

# Evaluation of Regulations 1/2003 and 773/2004 - detailed questionnaire



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Fields marked with \* are mandatory.

## Introduction

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Regulation 1/2003 is the result of the most comprehensive reform of procedures for the enforcement of Articles 101 and 102 TFEU since 1962. Its main features are:

- The abolition of the practice of notifying business agreements to the Commission, enabling the Commission to focus its resources on serious violations of the antitrust rules.
- The empowerment of National Competition Authorities and courts to apply Articles 101 and 102 TFEU in their entirety, so that there are multiple enforcers and therefore wider application of the EU antitrust rules.
- More level playing field for businesses operating cross-border as all competition enforcers, including the National Competition Authorities and national courts, are obliged to apply the EU antitrust rules to cases that affect trade between Member States.
- Close cooperation between the Commission and National Competition Authorities in the European Competition Network (the 'ECN').
- Enhanced enforcement tools for the Commission so that it is better equipped to detect and address breaches of the EU antitrust rules.

In the context of Regulation 1/2003, the Commission further adopted the Commission implementing Regulation 773/2004 (together with Regulation 1/2003, the "Regulations").

A number of significant changes have occurred in market dynamics over the past twenty years and many are potentially liable to impact the way competition rules are enforced. The digitisation of the global economy, for example, has highlighted a potentially increasing tension between the need for prompt and effective intervention and the complexity of antitrust proceedings.

In order to ensure that its antitrust enforcement tools remain fit for purpose, the Commission is launching an evaluation of the procedures for the application of Articles 101 and 102 TFEU, as established by the Regulations.

## Purpose of the evaluation

The purpose of the evaluation is to provide a solid basis for the assessment of the performance of the antitrust procedural framework, also in light of changes that have occurred in market dynamics since the adoption of Regulation 1/2003, such as the digitisation of the global economy.

The evaluation of the Regulations has to be seen in the context of the broader review exercise launched in the area of EU competition law in the past years. It will take place roughly ten years after the publication on “Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives” and will allow taking stock of the almost twenty years of experience with the application of the antitrust procedural framework.

More information on the evaluation can be found in the [Call for Evidence](#).

## Structure of the public consultation and how to respond to it

As part of the evaluation, the Commission will seek the views of stakeholders on the effectiveness, efficiency, relevance, coherence and EU added value of Regulation 1/2003. To this end, both a short questionnaire and a detailed questionnaire are being published in parallel. The results of this consultation will serve as input for the evaluation. Views are welcome from all stakeholders.

The detailed questionnaire is more suitable for stakeholders with specific expertise and experience in the application of Regulation 1/2003 and of Articles 101 and 102 TFEU. The shorter questionnaire instead is more suitable for the general public. All topics addressed in the shorter questionnaire are also covered in the detailed questionnaire, which contains additional and more technical questions. Each stakeholder should therefore choose to reply to either the short or the detailed questionnaire.

Both questionnaires are open for 14 weeks, and replies can be provided in all 24 official EU languages. Replies to either questionnaire will be equally considered. You are now in the detailed questionnaire. If you want to switch to the shorter questionnaire, please click [here](#).

This detailed questionnaire contains both high-level and detailed technical questions. The questions are available in English and are grouped by the following evaluation criteria:

- **Effectiveness:** The Commission will evaluate the extent to which the Regulations have been effective in meeting their objective of effective and uniform application of Articles 101 and 102 TFEU;
- **Efficiency:** The Commission will evaluate whether its experience in the application of the Regulations has contributed in an efficient manner to the effective and uniform application of Articles 101 and 102 TFEU, in particular for (i) undertakings; (ii) NCAs and (iii) consumers and whether the net benefits associated with the Regulations have been positive;
- **Relevance:** The Commission will evaluate whether the objective of the Regulations, namely the effective and uniform application of Articles 101 and 102

TFEU, continue to be appropriate, taking into account developments since 2004, for instance the digitisation of the economy and other legislative instruments that have come into force (e.g. the ECN+ Directive);

- **Coherence:** The Commission will evaluate how well the different components set out in the Regulations operate together, but also whether the Regulations are consistent with other EU legislation, EU Courts' case-law and other EU policies; and
- **EU added value:** The Commission will evaluate the extent to which the Regulations, that provide the Commission with important powers in the application of Articles 101 and 102 TFEU, but also empower NCAs to apply these Treaty provisions, have contributed to ensuring the effective and uniform application of these provisions in a manner that goes beyond what would have been achieved by Member States acting alone.

