FINAL REPORT

Support Study for the Evaluation of Regulations 1/2003 and 773/2004

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Glossary

Term / acronym	Meaning
AI	Artificial Intelligence
Attorneys	Attorneys at law
BRG	Better Regulation Guidelines and Toolbox
CJEU	Court of Justice of the European Union
CMA	Competition and Markets Authority (UK)
Commission	European Commission
Consortium	Deloitte Legal – *Lawyers*, Deloitte Consulting and Spark Legal & Policy Consulting
DG	Directorate-General
DG COMP	Directorate-General for Competition
DMA	Digital Markets Act
DoJ	US Department of Justice
DRM	Document retention measures
ECN	European Competition Network
ECN+ Directive	EU Directive 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market
EC Treaty	European Community Treaty
EEA	European Economic Area

EEC Treaty	European Economic Community Treaty
ESG	Environmental, Social and Governance
EU	European Union
EU-27	27 Member States of the European Union
FCA	Financial Conduct Authority (UK)
FTC	US Federal Trade Commission
GDPR	General Data Protection Regulation
Icelandic competition authority	Samkeppniseftirlitið (or any of its predecessors)
ICT	Information and Communication Technologies
JRC	Joint Research Centre
LPP	Legal Professional Privilege
MFN	Most Favoured Nation
NCA	National Competition Authority of any of the EU-27, including (where relevant) national courts designated as 'competition authorities' pursuant to Article 35 of Regulation 1/2003
Norwegian competition authority	Konkurransetilsynet (or any of its predecessors)
OECD	Organisation for Economic Cooperation and Development
Ofcom	Office of Communications (UK)
Ofgem	Office of Gas and Electricity Markets (UK)
OFT	Office of Fair Trading (UK)

Regulation No 17	Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty
Regulations	Regulations 1/2003 and 773/2004
RFI	Request for information
SME	Small and medium-sized enterprise
SO	Statement of Objections
Study	This support study for the evaluation of Regulations 1/2003 and 773/2004
TEC	Treaty establishing the European Community
TFEU	Treaty on the Functioning of the European Union
Third Countries	Norway, UK and United States
ToR	Terms of Reference
UK	United Kingdom
UK competition authorities	CMA (and its predecessor OFT), Ofcom, FCA and Ofgem
US / USA	United States
US competition authorities	FTC and DoJ
VPN	Virtual Private Network

Abstract

The purpose of the Study is to provide information to support the European Commission's evaluation of Regulations 1/2003 and 773/2004 (the "**Regulations**") covering the time period as from the applicability of both Regulations, as from May 2004, until 31 December 2022.

From a methodological perspective, the Study is based on collection and analyses of data pertaining to the Commission, NCAs and selected third countries, as well as standardised interviews with attorneys and in-house counsel across the EU and in selected third countries, as complemented by relevant desk research.

The Study provides input on (i) the general application of the Regulations, (ii) the investigative tools, (iii) the decision-making powers, (iv) the procedural rights of parties and third parties during investigations and (v) the functioning of the ECN and NCA procedural features.

The results of the Study indicate that the Regulations have overall performed well in ensuring the effective and uniform application of Articles 101 and 102 TFEU across the EU. The input collected from the various workstreams has also pointed to elements worthy of further reflection, and possibly an update, to keep pace with rapid digitalisation and business evolutions.

Résumé

L'objectif de l'étude est de fournir des informations en vue de l'évaluation par la Commission européenne des règlements 1/2003 et 773/2004 (les "**règlements**") couvrant la période de mai 2004, date d'applicabilité de ces deux règlements, jusqu'au 31 décembre 2022.

D'un point de vue méthodologique, l'étude se fonde sur la collecte et l'analyse de données relatives à la Commission, aux ANC et à certains pays tiers, ainsi que sur des entretiens standardisés avec des avocats et des juristes d'entreprise au sein de l'UE et dans certains pays tiers, complétés par des recherches documentaires pertinentes.

L'étude fournit des commentaires sur (i) l'application générale des règlements, (ii) les outils d'enquête, (iii) les pouvoirs de décision, (iv) les droits procéduraux des parties et des tiers durant les enquêtes et (v) le fonctionnement du REC et les particularités procédurales des ANC.

Les résultats de l'étude indiquent que les règlements sont, de manière générale, parvenus à garantir une application efficace et uniforme des articles 101 et 102 du TFUE dans l'ensemble de l'UE. Les informations recueillies dans les différents groupes de travail ont également mis en évidence des éléments qui méritent une réflexion plus approfondie, voire une possible mise à jour des règlements, pour tenir compte de la digitalisation rapide et de l'évolution de l’économie.

Kurzfassung

Ziel der Studie ist es, Informationen zur Verfügung zu stellen, die die Evaluierung der Verordnungen (EG) Nr. 1/2003 und Nr. 773/2004 (die "**Verordnungen**") durch die Europäische Kommission unterstützen, die den Zeitraum vom Inkrafttreten der beiden Verordnungen im Mai 2004 bis zum 31. Dezember 2022 umfasst.

Methodisch basiert die Studie auf der Erhebung und Analyse von Daten der Kommission, der nationalen Wettbewerbsbehörden („NWB") der EU Mitgliedstaaten und von Wettbewerbsbehörden ausgewählter Drittstaaten, sowie auf standardisierten Befragungen von Rechtsanwälten und Unternehmensjuristen in der EU und ausgewählten Drittstaaten. Ergänzt wird dies durch relevante Sekundärforschung.

Die Studie leistet einen Beitrag zu (i) der allgemeinen Anwendung der Verordnungen, (ii) den Ermittlungsbefugnissen, (iii) den Entscheidungsbefugnissen, (iv) den Verfahrensrechten von Parteien und Dritten während der Ermittlungen und (v) der Funktionsweise der ECN- und NWB-Verfahrensmerkmale.

Die Ergebnisse der Studie zeigen, dass die Verordnungen insgesamt gut geeignet sind, eine wirksame und einheitliche Anwendung der Artikel 101 und 102 AEUV in der EU zu gewährleisten. Die aus den verschiedenen Bereichen zusammengetragenen Beiträge haben auch Elemente aufgezeigt, die weiterer Überlegungen und möglicherweise einer Aktualisierung bedürfen, um mit der raschen Digitalisierung und den Entwicklungen in der Wirtschaft Schritt halten zu können.

Executive summary

The purpose of the Study is to provide information to support the evaluation by the European Commission (the "**Commission**") of Regulations 1/2003 and 773/2004 (the "**Regulations**") covering the time period from the applicability of both Regulations, as from May 2004, until 31 December 2022.

From a methodological perspective, the Study is based on collection and analyses of data pertaining to the Commission, national competition authorities ("**NCAs**") and selected third countries, as well as standardised interviews with attorneys and in-house counsel across the EU and in selected third countries, as complemented by relevant desk research.

General overview

The first part of the Study provides an overview of the performance of the Regulations based on the application of EU competition rules by the Commission and NCAs.

At the outset, the analysis offers an overview of key statistics with respect to the **Commission decisions** applying Articles 101 and / or 102 TFEU since the applicability of Regulation 1/2003 until 31 December 2022. The Study provides a breakdown of the 216 in-scope substantive Commission decisions adopted and sets out various findings in relation to these decisions, including that:

— 169 decisions were adopted under Article 101 TFEU, 44 decisions were adopted under Article 102 TFEU, and two decisions were adopted under both Articles 101 and 102 TFEU, whereby 163 of these Commissions decisions qualify as prohibition decisions and 52 as commitment decisions; one decision imposes interim measures;

— of the 163 prohibition decisions, 40 decisions qualify as cartel settlement decisions and 17 decisions were adopted after cooperation (entailing a fine reduction);

— the number of prohibition decisions adopted by the Commission under Regulation No 17 between 1988 and 2003 (a total of 121 prohibition decisions) is comparable to the number of prohibition decisions adopted by the Commission under Regulation 1/2003 between 2007 and 2022 (a total of 127 prohibition decisions), though due account should be given to the differences in the enforcement systems between Regulation No 17 and Regulation 1/2003, namely the fact that under Regulation 1/2003 the Commission can adopt commitment decisions and notifications were abolished whereas notifications were a prevalent feature of Regulation No 17. Furthermore, the decentralisation under Regulation 1/2003 resulted in NCAs adopting in parallel 931 prohibition decisions applying Articles 101 and / or 102 TFEU for the sample period of 2007-2022; and

— the average duration for the adoption of a decision under Article 101 TFEU amounts to 4.47 years, whereas the average duration for the adoption of a decision under Article 102 TFEU is 4.67 years. The starting point for the calculation of durations is based on the date of the first investigative step or the date of a formal complaint, whichever is the earliest.

The Study has also identified and analysed close to 1470 prohibition, commitment and interim measures decisions adopted by NCAs applying Article 101 and / or 102 TFEU for the aforementioned temporal scope. In addition to the categorisation of these decisions, the Study provides an overview of the number of NCA decisions applying Articles 101

and / or 102 TFEU on a stand-alone basis or in parallel with equivalent national competition law provisions.

Interview feedback from attorneys and in-house counsel reveals that a large majority (75%) of interviewees consider the Regulations as an overall success and that the Regulations were generally able to facilitate a uniform and coherent application of EU competition rules. The feedback on the decentralised application of Articles 101 and 102 is generally positive, though some concerns are voiced by a small number of interviewees with regard to certain divergences in substantive outcomes between the Commission and NCAs experienced in the past.

Article 3 of Regulation 1/2003 is generally seen as successful, though criticism is raised in relation to the scope of application of Article 3(2) and the risks associated to a perceived increase of stricter national laws. Interviewees are also generally positive about the abolition of the notification system that existed under the Regulation No 17; however, a sizeable number of interviewees (35%) would welcome additional guidance by the Commission. A majority of interviewees (66%) consider that the duration of Commission proceedings is lengthy, with a number of interviewees (17%) pointing to the complex nature of the investigations as a key driver for duration.

Investigative tools

The second part of the Study offers findings on investigative tools used by the Commission and NCAs to identify potential infringements of Articles 101 and 102, focusing on inspections, requests for information ("**RFIs**"), interviews and sector inquiries.

In relation to **inspections**, slightly more than two-thirds of interviewees consider this power to be an effective investigative tool. Inspections are generally seen as more effective than both RFIs and interviews in providing the Commission with objective and comprehensive evidence. The latter evaluation may relate to the typically unexpected initiation of inspections rendering it more difficult for undertakings under investigation to conceal relevant evidence pointing to the existence of any infringements.

Simultaneously, 15% of interviewees highlight the intrusive nature of inspections compared to other investigative instruments – especially when inspections take place in private premises of employees or directors. Approximately three quarters of interviewees consider inspections as an efficient investigative tool, though about half of the sample also noted some room for improvement on various fronts. As an example, 19% of interviewees refer to the resource-intensive nature of inspections for both competition authorities and the undertaking under inspection.

Approximately one-third of interviewees (36%) highlight that the efficiency of inspections has improved due to undertakings storing their data digitally, allowing the Commission to perform searches on digital devices rather than on physical carriers. Conducting inspections in a digital format can facilitate effective supervision of Articles 101 and / or 102 as it may be difficult to delete or alter digital data.

In relation to **RFIs**, a majority of interviewees (57%) consider these to be an effective investigative tool though their effectiveness is reported to depend on accurate design and proper use. In addition, 50% of interviewees consider RFIs to be efficient but point to the significant burden on undertakings to respond to what may be perceived as rather broad-in-scope questions requiring detailed information.

