



**International  
Competition  
Network**

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**European Union**

**Updating of the template:**

**28/04/2020**

# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

## 1. Information on the law relating to cartels

### A. Law(s) covering cartels:

The applicable legal provision is [Article 101, paragraph 1 of the Treaty on the Functioning of the European Union \(TFEU\)](#) (ex Article 81, paragraph 1 of the EC Treaty), according to which are prohibited:

“all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts“.

	<p>See <a href="#">Consolidated version of the Treaty on the Functioning of the European Union</a>.</p> <p>The TFEU is available in Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish.</p>
<p><b>B. Implementing regulation(s):</b></p>	<p>Article 101 TFEU is implemented by <a href="#">Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty</a> (Official Journal, L1 of 4 January 2003, pages 1-25).</p> <p>Regulation 1/2003 is further complemented by <a href="#">Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 101 and 102 of the Treaty on the Functioning of the European Union Treaty</a> (Official Journal, L123 of 27 April 2003, pages 18-24).</p>
<p><b>C. Interpretative guideline(s):</b></p>	<p>Regulation 1/2003 is also complemented by a set of interpretative guidelines regarding certain aspects of the Commission's antitrust policy. These concern:</p> <ul style="list-style-type: none"> <li>- <a href="#">Commission Notice on cooperation within the Network of Competition Authorities</a> (Official Journal C 101 of 27 April 2004, pages 43-53)</li> <li>- <a href="#">Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC</a> (Official Journal C 101 of 27 April 2004, pages 54-64), as <a href="#">amended</a>.</li> <li>- <a href="#">Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty</a> (Official Journal C 101 of 27 April 2004, pages 65-77).</li> <li>- <a href="#">Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters)</a> (Official Journal C 101 of 27 April 2004, pages 78-80).</li> <li>- <a href="#">Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty</a> (Official Journal C 101 of 27 April 2004, pages 81-96), and <a href="#">summary</a>.</li> <li>- <a href="#">Communication from the Commission - Notice - Guidelines on the application of Article 81(3) of the Treaty</a> (Official Journal C 101 of 27 April 2004, pages 97-118).</li> </ul> <p>These documents are available in the same languages as mentioned under 1.A.</p>
<p><b>D. Other relevant materials:</b></p>	<p>See also the <a href="#">webpage</a> of DG Competition with antitrust legislation. The legislation is available in the same languages as mentioned under 1.A.</p>

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>	<p>The <a href="#">Commission Notice on Immunity from fines and reduction of fines in cartel cases</a> (Official Journal C 298 of 8 December 2006, pages 17-22 ("the Leniency Notice")) states in point (1) that it concerns secret cartels affecting the EU and that "cartels are agreements and/or concerted practices 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." This definition is also included in the Settlement Notice (see response to question 7.B).</p> <p>The term "cartel" is defined in <a href="#">Art. 2(14) of 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</a> (Official Journal L 349 of 5 December 2012, pages 1-19 ("the Damages Directive")) as "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".</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>1</sup>) and other types of “cartels”?</b></p>	<p>No distinction is made between the different types of cartel behaviour.</p> <p>The Leniency Notice states in point (1) that cartels "are among the most serious violations of [Article 101 TFEU]", as opposed to other trade restrictions, mainly of a vertical nature.</p>
<p><b>C. Scope of the prohibition of hardcore cartels:</b></p>	<p>Article <a href="#">101(3) TFEU</a> provides the possibility for the provisions of Article 101(1) TFEU to be declared inapplicable to certain restrictive agreements, decisions or concerted practices fulfilling certain criteria. However, cartel agreements are very unlikely to meet the criteria of Article 101(3) TFEU.</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i><sup>2</sup>?</b></p>	<p>As a matter of practice, any agreement which fixes prices, limits its output, shares markets, customers or sources of</p>

<sup>1</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<sup>2</sup> For the purposes of this template the notion of ‘per se’ covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

	supply or involves other cartel behaviour such as bid-rigging will be regarded as a per se restriction of competition within the meaning of Article 101(1) TFEU. As these are restrictions "by object" it is not necessary to prove the anti-competitive effects of the cartel.
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	The European Commission can only impose administrative sanctions on the undertakings participating in the cartel. See <a href="#">Article 23(5) of Council Regulation (EC) No 1/2003</a> that sets out that the decisions imposing a fine for an infringement of Article 101(1) TFEU are not of a criminal law nature. Nevertheless, some Member States of the EU may also prosecute individuals participating in a cartel criminally.

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	European Commission Directorate General for Competition
<b>B. Contact details of the agency:</b>	<p>- Visiting address: Competition DG Place Madou, Madouplein 1 1210 Saint-Josse-ten-Noode /Sint-Joost-ten-Noode Belgium</p> <p>- Postal Address: European Commission Directorate-General for Competition For the attention of the Antitrust Registry 1049 Bruxelles/Brussel BELGIQUE/BELGIË</p> <p>Telephone: <a href="tel:0080067891011">00 800 67 89 10 11</a></p> <p>Email: <a href="mailto:comp-greffe-antitrust@ec.europa.eu">comp-greffe-antitrust@ec.europa.eu</a></p> <p>Website: <a href="http://ec.europa.eu/competition/contacts/index_en.html">http://ec.europa.eu/competition/contacts/index_en.html</a></p>
<b>C. Information point for potential complainants:</b>	<p>Correspondents in antitrust and cartel cases are asked to submit documents as electronic files, and preferably by <a href="#">electronic means</a>.</p> <p>See also <a href="#">Electronic Document Submissions instructions</a>.</p> <p>Correspondence complaints shall be made to the Postal Address mentioned in 3. B.</p>
<b>D. Contact point where complaints can be lodged:</b>	<p><a href="mailto:comp-greffe-antitrust@ec.europa.eu">comp-greffe-antitrust@ec.europa.eu</a></p> <p>European Commission DG Competition (Antitrust Registry) For the attention of the Antitrust Registry 1049 Bruxelles/Brussels BELGIQUE/BELGIË</p> <p>Telephone - AT Registry DG COMPETITION: +32 2 299 32 32/+32 2 295 28 14</p>

	Fax - AT Registry DG COMPETITION: +32 2 295.01.28
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	<p>The European Commission may be assisted in carrying out its investigation by the National Competition Authorities of any of the Member States.</p> <p>This assistance may consist of an exchange of information within the framework of the <a href="#">European Competition Network (ECN)</a>; it may also consist of cooperation in carrying out on-the-spot investigations (for instance during the preparation of the investigation, assistance to overcome obstruction, etc.) or even consist of the investigations being carried out by the National Competition Authorities on behalf of the Commission.</p>

#### 4. Decision-making institution(s)<sup>3</sup> [to be filled in only if this is different from the investigating agency]

<b>A. Name of the agency making decisions in cartel cases:</b>	Not applicable.
<b>B. Contact details of the agency:</b>	Not applicable.
<b>C. Contact point for questions and consultations:</b>	Not applicable.
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	Not applicable.
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	Not applicable.