The collected information will provide part of the evidence base for determining whether it will be appropriate to revise Regulation 1/2003 and/or Regulation 773/2004.

The responses to this public consultation will be analysed and the summary of the main points and conclusions will be made public on the Commission's central public consultations page. Please note that your replies will also become public as a whole, see below under Section 'Privacy and Confidentiality.' Nothing in this questionnaire may be interpreted as stating an official position of the Commission.

You are invited to provide your feedback through this online questionnaire. Please explain your responses and, as far as possible, illustrate them with concrete examples. We also invite you to upload any documents and/or data that you consider useful to accompany your replies at the end of this online questionnaire.

In order to ensure a fair and transparent consultation process, only responses received through this online questionnaire will be taken into account and included in the report summarising the responses.

If you encounter problems with completing this questionnaire or if you require assistance, please contact [COMP-REG-1@ec.europa.eu](mailto:COMP-REG-1@ec.europa.eu).

## About you

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### \* Language of my contribution

Bulgarian

Croatian

Czech

Danish

Dutch

English

- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation

- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\*First Name

\*Surname

\*Email (this won't be published)

\*Scope

International

Local

National

Regional

\*Level of governance

Local Authority

Local Agency

\*Level of governance

Parliament

Authority

Agency

\*Organisation name

255 character(s) maximum

European Round Table for Industry on behalf of its members

\*Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more) **[note: based on membership]**

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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\*Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

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| <input type="checkbox"/> Afghanistan    | <input type="checkbox"/> Antarctica          |
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| <input type="checkbox"/> Albania        | <input type="checkbox"/> Argentina           |
| <input type="checkbox"/> Algeria        | <input type="checkbox"/> Armenia             |
| <input type="checkbox"/> American Samoa | <input type="checkbox"/> Aruba               |
| <input type="checkbox"/> Andorra        | <input type="checkbox"/> Australia           |
| <input type="checkbox"/> Angola         | <input type="checkbox"/> Austria             |
| <input type="checkbox"/> Anguilla       | <input type="checkbox"/> Azerbaijan          |

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 Benin  
 Bermuda  
 Bhutan  
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Bosnia and Herzegovina  
Botswana  
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Brunei  
Bulgaria  
Burkina Faso  
Burundi  
Cambodia  
Cameroon  
Canada  
Cape Verde

Cayman Islands  
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Congo  
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Croatia  
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Curaçao  
Cyprus  
Czechia  
Democratic Republic of the Congo  
Denmark  
Djibouti  
Dominica  
Dominican  
Ecuador  
Egypt  
El Salvador  
Equatorial Guinea

Eritrea	Heard Island and McDonald Islands
Estonia	Honduras
Eswatini	Hong Kong
Ethiopia	Hungary
Falkland Islands	Iceland
Faroe Islands	India
Fiji	Indonesia
Finland	Iran
France	Iraq
French Guiana	Ireland
French Polynesia	Islands
French Southern and Antarctic Lands	Islands
Gabon	Islands
Georgia	Isle of Man
Germany	Israel
Ghana	Italy
Gibraltar	Jamaica
Greece	Japan
Greenland	Jersey
Grenada	Jordan
Guadeloupe	Kazakhstan
Guam	Kenya
Guatemala	Kiribati
Guernsey	Korea
Guinea	Kosovo
Guinea-Bissau	Kuwait
Guyana	Kyrgyzstan
Haiti	Laos

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Liechtenstein	Nepal
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Mali	Norfolk Island
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Marshall Islands	North Macedonia
Martinique	Northern Mariana Islands
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Mexico	Palau
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Moldova	Papua New Guinea
Monaco	Paraguay
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Montserrat	Pitcairn Islands

Poland	Slovenia
Portugal	Solomon Islands
Puerto Rico	Somalia
Qatar	South Africa
Republic	South Georgia and the South Sandwich Islands
Réunion	South Korea
Romania	South Sudan
Russia	Spain
Rwanda	Sri Lanka
Saint Barthélemy	Sudan
Saint Helena Ascension and Tristan da Cunha	Suriname
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Saint Lucia	Sweden
Saint Martin	Switzerland
Saint Pierre and Miquelon	Syria
Saint Vincent and the Grenadines	Taiwan
Samoa	Tajikistan
San Marino	Tanzania
São Tomé and Príncipe	Thailand
Saudi Arabia	The Gambia
Senegal	<input type="checkbox"/> Timor-Leste
Serbia	<input type="checkbox"/> Tokelau
Seychelles	<input type="checkbox"/> Tonga
Sierra Leone	<input type="checkbox"/> Trinidad and Tobago
Singapore	<input type="checkbox"/> Tunisia
Sint Maarten	<input type="checkbox"/> Turkey
Slovakia	

- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- United States
- United States
- Uruguay
- US Virgin Islands
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### \*Contribution publication privacy settings

*The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.*

**Anonymous**

The type of respondent that you responded to this consultation as, your country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself.

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## A. General Questions

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### Effectiveness

1. In your view, has Regulation 1/2003 achieved its objective of an effective and uniform application of Article 101 TFEU in the EU?

Yes

No

Don't know

Please explain your answer

In general, Regulation 1/2003 has facilitated effective and uniform application of the EU antitrust rules. Nonetheless, there still are some diverging approaches among the national competition authorities, which undermine the legal certainty for companies operating in multiple markets across the EU.

2. In your view, has Regulation 1/2003 achieved its objective of an effective and uniform application of Article 102 TFEU in the EU?

Yes

No

Don't know

Please explain your answer

See above.

3. In your view, has the system of parallel enforcement of Article 101 TFEU by the European Commission and the National Competition Authorities introduced by Regulation 1/2003 led to increased and more effective enforcement across the EU?

Yes

No

Don't know

Please explain your answer

Generally, yes, as evidenced by how few conflicting cases there have been but target should be for uniformity as far as possible. One of the aspects undermining the uniformity of enforcement stems from a discretion of national competition authorities and the EC to prioritize cases according to wide levels of discretion. In practice, this results in under-enforcement where particular issues or industries are not subject to enforcement as they are not "in vogue".

4. In your view, has the system of parallel enforcement of Article 102 TFEU by the European Commission and the National Competition Authorities introduced by Regulation 1/2003 led to increased and more effective enforcement across the EU?

Yes

No

Don't know

Please explain your answer

See above

5. In your view, has Regulation 773/2004 been effective in empowering the commission to regulate certain aspects of proceedings for the application of Articles 101 and 102 TFEU (notably concerning the initiation of proceedings, the Commission's powers of investigation, the handling of complaints, the exercise of the right to be heard, access to the file, the limitations to the use of information obtained and time-limits)?

Yes

No

Don't know

Please explain your answer

Reg 1/2003 gives the Commission adequate powers to achieve these aims, albeit that it is important its discretion is exercised in a balanced and reasoned way.

### **Efficiency**

6. In your view, has the system of parallel enforcement of Articles 101 and 102 TFEU by the European Commission and the National Competition Authorities introduced by Regulation 1/2003 led to more efficient enforcement across the EU, compared to the previous centralised system set up by Regulation No 17?

Yes

No

Don't know

Please explain your answer

Although leniency is not formally part of Reg 1/2003, the introduction of a "one stop shop" for leniency would be a critical step in ensuring more efficient enforcement.

7. In your view, has the removal of the system of notification of business agreements to the Commission resulted in a more efficient application of Article 101 TFEU?

Yes

No

Don't know

Please explain your answer

This has been a critical development for efficient compliance with Article 101. There is, however, a resulting lack of recent guidance and caselaw in some areas e.g. the application of competition law to sustainability agreements.

8. In your view, have the procedures set up in Regulation 1/2003 and Regulation 773/2004 generally contributed to a timely and efficient enforcement of Articles 101 and 102 TFEU?

- Yes
- No
- Don't know

Please explain your answer

Cases are too long in duration and very burdensome on all businesses involved.

9. In your view, are the objectives of an effective and uniform application of Article 101 TFEU of Regulation 1/2003 still relevant?

- Yes
- No
- Don't know

Please explain your answer

Nowadays, in the context of digitalization and globalisation, the objective of an effective and uniform application of EU antitrust rules is even more important and pertinent than before.

10. In your view, are the objectives of an effective and uniform application of Article 102 TFEU of Regulation 1/2003 still relevant?

- Yes
- No
- Don't know

Please explain your answer

See above.

11. In your view, is the procedural framework established by Regulations 1/2003 and 773/2004 still relevant in light of the developments of the global and European economy, e.g. digitisation and the move towards sustainable development? If you reply

in the negative, please explain which developments have affected the relevance of the procedural framework in your view.

