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To:	Permanent Representatives Committee
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Subject:	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 - **Analysis of the final compromise text with a view to agreement**

I. INTRODUCTION

1. On 23 March 2017, the Commission submitted a 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 ("ECN Plus"), containing new rules to enable Member States' competition authorities to be more effective enforcers of EU antitrust rules.

The proposal provides the national competition authorities with common instruments and effective enforcement powers, making sure that they will (a) act independently when enforcing EU antitrust rules and work in a fully impartial manner, without taking instructions that would put at risk their impartiality; (b) have the necessary financial and human resources to do their work; (c) have all the powers needed to gather all relevant evidence; (d) have adequate tools to impose proportionate and deterrent sanctions for breaches of EU antitrust rules; (e) have coordinated leniency programmes which encourage companies to come forward with evidence of illegal cartels; and (f) have the tools necessary for cooperation and mutual assistance.

The proposal underlines the importance of companies' fundamental rights and requires authorities to respect appropriate safeguards for the exercise of their powers, in accordance with the EU Charter of Fundamental Rights.

II. STATE OF PLAY

2. The Working Party on Competition examined the proposal at eighteen occasions during the Maltese, Estonian and Bulgarian Presidencies. The Presidency was granted a negotiating mandate by this Committee on 28 March 2018 on the basis of the Annex to doc. 7348/18.

3. The European Parliament's confirmed the ECON report (A8-0057/2018) in Plenary on 13 March 2018. The Rapporteur Mr SCHWAB (EPP/DE) has been granted a mandate to start negotiations with the Council on this basis.

4. The first trilogue took place on 17 April 2018. The second trilogue took place on the 14 May 2018.

5. An agreement *ad referendum* between the co-legislators was reached at the third trilogue on 30 May 2018. This Committee was informed on 1 June 2018. The Working Party on Competition (Attachés) was also debriefed more in details on 1 June 2018. The full compromise text was circulated to delegations on 5 June. Delegations were to react by 12 June, should they find any technical or drafting point to raise. The Presidency received only linguistic coments that will be taken into account during the legal-linguistic revision phase.

6. The compromise text agreed with the European Parliament is presented in the Annex to this Note. It represents an overall balanced compromise package with a view to a rapid agreement on this important file. It is supported by the Commission.

III. CONCLUSION

The Permanent Representatives Committee is invited to give its approval to the compromise text set out in the Annex to this Note and to mandate the Presidency to inform the European Parliament that, should Parliament adopt the text of the proposal in the exact form as set out in the Annex - subject to legal-linguistic revision - at a forthcoming plenary meeting, the Council would adopt the proposed Directive thus amended.

PE-CONS No/YY – 2017/0063 (COD)

DIRECTIVE (EU) 2018/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

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[1]

Acting in accordance with the ordinary legislative procedure,

[1] OJ C …, …, p. ….

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[2]. The NCAs and the Commission form together a network of public authorities applying the EU competition rules in close cooperation (the European Competition Network).

[2] 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).

(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 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 applied in parallel by NCAs. ***Furthermore, the application by the NCAs of national competition law to agreements or concerted practices which may affect trade between Member States cannot lead to a different outcome to the one reached by the NCA under Union law pursuant to Article 3(2) of Regulation (EC) No 1/2003. This means that in such cases of parallel application of national competition law and Union law, it is essential that the necessary guarantees of independence and enforcement and fining powers provided under this Directive are the same to ensure that a different outcome is not reached.***

(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 national competition law 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 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 [redacted] 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 operational independence*** 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 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 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 ***fundamental*** guarantees of independence and ***adequate financial, human, technical and technological*** resources and ***minimum*** enforcement and fining powers when applying Articles 101 and 102 TFEU and national competition law ▌in parallel to Articles 101 and 102 TFEU so that ***national administrative competition authorities*** 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 ▌ 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 ***fundamental*** 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 ***national administrative competition authorities*** and more detailed rules on the enforcement and fining powers of ***NCAs***. In particular, Member States may endow NCAs with additional powers beyond the core set provided for in this Directive to further enhance their effectiveness***, such as powers to impose fines on natural persons or by way of exception the power to carry out inspections with the consent of those subject to inspection***.

(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 ***clearer and harmonised*** rules for leniency in the area covered by this Directive, this would not only ***contribute*** 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 Article 101 TFEU and equivalent provisions ***of national competition law, or from accepting leniency applications from natural persons in their own name. This Directive is also without prejudice to leniency programmes that provide exclusively for immunity from sanctions in criminal judicial proceedings for the enforcement of Article 101 TFEU***.

(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. ***It also does not apply to national laws that provide for the imposition of administrative sanctions on natural persons that do not operate as an independent economic actor on a market.***

(12) Pursuant to Article 35 of Regulation (EC) No 1/2003 Member States can entrust the enforcement of Articles 101 and 102 TFEU exclusively to an administrative competition authority, as is the case in most jurisdictions, or they can entrust this to both judicial and administrative authorities. In such cases, the administrative authority is at least primarily responsible for conducting the investigation and the judicial authority is typically entrusted with the power to take decisions imposing fines and can have the power to take other decisions, such as finding an infringement of Articles 101 and 102 TFEU.

(13) The exercise of the powers***, including the investigative powers,*** conferred ***by this Directive*** on NCAs should be subject to appropriate safeguards which at least meet the standards of general principles of ***Union*** 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 ***in the form of a statement of objections or a similar measure*** prior to taking a decision ***finding an infringement*** and those parties should have an opportunity to effectively make their views known on these objections before such a decision is taken. 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, ***for*** decisions of NCAs***, in particular those decisions finding an infringement of*** Article 101 or Article 102 TFEU***, and imposing remedies or fines, the addressees*** 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. Such 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, taking into account the specificities of each case.*** 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.

(14) The exchange of information between national competition authorities and the use of such information in evidence for the application of Article 101 or Article 102 TFEU should be carried out pursuant to Article 12 of Regulation (EC) No 1/2003.

(15) Empowering ***national administrative competition authorities*** 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.

(16) The ***operational*** independence of ***national administrative competition authorities*** 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 ***national administrative competition authorities*** are protected against external intervention or political pressure liable to jeopardise their independent assessment of matters coming before them. For that purpose, ***the grounds*** should be laid down in advance ***in national law*** regarding the ***dismissal from the national administrative competition authority of those who take decisions exercising the powers referred to in Articles 10, 11, 12, 13 and 16,*** in order to remove any reasonable doubt as to ***their*** impartiality ***-***and ***their*** imperviousness to external factors. ***Similarly, clear and transparent rules and procedures for the selection, recruitment or appointment of these persons should be laid down in advance in national law. Moreover, to underpin the impartiality of national administrative competition authorities, the fines for infringements of Article 101 and Article 102 they impose should not be used to finance them directly.***

(17) To ensure the ***operational*** independence of ***national administrative competition authorities***, their ***heads,*** staff and ***those who take decisions*** should act with integrity and refrain from any action which is incompatible with the performance of their duties. ***To*** prevent the independent assessment of ***heads,*** staff or ***those who take decisions from*** being jeopardised***, they should refrain from any such incompatible action, whether gainful or not,*** during their employment ***or*** term of office and for a reasonable period thereafter.

(18) ***This means*** that during their employment ***or their term of office, the staff and those who take decisions should not be able to deal with proceedings for the application of Article 101 or Article 102 TFEU in which they have been involved or which directly concern undertakings or associations of undertakings by which they have been employed or otherwise professionally engaged if this has the potential to compromise their impartiality in a specific case. Similarly, the staff and those who take decisions and their close relatives*** should not have an interest in any businesses or organisations which ***are subject to proceedings for the enforcement of Articles 101 or 102 TFEU in which they take part if*** this has the potential to compromise their impartiality ***in a specific case***. ***The assessment of whether their impartiality might be impaired in each case should take into account the nature and the magnitude of the interest and the level of involvement or engagement of the individual concerned. Where it is necessary to ensure the impartiality of the investigation and the decision-making process, the individual concerned should have to recuse herself/himself from the specific case.***

(19) This also means that for a reasonable period after leaving the national administrative competition authority, whenever former staff or those who took decisions engage in an occupation which is related to the proceedings for the application of Article 101 or 102 TFEU with which they were dealing during their employment or term of office, they should not be involved in the same case in their new occupation.

