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AMENDMENTS

22 - 59

Draft opinion

Eva Maydell

(PE608.025v01-00)

Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market

Proposal for a directive

(COM(2017)0142 – C8-0119/2017 – 2017/0063(COD))

AM_Com_LegOpinion

Amendment 22
Marcus Pretzell

Proposal for a directive
Recital 1

Text proposed by the Commission

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

Amendment

(1) Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are a matter of public policy and should be applied effectively throughout the Union to ensure that competition in the internal market is not distorted. Effective enforcement of Articles 101 and 102 TFEU is necessary to ensure more open competitive markets in Europe, where companies compete more on their merits and without company erected barriers to market entry. ***Effective enforcement of competition law protects consumers from the risk that States may stabilise*** business practices that keep the prices of goods and services artificially high ***or limit*** their choice of goods and services.

Or. de

Justification

Collusion that is not protected by the State is unstable and is subject to competition from better offers.

Amendment 23
Marcus Pretzell

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) ***Moreover, providing NCAs with the power to obtain all information related to the undertaking subject to the investigation in digital form irrespective of the medium on which it is stored,***

Amendment

(4) ***The investigative powers*** of the NCAs ***depend whether only*** the national competition law provisions ***are*** applied ***or whether in addition*** Articles 101 and 102 TFEU ***are applied. Only where*** national

should also affect the scope of the NCAs' powers when, at the early stages of proceedings, they take the relevant investigative measure also on the basis of the national competition law provisions 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 provisions or also Articles 101 and 102 TFEU in parallel would hamper the effectiveness of competition law enforcement in the internal market. Accordingly, the scope of the Directive should cover both the application of Articles 101 and 102 TFEU on a stand-alone basis and the application of national competition law applied in parallel to the same case. This is with the exception of the protection of leniency statements and settlement submissions which *also extends to national competition law applied on a stand-alone basis.*

competition law *conflicts with the* competition law of the *Union* should *the NCAs exercise the investigative powers provided for by this Directive.* This is with the exception of the protection of leniency statements and settlement submissions, which extends *directly to the application of national competition law.*

Or. de

Justification

In accordance with the subsidiarity principle, national and European law must be distinguished, provided that there is no conflict between them.

Amendment 24 **Marcus Pretzell**

Proposal for a directive **Recital 5**

Text proposed by the Commission

(5) National law prevents many NCAs from having the necessary guarantees of independence and enforcement and fining powers to be able to enforce these rules effectively. This undermines their ability to effectively apply Articles 101 and 102 TFEU and national competition law

Amendment

(5) National law prevents many NCAs from having the necessary guarantees of independence and enforcement and fining powers to be able to enforce these rules effectively. This undermines their ability to effectively apply Articles 101 and 102 TFEU and national competition law

provisions in parallel to Articles 101 and 102 TFEU as appropriate. For example, under national law many NCAs do not have effective tools to find evidence of infringements of Articles 101 and 102 TFEU, to fine companies which break the law ***or do not have the resources they need to effectively apply Articles 101 and 102 TFEU.*** This can prevent them from taking action at all or results in them limiting their enforcement action. The lack of operational tools and guarantees of many NCAs to effectively apply Articles 101 and 102 TFEU means that undertakings engaging in anti-competitive practices can face very different outcomes of proceedings depending on the Member States in which they are active: they may be subject to no enforcement at all under Articles 101 or 102 TFEU or to ineffective enforcement. For example, in some Member States, undertakings can escape liability for fines simply by restructuring. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU results in missed opportunities to remove barriers to market entry and to create more open competitive markets throughout the European Union where undertakings compete on their merits. Undertakings and consumers particularly suffer in those Member States where NCAs are less-equipped to be effective enforcers. Undertakings cannot compete on their merits where there are safe havens for anti-competitive practices, for example, because evidence of anti-competitive practices cannot be collected or because undertakings can escape liability for fines. They therefore have a disincentive to enter such markets and to exercise their rights of establishment and to provide goods and services there. Consumers based in Member States where there is less enforcement miss out on the benefits of effective competition enforcement. Uneven enforcement of