Yes

No

Don't know

Please explain your answer

The rules need more explicit recognition of sustainability and for that to be factored-in to all decision making. The EC procedure could itself shift to sustainable standards, e.g. with a dematerialized procedure.

### Coherence

12. In your view, are Regulations 1/2003 and 773/2004 overall coherent with other EU legislation and EU policies?

Yes

No

Don't know

Please explain your answer

Add text

### EU added value

13. In your view, have Regulations 1/2003 and 773/2004 contributed to ensuring the effective and uniform application of Articles 101 and 102 TFEU in a manner that goes beyond what would have been achieved by Member States alone?

Yes

No

Don't know

Please explain your answer

Add text

## **B. Powers of Investigation (Articles 17 to 22 of Regulation 1/2003, Articles 3 and 4 of Regulation 773/2004)**

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The provisions on the Commission's powers of investigation in Regulations 1/2003 and 773/2004 aim at enabling the Commission to detect and investigate agreements, decisions of associations of undertakings and concerted practices that infringe Article 101 or unilateral conduct that infringes Article 102 TFEU. In particular, the Commission may (i) launch investigations into sectors of the economy and types of agreements (Article 17 of Regulation 1/2003); (ii) require undertakings and associations of undertakings to provide all necessary information by means of requests for information (Article 18 of Regulation 1/2003); (iii) take statements from natural or legal persons (Article 19 of Regulation 1/2003) and (iv) conduct inspections of premises (Articles 20 and 21 of Regulation 1/2003). The Commission intends to evaluate whether these powers have proven and remain adequate, notably in the context of the widespread digitisation of the economy.

### **Effectiveness**

14. In your view, do the following investigative tools provided by Regulation 1/2003 provide for an effective means to detecting and investigating potential infringements of Articles 101 or 102 TFEU?

a. Investigations into sectors of the economy and into types of agreements (Article 17 of Regulation 1/2003)

- Yes
- No
- Don't know

Please explain your answer

Under-used powers – which could otherwise be helpful in understanding the dynamics of certain sectors – but very little transparency on how these powers are used or when. In any event, given the resources such investigations would require on the part of both the Commission and the companies concerned, should only ever be used with caution.

b. Requests for information (Article 18 of Regulation 1/2003)

- Yes
- No
- Don't know

Please explain your answer

Could benefit from clarity on when & why using 18(2) vs 18(3) and vice versa. Because information requests can be very burdensome for the businesses responsible, the Commission should ensure to hold them to high standards and to ensure they contribute to the investigation.

c. Power to take statements (Article 19 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

Not often used and not appropriate tool to rely on for investigations of companies.

d. Powers of inspection (Article 20 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

But need to be updated to take account of post COVID working from home protocols and procedures and be used proportionately. Given the intrusive nature of inspections, the Commission should prioritize use of information requests over site inspections.

e. Inspections of other premises (Article 21 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

As above.

## Efficiency

15. In your view, are the following investigative tools provided by Regulation 1/2003 an efficient means to collect evidence related to potential anti-competitive conduct prohibited by Articles 101 and 102 TFEU? In order to answer this question, please take into account, on the one hand, the type and importance of the evidence that can be collected by means of each specific investigative tool and, on the other hand, the administrative burden on both the Commission and third parties.

a. Investigations into sectors of the economy and into types of agreements (Article 17 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

Overly burdensome on average but can be a useful tool to better understand the mechanics of a particular market / sector.

b. Requests for information (Article 18 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

Overall yes, provided that the information is tailored and focused. However, requests for information pursuant to Article 18 sometimes represent a considerable and disproportionate cost for companies, in terms of time as well as personnel and financial resources, particularly when investigations are later dropped. A possibility of reimbursement of these costs to non-investigated contributors, or when the investigation is not successful or is dropped, and/or the costs exceed a certain threshold should be considered. It would be also welcomed if the EC could explain the reasons of its decision to end / further pursue its investigations.

c. Power to take statements (Article 19 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

Investigations are of companies – Article 19 risks over-emphasising the views of a single individual.

d. Powers of inspection (Article 20 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

Broadly speaking, proportionately used but need to update to reflect post COVID working practices.

e. Inspections of other premises (Article 21 of Regulation 1/2003)

- Yes
- No
- Don't know

Please explain your answer

Need to be used proportionate and critical that companies are able to protect their interests and exercise their rights of defence in full.