In relation to the **power to take statements**, interviewees are divided as to whether these are effective (in particular, 44% of interviewees consider them as effective, 30% identify room for improvement and 26% deem interviews to be ineffective). In terms of efficiency, interviewee responses are similarly mixed (42% consider interviews as efficient, while 32% identify room for improvement and 26% consider interviews as inefficient). Concerns identified in relation to this power relate to protection of procedural rights, interview recording, formalities, the lack of mandatory interview powers and the potential inaccuracy of information provided during interviews.

The Study also provides an overview table indicating whether NCAs have the power to impose fines (i) on natural persons for a failure to appear at an interview, and (ii) on undertakings or natural persons for a failure to respond or for providing misleading information during an interview.

Finally, in relation to **sector inquiries**, the Study indicates that 16 Commission decisions out of the abovementioned 216 in-scope decisions were adopted as a follow-up to a sector inquiry under Article 17 of Regulation 1/2003.

Interview feedback on sector inquiries indicates that 52% of interviewees are of the opinion that sector inquiries are effective notably for the collection of information on a specific market, allowing for a better understanding of the business(es) involved. At the same time, 31% of interviewees identify room for improvement and 17% of interviewees consider sector inquiries to be ineffective. In addition, 38% of interviewees point out that sector inquiries may be inefficient as they are resource-intensive for the undertakings involved and could lead to inconclusive results.

Decision-making powers

The third part of the Study mainly covers the decision-making powers of the Commission under Regulation 1/2003, in particular prohibition decisions, commitment decisions, interim measures, findings of inapplicability and the power to impose fines (also including periodic penalty payments).

In relation to **prohibition decisions**, interviewees generally consider that such decisions are effective instruments to prevent distortions of competition in the EU internal market and to ensure the enforcement of Articles 101 and 102 as noted by 67% of interviewees. Almost 10% of interviewees consider prohibition decisions to be complex, particularly in cases involving abuses of dominant positions and cases related to complex industries, such as the digital sector, requiring a careful assessment of market circumstances. Interviewees also consider that prohibition decisions are effective in terminating infringements and preventing market distortions only to the extent that such decisions are adequately monitored and implemented, which may imply significant resource expenditure.

Besides the interview feedback, the Study provides two tables detailing respectively whether NCAs (i) frequently or systematically monitor compliance with antitrust decisions and (ii) are able to market test potential remedies in the context of prohibition decisions.

A majority of interviewees (65%) indicate that **commitment decisions** are an effective decision-making tool for terminating infringements of antitrust rules in the EU internal market. Commitment decisions are reported to be more efficient compared to other decision-making tools as such decisions do not involve lengthy and costly investigations

and litigation processes. Another important advantage according to interviewees is that commitment decisions offer flexibility in designing remedies, allowing for a quicker and more effective restoration of healthy competitive conditions compared to prohibition decisions. An analysis of the Commission's decision data similarly indicates that commitments decisions generally have an overall shorter duration compared to prohibition decisions. Respondents note that adequate drafting of commitment decisions remains crucial to ensure effectiveness, which can be challenging without an in-depth understanding of the market and its key players.

Furthermore, the Study also assesses the efficiency of commitment decisions adopted by the Commission and finds that such decisions:

— are generally shorter in duration, with an average duration of 4.1 years compared to an average duration of 4.7 years for prohibition decisions;

— have a smaller number of actions for annulment introduced against them, being 11.54% of commitment decisions compared to 60.12% of prohibition decisions;

— involve the adoption of fewer statements of objections ("**SOs**") as more than half of commitment decisions did not see an SO issued (53.85%), compared to prohibition decisions where an SO is always required. In cases where no SO is adopted, the average duration for commitment decisions is appreciably reduced; and

— are shorter overall in terms of number of pages, with an average of 31 pages compared to 115 pages for prohibition decisions.

In relation to **interim measures**, even though their use by the Commission has been rare as only one interim measure has been adopted during the analysed period (*Broadcom* 2019), interviewees generally consider such measures to be an effective instrument, and more than a quarter of interviewees argue that interim measures should be used more often. More than one fifth of interviewees indicate that the complexity of competition law cases and the fast-moving nature of various markets may present challenges for the Commission when considering interim measures as each case is unique and requires careful evaluation.

In relation to **findings of inapplicability**, 71% of the responding interviewees consider such findings as a potentially effective instrument to ensure uniform application of Articles 101 and 102. Decisions adopted under Article 10 of Regulation 1/2003 may help avoid ambiguities by declaring a practice to be compatible with applicable antitrust rules.

In relation to **fines**, the Study identifies a total of 151 Commission in-scope decisions imposing fines (not taking into account periodic penalty payments and re-adoption decisions). Of these 151 decisions, (i) 130 decisions impose fines for an infringement of Article 101, (ii) 16 decisions impose fines for an infringement of Article 102, (iii) one decision imposes a fine for an infringement of both Articles 101 and 102 and (iv) four decisions impose fines for a procedural infringement. Among other calculations, the Study finds that the Commission imposed fines of over EUR 42 billion under Regulation 1/2003, not taking into account re-adoptions or amendments.

To the extent that the Commission fines were challenged before EU courts, the Study finds that over EUR 37 billion have been confirmed (taking into account judgments until 14 December 2023).

The Study also provides a graph indicating the total amount of fines by NCAs per year split between Articles 101 and 102.

Procedural rights of parties and third parties

The fourth part of the Study covers procedural rights, including the right to be heard, access to file, confidentiality, formal and informal complaint mechanisms, transparency of proceedings and oral hearings.

With regard to the protection of procedural rights of parties, 68% of interviewees consider the Regulations as rather effective and efficient. However, these interviewees also express some criticism of the system mainly in relation to the right to be heard, transparency, confidentiality, and predictability of proceedings.

Interviewees are almost evenly split with regard to their views on the transparency of relevant antitrust proceedings. For a significant number of interviewees, the (perceived) low level of transparency of proceedings translates into diminished legal certainty and a weaker protection of procedural rights and rights of defence. Interviewees who consider proceedings to be transparent find that this transparency is fostered by a combination of the Regulations, the Commission's practices and the case law of the EU courts.

There is no clear-cut conclusion on the effectiveness of the current system relating to access to file. On the one hand, the current framework is described by interviewees as imposing clear terms and practical modalities and allowing for the use of digital tools. On the other hand, drawbacks of the system are linked to the large numbers of documents to be processed and the stage at which access to file takes place (i.e. at the time of the issuance of an SO). As regards the balance between the right to be heard and the protection of confidential information, while the majority (57%) of interviewees consider that the Regulations are overall effective, many interviewees acknowledge the procedural complexities arising from this exercise.

Oral hearings are mostly perceived as a useful safeguard for the right to be heard, although a limited number of respondents (16%) voice concerns as to the effectiveness of the oral hearing process.

While the Study does not reveal any clear preference of interviewees to advise clients to pursue a formal or an informal complaint, formal complaints are generally seen to carry more weight and to ensure that the procedural rights of parties involved are guaranteed. At the same time, informal complaints are reported to offer various advantages (e.g. anonymity where potentially necessary, speed, easier termination, and the ability to gauge the potential for a future formal complaint); careful deliberation is therefore highlighted as key in deciding on the form (and timing) of the complaint.

The Study also looks at the number of decisions adopted by the Commission and NCAs after submission of a formal complaint on the basis of the information collected and categorised and offered various findings for the applicable timeframe, including that:

— with respect to the Commission, approximately 14% were adopted after the submission of a formal complaint;

— with respect to NCAs that do have a formal complaints system comparable to that of the Commission, approximately 40% of a total of approximately 850 decisions were adopted after the submission of a formal complaint;

— with respect to NCAs that do not have a formal complaints system, approximately 475 in-scope decisions were adopted during the sample period.

Coordination within the ECN

The final part of the Study provides feedback on cooperation between the Commission and the NCAs, notably in the areas of case allocation and coordination.

The feedback from the majority of the interviewed attorneys and in-house counsel (53%) on the effectiveness of the case allocation and coordination mechanisms between the Commission and NCAs is overall positive. The collaborative dynamics between the Commission and NCAs within the ECN network are highlighted as having a positive impact on focusing Commission resources on infringements with the highest potential to distort competition across the EU.

At the same time, an appreciable number of respondents (36%) perceive the system of case allocation as lacking transparency. A more limited number of respondents (less than 10%) refer to inconsistencies in decisions across different jurisdictions, although it would appear that this criticism tends to particularly cluster around a single example (that of the hotel booking cases). Another comment made by a limited group of respondents (approximately 7%) is that the current system is not as efficient as it could be in reducing administrative burdens for undertakings and preventing cases from being handled by several authorities simultaneously.

In addition to the interview feedback in this context, the Study provides three tables respectively indicating (i) whether the investigative powers of NCAs were adapted in light of digitisation or whether such adaptations are contemplated, (ii) whether NCAs make use of hard and / or indicative deadlines in domestic antitrust proceedings and (iii) which investigative and decision-making processes are used by NCAs.

Synthèse

L'objectif de l'étude est de fournir des informations en vue de l'évaluation par la Commission européenne (la "**Commission**") des règlements (CE) n° 1/2003 et n° 773/2004 (les "**règlements**") couvrant la période de mai 2004, date d'applicabilité de ces deux règlements, jusqu'au 31 décembre 2022.

D'un point de vue méthodologique, l'étude se fonde sur la collecte et l'analyse de données relatives à la Commission, aux autorités nationales de concurrence ("**ANC**") et à certains pays tiers, ainsi que sur des entretiens standardisés avec des avocats et des juristes d'entreprise réalisés dans l'ensemble de l'UE et dans certains pays tiers, complétés par des recherches documentaires pertinentes.

Aperçu général

La première partie de l'étude analyse l'efficacité des règlements sur la base de l'application des règles de concurrence de l'UE par la Commission et les ANC.

Tout d'abord, l'étude offre une présentation des principales statistiques concernant les **décisions de la Commission** appliquant les articles 101 et/ou 102 du TFUE depuis l'applicabilité du règlement (CE) n° 1/2003 et jusqu'au 31 décembre 2022. L'étude fournit une analyse des 216 décisions de fond adoptées par la Commission et présente diverses conclusions relatives à ces décisions, notamment que :

— 169 décisions ont été adoptées au titre de l'article 101 du TFUE, 44 décisions ont été adoptées au titre de l'article 102 du TFUE et deux décisions ont été adoptées au titre des articles 101 et 102 du TFUE. 163 de ces décisions de la Commission sont qualifiées de décisions d'interdiction et 52 de décisions d'engagements ; une décision impose des mesures provisoires ;

— sur les 163 décisions d'interdiction, 40 décisions ont été adoptées suite à une procédure de transaction et 17 décisions ont été adoptées après coopération (entraînant une réduction de l'amende) ;

— le nombre de décisions d'interdiction adoptées par la Commission en vertu du règlement n° 17 entre 1988 et 2003 (121 décisions d'interdiction au total) est comparable au nombre de décisions d'interdiction adoptées par la Commission en vertu du règlement n° 1/2003 entre 2007 et 2022 (127 décisions d'interdiction au total), bien qu'il existe des différences entre les systèmes du règlement n° 17 et du règlement (CE) n° 1/2003, à savoir principalement le fait qu'en vertu du règlement n° 1/2003, la Commission peut adopter des décisions d'engagements et que les notifications ont été supprimées, alors que les notifications étaient une caractéristique prédominante du règlement n° 17. En outre, la décentralisation prévue par le règlement (CE) n° 1/2003 a conduit les ANC à adopter en parallèle 931 décisions d'interdiction appliquant les articles 101 et/ou 102 du TFUE pour la période d'échantillonnage 2007-2022 ; et

— la durée moyenne pour l'adoption d'une décision au titre de l'article 101 du TFUE est de 4,47 ans, tandis que la durée moyenne pour l'adoption d'une décision au titre de l'article 102 du TFUE est de 4,67 ans. Le point de départ du calcul de la durée est la date de la première mesure d'enquête ou la date de la plainte formelle, selon celle qui intervient en premier.

