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DIRECTORATE-GENERAL FOR COMPETITION

# **Antitrust Manual of Procedures**

**Publication of decisions**

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## Antitrust Manual of Procedures

Internal DG Competition working documents on procedures for the application of Articles 101 and 102 TFEU

September 2024

The text is made available on the internet:

[https://competition-policy.ec.europa.eu/antitrust-and-cartels/procedures\\_en](https://competition-policy.ec.europa.eu/antitrust-and-cartels/procedures_en)

## NOTICE

The public Antitrust Manual of Procedures aims to provide transparency about the Commission's procedures for applying Articles 101 and 102 TFEU.

It was originally published in 2012 as a booklet, with two modules added in 2019. In 2024, the Commission started to re-publish it in the form of self-standing modules, as part of an ongoing update process that will allow the Commission to reflect important developments and changes in its procedures.

The public Antitrust Manual of Procedures is based on DG Competition's Antitrust Manual of Procedures, which is an internal working tool intended to provide practical guidance to DG Competition's staff on how to conduct competition investigations in accordance with the applicable competition rules.

The public Antitrust Manual of Procedures does not create or alter any rights or obligations arising under EU competition rules. In cases of divergence between the EU competition rules and the public Antitrust Manual of Procedures, the former prevail.

The public Antitrust Manual of Procedures has not been formally adopted by the Commission and it does not contain binding instructions. It is not intended to provide complete or exhaustive guidance on every question that might arise. The guidance provided may have to be adapted to the circumstances and specificities of the case at hand. Terms used in the Manual are explained in this [Glossary](#).

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## **1. PUBLICATION IN THE OJ**

### **1.1. Scope of publication**

- (1) Article 30(1) of Regulation 1/2003 requires the Commission to publish the main content of the following decisions in the OJ :
  - (a) Article 7: Finding and termination of an infringement,
  - (b) Article 8: Interim measures,
  - (c) Article 9: Commitments,
  - (d) Article 10: Finding of inapplicability,
  - (e) Article 23: Fines,
  - (f) Article 24: Periodic penalty payments.
- (2) The obligation to publish in the OJ extends to the final report of the Hearing Officer,<sup>(1)</sup> as well as to the opinion of the AdCom, if the AdCom so recommends.<sup>(2)</sup>
- (3) According to Article 27(4) of Regulation 1/2003, when the Commission intends to adopt a decision pursuant to Article 9 or Article 10 of Regulation 1/2003, it has to publish a summary of the case and the main content of the commitment or of the proposed course of action (so-called Article 27(4) Market test notice).
- (4) Publications going beyond the legal requirements are made available on DG Competition's website (see further section 2).
- (5) Addressees of decisions adopted under the above-mentioned provisions<sup>(3)</sup> have no specific right to prevent the publication by the Commission in the OJ and, where relevant, on DG Competition's website, of (non-confidential) information which goes beyond the 'main content' essential for understanding the operative part of those decisions.
- (6) As the Court has established: the interest of an undertaking which the Commission has fined for breach of competition law in the details of the offending conduct of which it is accused not being disclosed to the public does not warrant any particular protection, given the public interest in knowing as fully as possible the reasons behind any Commission action, the interest of the economic operators in knowing the sort of behaviour for which they are liable to be penalised and the interest of persons harmed by the infringement in being informed of the details thereof so that they may, where appropriate, assert their rights against the undertakings punished,

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<sup>(1)</sup> Article 17(3) of the Terms of Reference of the Hearing Officer

<sup>(2)</sup> Article 14(6) of Regulation 1/2003.

<sup>(3)</sup> Except for market test publications.

and in view of the fined undertaking's ability to seek judicial review of such a decision. <sup>(4)</sup>

## **1.2. Content of the publication in the OJ**

### *1.2.1. Summary of the decision*

- (7) Pursuant to Article 30(2) of Regulation 1/2003, the publication in the OJ shall state:
- (a) the names of the parties,
  - (b) the main content of the decision,
  - (c) any penalties imposed.
- (8) To make clear that the summary of the decision is not a decision itself, the heading should read "Summary of Commission Decision".

### *1.2.2. Final Report of the Hearing Officer*

- (9) The final report of the Hearing Officer is published in the OJ.

### *1.2.3. Opinion of the AdCom*

- (10) If the AdCom recommends its publication, the opinion of the AdCom is published in the form in which it was established, but without the signatures.