## Relevance

16. In your view, do the following investigative tools provided by Regulation 1/2003 continue to be relevant when it comes to detecting and investigating potential infringements of Articles 101 or 102 TFEU, notably in light of the increasing trend towards a more digitised economy?

a. Investigations into sectors of the economy and into types of agreements (Article 17 of Regulation 1/2003)

- Yes
- No
- Don't know

Please explain your answer

Investigation into sectors can represent an important tool that helps the EC understand the dynamics and functioning of novel markets. The information that is publicly available should be screened by the EC prior to it reaching out to businesses.

b. Requests for information (Article 18 of Regulation 1/2003)

- Yes
- No
- Don't know

Please explain your answer

See reply to 14(b) and 15(b) above.

c. Power to take statements (Article 19 of Regulation 1/2003)

- Yes
- No
- Don't know

Please explain your answer

Add text

d. Powers of inspection (Article 20 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

But needs to be updated for post-COVID experiences and be used proportionately.

e. Inspections of other premises (Article 21 of Regulation 1/2003)

Powers of inspection (Article 20 of Regulation 1/2003)

Yes

No

Don't know

Please explain your answer

As above

### **Coherence**

17. In your view, are the Commission's investigative tools provided by Regulation 1/2003 coherent with other EU legislation and EU policies?

Yes

No

Don't know

Please explain your answer

There are several areas where the tools raise concerns about a company's ability to fully exercise its rights of defence – see attached note.

### **EU added value**

18. In your view, have the Commission's investigative tools provided by Regulation 1/2003 contributed to ensuring the effective and uniform application of Articles 101 and

102 TFEU compared to, in their absence, a system based on investigative tools conferred exclusively to national administrative and/or judicial authorities?

Yes

No

Don't know

Please explain your answer

Add text

### **C. Procedural rights of parties and third parties, handling of complaints (Articles 7(2), 27, 28 and 30 of Regulation 1/2003, Articles 5-9, 10-17 of Regulation 773/2004)**

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Regulation 1/2003 and Regulation 773/2004 respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights. In this regard, the Commission respects the parties' fundamental right to be heard by addressing a statement of objections to them and by granting parties access to the file. Parties may exercise their right to be heard by submitting their views in writing and by developing their arguments at an oral hearing, if they so request. Third parties whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand and the decisions taken should be widely publicised. While ensuring the rights of defence, Regulation 1/2003 and Regulation 773/2004 also protect business secrets.

For its enforcement activity, the Commission benefits from information supplied by undertakings and by consumers in the market. Currently, there are two ways to provide information to the Commission in this respect. One is by lodging a complaint pursuant to Article 7(2) of Regulation 1/2003 (a 'formal complaint'). The other way is the provision of market information that does not have to comply with the requirements for complaints pursuant to Article 7(2) of Regulation 1/2003.

The Commission intends to evaluate whether these procedures have proven and remain adequate, notably in the context of the widespread digitisation of the economy.

#### **Effectiveness**

19. In your view, are the provisions of Regulations 1/2003 and 773/2004 adequate to effectively protect the procedural rights of all participants in the Commission's proceedings, i.e. both parties to investigations and other interested parties?

Yes

No

Don't know

Please explain your answer

There needs to be a careful balance between parties' right of defence and interest in a fast proceeding, as well as third parties' time limits to provide answer versus obstructing the process.

In order to ensure a better protection of procedural rights, the EC should consider extending the applicability of a legal privilege to in-house counsel. It is essential that businesses are able to build strong trust relationships between its employees and in-house counsel in order to be able to detect any potential anticompetitive behaviour that otherwise might be underreported. Non-EU businesses do not face the same challenges given the differences in privilege rules.

20. In your view, does the role of the Hearing Officer and the availability of oral hearings contribute to the effective protection of procedural rights of the participants in the Commission's proceedings?

- Yes
- No
- Don't know

Please explain your answer

Greater checks and balances needed, including on day-to-day issues that arise during a case (such as case team responsiveness / updates on case progress / justification for information requests).

### Efficiency

21. In your view, does the procedural framework provided by Regulations 1/2003 and 773/2004 (e.g. statement of objections, access to file, oral hearing) ensure the efficient exercise of the right to be heard?

