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*Plenary sitting*

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**A8-0057/2018**

6.3.2018

**\*\*\*I**  
**REPORT**

on the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (COM(2017)0142 – C8-0119/2017 – 2017/0063(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Andreas Schwab

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (COM(2017)0142 – C8-0119/2017 – 2017/0063(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0142),
  - having regard to Article 294(2) and Articles 103 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0119/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Senate, by the Spanish Parliament, by the Portuguese Parliament and by the Romanian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on the Internal Market and Consumer Protection (A8-0057/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

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2017/0063 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 103 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are a matter of public policy and should be applied effectively throughout the Union to ensure that competition in the internal market is not distorted. Effective enforcement of Articles 101 and 102 TFEU is necessary to ensure more open *and fairer* competitive markets in Europe, where companies compete more on their merits and without company erected barriers to market entry, enabling them to generate wealth and create jobs. It protects consumers, *and undertakings active on the internal market*, from business practices that keep the prices of goods and services artificially high and enhances their choice of innovative goods and services.
- (2) The public enforcement of Articles 101 and 102 TFEU is carried out by the national competition authorities (NCAs) of the Member States in parallel to the Commission pursuant to Council Regulation (EC) No 1/2003 <sup>(2)</sup>. The NCAs and the Commission form together a network of public authorities applying the EU competition rules in close cooperation (the European Competition Network).

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p.1).

- (2a) ***In order to forestall the introduction of unnecessary new procedures in the Member States, existing allocations of decision-making and investigative powers between NCAs in a Member State which have proven their effectiveness are not called into question by this Directive.***
- (3) Article 3(1) of Regulation (EC) No 1/2003 obliges NCAs and national courts to apply Articles 101 and 102 TFEU to agreements or conduct capable of affecting trade between Member States. In practice, most NCAs apply national competition law provisions in parallel to Articles 101 and 102 TFEU. Therefore, this Directive, the objective of which is to ensure that NCAs have the necessary guarantees of independence and enforcement and fining powers to be able to apply Articles 101 and 102 TFEU effectively, will inevitably have an impact on national competition law provisions applied in parallel by NCAs.
- (4) Moreover, providing NCAs with the power to obtain all information related to the undertaking subject to the investigation in digital form irrespective of the medium on which it is stored, should also affect the scope of the NCAs' powers when, at the early stages of proceedings, they take the relevant investigative measure also on the basis of the national competition law provisions applied in parallel to Articles 101 and 102 TFEU. Providing NCAs with inspection powers of a different scope depending on whether they will ultimately apply only national competition law provisions or also Articles 101 and 102 TFEU in parallel would hamper the effectiveness of competition law enforcement in the internal market. Accordingly, the scope of the Directive should cover both the application of Articles 101 and 102 TFEU on a stand-alone basis and the application of national competition law applied in parallel to the same case. This is with the exception of the protection of leniency statements and settlement submissions which also extends to national competition law applied on a stand-alone basis.
- (5) National law prevents many NCAs from having the necessary guarantees of independence and enforcement and fining powers to be able to enforce these rules effectively. This undermines their ability to effectively apply Articles 101 and 102 TFEU and national competition law provisions in parallel to Articles 101 and 102 TFEU as appropriate. For example, under national law many NCAs do not have effective tools to find evidence of infringements of Articles 101 and 102 TFEU, to fine companies which break the law or do not have the ***adequate human and financial resources and the budgetary independence*** they need to effectively apply Articles 101 and 102 TFEU. This can prevent them from taking action at all or results in them limiting their enforcement action. The lack of operational tools and guarantees of many NCAs to effectively apply Articles 101 and 102 TFEU means that undertakings engaging in anti-competitive practices can face very different outcomes of proceedings depending on the Member States in which they are active: they may be subject to no enforcement at all under Articles 101 or 102 TFEU or to ineffective enforcement. For example, in some Member States, undertakings can escape liability for fines simply by restructuring. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU results in missed opportunities to remove barriers to market entry and to create ***fairer*** competitive markets throughout the Union where undertakings compete on their merits. Undertakings and consumers particularly suffer in those Member States where NCAs are less-equipped to be effective enforcers. Undertakings cannot compete on

their merits where there are safe havens for anti-competitive practices, for example, because evidence of anti-competitive practices cannot be collected or because undertakings can escape liability for fines. They therefore have a disincentive to enter such markets and to exercise their rights of establishment and to provide goods and services there. Consumers based in Member States where there is less enforcement miss out on the benefits of effective competition enforcement. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU throughout *the Union* thus distorts competition in the internal market and undermines its proper functioning.

- (6) Gaps and limitations in NCAs' tools and guarantees undermine the system of parallel powers for the enforcement of Articles 101 and 102 TFEU which is designed to work as a cohesive whole based on close cooperation within the European Competition Network. This system depends on authorities being able to rely on each other to carry out fact-finding measures on each other's behalf *in order to foster cooperation and mutual assistance among the Member States*. However it does not work well when there are still NCAs that do not have adequate fact-finding tools. In other key respects, NCAs are not able to provide each other with mutual assistance. For example, in the majority of Member States, undertakings operating cross-border are able to evade paying fines simply by not having a legal presence in some of the territories of Member States in which they are active. This reduces incentives to comply with Articles 101 and 102 TFEU. The resulting ineffective enforcement distorts competition for law-abiding undertakings and undermines consumer confidence in the internal market, particularly in the digital environment.
- (7) In order to ensure a truly common competition enforcement area in Europe that provides a more even level playing field for undertakings operating in the internal market and reduces unequal conditions for consumers there is a need to put in place minimum guarantees of independence, *adequate financial, human and technological* resources, and core enforcement and fining powers when applying Articles 101 and 102 TFEU and national competition law provisions in parallel to Articles 101 and 102 TFEU so that NCAs can be fully effective.
- (8) It is appropriate to base this Directive on the dual legal basis of Articles 103 and 114 TFEU. This is because this Directive covers not only the application of Articles 101 and 102 TFEU and the application of national competition law provisions in parallel to these Articles, but also the gaps and limitations in NCAs' tools and guarantees to apply Articles 101 and 102 TFEU, which negatively affect both competition and the proper functioning of the internal market.
- (9) Putting in place minimum guarantees to ensure that NCAs apply Articles 101 and 102 TFEU *uniformly and* effectively is without prejudice to the ability of Member States to maintain or introduce more extensive guarantees of independence and resources for NCAs and more detailed rules on the enforcement and fining powers of these authorities. In particular, Member States may endow NCAs with additional powers beyond the core set provided for in this Directive to further enhance their effectiveness.



- (10) Conversely, detailed rules are necessary in the area of conditions for granting leniency for secret cartels. Companies will only come clean about secret cartels in which they have participated if they have sufficient legal certainty about whether they will benefit from immunity from fines. The marked differences between the leniency programmes applicable in the Member States lead to legal uncertainty for potential leniency applicants, which may weaken their incentives to apply for leniency. ***Those differences can also result in several members of a secret cartel attempting to seek to benefit from leniency programmes in different Member States.*** If Member States could implement or apply ***clearer and harmonised rules*** for leniency in the area covered by this Directive, this would not only go ***towards*** to the objective of maintaining incentives for applicants in order to render competition enforcement in the Union as effective as possible, but would also ***guarantee a*** level playing field for undertakings operating in the internal market. This does not prevent Member States from applying leniency programmes that do not only cover secret cartels, but also other infringements of Articles 101 and 102 TFEU and equivalent national provisions.
- (11) This Directive does not apply to national laws in so far as they provide for the imposition of criminal sanctions on natural persons, with the exception of the rules governing the interplay of leniency programmes with the imposition of sanctions on natural persons.
- (12) The exercise of the powers conferred on NCAs should be subject to appropriate safeguards which at least meet the standards of general principles of EU law and the Charter of Fundamental Rights of the European Union, ***in accordance with the case law of the Court of Justice of the European Union, in particular in the context of proceedings which could give rise to the imposition of penalties.*** These safeguards include the right to good administration and the respect of undertakings' rights of defence, an essential component of which is the right to be heard. In particular, NCAs should inform the parties under investigation of the preliminary objections raised against them under Article 101 or Article 102 TFEU prior to taking a decision which adversely affects their interests and those parties should have an opportunity to effectively make their views known on these objections before such a decision is taken. ***It is therefore essential that the parties under investigation receive at least a statement of objections setting out all objections on which the NCA intends to rely in a final infringement decision which adversely affects the interests of the undertaking concerned.*** Parties to whom preliminary objections about an alleged infringement of Article 101 or Article 102 TFEU have been notified should have the right to access the relevant case file of NCAs to be able to effectively exercise their rights of defence. This is subject to the legitimate interest of undertakings in the protection of their business secrets and does not extend to confidential information and internal documents of, and correspondence between, the NCAs and the Commission. Moreover, the addressees of ***final*** decisions of NCAs ***finding an infringement of Article 101 or Article 102 TFEU, or imposing remedies or fines, or making commitments binding*** should have the right to an effective remedy before a tribunal, in accordance with Article 47 of the Charter of Fundamental Rights of the European Union ***and Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.*** Such final decisions of NCAs should be reasoned so as to allow addressees of such decisions to ascertain the reasons for the decision and to exercise their right to an effective remedy. ***Moreover, in accordance with the right to***

*good administration, Member States should ensure that, when applying Articles 101 and 102 TFEU, NCAs conduct proceedings within a reasonable timeframe.* The design of these safeguards should strike a balance between respecting the fundamental rights of undertakings and the duty to ensure that Articles 101 and 102 TFEU are effectively enforced.

- (13) Empowering NCAs to apply Articles 101 and 102 TFEU impartially and in the common interest of the effective enforcement of European competition rules is an essential component of the effective and uniform application of these rules.
- (14) The independence of NCAs should be strengthened in order to ensure the effective and uniform application of Articles 101 and 102 TFEU. To this end, express provision should be made in national law to ensure that when applying Articles 101 and 102 TFEU NCAs are protected against external intervention or political pressure liable to jeopardise their independent assessment of matters coming before them. For that purpose, *clear and transparent rules and procedures for the appointment, and grounds for the dismissal, of the members of the decision-making body of NCAs* should be laid down in advance in order to remove any reasonable doubt as to the impartiality of that body and its imperviousness to external factors. *Moreover, to underpin their impartiality, the fines imposed by NCAs should not be used to finance them directly.*
- (15) To ensure the independence of NCAs, their *heads*, members of the decision-making body *and staff* should act with integrity and refrain from any action which is incompatible with the performance of their duties. *To that end*, during their employment and term of office and for a reasonable period thereafter, they should refrain from any incompatible occupation *that may give rise to a conflict of interest in a specific case*. Furthermore, this also entails that during their employment and their term of office, they should not have an interest in any businesses or organisations which *are subject to proceedings for the application of Articles 101 and 102 TFEU in which they take part* to the extent that this has the potential to compromise their independence *in the handling of the case concerned*. The staff and the members of the decision-making body should declare any interest or asset which might create a conflict of interests in the performance of their duties. They should be required to inform the decision-making body, the other members thereof or, in the case of NCAs in which the decision-making power rests with only one person, their appointing authority, if, in the performance of their duties, they are called upon to decide on a matter in which they have an interest which might impair their impartiality.
- (15a) *Every NCA should publish a code of conduct that, without prejudice to the application of stricter national rules, covers at least rules avoiding conflict of interests, including provisions on cooling-off periods and the acceptance of invitations, as well as rules regarding activities undertaken in a personal capacity.*
- (16) The independence of NCAs does not preclude either judicial review or parliamentary supervision in accordance with the laws of the Member States. Accountability requirements also contribute to ensuring the credibility and the legitimacy of the actions of NCAs. Proportionate accountability requirements include the publication by NCAs of periodic reports on their activities to a governmental or parliamentary body.

NCAAs may also be subject to control or monitoring of their financial expenditure, provided this does not affect their independence.

