EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

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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

DIRECTIVE (EU) 2018/…
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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1]

Acting in accordance with the ordinary legislative procedure,[2]

[1] OJ C 345, 13.10.2017, p. 70

[2] Position of the European Parliament of 14 November 2018 (not yet published in the Official Journal) and decision of the Council of 4 December 2018.

Whereas:

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

(2) The public enforcement of Articles 101 and 102 TFEU is carried out by the national competition authorities (NCAs) of the Member States in parallel to the Commission pursuant to Council Regulation (EC) No 1/2003[1]. Together, the NCAs and the Commission form a network of public authorities that apply the Union competition rules in close cooperation (the 'European Competition Network').

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

(3) Article 3(1) of Regulation (EC) No 1/2003 obliges NCAs and national courts to apply Articles 101 and 102 TFEU to agreements, to decisions by associations of undertakings, to concerted practices or to the abuse of a dominant position which are capable of affecting trade between Member States. In practice, most NCAs apply national competition law in parallel to Articles 101 and 102 TFEU. Therefore, this Directive, the objective of which is to ensure that NCAs have the guarantees of independence, resources, and enforcement and fining powers necessary to apply Articles 101 and 102 TFEU effectively, inevitably has an impact on national competition law when it is applied in parallel by NCAs. Furthermore, the application by the NCAs of national competition law to agreements, to decisions by associations of undertakings or to concerted practices, which may affect trade between Member States, should not lead to a different outcome to the one reached by the NCAs under Union law pursuant to Article 3(2) of Regulation (EC) No 1/2003. Therefore, in such cases of parallel application of national competition law and Union law, it is essential that the NCAs have the same guarantees of independence, resources, and enforcement and fining powers necessary to ensure that a different outcome is not reached.

(4) Moreover, providing NCAs with the power to obtain all information related to the undertaking subject to the investigation, including in digital form, irrespective of the medium on which it is stored, would also affect the scope of the NCAs' powers when, at the early stages of their proceedings, they take the relevant investigative measure on the basis of national competition law applied in parallel to Articles 101 and 102 TFEU. Providing NCAs with inspection powers of a different scope, depending on whether they will ultimately apply only national competition law or also apply Articles 101 and 102 TFEU in parallel, would hamper the effectiveness of competition law enforcement in the internal market. Accordingly, the scope of the Directive should cover both the application of Articles 101 and 102 TFEU on a stand-alone basis and the parallel application of national competition law to the same case. As regards the protection of leniency statements and settlement submissions, this Directive should also cover the application of national competition law on a stand-alone basis.

(5) National law prevents many NCAs from having the necessary guarantees of independence, resources, and enforcement and fining powers to be able to enforce Union competition rules effectively. This undermines their ability to effectively apply Articles 101 and 102 TFEU and to apply national competition law in parallel to Articles 101 and 102 TFEU. For example, under national law many NCAs do not have effective tools to find evidence of infringements of Articles 101 and 102 TFEU or to fine undertakings which break the law, or do not have adequate human and financial resources and operational independence to apply Articles 101 and 102 TFEU effectively. This is capable of preventing NCAs from taking any action at all or limiting their enforcement actions. The lack of guarantees of independence, resources, and enforcement and fining powers for many NCAs to be able to apply Articles 101 and 102 TFEU effectively means that undertakings engaging in anti-competitive practices might face very different outcomes in proceedings, depending on the Member State in which they are active. They might be subject to no enforcement under Article 101 or 102 TFEU or they might only be subject to ineffective enforcement. For example, in some Member States, undertakings can escape liability for fines simply by restructuring.

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

(7) Gaps and limitations in the tools and guarantees of NCAs undermine the system of parallel powers for the enforcement of Articles 101 and 102 TFEU, which is designed to work as a cohesive whole based on close cooperation within the European Competition Network. This system depends on authorities being able to rely on each other to carry out fact-finding measures on each other's behalf in order to foster cooperation and mutual assistance among the Member States. However, it does not work well when there are still NCAs that do not have adequate fact-finding tools. In other key respects, NCAs are not able to provide each other with mutual assistance. For example, in the majority of Member States, undertakings that operate across borders are able to evade paying fines simply by not having a legal presence in some of the territories of Member States in which they are active. This reduces incentives to comply with Articles 101 and 102 TFEU. The resulting ineffective enforcement distorts competition for law-abiding undertakings and undermines consumer confidence in the internal market, particularly in the digital environment.

