scania a request for information aimed at producing documentary evidence of its observations or those objections, or by sending such a request to other parties. According to the applicants, that was a 'self-interested failure' by the Commission.

156 However, such arguments by the applicants demonstrate at the very most that the Commission did not follow the conclusions or interpretation of the facts proposed by Scania, in particular finding that they lacked credibility (see, inter alia, recital 301 of the contested decision) and overlap with the question of whether the findings of fact in the contested decision are duly supported by the evidence produced by the Commission and whether it made errors of law in its analysis, which forms part of the examination of the validity of the Commission's assessment (see, to that effect, judgment of 12 December 2018, *Servier and Others* v *Commission*, T-691/14, under appeal, EU:T:2018:922, paragraph 137 and the case-law cited). Such arguments do not demonstrate that the Commission was biased in deciding, in the exercise of its discretion, not to continue the investigation and, in particular, in deciding not to ask the applicants to produce additional evidence in support of their own arguments.

157 Fifthly, the applicants submit that the Commission did not act independently in that, as regards alleged cartels, the Commission is the investigating, prosecuting and decision-making authority at the same time.

158 In that regard, it should be noted that it is apparent from the case-law that the fact that the Commission is responsible for both investigating and imposing penalties for infringements of Article 101 TFEU is not in itself contrary to Article 6 ECHR as interpreted by the ECtHR, and does not constitute an infringement of the principle of impartiality, since its decisions are amenable to review by the EU Courts, which provides the guarantees set out in Article 6 ECHR (see, to that effect, judgments of 18 July 2013, *Schindler Holding and Others* v *Commission*,

C-501/11 P, EU:C:2013:522, paragraphs 33 to 38 and the case-law cited, and of 27 June 2012, *Bolloré* v *Commission*, T-372/10, EU:T:2012:325, paragraphs 65 to 67).

159 As regards the complaint alleging infringement of the rights of defence, it should be noted that the applicants do not allege that the Commission did not respect, during the administrative procedure which led to the adoption of the contested decision, 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 (see paragraph 140 above), but rely on the infringement of their rights of defence solely as regards the fact that, in the settlement decision, the Commission carried out a legal classification of the facts relating to the conduct of the settling parties but necessarily involving Scania, without the latter having been able to exercise its rights of defence.

160 In that regard, it should be noted that, in all proceedings in which sanctions, in particular fines or penalty payments, may be imposed, observance of the rights of the defence is a fundamental principle of EU law which has been emphasised on numerous occasions in the case-law of the Court of Justice and which has been enshrined in Article 48(2) of the Charter (see judgment of 14 September 2010, *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others*, C-550/07 P, EU:C:2010:512, paragraph 92 and the case-law cited). That principle must be fully complied with even if the proceedings in question are administrative proceedings (see judgments of 9 July 2009, *Archer Daniels Midland* v *Commission*, C-511/06 P, EU:C:2009:433, paragraph 84 and the case-law cited, and of 5 March 2015, *Commission and Others* v *Versalis and Others*, C-93/13 P and C-123/13 P, EU:C:2015:150, paragraph 94 and the case-law cited).

161 The rule that the parties should be heard forms part of the rights of the defence. It applies to any procedure which may result in a decision by an EU institution perceptibly affecting a person's interests (see judgment of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraphs 50 and 51 and the case-law cited).

162 In so far as the applicants claim that the settlement decision was adopted without them having been able to express their views, it should be noted, as is apparent from the examination of the complaint alleging infringement of the presumption of innocence, that the settlement decision did not perceptibly affect the applicants' interests within the meaning of the case-law referred to in paragraph 161 above since, contrary to what they claim, the Commission did not, in the settlement decision, carry out a legal classification of the facts against Scania and did not in any way prejudge Scania's liability for the infringement in question. Consequently, the fact that Scania was not heard in the procedure which led to the adoption of the settlement decision does not infringe its rights of defence.

163 As regards, lastly, the applicants' argument that an 'inextricable link' between the settlement decision and the contested decision results from the fact that the

Commission consulted the settling parties in the course of preparing the non-confidential version of the contested decision with a view to its publication cannot succeed either. First, the applicants do not explain how such an 'inextricable link' would support their arguments set out in the first plea in law. Secondly, and in any event, as the Commission submits, by following that course of action, it gave effect to the case-law resulting from the judgment of 12 October 2007, *Pergan Hilfsstoffe für industrielle Prozesse* v *Commission* (T-474/04, EU:T:2007:306), by giving the settling parties the opportunity to rely on the confidentiality of certain information concerning them in view of the fact that, although they were not the addressees of the contested decision, they were nevertheless mentioned in it.

164 Similarly, the applicants cannot reasonably claim that a mere technical error which, on the Commission's website, in the heading relating to the contested decision, caused the link to lead to the settlement decision suggests that there is a connection between the two decisions in such a way that a conclusion can be drawn from that on Scania's liability under Article 101 TFEU.

165 It follows that the first plea in law must be rejected.

2. The second plea in law, alleging infringement of Article 48(2) of the Charter and of Article 27(1) and (2) of Regulation No 1/2003

166 The applicants submit, in essence, that the Commission infringed their rights of defence, in breach of Article 48(2) of the Charter and Article 27(1) and (2) of Regulation No 1/2003, by refusing them access to all of the replies to the statement of objections submitted by [*confidential*] and [*confidential*], even though, according to the applicants, it is likely that those replies contain exculpatory evidence in relation to the other parties, including Scania, beyond the evidence set out in the excerpts from those replies to which access was granted to Scania by the Hearing Officer.

167 According to the applicants, [*confidential*] and [*confidential*] used their replies to the statement of objections to dispute the Commission's allegations against them, as is shown by the extracts which Scania was allowed to review. The applicants consider that the fact that the Commission partially changed its stance on the question of whether the replies of [*confidential*] and [*confidential*] were incriminating or exculpatory casts doubt on the validity of denying full access to those replies.

168 Relying on the case-law, the Commission disputes the applicants' arguments in that they do not demonstrate that the refusal to grant Scania access to all of the replies of [*confidential*] and [*confidential*] to the statement of objections, which are not strictly speaking part of an investigation file, undermined the effective exercise of Scania's rights of defence and, in particular, the right to consult documents that may contain exculpatory evidence relating to it.

169 As is apparent from the case-law referred to in paragraph 160 above, in all proceedings in which sanctions, in particular fines or penalty payments, may be imposed, observance of the rights of the defence is a fundamental principle of EU law which has been enshrined in Article 48(2) of the Charter. That principle must be fully complied with even if the proceedings in question are administrative proceedings.

170 According to Article 27(2) of Regulation No 1/2003, 'the rights of defence of the parties concerned shall be fully respected in the proceedings' and 'they shall be entitled to have access to the Commission's file, subject to the legitimate interest of undertakings in the protection of their business secrets'.

171 It should be noted that, according to settled case-law, that principle requires that the person concerned must have been afforded the opportunity, during the administrative procedure, to make known its views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission to support its claim that there has been an infringement of the Treaty (see judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 66 and the case-law cited).

172 A corollary of the principle of respect for the rights of the defence, the right of access to the file means that the Commission must give the undertaking concerned the opportunity to examine all the documents in the investigation file which may be relevant for its defence. Those documents include both incriminating evidence and exculpatory evidence, save where the business secrets of other undertakings, the internal documents of the Commission or other confidential information are involved (judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 68).

173 In that regard, it must be noted that it is not until the beginning of the *inter partes* administrative stage that the undertaking concerned is informed, by means of the notification of the statement of objections, of all the essential evidence on which the Commission relies at that stage of the procedure and that that undertaking has a right of access to the file in order to ensure that its rights of defence are effectively exercised. Consequently, the replies of the other undertakings which allegedly participated in the cartel to the statement of objections are not, in principle, included in the documents of the investigation file that the parties may consult (judgments of 14 May 2020, *NKT Verwaltung and NKT* v *Commission*, C-607/18 P, not published, EU:C:2020:385, paragraph 263, and of 30 September 2009, *Hoechst* v *Commission*, T-161/05, EU:T:2009:366, paragraph 163).

174 However, if the Commission wishes to rely on a passage in a reply to a statement of objections or on a document annexed to such a reply in order to prove the existence of an infringement in a proceeding under Article 101 TFEU, the other undertakings involved in that proceeding must be placed in a position in which

they can express their views on such evidence. In such circumstances, the passage in question from a reply to the statement of objections or the document annexed thereto constitutes evidence against the various undertakings alleged to have participated in the infringement (judgment of 14 May 2020, *NKT Verwaltung and NKT* v *Commission*, C-607/18 P, not published, EU:C:2020:385, paragraph 264; see, also, judgment of 30 September 2009, *Hoechst* v *Commission*, T-161/05, EU:T:2009:366, paragraph 164 and the case-law cited).

175 By analogy, if a passage in a reply to a statement of objections or in a document annexed to such a reply may be relevant for the defence of an undertaking in that it enables that company to invoke evidence which is not consistent with the inferences made at that stage by the Commission, it constitutes exculpatory evidence. In that case, the undertaking concerned must be authorised to examine the passage or the document concerned and to give its view thereon (judgment of 12 July 2011, *Mitsubishi Electric* v *Commission*, T-133/07, EU:T:2011:345, paragraph 43).

176 However, the mere fact that other undertakings relied on the same arguments as the undertaking concerned and that they may have used more resources for their defence is not sufficient to regard those arguments as exculpatory evidence (see, to that effect, judgment of 27 September 2006, *Jungbunzlauer* v *Commission*, T-43/02, EU:T:2006:270, paragraphs 353 and 355).

177 As regards the consequences of access to the file which does not comply with those rules, where an exculpatory document has not been communicated, the undertaking concerned must establish that its non-disclosure was able to influence, to its disadvantage, the course of the proceedings and the content of the decision of the Commission. It is sufficient for the undertaking to show that it would have been able to use the exculpatory documents in its defence, in the sense that, had it been able to rely on them during the administrative procedure, it would have been able to put forward evidence which did not agree with the findings made by the Commission at that stage and would therefore have been able to have some influence on the Commission's assessment in any decision it adopted, at least as regards the gravity and duration of the conduct of which it was accused and, accordingly, the level of the fine (judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraphs 74 and 75).

178 The possibility that a document which was not disclosed might have influenced the course of the proceedings and the content of the Commission's decision can be established only if a provisional examination of certain evidence shows that the documents not disclosed might – in the light of that evidence – have had a significance which ought not to have been disregarded (judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 76).

179 It is nevertheless for the applicant to adduce prima facie evidence that the undisclosed documents would be useful to its defence (see judgment of 14 March 2013, *Fresh Del Monte Produce* v *Commission*, T-587/08, EU:T:2013:129, paragraph 690 and the case-law cited; see also, to that effect, judgment of 14 May 2020, *NKT Verwaltung and NKT* v *Commission*, C-607/18 P, not published, EU:C:2020:385, paragraph 265 and the case-law cited). The applicant must, in particular, indicate the potential exculpatory evidence in question or adduce evidence that it exists and therefore of its relevance for the purposes of the case (see judgment of 16 June 2011, *Heineken Nederland and Heineken* v *Commission*, T-240/07, EU:T:2011:284, paragraph 257 and the case-law cited).

180 It is necessary to examine, in the light of those principles, whether, in the present case, the Commission's refusal to grant access to all of the replies of [*confidential*] and [*confidential*] to the statement of objections was capable of undermining the applicants' rights of defence in so far as they did not have sufficient access to potentially exculpatory evidence, as they claim.

181 In that regard, it should be noted, as the Commission submits, that there is a difference in access to the Commission's file in respect of a cartel depending on when a document was added to the investigation file, which is also apparent from paragraph 27 of the Commission Notice on the rules for access to the Commission file in cases pursuant to Articles [101] and [102 TFEU], Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ 2005 C 325, p. 7). Whereas the parties concerned, in order to be able effectively to exercise their rights of defence, have the right to consult the investigation file as it existed when the statement of objections was sent, and in order to be able to respond effectively to the objections put forward at that stage by the Commission, access to the evidence subsequently added to the file, in particular the replies of the other parties to the cartel to the statement of objections, is neither automatic nor unlimited (see, to that effect, judgment of 14 May 2020, *NKT Verwaltung and NKT* v *Commission*, C-607/18 P, not published, EU:C:2020:385, paragraph 265).

182 In the present case, it should be noted that the Hearing Officer granted the applicants access to certain passages of the replies to the statement of objections submitted by [*confidential*] and by [*confidential*], taking the view that they might contain exculpatory evidence concerning Scania in view of the fact that they came from a leniency applicant and from an undertaking to which the Commission had sent a request for information, therefore they might have contained amendments or withdrawals of the statements on which the Commission had relied.

183 The applicants claim, however, that 'it is likely' that the replies to the statement of objections submitted by [*confidential*] and by [*confidential*] contain more exculpatory evidence which they could have relied on effectively in the exercise of their rights of defence.

184 However, it must be stated that, as the Commission submits, in essence, the applicants remain very vague as regards the identification of the potential

exculpatory evidence that the replies of [*confidential*] and [*confidential*] to the statement of objections contained and which were not disclosed to the applicants following the Hearing Officer's decision and therefore they do not provide anything to prove the existence of that evidence and, therefore, its usefulness for their defence for the purposes of the case-law cited in paragraph 179 above.

185 The applicants do not specify in any way the Commission's findings in the contested decision which could have been influenced if full access to the replies of [*confidential*] and [*confidential*] to the statement of objections had been granted to the applicants. In particular, they do not identify any inference concerning Scania's own unlawful conduct which the Commission based specifically on an element covered by [*confidential*]'s leniency application or [*confidential*]'s reply to the request for information which might, depending on the circumstances, have been altered or withdrawn by those parties in their replies to the statement of objections.

186 The applicants rely, in that regard, on the specific procedural circumstances of the present case and, more specifically, on the fact that [*confidential*] and [*confidential*], two settling parties, sent the Commission their replies to the statement of objections when the settlement discussions were ongoing, only a few weeks before they 'presumably' filed their settlement submissions and before the settlement decision was adopted. The applicants infer from this that those replies must necessarily contain comments challenging the Commission's allegations against them, which is also apparent from the extracts from the replies in question to which access was granted to Scania.

187 However, such circumstantial and temporal evidence relating to the fact that the settling parties replied to the statement of objections during the settlement procedure is not in itself sufficient to demonstrate that those replies contain new exculpatory evidence in respect of Scania.

188 The applicants do not dispute that the extracts from the replies in question to which they were granted access by the Hearing Officer contained exculpatory evidence which was useful for their defence and do not even attempt to infer from those extracts that there is anything to suggest that the undisclosed parts of those replies could, by inference, contain other exculpatory evidence useful for their defence. The applicants' arguments in that regard are merely general and abstract.

189 It follows from the foregoing that the applicants have not provided any evidence of the usefulness, for their defence, of the undisclosed parts of the replies of [*confidential*] and [*confidential*] to the statement of objections. Consequently, they have not demonstrated that the Commission had infringed their rights of defence by failing to provide them with the full versions of the replies in question.

190 In those circumstances, the second plea in law must be rejected as being unfounded without there being any need to adopt the measure of organisation of procedure requested by the applicants, which was aimed at requesting the

Commission to produce the full versions of the replies to the statement of objections in question.

3. The third, fourth, fifth, sixth and seventh pleas in law, in so far as they relate to the Commission's conclusion as to the existence of a single and continuous infringement and its imputation to Scania

(a) Preliminary observations

(1) The concept of a single and continuous infringement

191 According to settled case-law, an infringement of Article 101 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 of the undertakings involved 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 (see judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 41 and the case-law cited).

192 An undertaking which has participated in such a single and complex 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 the same infringement throughout the period of its participation in the infringement. That is the position where it is shown 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 it and was prepared to take the risk (see judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 42 and the case-law cited).

193 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 anticompetitive conduct comprising the single and continuous infringement, 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).

194 In contrast, if an undertaking has directly taken part in one or more of the forms of anticompetitive conduct comprising a single and continuous infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other offending conduct planned or put into effect by those other participants in pursuit of the same objectives, or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it had participated directly and for the conduct planned or put into effect by the other participants, in pursuit of the same objectives as those pursued by the undertaking itself, where it has been shown that the undertaking was aware of that conduct or was able reasonably to foresee it and prepared to take the risk (judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 44).

195 Lastly, the Court has stated that, for the purposes of characterising various instances of conduct as a single and continuous infringement, it was not necessary to establish whether they presented a link of complementarity, in that each of them was intended to deal with one or more consequences of the normal pattern of competition, and, through that interaction, they contributed to the attainment of the set of anticompetitive effects desired by those responsible, within the framework of an overall plan having a single objective. In contrast, the condition relating to a single objective requires that it be ascertained whether there are any elements characterising the various instances of conduct forming part of the infringement which are capable of indicating that the conduct in fact implemented by other participating undertakings does not have an identical object or identical anticompetitive effect and, consequently, do not form part of an ‘overall plan’ as a result of an identical object distorting the normal pattern of competition within the internal market (see, to that effect, judgment of 19 December 2013, *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraphs 247 and 248).

196 As is apparent from the case-law cited in paragraphs 191 and 192 above, three factors are decisive for the purpose of concluding that an undertaking participated in a single and continuous infringement. The first concerns the very existence of the single and continuous infringement. The various forms of conduct in question must form part of an ‘overall plan’ with a single objective. The second and third elements concern whether or not the single and continuous infringement can be attributed to an undertaking. First, that undertaking must have intended, through its own conduct, to contribute to the common objectives pursued by all the participants. Secondly, it must have been aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or could

reasonably have foreseen all that conduct and was prepared to take the risks (judgment of 24 September 2019, *HSBC Holdings and Others* v *Commission*, T-105/17, under appeal, EU:T:2019:675, paragraph 208; see also, to that effect, judgment of 16 June 2011, *Team Relocations and Others* v *Commission*, T-204/08 and T-212/08, EU:T:2011:286, paragraph 37).

(2) The burden of proof and the standard of proof

197 To the extent that a finding of a single and continuous infringement leads to an undertaking being held liable for an infringement of competition law, it should be noted that, in the field of competition law, where there is a dispute as to the existence of an infringement, it is for the Commission to prove the infringements found by it and to adduce evidence capable of demonstrating to the requisite legal standard the existence of the circumstances constituting an infringement (see judgment of 22 November 2012, *E.ON Energie* v *Commission*, C-89/11 P, EU:C:2012:738, paragraph 71 and the case-law cited).

198 In order to establish that there has been an infringement of Article 101(1) TFEU, the Commission must produce firm, precise and consistent evidence. However, it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by that institution, viewed as a whole, meets that requirement (see judgment of 1 July 2010, *Knauf Gips* v *Commission*, C-407/08 P, EU:C:2010:389, paragraph 47 and the case-law cited).

199 Moreover, where the Commission relies, in establishing an infringement of competition law, on documentary evidence, the burden is on the undertakings concerned not only to put forward a plausible alternative to the Commission's view but also to allege that the evidence relied on in the contested decision to establish the existence of the infringement is insufficient (see judgment of 16 June 2015, *FSL and Others* v *Commission*, T-655/11, EU:T:2015:383, paragraph 181 and the case-law cited).

200 Moreover, where the Court still has a doubt, the benefit of that doubt must be given to the undertakings accused of the infringement (judgment of 16 February 2017, *Hansen & Rosenthal and H&R Wax Company Vertrieb* v *Commission*, C-90/15 P, not published, EU:C:2017:123, paragraph 18). It must be noted that the presumption of innocence constitutes a general principle of EU law which is now laid down in Article 48(1) of the Charter. That principle applies to the procedures relating to infringements of the competition rules applicable to undertakings that may result in the imposition of fines or periodic penalty payments (see paragraph 108 above).

(3) Contested decision

201 In the contested decision, the Commission found that Scania and the settling parties pursued a common plan with the single anticompetitive aim of restricting

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 as well as the timing and passing on of costs in relation to the introduction of trucks complying with environmental standards (recital 317 of the contested decision). The Commission stated that the exchanges between the parties:

– related to intended changes of gross prices and gross price lists, and occasional exchanges of intended changes of net prices or changes to rebates offered to customers and the timing of such changes;

– related to 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;

– were a means of sharing other competitively sensitive information such as information on delivery periods, order intake, stock figures, target market shares, current net prices and rebates and gross price lists (even before entering into force) and truck configurators.

202 The Commission considered that the abovementioned conduct formed part of a common plan with a single anticompetitive aim for five reasons, set out in detail in paragraphs 452 to 462 below. Those reasons related, inter alia, to the fact that the anticompetitive contacts concerned the same products, namely medium and heavy trucks, and the same group of truck manufacturers, the fact that the nature of the information shared (price information and information on the timing of the introduction of truck models complying with specific environmental standards) remained the same throughout the duration of the infringement, the fact that the anticompetitive contacts took place frequently and systematically, and the fact that the nature, scope and aim of those contacts remained the same throughout the duration of the infringement despite the fact that the level and internal responsibilities of the employees involved in those contacts changed over the course of the infringement.

