



**2017/0063(COD)**

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

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

*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 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

*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, 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 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

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 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.

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 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.

##### *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 *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 effectiveness.

*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 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

*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

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.

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 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.

##### *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 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*

*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 **and** other mobile devices.

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

*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 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

*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

application of Articles 101 and 102 TFEU;

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*

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);

##### *Amendment*

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 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*

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.

*Amendment*

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

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

the inspection;

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*

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.

##### *Amendment*

Member States shall ensure that national 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 level below*** 10% of its total worldwide turnover in the business year preceding the decision.

#### *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 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

#### *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.

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 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.

*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. ***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

*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 *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.

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-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.

#### *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 *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

#### *Amendment*

5. The requested authority shall enforce decisions pursuant to paragraph 1 ***unless it is able to demonstrate reasonable grounds to the applicant authority***

State in which enforcement is sought.

*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***

**Amendment 31**

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

*Text proposed by the Commission*

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.

*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.  
***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 Šoltés, 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 Šoltes

0	-

1	0
EFDD	Marco Zullo

**Key to symbols:**

+ : in favour

- : against

0 : abstention