L'étude a également recensé et analysé près de 1470 décisions d'interdiction, d'engagements et de mesures provisoires adoptées par les ANC en application de l'article 101 et/ou 102 du TFUE pour la période susmentionnée. Outre la catégorisation de ces décisions, l'étude donne un aperçu du nombre de décisions des ANC appliquant l'article 101 et/ou 102 du TFUE de manière autonome ou en parallèle avec les dispositions nationales équivalentes du droit de la concurrence.

Les commentaires des avocats et des juristes d'entreprise révèlent qu'une grande majorité (75 %) des personnes interrogées considèrent que les règlements sont une réussite globale et qu'ils ont généralement permis de faciliter une application uniforme et cohérente des règles de concurrence de l'UE. Les retours relatifs à l'application décentralisée des articles 101 et 102 sont généralement positifs, bien qu'une petite proportion des personnes interrogées se dit préoccupée par certaines divergences de fond entre la Commission et les ANC constatées dans le passé.

L'article 3 du règlement 1/2003 est généralement considéré comme une réussite, bien que des critiques soient émises quant au champ d'application de l'article 3, paragraphe 2, et aux risques associés à une augmentation perçue des lois nationales plus strictes. Les personnes interrogées sont aussi généralement positives quant à l'abolition du système de notification qui existait dans le cadre du règlement n° 17 ; toutefois, un nombre non négligeable des personnes interrogées (35 %) souhaiterait que la Commission fournisse des orientations supplémentaires. La majorité des personnes interrogées (66 %) considère que la durée des procédures de la Commission est longue, et un certain nombre d'entre elles (17 %) soulignent que la nature complexe des enquêtes est l'un des principaux facteurs de cette durée.

Outils d'enquête

La deuxième partie de l'étude présente des conclusions sur les outils d'investigation utilisés par la Commission et les ANC pour identifier les infractions potentielles aux articles 101 et 102, en mettant l'accent sur les inspections, les demandes de renseignements, les entretiens et les enquêtes sectorielles.

En ce qui concerne les **inspections**, un peu plus des deux tiers des personnes interrogées considèrent ce pouvoir comme un outil d'investigation efficace. Les inspections sont généralement considérées comme plus efficaces que les demandes de renseignements et les entretiens pour fournir à la Commission des preuves objectives et complètes. Ce dernier constat peut s'expliquer par le fait que les inspections surviennent généralement de manière inattendue et qu'il est donc plus difficile pour les entreprises faisant l'objet d'une enquête de dissimuler les éléments de preuve pertinents attestant de l'existence d'infractions.

Parallèlement, 15 % des personnes interrogées soulignent le caractère intrusif des inspections par rapport à d'autres instruments d'enquête - en particulier lorsque les inspections ont lieu dans les locaux privés des employés ou des directeurs. Environ trois quarts des personnes interrogées considèrent les inspections comme un outil d'investigation efficient, bien qu'environ la moitié de l'échantillon ait également noté des possibilités d'amélioration sur différents aspects. À titre d'exemple, 19 % des personnes interrogées font référence à la nécessité d'avoir recours à d'importantes ressources pour les inspections, tant pour les autorités de concurrence que pour l'entreprise faisant l'objet de l'inspection.

Environ un tiers des personnes interrogées (36 %) soulignent que l'efficience des inspections s'est améliorée du fait que les entreprises stockent leurs données sous forme numérique, ce qui permet à la Commission d'effectuer des recherches sur des appareils numériques plutôt que sur des supports physiques. La réalisation d'inspections sous forme numérique peut faciliter un contrôle efficace des articles 101 et/ou 102, étant donné qu'il peut être difficile d'effacer ou de modifier des données numériques.

En ce qui concerne les **demandes de renseignements**, la majorité des personnes interrogées (57 %) les considère comme un outil d'enquête efficace, bien que leur efficacité dépende de leur conception précise et de leur utilisation adaptée. En outre, 50 % des personnes interrogées considèrent que les demandes de renseignements sont efficientes, mais soulignent la charge importante que représente pour les entreprises le fait de répondre à des demandes qui pourraient être perçues comme de portée assez large nécessitant des informations détaillées.

En ce qui concerne le **pouvoir de recueillir des déclarations**, les personnes interrogées sont divisées quant à l'efficacité de ces entretiens (en particulier, 44 % des personnes interrogées les considèrent comme efficaces, 30 % estiment qu'ils peuvent être améliorés et 26 % jugent les entretiens inefficaces). En termes d'efficience, les réponses des personnes interrogées sont également mitigées (42 % considèrent les entretiens comme efficients, tandis que 32 % identifient une marge d'amélioration possible et 26 % considèrent les entretiens comme inefficients). Les préoccupations liées à ce pouvoir concernent la protection des droits procéduraux, l'enregistrement des entretiens, les formalités, l'absence de caractère obligatoire en matière d'entretien et l'inexactitude potentielle des informations fournies au cours des entretiens.

L'étude fournit également un tableau récapitulatif indiquant si les ANC sont habilitées à infliger des amendes (i) à des personnes physiques en cas de non-comparution lors d'un entretien, et (ii) à des entreprises ou à des personnes physiques en cas de non-réponse ou de fourniture d'informations erronées lors d'un entretien.

Enfin, en ce qui concerne les **enquêtes sectorielles**, l'étude indique que 16 décisions de la Commission sur les 216 décisions susmentionnées ont été adoptées à la suite d'une enquête sectorielle au titre de l'article 17 du règlement (CE) n° 1/2003.

Les commentaires reçus sur les enquêtes sectorielles indiquent que 52 % des personnes interrogées sont d'avis que les enquêtes sectorielles sont efficaces, notamment pour la collecte d'informations sur un marché spécifique, permettant de mieux comprendre les entreprises concernées. Dans le même temps, 31 % des personnes interrogées estiment que des améliorations sont possibles et 17 % considèrent que les enquêtes sectorielles sont inefficaces. En outre, 38 % des personnes interrogées soulignent que les enquêtes sectorielles peuvent être inefficientes car elles demandent beaucoup de ressources aux entreprises concernées et peuvent aboutir à des résultats peu concluants.

Pouvoirs de décision

La troisième partie de l'étude couvre principalement les pouvoirs de décision de la Commission en vertu du règlement (CE) n° 1/2003, en particulier les décisions d'interdiction, les décisions d'engagements, les mesures provisoires, les constatations d'inapplicabilité et le pouvoir d'imposer des amendes (y compris des astreintes).

En ce qui concerne les **décisions d'interdiction**, les personnes interrogées considèrent généralement que ces décisions sont des instruments efficaces pour prévenir les

distorsions de concurrence dans le marché intérieur de l'UE et pour garantir l'application des articles 101 et 102, comme l'ont noté 67 % des personnes interrogées. Près de 10 % des personnes interrogées considèrent que les décisions d'interdiction sont complexes, en particulier dans les cas d'abus de position dominante et dans les cas liés à des industries complexes, telles que le secteur numérique, qui nécessitent une évaluation minutieuse des circonstances du marché. Les personnes interrogées considèrent également que les décisions d'interdiction ne sont efficaces pour mettre fin aux infractions et prévenir les distorsions du marché que dans la mesure où ces décisions sont suivies et mises en œuvre de manière adéquate, ce qui peut impliquer des dépenses de ressources importantes.

Outre les retours des entretiens, l'étude fournit deux tableaux indiquant respectivement si les ANC (i) contrôlent fréquemment ou systématiquement le respect des décisions relatives au droit de la concurrence et (ii) sont en mesure de tester préalablement sur le marché les mesures correctives potentielles dans le cadre des décisions d'interdiction.

La majorité des personnes interrogées (65 %) indique que les **décisions d'engagements** constituent un outil décisionnel efficace pour mettre fin aux infractions au droit de la concurrence dans le marché intérieur de l'UE. Les décisions d'engagements sont considérées comme plus efficientes que d'autres outils décisionnels, car elles n'impliquent pas de longues et coûteuses enquêtes et procédures judiciaires. Un autre avantage important, selon les personnes interrogées, est que les décisions d'engagements offrent une certaine souplesse dans la conception des mesures correctives, ce qui permet de rétablir plus rapidement et plus efficacement des conditions de concurrence saines par rapport aux décisions d'interdiction. Une analyse des données relatives aux décisions de la Commission indique également que les décisions d'engagements ont généralement une durée globalement plus courte que les décisions d'interdiction. Les répondants notent qu'une rédaction adéquate des décisions d'engagements reste cruciale pour garantir leur efficacité, ce qui peut être difficile sans une compréhension approfondie du marché et de ses principaux acteurs.

En outre, l'étude évalue également l'efficience des décisions d'engagements adoptées par la Commission et constate que ces décisions :

— sont généralement plus courtes, avec une durée moyenne de 4,1 années, contre 4,7 années pour les décisions d'interdiction ;

— ont un nombre inférieur de recours en annulation introduits à leur encontre, soit 11,54 % des décisions d'engagements contre 60,12 % des décisions d'interdiction ;

— impliquent l'adoption de moins de **communications des griefs**, puisque plus de la moitié des décisions d'engagements n'ont pas fait l'objet d'une communication des griefs (53,85 %), par rapport aux décisions d'interdiction pour lesquelles une communication des griefs est toujours requise. Dans les cas où aucune communication des griefs n'est adoptée, la durée moyenne de prise de décision des décisions d'engagements est sensiblement réduite ; et

— sont globalement plus courtes en termes de nombre de pages, avec une moyenne de 31 pages contre 115 pages pour les décisions d'interdiction.

En ce qui concerne les **mesures provisoires**, même si leur utilisation par la Commission a été rare puisqu'une seule mesure provisoire a été adoptée au cours de la période analysée (*Broadcom* 2019), les personnes interrogées considèrent généralement que ces mesures sont un instrument efficace, et plus d'un quart des

personnes interrogées affirment que les mesures provisoires devraient être utilisées plus souvent. Plus d'un cinquième des personnes interrogées indiquent que la complexité des affaires de droit de la concurrence et l'évolution rapide des différents marchés peuvent poser des problèmes pour la Commission lorsqu'elle envisage des mesures provisoires, étant donné que chaque affaire est unique et nécessite une évaluation minutieuse.

En ce qui concerne les **constatations d'inapplicabilité**, 71 % des personnes interrogées considèrent ces décisions comme un instrument potentiellement efficace pour garantir l'application uniforme des articles 101 et 102. Les décisions adoptées en vertu de l'article 10 du règlement (CE) n° 1/2003 peuvent contribuer à éviter les ambiguïtés en déclarant une pratique compatible avec les règles de concurrence applicables.

En ce qui concerne les **amendes**, l'étude identifie un total de 151 décisions de la Commission imposant des amendes (sans tenir compte des astreintes et des décisions de réadoption). Sur ces 151 décisions, (i) 130 décisions imposent des amendes pour une infraction à l'article 101, (ii) 16 décisions imposent des amendes pour une infraction à l'article 102, (iii) une décision impose une amende pour une infraction à la fois à l'article 101 et à l'article 102 et (iv) quatre décisions imposent des amendes pour une infraction à la procédure. Parmi d'autres calculs, l'étude établit que la Commission a infligé des amendes d'un montant supérieur à 42 milliards d'euros au titre du règlement (CE) n° 1/2003, sans tenir compte des réadoptions ou des modifications.

