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## COOPERATION BETWEEN NATIONAL COURTS AND EU INSTITUTIONS IN COMPETITION LAW CASES

## ABSTRACT

The article explores the interplay between national courts and European Union institutions in the context of competition law enforcement of rules enshrined in Articles 101 and 102 TFEU. Cooperation between national competition authorities and national courts on one hand and EU institutions on the other hand is crucial for ensuring the effective and consistent application of competition rules. The article deals with the mechanisms of this cooperation. It examines the role of the European Commission and the Court of Justice of the European Union (CJEU) in providing guidance to national competition authorities and national courts. The article underscores the importance of a cohesive approach to competition law enforcement that is applied by national institutions of the EU member states.

## STRESZCZENIE

Artykuł bada wzajemne oddziaływanie sądów krajowych i instytucji Unii Europejskiej w kontekście egzekwowania prawa konkurencji zasad zapisanych w art. 101 i 102 TFUE. Współpraca między krajowymi organami ds. konkurencji i sądami krajowymi z jednej strony a instytucjami UE z drugiej strony ma kluczowe znaczenie dla zapewnienia skutecznego i spójnego stosowania reguł konkurencji. W artykule omówiono mechanizmy tej współpracy. Analizuje rolę Komisji Europejskiej i Trybunału Sprawiedliwości Unii Europejskiej (TSUE) w zapewnianiu wytycznych krajowym organom ds. konkurencji i sądom krajowym. W artykule podkreślono znaczenie spójnego podejścia do egzekwowania prawa konkurencji stosowanego przez instytucje krajowe państw członkowskich UE.

**KEYWORDS:** *EU competition law, national courts, European Commission, national competition authorities, amicus curiae, ECN+ directive*

**SŁOWA KLUCZOWE:** *prawo konkurencji UE, sądy krajowe, Komisja Europejska, krajowe organy ds. konkurencji, amicus curiae, Dyrektywa ECN+*

## 1. FOREWORD

The institutional framework for the application of EU competition law is a complex system involving multiple entities and layers of enforcement and oversight. This framework is designed to prevent anti-competitive practices and promote market efficiency, consumer welfare, and innovation. It involves a multitude of actors and mechanisms at both the EU and national levels, ensuring a comprehensive enforcement of competition rules. The primary legal bases for EU competition law are Articles 101 and 102 of the Treaty on the Functioning of the European Union (*TFEU*), which address anti-competitive agreements and the abuse of dominant positions, respectively.

Since 2004, under the modernization process initiated by Regulation 1/2003, national competition authorities and national courts have also been empowered to apply and enforce Articles 101 and 102 TFEU (Weatherill S. 2010. p 551-555). This decentralization aims to enhance the application and enforcement of competition law within the Member States, allowing for a more tailored approach that considers the unique economic contexts of each country.

## 2. INSTITUTIONAL FRAMEWORK FOR THE APPLICATION OF EU COMPETITION LAW

### 2.1 EUROPEAN COMMISSION

The European Commission (EC) plays a central role in the enforcement of EU competition rules. It is endowed with the competence to investigate and impose sanction on undertakings for anti-competitive behaviours that affect trade between Member States. The Directorate-General for Competition (DG COMP) is the department within the Commission responsible for this task (Karas V., Králik A. 2011. p. 113). EC has broad investigative powers, including the ability to conduct inspections, request information, and gather evidence. Undertakings found in breach of competition rules can face significant fines and orders to cease illegal activities. The EC has the authority to make binding decisions and impose fines of up to 10% of a company's global turnover (Regulation 1/2003, Article 23(2)). It also has the power to approve,

conditionally approve, or block mergers and acquisitions that may significantly impede effective competition (Tichý L. a kol. (2010). p. 557).

## **2.2 NATIONAL COMPETITION AUTHORITIES**

National Competition Authorities (NCAs) in each Member State are responsible for the enforcement of both national and EU competition laws within their jurisdictions<sup>[1]</sup>. They play a crucial role in investigating and sanctioning anti-competitive practices that may not warrant EU-level intervention but nonetheless affect competition within the internal market.