## **1.3. Information that should not be published**

- (11) Business secrets and other confidential information, , should normally not be published. <sup>(5)</sup> This data can only be published if disclosure is necessary for the good understanding of the decision. <sup>(6)</sup> Confidential information that should not be published also includes information the publication of which would infringe the principle of the presumption of innocence and information the publication of which would jeopardise the Commission's investigations.
- (12) Details can be found in Section 5 below.
- (13) The summary, the final report of the Hearing Officer and the opinion of the AdCom should already be drafted in such a way that they do not contain any information that should not be published. In principle, disputes on the contents of the summary, the final report of the Hearing Officer and the opinion of the AdCom should not arise. Should - exceptionally - a dispute arise, Sections 3.1.3 et seq. apply accordingly.

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<sup>(4)</sup> See Judgment of 30 May 2006, *Bank Austria Creditanstalt v Commission*, Case T-198/03, ECLI:EU:T:2006, paragraph 77.

<sup>(5)</sup> Pursuant to Article 30(2) of Regulation 1/2003, the publication of the decision shall have regard to the legitimate interest of undertakings in the protection of their business secrets. The same applies for the final report of the Hearing Officer (Article 17(3) of the Terms of Reference of the Hearing Officer) and the opinion of the AdCom (Article 14(6) of Regulation 1/2003).

<sup>(6)</sup> For personal data, see Article 9 of the EUDPR.

#### **1.4. Timing of the publication in the OJ**

- (14) There is no deadline for publication, but it should be done within a reasonable time.
- (15) While DG Competition strives to publish the summary of the decision in the OJ and the full non-confidential version of the decision on its website at the same time, publication on the website may be delayed in the event of disputes with the addressees regarding the contents of the web-publication. This should not prevent the timely publication of the summary in the OJ.
- (16) The final report of the Hearing Officer is published together with the summary of the decision in the OJ. <sup>(7)</sup> The opinion of the AdCom may be published separately, but it is common practice to publish all three documents together.

#### **1.5. Place of publication in the OJ**

- (17) The summary of the decision, the final report of the Hearing Officer and the opinion of the AdCom are published in the OJ in series C.

#### **1.6. Corrigenda**

- (18) If an adopted decision contains mistakes, leading to a correction, the summary of the decision will in principle be corrected as well, referring to the corrigendum. <sup>(8)</sup>

### **2. PUBLICATION ON DG COMPETITION'S WEBSITE**

#### **2.1. Scope of the publication**

- (19) The Commission has a long-established practice of publishing its final antitrust decisions on DG Competition's website in order to ensure transparency, predictability and legal certainty, even though the Commission is under no legal obligation to do so. <sup>(9)</sup>
- (20) In addition, all documents published in the OJ are also available on DG Competition's website via a direct link. <sup>(10)</sup>

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<sup>(7)</sup> Article 17(3) of the Terms of Reference of the Hearing Officer.

<sup>(8)</sup> Idem, if there are substantial mistakes in the summary of the decision only, the Commission will publish a corrigendum of this summary.

<sup>(9)</sup> In application of Article 1 of the Treaty on the European Union (TEU) OJ C 202, 7.6.2016 p. 13 and Regulation (EC) No 1049/2001. See also Judgment of 30 May 2006, *Bank Austria Creditanstalt v Commission*, Case T-198/03, ECLI:EU:T:2006, paragraph 76: "(...) that provision [Article 30(2) of Regulation 1] does not limit the Commission's power to publish the full text of its decisions, if, resources permitting, it considers it appropriate to do so" and paragraph 79: "the aim of [Article 30(2) of Regulation No 1] is not to limit the Commission's freedom to publish, of its own volition, a version of its decision that is fuller than the minimum necessary and also to include information whose publication is not required, in so far as the disclosure of that information is not inconsistent with the protection of professional secrecy".

<sup>(10)</sup> The bibliographic link allows viewers to choose the format and the language desired.



## **2.2. Content of the publication**

- (21) The full text of the decision is published on the website, as it was notified to the addressees, but information that should not be published is redacted.
- (22) Details on how to prepare such a non-confidential version can be found below in section 3.