Dans la mesure où les amendes de la Commission ont été contestées devant les tribunaux de l'UE, l'étude constate que plus de 37 milliards d'euros ont été confirmés (en tenant compte des jugements jusqu'au 14 décembre 2023).

L'étude fournit également un graphique indiquant le montant total des amendes infligées par les ANC chaque année, réparti entre les articles 101 et 102.

Droits procéduraux des parties et des tiers

La quatrième partie de l'étude porte sur les droits procéduraux, notamment le droit d'être entendu, l'accès au dossier, la confidentialité, les mécanismes de plainte formels et informels, la transparence des procédures et les auditions.

En ce qui concerne la protection des droits procéduraux des parties, 68 % des personnes interrogées considèrent que les règlements sont plutôt efficaces et efficients. Toutefois, ces personnes interrogées expriment également certaines critiques à l'égard du système, principalement en ce qui concerne le droit d'être entendu, la transparence, la confidentialité et la prévisibilité des procédures.

Les personnes interrogées sont presque divisées de manière égale en ce qui concerne leur opinion sur la transparence des procédures pertinentes relatives à l'exercice du droit de la concurrence. Pour un nombre important de personnes interrogées, le faible niveau (perçu) de transparence des procédures se traduit par une diminution de la sécurité juridique et une protection plus faible des droits procéduraux et des droits de la défense. Les personnes interrogées qui considèrent que les procédures sont transparentes estiment que cette transparence est favorisée par une combinaison des règlements, des pratiques de la Commission et de la jurisprudence des tribunaux de l'UE.

Il n'y a pas de conclusion claire sur l'efficacité du système actuel relatif à l'accès au dossier. D'une part, le cadre actuel est décrit par les personnes interrogées comme imposant des termes clairs et des modalités pratiques et permettant l'utilisation d'outils numériques. D'autre part, les inconvénients du système sont liés au grand nombre de documents à traiter et à l'étape à laquelle l'accès au dossier a lieu (c'est-à-dire, au moment de l'envoi d'une communication des griefs). En ce qui concerne l'équilibre entre le droit d'être entendu et la protection des informations confidentielles, bien que la majorité (57 %) des personnes interrogées considèrent que les règlements sont globalement efficaces, de nombreuses personnes interrogées reconnaissent les complexités procédurales découlant de cet exercice.

Les auditions sont majoritairement perçues comme une garantie utile du droit d'être entendu, bien qu'un nombre limité de répondants (16 %) exprime des inquiétudes quant à l'efficacité de la procédure d'audition.

Bien que l'étude ne révèle aucune préférence claire des personnes interrogées pour conseiller à leurs clients de déposer une plainte formelle ou informelle, les plaintes formelles sont généralement considérées comme ayant plus de poids et comme garantissant les droits procéduraux des parties concernées. Dans le même temps, les plaintes informelles présentent divers avantages (par exemple, l'anonymat lorsqu'il est potentiellement nécessaire, la rapidité, la facilité de résiliation et la possibilité d'évaluer le potentiel d'une future plainte formelle) ; une réflexion approfondie est donc essentielle pour décider de la forme (et du moment) de la plainte.

L'étude examine également le nombre de décisions adoptées par la Commission et les ANC après le dépôt d'une plainte formelle sur la base des informations collectées et classées par catégories, et présente diverses conclusions pour la période applicable, dont les suivantes :

— en ce qui concerne la Commission, environ 14 % d'entre elles ont été adoptées après le dépôt d'une plainte formelle ;

— en ce qui concerne les ANC qui disposent d'un système de plaintes formel comparable à celui de la Commission, environ 40 % d'un total d'environ 850 décisions ont été adoptées après le dépôt d'une plainte formelle ;

— en ce qui concerne les ANC qui ne disposent pas d'un système de plaintes formel, environ 475 décisions ont été adoptées au cours de la période d'échantillonnage.

Coordination au sein du REC

La dernière partie de l'étude fournit un retour des personnes interrogées sur la coopération entre la Commission et les ANC, notamment dans les domaines de l'attribution des dossiers et de la coordination.

Les réactions de la majorité des avocats et des juristes d'entreprise interrogés (53 %) sur l'efficacité des mécanismes d'attribution des affaires et de coordination entre la Commission et les ANC sont globalement positives. Les dynamiques de collaboration entre la Commission et les ANC au sein du réseau REC sont soulignées comme ayant un impact positif sur la possibilité pour la Commission de concentrer ses ressources sur les infractions les plus susceptibles de fausser la concurrence dans l'UE.

Dans le même temps, un nombre appréciable de répondants (36 %) perçoit le système d'attribution des affaires comme manquant de transparence. Un nombre plus limité de

répondants (moins de 10 %) fait référence à des incohérences dans les décisions prises par différentes juridictions, bien qu'il semblerait que cette critique tende à se concentrer sur un seul exemple (celui des affaires de réservation d'hôtel). Un autre commentaire formulé par un groupe limité de répondants (environ 7 %) est que le système actuel n'est pas aussi efficient qu'il pourrait l'être pour réduire les charges administratives des entreprises et éviter que des affaires ne soient traitées simultanément par plusieurs autorités.

En plus des réponses aux entretiens effectués dans ce cadre, l'étude fournit trois tableaux indiquant respectivement (i) si les pouvoirs d'enquête des ANC ont été adaptés à la lumière de la digitalisation ou si de telles adaptations sont envisagées, (ii) si les ANC utilisent des délais contraignants et/ou indicatifs dans les procédures nationales relatives au droit de la concurrence et (iii) quels processus d'enquête et de prise de décision sont utilisés par les ANC.

Zusammenfassung

Ziel der Studie ist es, Informationen zur Verfügung zu stellen, die die Evaluierung der Verordnungen (EG) Nr. 1/2003 und Nr. 773/2004 (die "**Verordnungen**") durch die Europäische Kommission (die „**Kommission**“) unterstützen, die den Zeitraum vom Inkrafttreten der beiden Verordnungen im Mai 2004 bis zum 31. Dezember 2022 umfasst.

Methodisch basiert die Studie auf der Erhebung und Analyse von Daten der Kommission, der nationalen Wettbewerbsbehörden („NWB“) der EU Mitgliedstaaten und von Wettbewerbsbehörden ausgewählter Drittstaaten, sowie auf standardisierten Befragungen von Rechtsanwälten und Unternehmensjuristen in der EU und ausgewählten Drittstaaten. Ergänzt wird dies durch relevante Sekundärforschung.

Allgemeiner Überblick

Der erste Teil der Studie gibt einen Überblick über die Wirkung der Verordnungen hinsichtlich der Anwendung der EU-Wettbewerbsregeln durch die Kommission und die NWB.

Zunächst wird ein Überblick über die wichtigsten Statistiken zu den **Kommissionsentscheidungen** zur Anwendung von Artikel 101 und/oder 102 AEUV seit Geltungsbeginn der Verordnung (EG) Nr. 1/2003 bis zum 31. Dezember 2022 gegeben. Die Studie enthält eine Aufschlüsselung der 216 materiellrechtlichen Kommissionsentscheidungen, die in den Anwendungsbereich fallen, und eine Reihe von Feststellungen zu diesen Entscheidungen, darunter die folgenden:

— 169 Entscheidungen wurden nach Artikel 101 AEUV, 44 Entscheidungen nach Artikel 102 AEUV und zwei Entscheidungen sowohl nach Artikel 101 als auch nach Artikel 102 AEUV erlassen, wobei 163 dieser Kommissionsentscheidungen als Abstellungsverfügungen und 52 als Verpflichtungszusagen zu qualifizieren sind; eine Entscheidung sieht einstweilige Maßnahmen vor;

— von den 163 Abstellungsverfügungen sind 40 als Kartellvergleichsentscheidungen zu qualifizieren, und 17 Entscheidungen wurden nach einer Kooperation (mit der Folge einer Bußgeldermäßigung) erlassen;

— die Zahl der von der Kommission zwischen 1988 und 2003 nach der Verordnung Nr. 17 erlassenen Abstellungsverfügungen (insgesamt 121) ist vergleichbar mit der Zahl der von der Kommission zwischen 2007 und 2022 nach der Verordnung (EG) Nr. 1/2003 erlassenen Abstellungsverfügungen (insgesamt 127), wenngleich die Unterschiede zwischen den Durchsetzungssystemen zwischen der Verordnung Nr. 17 und der Verordnung (EG) Nr. 1/2003 zu berücksichtigen sind, d.h. die Tatsache, dass die Kommission nach der Verordnung (EG) Nr. 1/2003 Verpflichtungszusagen erlassen kann und Anmeldungen abgeschafft wurden, während Anmeldungen in der Verordnung Nr. 17 ein vorherrschendes Merkmal waren. Darüber hinaus hat die Dezentralisierung im Rahmen der Verordnung (EG) Nr. 1/2003 dazu geführt, dass die NWB im Erhebungszeitraum 2007-2022 parallel 931 Abstellungsverfügungen nach Artikel 101 und/oder 102 AEUV erlassen haben; und

— die durchschnittliche Dauer bis zum Erlass einer Entscheidung nach Artikel 101 AEUV beträgt 4,47 Jahre, während die durchschnittliche Dauer für den Erlass einer Entscheidung nach Artikel 102 AEUV 4,67 Jahre beträgt. Ausgangspunkt für die

Berechnung der Fristen ist das Datum des ersten Prüfungsschritts oder der förmlichen Beschwerde, je nachdem, welcher Zeitpunkt früher liegt.

Darüber hinaus wurden in der Studie fast 1.470 Abstellungsverfügungen, Verpflichtungszusagen und einstweilige Maßnahmen der NWB zur Anwendung von Artikel 101 und/oder 102 AEUV im oben genannten Zeitraum identifiziert und analysiert. Neben der Kategorisierung dieser Entscheidungen gibt die Studie einen Überblick über die Anzahl der NWB-Entscheidungen, die Artikel 101 und/oder 102 AEUV allein oder in Verbindung mit entsprechenden nationalen Wettbewerbsvorschriften anwenden.

Aus den Rückmeldungen der Rechtsanwälte und Unternehmensjuristen geht hervor, dass die große Mehrheit (75 %) der Befragten die Verordnungen insgesamt für einen Erfolg hält und dass die Verordnungen im Allgemeinen eine einheitliche und kohärente Anwendung der EU-Wettbewerbsregeln erleichtert haben. Das Feedback zur dezentralen Anwendung der Artikel 101 und 102 ist im Allgemeinen positiv, auch wenn einige wenige Befragte Bedenken über die in der Vergangenheit ihrer Auffassung nach aufgetretene Divergenzen zwischen der Kommission und den NWB hinsichtlich materieller Ergebnisse zum Ausdruck bringen.

Artikel 3 der Verordnung (EG) Nr. 1/2003 wird im Großen und Ganzen als Erfolg gewertet, auch wenn Kritik am Anwendungsbereich von Artikel 3 Absatz 2 und an den Risiken einer beobachteten Verschärfung der nationalen Rechtsvorschriften geäußert wurde. Auch die Abschaffung des Anmeldesystems, das unter Verordnung Nr. 17 bestand, wird von Befragten im Allgemeinen befürwortet; eine beträchtliche Anzahl (35 %) würde jedoch zusätzliche Leitlinien der Kommission begrüßen. Die Mehrheit der Befragten (66 %) ist der Ansicht, dass die Dauer der Kommissionsverfahren sehr lang ist, wobei einige Befragte (17 %) die Komplexität der Untersuchungen als Hauptgrund für die lange Verfahrensdauer nennen.