(8) In order to ensure a truly common competition enforcement area in the Union that provides a more even level playing field for undertakings operating in the internal market and reduces unequal conditions for consumers, there is a need to put in place fundamental guarantees of independence, adequate financial, human, technical and technological resources and minimum enforcement and fining powers for applying Articles 101 and 102 TFEU and for applying national competition law in parallel to those Articles so that national administrative competition authorities can be fully effective.

(9) It is appropriate to base this Directive on the dual legal basis of Articles 103 and 114 TFEU. This is because this Directive covers not only the application of Articles 101 and 102 TFEU and the application of national competition law in parallel to those Articles, but also covers the gaps and limitations in the tools and guarantees of NCAs needed to apply Articles 101 and 102 TFEU, because such gaps and limitations negatively affect both competition and the proper functioning of the internal market.

(10) Putting in place fundamental guarantees to ensure that NCAs apply Articles 101 and 102 TFEU uniformly and effectively should be without prejudice to the ability of Member States to maintain or introduce more extensive guarantees of independence and resources for national administrative competition authorities and more detailed rules on the enforcement and fining powers of NCAs. In particular, Member States should be able to endow NCAs with additional powers beyond the core set provided for in this Directive to further enhance their effectiveness, such as powers to impose fines on natural persons or, by way of exception, the power to carry out inspections with the consent of those subject to inspection.

(11) Conversely, detailed rules are necessary in the area of conditions for granting leniency for secret cartels. Undertakings will only disclose secret cartels in which they have participated if they have sufficient legal certainty that they will benefit from immunity from fines. The marked differences between the leniency programmes in the Member States lead to legal uncertainty for potential leniency applicants. This may weaken their incentives to apply for leniency. If Member States were able to implement or apply clearer and harmonised rules for leniency in the area covered by this Directive, this would not only contribute to the objective of maintaining incentives for applicants to disclose secret cartels, in order to render competition enforcement in the Union as effective as possible, but would also guarantee a level playing field for undertakings operating in the internal market. This should not prevent Member States from applying leniency programmes that cover not only secret cartels, but also other infringements of Article 101 TFEU and equivalent provisions of national competition law, or from accepting leniency applications from natural persons acting in their own name. This Directive should also be without prejudice to leniency programmes that exclusively provide for immunity from sanctions in criminal judicial proceedings for the enforcement of Article 101 TFEU.

(12) This Directive should not apply to national laws insofar as they provide for the imposition of criminal sanctions on natural persons, with the exception of the rules governing the interplay of leniency programmes with the imposition of sanctions on natural persons. It also should not apply to national laws that provide for the imposition of administrative sanctions on natural persons that do not operate as an independent economic actor on a market.

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

(14) The exercise of the powers, conferred by this Directive on NCAs, including the investigative powers, should 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. These safeguards include the right to good administration and the respect of undertakings' rights of defence, an essential component of which is the right to be heard. In particular, NCAs should inform the parties under investigation of the preliminary objections raised against them under Article 101 or Article 102 TFEU in the form of a statement of objections or a similar measure prior to taking a decision finding an infringement, and those parties should have an opportunity to make their views on those objections known effectively before such a decision is taken. Parties to whom preliminary objections about an alleged infringement of Article 101 or Article 102 TFEU have been notified should have the right to access the relevant case file of NCAs, to be able to exercise their rights of defence effectively.