(4) The applicants' argument that the concept of a single and continuous infringement requires the Commission to identify several infringements which are clearly interrelated

203 In the reply, the applicants submitted that use of the concept of a single and continuous infringement assumes that the Commission has identified several clearly interrelated infringements. According to the applicants, a single and continuous infringement cannot encompass instances of conduct which do not constitute infringements in themselves.

204 On the basis of that premiss, in the first place, the applicants submitted that the Commission should have assessed the evidence relating to each level of contact separately in order to establish whether each level constituted an infringement

and, if so, to determine its scope and the anticompetitive aim pursued. In the second place, the Commission should have assessed whether the infringements concerned had to be regarded as a single overall infringement on the ground that they pursued an overall plan with a single anticompetitive aim. In the third and last place, the Commission should have assessed the temporal and geographic scope of the single and continuous infringement solely on the basis of the evidence considered as a whole. According to the applicants, the Commission ignored the first two stages and, finding that there was a single and continuous infringement, justified it by attributing the same nature and scope to the contacts at lower headquarters level and at German level as those attributed to the contacts at top management level. By doing so, the Commission found that there was a single and continuous infringement where none existed.

205 That argument of the applicants, which must be examined before the third, fourth, fifth, sixth and seventh pleas in law are examined, must be rejected.

206 The premiss of that line of argument, according to which a single and continuous infringement must include instances of conduct which, when considered in isolation, constitute an infringement of Article 101 TFEU, is not supported by the case-law of the EU Courts. As already noted, the EU Courts have stated that an infringement of Article 101 TFEU can result 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' (see paragraph 191 above).

207 According to the Court of Justice, when 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 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 258).

208 It follows from that case-law that the finding of a single and continuous infringement does not necessarily presuppose that the Commission establishes a number of infringements, each of which falls within Article 101 TFEU, but rather that the Commission demonstrates that the various instances of conduct which it has identified form part of an overall plan designed to achieve a single anticompetitive objective. It is therefore particularly important that the Commission demonstrates that such a plan existed and that the abovementioned activities were connected to that plan.

209 Moreover, it follows from the case-law that the notion of a single infringement covers, inter alia, a situation in which several undertakings participated in an infringement in which continuous conduct in pursuit of a single economic aim was intended to distort competition (see, to that effect, judgment of 7 November 2019,

Campine and Campine Recycling v *Commission*, T-240/17, not published, EU:T:2019:778, paragraph 269 and the case-law cited).

210 In the present case, it is common ground that, in the contested decision, the Commission did not classify the conduct within each of the three levels of contacts as an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement. By contrast, it considered that those actions, taken together, formed part of an overall plan aimed at achieving the single anticompetitive objective of restricting competition on the market for medium and heavy trucks in the EEA. In order to reach that conclusion, and in accordance with the case-law cited in paragraph 195 above, the Commission relied on the five elements characterising the abovementioned conduct summarised in paragraph 202 above. In the light of the analysis in paragraphs 206 to 208 above, that approach by the Commission is not vitiated by error.

211 It follows from the foregoing that the applicants' line of argument, in so far as it is based on the incorrect premiss that use of the concept of a single and continuous infringement assumes that the Commission has identified a number of infringements, must be rejected. The examination of the third, fourth, fifth, sixth and seventh pleas in law below enables the Court to review, inter alia, the merits of the Commission's conclusion that the various instances of conduct identified in the contested decision form part of an overall plan aimed at achieving a single anticompetitive objective, thus constituting a single and continuous infringement.

(b) The third plea in law, alleging misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement in so far as the exchanges of information at lower headquarters level were considered to constitute an infringement of those provisions

212 In this plea in law, the applicants raise two complaints. First, they complain that the Commission considered that there were links between the three levels of collusive contacts, in particular lower headquarters level with the other two levels (first complaint). In that context, they maintain that there was no contact or joint meeting between those levels, which functioned separately from each other. Secondly, the applicants complain that the Commission considered, relying in particular on the alleged links between the three abovementioned levels, that the collusive contacts at lower headquarters level constituted an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement (second complaint).

213 The Commission disputes the applicants' arguments.

214 Before addressing the two complaints referred to above, it is appropriate to refer to the relevant passages of the contested decision.

(1) Contested decision

215 In recital 213 of the contested decision, in the part relating to the examination of the question of the existence of agreements and concerted practices within the meaning of Article 101 TFEU, the Commission noted that the parties to the cartel were in contact at various levels and that, sometimes, the various levels had joint meetings, for example between employees at lower headquarters level and employees at German level. The Commission stated in recital 213 that the contacts were linked to each other by their subject matter, by their timing, through their open references to each other and by the transmission of the information gathered, providing, in that regard, examples of the transmission of information exchanged at German level to the respective headquarters of the parties to the cartel.

216 In recitals 315 to 317 of the contested decision, the Commission concluded that there was a single and continuous infringement, finding that all the collusive contacts set out in point 6.2 of the contested decision (and falling within the three levels), presented in chronological order, served a common plan with the single anticompetitive aim of restricting competition on the market for medium and heavy trucks in the EEA. According to the Commission, that objective was achieved through practices reducing the levels of strategic uncertainty between the parties as regards future prices and gross price increases, as well as with regard to the timing and passing on of costs related to the introduction of trucks complying with environmental standards (recital 317 of the contested decision).

217 In recital 327(a) of the contested decision, the Commission, in order to support its conclusion that the shift in the exchanges from top management level to German level did not affect the continuous nature of the infringement, found that there was a considerable temporal overlap between the meetings held at the various levels. The Commission noted that, notwithstanding the interruption in September 2004 of contacts at top management level, contacts at the two other levels continued. In particular, between 2003 and 2007, meetings and contacts between competitors were organised jointly at lower headquarters level and at German level and, often, headquarters employees took part in meetings at German level and vice versa. The Commission also relied on the fact that the parties repeatedly discussed at lower headquarters level the information to be exchanged and at what level.

(2) The first complaint

218 As regards the first complaint raised by the applicants relating to the ‘links’ between the three levels of collusive contacts, it should be noted that the Commission relied on the following elements to demonstrate the existence of such links: the fact that the participants within those levels were employees of the same undertakings, namely Scania and the settling parties; the fact that the exchanges within each of the levels had the same subject matter; the fact that there was a temporal overlap between the meetings held at different levels; the fact that the levels referred to each other and exchanged information gathered; the fact that

sometimes there were joint contacts and meetings between the different levels, with the Commission specifically referring to joint contacts and meetings between the employees at lower headquarters level and the employees at German level of the undertakings concerned (see recitals 213 and 327(a) of the contested decision).

219 The applicants' present complaint is based, inter alia, on the fact that there were no joint contacts or meetings between the three levels of collusive contacts.

220 In that regard, in the first place, it should be noted that, as follows from paragraphs 215 and 217 above and, moreover, from the Commission's clarifications in paragraph 122 of the defence, the Commission did not base its finding that the levels of the collusive contacts were linked to each other on the fact that there were joint contacts or meetings between top management level and lower headquarters level and between top management level and German level. The Commission relied solely on the existence of joint contacts and meetings between lower headquarters level and German level. Accordingly, the applicants' line of argument seeking to demonstrate that there were no joint contacts and meetings between top management level and lower headquarters level and between top management level and German level is ineffective.

221 In the second place, it should be noted that, in the contested decision, the Commission considered that there were joint contacts and joint meetings between lower headquarters level and German level, in particular between 2003 and 2007 (recital 327(a) of the contested decision). It is apparent from the contested decision that that factor was one of the factors on which the Commission relied in order to conclude that the infringement was continuous.

222 As regards that finding by the Commission, it is apparent from the file that meetings at lower headquarters level and at German level were often organised at the same time and at the same place for the preparation of trade fairs and that the participants at lower headquarters level were informed of the subject matter of the exchanges at German level, that they forwarded that subject matter within their respective undertakings and that, more generally, they were in contact with the participants in the exchanges at German level.

223 In that regard, the Court refers, in particular, to the evidence set out in recital 137 of the contested decision concerning a meeting between competitors on 24 August 2004 in Munich (Germany). According to [*confidential*], employees of lower headquarters level and German level attended that meeting. For Scania, A from lower headquarters level and B from German level were present. At that meeting, there were exchanges of information on future price increases in the German market and on the dates on which truck models complying with environmental standards would be introduced onto the market. A PowerPoint presentation prepared by [*confidential*], referred to in recital 137 of the contested decision, shows that the information exchanged at the meeting of 24 August 2004 was sent to [*confidential*]'s headquarters.

224 The Court also refers to the evidence set out in recital 147 of the contested decision showing that employees at lower headquarters level were informed of the subject matter of the exchanges on prices which had taken place at German level at a meeting between competitors in Munich on 4 and 5 July 2005. More specifically, the Court refers to the email sent by C, from [*confidential*]'s lower headquarters level, to employees of other competitor undertakings, also at lower headquarters level. In that email, C, referring to the abovementioned meeting of 4 and 5 July 2005, stated, inter alia, that, at that meeting, [*confidential*] had provided competitors with information on [*confidential*]'s current price list (based on the German market) and requested, inter alia, the addressees of his email to do the same. The employee of [*confidential*]'s headquarters who was one of the addressees of that email replied that his company wished to maintain exchanges on the market prices (namely at German level) and stated the names of [*confidential*]'s employees who were to be contacted in the context of those exchanges. C's email was also addressed to D, of Scania's lower headquarters level, who had participated in that meeting of 4 and 5 July 2005. It is apparent from the file that D did not receive that email because his name was misspelt (see recital 147 of the contested decision). That being so, C's email shows that employees at lower headquarters level, including Scania employees, were aware of the exchanges on prices that took place at the abovementioned meeting of 4 and 5 July 2005.

225 The Court also notes that some of the employees of the participating undertakings, whilst being part of the headquarters, participated in the exchanges at German level, which supports the Commission's conclusion that there were links between lower headquarters level and German level. The Court refers in particular to the case of C from [*confidential*] and E from [*confidential*]. Those employees, whilst being part of the headquarters, were active and organised the exchange of information at German level.

226 It follows from the foregoing that the Commission's finding that there were contacts between lower headquarters level and German level is established to the requisite legal standard.

227 In the third place, in the context of the present plea in law, the applicants also disputed the Commission's finding in recital 213 of the contested decision that the levels of collusive contacts made open references to each other and the finding, in recital 327(a) of the contested decision, that the parties to the cartel repeatedly discussed at lower headquarters level the information to be exchanged and at what level.

228 Those findings by the Commission have been established to the requisite legal standard. It is apparent, in particular, from the evidence set out in recital 116 of the contested decision, relating to a meeting between competitors at lower headquarters level on 3 and 4 July 2001, that the headquarters employees were aware of the content of the exchanges at German level, that they considered those exchanges went 'too far' and that they were 'potentially dangerous'. It is apparent

from the evidence presented in recital 117 of the contested decision that, at the abovementioned meeting held on 3 and 4 July 2001, competitors agreed to exchange in the future, at lower headquarters level, product information and technical information, but not price information or benchmarking data. Similarly, it is apparent from the evidence set out in recital 147 of the contested decision (see paragraph 224 above) that the employees at lower headquarters level discussed which information was to be exchanged and at what level and, in that context, some of those employees expressed the wish for the exchanges on prices to take place solely at German level.

229 It follows from the foregoing considerations that, in the context of the present plea in law, the applicants have not succeeded in calling into question the Commission's findings set out in particular in recitals 213 and 327(a) of the contested decision, relating to the links between the three levels of collusive contacts. As already noted, the Commission relied on a number of elements demonstrating the existence of links between the three levels of collusive contacts (see paragraph 218 above) which have not been disputed, namely the fact that the participants were employees of the same undertakings, the fact that there was a temporal overlap between the meetings held at the three levels of collusive contacts, or which were disputed without being called into question in the present plea in law, namely the fact that there were contacts between the employees at the respective lower headquarters level of the parties to the cartel and the employees at German level. In the light of those factors, the Court considers that the three levels of the collusive contacts were interlinked and that they did not act separately and independently of each other.

(3) The second complaint

230 As regards the second complaint raised by the applicants (see paragraph 212 above), it must be noted that, in the contested decision, the Commission did not classify the collusive contacts at lower headquarters level (or, moreover, the collusive contacts at the other two levels taken separately) as an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement, but it considered that all the contacts at the three levels formed part of a single and continuous infringement in so far as they pursued a common plan with the anticompetitive aim of restricting competition on the market for medium and heavy trucks in the EEA through, inter alia, exchanges that reduced the strategic uncertainty as regards future prices and gross price increases, and in respect of the timing and passing on of costs in relation to the introduction of emission technologies for medium and heavy trucks required by Euro 3 to 6 standards (recital 317 of the contested decision).

231 It should also be noted that the Commission was not required to classify the exchanges at a lower headquarters level, taken separately, as a separate infringement of Article 101 TFEU and of Article 53 of the EEA Agreement in order to conclude that there had been a single and continuous infringement (see paragraph 208 above).

232 It follows from the foregoing that the applicants' present complaint is based on the incorrect premiss that, in the contested decision, the Commission classified the exchanges at lower headquarters level as an infringement of Article 101 TFEU and Article 53 of the EEA Agreement. That said, and notwithstanding that incorrect premiss, it is appropriate to examine, in the light of the considerations set out in paragraphs 208 to 211 above, and in the light of the applicants' arguments, to what extent the exchanges at lower headquarters level contributed to the implementation of the common plan set out in paragraph 230 above.

233 In that regard, in the first place, it should be noted that, as concluded in the context of the examination of the first complaint, the participants at lower headquarters level were informed of the subject matter of the exchanges at German level, that they forwarded that subject matter within their respective undertakings and that, more generally, they were in contact with the participants in the exchanges at German level (see paragraph 222 above). It is thus apparent that the employees at lower headquarters level, by being associated with exchanges which reduced strategic uncertainty as regards future prices and the dates of introduction onto the market of truck models complying with environmental standards, contributed to the implementation of the abovementioned common plan.

234 In the second place, evidence presented in recital 144 of the contested decision, relating to a meeting between competitors at lower headquarters level on 3 and 4 February 2005 in Lyon (France), shows that, at that meeting, [*confidential*] informed the other manufacturers, including Scania, of the future 5% increase in the price of one of the truck models which it was building. It should be noted that the applicants submitted that that information was in the public domain on the date of the abovementioned meeting and that, in support of that claim, they produced, at the reply stage and a few days before the hearing, an article from a specialist magazine the electronic version of which was dated 4 February 2005. Irrespective of the admissibility of that item of evidence, the Court considers that the abovementioned article does not demonstrate that the applicants' argument is well founded, since the scope of the information communicated by [*confidential*] at the meeting of 3 and 4 February 2005 was broader than the scope of the information contained in the abovementioned article, which referred to the price increase for [*confidential*]'s truck model solely in respect of the United Kingdom market.

235 The pricing information provided by [*confidential*] at the meeting of 3 and 4 February 2005 at lower headquarters level shows that the exchanges at that level, irrespective of whether they constituted an infringement of competition rules, contributed to the implementation of the common plan set out in paragraph 230 above, in so far as that information shows that those exchanges also concerned issues relating to the pricing of trucks and not only technical issues.

236 In the third place, it is apparent from an internal email of [*confidential*], sent by F, from lower headquarters level of that undertaking, set out in recital 146 of the

contested decision, relating to the meeting between competitors on 4 and 5 July 2005, that the employees at lower headquarters level, including the employees of Scania's headquarters, exchanged information relating, inter alia, to the date of introduction onto the market of truck models complying with environmental standards Euro 4 and 5. By way of example, in the abovementioned email, F informed his colleagues of the fact, revealed at the meeting of 4 and 5 July 2005, that Scania 'will be showing a full range of Euro 4 (and some Euro 5) [standard] compliant engines at the [*confidential*]' and of the fact that 2 000 orders for engines compatible with Euro 4 standard had already been sent to Scania. Also by way of example, F also informed his colleagues that, according to the information provided by [*confidential*] at the abovementioned meeting, the price increase linked to the introduction of the Euro 5 standard was not disputed by Scania's customers and that 6 000 trucks compatible with that standard had already been sold. The content of the exchange of information at lower headquarters level at the meeting of 4 and 5 July 2005 also shows that the exchanges at lower headquarters level contributed to the implementation of the common plan set out in paragraph 230 above, in so far as it shows that those exchanges also concerned issues relating to the date on which truck models complying with specific environmental standards would be introduced onto the market.

237 In the fourth place, it should be noted that the participants in the three levels of the collusive contacts were employees of the same undertakings, that the meetings at headquarters lower level overlapped, from a temporal point of view, with the meetings at the other two levels and that contacts existed between the employees of lower headquarters level and the employees at German level (see paragraphs 218 and 229 above).

238 On the basis of those factors, it must be held that the exchanges of information at lower headquarters level contributed to the implementation of the common plan set out in paragraph 230 above and, consequently, that the Commission was entitled to take those exchanges into account for the purpose of concluding that there had been a single and continuous infringement.

239 In the light of the foregoing considerations, the present plea in law must be rejected.

(c) The fourth plea in law, alleging infringement of the obligation to state reasons and misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement in that the Commission found that the applicants had concluded an agreement or had engaged in a concerted practice concerning the timing of the introduction of emission technologies

240 The applicants' arguments in the present plea in law can be divided into three parts, examined in turn below.

(1) The first part of the fourth plea in law, alleging infringement of the obligation to state reasons

241 The applicants submit that the reasoning in the contested decision does not enable them to understand the nature and scope of the infringement attributed to them. First, according to the applicants, it is apparent from Article 1 of the contested decision that the Commission found that the applicants had committed an infringement, inter alia, by colluding on the timing of the introduction of emission technologies required by Euro 3 to 6 standards and that that conduct constituted an infringement in its own right. Secondly, the contested decision also appears to maintain, in recitals 243 and 321, that the facts relating to the abovementioned concerted practices are 'related' and 'complementary' to the alleged cartel on prices and gross prices, thus suggesting that the mere exchange of information on the dates on which the technologies would be introduced does not in itself constitute an infringement.

242 The applicants conclude that that inconsistency in the Commission's reasoning constitutes an infringement of Article 296 TFEU and that, on that basis, the contested decision must be annulled.

243 The applicants also complain that the Commission failed to explain why the exchange of information on the timing of the introduction of emission technologies constituted an infringement by object.

244 The Commission disputes the applicants' arguments.

245 It should be noted that, according to settled case-law, the obligation to provide a statement of reasons laid down in the second paragraph of Article 296 TFEU is an essential procedural requirement, as distinct from the question of whether the reasons given are correct, which goes to the substantive legality of the contested measure. From that point of view, the statement of reasons required must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. As regards, in particular, the reasons given for individual decisions, the purpose of the obligation to state the reasons on which such a decision is based is, therefore, in addition to permitting review by the Courts, to provide the person concerned with sufficient information to know whether the decision may be vitiated by an error enabling its validity to be challenged (see judgment of 7 November 2019, *Campine and Campine Recycling* v *Commission*, T-240/17, not published, EU:T:2019:778, paragraph 321 and the case-law cited).

246 Moreover, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of concern, for the purpose of the

fourth paragraph of Article 263 TFEU, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 7 November 2019, *Campine and Campine Recycling* v *Commission*, T-240/17, not published, EU:T:2019:778, paragraph 322 and the case-law cited).

247 Furthermore, the obligation to state reasons laid down in Article 296 TFEU requires that the reasoning on which a decision is based be clear and unequivocal. Thus, the statement of the reasons for a measure must be logical and contain no internal inconsistency that would prevent a proper understanding of the reasons underlying the measure (see judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 151 and the case-law cited).

248 In the present case, in recital 236 of the contested decision, under point 7.2.3, entitled 'Restriction of competition', the Commission stated that the anticompetitive conduct in the present case had the object of restricting competition in the EEA.

249 In recital 237 of the contested decision, the Commission stated that the principal aspect of all the agreements and concerted practices in the present case, which could be classified as a restriction of competition, consisted in the coordination of prices and gross price increases through contacts on pricing, the date and the additional costs relating to the introduction onto the market of new truck models complying with emission standards and the exchange of competitively sensitive information.

250 In recital 238(b) of the contested decision, the Commission stated that Scania had concluded agreements and/or had coordinated with competitors on the timing and passing on of costs relating to the introduction of emission technologies for medium and heavy trucks required by Euro 3 to 6 standards.