The length of that period may be determined taking into account the nature of the new occupation of the individuals concerned as well as the level of their involvement and of their responsibility in the same proceedings during their employment or term in office in the national administrative competition authority.

(20) Every national administrative competition authority should publish a code of conduct that, without prejudice to the application of stricter national rules, covers rules on conflicts of interests.

(21) The ***operational*** independence of ***national administrative competition authorities*** 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 ***national administrative competition authorities***. Proportionate accountability requirements include the publication by ***national administrative competition authorities*** of periodic reports on their activities to a governmental or parliamentary body. ***National administrative competition authorities*** may also be subject to control or monitoring of their financial expenditure, provided this does not affect their independence.

(22) N***ational administrative competition authorities*** 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***, with the exception of those lodged by public authorities which share competence for enforcing Articles 101 and 102 TFEU and national competition law with a national administrative competition authority where applicable***. This should be without prejudice to the power of ***national administrative competition authorities*** 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 formally filed complaints, such rejection should be subject to effective remedies in accordance with national law. The power of national administrative competition authorities*** to prioritise their enforcement proceedings is without prejudice to the right of a government of a Member State to issue general policy ***rules*** or priority guidelines to national ***administrative*** competition authorities that are not related to ***sector inquiries or*** specific proceedings for the enforcement of Articles 101 and 102 TFEU.

(23) ***National competition authorities*** should have the ***sufficient*** resources, in terms of ***qualified staff able to conduct proficient legal and economic assessments***, financial means***,*** technical ***and technological expertise and*** equipment ***including adequate information technology tools***, 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.

(24) The independence of NCAs should be enhanced by enabling them to independently decide on the spending of the budget allocations for the purpose of carrying out their duties, without prejudice to national budgetary rules and procedures.

(25) To ensure that national administrative competition authorities have the necessary resources to perform their tasks, different means of financing may be considered, such as financing from alternative sources other than the state budget.

(26) In order to ensure effective monitoring of the implementation of this Directive, Member States should ensure that administrative NCAs submit 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 made publicly available.

(27) NCAs require a minimum set of common investigative and decision-making powers to be able to effectively enforce Articles 101 and 102 TFEU.

(28) ***National administrative competition*** 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. ***These powers should apply to 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. Those effective investigative powers should ensure that national administrative competition authorities are all in a position to effectively assist each other when requested to carry out an inspection or any other fact-finding measure on their own territory on behalf on and account of another national competition authority pursuant to Article 22 of Regulation (EC) No 1/2003.***

(29) 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***.

(30) National administrative competition authorities should be ***able to carry out all necessary inspections of premises of undertakings and associations of undertakings when, in line with the case law of the Court of Justice of the European Union, they can show there are*** 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.***

(31) 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***. This necessarily includes the power to search for documents, files or data on devices which are not precisely identified in advance. Without such power, it would be impossible to obtain the information necessary for the investigation if undertakings adopt an obstructive attitude or refuse to cooperate. The power to examine books or records covers all forms of correspondence, such as electronic messages, irrespective of whether they appear to be unread or have been deleted***.

(32) To minimise the unnecessary prolongation of inspections, national administrative competition authorities should have the power to continue making searches ***and to select*** 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. ***Such searches should ensure continued due respect of undertakings' rights of defence.***

(33) Experience shows that business records may be kept in the homes of directors***, managers and other members of staff of undertakings or of associations of undertakings, in particular because of*** 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, ***if they can show that*** there is a reasonable suspicion that business records ▌-which may be relevant to prove ***an infringement*** of Article 101 or Article 102 TFEU ***are being kept in those premises***. The exercise of ***that*** power should be subject to the ***national administrative competition authority having obtained*** prior authorisation ***from*** a ***national*** judicial authority***, which may include a public prosecutor in certain national legal systems***. This does not prevent Member States ***in cases of extreme urgency*** from entrusting the tasks of a national judicial authority to a national administrative competition authority acting as a judicial authority-***or by way of exception allowing for the power to carry out such inspections with the consent of those subject to inspection. The conduct of such inspections may be entrusted by a national administrative competition authority to the police or an equivalent enforcement authority, provided that the inspection is carried out in the presence of the national administrative competition authority. This is without prejudice to the right of the national administrative competition authority to conduct the inspection itself and to obtain the necessary assistance of the police or an equivalent enforcement authority, including as a precautionary measure, to overcome possible opposition on the part of those subject to the inspection***.

(34) NCAs should have effective powers to require ***undertakings or associations of undertakings to provide*** information ***necessary to detect infringements of Articles 101 and 102 TFEU. To that end, NCAs should be able to require the disclosure of information that may enable them to investigate putative infringements***. This should include the right to require information ***in any digital form, including emails and instant messaging system messages,*** irrespective of where it is stored, ***including in clouds and on servers,*** provided it is accessible to the ***undertaking or association of undertakings which is 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 excessive 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. This is without prejudice to the obligations of undertakings to answer factual questions and to provide documents. Similarly, NCAs should have effective tools to require any other natural or legal person to provide information that may be relevant for the application of Articles 101 and 102 TFEU. Member States should be free to provide for procedural rules on such requests for information, such as the legal form they take, provided that those rules allow for the effective use of this tool. Experience also*** shows that information provided on a voluntary basis ***in response to non-compulsory requests for information can be a valuable source of information for informed and robust enforcement. Similarly, the provision of information*** by third parties, such as competitors, customers and consumers in the market, ***on their own initiative can contribute to effective*** enforcement and NCAs should encourage this.

(35) Experience shows that the power to conduct interviews is a useful tool to collect evidence and to help competition authorities assess the value of already collected evidence. NCAs should have effective means to summon for an interview any representative of an undertaking or of an association of undertakings or of other legal persons and any natural person who may possess information relevant for the application of Articles 101 and 102 TFEU. Member States should be free to provide for rules governing the conduct of such interviews, provided that such rules allow for the effective use of this tool.

(36) ***It is indispensable for NCAs to be able to require undertakings and associations of undertakings to bring an infringement of Article 101 or 102 TFEU to an end, including where an infringement continues after the proceedings of NCAs have been formally initiated. Moreover,*** NCAs should have effective means to restore competition ***in the market by imposing structural and behavioural remedies which are proportionate to the infringement committed and which are necessary to bring the infringement to an end. The principle of proportionality requires that, when choosing between two equally effective remedies, NCAs should choose the remedy that is least burdensome for the undertaking. Structural remedies, such as obligations to dispose of a shareholding in a competitor or to divest a business unit, affect the assets of an undertaking and can be presumed to be more burdensome for the undertaking. However, this should not preclude NCAs from finding in a specific case that the circumstances of a particular infringement justify the imposition of a structural remedy because it would be more effective in terms of bringing the infringement to an end than a behavioural remedy***.

(37) 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. This tool is important to avoid market developments that could be very difficult to reverse by any decision taken by a NCA at the end of the proceedings. NCAs should therefore have the power to adopt interim measures by decision. As a minimum, this power should apply in cases where an NCA has made a prima facie finding of infringement of Article 101 or Article 102 TFEU and where there is a risk of serious and irreparable harm to competition. Member States are free to provide NCAs with more extensive powers to adopt interim measures. 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 legality, including proportionality, of such measures can be reviewed in expedited appeal procedures or other procedures which also provide for expedited judicial control. Furthermore, Member States should create the conditions necessary to ensure that NCAs can make use of interim measures in practice. There is a particular need to enable all competition authorities to deal with developments in fast-moving markets and therefore to reflect within the European Competition Network on the use of interim measures and to take this experience into account in any relevant soft measure or future review of this Directive.

