Basic information

2017/0063(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Empowering competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market **Subject** 2 Internal market, single market 2.60 Competition 2.80 Cooperation between administrations	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	SCHWAB Andreas (PPE)	21/03/2017
	Shadow rapporteur SZANYI Tibor (S&D) STARBATTY Joachim (ECR) JEŽEK Petr (ALDE) LÓPEZ BERMEJO Paloma (GUE/NGL) REIMON Michel (Verts/ALE) KAPPEL Barbara (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	MAYDELL Eva (PPE)	25/04/2017
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	3544	2017-05-30

European Commission	**Commission DG**	**Commissioner**
	Competition	VESTAGER Margrethe
European Economic and Social Committee		

Key events

Date	Event	Reference	Summary
22/03/2017	Legislative proposal published	COM(2017)0142	Summary
26/04/2017	Committee referral announced in Parliament, 1st reading		
30/05/2017	Debate in Council		
27/02/2018	Vote in committee, 1st reading		
27/02/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
06/03/2018	Committee report tabled for plenary, 1st reading	A8-0057/2018	Summary
12/03/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
14/03/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
11/07/2018	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE623.968 GEDA/A/(2018)005087	
13/11/2018	Debate in Parliament		
14/11/2018	Decision by Parliament, 1st reading	T8-0452/2018	Summary
14/11/2018	Results of vote in Parliament		
04/12/2018	Act adopted by Council after Parliament's 1st reading		
11/12/2018	Final act signed		
11/12/2018	End of procedure in Parliament		
14/01/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0063(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 103-p1 Treaty on the Functioning of the European Union TFEU 114
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee

Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/09588

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE610.704	25/09/2017	
Amendments tabled in committee		PE613.265	06/11/2017	
Committee opinion	IMCO	PE608.025	21/11/2017	
Committee report tabled for plenary, 1st reading/single reading		A8-0057/2018	06/03/2018	Summary
Text agreed during interinstitutional negotiations		PE623.968	20/06/2018	
Text adopted by Parliament, 1st reading/single reading		T8-0452/2018	14/11/2018	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2018)005087	20/06/2018	
Draft final act	00042/2018/LEX	11/12/2018	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2017)0142	22/03/2017	Summary
Document attached to the procedure	SWD(2017)0114	23/03/2017	
Document attached to the procedure	SWD(2017)0115	23/03/2017	
Document attached to the procedure	SWD(2017)0116	23/03/2017	
Commission response to text adopted in plenary	SP(2018)838	19/12/2018	
Follow-up document	COM(2024)0558	29/11/2024	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_PARLIAMENT	COM(2017)0142	23/05/2017	
Contribution	PT_PARLIAMENT	COM(2017)0142	12/06/2017	

Contribution	RO_SENATE	COM(2017)0142	19/06/2017	
Contribution	CZ_SENATE	COM(2017)0142	28/07/2017	
Contribution	IT_CHAMBER	COM(2017)0142	26/10/2017	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1811/2017	05/07/2017	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act

Directive 2019/0001
OJ L 011 14.01.2019, p. 0003 Summary

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

2017/0063(COD) - 22/03/2017 - Legislative proposal

PURPOSE: to propose new rules to enable the competition authorities of the Member States to implement more effectively EU rules on anti-competitive practices.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: both the Commission and the national competition authorities NCAs have enforced the EU competition rules in **close cooperation** in the European Competition Network (ECN). The ECN was created in 2004 expressly for this purpose.

The national competition authorities of the EU Member States are empowered by Council Regulation (EC) No 1/2003 to apply the EU competition rules alongside the Commission. Since 2004, the Commission and the NCAs took over 1000 enforcement decisions, with the NCAs being responsible for 85%.

The NCAs are usually well placed to act where competition is substantially affected in their territory. NCAs have the expertise on how markets work in their own Member State. However, **many NCAs do not have all the tools they need** to effectively detect and tackle competition law infringements.

The Commission considers that a **legislative proposal** is therefore needed to empower the NCAs to be more effective enforcers of the EU competition rules to ensure that NCAs have the necessary guarantees of independence and resources and enforcement and fining powers.

IMPACT ASSESSMENT: the preferred option is to take **EU legislative action** providing NCAs with minimum means and instruments to be effective enforcers, complemented by both soft action and detailed rules where appropriate.

CONTENT: the proposal for a Directive aims to **provide NCAs with all the necessary tools** to more effectively implement the EU competition rules for employment and growth in order to ensure the proper functioning of the internal market. It seeks to enhance the effectiveness of the NCAs, while not imposing one size fits all so as to allow taking into account Member States' legal traditions and institutional specificities.