Following the modernization of EU competition law enforcement through Regulation 1/2003<sup>[2]</sup>, NCAs have the authority to apply Articles 101 and 102 TFEU directly. They can initiate investigations, impose sanctions, and take action against anti-competitive agreements and abuses of dominant positions. Due to decentralisation, it was necessary to find an optimal way of case allocation and assistance between the NCAs. The case allocation system shall ensure that cases are dealt with by the most appropriate authority, whether it be the EC or an NCA, based on factors such as the scope and impact of the infringement.

## **2.3 EUROPEAN COMPETITION NETWORK**

The European Competition Network (ECN) is a collaborative framework that links the NCAs and the European Commission. Established by Regulation 1/2003, it facilitates the consistent application of EU competition rules across the Member States<sup>[3]</sup>. Through the ECN, the EC and NCAs coordinate their enforcement activities to avoid duplication and ensure coherence in the application of EU competition law. The network serves as a platform for cooperation and coordination. The ECN serves for the sharing of information and best practices among national authorities and provides a platform for mutual assistance (Goyder D.G., Goyder J., Albors-Lorens A. 2009. p. 447).

## **2.4 COURT OF JUSTICE OF THE EUROPEAN UNION**

The Court of Justice of the European Union (CJEU), which includes the Court of Justice and the General Court, plays a critical role in the judicial oversight of EU competition law. It provides authoritative interpretations of EU competition rules and ensures the uniform application of competition rules.

The CJEU reviews decisions issued by the European Commission to ensure they comply with EU law. Undertakings can appeal against decisions of the European Commission imposing fines or other sanctions to the General Court, with further recourse to the Court of Justice on points of law<sup>[4]</sup>. Preliminary Ruling procedures belong to the most important interpretative source of EU law (Foster N. 2011. p. 103-125). National courts may refer questions concerning the interpretation of EU competition law to the CJEU for preliminary rulings, ensuring a uniform application of the law across the Member States (Bobek M., Bříza P. 2011. p. 187-220).

## **2.5 NATIONAL COURTS**

National courts play an essential role in the enforcement of EU competition law by adjudicating disputes that arise under Articles 101 and 102 TFEU. They are empowered to apply EU competition rules and grant remedies, including damages, to parties harmed by anti-competitive practices. National courts facilitate private enforcement by allowing individuals and companies to seek redress for damages caused by anti-competitive behaviour. This complements public enforcement by the EC and NCAs. The national courts have a close interaction with the CJEU through the preliminary ruling procedure (Stehlík V. 2012. p. 156). National courts contribute to the uniform application of competition rules across the EU by referring questions to the ECJ.

National courts play a crucial role in the private enforcement of competition rules under Articles 101 and 102 TFEU which allows individuals (natural persons or businesses) to seek remedies for violations of competition law (Kalesná K. 2009. p. 202.). Private enforcement is complementing public enforcement (Králík A. 2014, p. 7).

## **2.6 EUROPEAN PARLIAMENT**

The European Parliament, while not directly involved in the co-decision procedure for competition policy, has two committees that deal specifically with matters concerning competition policy and consumer welfare: the ECON committee<sup>[5]</sup> (economic and monetary affairs) and the IMCO committee<sup>[6]</sup> (internal market and consumer protection). These committees play a crucial

role in shaping the legislative framework that underpins competition policy and in scrutinizing the Commission's work in this area.

## 2.7 COUNCIL

The Council, together with the European Parliament, is responsible for approving laws on consumer protection and competition law (Craig P., de Búrca G. 2011, p. 66). For competition matters, ministers from each EU country meet in the Competitiveness Council to discuss and decide on policies and legislation. The European Council, comprising EU leaders, sets the general political direction and priorities of the EU, including aspects of competition policy (Varga P. 2011. p. 56).

## 3. DECENTRALISATION OF EU COMPETITION LAW

Before the Regulation 1/2003 was adopted, the enforcement of EU competition rules, particularly Articles 101 and 102 TFEU<sup>[7]</sup>, was primarily centralised under the European Commission. Under Regulation 17<sup>[8]</sup>, the European Commission held exclusive power to grant exemptions for agreements that could potentially restrict competition but also provided benefits outweighing the negative effects. This centralised system was ineffective, as the Commission struggled with a growing backlog of cases and limited resources.

