

Directive (EU) 2019/1 of the European Parliament and of the Council
of 11 December 2018 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)

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, 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 that consumers and undertakings are not put at a disadvantage by national laws and measures which prevent national competition authorities from being effective enforcers.

2 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.

3 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.

Article 2

Definitions

1 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 being responsible for the application of Articles 101 and 102 TFEU; Member States may designate one or more administrative competition authorities (national administrative competition authorities), as well as judicial authorities (national judicial competition authorities);
- (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;

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- (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 as regards the application and enforcement of Articles 101 and 102 TFEU;
- (6) 'national competition law' 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 law that predominantly pursue the same objective as Articles 101 and 102 TFEU and that are applied on a stand-alone basis as regards Article 31(3) and (4) of this Directive, excluding provisions of national law which impose criminal penalties on natural persons;
- (7) 'national court' means a court or tribunal of a Member State 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) 'enforcement proceedings' means the proceedings before a competition authority for the application of Article 101 or 102 TFEU, until that competition authority has closed such proceedings by taking a decision referred to in Article 10, 12 or 13 of this Directive in the case of a national competition authority, or by taking a decision referred to in Article 7, 9 or 10 of Regulation (EC) No 1/2003 in the case of the Commission, or as long as the competition authority has not concluded that there are no grounds for further action on its part;
- (10) 'undertaking' as referred to 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 an 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 under 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 of, 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 enforcement proceedings, 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 or 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 from, or a reduction of, fines under a leniency programme;
- (20) ‘applicant authority’ means a national competition authority which makes a request for mutual assistance as referred to in Article 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 as referred to in Article 25, 26, 27 or 28 means the competent public body 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.

2 All references to the application or infringement of Articles 101 and 102 TFEU in this Directive 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 Article 101 or 102 TFEU, including the exercise of the powers referred to in this Directive by national competition authorities, shall

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comply with general principles of Union law and the Charter of Fundamental Rights of the European Union.

2 Member States shall ensure that the exercise of the powers referred to in paragraph 1 is subject to appropriate safeguards in respect of the 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 enforcement proceedings of national competition authorities 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 such authorities perform their duties and exercise their powers impartially and in the interests of the effective and uniform application 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 persons who take decisions exercising the powers in Articles 10 to 13 and Article 16 of this Directive 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 enforcement proceedings; and
- c refrain from taking 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 enforcement proceedings that could give rise to conflicts of interest.

3 The persons who take decisions exercising the powers in Articles 10 to 13 and Article 16 of this Directive in national administrative competition authorities shall not be dismissed from such authorities for reasons related to the proper performance of their duties or to the proper exercise of their powers for the application of Articles 101 and 102 TFEU, as referred to in Article 5(2) of this Directive. 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 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.

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 as referred to in Article 5(2) of this Directive. 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 complaints to be an enforcement priority. This is without prejudice to the power of national administrative 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 for the application of Articles 101 and 102 TFEU as set out in paragraph 2 of this Article.

2 For the purposes of paragraph 1 national competition authorities shall be able, at a minimum, to conduct investigations with a view to applying Articles 101 and 102 TFEU, to adopt decisions applying those provisions on the basis of Article 5 of Regulation (EC) No 1/2003; and to 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 public institutions and bodies, where appropriate, on legislative, regulatory and administrative measures which may have an impact on competition in the internal market as well as promote public awareness of Articles 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 that amount compared to previous years. Such reports shall be 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 to 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 of or extracts from such books or records and, where they consider it appropriate, to continue making such searches for information and the selection of copies or extracts at the premises of the national competition authorities or at any 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 answers.

2 Member States shall ensure that undertakings and associations of undertakings are required to submit to the inspections referred to in paragraph 1. Member States shall also ensure that, 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 are able to 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 such inspections by a national judicial authority.

