

ECN+ DIRECTIVE – THE CHANGES INTRODUCED BY THE CO-LEGISLATORS

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European Parliament

Lunch talk of the GCLC: The ECN+ has arrived: will it fix the EU antitrust enforcement system?
Brussels, 14 December 2018



I. SAFEGUARDS, ART. 3

Commission proposal

- Safeguards, including respect of undertakings' rights of defence and right to an effective remedy before tribunal
- Reference to general principles of Union law and Charter of Fundamental Rights



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Commission proposal



Draft of Schwab report

- Safeguards, including respect of undertakings' rights of defence and right to an effective remedy before tribunal
- Reference to general principles of Union law and Charter of Fundamental Rights

Aim: create the right balance between increased enforcement powers and procedural guarantees for undertakings

- Right to access to file
- Right to be heard
- Right to an effective remedy before tribunal
- Right to a fair trial
- Legal professional privilege
- Statement of objections
- Reasonable timeframe for proceedings



I. SAFEGUARDS, ART. 3

Trilogue agreement

- Right to be heard
- Right to effective remedy before tribunal
- Statement of objections
- Reasonable timeframe for proceedings

Which other procedural guarantees besides those in Article 3?

- Requests for information, Art. 8
- Interim measures, Art. 11



1. Proceedings for the imposition of fines, Art. 13

- a) administrative or non-criminal judicial proceedings (COM, EP)
- b) „in their own proceedings“ or non-criminal judicial proceedings (Council)

➡ Trilogue agreement: „in their own proceedings“, BUT:

„proceedings allow for the imposition of effective, proportionate and dissuasive fines“



2. Maximum amount of the fine, Art. 15

a) at least 10% of total worldwide turnover (COM, Council)

b) Parliament:

- full harmonisation vs. minimum harmonisation?
- 10, 12 or 14 %?
- Maximum or even minimum amount of 10 %?
- 10 % of the worldwide turnover or relevant turnover?

➡ Trilogue agreement: maximum amount of at least 10 % of total worldwide turnover



III. LENIENCY

- Most difficult item of negotiation, in particular as regards summary applications
- Harmonisation and system coming close to one-stop-shop vs. avoidance of centralisation at Commission

Summary applications, Art. 22

1. When can summary applications be submitted?

- a) no limitation (COM + EP)
- b) only where more than 3 Member States affected (Council)

2. Requests for information by NCAs:

- a) no limitation (Council)
- b) only on specific items of the summary application (COM)
- c) no requests at all (EP)



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- a) no limitation (Council)
- b) no request until clear whether Commission pursues the case (COM, EP)

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- a) keep the provision (COM, EP)
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Form of leniency statements, Art. 20

- Novelty at the initiative of the EP:
statements not only in official language of MS of the NCA, but also in another official language of the Union bilaterally agreed between the NCA and the applicant
- Same applies for markers for the applications for immunity from fines (Art. 21)

2006 ECN+ Model Leniency Programme

- Introduction of as many elements as possible by EP, e.g. substantive requirements for applications
- Aim: even more convergence of national leniency programmes



CONCLUDING REMARKS

