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Antitrust Manual of Procedures

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Antitrust Manual of Procedures

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

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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. INTRODUCTION

- (1) Article 19 of Regulation 1/2003 empowers the Commission to interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject-matter of an investigation. Information collected in Article 19 interviews may be used by the Commission as evidence in proceedings under Article 101 and Article 102 TFEU. The procedure for carrying out Article 19 interviews is set out in Article 3 of Regulation 773/2004.
- (2) Case teams interact with various “external interlocutors” in their investigations. These may include: (i) parties (or potential parties) to formal proceedings; (ii) complainants / informants; and (iii) other third parties.
- (3) Oral exchanges with external interlocutors qualify as interviews within the meaning of Article 19 of Regulation 1/2003 if they are conducted for the purpose of collecting information relating to the subject-matter of an investigation.
- (4) Oral exchanges between the case team and external interlocutors that take place in the course of an investigation may lead to the collection of information relating to the subject-matter of the investigation. Such oral exchanges may qualify as interviews within the meaning of Article 19 of Regulation 1/2003, in which case the case team should comply with the procedural requirements for conducting such interviews (see section 3).
- (5) On the other hand, oral exchanges that do not concern the subject-matter of the investigation, for example exchanges relating to the procedure, do not qualify as interviews within the meaning of Article 19 of Regulation 1/2003 (see section 2).
- (6) Interviews conducted under Article 19 of Regulation 1/2003 are carried out on a voluntary basis. Accordingly, the external interlocutors may refuse to be interviewed and may also discontinue an interview at any time.
- (7) It is important to distinguish the power to conduct interviews pursuant to Article 19 of Regulation 1/2003 from the power to ask oral questions during an inspection pursuant to Article 20 (2) (e) of Regulation 1/2003. While it is possible to conduct interviews pursuant to Article 19 during an inspection, the Commission primarily uses its powers under Article 20 (2) (e) of Regulation 1/2003 when asking questions during inspections. The reason is that the inspected undertaking’s representatives (members of staff or legal representatives) are obliged to answer questions posed by the Commission during inspections. The Commission may impose a fine pursuant to Article 23 (1) (d) of Council Regulation 1/2003 if the representatives of the undertaking give incorrect, incomplete or misleading answers to questions posed during an inspection or if the representatives fail or refuse to reply. The Commission draws the attention of the inspected undertaking’s representatives to this legal consequence at the beginning of the inspection. This sanction does not apply for Article 19 interviews, which are voluntary in nature.
- (8) In the context of leniency applications, leniency applicants who fail to reply to questions posed during Article 19 interviews may breach their cooperation duties under point 12 of the Leniency Notice (see section 3.5).

2. TYPES OF ORAL EXCHANGES FALLING WITHIN AND OUTSIDE OF ARTICLE 19 OF REGULATION 1/2003

- (9) All types of oral exchanges may fall within Article 19 of Regulation 1/2003: any type of meetings, phone calls, video or telephone conferences; thus, the format of the oral exchange is not decisive.
- (10) Article 19 of Regulation 1/2003 applies to interviews conducted for the purpose of collecting information relating to the subject-matter of an investigation. This may include information on the functioning of the market, the behaviour of market players, the competitive situation on the market, or other contextual aspects that may affect the analysis of the practices being investigated.
- (11) On the other hand, it may happen that an oral exchange, which has not been set up for the purpose of collecting information about the subject-matter of the investigation, would nevertheless lead to, or result in, the collection of such information. Case teams shall properly record such information pursuant to section 3.
- (12) Certain oral exchanges will typically not fall within Article 19 of Regulation 1/2003 and its recording obligations. These include exchanges that concern procedural ⁽¹⁾ or other issues not relating to the substance of a case. ⁽²⁾ The Commission prepares a brief internal note on such meetings or phone calls.

3. PROCEDURAL REQUIREMENTS OF INTERVIEWS

3.1. Participants from the Commission's side

- (13) Interviews will generally be carried out by at least two persons from the case team.
- (14) If the interview takes place at the premises of the undertaking (located within the EU), Article 19(2) of Regulation 1/2003 requires the Commission to inform the National Competition Authority of the Member State in whose territory the interview takes place. In that case, the National Competition Authority can request that (one of) its officials participate(s) in the interview. National Competition Authorities should normally be informed about interviews at least 2 weeks in advance.