- Yes
- No
- Don't know

Please explain your answer

In general, more transparency regarding the process would enhance the parties' ability to exercise their rights.

22. In your view, does the procedural framework provided by Regulations 1/2003 and 773/2004 that grants addressees of statements of objections adopted by the Commission access to the file strike the right balance between, on the one hand, the effort required by the Commission and by undertakings in relation to this process and, on the other hand, the ability of undertakings to effectively exercise their rights of defence?

- Yes

No

Don't know

Please explain your answer

Parties should be given running access to key documents rather than all being delivered in one go as access to file. Critical that access to file both provides all materials that the Commission has sought to rely on, and all materials received that are exculpatory – the Commission needs to put the same effort into asking third parties to release information that goes either way.

23. In your view, does the procedural framework provided by Regulations 1/2003 and 773/2004 for the handling of formal complaints allow for the efficient handling of these complaints?

Yes

No

Don't know

Please explain your answer

Quicker resolution and anyway more transparency or frequent updates for complainants.

The principle of discretionary prosecution is not sufficiently supervised, to the detriment of high standards of legal certainty for the parties involved. For instance, the lack of information when complaints or investigations are rejected raises the question of possible "forum shopping" by the EC. Properly motivated and justified decisions would allow companies to better understand the competition rules.

The current framework should be more active in producing informal guidelines. The businesses suffer from a lack of guiding opinions, activity reports, market studies, and any other useful information that would allow companies to position themselves in new sectors, markets or practices. The information is not easily accessible at the EU level, unlike for NCAs such as in Germany or the Netherlands.

## Relevance

24. In your view, does the procedural framework provided by Regulations 1/2003 and 773/2004 for the protection of the rights of parties and third parties to investigations continue to be appropriate?

Yes

No

Don't know

Please explain your answer

More transparency and a dedicated timeline would ensure better protection of parties' rights.

### Coherence

25. In your view, is the procedural framework provided by Regulations 1/2003 and 773/2004 for the protection of the rights of parties and third parties to investigations coherent with other EU legislation and other EU policies?

Yes

No

Don't know

Please explain your answer

Add text

### **D. Commission Decisions (Articles 7 to 10 Regulation 1/2003)**

To ensure the effective and uniform application of Articles 101 and 102 TFEU, Regulation 1/2003 grants the Commission a series of decisional powers. In particular, the Commission may (i) require undertakings and associations of undertakings to bring an infringement to an end and impose on them behavioural or structural remedies (Article 7 of Regulation 1/2003); (ii) order interim measures (Article 8 of Regulation 1 /2003); (iii) make binding the commitments offered by undertakings to meet the concerns expressed to them by the Commission in its preliminary assessment (Article 9 of Regulation 1/2003); and (iv) find that Article 101 and/or 102 TFEU are not applicable to a specific case (Article 10 of Regulation 1/2003).

The Commission intends to evaluate whether these powers have proven and remain adequate, notably in the context of the widespread digitisation of the economy.

## Effectiveness

26. In your view, are the following decisional powers granted to the Commission by Regulation 1/2003 adequate to ensure the effective application of Articles 101 and 102 TFEU?

a. To require undertakings and associations of undertakings to bring an infringement to an end

Yes

No

Don't know

Please explain your answer

Add text

b. To impose behavioural or structural remedies on undertakings and associations of undertakings

Yes

No

Don't know

Please explain your answer

Add text

c. To order interim measures

Yes

No

Don't know

Please explain your answer

Interim measures can be an effective tool to stop infringements swiftly. Important that this is not used to undermine the presumption of innocence or the rights of defence.

d. To make binding the commitments offered by undertakings to meet the concerns expressed to them by the Commission in its preliminary assessment

Yes

No

Don't know

Please explain your answer

Commitment decisions are effective in terminating infringements faster.

e. To find that Article 101 and/or Article 102 TFEU are not applicable to a specific case

Yes

No

Don't know

Please explain your answer

Overall, yes. But more decisional practice and guidance would be needed to improve this.

27. In your view, are the Commission's powers pursuant to Articles 7, 9 and 17 of Regulation 1/2003 adequate to address situations where the Commission concludes at the end of an antitrust investigation or a sector inquiry that a market presents economic features leading to structural competition concerns? This could be the case e.g. when the economic features of a given market result in a risk of systemic non-compliance with Articles 101 and 102 TFEU by the operators active thereon.