The Regulation 17 was repealed by Regulation 1/2003, which came into effect on 1 May 2004, decentralised the application and enforcement of competition law, as the NCA and national courts were empowered to apply EU competition rules alongside the European Commission. The decentralisation of EU competition law under Regulation 1/2003 marks a significant shift in the enforcement and application of antitrust rules within the European Union. NCAs can apply national competition law alongside EU competition law. This parallel applicability is only allowed as long as it does not undermine the uniform application and practical effectiveness of EU competition rules<sup>[9]</sup>. In case 14/68, *Walt Wilhelm v Bundeskartellamt*, the Court of Justice confirmed that *the parallel applicability of national competition law of the Member States is only permissible to the extent that the uniform application and*

*the practical efficiency of the EU competition rules are not prejudiced. A conflict between both legal systems has to be resolved following the principle of primacy of Union law. Hence, the prohibition of a measure under the EU competition rules takes precedence over a permission of the same measure through a Member State's law.*<sup>[10]</sup> The judgment confirms that if there is a conflict between national competition laws and EU competition laws, the preferential application of EU law over national law applies.

This article explores the mechanisms of cooperation between the European Commission on one hand and NCA and national courts on the other hand.

## **4. COOPERATION BETWEEN THE EUROPEAN COMMISSION AND THE NCA**

The cooperation between the European Commission and NCA is a cornerstone of the EU competition policy, ensuring the consistent application of antitrust and competition laws across member states. This collaboration is governed by Regulation 1/2003, which emphasizes the mutual duty of loyal cooperation<sup>[11]</sup>. The NCAs and the Commission work together to enforce EU competition rules, with the NCAs having the power to apply Articles 101 and 102 of the TFEU in their respective jurisdictions.

### **4.1 EUROPEAN COMPETITION NETWORK**

The European Competition Network (ECN) plays a pivotal role in facilitating this cooperation, providing a platform for dialogue and coordination among the NCAs and the European Commission. In the system of parallel competence in which the European Commission and the NCAs can apply Articles 101 and Article 102 TFEU directly, it is necessary to enforce close cooperation among them and to establish a forum for discussion and cooperation in the application and enforcement of EU competition law. The ECN ensures an efficient division of work and an effective and consistent application of EU competition rules (Jones A., Sufrin B. 2016. p. 1169). The Commission Notice on cooperation within the Network of Competition Authorities<sup>[12]</sup> is document issued by the European Commission that outlines the framework

for cooperation among NCAs. The notice is applied since 2004 and reflects the evolving nature of competition law and the need for a more integrated enforcement landscape. The European Commission and the NCAs cooperate with each other through the ECN by:

- ***mutual exchange of information about new cases and decisions;***

When a NCA initiates a new case involving Articles 101 or 102 TFEU, it must inform the European Commission and other NCAs through the ECN's case-handling system<sup>[13]</sup>. In order to detect multiple procedures and to ensure that cases are dealt with by a well placed competition authority, the European Commission and the NCAs have to be informed at an early stage of the cases pending before the various competition authorities<sup>[14]</sup>. If a case is to be re-allocated, it is indeed in the best interest both of the network and of the undertakings concerned that the re-allocation takes place quickly. Re-allocation of a case would only be envisaged at the outset of a procedure where either that authority considered that it was not well placed to act or where other authorities also considered themselves well placed to act. The principles of re-allocation can be found in the Commission Notice on cooperation within the Network of Competition Authorities<sup>[15]</sup>. To avoid duplications or conflicting results, the cases can be referred to another NCA or the European Commission if they are deemed to be more effectively handled at that level.

- ***coordination of investigations and dawn raids;***

The cases may be investigated by parallel action by two or three NCAs. Parallel investigation is appropriate where an agreement or practice has substantial effects on competition mainly in their respective territories and the action of only one NCA would not be sufficient to bring the entire infringement to an end and/or to sanction it adequately<sup>[16]</sup>. The NCAs dealing with a case in parallel action, the ECN facilitates coordination to align methodologies and legal interpretations<sup>[17]</sup>. The NCAs often designate one of them as a lead authority that shall ensure coherent investigation and enforcement<sup>[18]</sup>.