- (17) NCAAs should be able to prioritise their proceedings for the enforcement of Articles 101 and 102 TFEU to make effective use of their resources, and to allow them to focus on preventing and bringing to an end anti-competitive behaviour that distorts competition in the internal market. To this end, they should be able to reject complaints on the grounds that they are not a priority, *except those emanating from relevant national public authorities so long as to do so does not affect the resources of the NCAAs*. This should be without prejudice to the power of NCAAs to reject complaints on other grounds, such as lack of competence or to decide there are no grounds for action on their part. *In cases of rejection, complainants should be informed in due time with a justification. Moreover, in cases of formally filed complaints, such rejection should be subject to effective remedies*. The power of NCAAs to prioritise their enforcement proceedings is without prejudice to the right of a government of a Member State to issue general policy or priority guidelines to national competition authorities that are not related to specific proceedings for the enforcement of Articles 101 and 102 TFEU.
- (18) NCAAs should have *sufficient* resources, in terms of *qualified* staff, *legal and economic* expertise, financial means and technical *and technological* equipment, to ensure they can effectively perform their tasks when applying Articles 101 and 102 TFEU. In case their duties and powers under national law are extended, the resources that are necessary to perform those tasks should still be sufficient. *The independence of NCAAs should be enhanced by enabling them to independently decide on the application of the budget allocations for the purpose of carrying out their duties, without prejudice to national budgetary rules and procedures*.
- (18a) *In order to ensure an effective monitoring of the implementation of this Directive, Member States should ensure that NCAAs submit publicly available periodic reports on their activities and their resources to a governmental or parliamentary body. Those reports should include information about the appointments and dismissals of members of the decision-making body, the amount of resources that were allocated in the relevant year and any changes in that amount compared to previous years. Such reports should be sent to Union level*.
- (19) NCAAs require a minimum set of common investigative and decision-making powers to be able to effectively enforce Articles 101 and 102 TFEU.
- (20) NCAAs authorities should be empowered to have effective powers of investigation to detect any agreement, decision or concerted practice prohibited by Article 101 TFEU or any abuse of dominant position prohibited by Article 102 TFEU at any stage of the proceedings before them.
- (21) The investigative powers of national administrative competition authorities need to be adequate to meet the enforcement challenges of the digital environment and should enable national competition authorities to obtain all information in digital form, including data obtained forensically, related to the undertaking or association of undertakings which is subject to the investigative measure, irrespective of the medium

on which it is stored, such as on laptops, mobile phones, other mobile devices *and cloud storage*.

- (22) National administrative competition authorities should be empowered to inspect the premises of both undertakings and associations of undertakings which are the subject of proceedings for the application of Articles 101 and 102 TFEU, as well as other market players which may be in possession of information which is of relevance to such proceedings. National administrative competition authorities should be able to carry out such inspections when there are at least reasonable grounds for suspecting an infringement of Article 101 or Article 102 TFEU. ***This Directive does not prevent Member States from requiring prior authorisation by a national judicial authority for such inspections.***
- (23) To be effective, the power of national administrative competition authorities to carry out inspections should enable them to access information that is accessible to the undertaking or association of undertakings or person subject to the inspection and which is related to the undertaking under investigation.
- (24) To minimise the unnecessary prolongation of inspections, national administrative competition authorities should have the power to continue making searches of copies or extracts of books and records related to the business of the undertaking or association of undertakings being inspected at the authority's premises or at other designated premises.
- (25) Experience shows that business records may be kept in the homes of directors or other people working for an undertaking, especially with the increased use of more flexible working arrangements. In order to ensure that inspections are effective, national administrative competition authorities should have the power to enter any premises, including private homes, where there is a reasonable suspicion that business records are being kept which may be relevant to prove a violation of Article 101 or Article 102 TFEU. The exercise of this power should be subject to the prior authorisation of a judicial authority. This does not prevent Member States from entrusting the tasks of a national judicial authority to a national administrative competition authority acting as a judicial authority, in cases of extreme urgency.
- (26) NCAs should have effective powers to require information to be supplied as is necessary to detect any agreement, decision or concerted practice prohibited by Article 101 TFEU or any abuse prohibited by Article 102 TFEU. This should include the right to require information ***stored in any digital form, including emails and instant messaging system messages, and*** irrespective of where it is stored, ***including in clouds and on servers***, provided it is accessible to the addressee of the request for information. ***That right should not result in an obligation on the undertaking which is disproportionate to the requirements of the investigation, for example, it does not result in undue costs or efforts being incurred by the undertaking. Whilst the right to require information is crucial for the detection of infringements, such requests should be appropriate in scope. Such requests should not compel an undertaking to admit that it has committed an infringement, which is incumbent upon the NCAs to prove.*** Experience shows that information provided on a voluntary basis by third parties, such as competitors, customers and consumers in the market, can also be a

valuable source of information for informed and robust enforcement and NCAs should encourage this.

- (27) NCAs should have effective means to restore competition on the market by imposing proportionate structural and behavioural remedies, *which are proportionate to the infringement committed and which are necessary to bring the infringement to an end.*
- (27a) *Interim measures can be an important tool to ensure that, while an investigation is ongoing, the investigated infringement does not seriously and irreparably harm competition, thereby leading to market developments that would be very difficult to reverse by any decision taken by a NCA at the end of the proceedings. In order to prevent such irreparable harm to competition, NCAs should be put in a position to impose interim measures. This Directive does however not prevent NCAs from imposing interim measures in other appropriate cases. A decision ordering interim measures should only be valid for a specified period, either until the conclusion of the proceedings by a NCA, or for a fixed time period which may be renewed insofar as it is necessary and appropriate. Member States should ensure that the appropriateness of such measures can be reviewed in accelerated appeal procedures. With a view to enabling competition authorities to deal with developments in fast-moving markets, the Commission should examine the options available either to accelerate proceedings before competition authorities for the application of Articles 101 and 102 or to simplify the adoption of interim measures. It should conduct a study and present the results to the European Parliament and to the Council by the end of 2020, and, if appropriate, submit a legislative proposal thereon. Furthermore, Member States should create the conditions necessary to ensure that NCAs can make use of interim measures in practice.*
- (28) Where in the course of proceedings which may lead to an agreement or a practice being prohibited, undertakings or associations of undertakings offer NCAs commitments which meet their concerns, these authorities should be able to adopt decisions which make these commitments binding on, and enforceable against, the undertakings concerned. *In principle, such commitment decisions are not appropriate in the case of secret cartels, in respect of which NCAs should impose a fine. Commitment decisions* should find that there are no longer grounds for action by the NCAs without concluding as to whether or not there has been an infringement of Article 101 TFEU or Article 102 TFEU. Commitment decisions are without prejudice to the powers of competition authorities and courts of the Member States to make such a finding of an infringement and decide upon a case. *Moreover, effective means of monitoring compliance by undertakings with commitments and of imposing sanctions in cases of non-compliance have proven to be effective tools for competition authorities. In cases where there has been material changes to any of the facts on which a decision was based, or where the undertaking acts contrary to their commitments, or where a decision was based on incomplete, incorrect or misleading information provided by the parties, NCAs should have effective means for the reopening of proceedings.*
- (29) To ensure the effective and uniform enforcement of Articles 101 and 102 TFEU, national administrative competition authorities should have the power to impose

effective, proportionate and dissuasive fines on undertakings and associations of undertakings for infringements of Articles 101 or 102 either directly themselves in administrative proceedings or to seek the imposition of fines in non-criminal judicial proceedings. This is without prejudice to national laws of the Member States which provide for the imposition of sanctions by courts in criminal proceedings for the infringement of Articles 101 and 102 TFEU.

- (30) To ensure that undertakings and associations of undertakings comply with the investigation and decision-making powers of the NCAs, national administrative competition authorities must be able to impose effective fines for non-compliance, and periodic penalty payments to compel compliance with these powers either directly themselves in administrative proceedings or to seek the imposition of fines in non-criminal judicial proceedings. This is without prejudice to national laws of the Member States which provide for the imposition of such fines by courts in criminal judicial proceedings. Moreover, this Directive affects neither national rules on the standard of proof nor obligations of NCAs to ascertain the facts of the relevant case, provided that such rules and obligations are compatible with general principles of Union law. The fines and periodic penalty payments should be determined in proportion to the total turnover of the undertakings and associations of undertakings concerned
- (31) To ensure the effective and uniform application of Articles 101 and 102 TFEU, the notion of undertaking, as contained in Articles 101 and 102 TFEU, should be applied in accordance with the case law of the Court of Justice of the European Union as designating an economic unit, even if it consists of several legal or natural persons. Accordingly, NCAs should be able to apply the notion of undertaking to find a parent company liable, and impose fines on it, for the conduct of one of its subsidiaries where such a parent company and its subsidiary form a single economic unit. To prevent undertakings escaping liability for fines for infringements of Articles 101 and 102 TFEU through legal or organisational changes, NCAs should be able to find legal or economic successors of the undertaking liable, and to impose fines on them, for an infringement of Articles 101 and 102 TFEU in accordance with the case law of the Court of Justice of the European Union.
- (32) To ensure that the fines imposed for infringements of Articles 101 and 102 TFEU reflect the economic significance of the infringement, NCAs should take into account the gravity of the infringement. NCAs should also be able to set fines that are proportionate to the duration of the infringement. These factors should be assessed in accordance with the case law of the Court of Justice of the European Union. In particular, as regards the assessment of the gravity of an infringement, the Court of Justice of the European Union has established that consideration must be given to the circumstances of the case, the context in which the infringement occurred and the deterrent effect of the fines. Factors that may form part of this assessment are the turnover for the goods and services in respect of which the infringement was committed and the size and economic power of the undertaking, ***including whether it is a small and medium-sized enterprise with a limited product portfolio***, as they reflect the influence the undertaking was able to exert on the market. Moreover, the existence of repeated infringements by the same perpetrator shows its propensity to commit such infringements and is therefore a very significant indication of the gravity

of the conduct in question and accordingly of the need to increase the level of the penalty to achieve effective deterrence. When determining the fine to be imposed, NCAs should consider the value of the undertaking's sales of goods and services to which the infringement directly or indirectly relates. Similarly, NCAs should be entitled to increase the fine to be imposed on an undertaking or association of undertakings that continues the same, or commits a similar, infringement after the Commission or a national competition authority has taken a decision finding that the same undertaking or association of undertakings has infringed Articles 101 or 102 TFEU. ***In addition, NCAs should be able to take account of the economic viability of the undertaking concerned and, in accordance with Article 18(3) of Directive 2014/104/EU of the European Parliament and of the Council,<sup>3</sup> of any compensation paid as a result of a consensual settlement.***

- (33) Experience has shown that associations of undertakings regularly play a role in competition infringements and NCAs should be able to effectively fine such associations. When assessing the gravity of the infringement in order to determine the amount of the fine in proceedings brought against associations of undertakings where the infringement relates to the activities of its members, regard should be had to the sum of the sales by the undertakings that are members of the association of goods and services to which the infringement directly or indirectly relates. In order to ensure effective recovery of fines imposed on associations of undertakings for infringements that they have committed, it is necessary to lay down the conditions on which NCAs may require payment of the fine from the members of the association where the association is not solvent. In doing so, NCAs should have regard to the relative size of the undertakings belonging to the association and in particular to the situation of small and medium-sized enterprises. Payment of the fine by one or several members of an association is without prejudice to rules of national law that provide for recovery of the amount paid from other members of the association.
- (34) The deterrent effect of fines differs widely across Europe and in some Member States the maximum amount of the fine that can be set is very low. To ensure NCAs can set deterrent fines, the maximum amount of the fine should be set at a level of not less than 10% of the total worldwide turnover of the undertaking concerned. This should not prevent Member States from maintaining or introducing a higher maximum amount of the fine.
- (35) Leniency programmes are a key tool for the detection of secret cartels and thus contribute to the efficient prosecution of, and the imposition of penalties for, the most serious infringements of competition law. However, there are currently marked differences between the leniency programmes applicable in the Member States. Those differences lead to legal uncertainty on the part of infringing undertakings concerning the conditions under which they can apply for leniency as well as their immunity status under the respective leniency programme(s). Such uncertainty may weaken incentives for potential leniency applicants to apply for leniency. This in turn can lead

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<sup>3</sup> ***Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349, 5.12.2014, p. 1).***

to less effective competition enforcement in the Union, as fewer secret cartels are uncovered.