## **2.3. What information should not be published?**

- (23) The same rules apply as for the publication in the OJ. As mentioned above in paragraph 11 above, the following information is not published:
  - (a) business secrets and other confidential information,
  - (b) personal data,
  - (c) information that would infringe the principle of the presumption of innocence,
  - (d) information that would jeopardise the Commission's investigations.
- (24) Details can be found in section 5 below.

## **2.4. Timing of publication on the website**

- (25) There is no deadline for publication of the decision on the website, but it should be done as soon as possible and within a reasonable time. <sup>(11)</sup>
- (26) As indicated, the case team strives to publish the full non-confidential text of the decision on the website at the same time as the publication of the summary in the OJ.

## **2.5. Place of publication on the website**

- (27) The relevant documents are published on DG Competition's website (link: <https://competition-cases.ec.europa.eu/search>).

## **2.6. Corrigenda**

- (28) If an adopted decision contains mistakes, requiring a corrigendum decision, the corrigendum should be published as well.
- (29) Exceptionally, if clearly clerical mistakes are discovered before the publication of the non-confidential version and for which a formal correction via adoption of a corrigendum decision is not necessary, the correction may be indicated in the non-confidential public version (via a footnote: “\*Should read:...”).

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<sup>(11)</sup> See Notice on Best Practices, paragraph 135.

### **3. HOW TO PREPARE DOCUMENTS FOR PUBLICATION**

- (30) This section deals with (i) the steps in the identification of information that normally is not published, and (ii) the practical aspects of publication.
- (31) As noted above, published texts normally do not contain:
  - (a) business secrets and other confidential information,
  - (b) personal data,
  - (c) information the publication of which may infringe the principle of the presumption of innocence,
  - (d) information the publication of which may jeopardise the Commission's investigations.
- (32) Before publication, the case team consolidates all redactions, and requests confirmation from all addressees of the decision for this consolidated text.

#### **3.1. Identifying information that should not be published**

- (33) In order to identify confidential information, the case team will normally consult the addressees of the final decision.
- (34) Under Article 16(3) of Regulation 773/2004, the addressees may be required, within a deadline set by the Commission to:
  - (a) identify any part of the final decision which, in their view, contains business secrets and/or other confidential information and/or personal data;
  - (b) substantiate each claim for confidentiality;
  - (c) provide the Commission with a non-confidential version of the decision, in which the confidential passages are marked; and
  - (d) provide a concise description of each piece of information for which they claim confidentiality.
- (35) If the addressees fail to comply with these requirements, the Commission may assume that the decision does not contain any confidential information (Article 16(4) of Regulation 773/2004).
- (36) The case team accepts the confidentiality or explains in writing why the claims cannot be accepted (see further section 3.1.3).

##### *3.1.1. Letter to the addressees*

- (37) Without undue delay after the adoption of the decision by the Commission, the case team sends a letter to the addressees attaching:
  - (a) the summary of the decision,
  - (b) the final report of the Hearing Officer, and

- (c) the opinion of the AdCom.
- (38) In this letter, the addressees are requested to confirm that the attached documents do not contain any confidential information, and, in particular, business secrets.
- (39) They are furthermore requested to:
  - (a) provide a complete non-confidential version of the decision that has been addressed to them. This means that they will have to identify any confidential information in the decision by marking the information,
  - (b) substantiate their confidentiality claims for each piece of information claimed to be confidential, and
  - (c) provide a concise summary of each piece of information, for which they claim confidentiality.
- (40) In this letter, the addressees will be reminded that confidential information refers, in particular, to:
  - (a) business secrets (see section 5.1), and
  - (b) information that the addressee submitted under the Leniency Notice, if applicable (see section 5.3).
- (41) The deadline for the reply is usually two weeks starting from the day on which the Commission letter was received.
- (42) This letter indicates that, in accordance with Article 16(4) of Regulation 773/2004, in the absence of a reply, the Commission will consider that none of the documents in question contain confidential information.

### *3.1.2. Request for extension*

- (43) If an addressee wishes to request an extension of the deadline to reply:
  - (a) Such a request must be submitted in writing.
  - (b) The request must be reasoned to allow for an appropriate assessment by the case team.
  - (c) In general, the need to prepare, at the same time, for a procedure before the Court (appeal, preparation for a hearing) is not an acceptable reason for an extension since this applies to all addressees.
  - (d) In general, a justified extension should not exceed one week, however, account should be taken of the length of the decision, which in certain circumstances may justify a longer extension.
- (44) The case team will reply to the extension request in writing.