- ***mutual help in investigations and dawn raids;***

Within the ECN there are many working groups specialized in partial areas of competition law. The most active working groups deal with cartels, mergers or international cooperation between competition authorities (Working Group on Cooperation Issues and Due Process).<sup>[19]</sup>

The ECN platform is useful for direct communication and cooperation between the NCAs. The most common mean of cooperation represents an exchange of non-confidential information, which is carried out in the form of so-called Requests for Information. Another platform is so called Requests for assistance in investigations pursuant to Article 22 of Regulation 1/2003 which is used when the NCAs need more information for initiation of proceedings or to add relevant evidence to the file.

- ***interchange of evidence and other information;***

Regulation 1/2003 enables the exchange of information (including documents, statements and digital information) within the NCAs and the European Commission and provide one another with and use in evidence any matter of fact or of law, including confidential information<sup>[20]</sup>. Exchanged information cannot be used for other purposes than applying Articles 101 and 102 TFEU. The Commission notice on cooperation within the Network of Competition Authorities emphasizes the importance of respecting procedural fairness and the rights of the parties involved. It includes provisions on the handling of confidential information, the rights of defence (individuals enjoy more extensive rights of defence as they may remain silent compared to undertakings which may only refuse to answer questions which would lead them to admit that they have committed an infringement), and the necessity of transparency in enforcement actions.

- ***discussion on issues of common interest;***

The Advisory Committee within the ECN is the forum where experts from the various NCAs discuss individual cases and general issues of EU competition law. The Advisory Committee can recommend the publication of its opinion.

The proper functioning of ECN is important for coherent application of EU competition law by all NCAs. As stated by the European Commission, *since 2004, the European Commission and NCAs have adopted approximately 1500 decisions, investigating a broad range of cases in all sectors of the economy. From 2004 till 2021, more than 90% of the decisions that applied EU antitrust rules were taken by national competition authorities. It is essential that national competition authorities have all the powers they need to apply the EU antitrust rules effectively.*<sup>[21]</sup>

#### 4.2 ECN+ DIRECTIVE

The European Commission proposed a Directive to empower the competition authorities of Member States to be more effective enforcers and to ensure the proper functioning on the internal market in 2017. The European Commission identified several areas where action was needed to enable NCAs to be more effective. Directive 2019/1<sup>[22]</sup> (known as *ECN+ Directive*) was published on 14 January 2019 and had to be transposed into national laws by 4 February 2021.

The purpose of adopting the Directive 2019/1 was to empower NCAs with the necessary tools and independence to enforce EU competition laws more effectively. It harmonizes competition law enforcement across the EU and ensures that the NCAs have consistent powers and are sufficiently equipped to uphold competition rules. The purposes and benefits of the Directive 2019/1 may be summed up in following points:

- ***minimum guarantees of independence of NCA***

One of the primary purposes of the ECN+ Directive is to bolster the independence of NCAs. Independence in this context means that NCAs *perform their duties and exercise their powers impartially and in the interests of the effective and uniform application of those provisions, subject to proportionate accountability requirements and without prejudice to close cooperation between competition authorities in the European Competition Network*<sup>[23]</sup>.

- ***basic guarantee of the human and financial resources***

The NCAs must have operational and financial autonomy from their respective national governments to avoid any undue influence on their decision-making processes. The staff and persons who take decisions

in NCAs must be able to perform their duties and to exercise their powers for the application of Articles 101 and 102 TFEU independently from political and other external influence, must not seek nor take any instructions from government or any other public or private entity and must refrain from taking any action which is incompatible with the performance of their duties and/or with the exercise of their powers for the application of Articles 101 and 102 TFEU and are subject to procedures that ensure that, for a reasonable period after leaving office, they refrain from dealing with enforcement proceedings that could give rise to conflicts of interest<sup>[24]</sup>. This independence is crucial for the unbiased enforcement of competition laws and for ensuring that NCAs can operate without interference from political entities or interest groups (Gippini-Fournier, E. 2020. p. 135–152).

In addition to human resources, the Member States shall ensure that NCAs have *sufficient financial, technical and technological resources that are necessary for the effective performance of their duties, and for the effective exercise of their powers for the application of Articles 101 and 102 TFEU*<sup>[25]</sup>.