251 In recital 239 of the contested decision, the Commission found that all the agreements and concerted practices in which Scania participated had as their object the restriction of competition within the meaning of Article 101(1) TFEU and enabled the undertakings to adapt their pricing strategy in the light of information received from competitors.

252 In recital 243 of the contested decision, the Commission explained that the applicants, by discussing the date of the introduction of the new environmental standards and the additional costs triggered by the new technology, obtained information on their competitors' intentions as regards gross price levels. According to the Commission's explanations, the passing on of costs relating to the introduction of new environmental technology resulted in changes to the gross price of the truck models concerned. The parties were aware of the date from which the new models (to which additional costs would be passed on) would be

included in the competitors' gross price list, since they were aware of the date on which those new models would be introduced onto the market. Consequently, according to the Commission, the nature of the discussions and agreements concerning the date of introduction onto the market of new truck models compatible with environmental standards was related and complementary to the parties' collusion on prices and gross price increases.

253 Furthermore, it is apparent from recitals 315 to 350 of the contested decision, under point 7.2.4, entitled 'Single and continuous infringement', that the Commission attributed to Scania an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement, which it classified as a single and continuous infringement consisting of collusive contacts with respect to pricing and gross price increases for medium and heavy trucks in the EEA and 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. According to the Commission, those collusive contacts were aimed at restricting competition by reducing the level of strategic uncertainty between the competitors with respect to future prices, gross price increases, and the timing and passing on of costs in relation to the introduction of truck models complying with environmental standards (recital 317 of the contested decision).

254 In recital 321 of the contested decision, the Commission repeated its analysis set out in recital 243 of the contested decision, according to which the nature of the discussions and the agreements concerning the date of introduction onto the market of new truck models compatible with environmental standards was related and complementary to the parties' collusion on prices and gross price increases.

255 Finally, it must be noted that, according to Article 1 of the contested decision:

'By colluding on pricing and gross price increases in the EEA for medium and heavy trucks; and 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, the following legal entities of Scania infringed Article 101 [TFEU] and Article 53 of the EEA Agreement during the periods indicated: …'

256 First, it is apparent from the abovementioned presentation of the contested decision that, contrary to the applicants' argument, the Commission did not, in that decision, separately classify the collusion on the timing of the introduction of emission technologies as a distinct infringement of Article 101 TFEU. However, it is clear that the Commission considered that the collusion referred to above formed part of a single and continuous infringement with the sole anticompetitive objective of restricting competition on the market for medium and heavy trucks in the EEA.

257 Secondly, it is apparent, inter alia, from recitals 236, 237, 239, 243 and 321 of the contested decision that the Commission considered that the exchanges of information on the timing of the introduction of emission technologies were

related and complementary to the exchanges of information on prices and gross price increases and that, in essence, all those exchanges enabled the undertakings concerned to adapt their pricing strategies based on the information received from competitors, thus constituting a restriction of competition by object.

258 It follows from the foregoing considerations that the statement of reasons contained in the contested decision sets out clearly and unequivocally the Commission's reasoning, thus enabling the Court to exercise its power of review. Moreover, the content and detailed nature of the applicants' arguments before the Court shows that the statement of reasons for the contested decision enabled the applicants to challenge that decision effectively before the Court.

259 On the basis of the foregoing, the first part of the present plea in law must be rejected.

(2) The second part of the fourth plea in law, alleging misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement in that the Commission found that the applicants had concluded an agreement or had engaged in a concerted practice on the timing of the introduction of emission technologies onto the market

260 The applicants dispute the Commission's assessment that they entered into an agreement or engaged in a concerted practice relating to the timing of the introduction of emission technologies.

261 In that regard, the applicants note that the requirement for truck engines to comply with the Euro standards stems from European legislation known to truck manufacturers, and does not result from any competition on innovation.

262 The applicants also claim that Scania had always complied with the various Euro emission standards even before the application of the deadlines laid down by the European legislation and that its production was generally planned approximately six or seven years before the deadline laid down by that legislation concerning the introduction of technologies compliant with those standards. According to the applicants, that fact cannot be reconciled with the Commission's argument that Scania entered into an agreement with its competitors or engaged in a concerted practice relating to the timing of the introduction of technologies complying with Euro standards.

263 The applicants also rely on the fact that the dates on which emission technologies were launched varied very significantly between the truck manufacturers, which calls into question the existence of coordination between them as regards those dates.

264 The applicants also dispute the fact that the exchanges of information described in the contested decision show that they concluded an agreement or participated in a concerted practice on the introduction of new emission technologies.

265 The Commission disputes the applicants' arguments.

266 In that regard, it should be noted that the definitions of 'agreement', 'decisions by associations of undertakings' and 'concerted practice' are intended, from a subjective point of view, to catch forms of collusion having the same nature which are distinguishable from each other only by their intensity and the forms in which they manifest themselves (see judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 23 and the case-law cited).

267 With regard to the definition of a concerted practice, the Court of Justice has held that such a practice is a form of coordination between undertakings by which, without it having been taken to the stage where an agreement properly so-called has been concluded, practical cooperation between them is knowingly substituted for the risks of competition (see judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 26 and the case-law cited).

268 The criteria of coordination and cooperation necessary for determining the existence of a concerted practice, far from requiring an actual 'plan' to have been worked out, are to be understood in the light of the concept inherent in the Treaty provisions on competition, according to which each trader must determine independently the policy which it intends to adopt on the common market and the conditions which it intends to offer to its customers (see judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 86 and the case-law cited, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 119 and the case-law cited).

269 While it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, nonetheless, strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market (see judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 87 and the case-law cited, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 120 and the case-law cited).

270 The Court of Justice has therefore held that the exchange of information between competitors was liable to be incompatible with the competition rules if it reduced or removed the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings was restricted (see judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 121 and the case-law cited).

271 In the present case, it must be noted that, in recital 238(b) of the contested decision, the Commission stated that Scania had concluded agreements and/or had coordinated with its competitors on the timing and passing on of costs relating to the introduction of emission technologies for medium and heavy trucks required by Euro 3 to 6 standards. That finding of the Commission is based on several pieces of evidence set out in the contested decision which demonstrate that it is well founded.

272 In the first place, reference should be made to the minutes of a meeting at top management level, held on 6 April 1998 in Brussels (Belgium), set out in recital 103 of the contested decision. Those minutes clearly show that the participants in that meeting exchanged information on prices and on the timetable for the introduction of truck models complying with the Euro 3 standard, and that they agreed not to introduce the technology complying with that standard before that introduction became mandatory. The abovementioned minutes also show that the participants in the meeting exchanged information on passing on to prices the costs of introducing the new technology. In so far as those minutes refer to 'all members of [*confidential*]', it can be inferred that Scania participated in the abovementioned meeting of 6 April 1998.

273 In the second place, the Court refers to the top management level meeting held on 10 and 11 April 2003 in Gothenburg (Sweden), in which Scania participated, set out in recital 127 of the contested decision. Handwritten notes taken by a representative of [*confidential*] participating in that meeting, and set out in that recital, show that the participants exchanged information on prices and on the introduction of technologies complying with the Euro 4 standard. According to those notes:

'[*confidential*] sales into Euro 4 Oct 2004. [*confidential*]/Scania can introduce earlier, but don't want to. All agree [to] introduce [*confidential*] "Sales Introduction".'

274 The content of the meeting of 10 and 11 April 2003, referred to in paragraph 273 above, is set out in the fax sent on 8 May 2003 by [*confidential*] to the competitors, including Scania, presented in recital 128 of the contested decision, where it is stated:

'During our meeting in Gothenburg[,] we discussed the market introduction of the Euro 4 specification. I took on me to discuss this issue with our colleague [G]. Although [*confidential*] have their doubts that we all keep to our promises[,] they agree on the basis of market introduction in September 2004 at [*confidential*]. Very clearly, we should not offer it before this date in sales. I presume we all still agree and commit to this date. If for whatever reason you can't, please let me know by return fax.'

275 The applicants relied on [*confidential*]'s explanations during the administrative procedure, according to which the notes cited in paragraph 273 above did not refer

to the existence of an agreement between the truck manufacturers, but merely stated that they had all accepted as a reality that the Euro 4 compliant engines would probably not be launched before [*confidential*] of September 2004. However, it must be held that those explanations, provided *a posteriori* and which contradict the clear wording of the notes of [*confidential*]'s representative and the fax of 8 May 2003 showing that the competitors had agreed to introduce the Euro 4 compliant engines in September 2004, are unconvincing.

276 In the third place, it is appropriate to refer to the email sent on 16 September 2004 by H, a representative of [*confidential*], to competitors including Scania, in which he indicated his decision not to participate in the top management level meeting planned in Hanover (Germany). That email, set out in recital 138 of the contested decision, stated the following:

'Reason for that [decision] is disappointment. The behaviour of some of our colleagues (one in particular) in the communication around Euro 4 and 5 and the way those colleagues have tried to damage the image of the truck industry and of some of their colleagues in particular is intolerable for me. …'

277 [*confidential*] explained in an oral statement, submitted during the administrative procedure and set out in recital 138 of the contested decision, that it had introduced the Euro 4 compliant technology before the date agreed with the competitors, namely September 2004 (see paragraphs 273 and 274 above), and that that was the source of the discontent expressed by [*confidential*]'s representative in that email. It is apparent from the file that, following that incident, the exchanges at top management level stopped (recital 138 of the contested decision).

278 The email from [*confidential*]'s representative, set out in paragraph 276 above, read in the light of the evidence described in paragraphs 273 and 274 above, shows that there was an agreement between competitors, including Scania, relating to the date of introduction onto the market of Euro 4 compliant technologies.

279 The applicants relied on the affidavit of [*confidential*]'s representative, who was the author of the email set out in paragraph 276 above, in which he explained that his email had been sent as a result of tensions between [*confidential*] and [*confidential*] and that there was no agreement between the truck manufacturers regarding the date of introduction of Euro 4 compliant engines. According to the applicants, the abovementioned affidavit is supported by the fact that [*confidential*] and its representative did not in any way react to Scania's announcement of the launch of its first Euro 4 compliant motor during a press conference of 31 March 2004. According to the applicants, it can be assumed that, if the manufacturers had concluded an agreement on the timing of the introduction of the Euro 4 compliant technology, [*confidential*]'s representative would have reacted in the same way as regards Scania's announcement.

280 That argument of the applicants is not convincing.

281 First, as regards the affidavit referred to above, it was by the author of the email set out in paragraph 276 above several years after the relevant events, for the purposes of the administrative procedure and, therefore, *in tempore suspecto*. Its content cannot therefore call into question the probative value of the contemporaneous, and more objective, evidence of the events, such as the fax set out in paragraph 274 above, and the probative value of the statement by [*confidential*] referred to in paragraph 277 above (see, to that effect, judgments of 27 September 2006, *Archer Daniels Midland* v *Commission*, T-59/02, EU:T:2006:272, paragraph 277; of 8 July 2008, *Lafarge* v *Commission*, T-54/03, not published, EU:T:2008:255, paragraph 379; and of 29 June 2012, *E.ON Ruhrgas and E.ON* v *Commission*, T-360/09, EU:T:2012:332, paragraph 201). All that evidence shows that there was an agreement between the truck manufacturers as regards the date of introduction of the Euro 4 compliant technology.

282 Secondly, as regards the argument based on Scania's press conference of 31 March 2004, it should be noted that the press release produced by the applicants, far from supporting their argument, announced the introduction of Euro 4 compliant 420-horsepower engines in September 2004, a date which matches the date agreed between the competitors at the meeting on 10 and 11 April 2003 in Gothenburg (see paragraphs 273 and 274 above).

283 In the fourth place, the Court refers to the exchanges of information between competitors, including Scania DE, which took place between 2 and 8 December 2004, concerning the price increases planned for 2005 (recital 140 of the contested decision). In that context, [*confidential*] stated that it would charge EUR 5 410 for the transition from 'Euro 3 to Euro 4'.

284 As is apparent from recital 141 of the contested decision, on 2 December 2004, B, a representative of Scania DE, sent an email to employees of the competitor undertakings, in which he asked on what date and at what gross price the engines complying with standards 4 and 5 would be delivered. [*confidential*]'s representative replied by providing the requested information, stating, in particular, that the additional prices for Euro 4 and Euro 5 compliant engines would be EUR 11 500 and EUR 14 800 respectively. On 17 December 2004, B forwarded to the competitors the information gathered (recital 142 of the contested decision).

285 In the fifth place, reference should be made to the meeting of 12 September 2005, set out in recital 149 of the contested decision, which concerned, inter alia, the 'situation EURO 4/5' and 'planned price increases for 2006'. It is apparent from the handwritten notes that, at that meeting, the competitors, which included a representative of Scania DE, I, exchanged information on the launch date of Euro 4 and Euro 5 compliant truck models and on their pricing.

286 In the sixth place, it is appropriate to refer to an email dated 21 July 2009, set out in recital 180 of the contested decision, in which an employee of [*confidential*] proposed to place the following item on the agenda of the meeting between competitors, organised by Scania DE, which was to be held on 17 and 18 September 2009: 'EURO VI? I know – are we allowed and do we want to talk about this?'

287 Recital 181 of the contested decision sets out the meeting held on 17 and 18 September 2009, referred to in paragraph 286 above. It is apparent from the evidence presented in the abovementioned recital, which is not disputed by the applicants, that the competitors exchanged information on the date on which the Euro 6 compliant technology would be introduced and on the price increases planned for 2010.

288 It is apparent from the evidence and facts presented in paragraphs 272 to 287 above that the Commission has established to the requisite legal standard that Scania had concluded agreements and/or coordinated with its competitors as regards the timing and the passing on of costs relating to the introduction of emission technologies for medium and heavy trucks required by Euro 3 to 6 standards.

289 That conclusion is not called into question by the applicants' arguments set out in paragraphs 261 to 263 above. In particular, it should be noted that European legislation relating to the dates of introduction of the Euro emission standards referred only to the deadlines for introducing those standards (see recital 6 of the contested decision) and did not require truck manufacturers to exchange information on the timing of the launch of products complying with those standards. Moreover, the fact that Scania planned its production several years before the deadline laid down by European legislation for the introduction of a specific Euro standard does not show that it did not participate in the collusion with the other truck manufacturers. Similarly, the fact that the dates on which emission technologies were launched varied between the truck manufacturers also does not show that there was no exchange of information between them, since those exchanges enabled them to know their competitors' plans.

290 On the basis of the foregoing considerations, the second part of the present plea in law must be rejected.

(3) The third part of the fourth plea in law, alleging that the exchanges of information on the timing of the introduction of emission technologies do not constitute an infringement by object

291 The applicants submit that, at most, the evidence in the file shows that, exceptionally, the parties shared information on the timing of the launch of their respective emission technologies. However, those rare exchanges do not amount to an infringement 'by object'. According to the applicants, the contested decision does not provide evidence that the exchange of information on the timing of the

introduction of emission technologies can, by its very nature, be regarded as harmful to the proper functioning of normal competition without examining its effects.

292 According to the applicants, it is difficult to understand how the exchange of information on the launch dates could lead to any delay or impede competition in the offering of the new technology in question, since, first, the technical development of any new emission control technology takes approximately six or seven years, secondly, all manufacturers were required to develop new Euro compliant engines and launched the technologies in question before the deadlines laid down in European legislation and, thirdly, there was very little demand for trucks complying with the Euro standards before those standards became mandatory. Clearly, according to the applicants, the objective of the exchange of information was not to 'delay' the introduction of emission technologies.

293 The Commission disputes the applicants' arguments.

294 It must be noted that, in recital 238(b) and recital 239 of the contested decision, the Commission found that all the agreements and concerted practices in which Scania participated, including agreements or concerted practices on the timing and passing on of costs relating to the introduction of emission technologies, had the object of restricting competition within the meaning of Article 101 TFEU and enabled the undertakings to adapt their pricing strategy in the light of the information received from competitors. Moreover, in recitals 243 and 321 of the contested decision, the Commission explained that the nature of the discussions and agreements concerning the date of introduction onto the market of new truck models complying with environmental standards was related and complementary to the parties' collusion on prices and gross price increases. It should also be noted that the Commission concluded that there was a single and continuous infringement the objective of which was to restrict competition on the market for medium and heavy trucks in the EEA and which consisted of practices that reduced the levels of strategic uncertainty between the parties as regards, inter alia, future prices and gross price increases (recital 317 of the contested decision).

295 It follows from the foregoing that the applicants' arguments set out in paragraphs 291 and 292 above are based on a series of incorrect premisses.

296 As already noted, the exchanges of information on the timing of the introduction of emission technologies were not classified by the Commission as a stand-alone infringement. Similarly, those exchanges were not classified in isolation as a restriction of competition by object, but were taken into consideration together with other collusive practices. It was that 'complex of agreements and concerted practices' that was classified, in recital 239 of the contested decision, as a restriction of competition by object, enabling the participants to adapt their pricing strategy in the light of information received from competitors.

297 Furthermore, it should be noted that the Commission's conclusion relating to the existence of a single and continuous infringement is not based on the finding that the agreements or concerted practices on the timing of the introduction of emission technologies constituted an obstacle to the offering of new technologies, as suggested by the applicants' arguments set out in paragraph 292 above. The Commission's conclusion is based on the finding that those collusive practices were complementary to the collusive practices concerning prices and gross price increases. It is apparent from the content of the exchanges between the competitors, presented in the contested decision, that the introduction of technologies ensuring that the truck engines complied with the Euro standards had an impact on the prices of the relevant truck models and led to an increase in those prices. The competitors discussed not only the timing but also the passing on of the costs of the introduction of the new technology. Accordingly, the Commission was entitled to state, in recitals 243 and 321 of the contested decision, that the competitors, by discussing the date of the introduction of the new technologies and the additional costs resulting from them, obtained knowledge of the intended level of gross prices and the timing for the increase in those gross prices. It follows that the applicants' line of argument, set out in paragraph 292 above, is based on a misunderstanding of the contested decision and is ineffective.

298 As regards the issue of whether the exchange of information between the truck manufacturers which enabled them to have knowledge of their competitors' intended level of gross prices and the timing for the increase in those gross prices constitutes a restriction of competition by object, that issue is not addressed by the applicants' arguments in the context of the present plea in law, which, as already noted, is based on the misunderstanding that the Commission alleged that those manufacturers had impeded the offering of new technologies (see paragraph 297 above). So far as is relevant, it must be noted that the exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted (see paragraph 270 above). In particular, an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anticompetitive object (see judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 122 and the case-law cited).

299 In the present case, in the light of the case-law set out in paragraph 298 above, it must be held that the exchange of information between competitors which enables them to obtain information on the level of intended gross prices and on the timing for the increase in those gross prices, thereby removing uncertainty as to the future conduct they will adopt, constitutes a restriction of competition by object (see, to that effect, judgment of 16 September 2013, *Mamoli Robinetteria* v *Commission*, T-376/10, EU:T:2013:442, paragraph 72).

300 In view of the foregoing considerations, the third part of the present plea in law must be rejected. Consequently, the present plea in law must be rejected in its entirety.

(d) The fifth plea in law, alleging misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement in so far as the Commission classified the exchanges of information at German level as an infringement 'by object'

(1) Preliminary observations

301 The applicants submit that the Commission did not submit precise and consistent evidence to support the argument that the exchange of information at German level constituted a sufficient impediment to competition for it to be classified as a restriction 'by object' within the meaning of the judgment of 11 September 2014, *CB* v *Commission* (C-67/13 P, EU:C:2014:2204).

302 The applicants contend that an analysis of the content, objectives, and economic and legal context of the information exchanged at German level demonstrates that the Commission's 'by object' assessment is vitiated by an error of law or a manifest error of assessment.

303 The Commission disputes the applicants' arguments.

304 It must be noted that, in recital 238 of the contested decision, the Commission found, first, that Scania had entered into agreements and/or had coordinated with the settling parties on intended changes of gross prices and gross price lists, and on the timing of those changes and, occasionally, on intended changes to net prices or changes to rebates offered to customers, secondly, that Scania had entered into agreements and/or had coordinated with the settling parties on the timing and passing on of the costs relating to the introduction of emission technologies for medium and heavy trucks, required by Euro 3 to 6 standards, and, thirdly, that Scania and the settling parties had exchanged other commercially sensitive information, namely information on delivery periods, order intake, stock figures, target market shares, current net prices and rebates, gross price lists (even before they entered into force) and truck configurators.

305 According to recital 212 of the contested decision, the collusive practices described by the Commission in recital 238 of that decision took place at the three levels identified in paragraphs 35 to 38 above and, in particular, at German level.

306 The Commission considered, in recital 239 of the contested decision, that the complex of agreements and concerted practices presented in recital 238 had as its object the restriction of competition within the meaning of Article 101(1) TFEU and enabled the undertakings to adapt their pricing strategy in the light of information received from competitors.