(38) 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. ***It should be at the discretion of NCAs whether or not to accept commitments.*** 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.***

(39) 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 ***their own proceedings, in particular in*** administrative proceedings***, provided that such national proceedings enable the direct imposition of effective, proportionate and dissuasive fines,*** 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 ***on undertakings and associations of undertakings*** by courts in criminal proceedings for the infringement of Articles 101 and 102 TFEU ***where the infringement is a criminal offence under national law and provided that it does not affect the effective and uniform enforcement of Articles 101 and 102 TFEU***.

(40) To ensure that undertakings and associations of undertakings ***are incentivised to*** comply with the ***investigative*** and decision-making powers of the NCAs, national administrative competition authorities must be able to impose effective fines for non-compliance-***with the measures and decisions referred to in Articles 6, 8, 9, 10, 11 and 12,*** either directly themselves in ***their own*** 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 ***on undertakings and associations of undertakings*** by courts in criminal judicial proceedings.

(41) In accordance with the Charter of Fundamental Rights of the European Union, fines should be imposed in proceedings before a national administrative competition authority or, as the case may be pursuant to Article 13(1), sought in non-criminal judicial proceedings, where an infringement has been committed intentionally or negligently. The notions of intent and negligence should be interpreted in line with the case law of the Court of Justice of the European Union on the application of Articles 101 and 102 TFEU and not in line with the notions of intent and negligence in proceedings conducted by criminal authorities relating to criminal matters. This is without prejudice to national laws according to which the finding of an infringement is based on criterion of objective liability provided that it is compatible with the case law of the Court of Justice of the European Union. This Directive does not affect national rules on the standard of proof ***or the*** 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.

(42) Fines should be determined in proportion to the total worldwide turnover of the undertakings and associations of undertakings concerned.

(43) Periodic penalty payments are a key tool to ensure that NCAs have effective means to tackle continuing and future non-compliance with their measures as referred to in Articles 6, 8, 9, 10, 11 and 12 by undertakings and associations of undertakings. They should not apply to findings of infringements that have been committed in the past. Periodic penalty payments are without prejudice to the power of NCAs to punish non-compliance with measures as referred to in Article 13(2). Such periodic penalty payments should be determined in proportion to the average daily total worldwide turnover of the undertakings and associations of undertakings concerned.

(44) For the purpose of imposing fines and periodic penalty payments***, the term decision should include any measure, the legal effects of which are binding on, and capable of affecting the interests of, the addressee by bringing about a distinct change in his or her legal position.***

(45) 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.

(46) 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 ***relevant*** case law of the Court of Justice of the European Union***and in a way that ensures deterrence. The*** assessment of ***gravity should be made on a case by case basis for all types of infringements, taking into account all*** circumstances of the case***. Factors that may be taken into consideration include the nature of the infringement, the combined market share of all undertakings concerned, the geographic scope of the infringement, whether the infringement has been implemented, the value of the undertaking's sales of goods and services to which the infringement directly or indirectly relates and the size and market power of the undertaking concerned. 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 need to increase the level of the penalty to achieve effective deterrence. ***Accordingly, NCAs should have the possibility*** 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 ***NCA*** has taken a decision finding that the same undertaking or association of undertakings has infringed Articles 101 or 102 TFEU. ***In accordance with Directive 2014/104/EU, NCAs should be able to take into account any compensation paid as a result of a consensual settlement. In addition, in exceptional circumstances, NCAs should be able to take into account the economic viability of the undertaking concerned.***

(47) 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, ***it*** should be ***possible*** to ***consider*** 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***. When a fine is imposed not only on the association but also on its members, the turnover of the members on which a fine is imposed should not be taken into account when calculating the fine of the association***. 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 ***in*** which ***it is at*** NCAs***' discretion to*** 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.

(48) 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 ***dissuasive*** fines, the maximum amount of the fine ***for each infringement of Articles 101 or 102 TFEU*** 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.

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

(50) 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 ***for undertakings in the internal market and to boost the attractiveness of leniency programmes across the Union*** by reducing these differences ***through enabling all NCAs to grant immunity and reduction from fines and accept summary applications under the same conditions. Further efforts by the European Competition Network on aligning leniency programmes could be needed in the future.***

(51) NCAs should grant undertakings immunity from, and reductions of, fines if certain conditions are met. ***Associations of undertakings which perform an economic activity on their own behalf should be eligible for immunity from fines and reductions of fines if they participate in an alleged cartel on their own behalf and not on behalf of their members.***

(52) For a cartel to be considered secret, not all aspects of the conduct need to be secret. In particular, a cartel can be considered secret when elements, which make the full extent of the conduct more difficult to detect, are not known to the public or the customers or suppliers.

(53) In order to qualify for leniency, the applicant should end its involvement in the alleged secret cartel, except when a NCA considers that its continuation is reasonably necessary to preserve the integrity of its investigation, for example, in order to ensure that other alleged participants in the cartel do not discover that the NCA was made aware of the alleged cartel before the NCA carries out investigative measures such as unannounced inspections.

(54) In order to qualify for leniency, the applicant should cooperate genuinely, fully, on a continuous basis and expeditiously with the NCA. This means, inter alia, that when contemplating making an application to the NCA the applicant should not destroy, falsify or conceal evidence of the alleged secret cartel. When an undertaking is contemplating making an application, there is a risk that its directors, managers and other staff may destroy evidence for the purpose of concealing their involvement in a cartel but this could also occur for other reasons. Therefore, when assessing whether an applicant fulfils this condition, national competition authorities should take into account the specific circumstances under which evidence may have been destroyed and the significance of such destruction when considering whether the destruction of evidence calls into question the genuine cooperation of the applicant.

(55***)*** ***In order to fulfil the condition of genuine, full, continuous and expeditious cooperation, when contemplating making an application to the NCA an applicant should not have disclosed the fact or any of the content of its contemplated application, except to other national competition authorities, the Commission or competition authorities of third countries. This does not preclude an applicant from reporting its behaviour to other public authorities as required by relevant laws but only prevents it from disclosing the fact that it contemplates to apply for leniency and from handing over leniency statements to those authorities. However, when fulfilling its obligations under those relevant laws, the applicant should also give consideration to the importance of not adversely impacting the potential investigation by the NCA.***

(56) Applicants should have the possibility to ***submit*** leniency ***statements in relation to full or summary applications*** in writing ***and*** NCAs should ***also*** have a system in place that enables them to accept ***them*** either orally or***,*** by other means ***that permit applicants not to take possession, custody, or control of submitted leniency statements. NCAs should be able to choose by which means they accept leniency statements.***

(57) Undertakings wishing to make an application for immunity should be able to initially apply for a marker for a place in the queue for leniency to national competition authorities, in order to gather the necessary information and evidence to meet the relevant evidential threshold. This is without prejudice to Member States to provide for a possibility to apply for a marker also to undertakings wishing to make an application for the reduction of fines.

(58) Moreover, in order to reduce administrative and other considerable burdens in terms of time, it should be possible for applicants to submit statements in relation to full or summary applications as well as requests for markers either in an official language of the Member State of the NCA concerned, or, where bilaterally agreed between the NCA and the applicant, in another official language of the Union. Such agreement is deemed to exist where the NCAs generally accept such submissions in another official language of the Union.