- ***effective investigative and decision-making toolbox, including to gather digital evidence stored on mobile devices***

The Directive 2019/1 grants NCAs robust investigative powers, including the ability to inspect business premises<sup>[26]</sup>, access documents and information<sup>[27]</sup>, and conduct interviews<sup>[28]</sup>.

- ***imposing effective, proportionate, and dissuasive fines***

The Directive 2019/1 provides the NCAs with the authority to impose fines<sup>[29]</sup> directly, which is essential for the deterrence of anti-competitive behaviour.

- ***effective leniency programmes in place which encourage companies to report cartels throughout the EU***

The Directive 2019/1 requires that the NCAs *have in place leniency programmes that enable them to grant immunity from fines to undertakings for disclosing their participation in secret cartels. This is without prejudice to national competition authorities having in place leniency programmes for infringements other than secret cartels or leniency programmes that enable them to grant immunity from fines to natural persons.*<sup>[30]</sup>

- ***mutual assistance***

Directive 2019/1 shall improve the cooperation among NCAs, which is vital given the cross-border nature of many business activities in the EU. The directive facilitates the sharing of information and evidence across borders, ensuring that NCAs can collaborate effectively on cases that span multiple jurisdictions so that, for example companies with assets in other Member States cannot escape from paying fines.

Another important objective of the Directive 2019/1 is to standardize the enforcement of competition laws across the EU and to ensure a consistent approach to competition law enforcement, reducing disparities between Member States. This harmonization helps to create a more predictable regulatory environment for businesses operating across the EU and contributes to the overall integration of the internal market.

## **5. COOPERATION BETWEEN THE EUROPEAN COMMISSION AND THE NATIONAL COURTS**

National courts play a key role in the enforcement and application of EU competition law. The cooperation between the European Commission and national courts aims to ensure consistent application of EU competition rules across the EU, particularly those established under Articles 101 and 102 TFEU<sup>[31]</sup>:

- hearing cases between private parties (lawsuits relating to contracts, actions for damages),
- public enforcers,
- review courts that hear appeals against decisions of NCAs.

Regulation 1/2003 gave national courts a wider role to enforce Articles 101 and 102 TFEU in full. If the national courts apply national competition law, they also have to apply EU competition law where there is an effect on trade between Member States.

### 5.1 COOPERATION OF NATIONAL COURT WITH THE EUROPEAN COMMISSION

The principle of sincere cooperation established in Article 4(3) of the Treaty on European Union requires the European Commission to assist the national courts. The European Commission issued the 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<sup>[32]</sup> (now Articles 101 and 102 TFEU) addressed to the courts of the EU Member States' that are defined as courts and tribunals within an EU Member State that can apply Articles 101 and 102 TFEU and that are authorised to ask a preliminary question to the Court of Justice of the European Union. It aims to enhance and clarify the collaboration between the European Commission and national courts in the enforcement of EU competition rules. It must be mentioned that it is not binding on national courts, nor does it affect the rights and obligations of EU governments or natural or legal persons.

There are several mechanisms of cooperation between national courts and the European Commission:

- ***Provision of Information/opinions***

According to the Article 15(1) of Regulation 1/2003, in proceedings for the application of Articles 101 or 102 TFEU, national courts may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of the Community competition rules.

This provision enables the national courts to request information and/or guidance from the European Commission on matters related to the application of EU competition law they are dealing with. The Commission, in turn, may submit written observations, known as *amicus curiae* briefs, to national courts. These observations aim to clarify complex legal or economic aspects of EU competition rules and ensure that national courts' rulings are consistent with EU law.

After the national court issues a decision where Articles 101 and 102 TFEU are applied, the Member States are obliged to forward to the European Commission a copy of a written judgment. Such copy shall be forwarded without delay after the full written judgment is notified to the parties<sup>[33]</sup>.

- ***Amicus curiae***

According to the Article 15(3) of Regulation 1/2003, the NCAs, acting on their own initiative, may submit written observations to the national courts on issues relating to the application of Articles 101 and 102 TFEU. With the permission of the court in question, they may also submit oral observations to the national courts.

Where the coherent application of Articles 101 and 102 TFEU so requires, the Commission, acting on its own initiative, may submit written observations to national courts. With the permission of the court in question, it may also make oral observations.