Article 7

Power to inspect other premises

1 Member States shall ensure that if a reasonable suspicion exists that books or other records related to the business and to the subject matter of the inspection, which may be relevant to prove an infringement of Article 101 or Article 102 TFEU, are being kept in any premises, land or means of transport other than those referred to in point (a) of Article 6(1) of this Directive, including the homes of directors, managers, and other members of staff of undertakings or associations of undertakings, national administrative competition authorities are able to 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 national competition authorities to conduct an inspection in accordance with paragraph 1 of this Article at a minimum have the powers set out in points (a), (b) and (c) of Article 6(1) 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 addressees of the requests to admit an infringement of Articles 101 and 102 TFEU. The obligation to provide all necessary information covers information which is accessible to such undertakings or associations 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 application 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 at a minimum are empowered to summon 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 possess information relevant for the application of Articles 101 and 102 TFEU, to appear for an interview.

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 shall 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 are empowered to find that an infringement of Article 101 or 102 TFEU has been committed in the past.

2 Where, having informed the Commission in accordance with Article 11(3) of Regulation (EC) No 1/2003, national competition authorities decide that there are no grounds to continue enforcement proceedings and as a result close those enforcement proceedings,

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Member States shall ensure that those national competition authorities inform the Commission accordingly.

Article 11

Interim measures

1 Member States shall ensure that national competition authorities are empowered to act on their own initiative to order by decision 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, 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 shall 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 national competition authorities shall inform the European Competition Network of the imposition of those interim measures.

2 Member States shall ensure that the legality, including the 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 enforcement 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 formally or informally seeking the views of market participants, by decision make commitments offered by undertakings or associations of undertakings binding, where those commitments meet the concerns expressed by the national competition 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 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 enforcement proceedings where there have been material changes to any of the facts on which a decision referred to in paragraph 1 was based, where undertakings or associations of undertakings act contrary to their commitments, or where a decision referred to in paragraph 1 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 Member States shall ensure that national administrative competition authorities may either impose by decision in their own enforcement proceedings, or request in non-

criminal judicial proceedings, the imposition of effective, proportionate and dissuasive fines on undertakings and associations of undertakings where, intentionally or negligently, they infringe Article 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 enforcement proceedings, or, request in non-criminal judicial proceedings, the imposition of effective, proportionate and dissuasive fines on undertakings and associations of undertakings. Such fines shall be determined in proportion to their total worldwide turnover, where intentionally or negligently:

- a they fail to comply with an inspection as referred to in Article 6(2);
- b seals affixed by the officials or other accompanying persons authorised or appointed by the national competition authorities as referred to in point (d) of Article 6(1)) have been broken;
- c in response to a question referred to in point (e) of Article 6(1), 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 fines

1 Member States shall ensure that national competition authorities have regard both to the gravity and to the duration of the infringement when determining the amount of the fine to be imposed for an infringement of Article 101 or 102 TFEU.

2 Member States shall ensure that national competition authorities may consider compensation paid as a result of a consensual settlement when determining the amount of the fine to be imposed for an infringement of Article 101 or 102 TFEU, in accordance with Article 18(3) of Directive 2014/104/EU.

3 Member States shall ensure that, where a fine for an infringement of Article 101 or 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 Member States shall ensure that, where contributions referred to in paragraph 3 have not been made in full to the association of undertakings within the time limit fixed by national competition authorities, 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 that association. Where necessary to ensure full payment of the fine, after the national competition authorities have required payment from such undertakings, 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 its existence or have actively distanced themselves from it before the investigation started.

Article 15

Maximum amount of the fine

1 Member States shall ensure that the maximum amount of the fine that national competition authorities may impose on each undertaking or association of undertakings participating in an infringement of Article 101 or 102 TFEU is not less than 10 % of the total worldwide turnover of the undertaking or association of undertakings in the business year preceding the decision referred to in Article 13(1).

2 Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall be not 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. 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:

- a to supply complete and correct information in response to a request 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. 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 them at least:

- a to submit to an inspection as 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 their 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 from fines is granted only where the applicant:

- 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 the national competition authority 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 such an inspection 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 authority did not yet have in its possession sufficient evidence to find such an infringement and that no other undertaking previously qualified for immunity from fines under point (i) in relation to that secret cartel.