#### 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases:</b>	Ex officio, leniency application, information from other sources (former employees, customers, other EU National
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<sup>3</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	Competition Authorities in the framework of ECN, anonymous whistle-blowers <sup>4</sup> ) or complaints.
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	<p>Complaints have to contain the information set out in Form C (see <a href="#">Article 5 and annex of Commission Regulation 773/2004</a>, Official Journal, L123 of 27 April 2003, pages 18-24).</p> <p>Besides complaints, the Commission receives market information, i.e. more or less detailed information about suspected infringements in any form (e-mail, letters etc.) that does not form a complaint in the formal sense.</p>
<b>C. Legal requirements for lodging a complaint against a cartel:</b>	Complainants must be able to show a legitimate interest (Article 7(2) of Regulation 1/2003 and Article 5(1) of Regulation 773/2004. More detailed information can be found in the <a href="#">Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty</a> , paragraphs 33ff. (Official Journal C 101 of 27 April 2004, pages 65-77).
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b>	The Commission is obliged to carefully examine the factual and legal elements brought to its attention by the complainant. It is however not required to conduct an investigation in each case. It may give differing degrees of priority to the complaints it receives and refer to the Community interest in determining the priority of a complaint (Article 2 Regulation of 773/2004 and Commission Notice on the handling of complaints by the Commission, paragraphs 27 and 28).
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	<p>Where the Commission considers that there are insufficient grounds for acting on a complaint, it has to inform the complainant of the reasons and set a time limit for comments by the complainant. If the complainant makes known its views within the time limit and the comments by the complainant do not lead to a different assessment, the Commission rejects the complaint by decision. If the complainant does not reply within the time-limit, the complaint is deemed to have been withdrawn (Article 7 of Regulation 773/2004).</p> <p>Where the Commission rejects a complaint pursuant to Article 13 of Regulation 1/2003 (i.e. on the ground that a Member State's competition authority is already dealing with the case or has already dealt with the case), it shall inform the complainant of the national competition authority which is dealing or has dealt with the case (Article 9 of Regulation 773/2004).</p>
<b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or</b>	There is no statutory time limit. Pursuant to case law, the Commission is obliged to decide on complaints within a reasonable time. As a matter of good administration, the Commission has publicly stated that it endeavours to inform complainants of the action that it proposes to take within 4 months (Notice on the handling of complaints, paragraphs

<sup>4</sup> The whistleblower tool allows individuals to alert anonymously the Commission about secret cartels and other antitrust violations. The new tool protects whistleblowers' anonymity through a specifically designed-encrypted messaging system that allows two-way communications. Individuals that are willing to reveal their identity can contact the Commission's competition department directly through a dedicated phone number and e-mail address. The service is accessible via this [link](#).

reject it?	60ff.).
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## 6. Leniency policy<sup>5</sup>

<b>A. What is the official name of your leniency policy?</b>	The <a href="#">Commission Notice on Immunity from fines and reduction of fines in cartel cases</a> (Official Journal C 298 of 8 December 2006, pages 17-22, ("the Leniency Notice")), as <a href="#">amended</a> .
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b>	Yes (See points (8) and (26) of the Leniency Notice). Regarding partial immunity see response to question 6.G. below.
<b>C. Who is eligible for full leniency?</b>	The Commission will grant immunity from any fine to the first undertaking to submit information and evidence which in the Commission's view will enable it:  1/ to carry out a targeted inspection in connection with the alleged cartel (point (8)(a) Leniency Notice); or  2/ to find an infringement of Article 101 TFEU in connection with the alleged cartel (point (8)(b) Leniency Notice).
<b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b>  <b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b>	Yes.  Immunity pursuant to point (8)(a) will not be granted if, at the time of the submission, the Commission had already sufficient evidence to adopt a decision to carry out an inspection in connection with the alleged cartel or had already carried out such an inspection (point (10) Leniency Notice).  Immunity pursuant to point (8)(b) will only be granted on the cumulative conditions that the Commission did not have, at the time of the submission, sufficient evidence to find an infringement of Article 101 TFEU in connection with the alleged cartel and that no undertaking had been granted conditional immunity from fines under point (8)(a) in connection with the alleged cartel (point (11) Leniency Notice).
<b>E. Who can be a beneficiary of the leniency program?</b>	Only undertakings can benefit from the leniency programme (not individuals as such).
<b>F. What are the conditions of availability of full leniency?</b>	In addition to being the first undertaking to comply with the requirements stated under points (8)-(11) of the Leniency Notice, the successful immunity applicant must meet the cumulative conditions set out in points (12) (a)-(c) and (13) Leniency Notice:

<sup>5</sup> For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.



	<p>1/ cooperate genuinely<sup>6</sup>, fully, on a continuous basis and expeditiously from the time it submits its application throughout the Commission's administrative procedure. This includes:</p> <ul style="list-style-type: none"> <li>— providing the Commission promptly with all relevant information and evidence relating to the alleged cartel that comes into its possession or is available to it;</li> <li>— remaining at the Commission's disposal to answer promptly to any request that may contribute to the establishment of the facts;</li> <li>— making current (and, if possible, former) employees and directors available for interviews with the Commission;</li> <li>— not destroying, falsifying or concealing relevant information or evidence relating to the alleged cartel; and</li> <li>— not disclosing the fact or any of the content of its application before the Commission has issued a statement of objections in the case, unless otherwise agreed;</li> </ul> <p>2/ end its involvement in the alleged infringement immediately following its application, except for what would, in the Commission's view, be reasonably necessary to preserve the integrity of the inspections.</p> <p>3/ when contemplating making its application to the Commission, not have destroyed, falsified or concealed evidence of the alleged cartel nor disclosed the fact or any of the content of its contemplated application, except to other competition authorities.</p> <p>An undertaking which took steps to coerce other undertakings to join the cartel or to remain in it is not eligible for immunity from fines. However, it may still qualify for a reduction of fines if it fulfils all the relevant requirements (point (13) Leniency Notice).</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b></p>	<p>1/ In order to benefit from a reduction of any fine that would otherwise have been imposed, an undertaking must provide evidence to the Commission which represents "significant added value" (point (24) Leniency Notice). The concept of "added value" refers to the extent to which the evidence provided strengthens, by its very nature and the level of detail, the Commission's ability to prove the alleged cartel (point (25) Leniency Notice). Therefore, to be eligible for a fine reduction on the basis of point (24) of the Leniency Notice, the information does not necessarily need to lead to the initiation of an investigation as is the case for the immunity applicant.</p> <p>The Commission takes into account both the time at which the evidence was submitted and the extent to which it represents added value. In this regard, the Leniency Notice sets out different bands of reductions:</p> <ul style="list-style-type: none"> <li>— the first undertaking to provide significant added value: a reduction of 30-50 %,</li> </ul>

<sup>6</sup> This requires in particular that the applicant provides accurate, not misleading, and complete information (see judgements of 29 June 2006, *Commission v SGL Carbon AG a.o.*, C-301/04 P, paragraphs 68-70 and of 28 June 2005, *Dansk Rorindustri A/S a.o. v Commission*, C-198/02 P, C-202/02 P, C-205/02 P, C-208/02 P and C-213/02 P, paragraphs 395-399).

	<ul style="list-style-type: none"> <li>— the second undertaking to provide significant added value: a reduction of 20-30 %,</li> <li>— subsequent undertakings that provide significant added value: a reduction of up to 20 %.</li> </ul> <p>In order to determine the level of reduction within each of these bands, the Commission will take into account the time at which the evidence fulfilling the condition in point (24) was submitted and the extent to which it represents added value (point (26) Leniency Notice).</p> <p>2/ Partial immunity will be granted to an undertaking that submits compelling evidence which the Commission uses to establish additional facts increasing the gravity or the duration of the infringement (point (26) Leniency Notice last paragraph).</p>
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted:</b></p>	<p>The successful leniency applicant (eligible for a reduction of the fine) must fulfil all the following conditions (point (12)(a)-(c) and point (24) of the Leniency Notice):</p> <p>(a) cooperate genuinely, fully, on a continuous basis and expeditiously from the time it submits its application throughout the Commission's administrative procedure. This includes:</p> <ul style="list-style-type: none"> <li>— providing the Commission promptly with all relevant information and evidence relating to the alleged cartel that comes into its possession or is available to it;</li> <li>— remaining at the Commission's disposal to answer promptly to any request that may contribute to the establishment of the facts;</li> <li>— making current (and, if possible, former) employees and directors available for interviews with the Commission;</li> <li>— not destroying, falsifying or concealing relevant information or evidence relating to the alleged cartel; and</li> <li>— not disclosing the fact or any of the content of its application before the Commission has issued a statement of objections in the case, unless otherwise agreed;</li> </ul> <p>(b) end its involvement in the alleged infringement immediately following its application, except for what would, in the Commission's view, be reasonably necessary to preserve the integrity of the inspections.</p> <p>(c) when contemplating making its application to the Commission, not have destroyed, falsified or concealed evidence of the alleged cartel nor disclosed the fact or any of the content of its contemplated application, except to other competition authorities.</p>
<p><b>I. Are there formal requirements to make a leniency application?</b></p>	<p>The immunity applicant must provide the Commission with:</p> <p>1/ a corporate statement<sup>7</sup> which includes, in so far as it is known by the applicant at the time of submission:</p> <ul style="list-style-type: none"> <li>- a detailed description of the alleged cartel arrangement;</li> <li>- the name and address of the legal entity submitting the</li> </ul>

<sup>7</sup> Corporate statements may take the form of written documents signed by or on behalf of the undertaking or be made orally.