3.2. Interviewees from the external interlocutor's side

- (15) In the context of Article 19, the Commission may interview any natural person or legal person duly represented by a natural person. Typical examples are a current or former member of staff of an undertaking (irrespective of their function in the undertaking), experts on specialised matters, or a lawyer acting on behalf of a client. Members of staff of an undertaking should be asked at the beginning of the interview whether they act on behalf of the undertaking (as legal person), or on

⁽¹⁾ For example, discussions about the interpretation of questions of requests for information, or extension of deadlines, or explanations on the next procedural steps, or state of play meetings.

⁽²⁾ For example, discussions on technical issues, on confidentiality claims on documents, or discussions with third parties that are conducting studies for the Commission in relation to the design of a survey.

their own behalf (as natural person). Unless there are no doubts in that regard, the interviewee should be asked to provide supporting documents confirming their identity and function.

- (16) The interviewee must expressly consent to being interviewed. As explained above, such consent can be withdrawn at any time and without justification – wholly or in part (e.g. by not answering certain questions).
- (17) The interviewee may decide to be accompanied by a person of their choice, e.g. a lawyer. If an employee is not being interviewed on behalf of the undertaking, employers have no right to be informed about and/or attend the interview (unless the employee agrees to it and the case team considers such presence useful).
- (18) The interviewee can choose the language used in the interview, provided that the language chosen is an official language of the European Union. If need be, the Commission shall ensure appropriate translation.

3.3. Information to be provided by the Commission before the interview

- (19) The case team will communicate the following information to the interviewee before the interview: (i) the legal basis of the interview (the interview is taking place under Article 19 of Regulation 1/2003); (ii) that the interview is voluntary and can be discontinued at any time; (iii) that the purpose of the interview is to collect information about the subject-matter of the investigation (the case team provides a short description of the investigation); (iv) that a record (minutes) will be made of the interview; and (v) that the interviewee will be asked to approve the interview record or to correct the record, as appropriate.
- (20) In addition, in certain circumstances, case teams can draw the attention of the interviewees to the fact that: (i) they are entitled to obtain the assistance of a lawyer (particularly, if a natural person is being interviewed who is not representing an undertaking, such as an informant); (ii) at a later stage, it may be necessary to grant access to the file, which will include a non-confidential version of the interview, however, the interviewees can request anonymity if they fear reprisals; (iii) the information obtained can be shared with National Competition Authorities under Article 12 of Regulation 1/2003 and used in evidence for the application of Article 101 and 102 TFEU, including for the purpose of imposing (pecuniary) sanctions on natural persons where the conditions of the national law of the receiving authority are fulfilled; (iv) there is no obligation to answer any questions, including in circumstances when the interviewee considers that a reply could be self-incriminating .
- (21) To certify that the Commission has fulfilled the procedural obligations set out above, it is recommended to ask the interviewee to sign a statement which confirms this (to be presented at the end of the interview).

3.4. Location

- (22) The interview may be conducted by any means, including by telephone or electronic means.

- (23) Normally, in-person interviews will take place at the premises of the Commission, but they can also be carried out elsewhere, e.g. in the office of a National Competition Authority or at the premises of an undertaking (for example, if the case team conducts a site visit.)
- (24) In the latter case, the Commission should – as indicated above – inform the National Competition Authority concerned and allow them to participate in the interview.

3.5. Questions asked during the interview

- (25) As explained above, interviewees are not obliged to reply to any question posed during an interview conducted under Article 19 of Regulation 1/2003. Consequently, interviewees are also not obliged to make any self-incriminating statements in such interviews.
- (26) The case team should explain that if the interviewee intentionally chooses to make clearly self-incriminating statements, these statements may justify a reduction of any fine that may later be imposed by the Commission, if the information provided assists the Commission in establishing an infringement. However, the case team should also explain that there is no obligation to make self-incriminating statements.
- (27) By contrast, in cases where leniency applicants are involved (immunity applicants and applicants for a reduction of fines), there is a general obligation for such parties to cooperate with the Commission genuinely, fully, on a continuous basis and expeditiously, ⁽³⁾ including replying to the Commission’s questions promptly. The Commission may choose to ask questions from such parties in an interview or in writing (so-called “point 12 requests”) ⁽⁴⁾ to clarify the specificities of the cartel. Refusal to reply to such questions may qualify as a failure to cooperate with the Commission and can affect the Commission’s final assessment of the leniency application, in particular the determination of the reduction of the fine. The case team should draw the leniency applicant’s attention to these legal consequences.