3 Member States shall ensure that all undertakings are eligible for immunity from fines, with the exception of undertakings that have taken steps to coerce other undertakings to join a secret cartel or to remain in it.

4 Member States shall ensure that national competition authorities inform the applicant of whether or not it has been granted conditional immunity from fines. The applicant may request that it be informed by the national competition authority of the result of its application in writing. In cases where the national competition authority rejects an application for immunity from fines, the applicant concerned may request that national competition authority to consider its application as an application for reduction of fines.

*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 undertakings which do not qualify for immunity from fines. 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.

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- 2 Member States shall ensure that a reduction of fines is granted only if the applicant:
- a fulfils the conditions laid down in Article 19;
 - b discloses its participation in a secret cartel; and
 - c submits 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 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 shall 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 is required to satisfy the following conditions:

- (a) it ended its involvement in the alleged secret cartel at the latest immediately following its leniency 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 enforcement proceedings against all parties under investigation by adopting a decision or has otherwise terminated its enforcement proceedings; such cooperation includes:
 - (i) providing the national competition authority promptly with all relevant information and evidence relating to the alleged secret cartel that comes into the applicant's possession or is accessible to it, in particular:
 - the name and address of the applicant,
 - 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 competition authorities 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 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 leniency application before the national competition authority has issued objections in the enforcement proceedings before it, unless otherwise agreed; and
- (c) during the contemplation of making a leniency 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 of, or any of the content of, its contemplated application, other than to any other competition authorities or competition authorities of third countries.

Article 20

Form of leniency statements

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

2 If requested by the applicant, the national competition authority shall acknowledge the receipt of the full or summary application in writing, stating the date and time of receipt.

3 Applicants shall be able to submit leniency 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 from fines

1 Member States shall ensure that undertakings wishing to apply for immunity from fines may be initially granted a place in the queue for leniency, where they so request, 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 from fines.

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;

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- 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 authorities or competition authorities of third countries in relation to the alleged secret cartel.

3 Member States shall ensure that any information and evidence provided by the applicant within the period specified in accordance with paragraph 1 is deemed to have been submitted at the time of the initial request.

4 The applicant 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 for undertakings wishing to make an application for the reduction of fines to request initially a place in the queue for leniency.

Article 22

Summary applications

1 Member States shall ensure that national competition authorities 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 those 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 names of other parties to the alleged secret cartel;
 - c the affected products and territories;
 - d the duration and the nature of the alleged secret cartel conduct;
 - e the Member State(s) where the evidence of the alleged secret cartel is likely to be located; and
 - f information on any past or possible future leniency applications made to any other competition authorities or competition authorities of third countries in relation to the alleged secret cartel.

3 Where the Commission receives a full application and national competition authorities receive summary applications in relation to the same alleged cartel, the Commission shall be the main interlocutor of the applicant, in the period before clarity has been gained as to whether the Commission intends to pursue the case in whole or in part, in particular in providing instructions to the applicant on the conduct of any further internal investigations. 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 the applicant to provide 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 summary applications verify whether they have already received a summary or full application

from another applicant in relation to the same alleged secret cartel at the time of receipt of such applications. If a national competition authority has not received such an application from another applicant and considers the summary application to fulfil the requirements of paragraph 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 applications to the national competition authorities concerned. Only in exceptional circumstances, when strictly necessary for case delineation or case allocation, may a national competition authority request the applicant to submit 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 within which the applicant is to 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 full application is deemed to have been submitted at the 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 secret cartel, as the leniency application filed with the Commission, which may have been updated.

Article 23

Interplay between applications for immunity from fines 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 immunity from fines, for violations of national laws that pursue predominantly the same objectives to those pursued by Article 101 TFEU, if:

- a the application for immunity from fines of the undertaking to the competition authority pursuing the case fulfils the requirements set out in points (b) and (c) of Article 17(2);
- b those current and former 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 from fines of the undertaking predates the time when those current or former 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 referred to in this paragraph.

