



EUROPEAN COMMISSION

*Brussels, 28.9.2017
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Dear President,

The Commission would like to thank the Senát for its Opinion on the Commission's proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market {COM(2017) 142 final}.

One of the Commission's strategic objectives is to achieve a new boost for jobs, growth and investment. In order to achieve this objective, it is essential to ensure the effective and coherent application of European Union competition law by national competition authorities and national courts. Since Council Regulation (EC) No 1/2003 entered into force, the national competition authorities have applied the EU competition rules alongside the Commission. Now, EU competition rules are being enforced on a scale which the Commission could never have achieved on its own, with national competition authorities accounting for 85% of all decisions applying EU competition rules.

However, national competition authorities still face issues that prevent them from effectively performing their role. The proposed Directive would ensure that national competition authorities have the necessary guarantees of independence and resources and enforcement and fining powers they need to carry out their job. Eliminating these obstacles will help remove distortions to competition in the internal market for the benefit of consumers and businesses, including small and medium-sized enterprises, which now are suffering harm from such obstacles. The proposed Directive would also enable national competition authorities effectively to provide each other with mutual assistance, ensuring a more level playing field in the internal market.

The Commission welcomes the Senát's support for the proposed Directive and has taken note of its views concerning the imposition of fines (Article 12), the use of information collected on the basis of the provisions of the proposed Directive (Article 29) and its provisions on the independence and resources of national competition authorities (Articles 4 and 5).

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The Commission has also taken due note of the Senát's comment that it would be more appropriate to leave the regulation of effective repentence in the framework of criminal liability for infringement of competition rules to the Member States as the Senát considers that the rules in Article 22 of the proposed Directive concerning the interplay between leniency programmes and sanctions on natural persons are unclear and that the legal basis of the proposed Directive does not allow harmonisation of criminal law. In this respect, the Commission would like to underline that the proposed Directive is based on Articles 103 and 114 of the Treaty on the Functioning of the European Union because it pursues a number of inextricably linked goals, among which is giving effect to the principles set out in Articles 101 and 102 TFEU by empowering National Competition Authorities to be more effective enforcers. Moreover, leniency programmes are important tools for uncovering secret cartels and achieving this goal. The objective of the proposed Article 22 is not to harmonise national criminal laws but to maintain incentives for companies to apply for leniency, because their leniency applications often depend on their employees cooperating fully, without fear of incurring sanctions. The application of Article 22 is limited to immunity applicants only. Furthermore, it is subject to two conditions: employees have to cooperate actively with the competition authorities concerned and the immunity application has to predate the start of the criminal proceedings. Therefore, the Commission considers that this provision is important to prevent the loss of welfare across the European Union due to secret cartels that go uncovered.

The Commission hopes these clarifications address the issues raised by the Senát and looks forward to continuing our political dialogue.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Margrethe Vestager
Member of the Commission*