- (36) The differences between leniency programmes at Member State level also jeopardise the level playing field for undertakings operating in the internal market. It is therefore appropriate to increase legal certainty by reducing these differences ***by ensuring that all NCAs can grant immunity and reduction from fines and accept summary applications under the same conditions. In order to ensure an even greater degree of legal certainty for undertakings in the internal market and to boost the attractiveness of leniency programmes across the Union, further efforts by the Member States on aligning their leniency conditions are needed.***
- (37) NCAs should grant undertakings immunity from, and reductions of, fines if certain conditions are met. Undertakings should be deemed to have provided a national competition authority with evidence in respect of a secret cartel which enables the finding of an infringement of Article 101 TFEU if that national competition authority did not have sufficient evidence to find an infringement of Article 101 TFEU in connection with the same cartel at the time of the submission by the undertaking of such evidence.
- (38) Applicants should have the possibility to apply for leniency in writing or, where appropriate, by other means that do not result in the production of documents, information, or other materials in the applicant's possession, custody, or control. To that effect, NCAs should have a system in place that enables them to accept leniency statements either orally or by other means, including in digital form. ***Moreover, in order to reduce administrative and other considerable burdens in terms of time relating to multiple applications, it should be possible for applicants to submit leniency applications not only in an official language of the relevant NCA, but also in one other working language of the Union.***
- (39) ***In view of the shared competences between the Commission and the NCAs for the enforcement of Articles 101 and 102 TFEU, it is key to have in place a system of summary applications that functions smoothly.*** Applicants which have applied for leniency to the European Commission in relation to an alleged secret cartel should be able to file summary applications in relation to the same cartel to the NCAs that they deem appropriate. NCAs should accept summary applications that contain a minimum set of information in relation to the alleged cartel and not request additional information beyond this minimum set before they intend to act on the case. However, the onus is on applicants to inform the NCAs to which they have submitted summary applications if the scope of their leniency application with the Commission changes. NCAs should provide applicants with an acknowledgement stating the date and time of receipt, and inform the applicant whether they have already received a previous summary or leniency application in relation to the same cartel, ***except where it would adversely affect the integrity of an investigation.*** Once the Commission has decided not to act on the case in whole or partially, applicants should have the opportunity to submit full leniency applications to the NCAs to which they have submitted summary applications.



- (40) Legal uncertainty as to whether undertakings' employees are shielded from individual sanctions can prevent potential applicants from applying for leniency. Current and former employees and directors of undertakings that apply for immunity from fines to competition authorities should thus be protected from any sanctions imposed by public authorities for their involvement in the secret cartel covered by the application. Such protection should be dependent on these employees and directors **cooperating effectively** with the NCAs concerned and the immunity application predating the start of the criminal proceedings.
- (41) In a system of parallel powers to apply Articles 101 and 102 TFEU, close cooperation is required between NCAs **and between NCAs and the Commission**. In particular when a NCA carries out an inspection on behalf of another NCA pursuant to Article 22(1) of Council Regulation (EC) No 1/2003, the presence and assistance of the officials from the requesting authority should be enabled to enhance the effectiveness of such inspections by providing additional resources, knowledge and technical expertise.
- (42) Similarly, arrangements should be put in place to allow NCAs to request mutual assistance for the notification of preliminary objections and decisions and the enforcement of decisions imposing fines or period penalties when the undertaking concerned has no legal presence in their territory. This would ensure the effective enforcement of Articles 101 and 102 TFEU and contribute to the proper functioning of the internal market. **To ensure that NCAs make reasonable attempts to enforce decisions imposing fines or periodic penalty payments before requesting mutual assistance, the requested authorities should be required to enforce such decisions only to the extent that the undertaking concerned does not have a legal presence, or evidently does not have sufficient assets, in the Member State of the NCA requesting mutual assistance. In order to ensure that NCAs devote sufficient resources to the requests for mutual assistance and in order to incentivise such assistance, the requested authorities should be able to recover the related costs.**
- (43) To ensure the effective enforcement of Articles 101 and 102 TFEU by NCAs there is a need to provide for workable rules on suspension of limitation periods. In particular, in a system of parallel powers, national limitation periods should be suspended for the duration of proceedings before NCAs of another Member State or the Commission. This does not prevent Member States from maintaining or introducing absolute limitation periods, provided that the duration of such absolute time periods does not render the effective enforcement of Articles 101 and 102 TFEU practically impossible or excessively difficult.
- (44) To ensure that cases are dealt with efficiently and effectively within the European Competition Network, in those Member States where a national administrative competition authority is competent to investigate infringements of Articles 101 or 102 TFEU and a national judicial competition authority is competent for adopting a decision finding the infringement and/or imposing the fine, national administrative competition authorities should be able to bring directly the action before the national judicial competition authority. In addition, to the extent that national courts act as review courts in proceedings brought against enforcement decisions of NCAs applying Articles 101 or 102, national administrative competition authorities should be of their

own right fully entitled to participate as a prosecutor, defendant or respondent in those proceedings, and enjoy the same rights of such a party to those proceedings.

- (45) The risk of self-incriminating material being disclosed outside the context of the investigation for the purposes of which it was provided can weaken the incentives for potential leniency applicants to cooperate with competition authorities. As a consequence, regardless of the form in which leniency statements are submitted, information in leniency statements obtained through access to the file should be used only where necessary for the exercise of rights of defence in proceedings before the courts of the Member States in certain very limited cases which are directly related to the case in which access has been granted. This should not prevent competition authorities from publishing their decisions in accordance with the applicable Union or national law.
- (46) Evidence is an important element in the enforcement of Articles 101 and 102 TFEU. NCAs should be able to consider relevant evidence irrespective of whether it is made in writing, orally or in a recorded form, including covert recordings made by legal or natural persons provided this is not the sole source of evidence. This is without prejudice to the right to be heard.
- (47) To underpin close cooperation in the European Competition Network, the Commission should maintain, develop, host, operate and support a central information system (European Competition Network System) in compliance with the relevant confidentiality, data protection and data security standards. The European Competition Network relies on interoperability for its effective and efficient functioning. The general budget of the Union should bear the costs of maintenance, development, hosting, user support and operation of the central information system as well as other administrative costs incurred in connection with the functioning of the European Competition Network, in particular the costs related to the organisation of meetings. Until 2020 the costs for the European Competition Network System are foreseen to be covered by the programme on interoperability solutions and common frameworks for European public administrations (ISA<sup>2</sup> programme), subject to the programme's available resources, eligibility and prioritisation criteria.
- (48) Since the objectives of this Directive, namely to ensure that NCAs have the necessary guarantees of independence and resources and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU and national competition law in parallel to Articles 101 and 102 TFEU and to ensure the effective functioning of the internal market and the European Competition Network, cannot be sufficiently achieved by the Member States alone, and this objective can by reason of the requisite effectiveness and uniformity in the application of Articles 101 and 102 TFEU be better achieved by the Union alone, in particular in view of its territorial scope, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve this objective.

- (49) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,<sup>4</sup> Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### *Article 1*

##### **Subject matter and scope**

1. This Directive sets out certain rules to ensure that national competition authorities have the necessary guarantees of independence and resources and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU so that competition in the internal market is not distorted and consumers and undertakings, *especially small and medium-sized enterprises*, are not put at a disadvantage by national laws and measures which prevent national competition authorities from being effective enforcers. The scope of the Directive covers the application of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU to the same case, with the exception of Article 29(2) which also extends to national competition law applied exclusively.
2. This Directive sets out certain rules on mutual assistance to safeguard the smooth functioning of the internal market and the system of close cooperation within the European Competition Network.

#### *Article 2*

##### **Definitions**

For the purposes of this Directive, the following definitions apply:

- (1) 'national competition authority' means an authority designated by a Member State pursuant to Article 35 of Regulation (EC) 1/2003 as responsible for the application of Articles 101 and 102 TFEU. Member States may designate one or more

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<sup>4</sup> OJ C 369, 17.12.2011, p. 14.

administrative authorities (national administrative competition authority), as well as judicial authorities (national judicial competition authority) to carry out these functions;

- (2) 'competition authority' means a national competition authority or the Commission or both, as the context may require;
- (3) 'European Competition Network' means the Network of public authorities formed by the national competition authorities and the Commission to provide a forum for discussion and cooperation in the application and enforcement of Articles 101 and 102 TFEU;
- (4) 'national competition law provisions' means provisions of national law that predominantly pursue the same objective as Articles 101 and 102 TFEU and that are applied to the same case and in parallel to Union antitrust law pursuant to Article 3(1) of Regulation (EC) No 1/2003 with the exception of the use of information taken from leniency statements and settlement submissions as referred to in Article 29(2) and excluding provisions of national law which impose criminal penalties on natural persons.
- (5) 'national court' means a national court or tribunal within the meaning of Article 267 TFEU;
- (6) 'review court' means a national court that is empowered by ordinary means of appeal to review decisions of a national competition authority or to review judgments pronouncing on these decisions, irrespective of whether the court itself has the power to find an infringement of competition law;
- (7) 'proceedings' means the proceedings before a national competition authority for the application of Article 101 or Article 102 TFEU, until that authority has closed these proceedings by taking a decision referred to in Article 9 or Article 11 or has concluded that there are no grounds for further action on its part, or in the case of the Commission, means proceedings before it for the application of Article 101 or Article 102 TFEU until it has closed these proceedings by taking a decision pursuant to Articles 7, 9 or 10 of Regulation (EC) No 1/2003 or has concluded that there are no grounds for further action on its part;
- (8) 'undertaking' as contained in Articles 101 and 102 TFEU, means any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed in accordance with the case law of the Court of Justice of the European Union;
- (9) 'secret cartel' means an agreement and/or concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market and/or influencing the relevant parameters of competition through practices such as the fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets including bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other competitors, which is not, partially or fully, known except to the participants;

- (10) 'immunity from fines' means that no fine is imposed on an undertaking for its participation in a secret cartel as a reward for its cooperation with a competition authority in the framework of a leniency programme;
- (11) 'reduction of fines' means that a reduced fine is imposed as compared to the fines which would otherwise be imposed on an undertaking for its participation in a secret cartel as a reward for its cooperation with a competition authority in the framework of a leniency programme;
- (12) 'leniency' means both immunity from fines and reduction of fines;
- (13) 'leniency programme' means a programme concerning the application of Article 101 TFEU or national competition law on the basis of which a participant in a secret cartel, independently of the other undertakings involved in the cartel, cooperates with an investigation of the competition authority, by voluntarily providing presentations regarding that participant's knowledge of, and role in, the cartel in return for which that participant receives, by decision or by a discontinuation of proceedings, immunity from, or a reduction in, fines for its involvement in the cartel;
- (14) 'leniency statement' means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a natural person to a competition authority or a record thereof, describing the knowledge of that undertaking or natural person of a secret cartel and describing its role therein, which presentation was drawn up specifically for submission to the competition authority with a view to obtaining immunity or a reduction of fines under a leniency programme, not including pre-existing information;
- (15) 'pre-existing information' means evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority;
- (16) 'settlement submission' means a voluntary presentation by, or on behalf of, an undertaking to a competition authority describing the undertaking's acknowledgement of, or its renunciation to dispute, its participation in an infringement of Article 101 TFEU or national competition law and its responsibility for that infringement, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure;
- (17) 'applicant' means an undertaking that applies for immunity or reduction from fines under a leniency programme;
- (18) 'applicant authority' means a national competition authority which makes a request for mutual assistance as referred to in Articles 23, 24 or 25;
- (19) 'requested authority' means a national competition authority which receives a request for mutual assistance and in the case of a request for assistance referred to in Articles 24 and 25 may mean the competent public office, authority or department which has principal responsibility for the enforcement of such decisions under national laws, regulations and administrative practice.

All references to the application, and infringements, of Articles 101 and 102 TFEU shall be understood as including the parallel application of the national competition law provisions to the same case.

## CHAPTER II

### FUNDAMENTAL RIGHTS

#### Article 3

##### Safeguards

1. The exercise of the powers referred to in this Directive by national competition authorities shall respect general principles of Union law and the Charter of Fundamental Rights of the European Union.
2. *In particular, Member States shall ensure that the exercise of those powers is subject to appropriate safeguards in respect of undertakings' rights of defence, including the right to be heard and the right to an effective remedy before a tribunal.*
3. *Member States shall ensure that proceedings of national competition authorities concerning the application of Articles 101 and 102 TFEU are conducted within a reasonable timeframe. Member States shall ensure that, prior to taking a decision pursuant to Article 9 of this Directive, national competition authorities adopt a statement of objections.*

## CHAPTER III

### INDEPENDENCE AND RESOURCES

#### Article 4

##### Independence

1. To guarantee the independence of national administrative competition authorities when applying Articles 101 and 102 TFEU, Member States shall ensure that they perform their duties and exercise their powers impartially and in the interests of the effective and uniform enforcement of these provisions, subject to proportionate accountability requirements and without prejudice to close cooperation between competition authorities in the European Competition Network.