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 immunity from fines, 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 competent prosecuting authority may proceed with the investigation.

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3 In order to ensure conformity with the existing basic principles of their legal system, by way of derogation from paragraph 2, Member States may provide that the competent authorities are able not to impose a sanction or only to mitigate the sanction to be imposed in criminal proceedings to the extent that the contribution of the individuals, referred to in paragraph 2, to the detection and investigation of the secret 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 that of 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 have 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 where 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 Regulation (EC) No 1/2003, officials and other accompanying persons authorised or appointed by the applicant national competition authority shall be permitted to attend and actively assist the requested national competition authority, under the supervision of the officials of the requested national competition authority, in the inspection or interview when the requested national competition authority exercises the powers referred to in Articles 6, 7 and 9 of this Directive.

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 to 9 of 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, as referred to in Articles 6 and 8 to 12 of this Directive. 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, subject to the safeguards set out in Article 12 of Regulation (EC) No 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) any preliminary objections to the alleged infringement of Article 101 or 102 TFEU and any decisions applying those Articles;
- (b) any other procedural act adopted in the context of enforcement proceedings which should be notified in accordance with national law; and
- (c) any other relevant documents related to the application of Article 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 or association of undertakings 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 of this Article, in particular cases where the undertaking or association of undertakings 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 the requested authority may enforce decisions imposing fines or periodic penalty payments adopted in accordance with Articles 13 and 16 by the applicant authority, where the applicant authority so requests.

Point (d) of Article 27(3) shall not apply for the purposes of this paragraph.

3 The applicant authority may only request the enforcement of a final decision.

4 Questions regarding limitation periods for the enforcement of fines or periodic penalty payments shall be governed by the national law of the Member State of the applicant authority.

Article 27

General principles of cooperation

1 Member States shall ensure that the requests as referred to in Articles 25 and 26 are executed by the requested authority in accordance with the national law of the Member State of the requested authority.

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

- a the name, known address of the addressee, and any other relevant information for the identification of the addressee;
- b a summary of the relevant facts and circumstances;
- c a summary of the attached copy of the act to be notified or enforced;

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- d the name, address and other contact details of the requested authority; and
- e the period within which notification or enforcement should be effected, such as statutory deadlines or limitation periods.

3 For requests referred to in Article 26, in addition to the requirements set out in paragraph 2 of this Article, the uniform instrument shall provide the following:

- a information about the decision permitting enforcement in the Member State of the applicant authority;
- b the date when the decision became final;
- c the amount of the fine or periodic 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. It shall not be subject to any act of recognition, supplementing or replacement in the Member State of the requested authority. The requested authority shall take all necessary measures for the execution of this request, unless the requested authority invokes paragraph 6.

5 The applicant authority shall ensure that the uniform instrument is sent to the requested authority in the official language, or in one of the official languages, of the Member State of the requested authority, unless the requested authority and the applicant authority bilaterally agree on a case-by-case basis that the uniform instrument may be sent in another language. Where required under the national law of the Member State of the requested authority, the applicant authority shall provide a translation of the act to be notified or the decision permitting enforcement of the fine or periodic penalty payment into the official language, or into one of the official languages, of the Member State of the requested authority. This shall be without prejudice to the right of the requested authority and applicant authority to bilaterally agree, on a case-by-case basis, that such translation may be provided in a different language.

6 The requested authority shall not be obliged to execute a request referred to in Article 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 the execution of the request would be manifestly contrary to public policy in the Member State in which enforcement is sought.

If the requested authority intends to refuse a request for assistance referred to in Article 25 or 26 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 Article 24 or 25.