(59)——***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***, provided that the application to the Commission covers more than three Member States as affected territories. This is without prejudice to the ability of the Commission to deal with cases if they are closely linked to other Union provisions which may be exclusively or more effectively applied by the Commission, where the Union interest requires the adoption of a Commission decision to develop Union competition policy when a new competition issue arises or to ensure effective enforcement.***

(60) ***The summary application system should allow companies to file a leniency application to NCAs on the basis of limited information where a full application has been given to the Commission in relation to such an alleged cartel. NCAs should therefore*** accept summary applications that contain a minimum set of information in relation to the alleged cartel ***for each of the items set out in Article 22(2). This is without prejudice to the possibility for the applicant to provide more detailed information at a later moment in time. At request of the leniency applicant, NCAs should provide it with an acknowledgement of receipt stating the date and time of receipt. If a national competition authority has not received such a leniency application and considers the summary application to fulfil the requirements of Article 22(2), the NCA should inform the applicant accordingly.***

(61) The aim of the system of summary applications is to reduce the administrative burden on applicants which submit a leniency application to the Commission in relation to an alleged secret cartel that covers more than three Member States as affected territories. Since in such cases the Commission receives a full application it should be the main interlocutor of the leniency applicant, in particular in providing instructions on the conduct of any further internal investigation by the applicant, in the period before clarity has been gained as to whether the Commission will pursue the case in full or in part. The Commission will endeavour to decide on this matter within a reasonable period of time and inform the NCAs accordingly, without prejudice to Article 11(6) of Regulation (EC) No 1/2003. In exceptional circumstances, when strictly necessary for case delineation or case allocation, an applicant may be requested to submit a full application by an NCA at a prior moment in time. This possibility should be used very rarely. In other cases the applicant should only be asked to submit a full application to a NCA which has received a summary application, once it is clear that the Commission does not intend to pursue the case in whole or in part.

(62) ***Applicants should have the opportunity to submit full leniency applications to the NCAs to which they have submitted summary applications. If the applicants submit such full applications within the period specified by the NCA, the information contained therein should be deemed to have been submitted at the date and time of the summary application, provided that the summary application covers the same affected product(s) and territory(ies) as well as the same duration of the alleged cartel as in the leniency application filed with the Commission, which may have been updated. The*** onus ***should be*** on applicants to inform the NCAs to which they have submitted summary applications if the scope of their leniency application with the Commission changes ***thereby updating the summary applications. NCAs should be able to check whether the scope of the summary application corresponds to the scope of the leniency application filed with the Commission through cooperation within the European Competition Network.***

(63) Legal uncertainty as to whether ***current and former directors, managers and other members of staff of applicants for immunity*** are shielded from individual sanctions***, such as pecuniary fines, disqualification or imprisonment,*** can prevent potential applicants from applying for leniency. ***In light of their contribution to the detection and investigation of secret cartels, those individuals*** should thus***, in principle,*** be protected from ~~-~~sanctions imposed by public authorities ***in criminal, administrative and non-criminal judicial proceedings, in relation to*** their involvement in the secret cartel covered by the application~~.~~***pursuant to national laws that predominantly pursue the same objectives to those pursued by Article 101 TFEU, such as national laws on bid-rigging, if they fulfil the conditions foreseen in this Directive. One of these conditions is that the application for immunity should predate the time when these individuals were made aware by the competent national authorities of the proceedings leading to the imposition of sanctions. Such proceedings include the moment they are suspected of violating such national laws***.

(64) Member States are free to provide under national law for modalities as to how those individuals should cooperate with the relevant authorities to ensure the effective functioning of this protection. Protection from criminal sanctions includes the case in which the competent national authorities dispense with prosecution under certain conditions or instructions as to the future behaviour of the individual.

(65) By way of derogation, in order to ensure that the protection from sanctions to be imposed on individuals in criminal proceedings is in conformity with the existing basic principles of their legal system, Member States may provide that the competent authorities may choose between protecting from sanctions or only mitigating the sanctions depending on the outcome of weighing the interest in prosecuting and/or sanctioning them against their contribution to the detection and investigation of the cartel. When assessing the interest in prosecuting and/or sanctioning those individuals, among other factors, their personal responsibility or contribution to the infringement may be taken into account.

(66) Member States are not precluded from providing protection from sanctions or a mitigation of sanctions also to current or former directors, managers and other members of staff of applicants for reduction of fines.

(67) In order to allow the protection to function in situations where more than one jurisdiction is involved, Member States should provide that in cases where the competent sanctioning or prosecuting authority is in a different jurisdiction than the jurisdiction of the competition authority pursuing the case, the necessary contacts between them should be ensured by the national competition authority of the jurisdiction of the competent sanctioning or prosecuting authority.

(68) 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 ***or an interview under its national law*** 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 ***applicant*** authority should be enabled to enhance the effectiveness of such inspections ***and interviews*** by providing additional resources, knowledge and technical expertise. ***NCAs should also be empowered to ask other NCAs for their assistance in the process of establishing whether there has been a failure by undertakings or associations of undertakings to comply with investigative measures and decisions taken by the applicant NCAs.***

(69)——***Arrangements*** should be put in place to allow NCAs to request mutual assistance for the notification of ***documents related to the application of Article 101 or 102 TFEU on a cross-border basis to parties to the proceedings or other undertakings, associations of undertakings or natural persons which may be the addressees of such notifications. Similarly, NCAs should be able to request*** the enforcement of decisions imposing fines or period penalties ***by authorities in other Member States when the applicant authority has made reasonable efforts to ascertain 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. Member States should also provide that, in particular, where the undertaking against which the fine or periodic penalty payment is enforceable is not established in the Member State of the applicant authority, the requested authority may enforce such decisions adopted by the applicant authority, at the request of the applicant authority***. This would ensure the effective enforcement of Articles 101 and 102 TFEU and contribute to the proper functioning of the internal market. ***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 costs incurred. Such mutual assistance is without prejudice to the application of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties[3].***

[3] ***OJ L 76, 22.3.2005, p. 16.***

(70) To ensure the effective enforcement of Articles 101 and 102 TFEU by NCAs there is a need to provide for workable rules on limitation periods. In particular, in a system of parallel powers, national limitation periods should be suspended ***or interrupted*** for the duration of proceedings before NCAs of another Member State or the Commission. ***Such suspension or interruption should*** 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.

(71) To ensure that cases are dealt with efficiently and effectively within the European Competition Network, in those Member States where ***both*** a national administrative competition authority and a national judicial competition authority***, are designated as NCAs for the purpose of enforcing Articles 101 and 102 TFEU as referred to in Articles 6, 7, 8, 9, 10, 11, 12, 13 and 16,*** 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 in proceedings brought against decisions ***taken by*** 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 ***public*** party to those proceedings.

(72) 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.

(73) 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 ***an electronic or*** recorded form-**▌**-***. This should include*** covert recordings made by legal or natural persons ***which are not public authorities,*** provided this is not the sole source of evidence. This is without prejudice to the right to be heard-***and to the admissibility of any recordings made or obtained by public authorities. Similarly, NCAs should be able to consider electronic messages as relevant evidence, irrespective of whether they appear to be unread or they have been deleted.***

(74) Ensuring that NCAs have the powers they need to be more effective enforcers should reinforce the need for close cooperation and effective multilateral and bilateral communication in the European Competition Network. This includes the development of soft measures to facilitate and underpin the implementation of the Directive.

(75) 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^2 programme), subject to the programme's available resources, eligibility and prioritisation criteria.

(76) 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 on 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.

(77) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,[4] 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:

[4] OJ C 369, 17.12.2011, p. 14.

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 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***. As regards*** Article 31(3) ***and 31(4), this Directive*** also extends to ***the application of*** national competition law ***on a stand-alone basis***.