	<p>immunity application, as well as the names and addresses of all the other participating undertakings;</p> <ul style="list-style-type: none"> <li>- the names, positions, office locations and, where necessary, home addresses of all individuals who are or have been involved in the cartel;</li> <li>- information on which other competition authorities have been approached or are intended to be approached in relation to the alleged cartel; and</li> </ul> <p>2/ other evidence relating to the alleged cartel in possession of the applicant or available to it at the time of the submission (point (9) Leniency Notice).</p>
<p><b>J. Are there distinct procedural steps within the leniency program?</b></p>	<p><u>Applications for immunity</u></p> <p>The immunity applicant should contact the Commission's Directorate General for Competition.</p> <p>The undertaking can make two types of submissions:</p> <ol style="list-style-type: none"> <li>1/ it may initially apply for a marker (see 6.M below); or</li> <li>2/ it may immediately proceed to make a formal application.</li> </ol> <p>If the undertaking makes a formal immunity application, it must</p> <ul style="list-style-type: none"> <li>- provide the Commission with all information and evidence relating to the alleged cartel available to it, as specified in points (8) and (9), including corporate statements; or</li> <li>- initially present this information and evidence in hypothetical terms, in which case the undertaking must present a detailed descriptive list of the evidence it proposes to disclose at a later agreed date (point (16) Leniency Notice).</li> </ul> <p>The Commission will not consider other applications for immunity from fines before it has taken a position on an existing application in relation to the same alleged infringement (point (21) Leniency Notice).</p> <p>If the undertaking continues to meet the conditions of point (12) of the Leniency Notice at the end of the Commission's administrative procedure, the Commission will grant the company immunity from fines in the relevant decision.</p> <p><u>Reduction of a fine</u></p> <p>The applicant for a reduction of a fine must make a formal application to the Commission and it must present it with sufficient evidence of the alleged cartel to qualify for a reduction of the fine (point (27) Leniency Notice).</p> <p>If requested, the Directorate General for Competition will provide an acknowledgement of receipt of the undertaking's application for a reduction of a fine and of any subsequent submissions of evidence, confirming the date and, where appropriate, time of each submission. The Commission will not take any position on an application for a reduction of a fine before it has taken a position on any existing applications for conditional immunity from fines in relation to the same alleged cartel (point (28) Leniency Notice).</p> <p>The Commission will evaluate the final position of each undertaking which filed an application for a reduction of a fine at the end of the administrative procedure in any decision adopted (point (30) Leniency Notice).</p>

<p><b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>	<p>See also response to question 6.J.</p> <p><u>Applications for immunity</u></p> <p>Once the Commission has received the information and evidence submitted by the undertaking under point (16)(a) and has verified that it meets the conditions set out in points (8)(a) or (8)(b), it will grant the undertaking conditional immunity from fines in writing (point (18) Leniency Notice). Conditional immunity is usually granted shortly before the inspections.</p> <p>If the undertaking has presented information and evidence in hypothetical terms, the Commission will verify that the nature and content of the evidence will meet the conditions and inform the undertaking accordingly. Following the disclosure of the evidence and having verified that it corresponds to the description made in the list, the Commission will grant the undertaking conditional immunity from fines in writing (point (19) Leniency Notice).</p> <p>If it becomes apparent that immunity is not available or that the undertaking failed to meet the conditions, the Commission will inform the undertaking in writing (point (20) Leniency Notice).</p> <p>The Commission will not consider other applications for immunity from fines before it has taken a position on an existing application in relation to the same alleged infringement (point (21) Leniency Notice).</p> <p>If at the end of the administrative procedure, the undertaking has met the conditions, the Commission will grant it immunity from fines in the relevant decision. If at the end of the administrative procedure, the undertaking has not met the conditions, the undertaking will not benefit from any favourable treatment under the Leniency Notice (point (22) Leniency Notice).</p> <p><u>Reduction of a fine</u></p> <p>If the Commission comes to the preliminary conclusion that the evidence submitted by the undertaking constitutes significant added value and that the undertaking has met the relevant criteria, it will inform the undertaking in writing, no later than the date on which a statement of objections is notified, of its intention to apply a reduction of a fine within a specified band (in practice, the Commission will try to do so as soon as possible, but this evaluation usually takes longer than in the case of an immunity application). The Commission will also, within the same time frame, inform the undertaking in writing if it comes to the preliminary conclusion that the undertaking does not qualify for a reduction of a fine (point (29) Leniency Notice).</p> <p>The Commission will evaluate the final position of each undertaking which filed an application for a reduction of a fine at the end of the administrative procedure in any decision adopted (point (30) Leniency Notice).</p>
<p><b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the</b></p>	<p>Immunity and reduction of fines are granted in the final Commission cartel decision which is taken by the college of Commissioners (see Leniency Notice point (22) for immunity and point (30) for the reduction of a fine).</p> <p>The immunity applicant will also be granted conditional immunity once the Commission has received the required</p>

<b>agency decides about leniency applications?</b>	information and evidence and has verified that the appropriate conditions have been met (point (18) Leniency Notice) (see also under 6.K).
<b>M. Do you have a marker system? If yes, please describe it.</b>	<p>Yes. The Commission services may grant a marker protecting an immunity applicant's place in the queue for a period to be specified on a case-by-case basis in order to allow for the gathering of the necessary information and evidence.</p> <p>To be eligible to secure a marker, the applicant must provide the Commission with information concerning its name and address, the parties to the alleged cartel, the affected product(s) and territory(-ies), the estimated duration of the alleged cartel and the nature of the alleged cartel conduct. The applicant should also inform the Commission on other past or possible future leniency applications to other authorities in relation to the alleged cartel and justify its request for a marker.</p> <p>Where a marker is granted, the Commission services determine the period within which the applicant has to perfect the marker by submitting the information and evidence required to meet the relevant threshold for immunity. Undertakings which have been granted a marker cannot perfect it by making a formal application in hypothetical terms. If the applicant perfects the marker within the period set by the Commission services, the information and evidence provided will be deemed to have been submitted on the date when the marker was granted (point (15) Leniency Notice).</p>
<b>N. Does the system provide for any extra credit<sup>8</sup> for disclosing additional violations?</b>	No, there is no extra credit.
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	<ul style="list-style-type: none"> <li>- The information provided by the leniency applicant may not be disclosed to third parties without the applicant's agreement because this would undermine the protection of the purpose of inspections and investigations within the meaning of <a href="#">Article 4(2) of the ["Transparency"] Regulation (EC) No 1049/2001 of the European Parliament and of the Council</a> (Official Journal, L 145/43 of 31 May 2005, pages 43-48).</li> <li>- Access to corporate statements is only granted to the addressees of a statement of objections. Other parties such as complainants will not be granted access to corporate statements, unless the applicant has disclosed to third parties the content thereof (point (33) Leniency Notice).</li> <li>- Corporate statements will only be transmitted to the competition authorities of the Member States pursuant to <a href="#">Article 12 of Regulation 1/2003</a>, provided that the conditions set out in the <a href="#">Commission Notice on cooperation within the Network of Competition Authorities</a> (Official Journal, C 101 of 27 April 2004, pages 43-53, "the Network Notice") are met and provided that the level of protection against disclosure awarded by the receiving competition authority is equivalent to the one conferred by the Commission (point (35) Leniency Notice). In</li> </ul>