provisions in parallel to Articles 101 and 102 TFEU as appropriate. For example, under national law many NCAs do not have effective tools to find evidence of infringements of Articles 101 and 102 TFEU ***or*** to fine companies which break the law. This can prevent them from taking action at all or results in them limiting their enforcement action. The lack of operational tools and guarantees of many NCAs to effectively apply Articles 101 and 102 TFEU means that undertakings engaging in anti-competitive practices can face very different outcomes of proceedings depending on the Member States in which they are active: they may be subject to no enforcement at all under Articles 101 or 102 TFEU or to ineffective enforcement. For example, in some Member States, undertakings can escape liability for fines simply by restructuring. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU results in missed opportunities to remove barriers to market entry and to create more open competitive markets throughout the European Union where undertakings compete on their merits. Undertakings and consumers particularly suffer in those Member States where NCAs are less-equipped to be effective enforcers. Undertakings cannot compete on their merits where there are safe havens for anti-competitive practices, for example, because evidence of anti-competitive practices cannot be collected or because undertakings can escape liability for fines. They therefore have a disincentive to enter such markets and to exercise their rights of establishment and to provide goods and services there. Consumers based in Member States where there is less enforcement miss out on the benefits of effective competition enforcement. Uneven enforcement of Articles 101 and 102 TFEU and national competition law provisions applied in

Articles 101 and 102 TFEU and national competition law provisions applied in parallel to Articles 101 and 102 TFEU throughout Europe thus distorts competition in the internal market and undermines its proper functioning.

parallel to Articles 101 and 102 TFEU throughout Europe thus distorts competition in the internal market and undermines its proper functioning.

Or. de

Amendment 25
Marcus Pretzell

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) In order to ensure a truly common competition enforcement area in Europe that provides a more even level playing field for undertakings operating in the internal market and reduces unequal conditions for consumers there is a need to put in place minimum guarantees of independence and *resources and* core enforcement and fining powers when applying Articles 101 and 102 TFEU and national competition law provisions in parallel to Articles 101 and 102 TFEU so that NCAs can be fully effective.

Amendment

(7) In order to ensure a truly common competition enforcement area in Europe that provides a more even level playing field for undertakings operating in the internal market and reduces unequal conditions for consumers there is a need to put in place minimum guarantees of independence and core enforcement and fining powers when applying Articles 101 and 102 TFEU and national competition law provisions in parallel to Articles 101 and 102 TFEU so that NCAs can be fully effective.

Or. de

Amendment 26
Marcus Pretzell

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) It is appropriate to base this Directive on the dual legal basis of Articles 103 and 114 TFEU. This is because this

Amendment

(8) It is appropriate to base this Directive on the dual legal basis of Articles 103 and 114 TFEU. This is because this

Directive covers not only the application of Articles 101 and 102 TFEU ***and the application of national competition law provisions in parallel to these Articles***, but also the gaps and limitations in NCAs' tools and guarantees to apply Articles 101 and 102 TFEU, which negatively affect both competition and the proper functioning of the internal market.

Directive covers not only the application of Articles 101 and 102 TFEU but also the gaps and limitations in NCAs' tools and guarantees to apply Articles 101 and 102 TFEU, which negatively affect both competition and the proper functioning of the internal market.

Or. de

Amendment 27

Maria Grapini, Marlene Mizzi

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) Putting in place minimum guarantees to ensure that NCAs apply Articles 101 and 102 TFEU effectively is without prejudice to the ability of Member States to maintain or introduce more extensive guarantees of independence and resources for NCAs and more detailed rules on the enforcement and fining powers of these authorities. In particular, Member States may endow NCAs with additional powers beyond the core set provided for in this Directive to further enhance their effectiveness.

Amendment

(9) Putting in place minimum guarantees to ensure that NCAs apply Articles 101 and 102 TFEU ***in the same way and*** effectively is without prejudice to the ability of Member States to maintain or introduce more extensive guarantees of independence and resources for NCAs and more detailed rules on the enforcement and fining powers of these authorities. In particular, Member States may endow NCAs with additional powers beyond the core set provided for in this Directive to further enhance their effectiveness.

Or. en

Amendment 28

Marcus Pretzell

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) Conversely, detailed rules are necessary in the area of conditions for granting leniency for secret cartels. Companies will only come clean about *secret* cartels in which they have participated if they have sufficient legal certainty about whether they will benefit from immunity from fines. The marked differences between the leniency programmes applicable in the Member States lead to legal uncertainty for potential leniency applicants, which may weaken their incentives to apply for leniency. If Member States could implement or apply either less or more restrictive rules for leniency in the area covered by this Directive, this would not only go counter to the objective of maintaining incentives for applicants in order to render competition enforcement in the Union as effective as possible, but would also risk jeopardising the level playing field for undertakings operating in the internal market. This does not prevent Member States from applying leniency programmes that do not only cover secret cartels, but also other infringements of Articles 101 and 102 TFEU *and equivalent national provisions*.