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) ***No*** 1/2003 as responsible for the application of Articles 101 and 102 TFEU. Member States may designate one or more administrative authorities (˝national administrative competition authority˝), as well as judicial authorities (˝national judicial competition authority˝) to carry out these functions;

(2) 'national administrative competition authority' means an administrative authority designated by a Member State to carry out all or some of the functions of a national competition authority;

(3) 'national judicial competition authority' means a judicial authority designated by a Member State to carry out some of the functions of a national competition authority;

(4) ˝competition authority˝means a national competition authority~~.~~**,** the Commission or both, as the context may require;

(5) '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;

(6) 'national competition law[redacted]' 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 ***competition*** law pursuant to Article 3(1) of Regulation (EC) No 1/***2003, as well as provisions of national competition law that are applied on a stand-alone basis as regards Article 31(3) and 31(4) of this Directive. This term does not include*** provisions of national law which impose criminal penalties on natural persons***;***

(7) 'national court' means a national court or tribunal within the meaning of Article 267 TFEU;

(8) '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 ***those*** decisions, irrespective of whether ***that*** court itself has the power to find an infringement of competition law;

(9) '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 ***Articles 10, 12*** or ***13*** 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;

(10) '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 ~~.~~;

(11) '~~.~~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 ~~.~~***;***

(12) ***'secret cartel' means a cartel, the existence of*** which is – partially or ***wholly concealed***;

(13) 'immunity from fines' means ***the exemption from fines that would otherwise be*** imposed on an undertaking for its participation in a secret cartel***, in order to*** reward ***it*** for its cooperation with a competition authority in the framework of a leniency programme;

(14) 'reduction of fines' means ***a reduction in the amount of the fine that*** would otherwise be imposed on an undertaking for its participation in a secret cartel***, in order to*** reward ***it*** for its cooperation with a competition authority in the framework of a leniency programme;

(15) 'leniency' means both immunity from fines and reduction of fines;

(16) 'leniency programme' means a programme concerning the application of Article 101 TFEU or ***a corresponding provision of*** 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;

(17) '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 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 evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority***, namely pre-existing information***;

(18) '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 Article 102*** 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;

(19) 'applicant' means an undertaking that applies for immunity or reduction from fines under a leniency programme;

(20) 'applicant authority' means a national competition authority which makes a request for mutual assistance as referred to in Articles 24, ***25, 26, 27*** or ***28***;

(21) '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 ***25, 26, 27 or 28 means, as appropriate,*** the competent public office, authority or department which has principal responsibility for the enforcement of such decisions under national laws, regulations and administrative practice***;***

(22) 'final decision' means a decision that cannot be, or that can no longer be, appealed by ordinary means.

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

CHAPTER II

FUNDAMENTAL RIGHTS

Article 3

Safeguards

1. ***Proceedings concerning infringements of Articles 101 or 102 TFEU, including the*** exercise of the powers referred to in this Directive by national competition authorities shall ***comply with 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 10 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 ***their national administrative competition authorities*** perform their duties and exercise their powers impartially and in the interests of the effective and uniform enforcement of ***those*** 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 ***at a minimum ensure that the staff and the persons who take decisions exercising the powers in Articles 10, 11, 12, 13 and 16 in national administrative competition authorities***:

   (a) ***Are able to*** perform their duties and ***to*** exercise their powers for the application of Articles 101 and 102 TFEU independently from political and other external influence;

(b) ***Neither*** seek nor take any instructions from ▌-government or ***any*** other public or private entity when carrying out their duties and exercising their powers for the application of Articles 101 and 102 TFEU***, without prejudice to the right of a government of a Member State, where applicable, to issue general policy rules that are not related to sector inquiries or specific proceedings for the enforcement of Articles 101 and 102 TFEU***;

(c) ***Refrain*** from any action which is incompatible with the performance of their duties and***/or with the*** exercise of their powers for the application of Articles 101 and 102 TFEU ***and are subject to procedures that ensure that, for a reasonable period after leaving office, they refrain from dealing with proceedings that could give rise to conflicts of interest***;

3. ***The persons who take decisions exercising the powers in Articles 10, 11, 12, 13 and 16 in*** national administrative competition authorities ***shall not be dismissed from such authorities for reasons related to the proper performance of their duties or the proper exercise of their powers in the application of Articles 101 and 102 TFEU as referred to in Article 5(2). They*** may be dismissed only if they no longer fulfil the conditions required for the performance of their duties or ***if they*** have been ***found*** guilty of serious misconduct under national law. The ***conditions required for the performance of their duties and what constitutes serious misconduct shall*** be laid down in advance in national law***, taking into account the need to ensure effective enforcement.***

4. ***The members of the decision-making body of national administrative competition authorities are selected, recruited or appointed according to clear and transparent procedures laid down in advance.***

5. National administrative competition authorities ***shall*** have the power to set their priorities for carrying out ***the*** tasks for the application of Articles 101 and 102 TFEU ***referred*** in Article 5(2). To the extent that national administrative competition authorities are obliged to consider ***formal*** complaints, those authorities ***shall have the power*** to reject such complaints on the grounds that they do not consider ***such a complaint*** to be ***an enforcement*** priority. This is without prejudice to the power of national competition authorities to reject complaints on other grounds defined by national law.

Article 5

Resources

1. Member States shall ensure ***at a minimum*** that national competition authorities have ***a sufficient number of qualified staff and sufficient*** financial, technical ***and technological*** resources that are necessary for the effective performance of their duties***,*** and ***for the effective*** exercise of their powers***,*** when applying Articles 101 and 102 TFEU as ***set out*** in paragraph 2.

2. ***In order to apply*** Articles 101 and 102 TFEU**,** national competition authorities shall ***be able, at a minimum, to conduct*** investigations with a view to applying Articles 101 and 102 TFEU***, adopt*** decisions applying ***those*** provisions on the basis of Article 5 of Regulation (EC) No 1/2003; and ***cooperate*** closely in the European Competition Network with a view to ensuring the effective and uniform application of Articles 101 and 102 TFEU. ***To the extent provided for under national law, national competition authorities shall also be able to advise, where appropriate, public institutions and bodies on legislative, regulatory and administrative measures which may have an impact on competition in the internal market as well as promote public awareness of Article 101 and 102 TFEU.***

3. Without prejudice to national budgetary rules and procedures, Member States shall ensure that national competition authorities are granted independence in the spending of the allocated budget for the purpose of carrying out their duties as set out in paragraph 2.

4. Member States shall ensure that national administrative competition authorities submit 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 made publicly available.

CHAPTER IV

POWERS

Article 6

Power to inspect business premises

1. Member States shall ensure that national administrative competition authorities ***are able to*** conduct all necessary unannounced inspections of undertakings and associations of undertakings for the application of Articles 101 and 102 TFEU. Member States shall ensure that the officials and other accompanying persons authorised ***or appointed*** by national competition authorities to conduct ***such inspections*** are at ***a*** 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, ***and shall have*** the right to access ***any*** 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 ***appropriate,*** to continue making ***such*** searches ***and to select those*** copies or extracts at their premises or ***at*** 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 ***that has been*** ordered by a national administrative competition authority ***and/***or ***that has been*** authorised by a national judicial authority, national competition authorities can obtain the necessary assistance of the police or of an equivalent enforcement ***authority*** so as to enable them to conduct the inspection. Such assistance may also be obtained as a precautionary measure.

3. This Article is without prejudice to requirements under national law for the prior authorisation of a national judicial authority for such inspections.

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***, and*** which may be relevant to prove ***an infringement*** 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 ***or of*** 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.

3. Member States shall ensure that the officials and other accompanying persons authorised ***or appointed*** by the national ***competition authority*** to conduct an inspection in accordance with paragraph 1 of this Article have at ***a minimum*** 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 for the application of Articles 101 and 102 TFEU within a specified ***and reasonable time limit. Such requests for information shall be proportionate 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 ***such*** undertaking ***or*** association of undertakings. ***National competition authorities shall also be empowered to require any other natural or legal persons to provide information that may be relevant for the enforcement of Articles 101 and 102 TFEU within a specified and reasonable time limit.***

Article 9

Interviews

Member States shall ensure that national administrative competition authorities are at minimum empowered to summon for an interview any representative of an undertaking or of an association of undertakings or of other legal persons and any natural person who may possess information relevant for the application of Articles 101 and 102 TFEU.