2. In particular, Member States shall ensure that:
- a) The staff and the members of the decision-making body of national administrative competition authorities can perform their duties and exercise their powers for the application of Articles 101 and 102 TFEU independently from political and other external influence;
  - b) The staff and the members of the decision-making body of national administrative competition authorities neither seek nor take any instructions from any government or other public or private entity when carrying out their duties and exercising their powers for the application of Articles 101 and 102 TFEU;
  - c) The staff and the members of the decision-making body of national administrative competition authorities refrain from any action which is incompatible with the performance of their duties and exercise of their powers for the application of Articles 101 and 102 TFEU. ***National competition authorities shall have procedures in place to ensure that, for a reasonable period after leaving office, their staff and the members of the decision-making body refrain from entering into occupations that could give rise to conflict of interests in relation to a specific case in which they were involved while at the national competition authority;***
  - d) The members of the decision-making body of national administrative competition authorities may be dismissed only if they no longer fulfil the conditions required for the performance of their duties or have been guilty of serious misconduct under national law. The grounds for dismissal should be laid down in advance in national law. They shall not be dismissed for reasons related to the proper performance of their duties and exercise of their powers in the application of Articles 101 and 102 TFEU as defined in Article 5(2);
  - e) National administrative competition authorities have the power to set their priorities for carrying out tasks for the application of Articles 101 and 102 TFEU as defined in Article 5(2). To the extent that national administrative competition authorities are obliged to consider complaints which are formally filed, this shall include the power of those authorities to reject such complaints on the grounds that they do not consider them to be a priority, ***excluding, where applicable in national law, complaints emanating from relevant national public authorities.*** This is without prejudice to the power of national competition authorities to reject complaints on other grounds defined by national law. ***The rejection of a formally filed complaint shall be subject to effective remedies in accordance with national law;***
  - ea) ***The members of the decision-making body of national administrative competition authorities are selected and appointed according to clear and transparent selection and recruitment procedures laid down in advance.***

## Article 5

### Resources

1. Member States shall ensure that national competition authorities have *a sufficient number of qualified staff and sufficient* financial, technical *and technological* resources *at their disposal* for the effective performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as *set out* in paragraph 2 *of this Article*.
2. The application of Articles 101 and 102 TFEU by national competition authorities shall include: conducting investigations with a view to applying Articles 101 and 102 TFEU; taking decisions applying these provisions on the basis of Article 5 of Regulation 1/2003; *providing advice*; and cooperating closely in the European Competition Network with a view to ensuring the effective and uniform application of Articles 101 and 102 TFEU.
  - 2a. *Without prejudice to national budgetary rules and procedures, Member States shall ensure that national competition authorities are granted independence in the application of the allocated budget for the purpose of carrying out their duties as set out in paragraph 2.*
  - 2b. *Member States shall ensure that national administrative competition authorities submit publicly available periodic reports on their activities and their resources to a governmental or parliamentary body. Member States shall ensure that such reports include information about the appointments and dismissals of members of the decision-making body, the amount of resources that were allocated in the relevant year and any changes in this amount compared to previous years, and are sent to Union level.*

## CHAPTER IV

### POWERS

## Article 6

### Power to inspect business premises

1. Member States shall ensure that national administrative competition authorities can conduct all necessary unannounced inspections of undertakings and associations of undertakings for the application of Articles 101 and 102 TFEU. *Member States are not prevented from requiring the prior authorisation of a national judicial authority for such inspections.* Member States shall ensure that the officials and other accompanying persons authorised by national competition authorities to conduct an inspection are at minimum empowered:



- a) to enter any premises, land, and means of transport of undertakings and associations of undertakings;
  - b) to examine the books and other records related to the business irrespective of the medium on which they are stored, including the right to access information which is accessible to the entity subject to the inspection;
  - c) to take or obtain in any form copies or extracts from such books or records and where they consider it necessary to continue making searches of these copies or extracts at their premises or other designated premises;
  - d) to seal any business premises and books or records for the period and to the extent necessary for the inspection;
  - e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answer.
2. Member States shall ensure that undertakings and associations of undertakings are required to submit to inspections conducted by national administrative competition authorities. Where an undertaking or association of undertakings opposes an inspection ordered by a national administrative competition authority or authorised by a national judicial authority, national competition authorities can obtain the necessary assistance of the police or of an equivalent enforcement agency so as to enable them to conduct the inspection. Such assistance may also be obtained as a precautionary measure.

#### *Article 7*

#### **Power to inspect other premises**

1. Member States shall ensure that if a reasonable suspicion exists that books or other records related to the business and to the subject matter of the inspection which may be relevant to prove a violation of Article 101 or Article 102 TFEU are being kept in any premises other than those referred to in Article 6, land or means of transport, including the homes of directors, managers, and other members of staff of undertakings and associations of undertakings, national administrative competition authorities may conduct unannounced inspections in such premises, land and means of transport.
2. Such inspections ***shall not*** be carried out without the prior authorisation of a national judicial authority, ***which expressly sets out the evidence for the reasonable suspicion referred to in paragraph 1.***
3. Member States shall ensure that the officials and other accompanying persons authorised by the national courts to conduct an inspection in accordance with paragraph 1 of this Article have at least the powers set out in Article 6(1)(a)(b) and (c) and Article 6(2).

## Article 8

### Requests for information

Member States shall ensure that national administrative competition authorities may require undertakings and associations of undertakings to provide all necessary information **required** for the application of Articles 101 and 102 TFEU within a specified **and reasonable** time limit. **Such requests for information shall be specific and appropriate in scope and not compel the addressee of the request to admit an infringement of Articles 101 and 102 TFEU.** This obligation shall cover information which is accessible to the undertaking and association of undertakings.

## Article 9

### Finding and termination of infringement

- I. Member States shall ensure that where national competition authorities find an infringement of Article 101 or 102 TFEU, they may by decision require the undertakings and associations of undertakings concerned to bring **that** infringement to an end. For that purpose, they may impose any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. **If two remedies are equally effective, national competition authorities should favour the least burdensome for the undertaking. If they have a legitimate interest in so doing, they may also make a finding that an infringement has been committed in the past.**
- Ia. **Where national competition authorities decide that there are no grounds to continue proceedings for the application of Articles 101 and 102 TFEU and as a result close the proceedings, Member States shall ensure that the national competition authorities inform the Commission accordingly.**

## Article 10

### Interim measures

- I. Member States shall ensure that national administrative competition authorities acting on their own initiative may by decision order the imposition of interim measures on undertakings at least in cases where there is urgency due to the risk of serious and irreparable harm to competition and on the basis of a prima facie finding of an infringement of Article 101 or Article 102 TFEU. Such a decision shall **be proportionate and** apply **either** for a **specified time** period, **which** may be renewed in so far that is necessary and appropriate, **or until the final decision is taken. The**

*European Competition Network shall be informed of such measures and their implementation.*

- 1a. Member States shall ensure that the appropriateness of the interim measures referred to in paragraph 1 can be reviewed in accelerated appeal procedures.*

#### *Article 11*

#### **Commitments**

- 1. Member States shall ensure that in proceedings initiated with a view to a decision requiring that an infringement of Article 101 or Article 102 TFEU be brought to an end, national competition authorities may **after seeking the views of market participants** by decision make binding commitments offered by undertakings to meet the concerns expressed by these authorities. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the national competition authority concerned.*
- 1a. Member States shall ensure that national competition authorities have at their disposal effective powers to monitor the implementation of the commitments referred to in paragraph 1.*
- 1b. Where the undertaking concerned acts contrary to a commitment decision, national competition authorities may reopen proceedings.*

### CHAPTER V

## **FINES AND PERIODIC PENALTY PAYMENTS**

#### *Article 12*

#### **Fines on undertakings and associations of undertakings**

- 1. Without prejudice to national laws of the Member States which provide for the imposition of sanctions in criminal judicial proceedings, Member States shall ensure that national administrative competition authorities may either impose by decision in administrative proceedings, or request in non-criminal judicial proceedings the imposition of effective, proportionate and deterrent pecuniary fines on undertakings and associations of undertakings when, either intentionally or negligently, they infringe Articles 101 or 102 TFEU.*

2. Without prejudice to national laws of the Member States which provide for the imposition of sanctions in criminal judicial proceedings, Member States shall ensure that national administrative competition authorities may either impose by decision in administrative proceedings, or, request in non-criminal judicial proceedings the imposition of effective, proportionate and deterrent pecuniary fines on undertakings or associations of undertakings which are determined in proportion to their total *worldwide* turnover, where intentionally or negligently:
  - a) they fail to comply with an inspection referred to Article 6(2);
  - b) seals fixed by officials or other accompanying persons authorised by the national competition authorities as referred to by Article 6(1)(d) have been broken;
  - c) in response to a question referred to by Article 6(1)(e), they give an incorrect, misleading answer, fail or refuse to provide a complete answer, or fail to rectify within a time-limit set by the national competition authority an incorrect, misleading or incomplete answer given by a member of staff;
  - d) they supply incorrect, incomplete or misleading information in response to a request referred to *in* Article 8 or do not supply information within the specified time-limit;
  - e) they fail to comply with a decision referred to in Articles 9, 10 and 11.
3. Member States shall ensure that the notion of undertaking is applied for the purpose of imposing fines on parent companies and legal and economic successors of undertakings.

### Article 13

#### Calculation of the fines

1. Member States shall ensure that when national competition authorities determine the amount of the fine for an infringement of Article 101 or Article 102 TFEU regard is had both to the gravity and to the duration of the infringement. ***That may include factors such as the size and market power of the undertaking and whether the infringement is repetitive.***
  - 1a. ***When determining the amount of the fine to be imposed as a result of an infringement of Articles 101 or 102 TFEU, national competition authorities may, in accordance with Article 18(3) of Directive 2014/104/EU, take into account any compensation paid as a result of a consensual settlement.***
2. Member States shall ensure that, when a fine is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association is obliged to call for contributions from its members to cover the amount of the fine.

Where necessary to ensure the full payment of the fine, Member States shall ensure that national competition authorities are entitled to require the payment of the outstanding amount of the fine by any of the undertakings whose representatives were members of the decision-making bodies of the association. To the extent that it is still necessary, national competition authorities shall also be entitled to require the payment of the outstanding amount of the fine by any of the members of the association which were active on the market on which the infringement occurred. However, payment *under this paragraph* shall not be required from those *undertakings which show* that *they* did not implement the *infringing decision of the association* and either were not aware of it or have actively distanced themselves from it before the investigation started.

#### *Article 14*

##### **Maximum amount of the fine**

1. Member States shall ensure that the maximum amount of the fine a national competition authority may impose on each undertaking or association of undertakings participating in an infringement of Articles 101 or 102 TFEU should not be set at a level below 10% of its total worldwide turnover in the business year preceding the decision.
2. Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall not be set at a level below 10 % of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association. However, the financial liability of each undertaking in respect of the payment of the fine shall not exceed the maximum amount set in accordance with paragraph 1.

#### *Article 15*

##### **Periodic penalty payments**

Member States shall ensure that national administrative competition authorities may by decision impose effective, proportionate and deterrent periodic penalty payments on undertakings and associations of undertakings which are determined in proportion to their daily total turnover in order to compel them:

- a) to submit to an inspection referred to in Article 6(2),
- b) to supply complete and correct information as referred to in Article 8,
- c) to comply with a decision referred to in Articles 9, 10 and 11.

## CHAPTER VI

### LENIENCY

#### *Article 16*

##### **Immunity from fines**

1. Member States shall ensure that national competition authorities have in place leniency programmes that enable them to grant immunity *for secret cartels* from fines to undertakings.
2. Member States shall ensure that immunity *for secret cartels* can be granted only if the undertaking
  - a) fulfils the conditions laid down in Article 18;
  - b) discloses its participation in a secret cartel; and
  - c) is the first to submit evidence which:
    - i. at the time the national competition authority receives the application, enables it to carry out a targeted inspection in connection with the secret cartel, provided that the national competition authority did not yet have in its possession evidence to carry out an inspection in connection with the secret cartel or had not already carried out such an inspection; or
    - ii. in the national competition authority's view, enables the finding of an infringement of competition law, provided that the national competition authority did not yet have in its possession evidence to find such an infringement and that no other undertaking previously qualified for immunity under paragraph 2(c)(i) in relation to the same cartel.
3. Member States shall ensure that all undertakings are eligible for immunity from fines, with the exception of undertakings that have taken steps to coerce other undertakings to participate in a secret cartel.
- 3a. *Member States shall ensure that national competition authorities inform an immunity applicant whether or not it has been granted conditional immunity. The immunity applicant may request that it is informed by the national competition authorities of the result of its application in writing. In cases of rejection, the applicant concerned may request the national competition authority to consider its application for a reduction of the fine.*

## Article 17

### Reduction of fines

1. Member States shall ensure that national competition authorities have in place leniency programmes that enable them to grant a reduction of fines to undertakings which do not qualify for immunity.
2. Member States shall ensure that a reduction of fines is granted only if the conditions laid down in Article 18 are fulfilled and the applicant discloses its participation in a secret cartel and provides the national competition authority with evidence of the alleged secret cartel which represents significant added value for the purpose of proving an infringement of Article 101 TFEU or a corresponding provision under national law, relative to the evidence already in the national competition authority's possession at the time of the application.
3. Member States shall ensure that national competition authorities are able to grant an additional reduction of fines if the applicant submits evidence which the national competition authority uses, without the need for further corroboration, to prove additional facts which lead to an increase in fines as compared to the fines that would otherwise have been imposed on the participants in the secret cartel. The reduction of fines for the applicant shall be proportionate to such increase in fines.