The European Commission's assistance to the national court consists of transmission of information and the Commission's opinions, both at the request of a national court and the possibility for the Commission to submit observations. These types of assistance are established by Regulation 1/2003. They cannot thus be limited by any Member States' rule. The European Commission must respect the independence of national courts, i.e. the assistance of the European Commission does not bind the national court. It must respect its duty of professional secrecy and that it safeguards its own functioning and independence, it must remain neutral and objective.

The 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 (now Articles 101 and 102 TFEU) sets the principles of cooperation between the European Commission and national courts<sup>[34]</sup> when the latter apply Articles 101 and 102 TFEU. National courts may apply Articles 101 and 102 TFEU in administrative, civil or criminal proceeding and do not need to apply national competition law in parallel. However, where a national court applies national competition law to agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States within the meaning of Article 101 or to any abuse prohibited by Article 102 TFEU, they also have to apply EU competition rules to those agreements, decisions or practices<sup>[35]</sup>. As to the parallel application of national competition law and EU competition law, the national courts must respect the principle

of the supremacy of EU law and must not issue a judgement that would be contrary to EU rules regardless of whether that national law provision was adopted before or after the EU rule. National courts are also competent to apply EU acts, to the extent that these acts have direct effect. National courts may enforce Commission decisions or EU regulations. When applying these EU competition rules, national courts act within the framework of EU law and are bound by EU competition policy case-law and Commission regulations and are obliged to observe the general principles of EU law<sup>[36]</sup>.

National courts apply mostly national rules for enforcement of EU competition law and the sanctions they can impose on undertakings for breach of competition rules. If there are EU competition rules applicable to proceedings before national courts, these EU law provisions prevail over national rules. Where the EU law provisions are directly applicable, they are a direct source of rights and duties for all those affected, and must be fully and uniformly applied in all the Member States from the date of their entry into force<sup>[37]</sup>. National rules regulating sanction must be compatible with the general principles of EU law, i.e. the sanctions must be effective, proportionate and dissuasive<sup>[38]</sup>. The harmed individuals should be able to ask the national court for damages. The national procedural rules and sanctions which are applied by national courts must not make the enforcement excessively difficult or practically impossible and must not be less favourable than the rules applicable to the enforcement of equivalent national law<sup>[39]</sup>.

Specific rules apply if a national court and the European Commission are both involved in the same EU competition case, i.e. national court applies the case at the same time as the European Commission or subsequently to the European Commission. The national court may not adopt a decision that might conflict with a subsequent decision not yet issued by the European Commission, i.e. the national court may ask the Commission about the progress of proceedings and the likelihood of a decision in the case or it may wait until the European Commission reaches a decision. The national court may not adopt a decision that is in conflict with the decision of the European Commission it has already adopted. If the national court has doubts about the legality of the European Commission's decision it may start a preliminary ruling procedure according to Article 267 TFEU. Both the European Commission

and the national courts have a legal obligation of mutual cooperation. This means that the European Commission assists the national courts and the national courts help to enforce EU competition rules.

On the other hand, national courts must provide the European Commission with a copy of any document it considers necessary to assess a case before submitting its observations, send the European Commission a copy of all national written judgments applying Articles 101 and 102 TFEU<sup>[40]</sup> and provide the necessary authorisation to carry out inspections into business behaviour.

## 6. CONCLUSION

The institutional framework for the application of EU competition law is a robust and multi-layered system that effectively balances centralized and decentralized enforcement. For effective enforcement of competition rules, both public and private, the cooperation between enforcers is necessary. The European Commission, national competition authorities, and the judiciary ensures comprehensive and consistent application of competition rules across the EU. Despite the challenges it faces, this framework remains a cornerstone of the EU's efforts to maintain a fair and competitive internal market. The ECN+ Directive represents a significant milestone in the EU's efforts to enhance the enforcement of competition laws across its member states. By empowering NCAs with greater independence, resources, and investigative powers, and by promoting cross-border cooperation and consistency in enforcement, the directive helps to ensure a more competitive and fair internal market.



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- Judgment of the Court of 13 February 1969, C-14/68 Walt Wilhelm and others v Bundeskartellamt (ECLI:EU:C:1969:4)
- Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition Council laid down in Articles 81 and 82 of the Treaty OJ L 1, 4.1.2003
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- Judgment of the Court (Fourth Chamber) of 11 June 2009, C-429/07, Inspecteur van de Belastingdienst v X BV

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official internet site of ECN: <https://uohs.gov.cz/en/competition/international-cooperation/european-competition-network-ecn.html> (24.06.2024).