Article 10

Finding and termination of infringement

1. 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. ***When choosing between two equally effective remedies, national competition authorities should choose the remedy that is least burdensome for the undertaking, in line with the principle of proportionality.***

Member States shall ensure that national competition authorities may find that an infringement has been committed in the past.

2. Where, having informed the Commission under Article 11(3) of Regulation (EC) No 1/2003, 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 11

Interim measures

1. Member States shall ensure that national ▌competition authorities***,*** acting on their own initiative***,*** may by decision order the imposition of interim measures on undertakings ***and associations of 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 adopted measures.***

2. Member States shall ensure that the legality, including proportionality, of the interim measures referred to in paragraph 1 can be reviewed in expedited appeal procedures.

Article 12

Commitments

1. Member States shall ensure that***,*** in proceedings initiated with a view to ***adopting*** 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, either formally or informally,*** by decision make commitments offered by undertakings ***or associations of undertakings binding, where those commitments*** meet the concerns expressed by ***those*** 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.

2. 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.

3. Member States shall ensure that national competition authorities are able to reopen proceedings where there have been material changes to any of the facts on which a decision was based, where undertakings act contrary to their commitments, or where a decision was based on incomplete, incorrect or misleading information provided by the parties.

CHAPTER V

FINES AND PERIODIC PENALTY PAYMENTS

Article 13

Fines on undertakings and associations of undertakings

1. ~~1.~~ Member States shall ensure that national administrative competition authorities may either impose by decision in ***their own*** proceedings, or request in non-criminal judicial proceedings the imposition of effective, proportionate and ***dissuasive*** fines on undertakings and associations of undertakings when, either intentionally or negligently, they infringe Articles 101 or 102 TFEU.

2. Member States shall ensure ***at a minimum*** that national administrative competition authorities may either impose by decision in ***their own*** proceedings, or, request in non-criminal judicial proceedings the imposition of effective, proportionate and ***dissuasive*** fines on undertakings ***and*** 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;

(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 appear at an interview referred to in Article 9;

(f) they fail to comply with a decision referred to in Articles 10**,** 11 and 12.

3. Member States shall ensure that the ***proceedings referred to in paragraphs 1 and 2 allow for the imposition of effective, proportionate and dissuasive fines.***

4. ***This Article is without prejudice to national laws allowing for the imposition of sanctions in criminal judicial proceedings provided that the application of such laws does not affect the effective and uniform enforcement of Articles 101 and 102 TFEU.***

5. ***Member States shall ensure that*** for the purpose of imposing fines on parent companies and legal and economic successors of undertakings***, the notion of undertaking applies***.

Article 14

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.

2. ***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.***

3. Member States shall ensure that, when a fine ***for an infringement of Article 101 or Article 102 TFEU*** 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.

4. Where ***contributions referred to in paragraph 3 have not been made in full to the association within a time limit fixed by national competition authorities***, Member States shall ensure that national competition authorities ***may*** require the payment of the fine ***directly*** by any of the undertakings whose representatives were members of the decision-making bodies of the association. ***After the*** national competition authorities ***have required payment from these undertakings, where necessary to ensure full payment of the fine, they may also*** 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 ***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 15

Maximum amount of the fine

1. Member States shall ensure that national competition ***authorities*** 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.

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.

Article 16

Periodic penalty payments

1. Member States shall ensure that national administrative competition authorities may by decision impose effective, proportionate and ***dissuasive*** periodic penalty payments on undertakings and associations of undertakings which are determined in proportion to their ***average*** daily total ***worldwide*** turnover in ***the preceding business year per day and calculated from the date appointed by the decision in*** order to compel them ***at least***:

(a) to supply complete and correct information as referred to in Article 8,

(b) to appear at an interview referred to in Article 9.

2. Member States shall ensure that national competition authorities may by decision impose effective, proportionate and dissuasive periodic penalty payments on undertakings and associations of undertakings which are determined in proportion to their average daily total worldwide turnover in the preceding business year per day and calculated from the date appointed by the decision in order to compel them at least:

(a) to submit to an inspection referred to in Article 6(2);

(b) to comply with a decision referred to in Articles 10, 11 and 12.

CHAPTER VI

LENIENCY ***PROGRAMMES FOR SECRET CARTELS***

Article 17

Immunity from fines

1. Member States shall ensure that national competition authorities have in place leniency programmes that enable them to grant immunity from fines to undertakings ***for disclosing participation in secret cartels. This is without prejudice to national competition authorities having in place leniency programmes for infringements other than secret cartels or leniency programmes that enable them to grant immunity from fines to natural persons***.

2. Member States shall ensure that immunity ***is*** granted only if the undertaking***:***

   (a) fulfils the conditions laid down in Article 19;

   (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 ***sufficient*** 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, ***is sufficient for it to find*** an infringement ***covered by the leniency programme***, provided that the [redacted]-authority did not yet have in its possession ***sufficient*** evidence to find such an infringement and that no other undertaking previously qualified for immunity under paragraph 2(c)(i) in relation to ***that secret*** cartel.

3. Member States shall ensure that all undertakings are eligible for immunity from fines***.*** ***However*** undertakings that have taken steps to coerce other undertakings to ***join*** a secret cartel ***or to remain in it shall not be eligible for immunity from fines.***

4. 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 18

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 ***be imposed for participation in secret cartels to*** undertakings which do not qualify for immunity. ***This is without prejudice to national competition authorities having in place leniency programmes for infringements other than secret cartels or leniency programmes that enable them to grant a reduction of fines to natural persons.***

2. Member States shall ensure that a reduction of fines is granted only if the conditions laid down in Article 19 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 ***covered by the leniency programme***, relative to the evidence already in the national competition authority's possession at the time of the application.

3. Member States shall ensure that ***if the applicant for*** reduction of fines ▌-submits ***compelling*** evidence which the national competition authority uses-▌- 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 national competition authority will not take such additional facts into account when setting any fine to be imposed on the applicant for reduction of fines which provided this evidence***.

Article 19

General conditions for leniency

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

(a) it ended its involvement in the alleged secret cartel ***at the latest*** 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 ***accessible*** to it***, in particular:***

- ***the name and address of the legal entity submitting the leniency 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;***

- ***information on any past or possible future leniency applications made to any other national competition authority, the Commission or competition authorities of third countries 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 ***directors, managers and other members of staff available for interviews with the national competition authority and making reasonable efforts to make*** former~~-~~ directors***, managers and other members of staff*** 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) ***during the contemplation of*** 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 ***national*** competition authorities***, the Commission or competition authorities of third countries***.

Article 20

Form of leniency ***statements***

1. Member States shall ensure that applicants can ***submit*** leniency ***statements in relation to full or summary applications*** in writing and that national competition authorities ***also*** have a system in place that enables them to accept ***such*** statements either orally or by other means that ***permit applicants not to take*** possession, custody, or control ***of such submitted statements***.

At the request of applicants, the receipt of their full or summary leniency applications shall be acknowledged by the national competition authorities in writing, stating the date and time of receipt.

2. ***Applicants shall be able to submit statements in relation to full or summary applications in the official language or one of the official languages of the Member State of the national competition authority concerned or in another official language of the Union bilaterally agreed between the national competition authority and the applicant.***

Article 21

Markers for ***applications*** for immunity

1. Member States shall ensure that ***undertakings*** wishing to ***apply for immunity may be initially granted upon their request*** a place in the queue for ***leniency for*** a period ▌specified on a case-by-case basis by the national competition authority***, in order for*** the applicant to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

2. Member States shall ensure that national competition authorities have discretion whether or not to grant ***the request pursuant to paragraph 1.***

An undertaking submitting such a request shall provide information, where available, to the national competition authority, such as:

(a) the name and address of the applicant;

(b) the basis for the concern which led to the request;

(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 ***any information and evidence provided by the applicant within the specified period,*** will be deemed to have been submitted at the time ***of*** the ***initial request.***

4. Applicants shall be able to submit a request pursuant to paragraph 1 in the official language or one of the official languages of the Member State of the national competition authority concerned or in another official language of the Union bilaterally agreed between the national competition authority and the applicant.