307 It must also be noted that the Commission classified all of that collusive conduct as a single and continuous infringement, which lasted from 1997 to 2011. According to the Commission, Scania and the settling parties pursued an overall plan with the single anticompetitive aim of restricting competition on the market for medium and heavy trucks in the EEA. That aim was achieved by engaging in practices that reduced the levels of strategic uncertainty between competitors as regards future prices and gross price increases, and the timing and passing on of costs relating to the introduction of trucks complying with environmental standards (recital 317 of the contested decision).

308 It follows from the foregoing that, in the present case, even though the Commission did not classify the collusive contacts at German level as an infringement per se of Article 101 TFEU, it considered that those contacts constituted restrictions of competition by object and formed part of the single and continuous infringement attributed to Scania, contributing to that infringement. In the context of the present plea in law, it is necessary to examine the merits of the Commission's assessment that the collusive contacts at German level constituted a restriction of competition by object.

309 In that regard, it follows from the Court of Justice's case-law that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 49, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 113; see also, to that effect, judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 34).

310 The distinction between 'infringements by object' and 'infringements by effect' stems from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 50, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 114; see also, to that effect, judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 35).

311 Consequently, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) TFEU, to prove that they have actual effects on the market. Experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 115).

312 Where the analysis of a type of coordination between undertakings does not reveal a sufficient degree of harm to competition, the effects of the coordination should, on the other hand, be considered and, for it to be caught by the prohibition, it is necessary to find that factors are present which show that competition has in fact been prevented, restricted or distorted to an appreciable extent (judgments of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 34; of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 52; and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 116).

313 According to the case-law of the Court of Justice, in order to determine whether an agreement between undertakings or a decision by an association of undertakings reveals a sufficient degree of harm to competition that it may be considered a restriction of competition 'by object' within the meaning of Article 101(1) TFEU, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 117; see also, to that effect, judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 36).

314 In addition, although the parties' intention is not a necessary factor in determining whether an agreement between undertakings is restrictive, there is nothing prohibiting the competition authorities, the national courts or the Courts of the European Union from taking that factor into account (judgments of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 37; of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 54; and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 118).

315 In so far as concerns, in particular, the exchange of information between competitors, it should be recalled that the criteria of coordination and cooperation necessary for determining the existence of a concerted practice are to be understood in the light of the notion inherent in the Treaty provisions on competition, according to which each economic operator must determine independently the policy which it intends to adopt on the common market (judgments of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 32, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 119).

316 While it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, nonetheless, strictly preclude any

direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market (judgments of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 33, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 120).

317 The Court of Justice has thus held that the exchange of information between competitors was liable to be incompatible with the competition rules if it reduced or removed the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings was restricted (judgments of 2 October 2003, *Thyssen Stahl* v *Commission*, C-194/99 P, EU:C:2003:527, paragraph 81; of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 35; and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 121).

318 In particular, an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anticompetitive object (judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 122; see also, to that effect, judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 41).

319 Moreover, a concerted practice may have an anticompetitive object even though there is no direct connection between that practice and consumer prices. Indeed, it is not possible on the basis of the wording of Article 101(1) TFEU to conclude that only concerted practices which have a direct effect on the prices paid by end users are prohibited (judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 123; see also, to that effect, judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 36).

320 On the contrary, it is apparent from Article 101(1)(a) TFEU that concerted practices may have an anticompetitive object if they ‘directly or indirectly fix purchase or selling prices or any other trading conditions’ (judgments of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 37, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 124).

321 In any event, Article 101 TFEU, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of individual competitors or

consumers but also to protect the structure of the market and thus competition as such. Therefore, in order to find that a concerted practice has an anticompetitive object, there does not need to be a direct link between that practice and consumer prices (judgments of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraphs 38 and 39, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 125).

322 Lastly, it should be pointed out that the concept of a concerted practice, as it derives from the actual terms of Article 101(1) TFEU, implies, in addition to the participating undertakings concerting with each other, subsequent conduct on the market and a relationship of cause and effect between the two (judgments of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 51, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 126).

323 In that regard, the Court of Justice has held 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. In particular, the Court of Justice concluded that such a concerted practice was caught by Article 101(1) TFEU, even in the absence of anticompetitive effects on that market (judgments of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 51, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 127).

(2) The content of the information exchanged

(i) The intended changes to gross prices and gross price lists and the timing of those changes, referred to in recital 238(a) of the contested decision

324 The applicants submit that the information exchanged at German level regarding gross prices was incapable of reducing ‘strategic’ uncertainty between the competitors.

325 In that regard, in the first place, the applicants claim that the pricing information exchanged at German level concerned the prices that were in force and charged by distributors to dealers in Germany, and did not concern future prices or pricing intentions. In the second place, the applicants maintain that the exchanges at German level concerned prices which were already public and, in the third place, they submit that the gross prices exchanged had no informative value as regards the prices actually charged to the end customer.

– *The applicants' argument relating to the current or future nature of the information exchanged at German level*

326 In recital 240 of the contested decision, the Commission stated that the competitors discussed a number of factors concerning future pricing and future evolution of gross prices.

327 The applicants dispute the Commission's conclusion in the contested decision that the information exchanged at German level on gross prices concerned future gross prices and pricing intentions. They submit, in essence, that the exchange of that information concerned gross prices in force and, therefore, was not of such strategic importance that it could be classified as a restriction of competition 'by object'. The gross prices exchanged were the (current) prices in force in so far as, before the exchange, they had already been communicated to the dealers' networks or applied to deliveries or orders already placed by customers.

328 In that regard, it must be noted that the file contains many pieces of evidence demonstrating that the discussions at German level on gross price increases were clearly prospective in nature and were intended to remove uncertainty as to competitors' future pricing policy. Thus, the exchanges between 2 and 8 December 2004, described in recital 140 of the contested decision, concerned the price increases planned for 2005, the exchanges of information which took place on 12 September 2005, described in recital 149 of the contested decision, concerned the price increases planned for 2006, the exchanges of information which took place in June and July 2007, described in recital 158 of the contested decision, concerned the price increases planned for 2008, the exchanges of information which took place on 12 and 13 March 2008, described in recital 166 of the contested decision, concerned the price increases for 2008 and 2009, the exchanges of information which took place in July 2009, described in recital 179 of the contested decision, concerned the price increases planned for 2010, and the email dated 14 October 2010, described in recital 190 of the contested decision, shows that there was an exchange of information regarding price increases for 2011. Scania DE employees took part in all those exchanges.

329 Furthermore, it is apparent from the file that both Scania and the other competitors discussed among themselves the price increases which they intended to apply, in response to requests, to that end, from one of the competitors. Thus, in an email of 2 December 2004, described in recital 140 of the contested decision, an employee of [*confidential*] at German level asked competitors for information on the price increases planned for 2005, stating: 'Price increases 2005: same as every year, the boss wants to know if and when you will increase prices next year.' He also stated: 'For this reason, please share this information with everyone in order to save time of individual requests'. Similarly, the email of 20 July 2009, set out in recital 179 of the contested decision, relating to a request for information concerning, inter alia, price increases for 2010, states: 'as every year, the forward planning is coming up in the house and with that related questions [must be addressed]'.

330 The applicants dispute the prospective nature of the gross prices exchanged, arguing that the pricing information exchanged at German level concerned the gross distributor-to-dealer price lists which had already been communicated to the dealers and which already served as a basis for orders made by end customers. In support of that argument, the applicants rely on two reports prepared by a firm of economics consultants, the first dated 20 September 2016, submitted to the Commission during the administrative procedure ('the economic report of 20 September 2016') and the second, dated 9 December 2017, submitted for the first time before the Court ('the economic report of 9 December 2017'). Those reports analyse the exchanges of information between competitors in which Scania DE was involved (and referred to in the statement of objections and the contested decision) and, relying on data provided by Scania, show, allegedly, that each of those exchanges concerned gross price lists, which, prior to being notified to Scania DE's competitors, had already been communicated to Scania's dealers in Germany or had served as a reference for the placing of orders by end customers.

331 That argument of the applicants does not convince the Court.

332 Irrespective of the reliability and accuracy of the data used in the two reports referred to in paragraph 330 above, which had been ordered by the applicants with a view to their defence in the administrative procedure and before the Court, it must be noted that several exchanges of information set out in the contested decision show that the price increases discussed during those exchanges applied to orders made after those exchanges. Consequently, the prospective nature of the information exchanged is established even by following the analysis used by the applicants. In that regard, the Court refers, by way of example, to the exchanges of information at German level, set out in recitals 140, 149, 166, 171 and 190 of the contested decision. Thus, during the exchanges of December 2004, set out in recital 140 of the contested decision, [*confidential*] informed its competitors that the price lists for vehicles and options would be increased by 3% for orders placed after 1 April 2005; in a presentation by [*confidential*] at a meeting between competitors at German level on 12 and 13 March 2008, set out in recital 166 of the contested decision, [*confidential*] informed its competitors of the price increase for certain truck models applied to orders placed from April 2008, October 2008 and April 2009; the email of 7 November 2008 set out in recital 171 of the contested decision informs competitors of the price increases applied by [*confidential*] for orders placed from April 2009 onwards and the price increases applied by [*confidential*] for orders placed from February 2009 onwards.

333 Furthermore, it must be noted that, even though the truck manufacturers, before exchanging information on gross price increases at German level, had communicated 'internally', that is to say to their dealers, their intention to increase gross prices, and even though they had already taken orders on the basis of those gross prices, that does not mean that the information exchanged was not useful for their competitors, since that information was not public and disclosed the future pricing strategy of the truck manufacturers which supplied the information.

334 The applicants, in order to support their argument that the exchanges of information between manufacturers at German level concerned the gross prices in force at the time, not future prices, also submit that Scania DE did not revise its prices as a result of the information (on prices) which it might have received from its competitors. In support of that argument, the applicants relied on the economic report of 9 December 2017 which allegedly demonstrates that a significant volume of sales had been achieved on the basis of price lists, after Scania DE had provided them to the other participants at German level.

335 That argument, which must be addressed in the light of the principles set out in paragraphs 322 and 323 above, cannot be accepted either, since it does not demonstrate in any way that Scania did not take into account the information received in the exchanges at German level in order to determine its pricing strategy. The fact that Scania took part in exchanges with its competitors for 14 years and on a regular basis demonstrates the strategic value of that information to Scania (see, to that effect, judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 51).

336 In order to dispute the prospective nature of the gross prices exchanged at German level, the applicants put forward two other arguments. First, they refer to the statements of other truck manufacturers in the file, which, they claim, confirm that the exchange of information at German level did not concern future pricing intentions. Secondly, they submit that the Scania DE employees who participated in the exchanges at German level did not have the task of establishing prices and that they held a genuine belief that 'future' information on prices was outside the scope of their contacts. Scania DE employees confirmed that the information provided to the employees of other manufacturers had always been widely distributed in Scania's dealer networks and those Scania DE employees assumed that the pricing information provided by the other manufacturers concerned 'current' and not future prices.

337 The applicants' arguments set out in paragraph 336 above also cannot be accepted.

338 First of all, in the statements relied on by the applicants, the truck manufacturers stated, in essence, that the information on gross prices exchanged at German level had already (that is to say, before the exchanges) been communicated to the dealers and was therefore, according to those manufacturers, public in nature. The 'public' nature of the information exchanged at German level will be examined in paragraphs 342 to 350 below. At this stage of the analysis, it must be noted that the file contains evidence showing that the exchanges at German level concerned, inter alia, future increases in gross prices, and that is also demonstrated by the statements of the manufacturers themselves. As the Commission states in recitals 89 and 91 of the contested decision, the majority of the manufacturers confirmed that the topics of discussions at German level included future increases in gross prices and that those exchanges were systematic and regular.

339 Next, the statements of the Scania DE employees are based on the incorrect premiss that the gross prices exchanged at German level constituted 'current' prices, since they had already been communicated to the dealer networks. In any event, as regards the perception which Scania DE's employees had of the exchanges of information at German level, it must be noted that, according to the case-law, the attribution to an undertaking of an infringement of Article 101 TFEU does not require there to have been knowledge on the part of the employees of the undertaking concerned by that infringement; action by a person who is authorised to act on behalf of the undertaking suffices (see, to that effect, judgment of 14 March 2013, *Dole Food and Dole Germany* v *Commission*, T-588/08, EU:T:2013:130, paragraph 581 and the case-law cited). In the present case, as the Commission observes, the applicants do not deny that the Scania DE employees who took part in the exchanges of information were authorised to do so. Accordingly, the applicants' argument based on the abovementioned perception of the Scania DE employees and their responsibility for the price-setting is ineffective and must be rejected.

340 Lastly, the applicants' complaint that the Commission ignored the economic report of 20 September 2016 referred to in paragraph 330 above must be rejected. The file does not show that such a complaint is well founded and it is apparent from the foregoing considerations that that report served a limited purpose since it sought to support an incorrect argument, namely that the information exchanged at German level was 'current' in so far as it had already been communicated to the dealers' networks.

341 In the light of the foregoing considerations, all of the applicants' arguments relating to the 'current' nature of the information exchanged at German level must be rejected.

– *The applicants' argument concerning the public nature of the gross prices exchanged at German level*

342 The applicants submit that, in view of the fairly long period of time that elapses between the order for and delivery of a truck, the information exchanged at German level on gross prices had already been communicated by the truck manufacturers to their dealer networks and had already been referred to in the negotiations between dealers and customers and was, therefore, in the public domain. That information therefore has no strategic value for competitors. The applicants maintain that their analysis is supported, to a certain extent, by footnote 4, under point 74, of the Commission Guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements (OJ 2011 C 11, p. 1).

343 That argument of the applicants does not convince the Court.

344 In the first place, generally, it is noted that the exchanges of pricing information at German level took place frequently and over a number of years. It is also apparent from the file that those exchanges were structured and well organised, since the

participants were often invited to complete an Excel table with information on, inter alia, planned gross price increases, and the Court refers, in that regard, by way of example, to recitals 150, 166, 171, 172, 175, 179 and 188 of the contested decision and to the statements of some of the manufacturers during the administrative procedure, set out in recital 91 of the contested decision. In the light of that fact, the argument that exchanges at German level were of no value to competitors for the purposes of planning their pricing strategies is implausible.

345 In the second place, it should be noted that the applicants have not demonstrated that the truck manufacturers could have obtained the information exchanged at German level by means other than direct contacts between competitors and concede that they are unable to provide examples of price increase announcements made through a freely accessible source. Nor do the applicants dispute the statements of some of the competitors during the administrative procedure, set out in recitals 269 and 270 of the contested decision, according to which gross prices and the intention to increase gross prices, which were the subject of exchanges at German level, were generally not public and could only be partially obtained from publicly accessible sources and that information on gross prices that was in the public domain was not as detailed and accurate as the information received directly from competitors.

346 In the same context, it should also be noted that the applicants have not demonstrated that the information obtained by dealers and end customers of a truck manufacturer relating to future gross price increases reaches other truck manufacturers in a simple, direct and systematic manner. In that regard, a truck manufacturer stated during the administrative procedure that, generally, customers did not share information on the competitors' intended gross price increases during their negotiations with dealers, since that information did not strengthen the customers' negotiating power vis-à-vis those dealers (see recital 279 of the contested decision).

347 It follows from the foregoing considerations that the communication to the dealer networks of information relating to the increases applied to the gross price lists did not cause that information to become 'public', since public information is objective market data that is readily accessible (see, to that effect, judgment of 8 July 2008, *BPB* v *Commission*, T-53/03, EU:T:2008:254, paragraph 236).

348 It also follows that the exchange of information at German level on the increases applicable to the gross price lists was the only way that competitors could have access to that information in a simple, rapid and direct manner and allowed them to create a climate of mutual certainty as to their future pricing policies (see, to that effect, judgment of 8 July 2008, *BPB* v *Commission*, T-53/03, EU:T:2008:254, paragraph 236).

349 The Commission's conclusion in the contested decision that the information exchanged at German level was not public (see, inter alia, recital 242 of the contested decision) must therefore be endorsed. It should also be stated that,

contrary to the applicants' argument (see paragraph 342 above), that conclusion of the Commission is consistent with the Guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements. In point 74 of those guidelines, the Commission explained that exchanges between competitors of individualised data regarding intended future prices or quantities should be considered a restriction of competition by object. It is true that, in footnote 4, under point 74, the Commission stated that, in specific situations where companies were fully committed to sell in the future at the prices that they previously announced to the public (prices that they therefore could not revise), such public announcements of future individualised prices or quantities would not be considered as intentions, and hence would normally not be found to restrict competition by object. However, the content of that footnote is not relevant in the present case, since the truck manufacturers, including Scania, did not inform the general public of the price information exchanged at German level, but informed only their dealer networks.

350 On the basis of the foregoing considerations, the applicants' arguments relating to the public nature of the information on gross prices exchanged at German level must be rejected.

– *The applicants' argument that the gross prices exchanged at German level had no informative value as regards the prices actually applied in market transactions*

351 The applicants submit that the information exchanged at German level on gross prices provides no indication as to competitors' future pricing behaviour. They explain that, due to the complexity and number of the pricing factors in respect of trucks, gross prices and gross price lists have no informative value as regards the prices actually applied in market transactions, contrary to the Commission's assessment in the contested decision.

352 That argument of the applicants is repeated and further developed in the context of their arguments relating to the economic and legal context of the exchange of information at German level. It will therefore be addressed in the assessment of that line of argument.

(ii) The intended changes to net prices and rebates offered to customers, as referred to in recital 238(a) of the contested decision

353 It must be noted that the Commission, in recital 238(a) of the contested decision, stated that Scania and the settling parties occasionally exchanged information on intended changes to net price changes or on changes to rebate offered to customers. It is apparent from recital 212(a) of the contested decision that, according to the Commission, several of those exchanges took place at German level.

354 The applicants deny that such exchanges took place and maintain that the documentary evidence relied on by the Commission does not establish the existence of those exchanges.

355 It is apparent from the file that the Commission has established to the requisite legal standard the existence of the practices set out in paragraph 353 above.

356 As regards the exchanges of information relating to rebates, the existence of those exchanges is demonstrated in the handwritten notes of a [*confidential*] employee, relating to a meeting between competitors on 3 and 4 May 2004 at Scania DE's premises, set out in recital 134 of the contested decision. Those notes state: 'Prices average +5, 6, 7.5%! [N]o reform of the gross prices, same rebate level'. Furthermore, it is apparent from the documentary evidence set out in recital 156 of the contested decision that, on 7 September 2006, a [*confidential*] employee informed employees of other manufacturers at German level, including one of Scania DE's employees, about a price increase put in place by [*confidential*], stating that 'there will be a price increase (only [*confidential*]) from 1 October: 2% on all [*confidential*] models' and that 'the list prices do not change, but the seller's discounts'. Similarly, it is apparent from the documentary evidence in recital 158 of the contested decision that, on 10 July 2007, a [*confidential*] employee, in response to a request for information from a [*confidential*] employee, that response being addressed to employees of competitors at German level, sent an amendment to the rebates applied by [*confidential*]. Scania DE employees took part in the abovementioned exchanges.

357 As regards the exchanges of information relating to net prices, it is apparent from the documentary evidence set out in recital 140 of the contested decision that, in response to a request for information, on 2 December 2004, from a [*confidential*] employee, relating to price increases planned for 2005, [*confidential*] informed its competitors, inter alia, that net prices would be increased by 1% from 1 January 2005 for options, and from 1 February 2005 for all series. [*confidential*] stated that the price increase would be achieved through the reduction of rebates. Similarly, it is apparent from the documentary evidence set out in recital 149 of the contested decision that, in a meeting between competitors on 12 September 2005 at German level, in which Scania had participated, [*confidential*] informed its competitors about a price increase of between 8 and 10% net for the [*confidential*] truck model. Furthermore, it is apparent from the documentary evidence in recital 179 of the contested decision that, in response to a request for information of 20 July 2009 from a [*confidential*] employee concerning, inter alia, price increases for 2010, [*confidential*] informed its competitors about a 1.5% increase in net prices applied to orders placed from October 2009 onwards. Exchanges of information relating to net prices are also apparent from the documentary evidence set out in recitals 184 and 188 of the contested decision. Scania DE employees took part in the abovementioned exchanges.

358 As regards several of the exchanges set out in paragraphs 356 and 357 above (for example, the exchanges referred to in recitals 140, 149, 156 and 158 of the

contested decision), the applicants, using the reasoning set out in paragraphs 327 and 342 above, rely on the fact that the information exchanged was 'current' (not future) information in the public domain. Since that reasoning has already been rejected by the Court, the applicants' line of argument does not call into question the conclusion in paragraph 355 above.