**ENDNOTES**

- [1] In the Slovak Republic the NCA is Protimonopolný úrad Slovenskej republiky (<https://www.antimon.gov.sk/>), in Poland it is Urząd Ochrony Konkurencji i Konsumentów (<https://uokik.gov.pl/>).
- [2] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition Council laid down in Articles 81 and 82 of the Treaty OJ L 1, 4.1.2003, s. 1 – 25.
- [3] Regulation 1/2003, Recital 15: The Commission and the competition authorities of the Member States should form together a network of public authorities applying the Community competition rules in close cooperation. For that purpose it is necessary to set up arrangements for information and consultation.
- [4] Article 256 TFEU together with Article 56 of the Protocol No. 6 on the Statute of the Court of Justice of the European Union, Official Journal of the European Union, C 202, 7 June 2016.
- [5] See <https://www.europarl.europa.eu/committees/en/econ/home/highlights> (30.6.2024).
- [6] See <https://www.europarl.europa.eu/committees/en/imco/home/highlights> (30.6.2024).
- [7] Ex articles 81 and 82 of the Treaty establishing European Community prior adoption of the Lisbon Treaty.
- [8] EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty, OJ 13, 21.2.1962, p. 204 – 211.
- [9] See Regulation 1/2003, Article 3.
- [10] Judgment of the Court of 13 February 1969, C-14/68 Walt Wilhelm and others v Bundeskartellamt (ECLI:EU:C:1969:4).
- [11] Regulation 1/2003, Article 11(1): The Commission and the competition authorities of the Member States shall apply the Community competition rules in close cooperation.
- [12] OJ EU C101, 27.4.2004, p. 43.
- [13] Commission Notice on cooperation within the Network of Competition Authorities, point 16.
- [14] Regulation 1/2003, Article 11(3): The competition authorities of the Member States shall, when acting under Article 81 or Article 82 of the Treaty, inform the

Commission in writing before or without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other Member States.

- [15] Commission Notice on cooperation within the Network of Competition Authorities, points 8-15.
- [16] *Ibid.*, point 12.
- [17] *Ibid.*, point 13.
- [18] *Ibid.*, point 13.
- [19] See the official internet site of ECN: <https://uohs.gov.cz/en/competition/international-cooperation/european-competition-network-ecn.html> (24.06.2024).
- [20] Regulation 1/2003, Article 12.
- [21] See: [https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/ecn-directive\\_en](https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/ecn-directive_en) (25.6.2024).
- [22] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market OJ L 11, 14.1.2019, p. 3 – 33.
- [23] Directive 2019/1, Article 4(1).
- [24] Directive 2019/1, Article 4(2).
- [25] Directive 2019/1, Article 5(1).
- [26] Directive 2019/1, Article 6 (business premises) and Article 7 (other premises).
- [27] Directive 2019/1, Article 8.
- [28] Directive 2019/1, Article 9.
- [29] Directive 2019/1, Article 13.
- [30] Directive 2019/1, Article 17.
- [31] See: [https://competition-policy.ec.europa.eu/antitrust-and-cartels/national-courts/application-antitrust-law\\_en](https://competition-policy.ec.europa.eu/antitrust-and-cartels/national-courts/application-antitrust-law_en) (25.6.2024).
- [32] OJ C 101 27.4.2004, p. 54.
- [33] Regulation 1/2003, Article 15(2).
- [34] The notice is not binding on national courts, nor to individuals (natural or legal persons).
- [35] 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, point 5.
- [36] *Ibid.*, point 7.
- [37] *Ibid.*, point 9.
- [38] Judgment of the Court (Fourth Chamber) of 11 June 2009, C-429/07, *Inspecteur van de Belastingdienst v X BV.*, point 37: The effectiveness of the penalties imposed by the national or Community competition authorities on the basis of Article 83(2)(a) EC is therefore a condition for the coherent application of Articles 81 EC and 82 EC.
- [39] *Ibid.*, point 10.
- [40] Regulation 1/2003, Article 15(2).