(10) Conversely, detailed rules are necessary in the area of conditions for granting leniency for secret cartels. Companies will only come clean about *State-supported* cartels in which they have participated if they have sufficient legal certainty about whether they will benefit from immunity from fines. The marked differences between the leniency programmes applicable in the Member States lead to legal uncertainty for potential leniency applicants, which may weaken their incentives to apply for leniency. If Member States could implement or apply either less or more restrictive rules for leniency in the area covered by this Directive, this would not only go counter to the objective of maintaining incentives for applicants in order to render competition enforcement in the Union as effective as possible, but would also risk jeopardising the level playing field for undertakings operating in the internal market. This does not prevent Member States from applying leniency programmes that do not only cover secret cartels, but also other infringements of Articles 101 and 102 TFEU.

Or. de

Amendment 29

Maria Grapini, Marlene Mizzi, Nicola Danti, Pina Picierno, Virginie Rozière

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) The exercise of the powers conferred on NCAs should be subject to appropriate safeguards which at least meet the standards of general principles of EU law and the Charter of Fundamental Rights of the European Union. These safeguards

Amendment

(12) The exercise of the powers conferred on NCAs should be subject to appropriate safeguards which at least meet the standards of general principles of EU law and the Charter of Fundamental Rights of the European Union. 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 prior to taking a decision which adversely affects their interests and those parties should have an opportunity to effectively make their views known on these objections before such a decision is taken. Parties to whom preliminary objections about an alleged infringement of Article 101 or Article 102 TFEU have been notified should have the right to access the relevant case file of NCAs to be able to effectively exercise their rights of defence. This is subject to the legitimate interest of undertakings in the protection of their business secrets and does not extend to confidential information and internal documents of, and correspondence between, the NCAs and the Commission. Moreover, the addressees of final decisions of NCAs applying Article 101 or Article 102 TFEU 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 final decisions of NCAs should be reasoned so as to allow addressees of such decisions to ascertain the reasons for the decision and to exercise their right to an effective remedy. The design of these safeguards should strike a balance between respecting the fundamental rights of undertakings and the duty to ensure that Articles 101 and 102 TFEU are effectively enforced.

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 prior to taking a decision which adversely affects their interests and those parties should have an opportunity to effectively make their views known on these objections before such a decision is taken. Parties to whom preliminary objections about an alleged infringement of Article 101 or Article 102 TFEU have been notified should have the right to access the relevant case file of NCAs to be able to effectively exercise their rights of defence. This is subject to the legitimate interest of undertakings in the protection of their business secrets and does not extend to confidential information and internal documents of, and correspondence between, the NCAs and the Commission. Moreover, the addressees of final decisions of NCAs applying Article 101 or Article 102 TFEU 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 final decisions of NCAs should be reasoned so as to allow addressees of such decisions to ascertain the reasons for the decision and to exercise their right to an effective remedy. The design of these safeguards should strike a balance between respecting the fundamental rights of undertakings and the duty to ensure that Articles 101 and 102 TFEU are effectively enforced. ***In addition, effective protection is needed especially on protecting individuals who report or disclose information about violations of EU competition law.***

Or. en

Amendment 30
Jan Philipp Albrecht

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) To ensure the independence of NCAs, their staff and members of the decision-making body should act with integrity and refrain from any action which is incompatible with the performance of their duties. The need to prevent the independent assessment of staff or members of the decision-making body being jeopardised entails that during their employment and term of office and for a reasonable period thereafter, they should refrain from any ***incompatible occupation***, whether gainful or not. Furthermore, this also entails that during their employment and their term of office, they should not have an interest in any businesses or organisations which have dealings with a NCA to the extent that this has the potential to compromise their independence. The staff and the members of the decision-making body should declare any interest or asset which might create a conflict of interests in the performance of their duties. They should be required to inform the decision-making body, the other members thereof or, in the case of NCAs in which the decision-making power rests with only one person, their appointing authority, if, in the performance of their duties, they are called upon to decide on a matter in which they have an interest which might impair their impartiality.