The proposal focuses on the following:

Independence and resources: the proposal introduces guarantees aiming to protect the staff and management of NCAs from external influence when enforcing the EU competition rules by **explicitly excluding instructions from any government or other public or private entity**. Moreover, it obliges Member States to ensure that NCAs have the human, financial and technical resources that are necessary to perform their core tasks.

Investigative powers: the scope of NCAs' investigative and decision-making powers varies considerably, which can significantly impact on their effectiveness. The proposal provides:

- for the core minimum effective **powers to investigate** (the power to inspect business and non-business premises, to issue requests for information) and to take decisions (the power to adopt prohibition decisions including the power to impose structural and behavioural remedies, commitment decisions, and interim measures);
- **effective sanctions** in the case of non-compliance of the rules. These sanctions will be calculated in proportion to the total turnover of the undertaking concerned, but Member States will have flexibility in how this is implemented.

Fines and periodic penalty payments: fines can vary by up to 25 times depending on which authority act. National administrative competition authorities should have the power to impose effective, proportionate and dissuasive fines. The proposal:

- provides: (i) that the **maximum amount** of the fine should not be set at a level below 10% of its total worldwide turnover; (ii) that regard should be given to both the gravity and the duration of the infringement;
- provides the possibility to impose **fines on parent companies and legal and economic successors** of undertakings in order to avoid companies escaping from liability for fines simply by restructuring.

Leniency: the proposal seeks to **increase legal certainty** for companies that wish to apply for leniency and thus to maintain their incentives to cooperate with the Commission and the NCAs by reducing the current differences between the leniency programmes applicable in the Member States.

It shall ensure that all NCAs can grant immunity and reduction from fines and accept summary applications under the same conditions. It shall guarantee that employees and directors of companies that file for immunity are protected from individual sanctions, where they exist, provided that they cooperate with the authorities.

Mutual assistance: when one NCAs requests another NCA to carry out **investigative measures** on its behalf to gather evidence located in another jurisdiction, officials from the requesting NCA have the right to attend and actively assist in that inspection. In addition, the proposal calls for these arrangements to allow NCAs to request and provide mutual assistance for the notification of decisions and enforcement of fines when companies have no legal presence in the territory of the requesting NCA.

The proposal also recalls the importance of the **fundamental rights** of companies and obliges the authorities to respect appropriate safeguards in the exercise of their powers in accordance with the Charter of Fundamental Rights.

BUDGETARY IMPLICATIONS: an indicative amount of **EUR 1 million** per year is foreseen to maintain, develop, host, operate and support a central information system (European Competition Network System) in compliance with the relevant confidentiality and data security standards.

Other administrative costs incurred in connection with the functioning of the ECN, e.g. organisation of meetings, developing and providing training programmes, issuing guidelines and common principles are estimated at **EUR 500 000** per year.

The total impact on expenditure is estimated at **EUR 6.877 million** up to 2020 (including human resources and other administrative expenditure).

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

2017/0063(COD) - 14/11/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 569 votes to 70, with 36 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Fundamental rights: proceedings concerning infringements of Article 101 (agreements between undertakings, decisions of associations of undertakings and concerted practices) or 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union, including the exercise of the powers provided for in the Directive by national competition authorities (NCAs), shall comply with the general principles of Union law and the **Charter of Fundamental Rights of the European Union**.

This Directive covers the application of Articles 101 and 102 TFEU and the parallel application of national competition law to the same case. As regards Article 31(3) and (4) of this Directive, this Directive also covers the application of national competition law on a stand-alone basis.

The exercise of the powers, conferred by this Directive on NCAs, including the investigative powers, shall be subject to appropriate safeguards which at least comply with the 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.

In particular, NCAs shall 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.

Independence and resources: the amended text specifies that staff members and decision makers within NCAs shall:

- be able to carry out their duties and exercise their powers **independently** of any external political or other influence;
- be subject to procedures to ensure that, for a reasonable period of time after leaving office, they refrain from dealing with implementation procedures that may give rise to **conflicts of interest**.

Member States shall ensure that 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 in national law.

In addition, NCAs shall: (i) have a sufficient number of qualified staff; (ii) be able to conduct investigations; (iii) be able to spend the allocated budget independently for the performance of their duties; and (iv) submit periodic reports on their activities and resources to a governmental or parliamentary body.