(iii) The passing on of costs relating to the introduction of emission technologies for medium and heavy trucks, required by Euro 3 to 6 standards, referred to in recital 238(b) of the contested decision

359 It must be noted that the Commission, in recital 238(b) of the contested decision, stated that Scania and the settling parties had concluded agreements and/or had coordinated on the passing on of costs relating to the introduction of emission technologies for medium and heavy trucks required by Euro 3 to 6 standards. It is apparent from recital 212(b) of the contested decision that, according to the Commission, a number of those collusive contacts took place at German level.

360 The applicants deny that they colluded at German level as regards the passing on of costs (gross price increases) relating to the introduction of emission technologies. Moreover, while not denying that price information was exchanged at German level, they do not accept that the prices linked to the introduction of the technologies which were the subject of the exchanges were future or intended prices.

361 It is apparent from the file that the Commission has established to the requisite legal standard the existence of the collusive practices set out in paragraph 359 above and Scania's participation in those practices.

362 By way of example, it is apparent from the evidence in recital 140 of the contested decision that, in an exchange of information at German level, which took place between 2 and 8 December 2004, in which a Scania DE employee participated, [*confidential*] informed its competitors of its intention to increase the price of new Euro 4 compliant models by EUR 5 410. Similarly, it is apparent from the evidence in recital 141 of the contested decision that, in response to an email from B, an employee of Scania DE, sent to competitors and requesting information on the prices and delivery dates of Euro 4 and 5 compliant engines, J, from the German subsidiary of [*confidential*], replied that that manufacturer would deliver trucks complying with those standards from April or May 2005 and that the additional prices for Euro 4 and 5 compliant engines would be EUR 11 500 and EUR 14 800 respectively. Furthermore, it is apparent from the evidence set out in recital 149 of the contested decision that exchanges on prices took place at the meeting between competitors, at German level, on 12 September 2005. The topics of discussion included price increases planned for 2006. I, from Scania DE, was present at the meeting. It is apparent from the handwritten notes of one of the participants in the meeting that [*confidential*] informed its competitors of the surcharges which that manufacturer would apply as a result of the introduction of the Euro 4 and 5 compliant technologies. It is also apparent from the evidence in

the file that, at the abovementioned meeting of 12 September 2005, I, of Scania DE, gave a detailed presentation on the price increases which resulted from the introduction of the Euro 4 and 5 compliant technologies and which were charged by Scania. It is also apparent from the evidence in recital 166 of the contested decision, relating to a meeting between competitors at German level on 12 and 13 March 2008, that exchanges of information on the planned price increases took place. A presentation by [*confidential*] indicated an increase of EUR 2 350 for Euro 5 compliant engines from May 2008 onwards.

363 As regards several of the exchanges set out in paragraph 362 above (the exchanges referred to in recitals 141, 149 and 166 of the contested decision), the applicants, using the reasoning presented in paragraphs 327 and 342 above, claim that the information exchanged was current, not future, and that it was in the public domain. Since that reasoning has already been rejected by the Court, the applicants' line of argument does not call into question the conclusion in paragraph 361 above.

(iv) The exchange of other commercially sensitive information, referred to in recital 238(c) of the contested decision

364 It must be noted that, in recital 238(c) of the contested decision, the Commission stated that Scania and the settling parties had exchanged other commercially sensitive information such as information on delivery periods, order intake, stock levels, target market shares, current net prices and rebates, gross price lists (even before they entered into force) and truck configurators.

365 The applicants submit, inter alia, that the 'other commercially sensitive information' which was sometimes exchanged at German level was of a technical nature and incapable of removing strategic uncertainty between the participants as regards their conduct on the market. According to the applicants, that information could not be regarded, in isolation or in conjunction with the other information referred to in recital 238 of the contested decision, as forming part of a 'by object' infringement.

366 In that respect, it must be noted that it is apparent from recital 237 of the contested decision that, according to the Commission, the exchange of commercially sensitive information, set out in paragraph 364 above, was one of the means used by competitors which allowed them to coordinate prices and gross price increases, the other means being collusive contacts on the pricing, timing and additional costs resulting from the introduction onto the market of new truck models complying with emission standards (referred to in recital 238(a) and (b) of the contested decision).

367 It is also apparent from recital 317 of the contested decision that, according to the Commission, the exchange of commercially sensitive information, referred to in paragraph 364 above, was one of the means used by competitors to reduce strategic uncertainty between them as regards future prices, gross price increases,

and the timing and the passing on of costs relating to the introduction of truck models complying with environmental standards.

368 It must also be noted that Article 1 of the operative part of the contested decision does not refer to the exchanges of 'other commercially sensitive information' identified in recital 238(c) of the contested decision.

369 Furthermore, the Commission explained, in the defence, that the reference to 'other commercially sensitive information' was one of the examples of the way in which the cartel members implemented their collusion on future prices and gross price increases, as well as on the timing of the introduction of technologies and the passing on of the costs relating to those technologies, and that that reference did not broaden the scope of the infringement.

370 It follows from the foregoing that the examination of the merits of the Commission's assessments relating to the exchanges of 'other commercially sensitive information' becomes superfluous if it is established that the Commission has succeeded in establishing the existence of the other collusive practices identified in recital 238(a) and (b) and in recital 317(a) and (b) of the contested decision and the restriction 'by object' of competition resulting from those practices. The Court rules on that point in paragraph 394 below.

371 In that regard, the Court also takes into account the fact that the Commission's conclusions on the exchanges of 'other commercially sensitive information' have no impact on the duration and gravity of the infringement and, consequently, on the amount of the fine, in so far as those findings are determined by the collusive practices identified in recital 238(a) and (b) and in recital 317(a) and (b) of the contested decision.

(3) The aim of the exchanges of information at German level

372 The applicants submit that the exchanges of information at German level focused primarily on technical product information. The participants' aim was to be kept informed of the technical evolution of the trucks in order better to serve customers. According to the applicants, the participants in the exchanges at German level on behalf of Scania DE were sales trainers who were not involved in Scania DE's decision-making process on prices. In support of their arguments, the applicants submitted affidavits by the Scania DE employees who participated in the exchanges of information at German level. They also relied on a reply by [*confidential*] to the statement of objections.

373 The Commission contends that the applicants' arguments are unfounded.

374 It should be noted that the content of the file does not support the applicants' claim that the exchanges at German level concerned primarily technical matters. By contrast, the evidence in the file shows that a significant proportion of those exchanges concerned pricing information, which, contrary to the applicants'

analysis, was prospective in nature and was not in the public domain. The anticompetitive aim of the exchanges at German level is also demonstrated by the fact that a number of those exchanges were as a result of requests for information made by employees of the various manufacturers regarding the price increases planned by competitors for the future. Thus, in the email of 2 December 2004 set out in recital 140 of the contested decision, K, of [*confidential*] writes, in respect of 'price increases 2005', 'same as every year, the boss wants to know if and when you will increase prices next year' and states: 'For this reason, please share this information with everyone in order to save time of individual requests'. In the email of 21 July 2009, referred to in recital 180 of the contested decision, L, an employee of [*confidential*], in response to an email from I, of Scania DE, who had asked for topics to discuss at the meeting of competitors at German level on 17 and 18 September 2009, made 'spontaneous suggestions for topics', stating: 'EURO VI? I know – are we allowed and do we want to talk about this? – How do we all get this year's totally messed up price level raised up again?'

375 In their affidavits, the Scania DE employees stated that they did not participate in the pricing decision-making process within that company, but those assertions do not support the claim that the exchanges at German level related primarily to technical information, or the claim that the abovementioned employees, by participating in those exchanges, had the aim of keeping themselves informed about technical developments.

376 Similarly, [*confidential*]'s claim, relied on by the applicants, that the information on prices was not the main reason for the participation of its employees in the exchanges at German level, and its claim that that company was interested in the price lists of the other manufacturers mainly because they were the only documents containing a complete picture of the various truck models and variations, are unconvincing to the Court. As the Commission correctly notes, [*confidential*]'s abovementioned claims do not explain why it was necessary, for the purposes of obtaining the list of the various truck models and variations, also to exchange information on future price increases. Moreover, it is apparent from the file that that manufacturer clearly stated during the administrative procedure (in its replies to a request for information from the Commission) that the exchanges at German level also concerned information on intended increases of price lists and that those exchanges were systematic and regular.

377 It follows from the foregoing that the Court is unconvinced by the applicants' arguments set out in paragraph 372 above. By contrast, the file demonstrates the validity of the Commission's conclusion, in recital 307 of the contested decision, that the exchanges in respect of the gross price increases of trucks went beyond the exchange of information in the public domain and had the objective of increasing transparency between the parties and, consequently, of reducing uncertainties associated with the normal operation of the market.

378 Furthermore, even if the exchanges of information at German level pursued legitimate objectives, such as those relied on by the applicants, which coexisted

with the anticompetitive objective established, that would not call into question the Commission's conclusion that there was a restriction of competition 'by object'. It follows from settled case-law that collusive conduct may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives (see, to that effect, judgment of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21 and the case-law cited).

379 In the light of the foregoing considerations, the applicants' arguments relating to the objective of the exchange of information at German level must be rejected.

(4) The context of the exchange of information at German level

380 The applicants submit that an analysis of the economic and legal context, in particular the nature and structure of the trucks market and the conditions under which it operates, calls into question the 'by object' nature of the infringement found by the Commission.

381 The applicants explain that trucks are produced and marketed in a large number of forms and variations depending on customers' needs, and that the final price of the trucks depends on their characteristics and the specific features of the national market in which they are sold. The applicants also note that buyers of trucks are professionals who have significant bargaining power.

382 The applicants thus conclude that, because of the complexity of trucks and the large number of factors influencing the final price charged to the customer, which becomes an individual price, the gross prices and gross price lists exchanged between competitors have no informative value in respect of parameters of competition (that is to say, in respect of the prices to be charged or actually applied in market transactions), and conclude that the Commission did not sufficiently take that context into account when determining the nature of the exchanges of information.

383 The applicants also submit that Scania uses a price-setting mechanism which is complex and in which pricing decisions are taken at several trade levels which are independent of each other, and on the basis of arm's length negotiations between Scania's headquarters, national distributors, local dealers and end customers. The variation in prices down the supply chain, brought about by the arm's length nature of the negotiations at all levels, therefore creates a disconnect between the factory-to-distributor prices and distributor-to-dealer gross price lists and the actual transaction price charged by independent dealers to end customers. In support of their arguments, the applicants rely on the economic report of 9 December 2017, which demonstrates, as regards Scania, the significant difference between distributor-to-dealer gross prices and the corresponding transactions prices, and the absence of a common trend in gross price lists and the actual transaction prices. It follows that a competitor could not have inferred from

a change in the gross price list what was the approximate change in the actual transaction price.

384 In the first place, it should be noted that the Commission set out, in recitals 22 to 40 of the contested decision, the structure of the trucks market and the price-setting mechanism in the truck industry (see paragraphs 19 to 22 above).

385 It should also be noted that, in recitals 51 and 52 of the contested decision, the Commission examines the impact of the price increases at European level on prices at national level (see paragraphs 32 and 33 above). In that regard, the Commission notes 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 consumer derive from the EEA-wide gross price lists set at headquarters level (recital 51 of the contested decision).

386 It follows, according to the Commission, that an increase in the European-wide gross price list, decided at headquarters level, determines the movement of the distributor's net price, that is to say, the price which the distributor pays to the headquarters for the purchase of the 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 (recital 52 of the contested decision).

387 It is, therefore, by taking that factual background into account that the Commission, when assessing the anticompetitive nature of the exchanges of information on future gross price increases, states, in recital 284 of the contested decision, that, because of the increased transparency of the truck market and its high concentration, the only uncertainty faced by the parties was whether the official pricing policy of their competitors would be changed, and if so, why and on what date. The Commission states that, in order to eliminate that uncertainty, Scania and the settling parties established a well-structured and systematic exchange of strategic information concerning future pricing developments. According to the Commission, the future gross price increases constituted a price-setting factor applied to the EEA-wide gross price lists (which were available to all the parties except [*confidential*]), since those price lists gave rise to all the prices applied at national level, including final transaction prices (recital 284 of the contested decision).

388 The Commission also states that the fact that it was not possible to calculate exactly the final prices of the trucks sold to customers on the basis of the exchange of information is irrelevant. According to the Commission, the exchange of information revealing the trend in the future movement of gross prices enabled competitors to understand the date and how prices would evolve in Europe. Furthermore, according to the Commission, the exchange of detailed gross price

lists enabled manufacturers to deduce approximate current and/or future net prices through a combination of different types of information which they obtained (recital 285 of the contested decision).

389 In the second place, it should be noted that the Commission, in recitals 41 to 50 of the contested decision, describes the price-setting mechanism within Scania and the players involved in that setting (see paragraphs 23 to 31 above).

390 It is apparent from paragraphs 384 to 389 above that, contrary to the applicants' arguments, the Commission took sufficient account of the context of the exchanges of information in which Scania participated, in order to conclude that they were anticompetitive 'by object'. In particular, the Commission took into account the characteristics of the truck market and the pricing mechanism for those trucks in order to find that the exchanges of prospective information which took place, inter alia, at German level were anticompetitive 'by object'.

391 In the third place, as regards the applicants' arguments set out in paragraph 383 above, first, it should be noted that, according to the case-law, a concerted practice may have an anticompetitive object even though it has no direct connection with consumer prices (see paragraphs 319 to 321 above). Consequently, the absence of impact that a gross price increase, decided at any stage in Scania's distribution chain, might have on the price paid by the end consumer is not sufficient to call into question the Commission's conclusion that the exchange of information on future changes to gross prices, which took place inter alia at German level, constituted a restriction of competition 'by object' because the information that was exchanged was useful for defining competitors' pricing strategy.

392 Secondly, the applicants' line of argument, set out in paragraph 383 above, does not demonstrate that the information on future gross price changes provided by the Scania DE employees during the exchanges at German level was not strategic in nature. As is apparent from the presentation of the price-setting mechanism within Scania (see, inter alia, paragraphs 26, 27 and 31 above), the gross prices applied by Scania DE, to which rebates are applied, are the basic price for the sale of trucks to dealers in the German market. It follows that the future changes to gross price referred to above constitute a factor which influences the price for the transfer of a truck by Scania DE to German dealers and that the exchanges of information on those changes are thus strategic in nature.

393 In the fourth place, and more generally, the strategic nature of the information on the future change to gross prices, exchanged at German level, is also demonstrated by the frequency, regularity and systematic nature of the exchanges and by the fact, which is not disputed, stated in recital 93 of the contested decision, that, for the majority of the manufacturers, that information was frequently transferred to their respective headquarters and was taken into account in the determination of their pricing strategies.

394 On the basis of the foregoing considerations, the applicants' arguments relating to the context of the exchanges of information at German level must be rejected. It must also be concluded that the Commission's classification of the exchanges of information at German level as a restriction of competition 'by object' is not vitiated by error. Consequently, the fifth plea in law must be rejected.

(e) The sixth plea in law, alleging misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement in that the Commission considered that the geographic scope of the infringement relating to German level extended to the whole of the EEA

395 The applicants dispute the Commission's finding in recital 386 of the contested decision that the geographic scope of the infringement was EEA-wide for the entire period of the infringement, thus covering the conduct of competitors at German level.

396 It must be noted that the Commission concluded in the present case that there was a single and continuous infringement of Article 101 TFEU and of Article 53 of the EEA Agreement from 17 January 1997 to 18 January 2011.

397 As regards the geographic scope of the infringement, the Commission considered that it covered all of the territory of the EEA for the entire period from 17 January 1997 to 18 January 2011 (recital 386 of the contested decision).

398 The Commission's reasoning on which the conclusion in recital 386 of the contested decision was based is set out, in the following terms, in recitals 388 and 389 of the contested decision:

'(388) Scania and the settling parties have European wide gross prices and gross price lists. The evidence shows that before and after the introduction of European wide or global price lists, competitors had anticompetitive discussions that covered Contracting Parties to the EEA Agreement and agreed on gross price increases in order to align prices for medium and heavy trucks in the EEA. Before the introduction of European wide price lists[,] the evidence shows that discussions were not limited to specific countries, but explicitly mentioned a European wide scope (see recitals (103) and (104)). After the introduction of European gross price lists, applicable in the entire EEA, the competitors were able to understand the European price strategy by exchanging gross price increases in Germany (see recital (175)), as they reflected the gross price increases by the headquarters for their respective European gross price lists.

(389) They also agreed and/or coordinated 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, standards that were applicable EEA-wide. The exchanges on the introduction dates of new technology standards (for example EURO 3) and the connected price increases were not limited to

specific countries, but covered the entire EEA (see recitals (100) and (103)).'

399 It must also be noted that, in the contested decision, the Commission found that the exchanges between competitors at top management level ended in September 2004 and that, after that date, the exchanges between competitors were continued at German level (recital 327(a) of the contested decision).

400 The addressees of the contested decision included Scania DE, the Commission considering that that entity was directly liable for the exchanges of anticompetitive information for the period from 20 January 2004 to 18 January 2011 (recital 410(b) of the contested decision).

401 The applicants, in order to support their argument that the exchanges of information between competitors at German level did not have a scope that went beyond German territory, put forward, in essence, two sets of arguments.

402 First, the applicants submit that the information obtained by Scania DE from its competitors was not of interest beyond the German market. Moreover, according to the applicants, Scania DE never assumed that that information was of such an interest and that it was capable of reducing uncertainty as regards the European pricing strategy of its competitors.

403 Secondly, the applicants submit that Scania DE did not provide information to its competitors which was of interest beyond the German market, thereby reducing their uncertainty as to Scania's pricing strategy outside of Germany. Moreover, Scania DE did not give its competitors the 'impression' of providing information relating to the whole of the EEA.

404 Those two sets of arguments are examined below.

(1) The geographic scope of the information obtained by Scania DE

405 In the first place, it is apparent from the file that truck manufacturers began to apply European gross price lists gradually from 2000 and that, in 2006, the majority of manufacturers had such price lists, namely [*confidential*], [*confidential*], [*confidential*], [*confidential*] and [*confidential*]. The Court concludes that that was also the case for Scania, as will be explained in paragraphs 426 to 428 below. Only [*confidential*] did not have a European gross price list.

406 It should also be noted that the applicants do not call into question, as regards the other parties, the Commission's finding, in recitals 51 and 52 of the contested decision, that the European gross price lists are established at the manufacturers' headquarters and that the price increases indicated in those price lists influence the level of prices at distributor and dealer levels.

407 In the second place, the file in the present case contains evidence suggesting that the competitors had more or less precise knowledge that such price lists existed. Thus, it is apparent from an internal presentation by [*confidential*] of 30 March 2006, set out in recital 151 of the contested decision, that that manufacturer had information on competitors' price increases, taken from the European gross price lists of [*confidential*], [*confidential*], Scania and [*confidential*], from the Italian price list of [*confidential*] and from the German price list of [*confidential*]. Similarly, as is apparent from recital 160 of the contested decision, according to a survey carried out by employees of competitors established in Spain regarding the 'price structure', the results of which were indicated in a table, [*confidential*], [*confidential*], [*confidential*], [*confidential*] and [*confidential*] had 'common prices' in the European Union, whereas [*confidential*] and Scania did not. The table with the results of the survey was provided to the employees of competitors established in Spain, including Scania Spain's employees.

408 As regards the applicants' reliance on an internal presentation of [*confidential*] of April 2008, which might suggest that that undertaking did not believe, in 2008, that its competitors used European gross price lists, the Court does not consider that presentation to be decisive in its overall assessment of the evidence. Moreover, that undertaking stated, in 2010, in the context of its application for immunity, that it had a European gross price list and that 'this could also be the case for competitors', thus suggesting to the Commission that the geographic scope of the exchanges could be European.

409 In the third place, certain manufacturers with European gross price lists ([*confidential*]) stated, during the administrative procedure, that the price increases which they communicated at German level were, in essence, the increases applied to those European price lists, in so far as those price lists had replaced the national price lists. The Court refers, in that regard, to the replies of [*confidential*], [*confidential*] and [*confidential*] to the Commission's request for information of 27 November 2012, those replies being annexed to the defence, and to [*confidential*]'s response to the Commission's request for information of 19 September 2013, produced by it following the measure of inquiry adopted by the Court (see paragraph 75 above). It follows from that evidence that the scope of the anticompetitive information provided by at least some of Scania's competitors during the exchanges at German level, in which it is common ground that Scania DE employees participated, went beyond the German market.