<sup>8</sup> Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

	<p>principle, the consent of the leniency applicant is required, save where the receiving authority has also received a leniency application by the same applicant for the same infringement or where the receiving authority provides a written commitment that the information will not be used by it or by any other authority to impose sanctions (points (40) and (41) Network Notice).</p> <p>- In accordance with the <a href="#">Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004</a> ("the Commission Notice on rules for access to the Commission file") (Official Journal, C 325 of 27 April 2004, pages 7-15, as <a href="#">amended</a>), access to the file is only granted to the addressees of a statement of objections on the condition that the information thereby obtained may only be used for the purposes of judicial or administrative proceedings for the application of the Union competition rules at issue in the related administrative proceedings (point (34) Leniency Notice).</p> <p>- Furthermore, the parties will be granted access to all documents making up the Commission file with the exception of internal documents, business secrets of other undertakings, or other confidential information (point 10 Commission Notice on rules for access to the Commission file).</p>
<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>Yes. The final decision of the Commission can be appealed before the General Court.</p> <p>The intermediate act on conditional immunity and/or the eligibility for a reduction of the fine cannot be appealed as they are not final decisions.</p>
<p><b>Q. Contact point where a leniency application can be lodged:</b></p>	<p>Applicants for leniency can contact the Commission via email at <a href="mailto:comp-lenieny@ec.europa.eu">comp-lenieny@ec.europa.eu</a> or via fax at +32 2 299.45.85. Before sending the actual submission applicants are advised to seek assistance from one of the Commission officials involved in leniency by calling +32 2 298.41.90 or +32 2 298.41.91. The telephones are monitored from 09.00 to 17.00 on weekdays. Outside of these times, the leniency email address or fax can be used.</p> <p>Recently, the Commission launched "<a href="#">eLeniency</a>", a new tool allowing companies and their lawyers to file statements and submissions online. All submissions are to be made in writing, with no recording of the statements. This online IT tool is available online 24 hours a day, 7 days a week.</p> <ol style="list-style-type: none"> <li>1. To access eLeniency the first time, users must first create an EU Login account (or use an existing EU Login account). An EU Login can be created for a law firm or individually (by lawyer or by partner).</li> <li>2. Users must then send an email to <a href="mailto:comp-lenieny@ec.europa.eu">comp-lenieny@ec.europa.eu</a> indicating the email address linked to their EU Login account asking to have their EU Login registered with the eLeniency system. This ensures only authorised users have access. The registration of user requests will be done from 09.00 to 17.00 on weekdays.</li> <li>3. Registered users can then login to eLeniency at:</li> </ol>

	<p>eleniency.ec.europa.eu</p> <p>Users are advised to follow the <a href="#">Guidance for submitting supporting documents in eLeniency</a>.</p>
<p><b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b></p>	<p>In case the undertaking no longer fulfils the requirements set out in the Leniency Notice, the Commission will not grant immunity or reduce the fine in the final decision.</p> <p>The final decision in this regard can be appealed before the General Court. The intermediate act whereby the undertaking is informed of the Commission's intention not to grant immunity or a reduction of the fine cannot be appealed.</p>
<p><b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b></p>	<p>No.</p>
<p><b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b></p>	<p>Yes. Applicants who fear that their leniency application might be disclosed in other jurisdictions have the possibility to make oral corporate statements. Oral corporate statements are protected from disclosure, as they are rendered into writing by the Commission and are not documents of the applicant.</p> <p>The eLeniency system provides the same guarantees in terms of confidentiality and legal protection as the traditional procedure. All data is transferred securely and can't be copied or printed. Corporate statements under the Leniency Notice that are made via eLeniency are protected from disclosure.</p>

## 7. Settlement

<p><b>A. Does your competition regime allow settlement?</b></p> <p>If yes, please indicate its public availability.</p>	<p>In 2008 the European Commission adopted the legislative package introducing the Settlement Procedure. The package is composed of:</p> <ol style="list-style-type: none"> <li>1) <a href="#">Commission Regulation (EC) No 622/2008 that amended Regulation (EC) No 773/2004</a>, and</li> <li>2) <a href="#">The Commission's Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases</a> ("the Settlement Notice"), as <a href="#">amended</a>.</li> </ol>
<p><b>B. Which types of restrictive agreements are eligible for settlement?</b></p>	<p>The Settlement Notice is only applicable to cartel cases [see definition in paragraph 1 (footnote 2) of the Settlement Notice or response to question 2.A. above].</p>
<p><b>C. What is the reward of the settlement for the parties?</b></p>	<p>Cooperation with the Commission in the Settlement Procedure is rewarded by a 10% reduction of the fine (point (32) Settlement Notice).</p>
<p><b>D. May a reduction for settling be cumulated with a leniency</b></p>	<p>Yes. Paragraph 33 of the Settlement Notice specifically clarifies that both reductions can be cumulated.</p>

<b>reward?</b>	
<b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b>	<p>The Commission retains a broad margin of discretion in determining which cases are suitable for settlement. The Settlement Notice in paragraph 5 sets out a non-exhaustive list of criteria such as the probability of reaching a common understanding, the number of parties involved or the prospect of achieving procedural efficiencies.</p>
<b>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</b>	<p>While the parties do not have the right to settle, if the Commission considers a certain case to be suitable for settlement, it will explore the parties' interest in settling (point (6) Settlement Notice).</p> <p>Although the Commission retains a broad margin of discretion to determine which cases are suitable for settling, the Settlement Notice sets out a non-exhaustive list of criteria that may influence the decision. Factors such as the probability of reaching a common understanding regarding the potential objections; the number of parties involved; the foreseeable conflicting positions or the potential procedural efficiencies will be taken into account in this assessment (point (5) Settlement Notice).</p> <p>Should the Commission consider it suitable to explore the parties' interest in engaging in settlement discussions, it will initiate proceedings no later than the date on which it either issues a statement of objections or requests the parties to express in writing their interest to engage in settlement discussions, whichever is the earlier (point (9) Settlement Notice)</p> <p>Subsequently, the Commission will set a time-limit of no less than two weeks pursuant to Articles 10a(1) and 17(3) of Regulation (EC) No 773/2004 within which parties to the same proceedings should declare in writing whether they envisage engaging in settlement discussions (point (11) Settlement Notice).</p> <p>The eLeniency system can be used as part of cartel settlement procedures for submitting documents, providing comments or making formal settlement submissions to the Commission.</p> <p>The parties are entitled to withdraw from the settlement procedure until the issuing of the Settlement Submissions. Therefore, the Settlement Submissions preclude the right to opt out for the parties.</p> <p>As for the Commission, it maintains the right to revert to the standard procedure until before a decision is issued.</p>
<b>F. Describe the procedural efficiencies of your settlement system.</b>	<p>Firstly, the main procedural efficiencies for both the Commission and the parties are the adoption of a shorter and streamlined final decision. Secondly, administrative economies will also be attained since no full access to file is usually needed; moreover the parties waive their right to an oral hearing. Additionally, it is unlikely that the parties will appeal the settlement decision. Therefore, the Commission saves time and resources that can be dedicated to other cases.</p>
<b>G. Does a settlement necessitate that the parties acknowledge</b>	<p>Yes. When submitting the Settlement Submissions to the Commission the parties acknowledge their liability for the</p>



<b>their liability for the violation?</b>	infringement (point (20) Settlement Notice).
<b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b>	Yes. Decisions taken by the Commission under regulation (EC) No 1/2003 are subject to judicial review in accordance with <a href="#">Article 263 of the TFEU</a> (point (41) Settlement Notice).

## 8. Commitment

<b>A. Does your competition regime allow the possibility of commitment?</b>  If yes, please indicate its public availability.	Yes, <a href="#">Article 9 of Regulation 1/2003</a> (Official Journal L 1 of 4 January 2003, pages 1-25) provides for the adoption by the Commission of decisions whereby undertakings make legally-binding commitments as to their future behaviour.  More detailed information can be found in the <a href="#">Commission Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU</a> , paragraphs 115 ff. (Official Journal C 308 of 20 October 2011, pages 6-32).
<b>B. Which types of restrictive agreements are eligible for commitment?</b>  Are there commitments which are excluded from the commitment possibility?	Commitment decisions can be imposed in Article 101 and/or Article 102 TFEU cases. However, commitment decisions are not appropriate in cases where the Commission intends to impose a fine (recital 13 Regulation 1/2003).  Consequently, commitment decisions are excluded in the case of secret cartels that fall under the Leniency Notice (point 116 Commission Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU).
<b>C. List the criteria determining the cases which are suitable for commitment.</b>	Not applicable in cartel cases.
<b>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</b>	Not applicable in cartel cases.
<b>E. Describe briefly the system!</b>	Not applicable in cartel cases.
<b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b>	Not applicable in cartel cases.
<b>J. Describe how your authority monitors the parties' compliance to the commitments.</b>	Not applicable in cartel cases.
<b>K. Is there a possibility for parties to appeal a commitment decision at court?</b>	Not applicable in cartel cases.