- (45) Should there be no reaction by the addressees within the (extended) deadline, the documents can be published. However, the case team should redact information that is, in the view of the case team, obviously confidential. <sup>(12)</sup>

### 3.1.3. *Dealing with confidentiality claims*

#### 3.1.3.1. When confidentiality claims are accepted

- (46) Where the addressees make confidentiality claims (either in response to the first letter or to the reminder letter), the case team will make a thorough assessment.
- (47) If the case team accepts all confidentiality claims, it prepares a consolidated version of the decision and takes all the necessary steps for the publication on the website (see section 4 below).

#### 3.1.3.2. When confidentiality claims are initially not accepted

- (48) It is for the case team to determine whether the confidentiality claims are justified on the basis of substantiated reasons provided by the addressees, in line with the substantive requirements detailed in section 5 below.
- (49) Disagreements with the addressees regarding confidentiality claims should usually not arise for the documents to be published in the OJ (summary of the decision, final report of the Hearing Officer and opinion of the AdCom), which generally do not contain confidential information. Such disagreements, however, may occur when establishing the non-confidential version of the decision for publication on the website.
- (50) Where the case team does not accept a confidentiality claim made by an addressee, it will inform the addressee, with a view to obtaining the agreement of all addressees on a version that is acceptable to the Commission.
- (51) Initially, this can be done informally via telephone calls, but if the dispute persists, the case team will inform the addressee about its rejection of the confidentiality claims in writing and explain the reasons for the rejection. The case team will set a deadline for the addressee to submit any written comments.

#### 3.1.3.3. Where disputes over confidentiality claims are not settled – referral to the Hearing Officer

- (52) Where a dispute over confidentiality claims cannot be resolved between the case team and the addressee, the case team informs the addressee of the confidentiality claims that are not considered to be justified, the reasons therefore <sup>(13)</sup> and the fact that:
- (a) The addressee may refer the dispute, within a reasonable deadline to be set in view of the circumstances of the case (in many cases one week may be

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<sup>(12)</sup> Article 16(4) of Regulation 773/2004 does not oblige the Commission to leave obviously confidential information in the public version: "*If undertakings [...] fail to comply [...], the Commission may assume that the documents or statements concerned do not contain confidential information.*"

<sup>(13)</sup> See Article 8(1) of the Terms of Reference of the Hearing Officer.

appropriate), to the Hearing Officer, who can decide on the disputed confidentiality claims (14), and,

- (b) if the addressee fails to refer the dispute to the Hearing Officer within the given deadline, the relevant confidentiality claims will be considered to be withdrawn and the information covered by those claims will be published.
- (53) If the addressee refers the dispute to the Hearing Officer within the given deadline:
- (a) The relevant procedure regarding the involvement of the Hearing Officer set out in Article 8 of the Terms of Reference of the Hearing Officer applies.
  - (b) Where the addressees refer a dispute to the Hearing Officer, a provisional version of the decision without the disputed parts may be published on the website.
- (54) The final non-confidential version will be published on the date specified in the reasoned decision of the Hearing Officer notified to the provider of the disputed information, unless the addressee(s) brings an action against the Hearing Officer's decision before the General Court and makes a request for interim relief to the Court to suspend the effect of that decision.

### **3.2. Personal data – Commission's own initiative**

- (55) While it is often the case that confidentiality claims made by addressees of Commission decisions also cover the personal data of their former and current employees, it is necessary that the case team, on its own initiative, identifies and removes any names of individuals or other information that directly or indirectly allows to identify the individuals from documents prior to their publication (in particular from the decision).
- (56) For more information and guidance on the substantive identification of personal data, see section 5.2.

### **3.3. Information whose publication may jeopardise Commission investigations – Commission's own initiative**

- (57) For more information and guidance on the substantive identification of this type of information, see section 5.3 below.

## **4. PRACTICAL ASPECTS**

### **4.1. How should confidential information be identified?**

- (58) The case team asks the addressees to submit a draft, in which they should identify the information for which they claim confidentiality by marking the information.
- (59) When all confidentiality claims have been settled (either by the case team or by the Hearing Officer), all addressees are asked to confirm their agreement with the final

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<sup>(14)</sup> See Article 8 of the Terms of Reference of the Hearing Officer.

consolidated version of the decision, in which the case team has redacted any confidential information.

