



ECN+

**EU Directive to empower national competition
authorities to be more effective enforcers**

GCLC

Brussels, 14 December 2018



Timeline

- **Commission proposal** - 22 March 2017
- **Ordinary procedure** (EP and Council = co-legislators)
- **Political agreement** - 30 May 2018
- **Signed by co-legislators** - 11 December 2018

Fundamental Rights

- Article 3: NCAs' powers subject to appropriate safeguards, including **respect of companies' rights of defence** and **effective judicial review**, in accordance with general principles of EU law and EU Charter
- **Certain aspects mentioned in the Article:**
 - right to be heard
 - right to a statement of objections
- Explicit reference to need to **conduct proceedings within a reasonable timeframe**

Independence

- Everyone in administrative NCAs should:
 - Act **independently from political/external influence**
 - **Not seek nor take instructions**
 - Refrain from **actions incompatible with duties & (new) for reasonable period after leaving office**, refrain from **same cases**
- Persons taking key enforcement decisions **dismissed only** if: a) **not fulfil conditions for performance of duties** or b) **found guilty of serious misconduct**
- **Clear and transparent procedures** for **selection, recruitment or appointment** of decision making bodies
- **Set priorities in full** incl. reject formal complaints on priority grounds



Resources

- NCAs should have a **sufficient number of qualified staff** and **sufficient financial, technical and technological resources** to:
 - Conduct **investigations**
 - Adopt **decisions**
 - **Cooperate** closely in the ECN and
 - **Advise** public bodies & **promote public awareness** (only if provided under national law)
- **Independence in spending of allocated budget**
- **Publicly available periodic reports** on activities, amount of resources and appointments & dismissals



Powers

Core set of investigative and decision-making tools

- NCAs can **access information** accessible to company being inspected (even if stored on clouds, servers)
- Legal basis for **continued inspections**
- Empowers some NCAs to **inspect private homes**
- New power to compulsory summon for **interviews**
- Empowers several NCAs to impose **structural and behavioural remedies**
- Tools backed up by **effective sanctions**



Fines

- Criminal systems should ensure **alternative route** for administrative NCAs to impose fines:
 - in **their own proceedings** or
 - in **non-criminal judicial proceedings**
- **No escape** from fines through **restructuring**
- **Gravity and duration**: common parameters
- **Consensual settlements may** be considered (Damages Directive)
- **Legal maximum: no less than 10%** of worldwide turnover
- Fines **on insolvent associations** can be **collected from members**

Leniency - I

- Harmonisation of the **thresholds** and **conditions** for immunity and reduction of fines applicants
- Enabling applicants to submit **leniency statements** not only **in writing** but also **orally or by other means** that permit them **not to take possession** of those statements
- Enabling NCAs to accept **leniency statements** and **requests for marker** in an **EU language bilaterally agreed** with the applicant
- Enabling immunity applicants to initially request a place in the leniency queue (**marker**)

Leniency - II

- Effective **summary applications system**:
 - In cases with **3MS+** as affected territories
 - **Content** of summary applications
 - The **NCAs** can **ask** only for **specific clarifications** about the summary applications
 - Only in **exceptional circumstances, when strictly necessary for case delineation or case allocation**, may **NCAs ask for full applications** in the period before it is clear whether the Commission will pursue a case in whole or in part

Leniency - III

- Protection of directors, managers and other members of staff of **immunity applicants** from **individual sanctions** if they **cooperate** with the relevant public authorities and the **immunity application predates** proceedings against individuals:
 - **Full protection** from **administrative** and **criminal** sanctions
 - Possibility for **derogation** concerning **criminal sanctions** allowing to foresee either **full protection** or only **mitigation of sanction** depending on the outcome of the **balancing test** (interest to prosecute or sanction v. contribution of the individual to the detection of the cartel)

Mutual assistance

- Currently it's impossible/difficult to notify procedural acts or enforce fines cross-border
- To tackle this, the Directive enables:
 - **cross-border notification of key procedural acts**
 - **mandatory cross-border enforcement of fines**

Next steps

- **OJ Publication** : January 2019
- **Transposition**: 2 years after publication