The right to access the file should be subject to the legitimate interest of undertakings in the protection of their business secrets and should not extend to confidential information and internal documents of, and correspondence between, the NCAs and the Commission. Moreover, for decisions of NCAs, in particular those decisions finding an infringement of Article 101 or Article 102 TFEU, and imposing remedies or fines, the addressees should have the right to an effective remedy before a tribunal, in accordance with Article 47 of the Charter of Fundamental Rights of the European Union. Such decisions should be reasoned so as to allow addressees of such decisions to ascertain the reasons for the decision and to exercise their right to an effective remedy. Moreover, in accordance with the right to good administration, Member States should ensure that, when applying Articles 101 and 102 TFEU, NCAs conduct proceedings within a reasonable timeframe, taking into account the specificities of each case. The design of those safeguards should strike a balance between the respect of the fundamental rights of undertakings and the duty to ensure that Articles 101 and 102 TFEU are effectively enforced.

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

(16) Empowering national administrative competition authorities to apply Articles 101 and 102 TFEU impartially and in the common interest of the effective enforcement of the Union competition rules is an essential component of the effective and uniform application of those rules.

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

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

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

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

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

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

(22) The operational independence of national administrative competition authorities should not preclude either judicial review or parliamentary supervision in accordance with national law. Accountability requirements should also contribute to ensuring the credibility and the legitimacy of the actions of national administrative competition authorities. Proportionate accountability requirements include the publication by national administrative competition authorities of periodic reports on their activities to a governmental or parliamentary body. National administrative competition authorities might also be subject to control or monitoring of their financial expenditure, provided this does not affect their independence.

(23) National administrative competition authorities should be able to prioritise their proceedings for the enforcement of Articles 101 and 102 TFEU to make effective use of their resources, and to allow them to focus on preventing and bringing anti-competitive behaviour that distorts competition in the internal market to an end. For this purpose, they should be able to reject complaints on the grounds that they are not a priority, with the exception of complaints lodged by public authorities which share competence with a national administrative competition authority for enforcing Articles 101 and 102 TFEU and national competition law, where applicable. This should be without prejudice to the power of national administrative competition authorities to reject complaints on other grounds, such as a lack of competence, or to decide that there are no grounds for action on their part. In cases of formally filed complaints, such rejections should be subject to effective remedies in accordance with national law. The power of national administrative competition authorities to prioritise their enforcement proceedings is without prejudice to the right of a government of a Member State to issue to national administrative competition authorities general policy rules or priority guidelines that are not related to sector inquiries or specific proceedings for the enforcement of Articles 101 and 102 TFEU.

(24) NCAs should have sufficient resources, in terms of qualified staff able to conduct proficient legal and economic assessments, financial means, technical and technological expertise and equipment including adequate information technology tools, to ensure they are able to perform their tasks effectively when applying Articles 101 and 102 TFEU. In the event that the duties and powers of NCAs under national law are extended, Member States should ensure that NCAs have sufficient resources to perform those tasks effectively.

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

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

(27) In order to ensure effective monitoring of the implementation of this Directive, Member States should ensure that national administrative competition authorities submit periodic reports on their activities and resources to a governmental or parliamentary body. Those reports should include information about the appointments and dismissals of members of the decision-making body, the amount of resources that were allocated in the relevant year and any changes in that amount compared to previous years. Such reports should be made publicly available.

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

(29) National administrative competition authorities should have effective powers of investigation to detect any agreement, decision or concerted practice prohibited by Article 101 TFEU or any abuse of a dominant position prohibited by Article 102 TFEU at any stage of the proceedings before them. The national administrative competition authorities should be able to apply those powers to undertakings and associations of undertakings which are the subject of proceedings for the application of Articles 101 and 102 TFEU, as well as to other market players which may be in possession of information which is of relevance to such proceedings. Granting such effective investigative powers to all national administrative competition authorities should ensure that they are in a position to assist each other effectively when requested to carry out an inspection or any other fact-finding measure on their own territory on behalf of and for the account of another NCA pursuant to Article 22 of Regulation (EC) No 1/2003.

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

(31) National administrative competition authorities should be able to carry out all necessary inspections of premises of undertakings and associations of undertakings where, in line with the case law of the Court of Justice of the European Union, they can show that there are reasonable grounds for suspecting an infringement of Article 101 or 102 TFEU. This Directive should not prevent Member States from requiring prior authorisation by a national judicial authority for such inspections.