## Article 18

### General conditions for leniency

Member States shall ensure that, in order to qualify for leniency, the applicant must satisfy the following cumulative conditions:

- a) it ended its involvement in the alleged secret cartel immediately following its application, except for what would, in the competent national competition authority's view, be reasonably necessary to preserve the integrity of its investigation;
- b) it cooperates genuinely, fully, on a continuous basis and expeditiously with the national competition authority from the time of its application until the authority has closed its proceedings against all parties under investigation by adopting a decision or has otherwise terminated its proceedings. This includes:
  - i. providing the national competition authority promptly with all relevant information and evidence relating to the alleged secret cartel that comes into its possession or is available to it, *in particular*:
    - *the name and address of the legal entity submitting the immunity application;*

*- the names of all other undertakings that participate or participated in the alleged secret cartel;*

*- a detailed description of the alleged secret cartel, including the affected products, the affected territories, the duration, and the nature of the alleged secret cartel conduct;*

*- evidence of the alleged secret cartel accessible to the applicant;*

*- information on any past or possible future leniency applications made to any other national competition authority or to the Commission in relation to the alleged secret cartel.*

- ii. remaining at the national competition authority's disposal to answer any request that may contribute to the establishment of the facts;
  - iii. making current (and, if possible, former) employees and directors available for interviews with the national competition authority;
  - iv. not destroying, falsifying or concealing relevant information or evidence; and
  - v. not disclosing the fact of, or any of the content of, its application before the national competition authority has issued objections in the proceedings before it, unless otherwise agreed; and
- c) when contemplating making an application to the national competition authority it must not have:
- i. destroyed, falsified or concealed evidence of the alleged secret cartel; or
  - ii. disclosed the fact or any of the content of its contemplated application, except to other competition authorities.

#### *Article 19*

### **Form of leniency applications**

- I.** Member States shall ensure that applicants can apply for leniency in writing and that national competition authorities have a system in place that enables them to accept leniency statements either orally or by other means that do not result in the production of documents, information, or other materials in the applicant's possession, custody, or control. ***At the request of the applicant, the receipt of its leniency application shall be acknowledged by the national competition authorities in writing.***
- Ia.** ***Member States shall ensure that applications for leniency may be submitted in one of the respective official languages of the relevant national competition authority***



*or in one of the working languages of the Union.*

## Article 20

### **Marker for a formal application for immunity**

1. Member States shall ensure that an undertaking wishing to make an application for immunity can initially apply for a marker to national competition authorities. The marker grants the applicant a place in the queue for a period to be specified on a case-by-case basis by the national competition authority receiving the application for a marker. It allows the applicant to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

*Member States shall ensure that applications for a marker may be submitted on one of the respective official languages of the relevant national competition authority or in one of the working languages of the Union.*

2. Member States shall ensure that national competition authorities have discretion whether or not to grant a marker. *A marker may be granted only if the undertaking provides the national competition authority with all of the following information:*

*(a) the name and address of the applicant;*

*(b) the basis for the concern which resulted in the leniency application;*

*(c) the names of all other undertakings that participate or participated in the alleged secret cartel;*

*(d) the affected products and territories;*

*(e) the duration and the nature of the alleged secret cartel conduct;*

*(f) information on any past or possible future leniency applications made to any other competition authority in relation to the alleged secret cartel.*

3. Member States shall ensure that if the applicant perfects the marker within the specified period, the information and evidence provided will be deemed to have been submitted at the time the marker was granted.

- 3a. *Member States shall ensure that an undertaking wishing to make an application for a reduction of fines may initially apply for a marker to national competition authorities. In respect of such a marker, paragraphs 1 to 3 shall apply mutatis mutandis.*

### Summary applications

1. Member States shall ensure that applicants that have applied for leniency, either by applying for a *marker* or by submitting a full application, to the Commission in relation to an alleged secret cartel can file summary applications in relation to the same cartel with the national competition authorities which the applicant considers well placed to deal with the case.

***Member States shall ensure that summary applications may be filed in one of the respective official languages of the relevant national competition authority or in one other working language of the Union.***

2. Member States shall ensure that national competition authorities accept summary applications provided that they take one of the forms stipulated in Article 19, have the same product, geographic and durational scope as the leniency application filed with the Commission and include a short description of the ***information referred to in point (a) and in points (c) to (f) of Article 20(2), as well as information on the Member State where the evidence is likely to be located***, in so far as it is known to the applicant at the time of the submission .
3. Member States shall ensure that national competition authorities refrain from requesting from the applicant any information before they require the submission of a full application pursuant to paragraph 6.
4. Member States shall ensure that national competition authorities which receive a summary application provide the applicant with an acknowledgement stating the date and time of receipt. ***At the request of the applicant, the receipt of a summary application shall be acknowledged by the national competition authorities in writing.***
5. Member States shall ensure that national competition authorities which receive a summary application verify whether they already had received a previous summary or leniency application in relation to the same alleged secret cartel at the time of its receipt and, ***except where it would adversely affect the integrity of the investigation***, inform the applicant accordingly.
6. Member States shall ensure that applicants have the opportunity to submit full leniency applications, perfecting the summary applications referred to in paragraph 1, to the national competition authorities concerned, ***only*** once the Commission has informed those authorities that it does not intend to act on the case in whole or in part. ***The Commission will keep the national competition authorities concerned informed on a regular basis about the state of play and reach such a decision without undue delay.*** Member States shall ensure that national competition authorities have the power to specify a reasonable period of time within which the applicant must submit the full application together with the corresponding evidence and information.

7. Member States shall ensure that if the applicant submits the full application in accordance with paragraph 6, within the period specified by the national competition authority, the information contained therein will be deemed to have been submitted at the date and time of the summary application. If the applicant had submitted the summary application no later than 5 working days after filing the leniency application to the Commission, the summary application will be deemed to have been submitted at the date and time of the leniency application submitted to the Commission.

#### *Article 22*

### **Interplay between leniency programmes and sanctions on natural persons**

Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities are ***fully and immediately*** protected from any criminal and administrative sanctions and from sanctions imposed in non-criminal judicial proceedings for their involvement in the secret cartel covered by the application, ***including in cross-border cases, on the sole condition that*** these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the ***time when the employees and directors were made aware by the competent authorities of the Member States*** of the criminal proceedings.

## CHAPTER VII

### MUTUAL ASSISTANCE

#### *Article 23*

### **Cooperation between national competition authorities**

Member States shall ensure that when national administrative competition authorities carry out an inspection on behalf of and for the account of other national competition authorities pursuant to Article 22 of Council Regulation (EC) No 1/2003, officials and other accompanying persons authorised by the requesting national competition authority shall be permitted to attend and actively assist the requested national competition authority in the inspection by exercising the powers referred to in Articles 6 and 7.

## Article 24

### Requests for the notification of preliminary objections and decisions

1. Without prejudice to any other form of notification made by a national competition authority of the applicant Member State in accordance with the rules in force in that Member State, Member States shall ensure that at the request of the applicant authority, the requested authority shall notify to the addressee on behalf of the applicant authority preliminary objections to the alleged infringement of Articles 101 or 102 TFEU and decisions applying those Articles, as well as documents which relate to the enforcement of decisions imposing fines or periodic penalty payments.
2. The requested authority shall ensure that notification in the requested Member State is effected in accordance with the national laws, regulations and administrative practices in force in the requested Member State.

## Article 25

### Requests for the enforcement of decisions imposing fines or periodic penalty payments

1. Member States shall ensure that at the request of the applicant authority, the requested authority shall enforce decisions imposing fines or periodic penalty payments adopted in accordance with Articles 12 and 15 by the applicant authority. This shall apply only to the extent that:
  - a) the undertaking against which the fine or periodic penalty payment is enforceable does not have a legal presence in the Member State of the applicant authority; or
  - b) it is obvious that the undertaking against which the fine or periodic penalty payment can be enforced does not have sufficient assets in the Member State of the applicant authority.
2. The requested authority shall ensure that enforcement in the requested Member State is effected in accordance with the national laws, regulations and administrative practices in force in the requested Member State.
3. The applicant authority may only make a request for enforcement when the decision permitting its enforcement in the applicant Member State is final and can no longer be appealed by ordinary means, **and when it has made reasonable attempts to enforce the decisions in its own territory.**
4. Questions regarding periods of limitation shall be governed by the laws in force of the applicant Member State.
5. The requested authority shall not be obliged to enforce decisions pursuant to paragraph 1 **where it is able to demonstrate reasonable grounds to the applicant**

*authority showing how* this would be manifestly contrary to public policy in the Member State in which enforcement is sought.

#### *Article 26*

### **Disputes concerning requests for notification and for the enforcement of decisions imposing fines or penalty payments**

1. Disputes concerning the lawfulness of a measure to be notified or a decision imposing fines or periodic penalty payments in accordance with Articles 12 and 15 made by an applicant authority shall fall within the competence of the competent bodies of the applicant Member State and be governed by the national rules of that State.
2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by the requested authority shall fall within the competence of the competent bodies of the requested Member State and be governed by the rules in force of that State.

#### *Article 26a*

### *Cost sharing between national competition authorities*

*Member States shall ensure that the national administrative competition authorities requesting assistance shall, upon the request of the requested authority:*

- (a) bear all reasonable additional costs, including translation and administrative costs, in relation to action taken pursuant to Articles 23 and 24;*
- (b) allow the requested authority to recover all reasonable administrative costs from a collected fine or penalty payment in relation to action taken pursuant to Article 25.*

## CHAPTER VIII

### **LIMITATION PERIODS**

#### *Article 27*

### **Suspension of limitation periods for the imposition of penalties**

1. Member States shall ensure that limitation periods for the imposition of fines or periodic penalty payments by the national competition authorities pursuant to Articles 12 and 15 shall be suspended for the duration of proceedings before national

competition authorities of other Member States or the Commission in respect of an infringement concerning the same agreement, decision of an association or concerted practice. The suspension shall start to run from the notification of the first formal investigative measure to the undertaking subject to the proceedings. It shall end on the day the authority concerned has closed its proceedings and informed the undertaking thereof. The duration of this suspension period is without prejudice to absolute limitation periods provided for under national law.

2. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of a competition authority is the subject of proceedings pending before a review court.
- 2a. *The Commission shall ensure that the notification of the start of a formal investigative measure received from a national competition authority under Article 11(3) of Regulation 1/2003 is made available to the national competition authorities of the other Member States within the European Competition Network System.*

## CHAPTER IX

### GENERAL PROVISIONS

#### *Article 28*

#### **Role of national administrative competition authorities before national courts**

1. Member States which designate both a national administrative competition authority, which is competent to investigate infringements of Articles 101 or 102 TFEU, and a national judicial competition authority, which is competent for adopting a decision finding the infringement and/or imposing the fine, shall ensure that the action before the national judicial competition authority can be brought directly by the national administrative competition authority.
2. To the extent that national courts act in proceedings brought against enforcement decisions of national competition authorities applying Articles 101 or 102 TFEU, Member States shall ensure that the national administrative competition authority is of its own right fully entitled to participate as a prosecutor, defendant or respondent in those proceedings and to enjoy the same rights as such public parties to these proceedings.