8 The requested authority may recover the full costs incurred in relation to actions taken as referred to in Article 26 from the fines or periodic penalty payments it has collected on behalf of the applicant authority, including translation, labour and administrative costs. If the requested authority is unsuccessful in collecting the fines or periodic penalty payments, it may request the applicant authority to bear the costs incurred.

Member States are free to provide that the requested authority may also recover the costs incurred in relation to 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 on which the fines or periodic penalty payments were imposed.

Article 28

Disputes concerning requests for notification or enforcement of decisions imposing fines or periodic penalty payments

1 Disputes shall fall within the competence of the competent bodies of the Member State of the applicant authority, and shall be governed by the law of that Member State, where they concern:

- a the lawfulness of an act to be notified in accordance with Article 25 or a decision to be enforced in accordance with Article 26; and
- b the lawfulness of the uniform instrument permitting enforcement in the Member State of the requested authority.

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 law of that Member State.

CHAPTER VIII

LIMITATION PERIODS

Article 29

Rules on limitation periods for the imposition of fines and periodic penalty payments

1 Member States shall ensure that the 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 enforcement 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, concerted practice or other conduct prohibited by Article 101 or 102 TFEU.

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 enforcement 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 competition authority concerned closes its enforcement proceedings by taking a decision referred to in Article 10, 12 or 13 of this Directive or pursuant to Article 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

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of such 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 national competition authority is the subject of proceedings pending before a review court.

3 The Commission shall ensure that the notification of the first formal investigative measure received from a national competition authority under Article 11(3) of Regulation (EC) No 1/2003 is made available to the other national competition authorities 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 as being responsible for the application of Articles 101 and 102 TFEU shall ensure that actions 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 Chapter IV and Articles 13 and 16 of this Directive for the application of Article 101 or 102 TFEU, including the enforcement of fines and periodic penalty payments 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 with the same rights as set out in paragraph 2 to appeal against:

- a decisions of national courts pronouncing on decisions taken by national competition authorities as referred to in Chapter IV and Articles 13 and 16 of this Directive, concerning the application of Article 101 or 102 TFEU, including the enforcement of fines and periodic penalty payments imposed in that respect; and
- b the refusal of a national judicial authority to grant prior authorisation of an inspection referred to in Articles 6 and 7 of this Directive, 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 a natural person to provide information on the basis of measures referred to in point (e) of Article 6(1), Article 8 or Article 9, that information shall not be used in evidence to impose sanctions on that natural person 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 that was acquired on the basis of the powers referred to in this Directive and that is 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 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 the party having obtained access to the file of the enforcement proceedings of the national competition authorities may only use information taken from leniency statements and settlement submissions where necessary to exercise its rights of defence in proceedings before national courts in cases that are directly related to the case for which access has been granted, and only where such proceedings 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 found an infringement of Article 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 enforcement proceedings before a national competition authority shall not be used by that party in proceedings before national courts before the national competition authority has closed its enforcement proceedings with respect to 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 enforcement 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 enforcement proceedings; and
- c settlement submissions that have been withdrawn.

6 Member States shall ensure that leniency statements shall only be exchanged between national competition authorities pursuant to Article 12 of Regulation (EC) No 1/2003 either:

- a with the consent of the applicant; or
- b where the national competition authority receiving the leniency statement has also received a leniency application relating to the same infringement from the same applicant as the national competition authority transmitting the leniency statement, provided that, at the time the leniency statement is transmitted, it is not open to the applicant to withdraw the information which it has submitted to the national competition authority receiving the leniency statement.

7 The form in which leniency statements are submitted pursuant to Article 20 shall not affect the application of paragraphs 3 to 6 of this Article.

Article 32

Admissibility of evidence before national competition authorities

Member States shall ensure that the types of proof that are 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 information is stored.

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Article 33

The operation of European Competition Network

1 The costs incurred by the Commission in connection with the maintenance and the development of the central information system of the European Competition Network (European Competition Network System) and in connection with 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 4 February 2021. 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 12 December 2024, 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 Strasbourg, 11 December 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

J. BOGNER-STRAUSS