Amendment

(15) To ensure the independence of NCAs, their staff and members of the decision-making body should act with integrity and refrain from any action which is incompatible with the performance of their duties. The need to prevent the independent assessment of staff or members of the decision-making body being jeopardised entails that during their employment and term of office and for a reasonable period thereafter, they should refrain from any ***occupation which could give rise to a conflict of interests or be otherwise incompatible***, whether gainful or not. Furthermore, this also entails that during their employment and their term of office, they should not have an interest in any businesses or organisations which have dealings with a NCA to the extent that this has the potential to compromise their independence. The staff and the members of the decision-making body should declare any interest or asset which might create a conflict of interests in the performance of their duties. They should be required to inform the decision-making body, the other members thereof or, in the case of NCAs in which the decision-making power rests with only one person, their appointing authority, if, in the performance of their duties, they are called upon to decide on a matter in which they have an interest which might impair their impartiality.

Or. en

Amendment 31

Marcus Pretzell

**Proposal for a directive
Recital 18**

Text proposed by the Commission

(18) NCAs should have the necessary resources, in terms of staff, expertise, ***financial means*** and technical equipment, to ensure they can effectively perform their tasks when applying Articles 101 and 102 TFEU. ***In case their duties and powers under national law are extended, the resources that are necessary to perform those tasks should still be sufficient.***

Amendment

(18) NCAs should have the necessary resources, in terms of staff, expertise and technical equipment, to ensure they can effectively perform their tasks when applying Articles 101 and 102 TFEU.

Or. de

**Amendment 32
Maria Grapini, Marlene Mizzi**

**Proposal for a directive
Recital 18**

Text proposed by the Commission

(18) NCAs should have the necessary resources, in terms of staff, expertise, financial means and technical equipment, to ensure they can effectively perform their tasks when applying Articles 101 and 102 TFEU. In case their duties and powers under national law are extended, the resources that are necessary to perform those tasks should still be sufficient.

Amendment

(18) NCAs should have ***adequate laws and enforcement tools such as*** the necessary resources ***in terms*** in terms of staff, expertise, financial means ***for effective enforcement of competition policy, including to carry out specific activities and permanent training for staff*** and technical equipment, to ensure they can effectively ***and independently*** perform their tasks when applying Articles 101 and 102 TFEU. In case their duties and powers under national law are extended, the resources that are necessary to perform those tasks should still be sufficient.

Or. en

Amendment 33
Daniel Dalton

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) NCAs should have the necessary resources, in terms of staff, expertise, financial means and technical equipment, to ensure they can effectively perform their tasks when applying Articles 101 and 102 TFEU. In case their duties and powers under national law are extended, the resources that are necessary to perform those tasks should still be sufficient.

Amendment

(18) NCAs should have the necessary resources, in terms of staff, expertise, financial means and technical equipment, to ensure they can effectively perform their tasks when applying Articles 101 and 102 TFEU. In case their duties and powers under national law are extended, the resources that are necessary to perform those tasks should still be sufficient. ***The independence of NCAs will be enhanced if they have autonomy in the implementation of the budgets allocated to them. Autonomy in the implementation of allocated budgets should be implemented within the framework of national budgetary rules and procedures.***

Or. en

Amendment 34
Eva Maydell

Proposal for a directive
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) The independence of NCAs will be enhanced if they are able to administer independently the budgets allocated to them. Such freedom of management of the allocated budgets should be implemented in the framework of national budgetary rules and procedures.

Or. en

Amendment 35
Marcus Pretzell

Proposal for a directive
Recital 26

Text proposed by the Commission

(26) NCAs should have effective powers to require information to be supplied as is necessary to detect any agreement, decision or concerted practice prohibited by Article 101 TFEU or any abuse prohibited by Article 102 TFEU. This should include the right to require information irrespective of where it is stored, provided it is accessible to the addressee of the request for information.

Experience shows that information provided on a voluntary basis by third parties, such as competitors, customers and consumers in the market, can also be a valuable source of information for informed and robust enforcement and NCAs should encourage this.

Amendment

(26) NCAs should have effective powers to require information to be supplied as is necessary to detect any agreement, decision or concerted practice prohibited by Article 101 TFEU or any abuse prohibited by Article 102 TFEU. This should include the right to require information irrespective of where it is stored, provided it is accessible to the addressee of the request for information.