410 In the fourth place, as stated in recital 327(c) of the contested decision, it is apparent from the file that, on a number of occasions, the manufacturers' employees who participated in the exchanges of information at German level notified the headquarters of that information, which is an additional factor that demonstrates that the scope of those exchanges went beyond the German market (see recital 213 of the contested decision, which refers to examples of the notification to the headquarters of information exchanged at German level). In that regard, reference must be made, in particular, to the content of recital 175 of the contested decision, which not only shows that the information exchanged at

German level was provided to [*confidential*]'s headquarters, but also supports the Commission's contention, set out in recital 388 of the contested decision, that the information exchanged at German level, relating to gross price increases, helped the manufacturers to understand their competitors' pricing strategy at European level. Thus, according to the documentary evidence in recital 175 of the contested decision, the manager of [*confidential*] at the company's headquarters wrote to his colleagues regarding the information exchanged at German level: 'Hereby I want to exchange with you a snap shot of the German market regarding lead times and tariff increase to our competitors. … At least the pricing strategy is very much in line with the competitors global European approach.'

411 Similarly, the fact, established in the context of the examination of the third plea in law, that employees at lower headquarters level were aware of the exchanges of pricing information at German level (see paragraphs 221 to 229 above) supports the Commission's argument regarding the geographic scope of the exchanges at German level.

412 In the fifth place, it is apparent from the file that, as the Commission notes in recital 327(b) of the contested decision, in view of the fact that the parties' German subsidiaries did not produce trucks and were not responsible for developing technologies, those responsibilities being the exclusive competence of the headquarters, it could be considered that the information exchanged at German level on the timing and additional costs relating to compliance with Euro 5 and 6 standards came from the headquarters and related to the whole of the EEA.

413 The finding in paragraph 412 above is illustrated by the documentary evidence set out in recital 148 of the contested decision concerning Scania. In an email of 26 July 2005, I, an employee of Scania DE participating in exchanges at German level, provided E, who was from [*confidential*]'s headquarters, with information on the date of Scania's presentation of its entire range of Euro 4 compliant engines and on the introduction of Euro 5 compliant truck models, stating that he would know exact dates and prices 'after the factory [staff's] holidays in Södertalje [(Sweden)]'. Since Södertälje is the city in which Scania has its headquarters, that statement, provided by the Scania DE employee to the [*confidential*] employee, supports the inference that the information to which the Scania DE employee was referring came from the headquarters and, therefore, had a scope going beyond the German market. The documentary evidence set out in recital 148 of the contested decision also shows the influence of Scania's headquarters in the determination of the prices charged on the German market, an issue which is addressed in paragraphs 422 to 438 below.

414 In the light of the considerations set out in paragraphs 405 to 413 above, taken together, it must be held that the scope of the information obtained by Scania DE during the exchanges at German level went beyond the German market.

415 In that regard, the Court is not convinced by the applicants' claim that the Scania DE employees who participated in the exchanges at German level 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 pricing strategy of other manufacturers.

416 First, it must be noted that the file in the present case contains evidence suggesting that the use of European gross price lists by the majority of manufacturers did not constitute a business secret (see paragraph 407 above). Consequently, it is entirely possible to assume that Scania DE's employees and the headquarters in Sweden were aware of the existence of those price lists and could therefore infer the pricing strategy of their competitors on the basis of information obtained at German level, for example, based on information relating to gross price increases, which were applied to competitors' European price lists (see paragraph 409 above).

417 Secondly, the Court is unconvinced by the applicants' claim that Scania DE, unlike the other participants in the exchanges at German level, never transmitted to its headquarters the information received at German level. It is true that the file contains no evidence that such transmission of information actually took place. That said, it is apparent from the documentary evidence presented in recital 166 of the contested decision that I, of Scania DE, who organised and participated in a meeting at German level held in Koblenz (Germany) on 12 and 13 May 2008, sent to his Scania DE colleagues information on the price increases exchanged at that meeting, while explaining that that information had not 'yet' been sent to the headquarters in Sweden. The use of the word 'yet' suggests that the intention of the abovementioned employee of Scania DE was to communicate the information to the headquarters and that that communication to the headquarters would not be exceptional in nature.

418 In any event, the fact that the file contains evidence demonstrating that the employees at Scania's lower headquarters level were aware of the exchange of anticompetitive pricing information at German level (see paragraph 228 above) and that the meetings at the two levels took place frequently on the same date and at the same place means that it is not decisive that there is no direct proof that the Scania DE employees sent information exchanged at German level to Scania's headquarters. In the light of the two factors referred to above, it can be inferred that Scania's headquarters knew about the content of that information.

419 Thirdly, it should be noted that employees of the headquarters of certain manufacturers also participated in the exchanges at German level. That was frequently the case for [*confidential*]. Furthermore, in an email of 11 November 2004, set out in recital 139 of the contested decision, sent by C from [*confidential*]'s headquarters and addressed to employees of competitors at both headquarters and German level, including A from Scania's headquarters and B from Scania DE, C presented two new employees of the headquarters of [*confidential*] who would be responsible for the central pricing within that manufacturer. That evidence relating to the participation of employees from headquarters in the exchanges that took place at German level indicates that

Scania DE's employees could not have not assumed that the information exchanged at German level was of interest for the pricing strategy of competitors at European level.

420 Fourthly, in the light of the probative evidence set out above, the affidavits of the Scania DE employees who participated in the exchanges at German level, which are to support the claim made in paragraph 415 above, do not convince the Court. Moreover, for the reasons set out in paragraph 281 above, those affidavits, produced after the end of the infringement and for the specific purposes of supporting Scania's position, have limited probative value.

421 On the basis of the foregoing, assessed as a whole (see paragraph 198 above), it must be concluded that Scania DE, through the participation of its employees in exchanges of information at German level, obtained information the scope of which went beyond the German market. On the basis of that finding, the present plea in law must be rejected, irrespective of whether Scania DE also provided information the scope of which went beyond the German market (see, to that effect and by analogy, judgment of 12 July 2001, *Tate & Lyle and Others* v *Commission*, T-202/98, T-204/98 and T-207/98, EU:T:2001:185, paragraph 58). That being so, the Court considers it appropriate to examine the latter question for the purposes of assessing the gravity of Scania's infringement of Article 101(1) TFEU and, where appropriate, to determine the amount of the fine (see, to that effect, judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 45 and the case-law cited).

(2) The geographic scope of the information provided by Scania DE

422 It must be noted that the Commission, in recital 388 of the contested decision, considered that, following the introduction of the European gross price lists, the truck manufacturers were able to understand their competitors' European pricing strategy by exchanging information on gross price increases applied to the German market, since those increases reflected increases applied by the manufacturers' headquarters to their European gross price lists.

423 The applicants submit, in essence, that the information on gross price lists provided during the exchanges at German level did not reflect Scania's prices at European level and, therefore, did not contribute to reducing the uncertainty of Scania's competitors regarding Scania's pricing strategy outside Germany.

424 In that regard, the applicants state that it is not correct to take the view that the FGPL constitutes a gross price list at EEA level and that it serves as a basis for the negotiations which took place in the context of the pricing process. In support of their argument, the applicants rely on the economic report of 9 December 2017 which shows that there is no correlation between the FGPL and the gross distributor-to-dealer price in Germany. The applicants explain that the FGPL is an internal reference tool used by Scania's headquarters to keep track of the general level of the prices of the various truck components in Scania's manufacturing

process. Despite its name, the FGPL is not a 'price list', since it does not set the price of transferring parts at any level of the distribution network. The applicants state that negotiations, conducted on an equal footing, between distributors and headquarters are carried out on the basis of country-specific factory-to-distributor net price lists and that it is those price lists that are negotiated whenever market conditions justify an increase or decrease in prices. In support of their arguments regarding the nature of the FGPL, the applicants submitted affidavits by employees of Scania's headquarters and of Scania DE. In support of their claim that negotiations between Scania distributors and the headquarters are conducted on an equal footing and that they are equivalent to negotiations between parties acting as independent commercial counterparts and competing profit centres, the applicants rely on an internal Scania report written in 2010, the 'Transfer Pricing Masterfile 2010'.

425 The applicants' line of argument set out in paragraph 424 above reveals a discrepancy between the description of Scania's pricing system provided in the context of the responses to requests for information sent by the Commission during the administrative procedure and the description of that system which was provided in the response to the statement of objections and before the Court.

426 The description of Scania's pricing system in the contested decision (see paragraphs 23 to 31 above) was based on the information provided by Scania in the responses, in particular of 16 April and 5 July 2012, to the requests for information sent by the Commission. The flowchart in recital 50 of the contested decision (see paragraph 31 above) which reveals the influence of the FGPL on the prices applied at the various stages of the distribution chain was also produced by Scania in the responses referred to above. Similarly, in the response of 5 July 2012, Scania described, inter alia, the role of the Price Decision Group and the Executive Vice President of Sales [*confidential*].

427 However, the arguments in paragraph 424 above reflect Scania's position set out *in tempore suspecto*, namely in its response to the statement of objections and before the Court.

428 In those circumstances, the Court considers, as does the Commission, that greater probative value must be attached to the applicants' replies to the requests for information sent by the Commission pursuant to Article 18(2) of Regulation No 1/2003 than to the explanations subsequently provided by the applicants in response to the statement of objections. Under Article 23(1) of Regulation No 1/2003, undertakings which supply incorrect or misleading information in response to a request for information made pursuant to Article 18(2) of that regulation may be fined up to 1% of their total annual turnover.

429 Furthermore, it must be noted that the applicants have not submitted any document to support their arguments relating to the nature of the FGPL. As the Commission states in recital 299(a) of the contested decision, it is logical to expect Scania to be able to provide documentation to support its analysis of the

FGPL. Scania did not do so and merely produced affidavits by some of its employees, which have limited probative value and do not convince the Court (see paragraph 420 above).

430 As regards the applicants' reliance on the economic report of 9 December 2017 showing that there was no correlation between the FGPL and gross distributor-to-dealer prices in Germany (see paragraph 424 above), that report states that specific changes in the FGPL are not matched by identical changes in the gross distributor-to-dealer price in Germany. It should be noted that the Commission's analysis in the contested decision is not based on such a correlation, since the Commission in no way maintained that an increase of prices in the FGPL led to an identical increase in the gross distributor-to-dealer price in Germany. In the contested decision, the Commission found that an increase of prices in the FGPL influenced the net price for the distributor (that is to say, the price which the distributor pays to the headquarters) and the distributor's gross price (namely the price which the dealer pays to the distributor), even though the price for the end consumer was not necessarily altered in the same proportion or was not altered at all (recital 52 of the contested decision). It is therefore apparent that the contested decision is not based on the correlation referred to in the economic report of 9 December 2017.

431 It follows from paragraphs 423 to 430 above that the Commission's argument that the FGPL is a European gross price list which influences the pricing of trucks at national distributor level (and, therefore, at Scania DE level) is established to the requisite legal standard.

432 More generally, the evidence in the file shows that Scania's national distributors (and therefore Scania DE) are not independent of the headquarters when determining their pricing policy towards dealers.

433 In that regard, first, account should be taken of the fact that the FGPL is established at headquarters level. It is apparent from the flowchart in paragraph 31 above that the FGPL is an important price component since all the prices applied in the stages down Scania's distribution chain result from that FGPL and from the discounts and profit margins from which the various operators benefit.

434 Secondly, account should be taken of the fact that the vast majority of Scania's distributors were subsidiaries which were fully controlled by the headquarters (see paragraph 20 above), which, moreover, was the case for Scania DE. In the light of that fact, the Court is unconvinced by the applicants' argument that pricing negotiations between those distributors and the headquarters constituted negotiations between parties acting as independent commercial counterparts and competing profit centres.

435 In that regard, it must be noted that the evidence set out in recitals 249 and 250 of the contested decision, consisting of internal documents of the Price Decision Group (see paragraph 24 above), show that that body (part of Scania's

headquarters) was in a position of strength as regards the determination of the level of discounts applied to national distributors. The applicants, relying on an affidavit by a member of the Price Decision Group, merely submit that the abovementioned internal documents referred to an exceptional event, namely the launch of a new engine, which was highly strategic for Scania, and did not reflect a normal situation. That affidavit does not have sufficient probative value to call into question the probative value and clear content of the evidence set out in recitals 249 and 250 of the contested decision and does not convince the Court.

436 Furthermore, as regards Scania's reliance on its 2010 'Transfer Pricing Masterfile' (see paragraph 424 above), it should be noted that the aim of that document is to show that Scania observed the arm's length principle when setting the intragroup transfer prices (for example, when setting the distributor net prices), in the event of a tax inspection. As the Commission stated (see recital 296 of the contested decision), the Court considers that the fact that Scania's headquarters applies transfer prices in accordance with the arm's length principle does not demonstrate the independence of Scania's distributors in pricing negotiations, but rather demonstrates that those transfer prices are set at levels that allow those prices not to be challenged by the competent tax authorities.

437 Thirdly, the fact that Scania DE is not independent in the determination of its pricing policy is illustrated by the documentary evidence in recital 148 of the contested decision (see paragraph 413 above). It is also illustrated by the documentary evidence set out in recitals 134 and 135 of the contested decision, which reveals the consistency of the information on gross price increases provided to competitors by Scania DE employees and Scania employees at top management level, respectively. Thus, it is apparent from the documentary evidence in recital 134 of the contested decision that, at the meeting of 3 and 4 May 2004, at German level, the Scania DE employee informed competitors that the prices of the new [*confidential*] series of the trucks would be on average 6% higher than the prices of the current [*confidential*] series. It is apparent from the documentary evidence in recital 135 of the contested decision that Scania's representative participating in the meeting of 27 and 28 May 2004, at top management level, informed the competitors that prices of the [*confidential*] series of the trucks would be between 5% and 6% higher than the prices of the [*confidential*] series. That consistency of the information provided during the exchanges at the two levels of the abovementioned collusive contacts is also capable of demonstrating that the scope of the information provided by Scania DE employees during the exchanges at German level went beyond the German market.

438 In the light of the role played by Scania's headquarters in the determination of Scania DE's pricing policy, as demonstrated in paragraphs 433 to 437 above, the Commission was entitled to take the view that the anticompetitive pricing information provided by Scania DE employees to competitors during exchanges at German level reflected a pricing strategy established at Scania's headquarter level and, therefore, the scope of that information went beyond the German market.

439 That conclusion of the Court is not called into question by the content of the economic reports of 20 September 2016 and 9 December 2017, relied on by the applicants.

440 According to the applicants, the two economic reports referred to above show that Scania DE's gross distributor-to-dealer prices are not representative of prices in other European countries and, for that reason, cannot reduce uncertainty as to Scania's pricing strategy in the EEA. It should be noted that, as regards Scania, the contested decision is not based on the argument that there is any parallel between the gross distributor-to-dealer prices in the various European countries, since, as is apparent from the flowchart in paragraph 31 above, the national distributor's gross price is determined on the basis of the discounts applied to the FGPL and its profit margin. The contested decision is based on the consideration that any increase applied to the FGPL, and thus decided upon by the headquarters, influences, to varying degrees (depending on the discounts applied), the national distributor's gross price (see recitals 51 and 52 of the contested decision).

441 In any event, contrary to the applicants' arguments, the Court considers that the file demonstrates to the requisite legal standard the fact that, irrespective of the actual geographic scope of the information provided by Scania DE, the latter gave its competitors the impression that the information it provided to them had a scope, and was of interest, beyond the German market, thus contributing to the common objectives pursued by means of an exchange, at German level, of anticompetitive information.

442 In that regard, the Court refers to the exchange set out in recital 148 of the contested decision (see paragraph 413 above). In view of the insinuation made by the Scania DE employee that the information on the dates of introduction of truck models and on prices, which he was going to communicate to the [*confidential*] employee, came from Scania's headquarters, it is reasonable to infer that that [*confidential*] employee perceived that information as being of interest beyond the German market. It is also appropriate to refer to the email of 28 October 2009, referred to in recital 185 of the contested decision, showing that [*confidential*]'s headquarters had received information from Scania during exchanges at German level, according to which a price increase of 3% was planned to enter into force on 1 January 2010, that increase being linked to a trucks 'facelift'. Thus, since the price increase revealed by Scania to its competitor was linked to a cost of producing the trucks and since Scania DE does not manufacture trucks, it may be inferred that [*confidential*] had perceived the abovementioned information on the price increase as having a scope which went beyond the German market.

443 On the basis of all of the foregoing considerations, the sixth plea in law must be rejected.

(f) The seventh plea in law, alleging misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement in that the Commission considered that the identified conduct constituted a single and continuous infringement and that the applicants were liable in that regard

444 It must be noted that the Commission considered that the agreements and/or concerted practices between Scania and the settling parties constituted a single and continuous infringement from 17 January 1997 to 18 January 2011. The infringement consisted of collusion on prices 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 medium and heavy trucks required by Euro 3 to 6 standards (recital 315 of the contested decision).

445 More specifically, the Commission considered that, by means of the anticompetitive contacts, the parties pursued a common plan with a single anticompetitive aim and that Scania was aware, or should have been aware of the general scope and the essential characteristics of the network of collusive contacts and intended to contribute to the cartel through its actions, with the result that Scania could be held liable for the infringement as a whole (recitals 316 and 350 of the contested decision).

446 The applicants deny, in essence, that there was a single and continuous infringement in the present case and dispute the imputation to them of that infringement as a whole.

(1) The existence of a single and continuous infringement in the present case

(i) Preliminary observations

447 It must be noted that, in order to establish the existence of a single and continuous infringement, the Commission must demonstrate that the various forms of conduct in question form part of an 'overall plan' with a single objective (see paragraph 196 above).

448 Several criteria have been identified by the case-law as relevant for assessing whether there is a single infringement, namely the identical nature of the objectives of the practices at issue, the identical nature of the goods or services concerned, the identical nature of the undertakings which participated in the infringement and the identical nature of the detailed rules for its implementation (see judgment of 17 May 2013, *Trelleborg Industrie and Trelleborg* v *Commission*, T-147/09 and T-148/09, EU:T:2013:259, paragraph 60 and the case-law cited; see also, to that effect, judgment of 19 December 2013, *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 243). Furthermore, whether the natural persons involved on behalf of the undertakings are identical and whether the geographical scope of the practices at issue is identical are factors which may be taken into consideration for the purposes of that examination (judgment of 17 May 2013,

Trelleborg Industrie and Trelleborg v *Commission*, T-147/09 and T-148/09, EU:T:2013:259, paragraph 60).

449 It must also be made clear that the concept of single objective cannot be determined by a general reference to the distortion of competition in the market concerned by the infringement, since an impact on competition, whether it is the object or the effect of the conduct in question, constitutes a consubstantial element of any conduct covered by Article 101(1) TFEU. Such a definition of the concept of a single objective is likely to deprive the concept of a single and continuous infringement of a part of its meaning, since it would have the consequence that different types of conduct which relate to a particular economic sector and are prohibited by the abovementioned provision would have to be systematically characterised as constituent elements of a single infringement (judgment of 12 December 2007, *BASF and UCB* v *Commission*, T-101/05 and T-111/05, EU:T:2007:380, paragraph 180).

450 Furthermore, as already noted (see paragraph 195 above), the condition relating to a single objective requires that it be ascertained whether there are any elements characterising the various instances of conduct forming part of the infringement which are capable of indicating that the instances of conduct in fact implemented by other participating undertakings do not have an identical object or identical anticompetitive effect and, consequently, do not form part of an 'overall plan' as a result of their identical object distorting the normal pattern of competition within the internal market.

(ii) Contested decision

451 It should be noted that, in the contested decision, the Commission considered that the collusive contacts within three levels, described in recital 317 of that decision, formed part of an overall plan with a single anticompetitive objective, for the following reasons.

452 In the first place, all the contacts concerned the same products, namely medium and heavy trucks (recital 319 of the contested decision).

453 In the second place, the nature of the information shared – information on prices, gross price increases, anticipated launch dates of trucks complying with the new environmental standards and competitors' intentions as to whether to pass the associated costs on to customers – stayed the same over the entire duration of the infringement (recital 320 of the contested decision). The Commission stated that the nature of the discussions and agreements concerning the timing of the introduction of new truck models which complied with certain environmental standards was related and complementary to the collusion on prices and gross price increases (recital 321 of the contested decision).

454 In the same context, the Commission stated that, even though, as from September 2004, the parties no longer actively sought, as they had done previously, to

conclude a specific agreement on common future gross price increases or on specific launch dates for trucks that complied with new environmental standards or the amount of costs that the parties would pass on to customers for those trucks, they continued to reach agreement by exchanging the same type of information and by pursuing the same aim of restricting competition by reducing the level of strategic uncertainty between them (recital 322 of the contested decision).

455 In the third place, the Commission stated that the anticompetitive contacts took place frequently and involved the same group of truck manufacturers, namely Scania and the settling parties. The individuals involved in the contacts belonged to the same manufacturers and arranged the exchanges in small groups of employees within the manufacturers (recital 323 of the contested decision).