### Limitations on the use of information

1. Information collected on the basis of the provisions referred to in this Directive should only be used for the purpose for which it was acquired. It should not be used in evidence for the imposition of sanctions on natural persons. *This paragraph is without prejudice to any obligations under national criminal law.*
  - 1a. *Member States shall ensure that national competition authorities, their officials, staff and other persons working under the supervision of those authorities, do not disclose information acquired pursuant to this Directive and of the kind covered by the obligation of professional secrecy.*
2. Member States shall ensure that access will be granted to leniency statements or settlement submissions only for the purposes of exercising the rights of defence in proceedings before a national competition authority. Member States shall ensure that information taken from such leniency statements and settlement submissions may be used by the party having obtained access to the file only where necessary for the exercise of its rights of defence in proceedings before the courts of the Member States in cases that are directly related to the case in which access has been granted, and which concern:
  - a) the allocation between cartel participants of a fine imposed jointly and severally on them by a national competition authority; or
  - b) the review of a decision by which a national competition authority has found an infringement of Article 101 TFEU or national competition law provisions.
3. Member States shall ensure that the following categories of information obtained during proceedings before a national competition authority shall not be used in proceedings before national courts until the national competition authority has closed its proceedings against all parties under investigation by adopting a decision referred to in Article 9 or Article 11 or otherwise has terminated its proceedings:
  - a) Information that was prepared by other natural or legal persons specifically for the proceedings of the national competition authority; and
  - b) Information that the national competition authority has drawn up and sent to the parties in the course of its proceedings.
4. Member States shall ensure that leniency statements will only be exchanged between national competition authorities pursuant to Article 12 of Regulation (EC) No 1/2003:
  - a) with the consent of the applicant; or
  - b) where the receiving authority has also received a leniency application relating to the same infringement from the same applicant as the transmitting authority,

provided that at the time the information is transmitted it is not open to the applicant to withdraw the information which it has submitted to that receiving authority; or

- c) where the receiving authority has provided a written commitment that neither the information transmitted to it nor any other information it may obtain following the date and time of transmission as noted by the transmitting authority will be used by it or by any other authority to which the information is subsequently transmitted to impose sanctions on the applicant, on any other legal or natural person covered by the favourable treatment offered by the transmitting authority as a result of the application made by the applicant under its leniency programme, or on any employee or former employee of any of the above mentioned persons;

and provided that the protection against disclosure granted by the receiving national competition authority is equivalent to that conferred by the transmitting national competition authority.

5. When a competition authority transmits information provided voluntarily by an applicant pursuant to Article 12 of Regulation (EC) No 1/2003 without the consent of the applicant, Member States shall ensure that receiving national competition authorities are able *meet the criteria* referred to in paragraph 4(c).
6. Paragraphs 2-5 apply regardless of the form in which leniency statements are submitted pursuant to Article 19.

#### *Article 30*

#### **Admissibility of evidence before national competition authorities**

Member States shall ensure that the types of proof admissible as evidence before a national competition authority include documents, oral statements, recordings and all other objects containing information, irrespective of the medium on which the information is stored.

#### *Article 31*

#### **■ The European Competition Network System**

1. The costs incurred by the Commission in connection with the maintenance and the development of the European Competition Network System and cooperation within the European Competition Network shall be borne by the general budget of the Union within the limit of the available appropriations.
2. ***The European Competition Network shall publish as often as necessary useful recommendations and best practices from different national competition authorities regarding independence, resources, powers, fines and mutual assistance.***



## CHAPTER X

### FINAL PROVISIONS

#### *Article 32*

##### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two year period for transposition] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 32a*

##### *Review*

*By ... [seven years after the date of adoption of the Directive], the Commission shall present a report to the European Parliament and to the Council on the transposition and implementation of this Directive, accompanied, if necessary, by an appropriate legislative proposal.*

#### *Article 33*

##### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 34*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

21.11.2017

## **OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION**

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market  
(COM(2017)0142 – C8-0119/2017 – (2017/0063(COD)))

Rapporteur: Eva Maydell

### **SHORT JUSTIFICATION**

National Competition Authorities play a decisive role in the enforcement of EU competition law (Articles 101 and 102 TFEU) alongside the European Commission and by this significantly contribute to a properly functioning, competitive, and consumer-oriented internal market. The rapporteur recognises that in order for those functions of NCAs to be maintained and strengthened, the enforcement powers created with Regulation 1/2003 need to be backed by the necessary instruments, means and procedures for all NCAs. Similar toolbox and guiding principles for all NCAs will ensure a more uniform, effective and consistent enforcement of competition rules throughout the EU. The rapporteur, therefore, recognises that the Commission proposal could bring practical benefits for countering the distortion of competition and is an important step towards developing the full potential of the EU's internal market.

The rapporteur would like to stress, that due to the lack of sufficient financial resources in some NCAs, the prioritising of proceedings and therefore the enforcement capabilities of the NCAs in question could be adversely affected. While it is not feasible to determine what is considered to be sufficient resources for all member states of the NCAs, the proposal could be strengthened by providing NCAs with greater budgetary autonomy in the implementation of their allocated budgets. Such a provision will allow NCAs to prioritise their case work, allow them to carry out multiple inspections simultaneously, and will increase their degree of independence. Therefore, the amendments proposed by the rapporteur suggest more budgetary autonomy for NCAs while observing all national budgetary rules.

The rapporteur believes that the impartiality of NCAs and their protection against political and business influence should be a key element, even more in the context of empowering

them with additional instruments, means and, in some cases, new responsibilities. Therefore, guarantees against conflicts of interests, and transparent selection and dismissal commitments by the NCAs and their management could strengthen the current proposal. Such provisions can be beneficial for raising awareness and increasing public trust in NCAs.

With regards to the level of fines applied by NCAs, the rapporteur recognises that, currently, undertakings can face very different fines for similar infringements in different Member States. This situation presents a danger to the uniform enforcement of competition law. The rapporteur welcomes the efforts in the proposal to address those challenges and believes that a common maximum limit of the fine can provide the right incentives for improvement.

The rapporteur furthermore is of the opinion that the evidence collecting powers of the NCAs could be improved by minimising some administrative procedures and by making their investigative powers better adapted to the digital realities of undertakings today. Therefore, the rapporteur suggests additions to the proposal in this context.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a directive Recital 1

##### *Text proposed by the Commission*

(1) Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are a matter of public policy and should be applied effectively throughout the Union to ensure that competition in the internal market is not distorted. Effective enforcement of Articles 101 and 102 TFEU is necessary to ensure more open competitive markets in Europe, *where companies compete more on their merits and* without *company erected* barriers to market entry, enabling *them* to generate wealth and create jobs. It protects consumers from business practices that

##### *Amendment*

(1) Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are a matter of public policy and should be applied effectively throughout the Union to ensure that competition in the internal market is not distorted. Effective enforcement of Articles 101 and 102 TFEU is necessary to ensure more open *and* competitive markets in Europe, without barriers to market entry, enabling *companies to compete on their merits and* to generate wealth and create jobs. It protects consumers from business practices that keep the prices of goods and services

keep the prices of goods and services artificially high and enhances their choice of innovative goods and services.

artificially high and enhances their choice of innovative goods and services.

### *Justification*

*The rapporteur's intention is to make the text clearer and more concise.*

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 5**

##### *Text proposed by the Commission*

(5) National law prevents many NCAs from having the necessary guarantees of independence and enforcement and fining powers to be able to ***enforce these rules effectively. This undermines their ability to*** effectively apply Articles 101 and 102 TFEU and national competition law provisions in parallel ***to Articles 101 and 102 TFEU as appropriate.*** For example, under national law many NCAs do not have effective tools to find evidence of infringements of Articles 101 and 102 TFEU, to fine companies which break the law or do not have the resources they need to effectively apply Articles 101 and 102 TFEU. This can prevent them from taking action at all or results in them limiting their enforcement action. The lack of operational tools and guarantees of many NCAs to effectively apply Articles 101 and 102 TFEU means that undertakings engaging in anti-competitive practices can face very different outcomes of proceedings depending on the Member States in which they are active: they may be subject to no enforcement at all under Articles 101 or 102 TFEU or to ineffective enforcement. For example, in some Member States, undertakings can escape liability for fines simply by restructuring. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles

##### *Amendment*

(5) National law prevents many NCAs from having the necessary guarantees of independence and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU and national competition law provisions in parallel. For example, under national law many NCAs do not have effective tools to find evidence of infringements of Articles 101 and 102 TFEU, to fine companies which break the law or do not have the resources they need to effectively apply Articles 101 and 102 TFEU. This can prevent them from taking action at all or results in them limiting their enforcement action. The lack of operational tools and guarantees of many NCAs to effectively apply Articles 101 and 102 TFEU means that undertakings engaging in anti-competitive practices can face very different outcomes of proceedings depending on the Member States in which they are active ***or established:*** they may be subject to no enforcement at all under Articles 101 or 102 TFEU or to ineffective enforcement. For example, in some Member States, undertakings can escape liability for fines simply by restructuring. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU results in missed opportunities to remove barriers to market entry and to

101 and 102 TFEU results in missed opportunities to remove barriers to market entry and to create more open competitive markets throughout the European Union where undertakings compete on their merits. Undertakings and consumers particularly suffer in those Member States where NCAs are less-equipped to be effective enforcers. Undertakings cannot compete on their merits where there are safe havens for anti-competitive practices, for example, because evidence of anti-competitive practices cannot be collected or because undertakings can escape liability for fines. They therefore have a disincentive to enter such markets and to exercise their rights of establishment and to provide goods and services there. Consumers based in Member States where there is less enforcement miss out on the benefits of effective competition enforcement. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU throughout Europe thus distorts competition in the internal market and undermines its proper functioning.

create more open competitive markets throughout the European Union where undertakings compete on their merits. Undertakings and consumers particularly suffer in those Member States where NCAs are less-equipped to be effective enforcers. Undertakings cannot compete on their merits where there are safe havens for anti-competitive practices, for example, because evidence of anti-competitive practices cannot be collected or because undertakings can escape liability for fines. They therefore have a disincentive to enter such markets and to exercise their rights of establishment and to provide goods and services there. Consumers based in Member States where there is less enforcement miss out on the benefits of effective competition enforcement. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU throughout Europe thus distorts competition in the internal market and undermines its proper functioning.

### *Justification*

*The rapporteur's intention is to make the text clearer and more concise. Undertakings can be active in more than one EU Member State, however the different outcome of proceedings can depend also on their place of establishment, i.e. the relevant NCA which handles the case.*

### **Amendment 3**

#### **Proposal for a directive**

#### **Recital 6**

##### *Text proposed by the Commission*

(6) Gaps and limitations in NCAs' tools and guarantees undermine the system of parallel powers for the enforcement of Articles 101 and 102 TFEU which is designed to work as a cohesive whole based on close cooperation within the

##### *Amendment*

(6) Gaps and limitations in NCAs' tools and guarantees undermine the system of parallel powers for the enforcement of Articles 101 and 102 TFEU which is designed to work as a cohesive whole based on close cooperation within the

European Competition Network. This system depends on authorities being able to rely on each other to carry out fact-finding measures *on* each other's *behalf*. However it does not work well when there are still NCAs that do not have adequate fact-finding tools. In other key respects, NCAs are not able to provide each other with mutual assistance. For example, in the majority of Member States, undertakings operating cross-border are able to evade paying fines simply by not having a legal presence in some of the territories of Member States in which they are active. This reduces incentives to comply with Articles 101 and 102 TFEU. The resulting ineffective enforcement distorts competition for law-abiding undertakings and undermines consumer confidence in the internal market, particularly in the digital environment.

European Competition Network. This system depends on authorities being able to rely on each other to carry out fact-finding measures *at* each other's *request*. However it does not work well when there are still NCAs that do not have adequate fact-finding tools. In other key respects, NCAs are not able to provide each other with mutual assistance. For example, in the majority of Member States, undertakings operating cross-border are able to evade paying fines simply by not having a legal presence in some of the territories of Member States in which they are active. This reduces incentives to comply with Articles 101 and 102 TFEU. The resulting ineffective enforcement distorts competition for law-abiding undertakings and undermines consumer confidence in the internal market, particularly in the digital environment.

#### *Justification*

*The rapporteur's intention is to keep the text consistent with the definitions: "applicant authority" and "requested authority". An NCA of one Member State can carry out fact-finding at the request of an NCA from another Member State.*

#### **Amendment 4**

##### **Proposal for a directive**

##### **Recital 9**

###### *Text proposed by the Commission*

(9) Putting in place minimum guarantees to ensure that NCAs apply Articles 101 and 102 TFEU effectively is without prejudice to the ability of Member States to maintain or introduce more extensive guarantees of independence and resources for NCAs and more detailed rules on the enforcement and fining powers of these authorities. In particular, Member States may endow NCAs with additional powers beyond the core set provided for in this Directive to further enhance their

###### *Amendment*

(9) Putting in place minimum guarantees to ensure that NCAs apply Articles 101 and 102 TFEU ***uniformly and*** effectively is without prejudice to the ability of Member States to maintain or introduce more extensive guarantees of independence and resources for NCAs and more detailed rules on the enforcement and fining powers of these authorities. In particular, Member States may endow NCAs with additional powers beyond the core set provided for in this Directive to

effectiveness.

further enhance their effectiveness.