(32) To be effective, the power of national administrative competition authorities to carry out inspections should enable them to access information that is accessible to the undertaking or association of undertakings or person subject to the inspection and which is related to the undertaking or the association of undertakings under investigation. This should necessarily include the power to search for documents, files or data on devices which are not precisely identified in advance. Without such power, it would be impossible to obtain the information necessary for the investigation where undertakings or associations of undertakings adopt an obstructive attitude or refuse to cooperate. The power to examine books or records should cover all forms of correspondence, including electronic messages, irrespective of whether they appear to be unread or have been deleted.

(33) To minimise the unnecessary prolongation of inspections, national administrative competition authorities should have the power to continue making searches and to select copies or extracts of books and records related to the business of the undertaking or association of undertakings being inspected at the authority's premises or at other designated premises. Such searches should ensure the continued due respect of undertakings' rights of defence.

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

(35) NCAs should have effective powers to require undertakings or associations of undertakings to provide information necessary to detect infringements of Articles 101 and 102 TFEU. To that end, NCAs should be able to require the disclosure of information that may enable them to investigate putative infringements. This should include the right to require information in any digital form, including emails and instant messaging system messages, irrespective of where it is stored, including in clouds and on servers, provided it is accessible to the undertaking or association of undertakings which is the addressee of the request for information. That right should not result in an obligation on the part of the undertaking or association of undertakings which is disproportionate to the requirements of the investigation. For example, it should not result in excessive costs or efforts being incurred by the undertaking or association of undertakings. While the right to require information is crucial for the detection of infringements, such requests should be appropriate in scope. Such requests should not compel an undertaking or association of undertakings to admit that it has committed an infringement, which is incumbent upon the NCAs to prove. This should be without prejudice to the obligations of undertakings or associations of undertakings to answer factual questions and to provide documents. Similarly, NCAs should have effective tools to require any other natural or legal person to provide information that may be relevant for the application of Articles 101 and 102 TFEU. Member States should be free to provide for procedural rules on such requests for information, such as the legal form they take, provided that those rules allow for the effective use of this tool.

Experience also shows that information provided on a voluntary basis in response to non-compulsory requests for information can be a valuable source of information for informed and robust enforcement. Similarly, the provision of information by third parties, such as competitors, customers and consumers in the market, on their own initiative can contribute to effective enforcement and NCAs should encourage this.

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

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

(38) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement being investigated does not seriously and irreparably harm competition. This tool is important to avoid market developments that could be very difficult to reverse by a decision taken by an NCA at the end of the proceedings. NCAs should therefore have the power to impose interim measures by decision. As a minimum, this power should apply in cases where an NCA has made a *prima facie* finding of infringement of Article 101 or 102 TFEU and where there is a risk of serious and irreparable harm to competition. Member States are free to provide NCAs with more extensive powers to impose interim measures. A decision imposing interim measures should only be valid for a specified period, either until the conclusion of the proceedings by an NCA, or for a fixed time period which can be renewed insofar as it is necessary and appropriate. Member States should ensure that the legality, including the proportionality, of such measures can be reviewed in expedited appeal procedures or other procedures which also provide for expedited judicial control. Furthermore, Member States should create the conditions necessary to ensure that NCAs can make use of interim measures in practice. There is a particular need to enable all competition authorities to deal with developments in fast-moving markets and therefore to reflect within the European Competition Network on the use of interim measures and to take this experience into account in any relevant soft measure or future review of this Directive.