456 In the fourth place, the Commission found that, while the level and internal responsibilities of the employees involved in the conduct evolved during the cartel, the nature, aim and scope of the contacts and meetings remained the same throughout the duration of the cartel (recital 325 of the contested decision). In that regard, the Commission explained that the collusive contacts that took place at the three levels all had the anticompetitive aim of restricting competition on the market for medium and heavy trucks in the EEA as regards future prices and gross price increases and the timing and passing on of costs in relation to the introduction of trucks complying with environmental standards (recital 326 of the contested decision).

457 In recital 327 of the contested decision, the Commission relied on three factors to support its conclusion that the shift in the exchanges from top management level to German level did not affect the continuous nature of the infringement.

458 First, the Commission found that there was a considerable temporal overlap between the meetings held at the various levels because the top management meetings took place from 1997 to 2004, the meetings at lower headquarters level took place from 2000 to 2008 and the discussions at German level took place from 2004 onwards. The result was, according to the Commission, that, despite the fact that the top management meetings did not continue after 16 September 2004, contacts at the other two levels continued without interruption (recital 327(a) of the contested decision). In that context, the Commission also found that (i) during the period between 2003 and 2007, there were contacts between employees at lower headquarters level and employees at German level, and joint meetings were organised and that (ii) the parties repeatedly discussed at lower headquarters level the information to be exchanged and at what level (recital 327(a) of the contested decision).

459 Secondly, the Commission found that the parties' German subsidiaries did not produce trucks and were not responsible for developing technologies, since those responsibilities came under the exclusive competence of the headquarters. Consequently, according to the Commission, where employees at German level exchanged information on the timing and additional costs relating to the

introduction of Euro 5 and 6 compliant technologies, they exchanged information that had come from the headquarters and concerned the whole of the EEA (recital 327(b) of the contested decision).

460 Thirdly, the Commission found that, as regards several parties to the cartel, there was evidence that the German subsidiaries systematically reported their pricing intentions to the headquarters and, even more importantly, to the persons at central administration level who were involved in the process of exchanging information on prices. In that context, the Commission also stated that Scania's headquarters had the power to determine factory gross prices and discounts for distributors (which were wholly owned subsidiaries of the parent company) and that Scania had a structured scheme of meetings to ensure prompt implementation of the headquarters' strategic decisions, which indicated that Scania's headquarters could not reasonably have been unaware of that information.

461 The Commission concluded, in recital 328 of the contested decision, that the change in the cartel was collectively managed and coordinated between the different parties, with the aim of ensuring continuity in the exchanges.

462 In the fifth place, according to the Commission, although the way in which the information was exchanged naturally evolved over the 14-year duration of the infringement, that was done in a gradual manner and the fundamental nature of the exchanges remained the same: the contacts evolved from multilateral exchanges, through in-person meetings or presentations, to multilateral exchanges via email through the compilation of future pricing information organised by email and presented in a spreadsheet (recital 329 of the contested decision).

463 On the basis of those five elements, the Commission concluded that the collusive contacts were interlinked and complementary in nature (recital 330 of the contested decision).

(iii) Assessment

464 In the first place, it is common ground that the collusive contacts in question concerned, throughout their duration, the same products, namely medium and heavy trucks, and that those contacts were conducted by the same group of truck manufacturers, namely Scania and the settling parties. Furthermore, the file shows that the contacts involved a small group of employees at each level, whose composition remained relatively stable, and that they took place on a regular and frequent basis.

465 In the second place, it is appropriate to note that there were links between the three levels of the collusive contacts, namely that the participants within those levels were employees of the same undertakings, in other words Scania and the settling parties, that the content of the exchanges within each level was the same, that there was a temporal overlap between the meetings held at the various levels, that levels referred to each other and exchanged information gathered and that

there were common contacts between the levels (see paragraph 218 above). It should also be noted that the applicants have not succeeded, in the context of the third plea in law, in calling into question the Commission's findings on the existence of links between the three levels of collusive contacts (see paragraph 229 above).

466 In the third place, the Court finds, as did the Commission (see paragraphs 453 and 454 above), that the content of the exchanges between the parties and the aim of those exchanges, which was to reduce uncertainty between the parties regarding, in essence, their future pricing strategies, remained the same. In that context, it is noted that the Court has found that the Commission was entitled to state, in recitals 243 and 321 of the contested decision, that the nature of the discussions and agreements concerning the timing of the introduction of new truck models complying with certain environmental standards was related and complementary to the collusive practices concerning prices and gross price increases (see paragraph 297 above).

467 In the fourth place, it should be noted that the Commission was entitled to take the view that the geographic scope of the anticompetitive exchanges at German level extended to the whole of the EEA, as did the anticompetitive exchanges at top management level.

468 On the basis of the abovementioned factors, the Commission's finding that the exchanges between the parties, described in recital 317 of the contested decision, formed part of an overall plan with a single anticompetitive aim must be endorsed.

469 The applicants' line of argument does not call into question the Court's conclusion. That line of argument can be divided into three groups. First, the applicants submit that the Commission erred in assessing jointly the three levels of contacts between the parties. Secondly, they dispute the Commission's finding that the information exchanged within the three levels of contacts was of the same nature, as is apparent from recital 320 of the contested decision. Thirdly, the applicants dispute the Commission's finding, in recital 327 of the contested decision, that the 'shift' in the exchanges from top management level to German level did not affect the continuous nature of the infringement.

– *The overall assessment of the three levels of contacts*

470 In order to dispute the existence of an overall plan in the present case, the applicants submit, in essence, that, contrary to the approach followed by the Commission in the contested decision, the three levels of contacts had to be assessed separately and not together.

471 In order to substantiate that argument, in the first place, the applicants claim that the Commission has not established any relevant factual link between the three levels of collusive contacts. For the reasons set out in paragraph 465 above, that complaint must be rejected.

472 In the second place, the applicants maintain that the scope of the infringement must be determined on the basis of factual elements directly linked to the employees who participated in the alleged collusive conduct. The Commission has not shown that the employees of the undertakings participating in the collusive contacts at the various levels had common knowledge and understanding of the scope of the collusive conduct. In that context, the applicants state that different employees represented the undertakings in the various levels of contacts.

473 In that regard, it must be noted that the collusive contacts at issue were conducted, throughout their duration, by the same group of truck manufacturers, namely Scania and the settling parties. Moreover, those contacts involved a small group of employees within each level, whose composition remained relatively stable, and those contacts took place on a regular and frequent basis. It is also appropriate to note the links between the three levels of the collusive contacts. In view of those factors, the fact that it was not the same employees who participated in the collusive contacts does not call into question the finding that there was a common plan in the present case.

474 As regards the applicants' argument, set out in paragraph 472 above, that the Commission has not demonstrated that the employees of the undertakings participating in the collusive contacts at the different levels had joint knowledge and understanding of the scope of the collusive conduct, that argument relates to the question of whether awareness of the overall plan must be assessed at undertaking level or at the level of the employees of the undertaking. The applicants complain that the Commission assessed that awareness at undertaking level and that it failed to examine the awareness at employee level.

475 That complaint is unfounded.

476 It should be noted that EU competition law refers to the activities of 'undertakings' and that that concept must be understood as designating an economic unit even if, in law, that economic unit consists of several persons, natural or legal (see judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C-97/08 P, EU:C:2009:536, paragraphs 54 and 55 and the case-law cited).

477 It should also be noted that, as regards whether undertakings can be held liable for infringements committed by their employees, it follows from the case-law that the Commission's power to impose a sanction on an undertaking presumes only the unlawful action of a person who is generally authorised to act on behalf of the undertaking (see judgment of 12 December 2014, *H & R ChemPharm* v *Commission*, T-551/08, EU:T:2014:1081, paragraph 73 and the case-law cited).

478 It follows from the case-law cited in paragraphs 476 and 477 above that the question of awareness of the existence of an overall plan must necessarily be assessed at the level of the undertakings involved and not at the level of their employees. As the Commission correctly states, if it were required to prove that

each of the employees of the same undertaking which participated in the cartel had precise knowledge of the other employees' conduct within the cartel, it would be impossible for the Commission to demonstrate the existence of a single and continuous infringement, particularly since cartels are generally clandestine in nature and the evidence is often fragmentary and sparse in cartel cases (see, to that effect, judgment of 13 July 2011, *Trade-Stomil* v *Commission*, T-53/07, EU:T:2011:360, paragraph 64 and the case-law cited). In the present case, due to the existence of links between the three levels of the collusive contacts and, in particular, the fact that the natural persons who participated in the three levels of the collusive contacts were employees of the same undertakings, it may be inferred that those undertakings had common knowledge and understanding of the overall plan and, therefore, of the unlawful conduct.

479 It follows from the foregoing that the applicants' argument that the Commission should have assessed the three levels of collusive contacts separately must be rejected.

– *The nature of the information exchanged within the three levels of contacts*

480 The applicants dispute the finding, set out inter alia in recitals 320 and 322 of the contested decision, that the information exchanged at the different levels of the contacts was of the same nature and pursued the same anticompetitive objective.

481 In that regard, in the first place, the applicants rely on recital 322 of the contested decision, which reveals a fundamental change in the nature of the contacts, in so far as it states that, from September 2004, the parties no longer actively sought, as they had done previously, to reach a specific agreement on future gross price increases.

482 That argument of the applicants cannot succeed. It is true that recital 322 of the contested decision states that, after September 2004, the parties no longer sought to conclude specific agreements, but, in essence, merely exchanged information with the aim of restricting competition. However, as the Commission correctly notes, although that change may influence a classification of the conduct at issue as either an agreement or a concerted practice, it does not concern the 'nature' of the information exchanged, which, according to recital 322 of the contested decision, remained the same and was aimed at reducing the level of strategic uncertainty between the parties as regards future prices and gross price increases, as well as the timing and the passing on of costs relating to the introduction of trucks complying with the new environmental standards.

483 In the second place, the applicants rely on recitals 116 and 117 of the contested decision, which refer to a meeting at a lower headquarters level on 3 and 4 July 2001, in which the employees of the parties' headquarters expressed their concern regarding the exchanges that had taken place at German level, which, in their view, went too far, and they agreed that, in the future, they would exchange only technical information and not price information. According to the applicants,

those recitals show that the exchanges of information at lower headquarters level and at German level were not of the same nature and did not have the same objective.

484 In that regard, it must be noted that the Court has already held, in the context of the examination of the third and fifth pleas in law, that the exchanges at lower headquarters level and at German level contributed to the implementation of the common plan and that those two levels of collusive contacts were factually linked, based in particular on the fact that the participants at those levels were employees of the same undertakings, there was a temporal overlap between the meetings held at both levels, there were contacts between the employees at lower headquarters level and the employees at German level, and the employees at lower headquarters level were informed of the content of the exchanges at German level (see paragraphs 224 and 228 above). Furthermore, the file shows that, notwithstanding the agreement between the participants at lower headquarters level in 2001 not to exchange price information in the future (see paragraph 478 above), such exchanges took place (see paragraph 229 above). In those circumstances, the applicants' argument set out in paragraph 483 above must be rejected. In any event, account must be taken of the fact that, according to the evidence which is set out in the contested decision and is not called into question by the applicants, meetings at the parties' top management level which took place until September 2004, therefore in tandem with the meetings at lower headquarters level, clearly had an anticompetitive object identical to that of the exchanges at German level which continued after 2004 up until the end of the infringement in 2011.

485 On the basis of the foregoing considerations, it must be concluded that the Commission did not err in finding that there was an overall plan in the present case.

– *The continuous nature of the infringement*

486 In the first place, it should be noted that the interruption, in September 2004, of the collusive contacts at the parties' top management level did not cause the collusive contacts to be interrupted at the two other levels.

487 Thus, according to the documentary evidence set out in recital 139 of the contested decision, on 11 November 2004, C, from the headquarters of [*confidential*], wrote to employees of the other manufacturers at lower headquarters level and at German level, in order to introduce to them two new contact persons at [*confidential*]'s headquarters, who were responsible for central product pricing at [*confidential*]'s headquarters in [*confidential*]. C asked the competitors to let him know who were the contact persons within their organisations. C's email was addressed, inter alia, to A and B, who were at Scania's lower headquarters level and German level, respectively. Similarly, as stated in recital 140 of the contested decision, the competitors exchanged, from 2 December 2004, at German level, information on price increases planned for 2005. In that exchange, I, a Scania DE employee, provided the following

information to K, who was the organiser of that exchange of information and an employee of the German subsidiary of [*confidential*]: 'From March 2005 we will increase [the prices of] all our [*confidential*] series by 1.5%.' It is thus apparent that the exchanges between the parties to the cartel at German level had the same content as their exchanges at top management level and that those exchanges took place in tandem.

488 In the second place, it should be noted that the Commission's findings in recital 327 of the contested decision (see paragraphs 457 to 461 above) are not vitiated by error. Thus, it is common ground that there was a temporal overlap between the meetings held at the various levels. Furthermore, in the context of the third plea in law, the Court has concluded that the Commission established that there were contacts between the employees of lower headquarters level and German level and that the employees at lower headquarters level were aware of the content of the exchanges at German level. In addition, in the context of the sixth plea in law, the Court has found that the Commission has established that pricing information exchanged at German level came from the parties' headquarters and that the employees at German level informed the headquarters of the pricing information obtained in their exchanges.

489 On the basis of those factors, the Courts concludes that the Commission was entitled to take the view that, notwithstanding the fact that the collusive contacts at top management level were interrupted in September 2004, the same cartel (with the same content and scope) was continued after that date, the only difference being that the employees involved were from different organisational levels within the undertakings concerned, and not from top management level.

490 The applicant's arguments do not call into question that conclusion.

491 First, the applicants complain that the Commission has failed to explain how the 'shift' in the collusive contacts from top management level to German level took place. They maintain that, in order for a 'shift' to be regarded as constituting the continuation of previous practices, a monitoring mechanism would have had to be put in place in order to ensure continuity. They also rely on the judgment of 10 November 2017, *Icap and Others* v *Commission* (T-180/15, EU:T:2017:795, paragraph 223), in which the Court stated that, where the pursuit of an agreement or of concerted practices required special positive measures, the Commission could not assume that the cartel had been pursued in the absence of evidence that those measures had been adopted.

492 That line of argument of the applicants cannot be accepted. It is apparent from the contested decision that the Commission used the terms 'shift' or 'migration' of exchanges from top management level to German level to indicate that there had been a change at the level of the employees participating in the collusive contacts, and not to indicate that any interruption of the cartel had taken place. Furthermore, in recital 327 of the contested decision, the Commission set out the factual circumstances demonstrating that the cartel continued after September 2004 (see

paragraphs 458 to 460 above) and, in the light of those circumstances, it is apparent that no 'special positive measure' within the meaning of the judgment of 10 November 2017, *Icap and Others* v *Commission* (T-180/15, EU:T:2017:795, paragraph 223), was required.

493 Secondly, the applicants complain that the Commission has not demonstrated in the contested decision that the Scania DE employees who participated in the meetings at German level knew that they were involved in the continuation of the practices that had taken place at the two other levels, or that the Scania employees who participated in the meetings at lower headquarters level were aware of the meetings at top management level.

494 That line of argument of the applicants is based on the contention that awareness of the overall plan must be assessed at the level of the employees of the undertaking and not at the level of the undertaking itself. As has already been stated, that contention is incorrect (see paragraphs 474 to 478 above).

495 As regards the issue of the awareness, at the level of Scania as an undertaking, of the continuous nature of the infringement despite the 'shift' in the exchanges from top management level to German level, the following factors must be noted.

496 First, it is appropriate to note the significant role played by Scania's headquarters in setting prices at the level of the undertaking's national distributors and, therefore, at the level of Scania DE, which is a wholly owned subsidiary. Scania's price-setting mechanism has been examined in the context of the sixth plea in law.

497 Secondly, it must be borne in mind that the evidence in the file shows that the employees at Scania's headquarters (lower headquarters level) were aware of the content of the exchanges at German level (see paragraph 418 above). It is not plausible that that undertaking's top management was not aware of those exchanges.

498 Thirdly, it must be noted that the evidence in the file suggests that Scania DE employees exchanged at German level information that had come from Scania's headquarters (see paragraphs 413, 437, 438 and 442 above).

499 Those three factors show that, notwithstanding the fact that the exchanges at top management level ended in September 2004, the undertaking Scania and its headquarters were aware of the fact that the same infringement was continued after September 2004, the only difference being that employees at top management level no longer participated in the collusive contacts. In that regard, the applicants' claim that Scania DE employees were not aware of the existence of collusive contacts at top management level is irrelevant.

500 On the basis of the foregoing considerations, it must be held that the Commission's conclusion on the existence of a single and continuous infringement in the present case is not vitiated by error.

(2) The imputability of the single and continuous infringement to Scania

501 The Commission stated, in recital 332 of the contested decision, that Scania had participated directly in all the relevant aspects of the cartel.

502 Furthermore, in recital 333 of the contested decision, the Commission noted that, even though Scania produced and sold only heavy trucks, it was aware or ought to have been aware that the other parties to the cartel also produced medium trucks and that the collusive contacts concerned both types of trucks (medium and heavy). The Commission therefore found that Scania was aware or ought to have been aware that the anticompetitive practices concerned medium and heavy trucks.

503 On the basis of those considerations, the Commission concluded, in recital 334 of the contested decision, that Scania intended to contribute to the infringement and that it was aware or ought to have been aware of the existence of that infringement.

504 In order to dispute the argument that the single and continuous infringement is imputable to Scania, the applicants complain that the Commission has failed to demonstrate the existence of the necessary 'mental element'. In other words, they criticise the Commission for not having demonstrated, in the contested decision, that the cumulative criteria of interest, knowledge and acceptance of risk, criteria established in the judgment of 8 July 1999, *Commission* v *Anic Partecipazioni* (C-49/92 P, EU:C:1999:356, paragraph 87), were satisfied in the present case as regards the representatives of Scania who participated in the three levels of contacts.

505 In that regard, it should be noted that, in so far as the awareness of the existence of an overall plan must be assessed at the level of the undertakings involved and not at the level of their employees (see paragraph 478 above), in a similar manner, the factors which determine the imputability of a single and continuous infringement must necessarily also be assessed at undertaking level.

506 Furthermore, as regards the factors determining the imputability to an undertaking of a single and continuous infringement, it is apparent from the judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens* (C-441/11 P, EU:C:2012:778, paragraphs 43 to 45), that, if the undertaking in question participated directly in all the forms of anticompetitive conduct comprising the single and continuous infringement, the Commission is entitled to attribute liability to it in relation to that infringement as a whole, without being required to demonstrate that the criteria of interest, knowledge and acceptance of the risk are satisfied.

507 In the present case, it can be found that, as per what is stated in recital 332 of the contested decision, the undertaking Scania participated directly in all the relevant aspects of the cartel. Its employees participated in the collusive contacts which took place at the three levels. The undertaking Scania had discussions with its

competitors on prices and gross price increases and on the timing and passing on of costs in relation to the introduction of technologies complying with Euro 3 to 6 standards. Scania took an active part in the cartel, organised meetings and participated in email exchanges (see recital 332 of the contested decision).

508 It is true that Scania does not produce medium trucks. Nevertheless, it is apparent from the file that the collusive contacts in which Scania employees participated concerned medium and heavy trucks indistinctly (see recital 333 of the contested decision). Consequently, the Commission was entitled to attribute to Scania the undertaking the single and continuous infringement which related also to medium trucks since that undertaking was necessarily aware of that aspect of the cartel.

509 In the light of the foregoing considerations, it must be concluded that the imputability of the whole of the single and continuous infringement to Scania is not vitiated by error. Accordingly, the seventh plea in law must be rejected.

4. The eighth plea in law, alleging misapplication of Article 101 TFEU and of Article 53 of the EEA Agreement, as well as of Article 25 of Regulation No 1/2003, in that the Commission imposed a fine in relation to conduct that is time-barred and, in any event, by not taking into account that the conduct was not continuous

510 In the first place, the applicants submit that the facts concerning top management level which were used as a basis to justify the imposition of a fine are time-barred under Article 25 of Regulation No 1/2003, in so far as the meetings at that level ended in September 2004, that is to say, more than five years before the Commission began its investigation. The applicants add that, in those circumstances, the Commission no longer has a legitimate interest, within the meaning of Article 7 of Regulation No 1/2003, in finding that there was an infringement linked to conduct at top management level.

511 In the second place, the applicants submit that, even if the Court were to find that the facts at issue constituted a single and continuous infringement (*quod non*), the contested decision would have to be altered in so far as it does not take into account the interruptions to the alleged infringement in relation to top management level. In that context, the applicants claim that the contested decision does not contain sufficient evidence that there were meetings at top management level in 1999.