#### **4.2. How to establish a consolidated version, from which all information that should not be published has been removed**

- (60) The case team will prepare a consolidated version for publication by introducing the following into the relevant document (for example, decision, summary of the decision):
- (a) redactions of confidential information (information with respect to which confidentiality claims have been accepted) of all addressees;
  - (b) redactions of personal data; and
  - (c) redactions of information the publication of which may jeopardise Commission investigations.
- (61) Redacted text is replaced by a non-confidential summary in square brackets, if applicable, or shown as [...].
- (62) As regards summaries of confidential information, should various addressees provide different summaries of the same confidential information, it is for the case team to decide whether to include a summary at all, whether to use one of the summaries provided by the addressees, or to establish its own summary based on those provided by the addressees.
- (63) Under specific circumstances, an indication of appropriate ranges may be used to replace detailed information on the companies' turnover or market share (e.g. a market share of 12.5% can be replaced by a market share range of 10-20%).
- (64) The case team sends this single consolidated version to all addressees, informing them that this version will be published by the Commission, unless they raise objections within the given deadline. The case team should also indicate that this document is the non-confidential version of the decision.
- (65) A short but reasonable deadline will be set in the accompanying correspondence.
- (66) The preparation of the consolidated version has to be carried out with particular caution to avoid accidentally disclosing the confidential information of one addressee to another addressee. Before the final consolidated redacted version is sent to the addressees, at least two case team members should verify the text. In this context, a similarly high degree of care and attention has to be applied as for the access to file procedure.
- (67) Once the deadline has expired and no addressee has objected to the final consolidated redacted version of the non-confidential version, the process of actual publication can be started.

### **4.3. Translations**

#### *4.3.1. Publication in the OJ*

##### 4.3.1.1. Languages required

- (68) Everything that is published in the OJ is published in all official languages of the European Union.
- (69) The summary of the decision, the final report of the Hearing Officer and the opinion of the AdCom must therefore be translated into all EU languages.

##### 4.3.1.2. Timing

- (70) To allow for a speedy publication in the OJ, the translation requests should be made as soon as the decision is adopted and the summary of the decision, the Opinion of the AdCom and the Final report of the Hearing Officer have been finalised.
- (71) Any possible confidentiality claims will have to be taken into account, but – as indicated above (see paragraph (13) above) – should not normally occur.
- (72) The Commission aims to publish the summary of the decision in the OJ within three months.

#### *4.3.2. Publication on the website of DG Competition*

##### 4.3.2.1. Languages required

- (73) The non-confidential version of the decision is published on the website of DG Competition in the authentic language(s) of the case. Exceptionally, the decision may also be published in another language than the authentic language(s) of the case if the decision was drafted in that language.

##### 4.3.2.2. Who and how?

- (74) Once the case team has a settled non-confidential version of the decision, it will use this to produce non-confidential versions in all the languages in which the decision is to be published, by introducing the same redactions in all the other language versions.

### **4.4. Practicalities of publication**

- (75) This section deals with the technicalities of publishing the relevant text in the OJ and on DG Competition's website.

#### *4.4.1. Publication in the OJ*

- (76) Once all official language versions have been received, the case team sends the texts that need to be published (summary, final report of the Hearing Officer, opinion of the AdCom) to the relevant Commission services in charge of publication indicating the name and number of the case as well as the date of adoption of the decision.

#### 4.4.2. Publication on the website of DG Competition

##### 4.4.2.1. Publishing the decision on the website

(77) On the date of the adoption of the decision, a notice is published on DG Competition's website indicating that no public version is available. This notice is later removed when the summary and the non-confidential version of the decision are available.

##### 4.4.2.2. Checking of the document to be published

(78) The case team must check all documents that are to be published to ensure that the right versions are published.

##### 4.4.2.3. Web search

(79) DG Competition's website contains a search tool enabling users to search for documents published in each case ([Competition case search \(europa.eu\)](http://competition.case.search.europa.eu)).

## 5. THE CONTENT OF THE NON-CONFIDENTIAL VERSION OF THE DECISION

(80) When preparing non-confidential versions of decisions for publication, the Commission must take into account its obligation of professional secrecy and interest in protecting its investigations, on the one hand, and, on the other hand, the objective of providing maximum transparency to the public.