## Amendment 5

### Proposal for a directive

#### Recital 10

##### *Text proposed by the Commission*

(10) Conversely, detailed rules are necessary in the area of conditions for granting leniency for *secret* cartels. Companies will only come clean about *secret* cartels in which they have participated if they have sufficient legal certainty about whether they will benefit from immunity from fines. The marked differences between the leniency programmes applicable in the Member States lead to legal uncertainty for potential leniency applicants, which may weaken their incentives to apply for leniency. If Member States could implement or apply either less or more restrictive rules for leniency in the area covered by this Directive, this would not only go counter to the objective of maintaining incentives for applicants in order to render competition enforcement in the Union as effective as possible, but would also risk jeopardising the level playing field for undertakings operating in the internal market. This does not prevent Member States from applying leniency programmes that do not only cover *secret* cartels, but also other infringements of Articles 101 and 102 TFEU and equivalent national provisions.

##### *Amendment*

(10) Conversely, detailed rules are necessary in the area of conditions for granting leniency for *disclosing* cartels. Companies will only come clean about cartels in which they have participated if they have sufficient legal certainty about whether they will benefit from immunity from fines. The marked differences between the leniency programmes applicable in the Member States lead to legal uncertainty for potential leniency applicants, which may weaken their incentives to apply for leniency. If Member States could implement or apply either less or more restrictive rules for leniency in the area covered by this Directive, this would not only go counter to the objective of maintaining incentives for applicants in order to render competition enforcement in the Union as effective as possible, but would also risk jeopardising the level playing field for undertakings operating in the internal market. This does not prevent Member States from applying leniency programmes that do not only cover cartels, but also other infringements of Articles 101 and 102 TFEU and equivalent national provisions.

##### *Justification*

*Leniency is in practice granted to the first participant in the cartel who discloses information about the cartel, rather than the whole cartel. Cartels are secret by their nature, and therefore “secret cartel” is a redundancy throughout the text. Deleting “secret” will bring the text in line with the terminology used in Directive 2014/104. See further AM 10.*



## Amendment 6

### Proposal for a directive Recital 14

#### *Text proposed by the Commission*

(14) The independence of NCAs should be strengthened in order to ensure the effective and uniform application of Articles 101 and 102 TFEU. To this end, express provision should be made in national law to ensure that when applying Articles 101 and 102 TFEU NCAs are protected against external intervention or political pressure liable to jeopardise their independent assessment of matters coming before them. For that purpose, rules should be laid down in advance regarding the grounds for the dismissal of the members of the decision-making body of the NCAs in order to remove any reasonable doubt as to the impartiality of that body and its imperviousness to external factors.

#### *Amendment*

(14) The independence of NCAs should be strengthened in order to ensure the effective and uniform application of Articles 101 and 102 TFEU. To this end, express provision should be made in national law to ensure that when applying Articles 101 and 102 TFEU NCAs are protected against external intervention or political pressure liable to jeopardise their independent assessment of matters coming before them. For that purpose, ***clear and transparent rules and procedures for the appointment, and grounds for the dismissal, of the members of the decision-making body of NCAs should be laid down in advance*** in order to remove any reasonable doubt as to the impartiality of that body and its imperviousness to external factors.

#### *Justification*

*The rapporteur's reasoning is that as the proposal will increase powers and competences for some NCAs, this should be paralleled by increasing their independence and expertise when it comes to the staff of the NCAs. Merit-based and transparent appointments and objective dismissals are likely to promote decision-making independence and to raise public trust in NCAs.*

## Amendment 7

### Proposal for a directive Recital 15

#### *Text proposed by the Commission*

(15) To ensure the independence of NCAs, their staff ***and*** members of the decision-making body should act with integrity and refrain from any action which is incompatible with the performance of their duties. The need to prevent the

#### *Amendment*

(15) To ensure the independence of NCAs, their staff, members of the decision-making body ***and management*** should act with integrity and refrain from any action which is incompatible with the performance of their duties. The need to

independent assessment of staff or members of the decision-making body being jeopardised entails that during their employment and term of office and for a reasonable period thereafter, they should refrain from any *incompatible* occupation, whether gainful or not. Furthermore, this also entails that during their employment and their term of office, they should not have an interest in any businesses or organisations which have dealings with a NCA to the extent that this has the potential to compromise their independence. The staff *and the* members of the decision-making body should declare any interest or asset which might create a conflict of interests in the performance of their duties. They should be required to inform the decision-making body, the other members thereof or, in the case of NCAs in which the decision-making power rests with only one person, their appointing authority, if, in the performance of their duties, they are called upon to decide on a matter in which they have an interest which might impair their impartiality.

prevent the independent assessment of staff, members of the decision-making body *and management of NCAs* being jeopardised entails that during their employment and term of office and for a reasonable period thereafter, they should refrain from any occupation *which could give rise to a conflict of interest or be otherwise incompatible*, whether gainful or not. Furthermore, this also entails that during their employment and their term of office, they should not have an interest in any businesses or organisations which have dealings with a NCA to the extent that this has the potential to compromise their independence. The staff, members of the decision-making body *and management of NCAs* should declare any interest or asset which might create a conflict of interests in the performance of their duties. *To that end, the staff, members of the decision-making body and management of NCAs should make an annual declaration of commitment and declaration of interests, indicating direct or indirect interests that might be considered prejudicial to their independence and might influence their performance.* They should be required to inform the decision-making body, the other members thereof or, in the case of NCAs in which the decision-making power rests with only one person, their appointing authority, if, in the performance of their duties, they are called upon to decide on a matter in which they have an interest which might impair their impartiality.

## Amendment 8

### Proposal for a directive Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

***(18a) The independence of NCAs will be enhanced if they are able to administer***

*independently the budgets allocated to them. Such freedom of management of the allocated budgets should be implemented in the framework of national budgetary rules and procedures.*

## Amendment 9

### Proposal for a directive

#### Recital 21

*Text proposed by the Commission*

(21) The investigative powers of national administrative competition authorities need to be adequate to meet the enforcement challenges of the digital environment and should enable national competition authorities to obtain all information in digital form, including data obtained forensically, related to the undertaking or association of undertakings which is subject to the investigative measure, irrespective of the medium on which it is stored, such as on laptops, mobile phones *and* other mobile devices.

*Amendment*

(21) The investigative powers of national administrative competition authorities need to be adequate to meet the enforcement challenges of the digital environment and should enable national competition authorities to obtain all information in digital form, including data obtained forensically, related to the undertaking or association of undertakings which is subject to the investigative measure, irrespective of the medium on which it is stored, such as on laptops, mobile phones, other mobile devices *and cloud storage*.

## Amendment 10

### Proposal for a directive

#### Article 2 – paragraph 1 – point 9

*Text proposed by the Commission*

(9) ‘*secret* cartel’ means an agreement *and/or* concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market *and/or* influencing the relevant parameters of competition through practices such as the fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets including bid-rigging, restrictions of imports or exports *and/or* anti-

*Amendment*

(9) ‘cartel’ means an agreement *or* concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market *or* influencing the relevant parameters of competition through practices such as, *but not limited to*, the fixing *or coordination* of purchase or selling prices or other trading conditions, *including in relation to intellectual property rights*, the allocation of production or sales quotas, the sharing

competitive actions against other competitors, ***which is not, partially or fully, known except to the participants;***

of markets ***and customers***, including bid-rigging, restrictions of imports or exports ***or*** anti-competitive actions against other competitors;

*(The change made to the defined term would need to be made throughout the text.)*

## **Amendment 11**

### **Proposal for a directive Article 3 – paragraph 1**

#### *Text proposed by the Commission*

The exercise of the powers referred to in this Directive by national competition authorities shall be subject to appropriate safeguards, including respect of undertakings' rights of defence and the right to an effective remedy before a tribunal, in accordance with general principles of Union law and the Charter of Fundamental Rights of the European Union.

#### *Amendment*

The exercise of the powers referred to in this Directive by national competition authorities shall be subject to appropriate safeguards, including respect of undertakings' rights of defence, ***the right to good administration, the right to a fair trial*** and the right to an effective remedy before a tribunal, in accordance with general principles of Union law and the Charter of Fundamental Rights of the European Union.

## **Amendment 12**

### **Proposal for a directive Article 4 – paragraph 2 – point a**

#### *Text proposed by the Commission*

a) The staff and the members of the decision-making body of national administrative competition authorities can perform their duties and exercise their powers for the application of Articles 101 and 102 TFEU independently from political and other external influence;

#### *Amendment*

a) The ***director, the*** staff and the members of the decision-making body of national administrative competition authorities can perform their duties and exercise their powers for the application of Articles 101 and 102 TFEU independently from political and other external influence;

## Amendment 13

### Proposal for a directive

#### Article 4 – paragraph 2 – point b

*Text proposed by the Commission*

b) The staff and the members of the decision-making body of national administrative competition authorities neither seek nor take any instructions from any government or other public or private entity when carrying out their duties and exercising their powers for the application of Articles 101 and 102 TFEU;

*Amendment*

b) The **director, the** staff and the members of the decision-making body of national administrative competition authorities neither seek nor take any instructions from any government or other public or private entity when carrying out their duties and exercising their powers for the application of Articles 101 and 102 TFEU;

## Amendment 14

### Proposal for a directive

#### Article 4 – paragraph 2 – point c

*Text proposed by the Commission*

c) The staff **and** the members of the decision-making body of national administrative competition authorities refrain from any action which is incompatible with the performance of their duties and exercise of their powers for the application of Articles 101 and 102 TFEU;

*Amendment*

c) The **director, the** staff, the members of the decision-making body **and the management** of national administrative competition authorities refrain from any action which is incompatible with the performance of their duties and exercise of their powers for the application of Articles 101 and 102 TFEU. ***In particular, that obligation entails that during their employment and their term of office, they do not have an interest in any businesses or organisations that have dealings with a national administrative competition authority to the extent that such interest has the potential to compromise their independence;***

*Justification*

*The rapporteur's intention is to strengthen the impartiality of NCA staff and members.*

## Amendment 15

### Proposal for a directive

#### Article 4 – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

*ca) The staff, the members of the decision-making body and the management of national administrative competition authorities declare any interest or asset that might create a conflict of interest in the performance of their duties. To that end, the staff, the members of the decision-making body and the management of national administrative competition authorities shall make an annual declaration of commitment and declaration of interests, indicating direct or indirect interests that might be considered prejudicial to their independence and might influence their performance;*

*Justification*

*The intention of the rapporteur is to strengthen the independence of the NCAs from political or business influence. Similar provisions already exist in sector regulations, such as for regulatory bodies in the railway sector (Directive 2012/34, Article 55).*

## Amendment 16

### Proposal for a directive

#### Article 4 – paragraph 2 – point d

*Text proposed by the Commission*

*Amendment*

d) The members of the decision-making body of national administrative competition authorities may be dismissed only if they no longer fulfil the conditions required for the performance of their duties or have been guilty of serious misconduct under national law. The grounds for dismissal should be laid down in advance in national law. They shall not be dismissed for reasons related to the proper

d) The **director and the** members of the decision-making body of national administrative competition authorities may be dismissed only if they no longer fulfil the conditions required for the performance of their duties or have been **found** guilty of serious misconduct under national law. The grounds for dismissal should be laid down in advance in national law. They shall not be dismissed for reasons related to the

performance of their duties and exercise of their powers in the application of Articles 101 and 102 TFEU as defined in Article 5(2);

proper performance of their duties and exercise of their powers in the application of Articles 101 and 102 TFEU as defined in Article 5(2) *of this Directive*;

## **Amendment 17**

### **Proposal for a directive Article 4 – paragraph 2 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*ea) The members of the decision-making body of national administrative competition authorities are selected and appointed according to clear and transparent rules and procedures laid down in advance.*

*Justification*

*The intention of the rapporteur is to strengthen the independence of the NCAs from political or business influence. Similar provisions already exist in sector regulations, such as for regulatory bodies in the railway sector (Directive 2012/34, Article 55).*

## **Amendment 18**

### **Proposal for a directive Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that national competition authorities have the human, financial and technical resources that are necessary for the effective performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as defined in paragraph 2.

1. Member States shall ensure that national competition authorities have the human, financial and technical resources that are necessary for the effective **and independent** performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as defined in paragraph 2.