(39) Where, in the course of proceedings which might lead to an agreement or a practice being prohibited, undertakings or associations of undertakings offer NCAs commitments which meet their concerns, these NCAs should be able to adopt decisions which make these commitments binding on, and enforceable against, the undertakings or associations of undertakings concerned. In principle, such commitment decisions are not appropriate in the case of secret cartels, in respect of which NCAs should impose fines. Commitment decisions should find that there are no longer grounds for action by the NCAs, without reaching a conclusion as to whether there has been an infringement of Article 101 or 102 TFEU. It should be at the discretion of NCAs whether to accept commitments. Commitment decisions are without prejudice to the powers of competition authorities and national courts to make such a finding of an infringement and decide upon a case. Moreover, effective means of monitoring compliance by undertakings or associations of undertakings with commitments and effective means of imposing sanctions in cases of non-compliance have proven to be effective tools for competition authorities. NCAs should have effective means for the reopening of proceedings in cases where there have been material changes to any of the facts on which a commitment decision was based, where the undertaking or association of undertakings acted contrary to their commitments, or where a commitment decision was based on incomplete, incorrect or misleading information provided by the parties.

(40) To ensure the effective and uniform enforcement of Articles 101 and 102 TFEU, national administrative competition authorities should have the power to impose effective, proportionate and dissuasive fines on undertakings and associations of undertakings for infringements of Article 101 or 102 TFEU, either directly themselves in their own proceedings, in particular in administrative proceedings, provided that such proceedings enable the direct imposition of effective, proportionate and dissuasive fines, or by seeking the imposition of fines in non-criminal judicial proceedings. This is without prejudice to national laws which provide for the imposition of sanctions on undertakings and associations of undertakings by courts in criminal proceedings for the infringement of Articles 101 and 102 TFEU where the infringement is a criminal offence under national law and provided that it does not affect the effective and uniform enforcement of Articles 101 and 102 TFEU.

(41) To ensure that undertakings and associations of undertakings have incentives to comply with the investigative measures and decisions of the NCAs, national administrative competition authorities should be able either to impose effective fines for non-compliance with the measures and decisions referred to in Articles 6, 8, 9, 10, 11 and 12 directly themselves in their own proceedings or to seek the imposition of fines in non-criminal judicial proceedings. This is without prejudice to national law which provide for the imposition of such fines on undertakings and associations of undertakings by courts in criminal judicial proceedings.

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

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

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

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

(46) To ensure the effective and uniform application of Articles 101 and 102 TFEU, the notion of 'undertaking', as contained in Articles 101 and 102 TFEU, which should be applied in accordance with the case law of the Court of Justice of the European Union, designates an economic unit, even if it consists of several legal or natural persons. Accordingly, NCAs should be able to apply the notion of undertaking to find a parent company liable, and impose fines on it, for the conduct of one of its subsidiaries, where the parent company and its subsidiary form a single economic unit. To prevent undertakings escaping liability for fines for infringements of Articles 101 and 102 TFEU through legal or organisational changes, NCAs should be able to find legal or economic successors of the undertaking liable, and to impose fines on them, for infringements of Articles 101 and 102 TFEU, in accordance with the case law of the Court of Justice of the European Union.

(47) To ensure that the fines imposed for infringements of Articles 101 and 102 TFEU reflect the economic significance of the infringement, NCAs should take into account the gravity of the infringement. NCAs should also be able to set fines that are proportionate to the duration of the infringement. These factors should be assessed in accordance with the relevant case law of the Court of Justice of the European Union and in a way that ensures deterrence. The assessment of gravity should be made on a case-by-case basis for all types of infringements, taking into account all circumstances of the case. Factors that might be taken into consideration include the nature of the infringement, the combined market share of all undertakings concerned, the geographic scope of the infringement, whether the infringement has been implemented, the value of the undertaking's sales of goods and services to which the infringement directly or indirectly relates and the size and market power of the undertaking concerned. The existence of repeated infringements by the same perpetrator shows its propensity to commit such infringements and is therefore a very significant indication that the level of the penalty needs to be increased to achieve effective deterrence. Accordingly, NCAs should have the possibility to increase the fine to be imposed on an undertaking or association of undertakings where the Commission or an NCA has previously taken a decision finding that that undertaking or association of undertakings has infringed Article 101 or 102 TFEU and that undertaking or association of undertakings continues to commit the same infringement or commits a similar infringement. In accordance with Directive 2014/104/EU of the European Parliament and of the Council[1], NCAs should be able to take into account any compensation paid as a result of a consensual settlement. In addition, in exceptional circumstances, NCAs should be able to take into account the economic viability of the undertaking concerned.