Or. de

Justification

Denunciation should never receive State support, particularly in view of the fact that favourable treatment by the State is generally at the root of unfair competition.

Amendment 36
Marcus Pretzell

Proposal for a directive
Recital 32

Text proposed by the Commission

(32) 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

Amendment

(32) 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 case law of the Court of Justice of the European Union. In particular, as regards the assessment of the gravity of an infringement, the Court of Justice of the European Union has established that consideration must be given to the circumstances of the case, the context in which the infringement occurred and the deterrent effect of the fines. Factors that may form part of this assessment are the turnover for the goods and services in respect of which the infringement was committed and the size *and economic power* of the undertaking, as they reflect the influence the undertaking was able to exert on the market. Moreover, the existence of repeated infringements by the same perpetrator shows its propensity to commit such infringements and is therefore a very significant indication of the gravity of the conduct in question and accordingly of the need to increase the level of the penalty to achieve effective deterrence. When determining the fine to be imposed, NCAs should consider the value of the undertaking's sales of goods and services to which the infringement directly or indirectly relates. Similarly, NCAs should be entitled to increase the fine to be imposed on an undertaking or association of undertakings that continues the same, or commits a similar, infringement after the Commission or a national competition authority has taken a decision finding that the same undertaking or association of undertakings has infringed Articles 101 or 102 TFEU.

are proportionate to the duration of the infringement. These factors should be assessed in accordance with the case law of the Court of Justice of the European Union. In particular, as regards the assessment of the gravity of an infringement, the Court of Justice of the European Union has established that consideration must be given to the circumstances of the case, the context in which the infringement occurred and the deterrent effect of the fines. Factors that may form part of this assessment are the turnover for the goods and services in respect of which the infringement was committed and the size of the undertaking, as they reflect the influence the undertaking was able to exert on the market. Moreover, the existence of repeated infringements by the same perpetrator shows its propensity to commit such infringements and is therefore a very significant indication of the gravity of the conduct in question and accordingly of the need to increase the level of the penalty to achieve effective deterrence. When determining the fine to be imposed, NCAs should consider the value of the undertaking's sales of goods and services to which the infringement directly or indirectly relates. Similarly, NCAs should be entitled to increase the fine to be imposed on an undertaking or association of undertakings that continues the same, or commits a similar, infringement after the Commission or a national competition authority has taken a decision finding that the same undertaking or association of undertakings has infringed Articles 101 or 102 TFEU.

Or. de

Justification

'Economic power' is not a legally relevant dimension.

Amendment 37

Maria Grapini, Nicola Danti, Pina Picierno

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) The deterrent effect of fines differs widely across Europe and in some Member States the maximum amount of the fine that can be set is very low. To ensure NCAs can set deterrent fines, the maximum amount of the fine should be set at a level of not less than **10%** of the total **worldwide** turnover of the undertaking concerned. This should not prevent Member States from maintaining or introducing a higher maximum amount of the fine.

Amendment

(34) The deterrent effect of fines differs widely across Europe and in some Member States the maximum amount of the fine that can be set is very low. To ensure NCAs can set deterrent fines, the maximum amount of the fine should be set at a level of not less than **14%** of the total **world wide** turnover of the undertaking concerned. This should not prevent Member States from maintaining or introducing a higher maximum amount of the fine. ***Decisions of NCAs to sanction an undertaking should be applicable throughout the whole Union territory, irrespective of the jurisdiction of the Member State in which they operate.***

Or. en

Amendment 38

Marcus Pretzell

Proposal for a directive

Recital 35

Text proposed by the Commission

(35) 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

Amendment

(35) Leniency programmes are a key tool for the detection of secret cartels and thus contribute to the efficient prosecution of, and the imposition of penalties for, the most serious infringements of competition law. However, there are currently marked differences between the leniency programmes applicable in the Member States. Those differences lead to legal uncertainty on the part of infringing undertakings concerning the conditions

under which they can apply for leniency *as well as their immunity status* under the respective leniency programme(s). *Such uncertainty may weaken incentives for potential leniency applicants to apply for leniency. This in turn can lead to less effective competition enforcement in the Union, as fewer secret cartels are uncovered.*

under which they can apply for leniency under the respective leniency programme(s).