## **Amendment 19**

### **Proposal for a directive Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall ensure that national competition authorities have separate budget allocations and, while respecting national budgetary rules, are able to manage allocated budgets independently for the purpose of prioritising investigations in specific cases.***

*Justification*

*Giving to the NCAs the right to autonomously distribute their financial resources between different cases will allow for flexibility and independence in choosing which cases deserve more attention. For some NCAs, this could be a substantial improvement in terms of independence.*

## **Amendment 20**

### **Proposal for a directive Article 6 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

b) to examine the books and other records related to the business irrespective of the medium on which they are stored, including the right to access information which is accessible to the entity subject to the inspection;

b) to examine the books and other records related to the business irrespective of the medium on which they are stored, ***such as on laptops, mobile devices and cloud storage***, including the right to access information which is accessible to the entity subject to the inspection;

*Justification*

*The intention of the rapporteur is to make the proposal fit for the digital age, and to enable NCAs to have better access to relevant media. Information about cartels is rarely documented in writing, but is rather found in electronic correspondence.*

## **Amendment 21**

### **Proposal for a directive Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that national

Member States shall ensure that national



administrative competition authorities may **by decision** require undertakings and associations of undertakings to provide all necessary information for the application of Articles 101 and 102 TFEU within a specified time limit. This obligation shall cover information which is accessible to the undertaking and association of undertakings.

administrative competition authorities may require undertakings and associations of undertakings to provide all necessary information for the application of Articles 101 and 102 TFEU within a specified time limit. This obligation shall cover information which is accessible to the undertaking and association of undertakings.

*Justification*

*The intention of the rapporteur is to facilitate NCAs in the request for information, provide them with more flexibility and speed up proceedings.*

**Amendment 22**

**Proposal for a directive  
Article 12 – paragraph 2 – point d**

*Text proposed by the Commission*

d) they supply incorrect, incomplete or misleading information in response to a request **made by a decision** referred to **by** Article 8 or do not supply information within the specified time-limit;

*Amendment*

d) they supply incorrect, incomplete or misleading information in response to a request referred to **in** Article 8 or do not supply information within the specified time-limit;

*Justification*

*The intention of the rapporteur is to facilitate NCAs in the request for information, provide them with more flexibility and speed up proceedings.*

**Amendment 23**

**Proposal for a directive  
Article 14 - paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that **the maximum amount of the fine** a national competition authority may impose on each undertaking or association of undertakings participating in an infringement of Articles 101 or 102 TFEU **should not be set at a**

*Amendment*

1. Member States shall ensure that a national competition authority may impose on each undertaking or association of undertakings participating in an infringement of Articles 101 or 102 TFEU **a maximum fine of not less than** 10% of

**level below** 10% of its total worldwide turnover in the business year preceding the decision.

its total worldwide turnover in the business year preceding the decision.

#### *Justification*

*Measures setting out maximum minimum penalties are common in EU legislation relating to Justice and Home Affairs. This wording mirrors that of Article 5 of Council Framework Decision of 13 June 2002 on the fight against terrorism.*

### **Amendment 24**

#### **Proposal for a directive Article 14 - paragraph 2**

##### *Text proposed by the Commission*

2. Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall not be **set at a level below** 10 % of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association. However, the financial liability of each undertaking in respect of the payment of the fine shall not exceed the maximum amount set in accordance with paragraph 1.

##### *Amendment*

2. Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall not be **less than** 10 % of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association. However, the financial liability of each undertaking in respect of the payment of the fine shall not exceed the maximum amount set in accordance with paragraph 1.

#### *Justification*

*Measures setting out maximum minimum penalties are common in EU legislation relating to Justice and Home Affairs. This wording mirrors that of Article 5 of Council Framework Decision of 13 June 2002 on the fight against terrorism.*

### **Amendment 25**

#### **Proposal for a directive Article 19 – paragraph 1**

##### *Text proposed by the Commission*

Member States shall ensure that applicants can apply for leniency in writing and that national competition authorities have a system in place that enables them to accept

##### *Amendment*

Member States shall ensure that applicants can apply for leniency in writing and that national competition authorities have a system in place that enables them to accept

leniency statements either orally or by other means that do not result in the production of documents, information, or other materials in the applicant's possession, custody, or control.

leniency statements either orally or by other means that do not result in the production of documents, information, or other materials in the applicant's possession, custody, or control. ***Member States shall allow national competition authorities to accept full leniency applications and summary applications in another official language of the Union, in addition to the official language or languages of the Member State of the national competition authority.***

#### *Justification*

*The intention of the rapporteur is to give an additional incentive to undertakings to apply for leniency by reducing costs for translating leniency applications, where possible.*

### **Amendment 26**

#### **Proposal for a directive Article 21 – paragraph 1**

##### *Text proposed by the Commission*

1. Member States shall ensure that applicants that have applied for leniency, either by applying for a ***market*** or by submitting a full application, to the Commission in relation to an alleged ***secret*** cartel can file summary applications in relation to the same cartel with the national competition authorities which the applicant considers well placed to deal with the case.

##### *Amendment*

1. Member States shall ensure that applicants that have applied for leniency, either by applying for a ***marker*** or by submitting a full application, to the Commission in relation to an alleged cartel can file summary applications in relation to the same cartel with the national competition authorities which the applicant considers well placed to deal with the case.

### **Amendment 27**

#### **Proposal for a directive Article 22 – paragraph 1**

##### *Text proposed by the Commission*

Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities are protected from any criminal and administrative sanctions and from sanctions imposed in non-

##### *Amendment*

Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities are protected from any criminal and administrative sanctions and from sanctions imposed in non-

criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the *start* of the criminal proceedings.

criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the *time when the employees and directors were made aware by the competent authorities of the Member States* of the criminal proceedings.

#### *Justification*

*If the leniency provision in the Directive is too broad it may remove the deterrent effect of sanctions.*

### **Amendment 28**

#### **Proposal for a directive Article 25 - paragraph 5**

##### *Text proposed by the Commission*

5. The requested authority shall ***not be obliged to*** enforce decisions pursuant to paragraph 1 ***if*** this would be manifestly contrary to public policy in the Member State in which enforcement is sought.

##### *Amendment*

5. The requested authority shall enforce decisions pursuant to paragraph 1 ***unless it is able to demonstrate reasonable grounds to the applicant authority showing how*** this would be manifestly contrary to public policy in the Member State in which enforcement is sought.

### **Amendment 29**

#### **Proposal for a directive Article 26 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

##### ***Article 26a***

##### ***Cost-sharing between national competition authorities***

***Member States shall ensure that, upon the request of the requested authority, the***

*applicant authority shall:*

*(a) in relation to action taken pursuant to Articles 23 and 24, bear all reasonable additional costs, including translation and administrative costs;*

*(b) in relation to action taken pursuant to Article 25, allow the requested authority to recover all reasonable administrative costs from a collected fine or penalty payment.*

## **Amendment 30**

### **Proposal for a directive Article 27 - paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. The Commission shall ensure that the notification of the commencement of the first formal investigative measure received from a national competition authority pursuant to Article 11(3) of Regulation (EC) No 1/2003 is made available to the national competition authorities of the other Member States within the European Competition Network System.*

## **Amendment 31**

### **Proposal for a directive Article 29 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Information collected on the basis of the provisions referred to in this Directive should only be used for the purpose for which it was acquired. It should not be used in evidence for the imposition of sanctions on natural persons.

1. Information collected on the basis of the provisions referred to in this Directive should only be used for the purpose for which it was acquired. It should not be used in evidence for the imposition of sanctions on natural persons.  
*Where the criminal liability of an individual is concerned, the competition*

*authority may transmit data from the case  
file to the court or the prosecutor's office.*

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market		
<b>References</b>	COM(2017)0142 – C8-0119/2017 – 2017/0063(COD)		
<b>Committee responsible</b> Date announced in plenary	ECON 26.4.2017		
<b>Opinion by</b> Date announced in plenary	IMCO 26.4.2017		
<b>Rapporteur</b> Date appointed	Eva Maydell 25.4.2017		
<b>Discussed in committee</b>	4.9.2017	11.10.2017	20.11.2017
<b>Date adopted</b>	21.11.2017		
<b>Result of final vote</b>	+: -: 0:	34 0 1	
<b>Members present for the final vote</b>	Pascal Arimont, Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Lara Comi, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Maria Grapini, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Philippe Juvin, Antonio López-Istúriz White, Eva Maydell, Marlene Mizzi, Nosheena Mobarik, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Richard Sulík, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Mihai Țurcanu, Anneleen Van Bossuyt, Marco Zullo		
<b>Substitutes present for the final vote</b>	Kaja Kallas, Arndt Kohn		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Heidi Hautala, Jaromír Štětina		

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

34	+
ALDE	Dita Charanzová, Kaja Kallas, Jasenko Selimovic
ECR	Daniel Dalton, Nosheena Mobarik, Richard Sulík, Anneleen Van Bossuyt
ENF	Mylène Troszczynski
GUE/NGL	Dennis de Jong
PPE	Pascal Arimont, Carlos Coelho, Lara Comi, Anna Maria Corazza Bildt, Philippe Juvin, Antonio López-Istúriz White, Eva Maydell, Andreas Schwab, Ivan Štefanec, Jaromír Štětina, Róza Gräfin von Thun und Hohenstein, Mihai Țurcanu
S&D	Sergio Gaetano Cofferati, Nicola Danti, Maria Grapini, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Arndt Kohn, Marlene Mizzi, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler
Verts/ALE	Heidi Hautala, Igor Šoltés

0	-

1	0
EFDD	Marco Zullo

Key to symbols:

+ : in favour

- : against

0 : abstention



## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market		
<b>References</b>	COM(2017)0142 – C8-0119/2017 – 2017/0063(COD)		
<b>Date submitted to Parliament</b>	23.3.2017		
<b>Committee responsible</b> Date announced in plenary	ECON 26.4.2017		
<b>Committees asked for opinions</b> Date announced in plenary	ITRE 26.4.2017	IMCO 26.4.2017	JURI 26.4.2017
<b>Not delivering opinions</b> Date of decision	ITRE 25.4.2017	JURI 12.4.2017	
<b>Rapporteurs</b> Date appointed	Andreas Schwab 21.3.2017		
<b>Discussed in committee</b>	11.7.2017	9.10.2017	21.11.2017
<b>Date adopted</b>	27.2.2018		
<b>Result of final vote</b>	+ : 48 - : 5 0 : 1		
<b>Members present for the final vote</b>	Burkhard Balz, Hugues Bayet, Pervenche Berès, Udo Bullmann, David Coburn, Esther de Lange, Markus Ferber, Jonás Fernández, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Cătălin Sorin Ivan, Petr Ježek, Wolf Klinz, Georgios Kyrtos, Philippe Lamberts, Werner Langen, Bernd Lucke, Olle Ludvigsson, Gabriel Mato, Costas Mavrides, Bernard Monot, Caroline Nagtegaal, Luděk Niedermayer, Stanisław Ożóg, Dimitrios Papadimoulis, Dariusz Rosati, Pirkko Ruohonen-Lerner, Anne Sander, Alfred Sant, Molly Scott Cato, Pedro Silva Pereira, Theodor Dumitru Stolojan, Kay Swinburne, Tibor Szanyi, Ramon Tremosa i Balcells, Ernest Urtasun, Marco Valli, Tom Vandenkendelaere, Jakob von Weizsäcker		
<b>Substitutes present for the final vote</b>	Enrique Calvet Chambon, Jan Keller, Verónica Lope Fontagné, Paloma López Bermejo, Thomas Mann, Michel Reimon, Andreas Schwab, Romana Tomc, Miguel Urbán Crespo, Roberts Zīle		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Zbigniew Kuźmiuk, Edouard Martin		
<b>Date tabled</b>	6.3.2018		

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

<b>48</b>	<b>+</b>
ALDE	Enrique Calvet Chambon, Petr Ježek, Wolf Klinz, Caroline Nagtegaal, Ramon Tremosa i Balcells
ECR	Zbigniew Kuźmiuk, Bernd Lucke, Stanisław Ożóg, Pirkko Ruohonen-Lerner, Kay Swinburne, Roberts Zīle
PPE	Burkhard Balz, Markus Ferber, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Georgios Kyrtos, Werner Langen, Verónica Lope Fontagné, Thomas Mann, Gabriel Mato, Luděk Niedermayer, Dariusz Rosati, Anne Sander, Andreas Schwab, Theodor Dumitru Stolojan, Romana Tomc, Tom Vandenkendelaere, Esther de Lange
S&D	Hugues Bayet, Pervenche Berès, Udo Bullmann, Jonás Fernández, Neena Gill, Roberto Gualtieri, Cătălin Sorin Ivan, Jan Keller, Olle Ludvigsson, Edouard Martin, Costas Mavrides, Alfred Sant, Pedro Silva Pereira, Tibor Szanyi, Jakob von Weizsäcker
Verts/ALE	Philippe Lamberts, Michel Reimon, Molly Scott Cato, Ernest Urtasun

<b>5</b>	<b>-</b>
EFDD	David Coburn
ENF	Bernard Monot
GUE/ NGL	Paloma López Bermejo, Dimitrios Papadimoulis, Miguel Urbán Crespo

<b>1</b>	<b>0</b>
EFDD	Marco Valli

Key to symbols:

+ : in favour

- : against

0 : abstention