## 9. Investigative powers of the enforcing institution(s)<sup>9</sup>

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>10</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>1. The Commission may by simple request or by decision require undertakings and associations of undertakings to provide all necessary information (<a href="#">Article 18 of Regulation 1/2003</a>). Penalties may be imposed in case of non-compliance to a request by decision, or the provision of incorrect, incomplete or misleading information.</p> <p>2. The Commission may conduct all necessary inspections of undertakings and associations of undertakings. In carrying out these inspections, the Commission has the power to (a) enter any premises, land and means of transport; (b) examine the books and other records related to the business irrespective of the medium on which they are stored and (c) take or obtain copies or extracts from such books or records (Article 20(2) and 21(4) of Regulation 1/2003).</p> <p>- In case of inspections at business premises, the inspections are carried out either on the basis of a simple mandate signed by the Deputy Director General of DG Competition or on the basis of a Commission decision (in which case the undertaking is obliged to cooperate). In addition to the powers mentioned above, the Commission also has the power to (d) seal any business premises and books or records for the period and to the extent necessary for the inspection as well as (e) ask any representative 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 record the answers (Article 20(2) of Regulation 1/2003).</p> <p>- In case of inspections at non-business premises, the inspections must be authorized by Commission decision as well as a prior authorization of the relevant national judicial authority.</p> <p>3. The Commission also has the power to interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject-matter of an investigation (Article 19 of Regulation 1/2003).</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>Automobiles and briefcases at business premises can be searched on the basis of the Commission's authorisation (Article 20(2) of Regulation 1/2003).</p> <p>Private residences can only be searched on the basis of a Commission decision and with a prior authorisation of the relevant national judicial authority (Article 21 of Regulation 1/2003).</p>
<p><b>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this</b></p>	<p>Yes, servers located outside the territory of the EEA or in a cloud can be inspected if they contain data (documents) related to the business of the inspected undertaking. There are no special rules in this regard, but the general rules on the</p>

<sup>9</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<sup>10</sup> “Searches/raids” means all types of search, raid or inspection measures.

<p><b>investigative power? Please explain!</b></p>	<p>Commission's powers of inspection are applicable. Article 20(2) b) of Council Regulation (EC) No 1/2003 provides that during an on-site inspection, the Commission can examine the books and other records related to the business, irrespective of the medium on which they are stored. On this basis, if the server (cloud) is accessible to the inspected undertaking (either from the inspection site or from any other premises of the undertaking subject to the inspection decision), the undertaking must make their content available to the inspectors. In practice, the undertaking will need to download the requested data and make them available to the Commission (e.g. on an external hard-drive)</p>
<p><b>D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b></p>	<p>No.</p>
<p><b>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>There have been challenges to the Commission's powers to seek information and documents. See for instance with relation to inspections, Judgment of 21 of September 1989, <a href="#">Hoechst AG v Commission</a>, Joined cases C-46/87 and C-227/88, ECR, EU:C:1989:337 and Judgment of 4 of April 1990, <a href="#">Hilti v Commission</a>, T-30/89, ECR, EU:T:1991:70. See also on requests for information, Judgment of 18 of October 1989, <a href="#">Orkem v Commission</a>, case C-374/87, ECR, ECLI:EU:C:1989:387.</p> <p>Moreover, the General Court, in its Judgment of 6 September 2013, <a href="#">Deutsche Bahn and Others v Commission</a>, T-289/11, T-290/11 and T-521/11, ECR, ECLI:EU:T:2013:404 stated two important points:</p> <ul style="list-style-type: none"> <li>- The lack of prior judicial authorisation in inspections concerning business premises is not unlawful <i>per se</i>.</li> <li>- Coincidental findings may be used to launch further inspections. The Commission has acknowledged that its inspectors are under an obligation not to examine business records if they fall outside the scope of the investigation. However, although fishing expeditions are not allowed in theory, if the Commission obtains suspicious information that falls outside the scope of the authorisation, it can initiate a new inspection of competition law.</li> </ul> <p>Another crucial development in this field is reflected in the Judgment of 25 June 2014, <a href="#">Nexans SA and Nexans France SAS v Commission</a>, C-37/13 P, ECR, ECLI:EU:C:2014:2030. Two key issues are approached by the ECJ:</p> <ul style="list-style-type: none"> <li>- First, regarding documents that can be seized by the Commission, the ECJ states that the Commission is not required to limit its investigations to documents relating to the projects which had an effect on the internal market. The Commission has therefore the right to examine documents relating to conduct outside the EU in order to detect conduct that could affect competition within the EU.</li> <li>- Second, concerning the product areas which the Commission is allowed to examine, the Court decided that the Commission</li> </ul>

	<p>can only examine product areas in which it has "reasonable grounds" to suspect an infringement.</p> <p>In two Judgments of 20 June 2018, <a href="#">České dráhy v Commission (T-325/16, EU:T:2018:368)</a>, and <a href="#">České dráhy v Commission (T-621/16, not published, EU:T:2018:367)</a> reviewing the legality of drawn raid decisions, the General Court highlighted the Commission's powers during investigations :</p> <ul style="list-style-type: none"> <li>- In case T-325/16, the General Court held that it is sufficient that the Commission is in possession of information and evidence providing reasonable grounds for suspecting an infringement; and that it is not necessary that the information in the Commission's possession establishes the existence of the infringement beyond reasonable doubt. However, the Commission may not extend the purpose of the inspection to other forms of infringement when it has no evidence in that regard.</li> <li>- In case T-621/16, the General Court considered that it is possible for a document seized during an inspection to contain information relevant to both an inspection under Article 101 TFEU and another one under Article 102 TFEU.</li> </ul> <p>More recently, the General Court, in its Judgment of 12 July 2018, <a href="#">Prysmian SpA and Prysmian Cavi e Sistemi Srl v Commission, T-475/14, ECR, ECLI:EU:T:2018:448</a>, stated that the Commission is not required to examine documents solely at the undertaking's premises, and therefore is entitled to continue the inspection at its premises in Brussels, in the presence of the lawyers of the undertakings concerned.</p>
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## 10. Procedural rights of businesses / individuals

### A. Key rights of defence in cartel cases:

**Please indicate the relevant legal provisions.**

1. Right of appeal against the final decision before the General Court which reviews the legality of and reasons for the decision. It also reviews whether the procedural rules have been respected and assesses whether the amount of the fines imposed is appropriate ([Article 31 Regulation 1/2003](#)).

2. Procedural rights, see [Commission Regulation \(EC\) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty](#) (Official Journal L123 of 27 April 2004).

These include for instance the right to be informed in writing by the Commission of the objections it raises against them; the right to reply to those objections within a set time limit (Article 10); the right of access to the Commission's file, save to business secrets and other confidential information and internal documents of the Commission (Article 15); the right to be heard in an oral hearing (Articles 11 and 12).

3. Right against self-incrimination, as endorsed by the European Courts of Justice (see for instance Judgment of 18 of October 1989, [Orkem v Commission](#), case C-374/87, ECR, ECLI:EU:C:1989:387).