Ermittlungsbefugnisse

Der zweite Teil der Studie befasst sich mit den Ermittlungsbefugnissen, die von der Kommission und den NWB eingesetzt werden, um mögliche Verstöße gegen Artikel 101 und 102 aufzudecken. Der Schwerpunkt liegt dabei auf Nachprüfungen, Auskunftsverlangen („**RFI**"), Befragungen und Sektoruntersuchungen.

Etwas mehr als zwei Drittel der Befragten halten **Nachprüfungen** (Durchsungen) für ein wirksames Ermittlungsinstrument. Nachprüfungen werden im Allgemeinen als wirksamer angesehen als RFI und Befragungen, da sie der Kommission objektive und umfassende Beweise liefern. Letztere Einschätzung könnte damit zusammenhängen, dass Nachprüfungen in der Regel unangekündigt erfolgen und es für die untersuchten Unternehmen schwieriger ist, relevante Beweise, die auf das Vorliegen von Zuwiderhandlungen hindeuten, zu verbergen.

Gleichzeitig betonen 15 % der Befragten, dass Nachprüfungen im Vergleich zu anderen Ermittlungsbefugnissen eingriffsintensiv sind – insbesondere, wenn sie in den Privaträumen von Mitarbeitern oder Geschäftsführern durchgeführt würden. Etwa drei Viertel der Befragten sehen Nachprüfungen als ein wirksames Ermittlungsinstrument, obwohl etwa die Hälfte der Befragten auch Verbesserungspotenzial in verschiedenen Bereichen sieht. So weisen beispielsweise 19 % der Befragten darauf hin, dass Nachprüfungen sowohl für die Wettbewerbsbehörden als auch für das inspizierte Unternehmen ressourcenintensiv sind.

Etwa ein Drittel der Befragten (36 %) hebt hervor, dass sich die Effizienz der Nachprüfungen dadurch verbessert hat, dass die Unternehmen ihre Daten digital speichern, sodass die Kommission Nachprüfungen an digitalen Geräten statt an physischen Trägern vornehmen kann. Die Durchführung von Nachprüfungen in digitaler Form kann die wirksame Überwachung von Artikel 101 und/oder 102 erleichtern, da es schwierig sein kann, digitale Daten zu löschen oder zu verändern.

Die Mehrheit der Befragten (57 %) hält **RFI** für ein wirksames Ermittlungsinstrument, auch wenn ihre Wirksamkeit von der genauen Gestaltung und der richtigen Anwendung abhängt. Darüber hinaus halten 50 % der Befragten RFI für effizient, weisen aber auf den erheblichen Aufwand der Unternehmen hin, der durch die Beantwortung von als recht umfangreich empfundenen Fragen, mit denen detaillierte Informationen angefordert werden, entsteht.

Hinsichtlich der **Befugnis zur Abgabe von Erklärungen** sind die Befragten geteilter Meinung über deren Wirksamkeit (44 % der Befragten halten sie für wirksam, 30 % sehen Verbesserungsmöglichkeiten und 26 % halten sie für nicht wirksam). Hinsichtlich der Effizienz sind die Befragten ähnlich geteilter Meinung (42 % halten Befragungen für effizient, während 32 % Verbesserungsmöglichkeiten sehen und 26 % Befragungen für ineffizient halten). Die im Zusammenhang mit dieser Befugnis geäußerten Bedenken betreffen den Schutz der Verfahrensrechte, die Aufzeichnung der Befragung, die Formalitäten, das Fehlen verbindlicher Befragungsbefugnisse und die mögliche Ungenauigkeit der in der Befragung erteilten Informationen.

Die Studie enthält auch eine Übersichtstabelle, aus der hervorgeht, ob die NWB befugt sind, (i) Geldbußen gegen natürliche Personen zu verhängen, die nicht zu einer Befragung erscheinen, und (ii) Geldbußen gegen Unternehmen oder natürliche Personen zu verhängen, die bei einer Befragung Fragen nicht beantworten oder irrführende Angaben machen.

Was schließlich die **Sektoruntersuchungen** anbelangt, so zeigt die Studie, dass 16 der 216 Kommissionsentscheidungen, die in den Anwendungsbereich der Studie fallen, im Anschluss an eine Sektoruntersuchung nach Artikel 17 der Verordnung (EG) Nr. 1/2003 erlassen wurden.

Aus dem Feedback zu Sektoruntersuchungen geht hervor, dass 52 % der Befragten der Ansicht sind, dass Sektoruntersuchungen wirksam sind, insbesondere bei der Sammlung von Informationen über einen bestimmten Markt, und dass sie ein besseres Verständnis der betreffenden Unternehmen ermöglichen. Gleichzeitig sehen 31 % der Befragten Verbesserungsmöglichkeiten und 17 % der Befragten halten Sektoruntersuchungen für ineffektiv. Darüber hinaus weisen 38 % der Befragten darauf hin, dass Sektoruntersuchungen ineffizient sein können, da sie für die betroffenen Unternehmen ressourcenintensiv sind und zu nicht eindeutigen Ergebnissen führen können.

Entscheidungsbefugnisse

Der dritte Teil der Studie befasst sich im Wesentlichen mit den Entscheidungsbefugnissen der Kommission nach Verordnung (EG) Nr. 1/2003, insbesondere mit Abstellungsverfügungen, Verpflichtungszusagen, einstweiligen Maßnahmen, Feststellungen der Nichtanwendbarkeit und der Befugnis zur Verhängung von Geldbußen (einschließlich Zwangsgeldern).

In Bezug auf **Abstellungsverfügungen** sind die Befragten im Allgemeinen (67 %) der Ansicht, dass diese ein wirksames Instrument zur Verhinderung von Wettbewerbsverzerrungen im Binnenmarkt und zur Durchsetzung der Artikel 101 und 102 AEUV sind. Fast 10 % der Befragten sind der Ansicht, dass Verbotsentscheidungen komplex sind, insbesondere in Fällen, in denen es um den Missbrauch einer marktbeherrschenden Stellung geht, und in Fällen, die komplexe Wirtschaftszweige wie den digitalen Sektor betreffen und eine sorgfältige Bewertung der Marktbedingungen erfordern. Die Befragten sind auch der Ansicht, dass Abstellungsverfügungen nur dann wirksam sind, wenn sie angemessen überwacht und durchgesetzt werden. Dies kann erhebliche Ressourcen erfordern, um Verstöße zu beenden und Marktverzerrungen zu verhindern.

Neben dem Feedback aus den Interviews enthält die Studie zwei Tabellen, die Aufschluss darüber geben, ob die NWB (i) häufig oder systematisch die Einhaltung ihrer Entscheidungen überwachen und (ii) in der Lage sind, potenzielle Abhilfemaßnahmen im Zusammenhang mit Verbotsentscheidungen zu testen.

Die Mehrheit der Befragten (65 %) ist der Ansicht, dass **Verpflichtungszusagen** ein wirksames Entscheidungsinstrument sind, um Verstöße gegen die Kartellvorschriften im Binnenmarkt zu beenden. Verpflichtungszusagen seien im Vergleich zu anderen Entscheidungsinstrumenten effizienter, da sie keine langwierigen und kostspieligen Untersuchungen und Rechtsstreitigkeiten nach sich ziehen. Ein weiterer wichtiger Vorteil ist nach Aussage der Befragten, dass Verpflichtungszusagen Flexibilität bei der Gestaltung von Abhilfemaßnahmen bieten und im Vergleich zu Abstellungsverfügungen eine schnellere und wirksamere Wiederherstellung gesunder Wettbewerbsbedingungen ermöglichen. Eine Analyse der Entscheidungsdaten der Kommission zeigt auch, dass Verpflichtungszusagen im Allgemeinen weniger Zeit benötigen als Abstellungsverfügungen. Die Befragten weisen darauf hin, dass eine angemessene Formulierung von Verpflichtungszusagen nach wie vor von entscheidender Bedeutung ist, um ihre Wirksamkeit zu gewährleisten, was ohne ein gründliches Verständnis des Marktes und seiner wichtigsten Akteure schwierig sein kann.

Darüber hinaus wurde im Rahmen der Studie auch die Effizienz der von der Kommission getroffenen Verpflichtungszusagen untersucht und festgestellt, dass diese Entscheidungen:

— im Allgemeinen eine kürzere Verfahrensdauer haben: die durchschnittliche Dauer beträgt 4,1 Jahre, gegenüber 4,7 Jahren bei Abstellungsverfügungen;

— seltener Gegenstand von Nichtigkeitsklagen sind: 11,54 % bei Verpflichtungszusagen gegenüber 60,12 % bei Abstellungsverfügungen;

— in mehr als der Hälfte der Fälle keine Mitteilung von Beschwerdepunkten ergeht (53,85 %), während bei Abstellungsverfügungen immer eine Mitteilung von Beschwerdepunkten erforderlich ist. In den Fällen, in denen keine Mitteilung der Beschwerdepunkte ergeht, ist die durchschnittliche Dauer der Verpflichtungszusagen deutlich kürzer; und

— insgesamt kürzer sind, mit durchschnittlich 31 Seiten gegenüber 115 Seiten bei Abstellungsverfügungen.

Obwohl die Kommission **einstweilige Maßnahmen** nur selten anwendet – im Untersuchungszeitraum wurde lediglich eine einstweilige Maßnahme erlassen (*Broadcom* 2019) – halten die Befragten einstweilige Maßnahmen im Allgemeinen für

ein wirksames Instrument, und mehr als ein Viertel der Befragten spricht sich dafür aus, häufiger auf einstweilige Maßnahmen zurückzugreifen. Mehr als ein Fünftel der Befragten gibt an, dass die Komplexität der Wettbewerbsfälle und die Schnelllebigkeit der verschiedenen Märkte die Kommission bei der Prüfung einstweiliger Maßnahmen vor Herausforderungen stellen können, da jeder Fall einzigartig ist und eine sorgfältige Prüfung erfordert.

Was **Nichtanwendbarkeitsfeststellungen** anbelangt, so halten 71 % der Befragten diese für ein potenziell wirksames Instrument zur Gewährleistung einer einheitlichen Anwendung der Artikel 101 und 102. Entscheidungen nach Artikel 10 der Verordnung (EG) Nr. 1/2003 können dazu beitragen, Unklarheiten zu vermeiden, indem sie eine Verhaltensweise für mit den geltenden Kartellvorschriften vereinbar erklären.

In Bezug auf **Geldbußen** wurden in der Studie insgesamt 151 Kommissionsentscheidungen ermittelt, in denen Geldbußen verhängt wurden (ohne Zwangsgelder und Entscheidungen in Wiederaufnahmeverfahren). Von diesen 151 Entscheidungen wurden (i) in 130 Entscheidungen Geldbußen wegen Verstößen gegen Artikel 101, (ii) in 16 Entscheidungen Geldbußen wegen Verstößen gegen Artikel 102, (iii) in einer Entscheidung eine Geldbuße wegen Verstößen sowohl gegen Artikel 101 als auch gegen Artikel 102 und (iv) in vier Entscheidungen Geldbußen wegen Verfahrensverstößen verhängt. Neben anderen Berechnungen kommt die Studie zu dem Ergebnis, dass die Kommission auf Grundlage der Verordnung (EG) Nr. 1/2003 Geldbußen in Höhe von mehr als 42 Mrd. EUR verhängt hat, wobei wieder aufgenommene oder geänderte Entscheidungen nicht berücksichtigt sind.

Soweit die von der Kommission verhängten Geldbußen vor den EU-Gerichten angefochten wurden, wurden der Studie zufolge mehr als 37 Mrd. EUR bestätigt (unter Berücksichtigung der bis zum 14. Dezember 2023 ergangenen Urteile).