5. Member States may also provide for the possibility to request initially a place in the queue for leniency for undertakings wishing to make an application for the reduction of fines.

Article 22

Summary applications

1. Member States shall ensure that ***NCAs accept summary applications from*** applicants that have applied ***to the Commission*** for leniency, either by applying for a ***marker*** or by submitting a full application in relation to the same ***alleged secret cartel, provided that the applications cover more than three Member States as affected territories***.

2. ***Summary*** applications ***shall consist of*** a short description of ***each of*** the following:

   (a) the name and address of the applicant;

   (b) the other parties to the alleged secret cartel;

   (c) the ***affected*** product(s);

   (d) the affected territory(ies);

   (e) the duration;

   (f) the nature of the alleged cartel conduct;

   (g) the Member State(s) where the evidence is likely to be located; and

(h) information on the applicant's other past or possible future leniency applications in relation to the alleged secret cartel.

3. ***When the Commission receives a full application and national competition authorities receive summary applications, the Commission shall be the main interlocutor of the leniency applicant, in particular in providing instructions on the conduct of any further internal investigation by the applicant, in the period before clarity has been gained as to whether the Commission will pursue the case in whole or in part. In this period, the Commission shall inform the national competition authorities concerned about the state of play at their request.*** Member States shall ensure that national competition authorities ***may request specific clarifications only regarding*** the items set out in paragraph 2 before they require the submission of a full application pursuant to paragraph 5.

4. Member States shall ensure that national competition authorities which receive a summary application verify whether they already had received a summary or ***full*** leniency application ***from another applicant*** in relation to the same alleged secret cartel at the time of its receipt***. If a national competition authority has not received such a leniency application and considers the summary application to fulfil the requirements of Article 22(2), it shall*** inform the applicant accordingly.

5. Member States shall ensure that***, once the Commission has informed the national competition authorities concerned that it does not intend to pursue the case in whole or in part, applicants are given*** the opportunity to submit full leniency applications~~.~~ to the national competition authorities concerned***. Only in exceptional circumstances, when this is strictly necessary for case delineation or case allocation, may a national competition authority request from the applicant the full application before*** the Commission has informed ***the national competition*** authorities ***concerned*** that it does not intend to ***pursue*** the case in whole or in part. ***The*** national competition authorities ***shall*** 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. ***This is without prejudice to the right of the applicant to voluntarily submit a full application at an earlier stage.***

6. Member States shall ensure that if the applicant submits the full application in accordance with paragraph 5, 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***, provided that*** the summary application ***covers the same affected product(s) and territory(ies) as well as the same duration of the alleged cartel as*** the leniency application ***filed with the Commission, which may have been updated***.

Article 23

Interplay between ***immunity applications*** and sanctions on natural persons

1. Member States shall ensure that current and former directors***, managers and other members of staff*** of applicants for immunity from fines to competition authorities are ***fully*** protected from sanctions imposed in ***administrative and*** non-criminal judicial proceedings***, in relation to*** their involvement in the secret cartel covered by the application, ***for violations of national laws that pursue predominantly the same objectives to those pursued by Article 101 TFEU, if:***

(a) ***the application for immunity of the undertaking to the competition authority pursuing the case fulfils the evidential threshold set out in Articles 17(2)(b) and (c);***

(b) ***these*** directors***, managers and other members of staff*** actively cooperate ***in this respect*** with the competition ***authority pursuing the case and***

(c) ***the application for immunity of the undertaking predates the time when directors, managers and other members of staff concerned were made aware by the competent authorities of the Member States of the proceedings leading to the imposition of sanctions.***

2. ***Member States shall ensure that, current and former directors, managers and other members of staff of applicants for immunity from fines to competition authorities are protected from sanctions imposed in criminal proceedings, in relation to their involvement in the secret cartel covered by the application, for violations of national laws that pursue predominantly the same objectives to those pursued by Article 101 TFEU, if they meet the conditions set out in paragraph 1 and actively cooperate with the competent prosecuting authority. If the condition of cooperation with the competent prosecuting authority is not fulfilled, that authority may proceed with the investigation.***

3. ***In order to ensure conformity with the existing basic principles of their legal system, Member States may provide, by way of derogation from paragraph 2, that the competent authorities may still impose no sanction or only mitigate the sanction to be imposed to the extent that the contribution of the individuals, referred to in paragraph 2, to the detection and investigation of the cartel outweighs the interest in prosecuting and/or sanctioning those individuals.***

4. ***In order to allow the protection referred to in paragraphs 1, 2 and 3 to function in situations where more than one jurisdiction is involved, Member States shall provide that in cases where the competent sanctioning or prosecuting authority is in a different jurisdiction than the jurisdiction of the competition authority pursuing the case, the necessary contacts between them shall be ensured by the national competition authority of the jurisdiction of the competent sanctioning or prosecuting authority.***

5. ***This Article is without prejudice to the right of victims who suffered harm caused by an infringement of competition law to claim full compensation for that harm, in accordance with Directive 2014/104/EU.***

CHAPTER VII

MUTUAL ASSISTANCE

Article 24

Cooperation between national competition authorities

1. Member States shall ensure that when national administrative competition authorities carry out an inspection ***or interview*** 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 ***applicant*** national competition authority shall be permitted to attend and actively assist the requested national competition authority in the inspection ***or interview when the requested authority exercises*** the powers referred to in Articles ***6, 7 and 9, under the supervision of the officials of the requested authority.***

2. Member States shall ensure that national administrative competition authorities are empowered in their own territory to exercise the powers referred to in Articles 6, 7, 8 and 9, in accordance with their national law on behalf of and for the account of other national competition authorities in order to establish whether there has been a failure by undertakings or associations of undertakings to comply with the investigative measures and decisions by the applicant authority, as referred to in Articles 6, 8, 9, 10, 11 and 12. The applicant and requested national authorities shall have the power to exchange and to use information in evidence for this purpose, subject to the safeguards set out in Article 12 of Regulation No (EC) 1/2003.

Article 25

Requests for the notification of preliminary objections and ***other documents***

Without prejudice to any other form of notification made by ***an*** applicant ***authority*** in accordance with the rules in force in ***its*** 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***:***

(a) preliminary objections to the alleged infringement of Articles 101 or 102 TFEU and decisions applying those Articles***;***

(b) ***any other procedural act adopted in the context of proceedings for the application of Articles 101 or 102 TFEU which should be notified in accordance with national law; and***

(c) ***any other relevant documents related to the application of Articles 101 or 102 TFEU, including*** documents which relate to the enforcement of decisions imposing fines or periodic penalty payments.

Article 26

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 13 and 16 by the applicant authority. This shall apply only to the extent that***, after having made reasonable efforts in its own territory, the applicant authority has ascertained that*** the undertaking against which the fine or periodic penalty payment is enforceable does not have sufficient assets in the Member State of the applicant authority ***to enable recovery of such fine or periodic penalty***.

2. For cases not covered by paragraph 1, in particular cases where the undertaking against which the fine or periodic penalty payment is enforceable is not established in the Member State of the applicant authority, Member States shall provide that, at the request of the applicant authority, the requested authority may enforce decisions imposing fines or periodic penalty payments adopted in accordance with Articles 13 and 16 by the applicant authority.

For the purposes of this paragraph, Article 27 shall apply, with the exception of Article 27(3)(d).

3. The applicant authority may only make a request for enforcement ***of a final decision***.

4. Questions regarding periods of limitation ***for the enforcement of fines or penalty payments*** shall be governed by the laws in force ***in the Member State*** of the applicant ***authority***.

Article 27

General principles of cooperation

1. Member States shall ensure that the execution of requests as referred to in Articles 25 and 26 is effected by the requested authority in accordance with the national laws of the Member State of the requested authority.