Powers: national administrative competition authorities shall be able to:

- be able to carry out all necessary **unannounced inspections** of undertakings and associations of undertakings with a view to the application of the competition rules and have the right of access to all information to which the entity subject to the inspection has access;
- require undertakings and associations of undertakings, as well as any other natural or legal person, to provide all necessary information within a specified and reasonable time limit. Requests for information shall be proportionate without requiring the addressee of the request to admit the existence of an infringement of the competition rules;
- invite to an **interview** any representative of an undertaking or association of undertakings, any representative of other legal persons and any natural person where such representative or person may have relevant information;
- **reopen enforcement proceedings** where there have been material changes to any of the facts on which a decision was based, where undertakings or associations of undertakings act contrary to their commitments, or where a decision was based on incomplete, incorrect or misleading information provided by the parties.

If two remedies are equally effective, NCAs shall favour the solution that is **least burdensome for the undertaking**. NCAs shall inform the Commission when they decide to discontinue proceedings.

Fines and periodic penalty payments: the maximum amount of the fine that national competition authorities may impose on each undertaking or association of undertakings participating in an infringement is **not less than 10 %** of the total worldwide turnover of the undertaking or association of undertakings in the business year preceding the decision.

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. Such periodic penalty payments shall be determined in proportion to the average daily total worldwide turnover of such undertakings or associations of undertakings in the preceding business year per day and calculated from the date appointed by that decision in order to compel those undertakings or associations of undertakings at least to submit to an inspection or to comply with a decision.

Leniency: 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 their participation in **secret cartels**. The amended text underlined the need to enhance legal certainty for companies in the internal market and to make leniency programmes more attractive throughout the Union, by allowing all NCAs to grant immunity from fines and reduction of fines and to accept summary applications on the same conditions.

In order to be eligible for leniency, the applicant shall: (i) end its involvement in the alleged secret cartel, except in cases where an NCA considers that its continued involvement is reasonably necessary to preserve the integrity of the investigation; (ii) cooperate genuinely, fully, on a continuous basis and expeditiously with the NCA.

Parliament introduced amendments to: (i) require NCAs to inform applicants for immunity from fines whether or not conditional immunity is granted; (ii) specify the relevant information and evidence to be provided by the applicant to the NCA without delay with regard to the alleged secret agreement; and (iii) specify the information to be provided by companies to the NCA so that a marker granting them a place in the order in which leniency applications are received can be granted.

Mutual assistance: Member States shall ensure that national administrative competition authorities are empowered in their own territory to exercise the powers referred to in this Directive, 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 of the applicant national competition authority. The applicant national competition authority and the requested national competition authority shall have the power to exchange and to use information in evidence for this purpose.

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

2017/0063(COD) - 06/03/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Andreas SCHWAB (EPP, DE) on the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

The committee recommended that the Parliament's position adopted in first reading following the ordinary legislative procedure approve the Commission's proposal as follows:

Fundamental rights: the exercise of the powers provided for in the Directive by the national competition authorities (NCAs) should be accompanied by guarantees as regards the **rights of undertakings to a defence**, such as the right to be heard and the right to an effective remedy before a tribunal.

Members considered it essential that the parties under investigation receive at least a **statement of objections** setting out all objections on which the NCA intends to rely in a final infringement decision that adversely affects the interests of the undertaking concerned. NCAs should conduct proceedings within a reasonable timeframe.

Independence and resources: the amended text states that NCAs should:

- have procedures that ensure that, for a reasonable period of time after termination of service, staff and members of the decision-making body refrain from entering into occupations that could give rise to **conflict of interests** in relation to a specific case in which they were involved while at the national competition authority;
- publish a **code of conduct** that covers at least rules avoiding conflict of interests;
- have **sufficient resources**, in terms of qualified staff, legal and economic expertise, financial means and technical and technological equipment, to ensure they can effectively perform their tasks;
- be able to decide independently on the application of the **budget allocations** for the purpose of carrying out their duties;
- submit publicly available **periodic reports** on their activities and their resources to a governmental or parliamentary body.

Powers:

- as regards the power to inspect business premises, Member States should be able to require that an **authorisation** be issued by a national judicial authority prior to these inspections. The inspection of other premises shall not be carried out without the prior authorisation of a national judicial authority;
- **requests for information** shall be specific and appropriate in scope and not compel the addressee of the request to admit an infringement of Articles 101 and 102 TFEU;
- if two remedies are equally effective, national competition authorities should **favour the least burdensome for the undertaking;**
- national competition authorities shall inform the Commission if they close the proceedings;
- 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;
- lastly, decisions to order the imposition of **interim measures** on undertakings 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 appropriateness of the interim may be reviewed in accelerated appeal procedures.