Die Studie enthält auch ein Schaubild, aus dem der Gesamtbetrag der von den NWB jährlich verhängten Geldbußen, aufgeschlüsselt nach Artikel 101 und 102, hervorgeht.

Verfahrensrechte von Parteien und Dritten

Der vierte Teil der Studie befasst sich mit den Verfahrensrechten, darunter das Recht auf Anhörung, Akteneinsicht, Vertraulichkeit, formelle und informelle Beschwerde-mechanismen, Transparenz der Verfahren und mündliche Anhörungen.

Hinsichtlich des Schutzes der Verfahrensrechte der Parteien halten 68 % der Befragten die Verordnungen für recht effektiv und effizient. Allerdings äußern auch diese Befragten Kritik am System, insbesondere in Bezug auf das Recht auf rechtliches Gehör, die Transparenz, die Vertraulichkeit und die Vorhersehbarkeit der Verfahren.

Hinsichtlich der Transparenz relevanter wettbewerbsrechtlicher Verfahren sind die Ansichten der Befragten nahezu gleichmäßig verteilt. Für eine beträchtliche Anzahl der Befragten bedeutet die (wahrgenommene) Intransparenz der Verfahren eine geringere Rechtssicherheit und einen schwächeren Schutz der Verfahrens- und Verteidigungsrechte. Diejenigen Befragten, die die Verfahren für transparent halten, sind der Ansicht, dass diese Transparenz durch eine Kombination aus den Verordnungen, der Praxis der Kommission und der Rechtsprechung der EU-Gerichte gefördert wird.

Hinsichtlich der Wirksamkeit des derzeitigen Systems für den Zugang zu den Akten kann keine eindeutige Schlussfolgerung gezogen werden. Einerseits wird der derzeitige

Rahmen von den Befragten so beschrieben, dass er klare Begriffe und praktische Modalitäten vorschreibt und den Einsatz digitaler Hilfsmittel ermöglicht. Andererseits werden die Nachteile des Systems mit der großen Zahl der zu prüfenden Dokumente und dem Zeitpunkt der Akteneinsicht (d.h. zum Zeitpunkt der Mitteilung der Beschwerdepunkte) in Verbindung gebracht. Hinsichtlich des Gleichgewichts zwischen dem Recht auf Anhörung und dem Schutz vertraulicher Informationen ist die Mehrheit der Befragten (57 %) der Ansicht, dass die Verordnungen zwar insgesamt wirksam sind, doch räumen viele ein, dass die Verfahren kompliziert sind.

Mündliche Anhörungen werden mehrheitlich als nützliches Mittel zur Wahrung des rechtlichen Gehörs angesehen, wenngleich eine geringe Anzahl von Befragten (16 %) Bedenken hinsichtlich der Wirksamkeit des mündlichen Anhörungsverfahrens äußert.

Obwohl die Studie keine eindeutigen Präferenzen der Befragten dahingehend erkennen lässt, ob sie ihren Mandanten zu einer formellen oder informellen Beschwerde raten, wird einer formellen Beschwerde im Allgemeinen mehr Gewicht beigemessen, insbesondere auch bei der Wahrung der Verfahrensrechte der beteiligten Parteien. Gleichzeitig wird berichtet, dass informelle Beschwerden eine Reihe von Vorteilen bieten (z. B. Anonymität, wo dies erforderlich ist, Schnelligkeit, leichtere Beendigung und die Möglichkeit, die Aussichten für eine künftige formelle Beschwerde zu bewerten). Daher wird eine sorgfältige Abwägung als maßgeblich für die Entscheidung über die Form (und den Zeitpunkt) der Beschwerde hervorgehoben.

Die Studie befasst sich auch mit der Anzahl der Entscheidungen, die von der Kommission und den NWB nach Einreichung einer förmlichen Beschwerde auf der Grundlage der gesammelten und kategorisierten Informationen getroffen wurden. Die Studie liefert verschiedene Erkenntnisse für den untersuchten Zeitraum, u.a.:

— Was die Kommission betrifft, so wurden etwa 14 % der Entscheidungen nach Einreichung einer förmlichen Beschwerde erlassen.

— Bei den NWB, die über ein förmliches Beschwerdesystem verfügen, das mit dem der Kommission vergleichbar ist, wurden ca. 40 % der insgesamt etwa 850 Entscheidungen nach Einlegung einer förmlichen Beschwerde erlassen.

— In Bezug auf NWB, die über kein förmliches Beschwerdesystem verfügen, wurden im Stichprobenzeitraum etwa 475 Entscheidungen erlassen, die in den Anwendungsbereich fallen.

Koordinierung innerhalb des ECN

Der letzte Teil der Studie enthält Rückmeldungen zur Zusammenarbeit zwischen der Kommission und den NWB, insbesondere in den Bereichen Fallverteilung und Koordinierung.

Die Mehrheit der befragten Rechtsanwälte und Unternehmensjuristen (53 %) äußerte sich insgesamt positiv über die Wirksamkeit der Mechanismen zur Fallverteilung und Koordinierung zwischen der Kommission und den NWB. Die Dynamik der Zusammenarbeit zwischen der Kommission und den NWB innerhalb des Europäischen Wettbewerbsnetzes wirkt sich positiv darauf aus, die Kommissionsressourcen für solche Verstöße zu bündeln, die das größte Potenzial haben, den Wettbewerb in der EU zu verzerren.

Gleichzeitig ist eine beträchtliche Anzahl der Befragten (36 %) der Ansicht, dass das System der Fallverteilung nicht transparent genug ist. Eine geringere Anzahl von Befragten (weniger als 10 %) weist auf Unstimmigkeiten der Entscheidungen in den verschiedenen Rechtsordnungen hin, wobei sich diese Kritik auf ein einziges Beispiel zu konzentrieren scheint (Hotelbuchungsfälle). Eine weitere Bemerkung einer kleinen Gruppe von Befragten (etwa 7 %) lautet, dass das derzeitige System nicht so effizient sei, wie es sein könnte, um den Verwaltungsaufwand für Unternehmen zu verringern und zu verhindern, dass Fälle von mehreren Behörden gleichzeitig bearbeitet werden.

Zusätzlich zu dem Feedback aus den Interviews enthält die Studie drei Tabellen, aus denen jeweils hervorgeht, (i) ob die Ermittlungsbefugnisse der NWB im Licht der Digitalisierung angepasst wurden oder ob solche Anpassungen in Erwägung gezogen werden, (ii) ob die NWB in nationalen Kartellverfahren auf feste und/oder indikative Fristen zurückgreifen und (iii) welche Ermittlungs- und Entscheidungsprozesse die NWB anwenden.

Introduction

1.1 About this document

1. From Deloitte Legal – *Lawyers*, Deloitte Consulting and Spark Legal & Policy Consulting (the "**Consortium**"), this document contains the support study (the "**Study**") for the evaluation of Regulations 1/2003 and 773/2004 (the "**Regulations**"). The Study follows the specifications outlined in the Terms of Reference (the "**ToR**"), the Consortium's technical proposal and the structure and content agreed with the Directorate-General for Competition of the European Commission ("**DG COMP**"). The Study takes into account the feedback provided by DG COMP at different stages of the drafting process and offers input on pre-determined desk research queries, interview queries and dedicated questionnaires addressed to competition authorities as agreed with DG COMP.

2. The Study compiles data collected by the Consortium from various sources, including via desk research, interviews of attorneys at law and in-house counsel, as well as data provided by DG COMP, National Competition Authorities of the 27 Member States of the European Union ("**EU-27**") ("**NCAs**"), the "Samkeppniseftirlitið" (the **"Icelandic competition authority**") and "Konkurransetilsynet" (the "**Norwegian competition authority**"). Pursuant to section 1.2 of the ToR, the Study complements the comprehensive public consultation and evaluation work conducted by DG COMP itself.

3. The information and views set out in the Study are those of the author(s) and / or any third parties consulted during the data collection exercise (for example, attorneys and in-house counsel for the interview workstream) and do not necessarily reflect the official opinion of the Commission. Neither the Commission nor any person acting on behalf of or contracted by the Commission may be held responsible for the use which may be made of the information contained therein. Both DG COMP and the NCAs received the opportunity to provide input and feedback on the Study, including the underlying data collection for in-scope antitrust decisions adopted by DG COMP and NCAs, which were taken into account and integrated into the Study as much as possible by the Consortium. Neither DG COMP nor the respective NCAs can guarantee the accuracy of all data included in the Study.

4. The Study is structured as follows:

- Chapter 1 (*Introduction*) outlines the objectives, scope and general methodological observations of the Study;
- Chapter 2 (*General overview of the application of the Regulations*) examines key data on in-scope decisions adopted by the European Commission (the "**Commission**"), NCAs and United Kingdom (the "**UK**") competition authorities (including, for the purpose of the Study, the UK Competition and Markets Authority ("the **CMA**") (and its predecessor the Office of Fair Trading ("the **OFT**") and the Competition Commission), the Office of Communications ("**Ofcom"**), the Financial Conduct Authority ("the **FCA**") and the Office of Gas and Electricity Markets ("**Ofgem**" for the period of application of Regulation 1/2003 during which the United Kingdom was a member of the European Union) since the applicability of Regulation 1/2003; it also provides an overview of perspectives collected on the overall performance of the Regulations;

— Chapter 3 (*Investigative Tools*) analyses the various investigative powers of the Commission and NCAs, including in relation to inspections, requests for information ("**RFIs**") and sector inquiries, while also providing an overview of perspectives collected on the overall performance of such investigative powers;

— Chapter 4 (*Decision-making powers*) provides an overview of the decision-making powers of the Commission and NCAs, including prohibition decisions, commitment decisions, interim measures decisions, findings of inapplicability and the power to impose fines;

— Chapter 5 (*Procedural rights of parties and third parties*) reflects on the procedural rights of (third) parties, including transparency of proceedings, access-to-file rights, protection of confidential information, oral hearings and formal / informal complaints;

— Chapter 6 (*Functioning of the ECN and NCA procedural features*) outlines the functioning of the European Competition Network (the "**ECN**") and procedural features of NCAs; and

— Chapter 7 provides concluding remarks.

The Annexes contain the following documentation:

— The desk research questionnaire in **Annex I**;

— The EU-27 interview questionnaire in **Annex II**;

— The Third Country interview questionnaire in **Annex III**;

— The NCA questionnaire in **Annex IV**;

— The questionnaire for the Icelandic and Norwegian competition authorities in **Annex V**;

— The final and agreed list of interviewed attorneys and in-house counsel in **Annex VI**;

— The data sheet including in-scope decisions adopted by the Commission for the period between 1 May 2004 until 31 December 2022 in **Annex VII**;

— The data sheet including in-scope decisions adopted by NCAs and UK competition authorities for the period between the respective dates of applicability of Regulation 1/2003 in the relevant jurisdiction until 31 December 2022 in **Annex VIII** (NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set); and

— Figures on fining, procedural infringement and periodic penalty payment in-scope decisions adopted by the Commission, NCAs and UK competition authorities in **Annex IX**.