2. Requests as referred to in Articles 25 and 26 shall be carried out without undue delay by means of a uniform instrument which shall be accompanied by a copy of the act to be notified or enforced, and which shall indicate:

(a) the name and known address of the addressee, and any other relevant data or information for the identification of the addressee;

(b) a summary of the relevant facts and circumstances;

(c) a description of the attached act;

(d) the name, address and other contact details regarding the requested authority; and

(e) the period within which notification or enforcement should be effected such as statutory deadlines or limitation periods.

3. In addition to the requirements set out in paragraph 2, the uniform instrument shall indicate for requests as referred to in Article 26:

(a) information about the decision permitting enforcement in the Member State of the applicant authority

(b) the date when the decision has become final;

(c) the amount of the fine or penalty payment; and

(d) information showing the reasonable efforts made by the applicant authority to enforce the decision in its own territory.

4. ***The uniform instrument permitting enforcement by the requested authority shall constitute the sole basis for the enforcement measures taken by the requested authority, subject to the requirements of paragraph 2 being met. It shall not be subject to any act of recognition, supplementing or replacement in that Member State. The requested authority shall take all the necessary measures for the execution of this request, unless it invokes paragraph 6.***

5. ***The applicant authority shall ensure that the uniform instrument is sent to the requested authority in the official language or one of the official languages of the requested Member State, or into any other language bilaterally agreed between the requested and applicant authorities on a case by case basis. Where required under the law of the requested Member State, the applicant authority shall provide a translation of the document to be notified or the decision permitting enforcement of the fine or penalty payment into the official language or one of the official languages of the requested Member State, or into any other language bilaterally agreed between the requested and applicant authorities a case by case basis.***

6. ***The requested authority shall not be obliged to execute a request as referred to in Articles 25 or 26 if:***

(a) the request does not comply with the requirements of this Article; or

(b) the requested authority is able to demonstrate reasonable grounds showing how this would be manifestly contrary to public policy in Member State in which enforcement is sought.

If the requested authority intends to refuse a request for assistance or requires additional information, it shall contact the applicant authority.

7. ***Member States shall ensure that, where requested by the requested authority, the applicant authority bears all reasonable additional costs in full, including translation, labour and administrative costs, in relation to actions taken as referred to in Articles 24 or 25.***

8. ***The requested authority may recover the full costs incurred in relation to action taken as referred to in Article 26 from the fines or periodic penalty payments it has collected for the applicant authority, including translation, labour and administrative costs. If the requested authority does not manage to collect the fines or periodic penalty payments, it may request the applicant authority to bear the costs incurred.***

Member State are free to provide that the requested authority may also recover the costs incurred from the enforcement of such decisions from the undertaking against which the fine or periodic penalty payment is enforceable.

The requested authority shall recover the amounts due in the currency of its Member State, in accordance with the laws, regulations and administrative procedures or practices in that Member State.

The requested authority shall, if necessary, in accordance with its national law and practice, convert the fines or periodic penalty payments into the currency of the Member State of the requested authority at the rate of exchange applying on the date when the fines or periodic penalty payments were imposed.

Article 28

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 13 and 16 made by an applicant authority ***or the uniform instrument permitting enforcement in the Member State of the requested authority*** shall fall within the competence of the competent bodies of the ***Member State of the*** applicant ***authority*** and be governed by the national ***law*** of that ***Member*** State.

2. Disputes concerning the enforcement measures taken in the Member State ***of the requested authority*** or concerning the validity of a notification made by the requested authority shall fall within the competence of the competent bodies of the Member State ***of the requested authority*** and ***shall*** be governed by the ***national law*** of that ***Member*** State.

CHAPTER VIII

LIMITATION PERIODS

Article 29

Rules on 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 13 and 16 shall be suspended ***or interrupted*** 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 ***of the limitation period*** shall start ***or the interruption of the limitation period shall take place*** from the notification of the first formal investigative measure to ***at least one*** undertaking subject to the proceedings. It shall ***apply to all undertakings or associations of undertakings which have participated in the infringement.***

The suspension or interruption shall end on the day the authority concerned has closed its proceedings ***by taking a decision referred to in Articles 10, 12 or Article 13 of this Directive or 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***. The duration of this suspension ***or interruption*** 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 ***by a national competition authority*** shall be suspended ***or interrupted*** for as long as the decision of ***that*** authority is the subject of proceedings pending before a review court.

3. 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 (EC) No 1/2003 is made available to the national competition authorities of the other Member States within the European Competition Network.

CHAPTER IX

GENERAL PROVISIONS

Article 30

Role of national administrative competition authorities before national courts

1. Member States which designate both a national administrative competition authority- and a national judicial competition authority ***to enforce Articles 101 and 102 TFEU***, 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 -decisions ***taken by*** national competition authorities ***exercising the powers referred to in Articles 6, 7, 8, 9, 10, 11, 12, 13 and 16 for the application of*** Articles 101 or 102 TFEU, ***including the enforcement of penalties imposed in that respect,*** Member States shall ensure that the national administrative competition authority is of its own right fully entitled to participate ***as appropriate*** as a prosecutor, defendant or respondent in those proceedings and to enjoy the same rights as such public parties to these proceedings.

3. The national administrative competition authority shall be empowered to bring appeals with the same rights as set out in paragraph 2 against:

(a) decisions of national courts pronouncing on decisions concerning the application of Articles 101 or 102 TFEU as referred to in Articles 6, 7, 8, 9, 10, 11, 12, 13 and 16, including the enforcement of penalties imposed in that respect; and

(b) a refusal of a national judicial authority to grant the prior authorisation of an inspection as referred to in Articles 6 and 7, to the extent that such an authorisation is required.

Article 31

Access to file by parties and limitations on the use of information

1. ***Member States may provide that where a national competition authority requires information from a natural person on the basis of measures referred to in Article 6(1)(e), Article 8 or Article 9, that information shall*** not be used in evidence for the imposition of sanctions on ***that*** natural person~~s~~ ***or on her or his close relatives***.

2. ***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 on the basis of this Directive and of the kind covered by the obligation of professional secrecy except where such disclosure is allowed under national law.***

3. Member States shall ensure that access to ***the*** leniency statements or settlement submissions ***is only granted to parties subject to the relevant proceedings and*** only for the purposes of exercising ***their*** rights of defence**.**

4. Member States shall ensure that information taken from leniency statements and settlement submissions may be used by the party having obtained access to the file ***of the proceedings of the national competition authorities*** 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 ***Articles*** 101 ***or 102*** TFEU or national competition law provisions.

5. Member States shall ensure that the following categories of information obtained ***by a party*** during proceedings before a national competition authority shall not be used ***by that party*** 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 10 or Article 12 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; ~~;~~

(b) Information that the national competition authority has drawn up and sent to the parties in the course of its proceedings***; and***

(c) Settlement submissions that have been withdrawn.

6. 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

7. Paragraphs 3-***to 6*** apply regardless of the form in which leniency statements are submitted pursuant to Article 20.

Article 32

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, ***electronic messages,*** recordings and all other objects containing information, irrespective of the ***form it takes and the*** medium on which the information is stored.

Article 33

Costs of 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 be able to develop and, where appropriate, publish best practices and recommendations on matters such as independence, resources, powers, fines and mutual assistance.***

CHAPTER X

FINAL PROVISIONS

Article 34

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … [two ***years from the entry into force of this Directive]***. They shall ***immediately inform*** the Commission ***thereof***.

   When Member States adopt those ***measures***, they shall contain a reference to this Directive or ***shall*** be accompanied by such reference on the occasion of their official publication. ***The methods of making*** such reference ***shall be laid down by Member States***.

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

Article 35

Review

By six 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. When appropriate, the Commission may review this Directive and, if necessary, present a legislative proposal.

Article 36

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 37

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament *For the Council*

The President *The President*