Or. de

Justification

It is ethically questionable to establish financial 'incentives' to denounce operators who may be competitors.

Amendment 39 **Jan Philipp Albrecht**

Proposal for a directive **Recital 39**

Text proposed by the Commission

(39) Applicants which have applied for leniency to the European Commission in relation to an alleged secret cartel should be able to file summary applications in relation to the same cartel to the NCAs that they deem appropriate. NCAs should accept summary applications that contain a minimum set of information in relation to the alleged cartel and not request additional information beyond this minimum set before they intend to act on the case. However, the onus is on applicants to inform the NCAs to which they have submitted summary applications if the scope of their leniency application with the Commission changes. NCAs should provide applicants with an acknowledgement stating the date and time of receipt, and inform the applicant whether they have already received a previous summary or leniency application

Amendment

(39) Applicants which have applied for leniency to the European Commission in relation to an alleged secret cartel should be able to file summary applications in relation to the same cartel to the NCAs that they deem appropriate. ***Applicants should be able to benefit from leniency at EU and national level in relation to the same cartel. However, to maintain the effectiveness of leniency programmes it should not be possible for multiple undertakings from the same cartel to benefit from immunity across EU and national level leniency programmes.*** NCAs should accept summary applications that contain a minimum set of information in relation to the alleged cartel and not request additional information beyond this minimum set before they intend to act on the case. However, the onus is on applicants to inform the NCAs to which

in relation to the same cartel. Once the Commission has decided not to act on the case in whole or partially, applicants should have the opportunity to submit full leniency applications to the NCAs to which they have submitted summary applications.

they have submitted summary applications if the scope of their leniency application with the Commission changes. NCAs should provide applicants with an acknowledgement stating the date and time of receipt, and inform the applicant whether they have already received a previous summary or leniency application in relation to the same cartel. Once the Commission has decided not to act on the case in whole or partially, applicants should have the opportunity to submit full leniency applications to the NCAs to which they have submitted summary applications.

Or. en

Amendment 40

Nicola Danti, Maria Grapini, Sergio Gaetano Cofferati, Virginie Rozière

Proposal for a directive

Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) To ensure the effective functioning of the leniency programmes, it is of paramount importance that the NCAs have in place effective means to protect individuals who report or disclose information about violations of EU competition law from retaliation, for example disciplinary measures by their employers.

Or. en

Amendment 41

Marcus Pretzell

Proposal for a directive

Recital 48

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 42
Marcus Pretzell

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive sets out certain rules to ensure that national competition authorities have the necessary guarantees of independence and resources and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU so that competition in the internal market is not distorted and consumers and

Amendment

(1) This Directive sets out certain rules to ensure that national competition authorities have the necessary guarantees of independence and resources and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU so that competition in the internal market is not distorted and consumers and

undertakings are not put at a disadvantage by national laws and measures which prevent national competition authorities from being effective enforcers. The scope of the Directive covers the application of Articles 101 and 102 TFEU and ***national competition law provisions applied in parallel to Articles 101 and 102 TFEU to the same case, with the exception of*** Article 29(2) which also extends to national competition law ***applied exclusively***.

undertakings are not put at a disadvantage by national laws and measures which prevent national competition authorities from being effective enforcers. The scope of the Directive covers the application of Articles 101 and 102 TFEU and of Article 29(2), which also extends to ***the application of*** national competition law.

Or. de

Amendment 43

Maria Grapini, Marlene Mizzi

Proposal for a directive

Article 2 – paragraph 1 – point 9

Text proposed by the Commission

(9) ***‘secret cartel’*** means an agreement ***and/or*** concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market ***and/or*** influencing the relevant parameters of competition through practices such as the fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets including bid-rigging, restrictions of imports or exports ***and/or*** anti-competitive actions against other competitors, ***which is not, partially or fully, known except to the participants;***

Amendment

(9) ***‘cartel’*** means an agreement ***or*** concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market ***or*** influencing the relevant parameters of competition through practices such as, ***but not limited to***, the fixing ***or coordination*** of purchase or selling prices or other trading conditions, ***including in relation to intellectual property rights***, the allocation of production or sales quotas, the sharing of markets ***and customers***, including bid-rigging, restrictions of imports or exports ***or*** anti-competitive actions against other competitors;

Or. en

Amendment 44

Maria Grapini, Marlene Mizzi

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

The exercise of the powers referred to in this Directive by national competition authorities shall be subject to appropriate safeguards, including respect of undertakings' rights of defence and the right to an effective remedy before a tribunal, in accordance with general principles of Union law and the Charter of Fundamental Rights of the European Union.