4. Access to documents, see [Regulation \(EC\) No 1049/2001 of](#)

	<p><a href="#">the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (Official Journal L 145 of 31 May 2001, pages 43-48) and Judgment of 28 June 2012, Commission v Editions Odile Jacob, C-404/10 P, ECR, ECLI:EU:C:2012:393.</a></p> <p>5. The post of the Hearing Officer, which was established to enhance impartiality and objectivity in competition proceedings before the Commission (see <a href="#">2011/695/: Decision of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings</a>, Official Journal L 275 of 20 October 2011, pages 29-37).</p> <p>6. See also the <a href="#">Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU</a>, Official Journal C 308 of 20 October 2011, pages 6-32).</p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</b></p>	<p>Information properly claimed to constitute business secrets is protected from disclosure. (See <a href="#">Article 15 and 16 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty</a> (Official Journal L123 of 27 April 2004).</p> <p>See also <a href="#">Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, as amended.</a></p>

## 11. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</b></p>	<p>There are no limitation periods for the investigation and prosecution of cartels.</p> <p>There are limitation periods applying to penalties against cartel participants (<a href="#">Article 25 of Regulation 1/2003</a>):</p> <ul style="list-style-type: none"> <li>- three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;</li> <li>- five years in the case of all other infringements.</li> </ul> <p>Time starts to run on the day on which the infringement is committed. However, in case of a continuing or repeated infringement, time shall begin to run on the day on which the infringement ceased.</p> <p>Any action taken by the Commission for the purpose of an investigation shall interrupt the limitation period for the imposition of penalties.</p> <p>The actions of the Commission that would interrupt the running of the limitation period are, for example, requests for information, inspection decisions, the initiation of proceedings, or a statement of objections.</p> <p>The limitation period shall expire at the latest on the day on</p>
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	<p>which a period equal to twice the limitation period has elapsed without the Commission having imposed a penalty.</p> <p>The interruption takes effect from the date on which the action is notified to at least one of the undertakings subject to the investigation, however the interruption applies to all undertakings in the infringement. Each interruption starts time running afresh.</p> <p>The limitation period for the imposition of fines is suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.</p>
<b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</b>	No limitation period.
<b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</b>	The final decision imposing sanctions may be challenged before the General Court within a period of 2 months ( <a href="#">Article 263 TFEU</a> ).

## 12. Types of decisions

<b>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b>	<p>The Commission finds that there is an infringement of <a href="#">Article 101 TFEU</a> requiring the undertaking and associations of undertakings concerned to bring such infringement to an end.</p> <p>The Commission may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end.</p> <p>If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past (<a href="#">Article 7(1) of Regulation 1/2003</a>).</p>
<b>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</b>	See question 10.A.

<p><b>C. Can interim measures<sup>11</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>12</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p>	<p>Yes, but they are rarely applied. In case of urgency due to the risk of serious and irreparable damage to competition, the Commission, acting on its own initiative may by decision, on the basis of a <i>prima facie</i> finding of infringement, order interim measures (Article 8 of Regulation 1/2003).</p>
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### 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	<ul style="list-style-type: none"> <li>- Non-compliance with a request for information under Article 17 or 18(2) of Regulation 1/2003 by supplying incorrect or misleading information.</li> <li>- Non-compliance with a request for information under Article 17 or 18(3) of Regulation 1/2003 by supplying incorrect, incomplete or misleading information or not supplying the information within the required time-limit.</li> <li>- Producing the required books or other records related to the business in incomplete form during inspections;</li> <li>- Refusal to submit to inspections;</li> <li>- Providing incorrect or misleading answers (and falling to rectify within the set time-limit) in response to a questions asked during an inspection;</li> <li>- Breaking a seal affixed during an inspection.</li> </ul> <p>See <a href="#">Article 23 of Regulation 1/2003</a>.</p>
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b></p>	<p>Administrative pecuniary sanction.</p>
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	<p>Undertakings.</p>
<p><b>D. Criteria for determining the</b></p>	<p>In fixing the amount of the fine, the Commission will take into</p>

<sup>11</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<sup>12</sup> Only for agencies which answered “yes” to question 2.B. above

<b>sanction / fine:</b>	account both the gravity and duration of the infringement (Article 23(3) of Regulation 1/2003).
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	No minimum. The fine may not exceed 1% of the total turnover in the preceding business year of the undertaking (Article 23(1) of Regulation 1/2003).

## 14. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b>  <b>On whom can sanctions be imposed?</b>	Administrative. Nevertheless, certain Member States may also impose criminal sanctions.  Undertakings only. Nevertheless, certain Member States may also impose sanctions on individuals.
<b>B. Criteria for determining the sanction / fine:</b>	The criteria for determining the amount of the fine are set out in the <a href="#">Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003</a> (Official Journal C 210 of 1 September 2006, pages 2-5, "the Fining Guidelines").  The basic amount for a fine will be set by reference to the value of sales to which the infringement relates. As a general rule, the proportion of the value of sales will be set at a level of up to 30%. For cartels, the proportion of the value of sales will generally be set at the higher end of the scale. The amount determined on the basis of the value of sales will then be multiplied by the number of years of participation in the infringement. In addition, the Commission will add an entry fee to the basic amount of between 15% and 25% of the value of sales.  The Commission may then further adjust the fine by taking into account aggravating or mitigating circumstances.
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	There is no real minimum fine. The fine shall not exceed 10% of the total turnover of the undertaking in the preceding business year ( <a href="#">Article 23 of Regulation 1/2003</a> ).
<b>D. Guideline(s) on calculation of fines:</b>	The Fining Guidelines are available in Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.
<b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b>	No automatic suspensory effect.  The Court may, however, if it considers that circumstances so require, order that the application of the contested act be suspended ( <a href="#">Article 278 of the TFEU</a> ).  Parties who wish to apply for such suspension must do so



	<p>together with the appeal against the decision and state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for (<a href="#">Article 156 of the Rules of Procedure of the General Court</a>, Official Journal L 105 of 23 April 2015, pages 1-66).</p>
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## 15. Possibilities of appeal

<p><b>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b></p>	<p>Yes. It is open for the parties to appeal the final decision before the General Court which reviews the legality of and reasons for the decision on the basis of fact and law. It also reviews whether the procedural rules have been respected and assesses whether the amount of the fines imposed is appropriate (<a href="#">Article 31 of Regulation 1/2003</a>).</p>
<p><b>B. Before which court or agency should such a challenge be made?</b></p>	<p>The General Court deals with all appeals in antitrust cases subject to judicial review. More information regarding the procedural rules of the General Court can be found <a href="#">here</a>.</p> <p>The European Court of Justice (ECJ) operates as a second degree of judicial review, only receiving appeals from the General Court. The ECJ only assesses points of law. More information concerning the procedural rules of the Court of Justice of the European Union can be found <a href="#">here</a>.</p>