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

(48) Experience has shown that associations of undertakings regularly play a role in competition infringements and NCAs should therefore be able to fine such associations effectively. When assessing the gravity of the infringement, in order to determine the amount of the fine in proceedings brought against associations of undertakings, where the infringement relates to the activities of its members, it should be possible to consider the sum of the sales of goods and services to which the infringement directly or indirectly relates by the undertakings that are members of the association. When a fine is imposed not only on the association but also on its members, the turnover of the members on which a fine is imposed should not be taken into account when calculating the fine of the association. In order to ensure effective recovery of fines imposed on associations of undertakings for infringements that they have committed, it is necessary to lay down the conditions in which it is at NCAs' discretion to require payment of the fine from the members of the association where the association is not solvent. In doing so, NCAs should have regard to the relative size of the undertakings that belong to the association and, in particular, to the situation of small and medium-sized enterprises. Payment of the fine by one or several members of an association is without prejudice to rules of national law that provide for recovery of the amount paid from other members of the association.

(49) The deterrent effect of fines differs widely across the Union, and in some Member States the maximum amount of the fine that can be imposed is very low. To ensure NCAs can impose dissuasive fines, the maximum amount of the fine that is possible to be imposed for each infringement of Article 101 or 102 TFEU should be set at a level of not less than 10 % of the total worldwide turnover of the undertaking concerned. This should not prevent Member States from maintaining or introducing a higher maximum fine that can be imposed.

(50) Leniency programmes are a key tool for the detection of secret cartels, and thus contribute to the efficient prosecution of, and the imposition of penalties for, the most serious infringements of competition law. However, there are currently marked differences between the leniency programmes applicable in the Member States. Those differences lead to legal uncertainty on the part of infringing undertakings concerning the conditions under which they are able to apply for leniency, as well as uncertainty about their immunity status under the respective leniency programmes. Such uncertainty might weaken incentives for potential leniency applicants to apply for leniency. This in turn can lead to less effective competition enforcement in the Union, as fewer secret cartels are uncovered.

(51) The differences between leniency programmes at Member State level also jeopardise the level playing field for undertakings operating in the internal market. It is therefore appropriate to increase legal certainty for undertakings in the internal market and to boost the attractiveness of leniency programmes across the Union by reducing these differences by enabling all NCAs to grant immunity and reduction from fines and accept summary applications under the same conditions. Further efforts by the European Competition Network to align leniency programmes could be needed in the future.

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

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

(54) In order to qualify for leniency, the applicant should 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, for example, in order to ensure that other alleged participants in the cartel do not discover that the NCA was made aware of the alleged cartel before it carries out investigative measures such as unannounced inspections.

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

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

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

(58) Undertakings that wish to make an application for immunity should be able to initially request NCAs for a marker for a place in the queue for leniency before they formally submit the application for immunity, in order to give the applicant time to gather the necessary information and evidence to meet the relevant evidential threshold. This is without prejudice to the ability of Member States to allow undertakings to apply for a marker in the case of applications for a reduction of fines.

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

(60) In view of the shared competences between the Commission and the NCAs for the enforcement of Articles 101 and 102 TFEU, it is key to have a smoothly functioning system of summary applications in place. Applicants which have applied for leniency to the Commission in relation to an alleged secret cartel should be able to submit summary applications to NCAs in relation to the same cartel, provided that the application to the Commission covers more than three Member States as affected territories. This is without prejudice to the possibility for the Commission to deal with cases if they are closely linked to other Union provisions which may be exclusively or more effectively applied by the Commission, where the Union interest requires the adoption of a Commission decision to develop Union competition policy when a new competition issue arises, or to ensure effective enforcement.