Yes

No

Don't know

Please explain your answer

Add text

### **Efficiency**

28. In your view, are the following decisional powers of the Commission adequate to ensure in an efficient manner full compliance with Articles 101 and 102 TFEU?

a. To require undertakings and associations of undertakings to bring an infringement to an end

Yes

No

Don't know

Please explain your answer

The requirement to cease the infringement is the most direct way to terminate the infringement and restore competition.

b. To impose behavioural or structural remedies on undertakings and associations of undertakings

- Yes
- No
- Don't know

Please explain your answer

Proceedings are too slow. Proceedings with remedies may be helpful where mere termination of infringements would be too slow in showing effects and restoring competition

c. To order interim measures

- Yes
- No
- Don't know

Please explain your answer

The power to impose interim measures can be efficient in preventing further harm. There is a case for them being used more often but always in a manner that does not infringe rights of defence.

d. To make binding the commitments offered by undertakings to meet the concerns expressed to them by the Commission in its preliminary assessment

- Yes
- No
- Don't know

Please explain your answer

The power to make binding commitments could lead to faster results and provide more legal certainty.

e. To find that Article 101 and/or Article 102 TFEU are not applicable to a specific case

- Yes
- No

Don't know

Please explain your answer

This power should be used more often and the EC should publish guidance on novel issues.

### Relevance

29. In your view, are the following decisional powers granted to the Commission by Regulation 1/2003 still necessary to ensure the effective application of Articles 101 and 102 TFEU?

a. To require undertakings and associations of undertakings to bring an infringement to an end

Yes

No

Don't know

Please explain your answer

Add text

b. To impose behavioural or structural remedies on undertakings and associations of undertakings

Yes

No

Don't know

Please explain your answer

Add text

c. To order interim measures

Yes

No

Don't know

Please explain your answer

Add text

d. To make binding the commitments offered by undertakings to meet the concerns expressed to them by the Commission in its preliminary assessment

Yes

No

Don't know

Please explain your answer

Add text

e. To find that Article 101 and/or Article 102 TFEU are not applicable to a specific case

Yes

No

Don't know

Please explain your answer

Add text

### **Coherence**

30. In your view, are the decisional powers granted to the Commission by Regulation 1/2003 coherent with other EU legislation and EU policies?

Yes

No

Don't know

Please explain your answer

Add text

### **EU added value**

31. In your view, have the decisional powers granted to the Commission by Regulation 1/2003 contributed to ensuring the effective and uniform application of Articles 101 and 102 TFEU compared to, in their absence, a system based on decisional powers conferred to national administrative and/or judicial authorities?

Yes

No

Don't know

Please explain your answer

Add text

### **E. Fines and limitation periods (Articles 23 to 26 of Regulation 1/2003)**

Article 23 of Regulation 1/2003 empowers the Commission to punish and deter infringements of Articles 101 and 102 TFEU as well as procedural breaches by means of fines imposed on undertakings and associations of undertakings. Article 24 of Regulation 1/2003 empowers the Commission to compel compliance with its decisions adopted pursuant to Articles 7, 8, 9, 17, 18(3) or 20(4) by means of periodic penalties imposed on undertakings and associations of undertakings.

Articles 25 and 26 of Regulation 1/2003 specify the rules on periods of limitation for the imposition and enforcement of fines and periodic penalty payments. They also specify the acts which may interrupt or suspend a limitation period.

#### **Effectiveness**

32. In your view, are the Commission's fining powers effective in sanctioning infringements and ensuring full compliance with Articles 101 and 102 TFEU?

Yes

No

Don't know

Please explain your answer

In general they help to ensure compliance. However, the instances of mitigating circumstances could be broadened. For instance, businesses with existing compliance programmes could benefit from a fine reduction.

33. In your view, are the Commission's fining powers effective in ensuring full compliance with the procedural obligations associated with proceedings under Articles 101 and 102 TFEU?

Yes

No

Don't know

Please explain your answer

Add text

34. In your view, does the system of limitation periods for the imposition and enforcement of fines and periodic penalty payments allow the Commission to make effective use of its fining powers?

Yes

No

Don't know

Please explain your answer

The proceedings take too long and due to the rules on suspending / re-starting limitation periods, they are effectively purely academic in practice.

### Efficiency

35. In your view, are the Commission's fining powers adequate to ensure in an efficient manner full compliance with Articles 101 and 102 TFEU?