## 16. Private enforcement

<p><b>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</b></p>	<p>Yes, private enforcement of competition law and private damage claims are possible in the EU. There is, however, no single legal provision governing them.</p> <p>In the EU, it is rather a combination of provisions that govern private enforcement of competition law and private damage claims. These provisions include primary EU law, namely Article 101 and 102 on the Treaty of the Functioning of the EU (“TFEU”), secondary EU legislation, namely Directive 2014/104/EU (“Damages Directive”), and national law of the Member States.</p> <p>In fact, as there is no fully harmonised civil law in the EU, victims of competition law infringements that seek redress have to do so under the national law of a relevant Member State. However, as the Court of Justice of the EU (“CJEU”) frequently held after its famous judgments in <i>Courage v Crehan</i> and <i>Manfredi</i>, any individual’s right to claim damages resulting from an infringement of Article 101 or 102 TFEU follows directly from these Articles.</p> <p>In light of this, the EU legislator adopted the Damages Directive, which has two goals. First, it intends to strike the right balance between public and private enforcement and, second, to make it easier for victims of competition law infringements to receive compensation for the harm they suffered.</p> <p>In particular, Article 3 of the Damages Directive provides that:</p> <p>“Member States shall ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim, and to obtain</p>
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	<p>full compensation for that harm.”</p> <p>The Damages Directive thus specifically intends to facilitate private damages claims and to harmonise certain aspects regarding such claims and ensures a more effective enforcement of the EU competition rules overall. All Member States have transposed the rules of the Damages Directive into national law.</p>
<p><b>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</b></p>	<p>Article 101 and 102 TFEU include the right of any individual to claim damages resulting from an infringement of these Articles. A consolidated version of the TFEU is available in the EU 23 languages at:</p> <p><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT</a></p> <p>In a number of judgments, the CJEU has further clarified this right to claim damages. Any judgments of the CJEU can be found in a number of languages at:</p> <p><a href="https://curia.europa.eu/jcms/jcms/j_6/en/">https://curia.europa.eu/jcms/jcms/j_6/en/</a></p> <p>Following the CJEU's first judgments on private enforcement of competition law, the EU legislator adopted the Damages Directive. The Damages Directive is the main piece of legislation regarding private enforcement in Europe since it harmonises certain aspects of the right to claim damages for infringements of EU competition law. It is available in the EU 23 languages at:</p> <p><a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014L0104">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014L0104</a></p>
<p><b>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>All of the Member States have implemented the Damages Directive. References to the national laws implementing the Damages Directive are available at:</p> <p><a href="https://ec.europa.eu/competition/antitrust/actionsdamages/directive_en.html">https://ec.europa.eu/competition/antitrust/actionsdamages/directive_en.html</a></p> <p>In the context of the adoption of the Damages Directive, the European Commission amended its procedural rules, in particular Regulation 773/2004, to align them with the Damages Directive. These amendments mostly concern the disclosure and use of information in the European Commission's files. The consolidated version of Regulation 773/2004 is available at:</p> <p><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1442411204860&amp;uri=CELEX:02004R0773-20150806">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1442411204860&amp;uri=CELEX:02004R0773-20150806</a></p> <p>The European Commission also provides non-binding guidance on private enforcement of competition law. For example, in summer 2020, it will publish a Communication on the protection of confidential information. Previously, the Commission has published non-binding guidance for quantifying antitrust harm in damages actions, namely the so-called Practical Guide and Passing-on Guidelines. Both documents are available in the EU 23 languages at:</p> <p><a href="https://ec.europa.eu/competition/antitrust/actionsdamages/quantification_en.html">https://ec.europa.eu/competition/antitrust/actionsdamages/quantification_en.html</a></p>
<p><b>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</b></p>	<p>In case of an infringement of Article 101 or 102 TFEU, any individual can claim compensation for harm suffered as a result of such an infringement. Article 101 TFEU prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market and Article 102 TFEU prohibits the abuse of a dominant undertaking. Therefore, in the EU, private actions cover a wide range of antitrust infringements, not only cartels but also other types of horizontal or even vertical restrictions as well as exclusionary and predatory unilateral practices of dominant undertakings.</p>
<p><b>E. What pleading</b></p>	<p>Pleading standards, as well as more generally the burden and standard of proof,</p>

<p><b>standards must the plaintiff meet to file a stand-alone or follow-on claim?</b></p> <ul style="list-style-type: none"> <li><b>is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals?</b></li> <li><b>if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised?</b></li> </ul>	<p>are subject to the national laws of the EU Member States, which in any case must comply with the EU principles of equivalence and effectiveness.</p> <p>This being said, in the EU, the finding of an infringement by a competition agency is not required to initiate a private antitrust action. The victim of an EU competition law infringement can claim damages in both scenarios, i.e. in the scenario in which neither the Commission nor any National Competition Authority of an EU Member State (“NCA”) has found an infringement (stand-alone claim) and in the scenario in which the Commission or a NCA has found an infringement of Article 101 or 102 TFEU (follow-on claim).</p> <p>However, in follow-on claim, the victim of an EU competition law infringement may benefit from the finding of such infringement. As regards decisions of the Commission, Article 16(1) of Regulation 1/2003 stipulates that national courts, when they rule on agreements, decisions or practices under Article 101 and 102 TFEU which are already the subject of a Commission decision, cannot take decisions running counter to the decision adopted by the Commission. As regards final infringement decisions of NCAs, Article 9 of the Damages Directive applies. This Article differentiates according to which NCA has issued the relevant infringement decision. According to Article 9(1) Damages Directive, a final decision of the NCA of a Member State is deemed to establish irrefutably an infringement of competition law before the courts of that particular Member State whereas Article 9(2) Damages Directive stipulates that national courts are required to consider a final decision of another Member State’s NCA at least as <i>prima facie</i> evidence of the existence of an infringement. The term “final infringement decision” is defined in Article 2(10) of the Damages Directive as “an infringement decision that cannot be, or that can no longer be, appealed by ordinary means”.</p> <p>Recital 34 of the Damages Directive states in regard to the scope of the binding effect:</p> <p>“The finding of an infringement of Article 101 or 102 TFEU in a final decision by a national competition authority or a review court should not be relitigated in subsequent actions for damages. Therefore, such a finding should be deemed to be irrefutably established in actions for damages brought in the Member State of the national competition authority or review court relating to that infringement. The effect of the finding should, however, cover only the nature of the infringement and its material, personal, temporal and territorial scope as determined by the competition authority or review court in the exercise of its jurisdiction. Where a decision has found that provisions of national competition law are infringed in cases where Union and national competition law are applied in the same case and in parallel, that infringement should also be deemed to be irrefutably established.”</p>
<p><b>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</b></p>	<p>Yes, private actions are available where there has been a criminal conviction in respect of the same matter. In other words, there is no restriction under EU law in that regard.</p>
<p><b>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</b></p>	<p>Yes.</p> <p>A leniency applicant, irrespective of whether or not the European Commission or a NCA will grant full or partial immunity from fines, receives beneficial treatment concerning the disclosure of evidence included in the file of such a competition authority. Article 6(6) of the Damages Directive provides for this beneficial statement. It stipulates that for the purpose of actions for damages, national courts cannot at any time order a party of third party to disclose leniency statements (and settlement submissions).</p> <p>Recital 26 of the Damages Directive provides further background as to why leniency statements may never be ordered for disclosure.</p>

	<p>An immunity recipient, i.e. a leniency applicant that the European Commission or a NCA grant full immunity from fines, receives an additional beneficial treatment. Such an applicant benefits from a derogation from the general rule of joint and several liability of all infringers. The relevant rule is Article 11 (4) of the Damages Directive which limits the liability of an immunity recipient (a) “to its direct or indirect purchasers or providers” and (b) “to other injured parties only where full compensation cannot be obtained from the other undertakings that were involved in the same infringement of competition law”. Article 11 (5) and (6) of the Damages Directive ensure that this rule is respected in case of contribution claims among the co-infringers.</p> <p>Recital 38 of the Damages Directive explains the reasoning behind the limits to the liability of immunity recipients.</p>
<p><b>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</b></p>	<p>Whereas a number of Member States have decided to create specialised courts for damages actions, the Damages Directive as such does neither require the creation of such courts for infringements of EU competition law nor stipulate to which national court private enforcement claims may be submitted to.</p> <p>Furthermore, Regulation No 1215/2012 (“Brussels I Recast”) includes rules on jurisdiction that apply to private enforcement claims. More specifically, Article 7(2) stipulates that “[a] person domiciled in a Member State may be sued in another Member State [...] in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur”. In fact, this rule has been subject to a number of judgments of the CJEU in the context of EU competition law, such as in <i>CDC Hydrogen Peroxide</i>, <i>flyLAL-Lithuanian Airlines</i> and <i>Tibor-Trans</i>.</p>
<p><b>I. Information about class action opportunities</b></p>	<p>The Damages Directive did not require Member States to introduce collective redress mechanisms. In a large majority of the Member States, however, collective damages actions for infringements of EU competition law are, in principle, possible. The Damages Directive applies to those collective actions. It therefore renders collective redress more effective in those Member States. For example, through its disclosure rules, the Damages Directive ensures that a consumer representative gets access to the necessary data to make its case before the national judge.</p>
<p><b>J. Role of your competition agency in private enforcement actions (if at all)</b></p>	<p>The main piece of legislation regarding private enforcement in Europe, i.e. the Damages Directive, is based on the European Commission’s proposal for such a Directive. The European Commission has therefore had an active role in the policy work behind private enforcement actions in Europe. The European Commission continues to have such a role. This is particularly because the European Commission monitors the implementation of the Damages Directive in the Member States. It also gives non-binding guidance that is of practical relevance for private enforcement actions. Examples of such guidance are the communications on quantifying harm (Practical Guide and Passing-on Guidelines) as well as the protection of confidential information (which will be adopted in summer 2020), as mentioned in 16 C. above.</p> <p>In addition, the European Commission has cooperated with the national courts of the Member States in the context of private enforcement actions. For example, in such a context, national courts have requested information pursuant to Article 15(1) of Regulation 1/2003 from the European Commission and the European Commission, on its own initiative, has submitted <i>amicus curiae</i> observations to national courts. The European Commission also submits observations to the CJEU in preliminary reference procedures that concern questions on the rules governing private enforcement actions.</p> <p>The Damages Directive also provides for rules that allow for cooperation between the European Commission and national courts. In particular, while the</p>