1.2 Objectives of the Study

5. The purpose of the Study was to provide clear and concise information to support the evaluation of the Regulations currently being conducted by the Commission. From their applicability in May 2004, the Regulations established a new European Union (the "**EU**") antitrust procedural framework and altered the enforcement system for the

implementation of Article 101 and Article 102 of the Treaty on the Functioning of the European Union (the "**TFEU**").[1]

Specifically, the evaluation by the Commission is seeking to assess the performance of the Regulations in the light of the digitisation of the economy, the Commission's initiatives to make the EU fit for the digital age and initiatives to empower the NCAs to be more effective enforcers, for instance, through the adoption of the European Competition Network Plus ("**ECN+**") Directive.[2]

6. The main objective of the Study is therefore to provide information to facilitate this assessment by the Commission of the performance of the Regulations. As part of the Study, information and analyses are provided in relation to the pre-determined desk research queries, interview queries and dedicated questionnaires addressed to competition authorities developed together with and agreed upon by DG COMP during the inception phase of the Study in accordance with the Better Regulation Guidelines and Toolbox (the "**BRG**").[3]

7. Unless specified otherwise, references to Articles 101 and / or 102 TFEU in the Study always include references to their predecessors: Articles 81 and / or 82 European Community Treaty (the "**EC Treaty**"), as well as Articles 85 and / or 86 European Economic Treaty (the "**EEC Treaty**"). References to "Article 101" and / or "Article 102" concern "Article 101 TFEU" and / or "Article 102 TFEU" respectively.

1.3 Scope of the Study

8. As per the Terms of Reference (the "**ToR**"), the Study temporally covers the period from the date of applicability of the Regulations of 1 May 2004 until 31 December 2022, the cut-off date for the Study. The Study includes an investigation of the past performance of the Regulations and considers potential future trends and developments, for instance, with respect to the impact of innovation, digitisation and homeworking on the antitrust procedural framework.

The Study focuses substantively on the Regulations as detailed *supra*, paragraph no. **5**.

Geographically, the Study covers all EU Member States, as well as Norway, the UK and the United States (the **"US / USA**") (the "**Third Countries**"). Input was gathered from the Icelandic competition authority.[4]

9. Based on the objectives, scope and deliverables specified in the ToR, as well as the amendments agreed with DG COMP, the Study was the result of the following multi-phased approach:

— **Phase 1** – Inception and scoping, concluded with the acceptance by DG COMP of the Inception Report;

[1] Prior to May 2004, Articles 81 and 82 of the Treaty on the European Community (the "**TEC**") were the relevant Treaty provisions being the predecessors of Articles 101 and 102.
[2] EU Directive 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, *OJ* L 11, 3.
[3] Commission, Staff Working Document of 3 November 2021 on Better Regulation Guidelines, SWD(2021) 305 final.
[4] At the request of DG COMP, the Icelandic competition authority was given the opportunity to respond to a dedicated questionnaire which was addressed to both the Icelandic and Norwegian competition authorities (see Annex V).

— **Phase 2** – Initiation of the data collection exercise and drafting of preliminary analyses, concluded with the acceptance by DG COMP of the Interim Report;

— **Phase 3** – Finalisation of the data collection exercise and further development of the analytical framework, resulting in the current Study;

— **Continuous, across phases** – Management of the data collection exercises pertaining to the desk research, interview and competition authority outreach workstreams, as well as quality assurance, including regular progress reports and meetings between DG COMP and the Consortium. Gap analyses were carried out throughout all phases to ensure compliance with relevant data requirements, as well as for the development of corrective and / or mitigation actions to address potential data gaps in a timely manner.

10. From a methodological perspective, the Study is based on:

— standardised interviews with attorneys and in-house counsel from the EU-27 and the Third Countries;

— desk research and analysis of in-scope decisions adopted by the Commission;

— desk research and analysis of in-scope decisions adopted by the NCAs and UK competition authorities;

— data provided by DG COMP and NCAs on in-scope decisions adopted by them respectively, including non-publicly available parameters;

— feedback provided by NCAs to data collected by the Consortium and its local affiliates via publicly available databases on decisions adopted by the NCAs and on draft versions of the Study (NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set);

— feedback provided by DG COMP on the data collected by the Consortium via publicly available databases on decisions adopted by the Commission and on draft versions of the Study;

— input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the dedicated questionnaires addressed to them, in written form and / or in bilateral meetings with the Consortium and / or its local affiliates; and

— a limited review of relevant literature, for instance, on the impact of the COVID-19 pandemic on remote working and related effects on antitrust investigative powers.

11. In agreement with DG COMP, the Consortium adopted the following **methodology for the interviews** conducted with attorneys and in-house counsel in the EU-27 jurisdictions (including a dedicated pool of antitrust attorneys in Brussels) and Third Countries based on the respective interview questionnaires in Annexes II and III:

— The selection of the interviewee[5] sample aspired to balance demographic representation, gender, the relative importance of the respective economy (GDP) within the EU, as well as the levels of activity of the respective NCAs and Third Country competition authorities.

[5] For the purpose of the Study, in-house counsel and / or attorneys who participated in the standardised interviews organised by the Consortium are referred to interchangeably as "respondents" or "interviewees".

— Concretely, a 3:1 division between attorneys and in-house counsel was pursued for all jurisdictions, excluding the dedicated pool of interviewed antitrust attorneys in Brussels.

— As regards demographic representation, the following division of interviewees per EU-27 jurisdiction was agreed with DG COMP: Austria: 7; Belgium: 7; Bulgaria: 3; Croatia: 3; Republic of Cyprus: 3; Czechia: 5; Denmark: 8; Estonia: 3; EU attorneys (Brussels): 50; Finland: 5; France: 13; Germany: 15; Greece: 5; Hungary: 5; Ireland: 7; Italy: 12; Latvia: 3; Lithuania: 4; Luxembourg: 3; Malta: 3; Netherlands: 12; Poland: 9; Portugal: 8; Romania: 8; Slovakia: 4; Slovenia: 3; Spain: 12; Sweden: 6. As for Third Country jurisdictions, the following division of interviewees was adopted: Norway: 5; UK: 10; USA: 10.

— The initial list of specific attorneys and in-house counsel to be contacted by the Consortium with a request for an interview was agreed with DG COMP. Amendments and / or additions to this list, for instance, to address refusals by the potential interviewees or in the absence of a positive response, were likewise screened and approved by DG COMP.

— On the above basis, the Consortium reached out to over 380 potential interviewees; 226 interviewees from the EU-27 and 25 interviewees from the Third Countries were interviewed. The Consortium thus conducted interviews with 251 attorneys and / or in-house counsel approved by DG COMP in excess of the agreed target.[6] As a result, at least 100 responses were collected for each interview question in accordance with the ToR.[7]

— As a complement to the above number of interviewees taken into account for the target of the Study, 28 additional respondents shared relevant insights as various approved interviewees brought an additional colleague from the same (law) firm to the interview with the Consortium.

— The interviews were standardised on the basis of dedicated questionnaires differentiating between the EU-27 and Third Country jurisdictions as agreed with DG COMP. The interviews were conducted by local affiliates of the Consortium specialised in antitrust law accompanied by a member of the core team of the Consortium for purposes of continuity, efficiency, and cross-learning, as the core team oversaw the interviews across all in-scope jurisdictions as well as the preparation of the respective interview minutes.

The Consortium triangulated the results of the interviews and validated trends in opinions of attorneys and in-house counsel per interview (sub-)question. The data triangulation process further consisted of the following steps:

— Identification of trends across interviews and consolidation of observations;

— Consistency analyses of the identified trends by interviewee subcategory, for instance by occupation and experience, followed by further granularisation of observations to identify sub-trends across different interviewee groups; and

[6] For the final list of interviewees, see Annex VI.
[7] See the full list of interview questions in Annex II. As an exception, interview questions nos. 8b.a, 8b.b and 8b.c were required to receive a combined total of at least 100 responses whereas no target was set for interview question no. 17 ("Any other comments").

— Identification of potential commonalities and contradictions between overarching trends and sub-trends.

To preserve confidentiality, the Consortium anonymised and aggregated input from interviewees as much as possible.

12. In agreement with DG COMP, the Consortium prepared relevant analyses in relation to **desk research questions** in Annex I for the following jurisdictions:[8]

— For desk research question no. 1.1 (pertaining to a general overview of the number of in-scope decisions): the respective jurisdictions of the Commission, the EU-27 and the UK (the latter including the following authorities: the CMA and its predecessor organisations, the OFT and the Competition Commission, as well as Ofcom, Ofgem and the FCA as concurrent regulators for the period of time before February 1, 2020);

— For desk research question no. 1.2 (pertaining to a comparison between decisions adopted under Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty[9] ("**Regulation No 17**") and under Regulation 1/2003): the jurisdiction of the Commission;

— For desk research question no. 1.3 (pertaining to statistical analyses of decisions adopted by the Commission): the jurisdiction of the Commission;

— For desk research question no. 2 (pertaining to commitment and prohibition decisions): the jurisdiction of the Commission;

— For desk research question no. 3 (pertaining to formal complaint systems): the respective jurisdictions of the Commission and the NCAs;

— For desk research question no. 4 (pertaining to decisions following sector inquiries): the jurisdictions of the Commission and the NCAs;

— For desk research question no. 5 (pertaining to the parallel application of Articles 101 and / or 102 with equivalent national competition law provisions): the respective jurisdictions of the NCAs;

— For desk research question no. 6 (pertaining to the stand-alone application of equivalent national competition law provisions): the respective jurisdictions of the NCAs;

— For desk research question no. 7 (pertaining to trends in home working): unrelated to a specific jurisdiction given the nature of the question;

— For desk research question no. 8 (pertaining to investigative powers in the face of digitisation): the respective jurisdictions of the NCAs and the Third Countries;

— For desk research question no. 9 (pertaining to fines and periodic penalty payments): the respective jurisdictions of the Commission, the EU-27 and the UK (with relevant authorities for the latter identical to desk research question no. 1); and

[8] See the full list of desk research questions in Annex I.
[9] Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty [1962] *OJ* 13, 204.

— For desk research question no. 10 (pertaining to input received from competition authorities in response to dedicated questionnaires): the respective jurisdictions of the NCAs and of the Icelandic and Norwegian competition authorities.

Specifically for the analysis of in-scope decisions adopted by the Commission, the Consortium worked on the basis of several data sets provided by DG COMP as further updated by the Consortium to incorporate:

(i) cartel and antitrust decisions adopted by the Commission in 2022;

(ii) in-scope decisions adopted by the Commission imposing periodic penalty payments between 1 May 2004 and 31 December 2022; and

(iii) additional parameters for the period between 1 May 2004 and 31 December 2022 based on publicly available information including (a) length of the decisions in pages, (b) dates of first investigative steps; (c) dates of Statement of Objections ("**SO**"); (d) in the event of initiation by complaints, whether the investigation was initiated by a formal complaint and, if so, when; (e) the nature of the decision as a follow-up to a sector inquiry where relevant; (f) whether an action for annulment had or has been lodged before the General Court and, in the event of commitment decisions, whether such an action for annulment was lodged by a third party; (g) the hybrid nature of settlements where relevant; (h) fine corrections by the EU courts with respect to (re-adoption) decisions adopted by the Commission and (i) grounds for the imposition of fines for procedural infringement(s).

Notwithstanding the above and given the diverging substance of each desk research question, the (statistical) methodologies applied for identification, consolidation and visualisation of relevant data and output may differ markedly per question. As a result, such methodologies are predominantly reflected in further detail in the relevant respective sections of the Study.