(81) In this regard, the Commission has to consider (i) a number of legal requirements for the redaction of information, such as the protection of confidential information, in particular business secrets, the protection of personal data, the principle of presumption of innocence and (ii) the effect that the publication of certain information may have on its ability to conduct investigations both in specific cases and generally. Such information is redacted from the decision for the purpose of publication.

(82) In particular, the Commission has to consider:

- (a) the requirements of transparency as set out in Regulation 1049/2001,
- (b) the interests of undertakings in knowing the type of behaviour for which they may be sanctioned, and
- (c) the interests of persons harmed by the infringement in being informed of the details of such infringement so that they may, where appropriate, assert their rights against the perpetrators. (15)

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<sup>(15)</sup> See Judgment of 30 May 2006, *Bank Austria Creditanstalt v Commission*, Case T-198/03, ECLI:EU:T:2006, paragraph 78.



## 5.1. Confidential information

- (83) Under Article 339 TFEU, the Commission and its staff are bound by the obligation of professional secrecy. <sup>(16)</sup> This obligation covers business secrets <sup>(17)</sup> and other confidential information, provided the information meets the criteria set out by case law.
- (84) According to the Court <sup>(18)</sup>, in order to fall under the obligation of professional secrecy, the information must:
- (a) be known only to a limited number of persons,
  - (b) if disclosed, be liable to cause serious harm to the person who provided it or to third parties, and
  - (c) if disclosed, the interests liable to be harmed by disclosure must, objectively, be worthy of protection.
- (85) The concept of business secrets or other confidential information concerns information for which not only disclosure to the public but also mere transmission to a person other than the one who provided the information may seriously harm the latter's interests. <sup>(19)</sup>
- (86) Therefore, the content of the published decisions is limited by the Commission's obligation to protect business secrets of undertakings or other confidential information. Typical examples of information that is redacted from the published version of decisions are precise and sufficiently contemporaneous turnover figures, customer information (e.g. their names, quantities purchased or prices paid) and market shares. <sup>(20)</sup> To protect such information, the non-confidential version may contain ranges of figures, data and shares, or a neutral description of a name. That being said, information which was secret or confidential, but which is at least five years old, must as a rule, on account of the passage of time, be considered historical and therefore as having lost its secret or confidential nature unless, exceptionally, the party relying on that nature shows that, despite its age, that information still

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<sup>(16)</sup> Article 339 TFEU provides: "*The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components*".

<sup>(17)</sup> Which are expressly mentioned in Article 30(2) of Regulation 1/2003.

<sup>(18)</sup> Judgement of 30 May 2006, *Bank Austria Creditanstalt v Commission*, Case T-198/03, ECLI:EU:T:2006, paragraph 71; and also Judgment of 12 October 2007, *Pergan Hilfsstoffe für industrielle Prozesse v Commission*, Case T-474/04, ECLI:EU:T:2007:306, paragraphs 65 et seq.

<sup>(19)</sup> See Judgment of 18 September 1996, *Postbank v Commission*, Case T-353/94, ECLI:EU:T:1996:119, paragraph 87.

<sup>(20)</sup> See Order of 25 November 2009, *Hynix Semiconductor v Council*, Case T-383/03, ECLI:EU:T:2009:466 and Judgment of 10 April 2008, *Deutsche Telekom v Commission*, Case T-271/03, ECLI:EU:T:2008:101.

constitutes essential elements of its commercial position or that of interested third parties. <sup>(21)</sup>

- (87) The Commission has delegated to the Hearing Officers the power to reject claims made by addressees of decisions for confidentiality in the context of the publication of decisions. The Hearing Officers take these decisions for the Commission with the approval of the Legal Service (see for more details on the process section 3.1.3 above). <sup>(22)</sup>

## 5.2. Personal data

- (88) The Commission must comply with the requirements of the EUDPR. The regulation defines personal data as ‘any information relating to an identified or identifiable natural person’ <sup>(23)</sup> and establishes specific rules for the processing of special categories of personal data which are particularly sensitive (i.e., sensitive personal data) <sup>(24)</sup>. The Commission may lawfully process personal data in the context of its investigations pursuant to Regulation 1/2003. <sup>(25)</sup>
- (89) Personal data should, in principle, be removed from documents before their publication. Information that could identify a person may therefore be replaced by a more general description (e.g. "Ms. Y" or "X's marketing director between 1998-2000" could be replaced by "one of X's representatives"). In certain cases, however, it may be proportionate to include such data in the non-confidential version. This may be the case if the indication of a person's function is necessary for the understanding of the decision <sup>(26)</sup>, or if the undertaking to which a decision is addressed is an individual.