	<p>European Commission may only be the last resort for disclosure requests, see Article 6(10) of the Damages Directive, the European Commission may, acting on its own initiative, submit observations to the national court on the proportionality of a disclosure request, see Article 6(11) of the Damages Directive. And, if the European Commission is the competent authority, a national court may request the assistance of the European Commission to assess whether evidence presented to it includes a leniency statement or a settlement submission, see Article 6(7) Damages Directive.</p>
<p><b>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</b></p> <ul style="list-style-type: none"> <li>• <b>Role of your competition agency in the damage calculation (if at all)</b></li> </ul>	<p>As indicated in 16 E. above, as a general rule, the laws of the Member States govern the burden and standard of proof in damages actions before national courts for infringements of Article 101 or Article 102 TFEU. However, first, the EU principles of equivalence and effectiveness may require exceptions to this general rule. As regards the evidentiary burden to quantify damages, for example, Article 17(1) of the Damages Directive highlights “that neither the burden nor the standard of proof required for the quantification of harm renders the exercise of the right to damages practically impossible or excessively difficult”. Second, the Damages Directive also includes specific rules that are relevant in relation to the burden and standard of proof, such as the general presumption “that cartel infringements cause harm” (Article 17(2) of the Damages Directive).</p> <p>Except for Article 7(1) and (2) of the Damages Directive, which are described in 16 L. below, the Damages Directive does not include rules on inadmissibility of evidence. In fact, the definition of evidence stipulated in Article 2(13) of the Damages Directive is broad, covering “all types of means of proof admissible before the national court seized, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored”. The role of the European Commission in relation to the calculation of damages has focused on the publication of general guidance on quantifying antitrust harm, namely the Practical Guide and the Passing-on Guidelines, as referred to in 16. C above. These publications cannot only help a claimant to meet the applicable standard of proof under national law but are specifically meant to provide national courts with practical guidance when they estimate harm in damages actions. The latter function is particularly relevant since Article 17(2) of the Damages Directive requires that “national courts are empowered, in accordance with national procedures, to estimate the amount of harm if it is established that a claimant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available.”</p>
<p><b>L. Discovery / disclosure issues:</b></p> <ul style="list-style-type: none"> <li>• <b>can plaintiff obtain access to competition authority or prosecutors’ files or documents collected during investigations?</b></li> <li>• <b>is your competition</b></li> </ul>	<p>Article 5 of the Damages Directive generally allows the party to a damages action for the infringement of EU competition law to request the disclosure of evidence from the other party or third parties. The European Commission, NCAs and prosecutors can be considered third parties within the meaning of this Article. However, as regards the European Commission and NCAs, according to Article 6(10) of the Damages Directive, disclosure of evidence from the European Commission or NCAs can only be the last resort, as indicated in 16 J. above.</p> <p>Furthermore, disclosure of evidence included in the file of a competition authority is in any case subject to the specific and strict requirements of Article 6 of the Damages Directive. Moreover, the disclosure rules of the Damages Directive do not include specific rules dealing with access to the prosecutor’s files and neither do they differentiate between documents “collected during Investigations” and other documents nor between stand-alone and follow-on cases.</p> <p>In addition, the Damages Directive, in its Article 5(4), stipulates that a national court can order the disclosure of evidence containing confidential information but obliges such a court to protect this confidential information through appropriate</p>

<p><b>agency obliged to disclose to the court the file of the case (in follow-on cases)?</b></p> <ul style="list-style-type: none"><li>• <b>summary of the rules regulating the disclosure of confidential information by the competition agency to the court</b></li> <li>• <b>summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court</b></li></ul>	<p>mechanisms.</p> <p>The general requirements for the order of disclosure of evidence based on the Damages Directive are set out in its Article 5 (1), (2) and (3). They essentially require that (i) the claim is plausible, (ii) the evidence is relevant and (iii) the disclosure proportionate.</p> <p>As regards rules governing the disclosure of leniency-based information, as mentioned in 16 G. above, Article 6(6) of the Damages Directive stipulates that for the purpose of actions for damages, national courts cannot at any time order a party of third party to disclose leniency statements (and settlement submissions). To ensure the full effect of this rule, Article 7(1) of the Damages Directive stipulates that such evidence, when a natural or legal person has obtained it solely through access to the file of a competition authority, is either deemed to be inadmissible in actions for damages or otherwise protected under the applicable national rules.</p>
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**M. Passing-on issues:**

- **how is passing-on regulated / treated in your jurisdiction?**
- **is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims?**

In the EU, the rules governing passing-on are harmonised by Articles 12 to 15 of the Damages Directive. This legal context is summarised in paragraphs 12 to 45 of the Passing-on Guidelines, which the European Commission issued pursuant to Article 16 of the Damages Directive and which are available in the EU 23 languages at:

<https://op.europa.eu/s/n3SH>

As regards standing, based on the principle of full compensation mentioned in 16 A. above, Article 12(1) of the Damages Directive specifies that, in the context of the passing-on of overcharges, “any individual” includes direct and indirect purchasers.

This means that, in the EU, standing to bring a claim is not limited those directly affected but also allows indirect purchasers to bring claims. And even direct and indirect suppliers can claim damages for harm suffered as a result of EU competition law infringements, as the CJEU confirmed in *Otis v Land Oberösterreich*.

When an indirect purchaser claims that it suffered harm due to the passing-on of overcharges, the burden of proving the existence and scope of such passing-on rests with the indirect purchaser seeking damages from the infringer, see Article 14(1) of the Damages Directive. However, Article 14(2) of the Damages Directive stipulates a rebuttable presumption according to which an indirect purchaser is deemed to have proved that a passing-on from the direct purchaser to the indirect purchaser occurred. It requires that the indirect purchaser can show the following: (a) the defendant has committed an infringement of EU competition law; (b) the infringement of EU competition law has resulted in an overcharge for the direct purchaser of the defendant; and (c) the indirect purchaser has purchased the goods or services that were the object of the infringement of EU competition law, or has purchased goods or services derived from or containing them. This presumption does not apply if the infringer can credibly demonstrate to the satisfaction of the court that the overcharge was not, or was not entirely, passed on to the indirect purchaser.

Furthermore, in the EU, an infringer may invoke the passing-on of overcharges in its defence against damages claims, i.e. arguing that the direct or indirect purchaser has passed on the overcharge, entirely or in part, to its own purchasers. If so, the infringer needs to prove that the claimant has passed on the overcharge. This burden of proof relates to the existence and extent of the passing-on of the overcharge.

The Damages Directive aims to ensure the effective exercise of rights and equality of arms by stipulating rules to request the disclosure of evidence. Article 13 of the Damages Directive specifically mentions that the defendant may reasonably require disclosure from the claimant or from third parties. In a scenario in which an indirect purchaser seeks compensation, Article 14(1) of the Damages Directive stipulates that this indirect purchaser may reasonably require disclosure from the defendant or third parties.

Finally, Article 12(5) of the Damages Directive ensures that national courts have the power to estimate, in accordance with national procedures, the share of any overcharge that was passed on and Article 15 of the Damages Directive includes rules in case of actions for damages by claimants from different levels in the supply chain.