(61) The summary application system should allow undertakings to submit a leniency application to NCAs containing a limited set of information where a full application has been submitted to the Commission in relation to such an alleged cartel. NCAs should therefore accept summary applications that contain a minimum set of information in relation to the alleged cartel for each of the items set out in Article 22(2). This is without prejudice to the possibility for the applicant to provide more detailed information at a later time. At the request of the leniency applicant, NCAs should provide it with an acknowledgement of receipt stating the date and time of receipt. If an NCA has not yet received such a prior leniency application from another leniency applicant about the same alleged secret cartel, and considers that the summary application fulfils the requirements of Article 22(2), the NCA should inform the applicant accordingly.

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

(63) Applicants should be given the opportunity to submit full leniency applications to the NCAs to which they have submitted summary applications. If the applicants submit such full applications within the period specified by the NCA, the information contained in those applications should be deemed to have been submitted at the time at which the summary application was submitted, provided that the summary application covers the same affected products and territories and the same duration of the alleged cartel as the leniency application filed with the Commission, which might have been updated. The onus should be on applicants to inform the NCAs to which they have submitted summary applications if the scope of their leniency application with the Commission has changed and to update their summary applications accordingly. NCAs should be able to check whether the scope of the summary application corresponds to the scope of the leniency application filed with the Commission, through cooperation within the European Competition Network.

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

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

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

(66) Member States are not precluded from also protecting the current or former directors, managers and other members of staff of the applicants for reduction of fines from sanctions, or from mitigating such sanctions.

(67) In order to allow the protection to function in situations where more than one jurisdiction is involved, Member States should provide that in cases where the competent sanctioning or prosecuting authority is not in the same jurisdiction as the competition authority that is pursuing the case, the necessary contacts between those authorities should be ensured by the NCA of the jurisdiction of the competent sanctioning or prosecuting authority.

(68) In a system in which the Commission and NCAs have parallel powers to apply Articles 101 and 102 TFEU, close cooperation is required among NCAs and between NCAs and the Commission. In particular when an NCA carries out an inspection or an interview under its national law on behalf of another NCA pursuant to Article 22(1) of Regulation (EC) No 1/2003, the presence and assistance of the officials from the applicant authority should be enabled to enhance the effectiveness of such inspections and interviews by providing additional resources, knowledge and technical expertise. NCAs should also be empowered to ask other NCAs to assist in establishing whether undertakings or associations of undertakings have failed to comply with investigative measures and decisions taken by the applicant NCAs.

(69) Arrangements should be put in place to allow NCAs to request mutual assistance for the notification of documents related to the application of Article 101 or 102 TFEU on a cross-border basis to parties to the proceedings or other undertakings, associations of undertakings or natural persons which may be the addressees of such notifications. Similarly, NCAs should be able to request the enforcement of decisions imposing fines or periodic penalty payments by authorities in other Member States where the applicant authority has made reasonable efforts to ascertain that the undertaking against which the fine or periodic penalty payment is to be enforced does not have sufficient assets in the Member State of the applicant authority. Member States should also provide, in particular, that where the undertaking against which the fine or periodic penalty payment is enforceable is not established in the Member State of the applicant authority, the requested authority may enforce decisions adopted by the applicant authority, at the request of the applicant authority. This would ensure the effective enforcement of Articles 101 and 102 TFEU and would contribute to the proper functioning of the internal market. In order to ensure that NCAs devote sufficient resources to the requests for mutual assistance, and in order to incentivise such assistance, the requested authorities should be able to recover the costs they incur in providing that assistance. Such mutual assistance is without prejudice to the application of Council Framework Decision 2005/214/JHA[1].

[1] Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16).

(70) To ensure the effective enforcement of Articles 101 and 102 TFEU by NCAs there is a need to provide for workable rules on limitation periods. In particular, in a system of parallel powers, national limitation periods should be suspended or interrupted for the duration of proceedings before NCAs of another Member State or the Commission. Such suspension or interruption should not prevent Member States from maintaining or introducing absolute limitation periods, provided that the duration of such absolute limitation periods does not render the effective enforcement of Articles 101 and 102 TFEU practically impossible or excessively difficult.