Yes

No

Don't know

Please explain your answer

The fines' calculation method could, however, be clarified to give more predictability to potentially sanctioned parties.

36. In your view, are the Commission's fining powers adequate to ensure in an efficient manner full compliance with the procedural obligations associated with proceedings under Articles 101 and 102 TFEU?

Yes

No

Don't know

Please explain your answer

Add text

## Relevance

37. In your view, are the Commission fining powers for infringements of Articles 101 and 102 TFEU and for procedural breaches still relevant to ensure full compliance with Articles 101 and 102 TFEU?

Yes

No

Don't know

Please explain your answer

Add text

## Coherence

38. In your view, are the Commission's fining powers for infringements of Articles 101 and 102 TFEU and for procedural breaches coherent with other EU legislation and EU policies?

Yes

No

Don't know

Please explain your answer

Add text

## EU added value

39. In your view, have the Commission's fining powers for infringements of Articles 101 and 102 TFEU and for procedural breaches contributed to the enforcement of Articles 101 and 102 TFEU compared to a system of penalties imposed by Member States' National Competition Authorities and courts?

Yes

No

Don't know

Please explain your answer

Add text

## F. Cooperation between the Commission and NCAs and courts (Articles 11)

## **– 16 of Regulation 1/2003)**

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Articles 11 to 13 and 15 of Regulation 1/2003 set forth cooperation mechanisms to promote the uniform application of Articles 101 and 102 TFEU by National Competition Authorities and national courts.

### **Effectiveness**

40. In your view, are the provisions regarding the cooperation between the Commission and the National Competition Authorities effective in ensuring the uniform application and enforcement of Articles 101 and 102 TFEU across the EU?

Yes

No

Don't know

Please explain your answer

Overall, the cooperation process is not transparent for the businesses concerned. In addition, one stop shop for leniency would make a material improvement to overall effectiveness.

41. In your view, are the provisions regarding the cooperation between the Commission and the national courts effective in ensuring the uniform application and enforcement of Articles 101 and 102 TFEU across the EU?

Yes

No

Don't know

Please explain your answer

National Courts are the determinants of several key aspects of overall competition enforcement which can lead to divergent outcomes.

### **Efficiency**

42. In your view, are the provisions on the cooperation between the Commission and the National Competition Authorities adequate to ensure in an efficient manner the uniform application and enforcement of Articles 101 and 102 TFEU across the EU?

Yes

No

Don't know

Please explain your answer

Uniformity should be the target and this has not been achieved – there should therefore be greater scope for the Commission to guide consistent and coherent enforcement.

43. In your view, are the provisions on the cooperation between the Commission and national courts adequate to ensure in an efficient manner the uniform application and enforcement of Articles 101 and 102 TFEU across the EU?

Yes

No

Don't know

Please explain your answer

Greater role for Commission in national court proceedings could help to ensure consistency between EC decision and any follow-on cases.

### Relevance

44. In your view, are the provisions regarding the cooperation between the Commission and the National Competition Authorities still relevant for the uniform application and enforcement of Articles 101 and 102 TFEU across the EU?

Yes

No

Don't know

Please explain your answer

Scope for these to be enhanced.

45. In your view, are the provisions regarding the cooperation between the Commission and the national courts still relevant for the uniform application and enforcement of Articles 101 and 102 TFEU across the EU?

Yes

No

Don't know

Please explain your answer

Add text

### Coherence

46. In your view, are the provisions regarding the cooperation between the Commission and the National Competition Authorities for the uniform application and enforcement of Articles 101 and 102 TFEU coherent with other EU legislation and EU policies?

- Yes
- No
- Don't know

Please explain your answer

Add text

47. In your view, are the provisions regarding the cooperation between the Commission and national courts for the uniform application and enforcement of Articles 101 and 102 TFEU coherent with other EU legislation and EU policies?

- Yes
- No
- Don't know

Please explain your answer

Add text

### Other

48. Is there any other comment related to the application of Regulation 1/2003 and Regulation 773/2004 that you want to bring to the Commission's attention and that has not been addressed in your replies to the previous questions? Yes No Don't know  
Please explain your answer

- Yes
- No
- Don't know

Please explain your answer

Please refer to separate paper attached.

49. If you want to share any documents (e.g. data, research paper, position paper, etc.) which may be relevant for the evaluation of Regulation 1/2003 and Regulation 773/2004, please upload them here. Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.

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