Leniency: NCAs may have a leniency programme allowing them to grant immunity from fines to undertakings for **secret cartels.**

The amended text stressed the need to **reduce the differences between the leniency programmes** applied at Member State level in order to enhance legal certainty by ensuring that all NCAs can, under the same conditions, issue fines, reduce the amount and accept summary applications.

Members introduced amendments to (i) require national competition authorities to inform an immunity applicant whether or not it has been granted conditional immunity; (ii) specify the information and evidence that the NCA applicant must promptly provide to the NCA with respect to the alleged secret agreement; iii) specify the information to be provided by the undertaking to the NCA so that a marker for a formal application for immunity might be granted.

Mutual assistance: in order to ensure that NCAs devote sufficient resources to the requests for mutual assistance and in order to incentivise such assistance, the requested authorities should be able to **recover the related costs**.

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

2017/0063(COD) - 11/12/2018 - Final act

PURPOSE: to enable Member States' competition authorities to implement more effectively EU rules on anti-competitive practices.

LEGISLATIVE ACT: Directive (EU) 2019/1 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.

CONTENT: the Directive lays down certain rules to ensure that national competition authorities (NCAs) have the necessary guarantees of independence, resources and enforcement and fining powers to be able to effectively apply Article 101 (agreements between undertakings, decisions of associations of undertakings and concerted practices) or 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union.

This Directive sets out certain rules on mutual assistance to safeguard the smooth functioning of the internal market and the smooth functioning of the system of close cooperation within the European Competition Network.

Fundamental rights

Proceedings concerning infringements of the competition rules, including the exercise of the powers provided for in the Directive by NCAs, must comply with the general principles of Union law and the Charter of Fundamental Rights of the European Union.

The exercise of the powers provided for in the Directive shall be subject to guarantees as regards the rights of defence of companies, including the right to be heard and the right to an effective remedy before a court. In addition, the proceedings must be concluded within a reasonable time and the NCAs must adopt a statement of objections before taking a decision to establish an infringement.

Independence and resources

In order to ensure the operational independence of NCAs, their leaders, staff members and decision-makers shall:

- be able to carry out their duties and exercise their powers independently of any external political or other influence;

- be subject to procedures to ensure that, for a reasonable period of time after leaving office, they refrain from dealing with implementation procedures that could give rise to conflicts of interest.

In addition, NCAs must, at a minimum:

- have a sufficient number of qualified staff and sufficient financial, technical and technological resources necessary for the effective performance of their functions and the effective exercise of their powers;

- submit periodic reports on their activities and resources to a government or parliamentary body.

Powers

National administrative competition authorities shall be able to:

- carry out all necessary unannounced inspections of undertakings and associations of undertakings with a view to the application of the competition rules and have the right of access to all information to which the entity subject to the inspection has access;

- require undertakings and associations of undertakings, as well as any other natural or legal person, to provide all necessary information within a specified and reasonable time limit. Requests for information shall be proportionate without requiring the addressee of the request to admit the existence of an infringement of the competition rules;

- invite to an interview any representative of an undertaking or association of undertakings, any representative of other legal persons and any natural person where such representative or person may have relevant information;

- reopen enforcement proceedings where there have been material changes to any of the facts on which a decision was based, where undertakings or associations of undertakings act contrary to their commitments, or where a decision was based on incomplete, incorrect or misleading information provided by the parties.

Fines and penalties

The maximum amount of the fine that national competition authorities may impose on each undertaking or association of undertakings participating in an infringement is not less than 10 % of the total worldwide turnover of the undertaking or association of undertakings in the business year preceding the decision.

Penalties imposed on undertakings and associations of undertakings must be effective, proportionate and dissuasive.

Leniency programmes for secret cartels

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 their participation in secret cartels. In order to be eligible for leniency, the applicant shall: (i) end its involvement in the alleged secret cartel, except in cases where an NCA considers that its continued involvement is reasonably necessary to preserve the integrity of the investigation; (ii) cooperate genuinely, fully, on a continuous basis and expeditiously with the NCA.

In addition, the Directive: (i) requires NCAs to inform applicants for immunity from fines whether or not conditional immunity is granted; (ii) specifies the relevant information and evidence to be provided by the applicant to the NCA without delay with regard to the alleged secret agreement; and (iii) specifies the information to be provided by companies to the NCA so that a marker granting them a place in the order in which leniency applications are received can be granted.

ENTRY INTO FORCE: 3.2.2019.

TRANSPOSITION: no later than 4.2.2021.