(71) To ensure that cases are dealt with efficiently and effectively within the European Competition Network, in those Member States where both a national administrative competition authority and a national judicial competition authority are designated as NCAs for the purpose of enforcing Articles 101 and 102 TFEU as referred to in Articles 6, 7, 8, 9, 10, 11, 12, 13 and 16 of this Directive, national administrative competition authorities should be able to bring the action directly before the national judicial competition authority. In addition, to the extent that national courts act in proceedings brought against decisions taken by NCAs applying Article 101 or 102 TFEU, national administrative competition authorities should be fully entitled to participate in their own right as a prosecutor, defendant or respondent in those proceedings, and should enjoy the same rights of such a public party to those proceedings.

(72) The risk of self-incriminating material being disclosed outside the context of the investigation for the purposes of which it was provided could weaken the incentives for potential leniency applicants to cooperate with competition authorities. As a consequence, regardless of the form in which leniency statements are submitted, information in leniency statements that has been obtained through access to the file should be used only where necessary for the exercise of rights of defence in proceedings before national courts in certain very limited cases which are directly related to the case for which access has been granted. This should not prevent competition authorities from publishing their decisions in accordance with applicable Union or national law.

(73) Evidence is an important element in the enforcement of Articles 101 and 102 TFEU. NCAs should be able to consider relevant evidence, irrespective of whether it is written, oral, or in an electronic or recorded form. This should include the ability to consider covert recordings made by natural or legal persons which are not public authorities, provided those recordings are not the sole source of evidence. This should be without prejudice to the right to be heard and without prejudice to the admissibility of any recordings made or obtained by public authorities. Similarly, NCAs should be able to consider electronic messages as relevant evidence, irrespective of whether those messages appear to be unread or have been deleted.

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

(75) To support close cooperation in the European Competition Network, the Commission should maintain, develop, host, operate and support a central information system (European Competition Network System) in compliance with the relevant confidentiality, data protection and data security standards. The European Competition Network relies on interoperability in order to function effectively and efficiently. The general budget of the Union should bear the costs of maintenance, development, hosting, user support and operation of the European Competition Network System, as well as other administrative costs incurred in connection with the functioning of the European Competition Network, in particular the costs related to the organisation of meetings. Until 2020, provision has been made for the costs for the European Competition Network System to be covered by the Programme on interoperability solutions and common frameworks for European public administrations, businesses and citizens (ISA^2 programme) established by Decision (EU) 2015/2240 of the European Parliament and of the Council[1], subject to the programme's available resources, eligibility and prioritisation criteria.

[1] Decision (EU) 2015/2240 of the European Parliament and of the Council of 25 November 2015 establishing a programme on interoperability solutions and common frameworks for European public administrations, businesses and citizens (ISA^2 programme) as a means for modernising the public sector (OJ L 318, 4.12.2015, p. 1).

(76) Since the objectives of this Directive, namely ensuring that NCAs have the necessary guarantees of independence, resources, and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU and national competition law in parallel to Articles 101 and 102 TFEU, and ensuring the effective functioning of the internal market and the European Competition Network, cannot be sufficiently achieved by the Member States, but can rather by reason of the requisite effectiveness and uniformity in the application of Articles 101 and 102 TFEU be better achieved at Union level in particular in view of the territorial scope of the Directive, the Union may adopt measures in accordance with the principle of subsidiarity as set out on Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

(77) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,[1] Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the transmission of such documents is considered to be justified,

HAVE ADOPTED THIS DIRECTIVE:

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

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Directive sets out certain rules to ensure that national competition authorities have the necessary guarantees of independence, 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;

(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 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, 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.

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;

   (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.

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;

(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 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 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.

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 … [two years from the entry into force of this Directive]. They shall immediately inform the Commission thereof.

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

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

Article 35

Review

By ... [six years after the date of adoption of this Directive], the Commission shall present a report to the European Parliament and to the Council on the transposition and implementation of this Directive. When appropriate, the Commission may review this Directive and, if necessary, present a legislative proposal.

Article 36

Entry into force

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

Article 37

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*