Amendment

The exercise of the powers referred to in this Directive by national competition authorities shall be subject to appropriate safeguards, including respect of undertakings' rights of defence, ***right to good administration, right to a fair trial*** and the right to an effective remedy before a tribunal, in accordance with general principles of Union law and the Charter of Fundamental Rights of the European Union.

Or. en

Amendment 45
Jan Philipp Albrecht

Proposal for a directive
Article 4 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) The staff and the members of the decision-making body of national administrative competition authorities are prevented, for a reasonable period after leaving office, from accepting employment, gainful or otherwise, that could give rise to conflicts of interest. The duration of this period shall take into account the specificities of the position and shall be proportionate to the threat posed by the potential conflicts of interest;

Or. en

Justification

This amendment is intended to introduce a requirement for Member States to introduce a 'cooling-off' period for officials working in national competition authorities, to combat potential conflicts of interest.

Amendment 46
Daniel Dalton

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that national competition authorities have the human, financial and technical resources that are necessary for the effective performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as defined in paragraph 2.

Amendment

1. Member States shall ensure that national competition authorities have the human, financial and technical resources that are necessary for the effective performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as defined in paragraph 2.
Member States shall ensure that the NCA is granted autonomy in the implementation of the allocated budget. This budgetary autonomy shall be exercised without prejudice to national budgetary rules and procedures.

Or. en

Amendment 47
Maria Grapini, Nicola Danti, Pina Picierno, Marlene Mizzi

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that national competition authorities have the human, financial and technical resources that are necessary for the effective performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as defined in paragraph 2.

Amendment

1. Member States shall ensure that national competition authorities have the human, financial and technical resources that are necessary for the effective ***and independent*** performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as defined in paragraph 2.

Or. en

Amendment 48

Eva Maydell

Proposal for a directive

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that the NCA has separate budget allocations, and while respecting national budgetary rules, is able to manage the allocated budgets independently for the purpose of prioritising investigations on specific cases.

Or. en

Justification

Giving to the NCAs the right to autonomously distribute their financial resources between different cases will allow for flexibility and independence in choosing which cases deserve more attention. For some NCAs, this could be a substantial improvement in terms of independence.

Amendment 49

Maria Grapini, Pina Picierno, Marlene Mizzi

Proposal for a directive

Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Decisions of NCAs to sanction an undertaking are applicable throughout the whole Union territory, irrespective of the jurisdiction of the Member State in which they operate.

Or. en

Amendment 50

Maria Grapini, Pina Picierno, Nicola Danti

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the maximum amount of the fine a national competition authority may impose on each undertaking or association of undertakings participating in an infringement of Articles 101 or 102 TFEU should not be set at a level below **10%** of its total worldwide turnover in the business year preceding the decision.

Amendment

1. Member States shall ensure that the maximum amount of the fine a national competition authority may impose on each undertaking or association of undertakings participating in an infringement of Articles 101 or 102 TFEU should not be set at a level below **14%** of its total worldwide turnover in the business year preceding the decision.

Or. en

Amendment 51

Daniel Dalton

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the maximum amount of the fine a national competition authority may impose on each undertaking or association of undertakings participating in an infringement of Articles 101 or 102 TFEU ***should not be set*** at a level ***below*** 10% of its total worldwide turnover in the business year preceding the decision.

Amendment

1. Member States shall ensure that the maximum amount of the fine a national competition authority may impose on each undertaking or association of undertakings participating in an infringement of Articles 101 or 102 TFEU ***is set at least*** at a level ***of*** 10% of its total worldwide turnover in the business year preceding the decision. ***This should not prevent Member States from maintaining or introducing a higher maximum level for the fine.***

Or. en

Justification

To make it clearer in the text that member states may choose to set a higher level of fine.

Amendment 52

Maria Grapini, Nicola Danti, Pina Picierno

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

2. Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall not be set at a level below **10** % of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association. However, the financial liability of each undertaking in respect of the payment of the fine shall not exceed the maximum amount set in accordance with paragraph 1.