3.6. Records of interviews

- (28) Interviews conducted under Article 19 of Regulation 1/2003 must be properly recorded. It is for the Commission to decide which is the most appropriate form of record for the case in question.
- (29) The interview can be recorded, for example, by: (i) taking notes and preparing minutes; or (ii) recording the entire interview on any medium and preparing a transcript (see Article 3 (2) of Regulation 773/2004).
- (30) The interview does not have to be recorded *verbatim*, but the record must include a complete and faithful presentation of the issues discussed, the substance of the discussions and the precise information relating to the subject-matter of the

⁽³⁾ Points 12 and 24 of the Leniency Notice.

⁽⁴⁾ Point 12(a) of the Leniency Notice.

investigation that was provided during the interview.⁽⁵⁾ It is not sufficient to merely record the subject-matter of the conversation without also recording the detailed content of the conversation.

- (31) Where relevant, the record will include a reference to supporting documents provided by the interviewee or undertaken in advance or during the interview (e.g. PowerPoint presentation).⁽⁶⁾
- (32) The case team should draft the record of the interview shortly after the interview. It should then send the draft record to the interviewee as soon as possible and set a deadline of two weeks for the interviewee to approve the record or make relevant corrections.⁽⁷⁾ When the case team sends the draft record, they should indicate that if the interviewee does not react within the given deadline, the record will be registered as “non-approved” in the case file. Once the record is approved, the case team will add it to the case file as “approved” minutes.

3.7. Access to the file and protection of confidential information

- (33) Case teams should request the interviewee to provide a non-confidential version of the record of the interview at the time when they request the interviewee to approve the draft record of the interview.
- (34) The non-confidential version of the record will be made accessible to the parties to the investigation in the context of access to file. To that end, the case team must verify that the non-confidential version provided by the interviewee does not contain business secrets or other confidential information. This may include protection of the identity of the interviewee, through anonymisation of the record, in the event that the Commission accepts the duly substantiated claim of the interviewee in this regard⁽⁸⁾ (for example, if the interviewee is an employee who fears reprisals from their employer). If anonymity is granted, it should nonetheless be possible to create a non-confidential version of the record, absent very exceptional circumstances.⁽⁹⁾

3.8. Use of information collected in interviews

- (35) Where information collected during interviews is shared with a National Competition Authority pursuant to Article 12 of Regulation 1/2003, it can only be used in evidence to impose sanctions on natural persons where the conditions set out in that Article are fulfilled.

⁽⁵⁾ Judgment of 14 September 2022, *Google v Commission*, Case T-604/18, ECLI:EU:T:2022:541, paragraph 930 and Judgment of 15 June 2022, *Qualcomm v Commission*, Case T-235/18, ECLI:EU:T:2022:358, paragraph 207.

⁽⁶⁾ Any supporting documents provided by the interviewee or undertaken before or during the interview will be added to the case file.

⁽⁷⁾ See Article 17(3) of Regulation 773/2004.

⁽⁸⁾ See Judgment of 7 November 1985, *Stanley George Adams v Commission*, Case C-145/83, ECLI:EU:C:1985:448, paragraph 34.

⁽⁹⁾ If protection of anonymity would not be possible with a non-confidential version of the minutes, then the minutes would remain as non-accessible in the file (although a completely redacted version of the minutes would be accessible during access to the file).

- (36) According to Article 28 of Regulation 1/2003, information collected pursuant to Article 19 of Regulation 1/2003 may only be used for the purpose for which it was acquired. Accordingly, information collected in one investigation cannot be used for another purpose than the one for which it was acquired, unless the interviewee agrees (in writing or in the interview record) that the interview was carried out also for the purpose of that other investigation.