



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senat for its Opinion on the Commission's proposal for a Directive 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}.

The Commission's key priority under the leadership of Jean-Claude Juncker is to strengthen Europe's competitiveness and to stimulate investment for the purpose of job creation. 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 European Union competition rules alongside the Commission. Now, European Union 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 European Union 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. Removing 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 is pleased that, in its Opinion, the Senat fully shares the view that action is required at the level of the European Union, rather than by each Member State individually, in order to ensure that national competition authorities effectively enforce European Union competition rules and to bolster the functioning of the internal market.

*Călin POPESCU-TĂRICEANU
President of the Senat
Calea 13 Septembrie nr. 1-3, sector 5
050711- Bucharest*

The Opinion of the Senat also makes three recommendations: to replace the definition of "secret cartel" by the terminology used in Directive No 104/2014/EU which only refers to a "cartel"; to review the provisions of Article 21 which in its view currently encourage submissions of leniency applications to the Commission to the detriment of national competition authorities; and to clarify the provisions of Article 29(1), which in its current form restricts the transmission of data to courts/public prosecutors in cases of criminal liability of the natural persons concerned.

The Commission understands that the use of the term "secret cartel" in the definitions instead of "cartel" could cause difficulties in certain Member States. The Commission also understands the problems that could be faced by Romania regarding the limitations to the transmission of information provided in Article 29 (1). The Commission will bear these considerations in mind during the discussions with the European Parliament and the Council.

Regarding the provisions of Article 21 on summary applications, the objective of the Directive is not to encourage leniency applications to be made to the Commission to the detriment of the national competition authorities, but to provide legal certainty to leniency applicants throughout the European Union. In case there is uncertainty about which competition authority will be responsible for a case the summary applications ensure that the leniency applicants which have filed an application with the Commission can keep their place in the queue before those national competition authorities with which they have filed summary applications should the Commission decide not to take up all, or part, of the case. Removing the uncertainty that currently exists in this regard will help to incentivise companies to apply for leniency and report cartels throughout Europe.

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

Yours faithfully,

Member of the Commission