Amendment

2. Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall not be set at a level below **14** % 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.

Or. en

Amendment 53
Daniel Dalton

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

2. Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall **not** be set at a level **below** 10 % of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association. However, the financial liability of each undertaking in respect of the payment of the fine shall not exceed the maximum amount set in accordance with paragraph 1.

Amendment

2. Where an infringement by an association of undertakings relates to the activities of its members, the maximum amount of the fine shall be set **at least** at a level **of** 10 % of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association. ***This should not prevent Member States from maintaining or introducing a higher maximum amount of the fine.*** 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.

Or. en

Amendment 54
Jan Philipp Albrecht

Proposal for a directive
Article 16 – paragraph 3

Text proposed by the Commission

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 participate in a secret cartel.

Amendment

3. Member States shall ensure that all undertakings are eligible for immunity from fines, with the exception of:
(a) undertakings that have taken steps to coerce other undertakings to participate in a secret cartel;
(b) undertakings whose participation in a secret cartel has been alleged to the Commission by another participant in the cartel.

Or. en

Justification

This amendment is intended to prevent multiple members of the same cartel benefitting from immunity by applying at national level when proceedings are already being conducted by the Commission.

Amendment 55
Jan Philipp Albrecht

Proposal for a directive
Article 16 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Undertakings granted leniency under a national authority's leniency programme shall remain eligible for leniency under the Commission's leniency programme for proceedings concerning participation in the same secret cartel.

Or. en

Justification

This amendment is intended to clarify that it is possible to benefit from leniency at both EU and national levels for proceedings in relation to participation in the same secret cartel.

Amendment 56

Maria Grapini, Marlene Mizzi

Proposal for a directive

Article 21 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that applicants that have applied for leniency, either by applying for a market or by submitting a full application, to the Commission in relation to an alleged secret cartel can file summary applications in relation to the same cartel with the national competition authorities which the applicant considers well placed to deal with the case.

Amendment

1. Member States shall ensure that applicants that have applied for leniency, either by applying for a market or by submitting a full application, to the Commission ***or to a better placed NCA*** in relation to an alleged secret cartel can file summary applications in relation to the same cartel with the national competition authorities which the applicant considers well placed to deal with the case.

Or. en

Amendment 57

Nicola Danti, Maria Grapini

Proposal for a directive

Article 21 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that applicants have the opportunity to submit full leniency applications, perfecting the summary applications referred to in paragraph 1, to the national competition authorities concerned, ***once the Commission has informed those authorities that it does not intend to act on the case in whole or in part.*** Member States shall ensure that national competition authorities have the power to

Amendment

6. Member States shall ensure that applicants have the opportunity to submit full leniency applications, perfecting the summary applications referred to in paragraph 1, to the national competition authorities concerned. Member States shall ensure that national competition authorities have the power to specify a reasonable period of time within which the applicant must submit the full application together with the corresponding evidence and

specify a reasonable period of time within which the applicant must submit the full application together with the corresponding evidence and information.

information.

Or. it

Justification

The powers of national competition authorities to ascertain that an infringement has been committed should not be reduced, at least until the Commission has decided whether to proceed in whole or in part.

Amendment 58
Daniel Dalton

Proposal for a directive
Article 22 – paragraph 1

Text proposed by the Commission

Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities are protected from any criminal and administrative sanctions and from sanctions imposed in non-criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the **start** of the criminal proceedings.

Amendment

Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities are protected from any criminal and administrative sanctions and from sanctions imposed in non-criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the ***time when the employees and directors were made aware by the competent authorities of the Member States*** of the criminal proceedings.

Or. en

Justification

The ECR is concerned that if the leniency provision in the Directive is too broad it may remove the deterrent effect of sanctions.

Amendment 59

Maria Grapini, Pina Picierno, Marlene Mizzi

Proposal for a directive

Article 29 – paragraph 1

Text proposed by the Commission

1. Information collected on the basis of the provisions referred to in this Directive should only be used for the purpose for which it was acquired. It should not be used in evidence for the imposition of sanctions on natural persons.

Amendment

1. Information collected on the basis of the provisions referred to in this Directive should only be used for the purpose for which it was acquired. It should not be used in evidence for the imposition of sanctions on natural persons.
Where the criminal liability of the individual is concerned, the competition authorities may transmit data from the case file to the court or to the prosecutor's office.

Or. en