512 Moreover, the applicants claim that, in view of the lack of evidence concerning Scania's participation in the meetings at top management level in 1999 and 2002, the contested decision wrongly concluded that Scania had continuously participated in the top management meetings between 17 January 1997 and 24 September 2004. The Commission should, instead, have concluded that those meetings were interrupted, at least as far as Scania is concerned, between 3 September 1998 and 3 February 2000 (a 17-month interruption) and between 20 November 2001 and 10 April 2003 (another 17-month interruption).

513 The applicants conclude that the contested decision must be annulled and that, in any event, the imposition of a fine should be time-barred for any infringement prior to 10 April 2003. In the alternative, the applicants submit that the imposition of a fine should be time-barred for any infringement prior to 3 February 2000. The applicants also submit that, in any event, the calculation of a fine in relation to the top management level should reflect the long periods of lesser intensity of the infringement.

514 The Commission disputes the applicants' arguments.

515 In the first place, as regards the applicants' argument relating to the limitation period in respect of the imposition of a fine by the Commission, it must be noted that, according to Article 25(1)(b) of Regulation No 1/2003, read in conjunction with Article 23(2)(a) of that regulation, the power conferred on the Commission to impose fines on undertakings for infringements of, inter alia, Article 101 TFEU is subject to a limitation period of five years. Article 25(2) of Regulation No 1/2003 provides that, in the case of continuing or repeated infringements, time begins to run on the day on which the infringement ceases. Article 25(3) of Regulation No 1/2003 provides, inter alia, that any action taken by the Commission for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines.

516 In the present case, the Commission found, without erring, that the conduct at top management formed part of a single and continuous infringement which ended on 18 January 2011. Consequently, the five-year limitation period began to run from that date, which means that, in the present case, the Commission's power to impose a fine is not time-barred.

517 In the second place, as regards the applicants' argument relating to the alleged lack of evidence of meetings at top management level in 1999, the following should be noted.

518 First, it should be noted that the contested decision contains sufficient evidence that there were meetings at top management level in 1998 and 2000. More specifically, recital 105 of the contested decision sets out documentary evidence relating to a meeting at top management level held on 3 September 1998, during which the parties' representatives exchanged market forecasts for 1999. According to that documentary evidence, N, a representative of Scania's headquarters, participated in that meeting. Similar meetings took place in 2000, as is apparent from recitals 109 to 112 of the contested decision, in which N from Scania's headquarters also participated.

519 Secondly, it is apparent from the documentary evidence in recital 106 of the contested decision that the next meeting at top management level after the meeting that took place on 3 September 1998 (see paragraph 518 above) was scheduled for January 1999.

520 Thirdly, in recital 106 of the contested decision, the Commission refers to a leniency statement by [*confidential*], according to which meetings between competitors for the period between 1998 and 2001 took place once a year. According to that statement, the participants in those meetings, who were not part of top management level, exchanged information on, inter alia, future price increases. O, who was managing director of Scania DE, was identified as being one of the participants in those meetings.

521 Fourthly, it should be noted that, as the Commission states, the meetings at top management level were part of a single and continuous infringement and that, therefore, all the meetings between the competitors, at any organisational level, had to be taken into account for the purpose of assessing whether the infringement continued in 1999.

522 Fifthly, it should also be noted that, according to settled case-law of the Court of Justice as regards, in particular, an infringement extending over a number of years, the fact that direct evidence of a company's participation in that infringement during a specified period has not been produced does not preclude that participation from being regarded as established also during that period, provided that that finding is based on objective and consistent indicia; the lack of any public distancing on the part of that company may be taken into account in that regard (see judgment of 26 January 2017, *Villeroy & Boch* v *Commission*, C-625/13 P, EU:C:2017:52, paragraph 111 and the case-law cited).

523 Having regard to the evidence in paragraphs 518 to 521 above and the case-law cited in paragraph 522 above, it must be concluded that the Commission did not err in finding that the single infringement in the present case was not interrupted in 1999 and that Scania participated in that infringement also during that year.

524 In the third place, as regards the applicants' claim that Scania's participation in the meetings at top management level in 2002 has not been demonstrated, the Court finds as follows.

525 First, it is apparent from recital 119 of the contested decision that, as regards a meeting at top management level held on 7 February 2002, an invitation letter was sent to M who was from Scania's headquarters.

526 Secondly, it is apparent from the handwritten notes relating to a meeting at top management level on 27 and 28 June 2002, taken by a representative of [*confidential*], set out in recital 123 of the contested decision, that Scania provided sales figures for 2002 in respect of several countries.

527 Thirdly, an internal report of [*confidential*] summarising the information exchanged at a top management level meeting on 18 September 2002, referred to in recital 126 of the contested decision, shows that Scania provided information on its price increases for 2002 and on legal proceedings that it was facing in the United Kingdom.

528 In the light of the evidence in paragraphs 525 to 527 above, it must be concluded that the Commission has demonstrated to the requisite legal standard that Scania participated in the meetings at top management level in 2002.

529 That conclusion is not called into question by the affidavit of M, who was Scania's representative at the top management level meetings, according to which, 'as far [he could] recall', he did not participate in any such meeting in 2002. That statement remains rather vague and does not convince the Court. Moreover, it has already been stated that documents drawn up *in tempore non suspecto*, such as handwritten notes taken at a meeting, have greater probative value than documents not dating from the material time, such as affidavits.

530 In the fourth place, the Court notes that the applicants, in footnote 554 of the application, claim that Scania's participation in certain meetings at top management level, set out in the contested decision, has not been established. Those were meetings in Brussels on 17 January 1997 (recital 98 of the contested decision) and on 6 April 1998 (recital 103), in Amsterdam (Netherlands) on 3 February 2000 (recitals 108 to 110) and in Eindhoven (Netherlands) on 6 September 2000 (recital 111). In support of that claim, the applicants rely on an affidavit by N, who claims that he does not recall attending those meetings.

531 The Court notes that the recitals of the contested decision referred to in paragraph 530 above provide documentary evidence establishing Scania's participation in the meetings in question. As regards the content of N's affidavit and its probative value, the Court refers to the considerations in paragraph 529 above. The Court concludes that the applicants' claim set out in paragraph 530 above is unfounded.

532 In the light of the above considerations, the Court rejects the present plea in law, while stating that the reasons put forward by the applicants in support of the alteration of the contested decision (see paragraphs 511 and 513 above) are unfounded, since the file before the Court does not show that there was any interruption in the single infringement, or that there were periods where that infringement was of a lesser intensity.

5. The ninth plea in law, alleging infringement of the principle of proportionality and of the principle of equal treatment as regards the amount of the fine and, in any event, alleging the need to reduce the amount of the fine under Article 261 TFEU and under Article 31 of Regulation No 1/2003

533 The applicants submit that the contested decision should be 'reformed' in so far as the fine imposed does not comply with the principles of proportionality and equal treatment. Moreover, and in any event, they request the Court, in the exercise of its unlimited jurisdiction, to substitute its own assessment for that of the Commission and to reduce the amount of the fine.

534 According to the Court's understanding of the use of the verb 'reform', the applicants are requesting the Court to exercise its unlimited jurisdiction conferred on the EU Courts by Article 31 of Regulation No 1/2003, in accordance with Article 261 TFEU.

535 In that regard, it should be noted that the system of judicial review of Commission decisions relating to proceedings under Articles 101 TFEU and 102 TFEU consists in a review of the legality of the acts of the institutions for which provision is made in Article 263 TFEU, which may be supplemented, pursuant to Article 261 TFEU and at the request of applicants, by the Court's exercise of unlimited jurisdiction with regard to the penalties imposed in that regard by the Commission (see judgment of 21 January 2016, *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 71 and the case-law cited).

536 When they exercise their unlimited jurisdiction provided for in Article 261 TFEU and in Article 31 of Regulation No 1/2003, the EU Courts are empowered, in addition to the mere review of the legality of the penalty, to substitute their own assessment in relation to the determination of the amount of that penalty for that of the Commission, which adopted the measure in which that amount was initially fixed (see judgment of 21 January 2016, *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 75 and the case-law cited).

537 By contrast, the scope of that unlimited jurisdiction is strictly limited, unlike the review of legality provided for in Article 263 TFEU, to determining the amount of the fine (see judgment of 21 January 2016, *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 76 and the case-law cited).

538 It follows from this that the unlimited jurisdiction enjoyed by the Court on the basis of Article 31 of Regulation No 1/2003 concerns solely the assessment by that Court of the fine imposed by the Commission, to the exclusion of any alteration of the constituent elements of the infringement lawfully determined by the Commission in the decision under examination by the Court (judgment of 21 January 2016, *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 77).

539 In order to determine the amount of the fine imposed, it is for the Court to assess for itself the circumstances of the case and the nature of the infringement in question. That exercise involves, in accordance with Article 23(3) of Regulation No 1/2003, taking into consideration, with respect to each undertaking sanctioned, the seriousness and duration of the infringement at issue, in compliance with the principles of, inter alia, adequate reasoning, proportionality, the individualisation of penalties and equal treatment, without the Court being bound by the indicative rules defined by the Commission in its guidelines (see, to that effect, judgment of 21 January 2016, *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraphs 89 and 90).

(a) Infringement of the principle of proportionality

540 In the first place, the applicants submit that the contested decision did not assess the gravity of the infringement in a proportionate manner, since it did not consider that the Scania DE employees could not have known that the information received from competitors could have a European scope. Consequently, even if Scania DE's employees had wished to undermine competition on the geographic market (Germany) for which they were responsible (*quod non*), the fine imposed by the contested decision is not proportionate to the gravity of the intended infringement, since it takes into account the value of sales at EEA level.

541 In the second place, the applicants submit that the contested decision infringes the principle of proportionality, in so far as, as regards the setting of the amount of the fine, it does not take into account the fact that the contacts between the truck manufacturers changed in nature and intensity during the period under consideration, as stated in recital 322 of the contested decision.

542 In the third place, the applicants submit that the infringement described in the recitals of the contested decision is broader than the infringement which gives rise to a fine in the operative part of that decision. In that regard, they compare recital 317 of the contested decision, which refers to exchanges of competitively sensitive information, with Article 1 of the operative part, which makes no reference to such exchanges. The applicants contend that that presentation has an impact on the calculation of the amount of the fine and that, consequently, the fine set in the contested decision is not proportionate to the infringement as the Commission purported to describe it.

543 The Commission disputes the applicants' arguments.

544 As regards the applicants' arguments set out in paragraph 540 above, it must be noted that, in the context of the examination of the sixth plea in law, the Court has rejected the applicants' claim that the Scania DE employees who participated in exchanges at German level had never assumed that the information received during those exchanges related to European prices or could reduce uncertainty as to the European pricing strategy of the other manufacturers (see paragraph 415 above). It follows that the arguments set out in paragraph 540 above do not demonstrate that the fine is disproportionate.

545 As regards the applicants' line of argument set out in paragraph 541 above, it should be noted that, in recital 322 of the contested decision, the Commission stated that, even though, from September 2004, the parties no longer actively sought, as they had done previously, to reach a specific agreement on common future gross price increases or specific launch dates for trucks complying with the environmental standards or the amount of costs that the parties passed on to customers in respect of those trucks, the parties continued to collude by exchanging the same type of information and by pursuing the same objective of

restricting competition by reducing the level of strategic uncertainty between them.

546 It is also appropriate to note the Court's finding that the change that occurred from September 2004, although it may influence the classification of the conduct in question as an agreement or as a concerted practice, does not concern the 'nature' of the information exchanged, which, according to recital 322 of the contested decision, remained the same (see paragraph 482 above).

547 It is thus apparent that the only difference in the parties' conduct before and after September 2004 was their attempts before September 2004 to conclude specific agreements on prices, attempts which ceased after that date. As the Commission correctly notes, in view of, first, the principle that concerted practices can be equally as harmful to competition as agreements and, secondly, the fact that the Commission did not increase the relevant gravity coefficient because of the parties' attempts to reach agreements on prices, the applicants' arguments in paragraph 541 above do not demonstrate that the fine is disproportionate.

548 As regards the applicants' arguments set out in paragraph 542 above, it should be noted that, in recital 317 of the contested decision, the Commission referred to the existence of practices that reduced the level of strategic uncertainty between the parties as regards future prices, gross price increases and the timing and passing on of costs in relation to the introduction of truck models complying with environmental standards. In recital 317(a) to (c), and as is apparent from the use of the wording 'in this respect', the Commission explained the nature of the abovementioned practices. In recital 317(c), the Commission referred to the sharing of 'other competitively sensitive information'.

549 In Article 1 of the operative part of the contested decision, the Commission refers to collusion on prices and gross price increases and on the timing and passing on of costs relating to the introduction of emission technologies.

550 It follows from a comparison of recital 317 with Article 1 of the operative part of the contested decision that there is no discrepancy between the two provisions in the description of the infringement, since the Commission's reference to the sharing of 'other competitively sensitive information' is merely an example of the collusion on prices and gross price increases and on the timing and passing on of costs relating to the introduction of emission technologies.

551 It follows from the foregoing that none of the applicants' arguments demonstrates that the fine is disproportionate.

(b) Infringement of the principle of equal treatment

552 The applicants put forward three arguments in support of their assertion that the level of the fine imposed infringes the principle of equal treatment.

553 In the first place, the applicants submit that the wording of the contested decision exaggerates their role in the infringement and largely ignores the role of the other truck manufacturers, thereby distorting the reality. According to the applicants, because of that wording of the contested decision, it is impossible to compare their role with that of the other truck manufacturers in the infringement and, since that comparison is not possible, several assessments made by the Commission in the contested decision, relating to the level of the fine, infringe the principle of equal treatment. The applicants refer to recital 444 of the contested decision, in which the Commission concluded that there were no aggravating or mitigating circumstances in the present case. The applicants also refer to recital 432 of the contested decision, in which the Commission stated that, for the purposes of calculating the basic amount of the fine imposed on Scania, it retained the same proportion of the value of Scania's sales as the proportion of the value of sales of the settling parties retained in the settlement decision.

554 The applicants also submit that the fact that the contested decision describes their role in the conduct in question in a more precise and more focused manner than the description of the role of the other competitors in the settlement decision puts the applicants at a disadvantage in actions for damages to which they are exposed.

555 In the second place, the applicants argue that the contested decision infringes the principle of equal treatment in so far as it applies the same method of calculating the fine to all the manufacturers without taking account of the fact that the applicants' market share at European level was lower than that of the other manufacturers and that the gap with the market leaders was very significant, in particular in Germany.

556 The applicants also submit that the contested decision infringed the principle of equal treatment in so far as it did not take into account the fact that the Scania DE employees played a passive role or, at the very least, they did not play a leading role in the conduct at issue, in comparison with the two major manufacturers on the market.

557 In the third place, the applicants claim that the contested decision infringes the principle of equal treatment in so far as the methodology followed by the Commission for setting the amount of the fine imposed on the applicants is the same as the methodology applied to the other truck manufacturers, despite the fact that the applicants, unlike the other manufacturers, do not build medium trucks.

558 The Commission disputes the applicants' arguments.

559 Before addressing each of the abovementioned arguments, it must be noted that the principle of equal treatment is a general principle of EU law, enshrined in Articles 20 and 21 of the Charter. According to settled case-law, that principle requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified (judgments of 11 July 2013, *Ziegler* v *Commission*,

C-439/11 P, EU:C:2013:513, paragraph 132, and of 26 January 2017, *Zucchetti Rubinetteria* v *Commission*, C-618/13 P, EU:C:2017:48, paragraph 38). Furthermore, it is also the Court of Justice's settled case-law that, when the amount of the fine is determined, there cannot, by the application of different methods of calculation, be any discrimination between the undertakings which have participated in an agreement or a concerted practice contrary to Article 101(1) TFEU (judgments of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 133; of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 62; and of 26 January 2017, *Zucchetti Rubinetteria* v *Commission*, C-618/13 P, EU:C:2017:48, paragraph 38).

560 As regards the applicants' argument set out in paragraph 553 above, first, it must be observed, as did the Commission, that that institution was required, under Article 296 TFEU, to state to the requisite legal standard the reasons for the contested decision, which it did. In so far as Scania was the sole addressee of the contested decision, it was normal for the assessment to focus on its role in the cartel. The other parties to the cartel had already been the subject of the settlement decision, which established their liability for the role which they played in the cartel.

561 Secondly, it should be noted that, contrary to the applicants' assertion, the wording of the contested decision does not 'ignore' the role of the other truck manufacturers in the cartel. Their conduct is clear from the chronology of events, described in point 6.2 of the contested decision, which explains in detail the nature and content of the exchanges as well as the participants in those exchanges. It follows that the applicants' claim that it is impossible to compare their role in the cartel with that of the other parties is unfounded.

562 Thirdly, the Court finds, on the basis of the contested decision and the file before it, that Scania's role in the cartel did not differ from that of the other parties and that the applicants have not put forward any arguments and have adduced no evidence to the contrary. Furthermore, as the Commission correctly notes, each of the factors taken into consideration in order to determine, in the calculation of the basic amount of the fine, the gravity of the infringement and the 'entry fee', namely the nature of the infringement, the combined market share of the undertakings involved, the geographic scope of the infringement and its implementation, applied in the same way to Scania and to the other parties.

563 In the light of the foregoing considerations, the Court concludes that the Commission did not err in its decision to retain the same proportion of value of sales by Scania as the proportion retained for the other manufacturers and to apply the same gravity multiplier (17%) and the same 'entry fee' (17%) as those applied to the other manufacturers in the settlement decision.

564 The argument set out in paragraph 553 above must therefore be rejected.

565 As regards the argument referred to in paragraph 554 above, it should be noted that the fact that the contested decision sets out in detail, in accordance with the requirements of the Commission's obligation to state reasons, Scania's unlawful conduct, results from the fact that that decision was addressed solely to Scania, since that undertaking did not acknowledge its liability in the cartel, unlike the other parties which made a formal settlement request. It follows that the applicants are not in the same situation as the settling parties and, consequently, their argument set out in paragraph 554 above does not show that there has been an infringement of the principle of equal treatment.

566 As regards the applicants' argument referred to in paragraph 555 above, it should be noted that the Commission, both in the contested decision and in the settlement decision, referred, inter alia, in order to determine the fines, to the value of the sales of goods to which the infringement by the undertakings involved in the EEA relates, in accordance, moreover, with its Guidelines on the method of setting fines. In paragraph 6 of those guidelines, the Commission explained that the combination of the value of sales to which the infringement related and of the duration of the infringement was to be regarded as providing an appropriate proxy to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement.

567 In the present case, the Court has no reason to call into question the Commission's decision to refer, as regards all the undertakings involved, to the value of their sales of goods to which the infringement in the EEA related. That was a reasonable choice in order to reflect the relative weight of each undertaking participating in the infringement and it concerned all the undertakings participating in the cartel, not only Scania.

568 Furthermore, the Court of Justice has held that EU law contains no general principle that the penalty be proportionate to the undertaking's size on the product market in respect of which the infringement was committed (judgment of 18 May 2006, *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission*, C-397/03 P, EU:C:2006:328, paragraph 101).

569 On the basis of those considerations, it must be concluded that the applicants' argument set out in paragraph 555 above does not demonstrate that the Commission infringed the principle of equal treatment and that argument must be rejected.

570 As regards the applicants' argument referred to in paragraph 556 above, it must be rejected in so far as it is not apparent from the file that the Scania DE employees played a passive role or a secondary role in the unlawful conduct established in the present case. Accordingly, there is no need to reduce the amount of the fine on that basis.

571 As regards the applicants' argument set out in paragraph 557 above, it must be noted that, as is apparent from recital 429 of the contested decision, the

Commission, in order to calculate the amount of the fine imposed on the applicants, took into account the value of their sales of heavy trucks in the EEA, contrary to what it did for the purposes of calculating the fines imposed on the settling parties in the settlement decision, in which it took into account the value of sales of medium and heavy trucks in the EEA (recital 109 of the contested decision). It follows that the applicants' complaint that the Commission did not take into account the fact that Scania did not manufacture medium trucks is unfounded.

572 In the light of all of the foregoing, it must be concluded that none of the applicants' arguments relating to an infringement of the principle of equal treatment demonstrates that the fine must be reduced.

(c) The amount of the fine

573 It must be noted that, in the light of the Court's unlimited jurisdiction in respect of fines for infringement of competition rules, nothing in the complaints, arguments and matters of law and of fact put forward by the applicants in all of the pleas in law examined above supports the conclusion that the amount of the fine imposed by the contested decision must be amended.

IV. Costs

574 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

575 Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Tenth Chamber, Extended Composition),

hereby:

1. Dismisses the action;

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.

Papasavvas Kornezov Buttigieg

Kowalik-Bańczyk Hesse

Delivered in open court in Luxembourg on 2 February 2022.

E. Coulon

Registrar President

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