## 5.3. Information whose publication may jeopardise Commission investigations

- (90) The publication of certain types of information may jeopardise the Commission's ability to conduct its investigations both in specific cases and in general. This may be the case for admissions provided by the parties under the Leniency Notice and voluntary admissions of participation in an infringement made by parties during inspections, in replies to requests for information and during the oral hearing.

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<sup>(21)</sup> See Judgment of 14 March 2017, *Evonik Degussa v Commission*, Case C-162/15 P, ECLI:EU:C:2017:205, paragraph 64.

<sup>(22)</sup> Delegation of powers C(2011)7442 to the Hearing Officer relating to the adoption of certain measures in competition proceedings under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

<sup>(23)</sup> See Article 3(1) EUDPR.

<sup>(24)</sup> See Article 10(1) EUDPR.

<sup>(25)</sup> See the Letter of the European Data Protection Supervisor (EDPS) of 18 October 2018 (available at: [https://edps.europa.eu/sites/edp/files/publication/18-10-30\\_letter\\_investigative\\_activities\\_eui\\_gdpr\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-10-30_letter_investigative_activities_eui_gdpr_en.pdf)) as well as the Judgment of 24 May 2023 in *Meta Platforms Ireland v Commission*, Case T-451/20, ECLI:EU:T:2023:276, paragraphs 185-194 and Order of 9 September 2023 in *Red Bull v Commission*, Case T-306/23 R, ECLI:EU:T:2023:590, paragraph 31.

<sup>(26)</sup> See Judgment of 12 October 2007, *Pergan v Commission*, Case T-474/04, paragraph 72.

Therefore, the Commission may redact certain information falling within this category in the public version of the decision. <sup>(27)</sup>

- (91) Having regard to the views expressed by the addressees, the Commission ultimately decides whether the publication of certain information would jeopardise its investigations and whether certain information in addition to that for which the addressees have claimed confidentiality should be redacted to avoid such adverse effects on the ability of the Commission to investigate and sanction infringements of competition law.

#### **5.4. Principle of the presumption of innocence**

- (92) As established by the General Court in Case T-474/04 *Pergan*, <sup>(28)</sup> findings relating to an infringement by any third parties who may have participated in the infringement but who are not mentioned in the operative part of the decision must be removed from the published version of the decision. In general, the adopted version of the decision should therefore avoid references to any such undertakings.

#### **5.5. Regulation 1049/2001**

- (93) Regulation 1049/2001 allows any person access to all Commission documents without having to state specific reasons. Such access may only be refused under the specific exceptions provided by Regulation 1049/2001. These include, *inter alia*, the protection of commercial interests and the protection of inspections and investigations. While there is a certain overlap with the above-mentioned reasons for redaction of information from a non-confidential version, case teams should be mindful that there are certain differences between the exceptions under Article 4 of Regulation 1049/2001 and the ones listed above.
- (94) For reasons of administrative efficiency, the non-confidential versions of Commission decisions should therefore be prepared with possible access requests in mind. Should a request under Regulation 1049/2001 exceptionally lead to the release of information that was not in the public version of the decision, an adapted public version should be published on DG Competition's website.

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<sup>(27)</sup> See Judgment of 14 March 2017, *Evonik Degussa v Commission*, Case C-162/15 P, paragraph 87, where the Court held: "*In that regard, it must be pointed out that the publication, in the form of verbatim quotations, of information from the documents provided by an undertaking to the Commission in support of a statement made in order to obtain leniency differs from the publication of verbatim quotations from that statement itself. Whereas the first type of publication should be authorised, subject to compliance with the protection owed, in particular, to business secrets, professional secrecy and other confidential information, the second type of publication is not permitted in any circumstances.*"

<sup>(28)</sup> Judgment of 14 March 2017, *Pergan Hilfsstoffe für industrielle Prozesse GmbH v Commission*, Case T-474/04, ECLI:EU:T:2007:306, paragraph 76.