13. As per the ToR, the Consortium understands that the Commission is currently conducting an evaluation of the Regulations with the aim of assessing the antitrust procedural framework and identifying whether any aspects of this framework merit an update of the Regulations. The ToR also indicate that the Study will complement the comprehensive public consultation and evaluation work that is being conducted by DG COMP in line with the following (BRG) evaluation criteria:

— **Relevance**: whether the objective of the Regulations, namely the effective and uniform application of Articles 101 and 102, continues to be appropriate taking into account developments since 2004 (such as the ECN+ Directive);

— **Effectiveness**: the extent to which the Regulations have been effective in meeting their objective of an effective and uniform application of Articles 101 and 102;

— **Efficiency**: whether the Commission's experience in the application of the Regulations has contributed in an efficient manner to the effective and uniform application of Articles 101 and 102;

— **Coherence**: the extent to which the different components set out in the Regulations operate (positively) together; and

— **EU added value**: the extent to which the Regulations contribute to ensuring the effective and uniform application of Articles 101 and 102 in a manner that goes beyond what would have been achieved by Member States acting alone.

As outlined further in Chapter 1 above, the objective of the Study is to provide insights that can lay part of the groundwork for an eventual full-scale evaluation to be conducted by DG COMP. The Study includes an initial assessment of the Regulations based on interviews and desk research broken down by topic. Where relevant, per-topic chapters and sections include sub-sections highlighting key insights of potential relevance for the evaluation of the Regulations based on the BRG.

Importantly, the interviewees consulted did not provide a comprehensive analysis across all evaluation criteria, nor was this the intention as agreed with DG COMP. While the input of these respondents proved to be broad in scope and insightful, not all responses were necessarily of relevance for the purposes of a BRG evaluation and the relevant content was generally focused on the effectiveness of the Regulations. While interviewees also discussed aspects of relevance, efficiency, coherence and EU added value, such elements were generally secondary to the primary focus on effectiveness.

This concentration on effectiveness has not enabled the Study, in view of its agreed scope, to offer a balanced examination of all the abovementioned evaluation criteria but rather prioritises those elements which were most clearly and frequently articulated by the interviewees. Finally, the qualification of interviewee responses is by definition a subjective process in which the Consortium has nevertheless aspired to derive key high-level takeaways from relevant interviewee responses for integration into the current Study.

Chapter 1. General overview of the application of the Regulations

14. This chapter aims to provide an overview of input collected on the performance of Regulation 1/2003, based both on the application of EU antitrust rules by the Commission as well as EU antitrust rules and equivalent national provisions by NCAs and UK competition authorities.

1.1 Key data on Commission decisions applying Articles 101 and / or 102 since the applicability of Regulation 1/2003

15. This section provides key data on Commission decisions applying Articles 101 and / or 102 since the applicability of Regulation 1/2003.[10]

16. First, the Consortium was requested to research the number of decisions applying Articles 101 and / or 102 as adopted by the Commission since the applicability of Regulation 1/2003.

The Consortium was requested to then indicate the total number of decisions adopted under Article 101, under Article 102, or under both Articles 101 and 102 (Figure 1) while also identifying prohibition decisions[11], interim measures decisions[12], commitment

[10] An overview of the relevant decisions can be found in Annex VII. At the request of DG COMP, procedural infringement decisions and decisions applying both Article 106(1) and Article 102 are omitted from the graphs and in-depth analyses unless explicitly stated otherwise.
[11] Article 7 Regulation 1/2003.
[12] Article 9 Regulation 1/2003.

decisions[13], procedural infringement decisions or decisions imposing periodic penalty payments.[14][15]

17. Second, the Consortium was requested to compare the number of decisions applying Articles 101 and / or 102 TFEU since the applicability of Regulation 1/2003 to the total number of Commission decisions applying (at the time) Articles 85 / 86 and 81 / 82 of respectively the EEC / EC Treaty under Regulation No 17 (Table 1).

18. Third, this section also examines the following features of the in-scope Commission decisions:

— sector involved (Figure 2) and sector by Article applied to the decision (Figure 3);

— decisions involving commitments / settlement / cooperation (Figure 4);

— sources of Commission investigations (ex officio / formal complaint / leniency) (Figure 5);

— the number of addressees (Figure 6);

— the duration of proceedings[16] (from the date of the formal complaint or from the date of the first investigative step, whichever was the earliest) (Figures 7-10); and

— the length of decisions (in pages) (Figure 11).[17]

1.1.1 Number, legal basis and typology

19. The Consortium identified 215 decisions adopted by the Commission in proceedings (mainly) on the substance of Articles 101 and / or 102 since May 2004 and until December 2022.[18]

Of these 215 decisions on substance:

— 169 decisions were adopted under Article 101, 44 decisions were adopted under Article 102, and two decisions were adopted under both Articles 101 and 102 (Figure 1); and

— 163 of the 215 decisions are prohibition decisions (144 under Article 101, 18 under Article 102 and 1 under both Articles 101 and 102) whereas 52 are commitment decisions (25 under Article 101, 26 under Article 102 and 1 under both Articles 101 and 102).

Of the 169 decisions adopted by the Commission under Article 101, 112 decisions are cartel decisions.[19]

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[13] Article 23(1) Regulation 1/2003.
[14] Article 24 Regulation 1/2003.
[15] See desk research question no. 1.1 reproduced in Annex I.
[16] In some cases where the Consortium could not identify a first investigative step in the public versions of Commission decisions, relevant dates were provided by DG COMP.
[17] See desk research question 1.3 reproduced in Annex I.
[18] See Annex VII.
[19] To determine which decisions under Article 101 qualify as a (non-)cartel decision, the Consortium applied the classification used by DG COMP in the data set provided. In particular, cartels include bid rigging, information exchange, market sharing, price and / or terms fixing, as well as other types (such as allocation

20. In addition during the relevant period, the Commission also adopted:

— one interim measure decision[20] adopted under Article 8 of Regulation 1/2003;

— four fining decisions[21] under Article 23(1) of Regulation 1/2003;

— three decisions on periodic penalty payments[22] under Article 24 of Regulation 1/2003; and

— five decisions on both Articles 102 and 106.

21. In total, the Commission announced the intention to impose periodic penalty payments pursuant to Article 24(1) of Regulation 1/2003 in 10 decisions (part of the category of 215 decisions above). Of these 10 instances, the Commission subsequently set a definitive amount of periodic penalty payment pursuant to Article 24(2) of Regulation 1/2003 in two decisions both relating to the same case.[23]

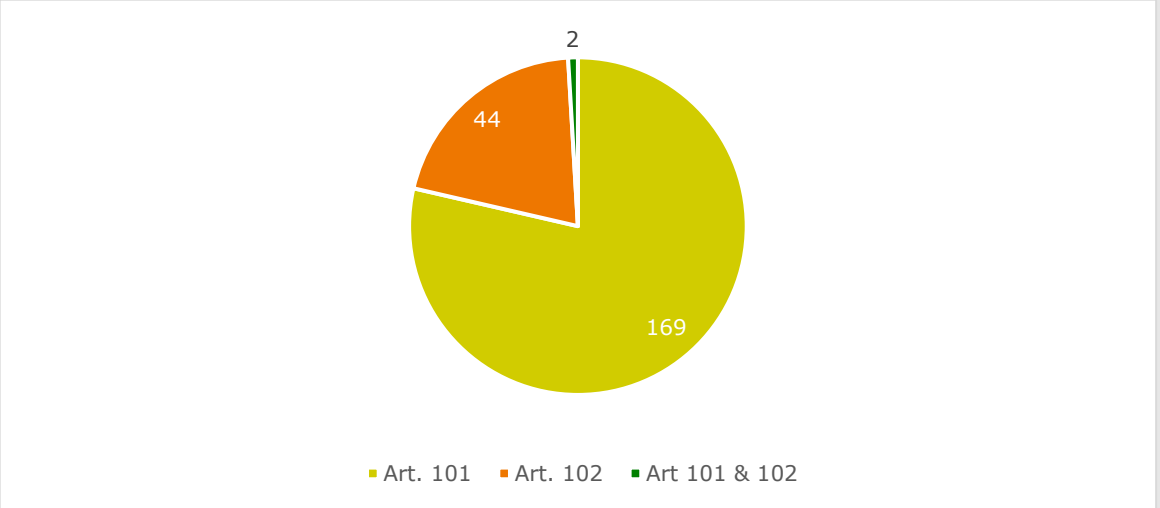

Figure 1 – Legal basis of Commission decisions (N=215)[24]
Source: Annex VII

1.1.2 Comparison with number of decisions adopted under Regulation No 17

22. On the basis of publicly available information, the Commission adopted 642 substantive and procedural decisions under Regulation No 17 predating the applicability of Regulation 1/2003 and relating to Articles 85 and / or 86 EEC or Articles 81 and / or

of supplies or terminations of contracts with non-cartel members). Non-cartels include other types of vertical and / or horizontal cooperation, including but not limited to tying, licensing clauses restricting cross-border trade, restrictive exclusive horizontal joint selling arrangements and joint management of schedules and capacity.

[20] Commission, Decision of 19 October 2019, Case AT.40.608, *Broadcom*.

[21] Commission, Decision of 30 January 2008, Case AT.39326, *E.ON*; Commission, Decision of 28 March 2012, Case AT.39793, *EPH*; Commission, Decision of 24 May 2011, Case AT.39796, *Suez Environment* under Article 23(1) of Regulation 1/2003; Commission, Decision of 6 March 2013, Case AT.39.530, *Microsoft* under Article 23(2) of Regulation 1/2003.

[22] Commission, Decision of 10 November 2005, Case AT.37792, *Microsoft*; Commission, Decision of 12 July 2006, Case AT.37792, *Microsoft*; Commission, Decision of 27 February 2008, Case AT.37792, *Microsoft*.

[23] Commission, Decision of 12 July 2006, Case AT.37792, *Microsoft* under Article 1; Commission, Decision of 27 February 2008, Case AT.37792, *Microsoft* under Article 1.

[24] The 215 relevant decisions do not include interim measures decisions nor procedural infringement decisions.

82 EC.[25] These 642 Commissions decisions (i) include *inter alia* negative clearance decisions, decisions rejecting complaints and exemption decisions with conditions and obligations and (ii) cover a period of approximately 40 years.

For comparability purposes, the Table below is limited to a comparison of the number of prohibition decisions adopted by the Commission under Regulation No 17 between 1988 and 2003 (spanning 16 years) with the number of prohibition decisions adopted by the Commission between 2007 and 2022 (equally spanning 16 years), each time pertaining to (the predecessors of) Articles 101 and / or 102 and excluding re-adoptions of decisions annulled by the EU courts.[26]

Overview of number of decisions adopted under Regulation No 17 (1988-2003) and under Regulation 1/2003 (2007-2022)[27]			
Year	**Number of prohibition decisions under Regulation No 17[28]**	**Year**	**Number of prohibition decisions under Regulation 1/2003**
2003	9	**2022**	2
2002	10	**2021**	14
2001	17	**2020**	5
2000	5	**2019**	10
1999	7	**2018**	12
1998	10	**2017**	8
1997	2	**2016**	7

[25] For sources, see EC - Antitrust Cases (1964 - 1998) for the decisions until 31 December 1998, and DG COMP - Case search engine for cases as from 1 January 1999 and until 30 April 2004.
[26] Table 1 is limited to a comparison of prohibition decisions only. Commitment decisions adopted under Article 9 of Regulation 1/2003 are not directly comparable with 'negative clearance' or 'exemption' decisions as adopted under Regulation No 17 because the latter are, for instance, inherently linked with the notification system under Regulation No 17 which ceased to exist following the introduction of Regulation 1/2003. Commitment decisions in the sense of Article 9 of Regulation 1/2003 are generally adopted after investigations initiated by the Commission itself (on an ex officio basis or following a complaint).
[27] The relevant numbers exclude re-adoptions.
[28] The number of prohibition decisions between 1988 and 2003 under Regulation No 17 is based on Table 2 in W. Wils, "Ten Years of Regulation 1/2003 – A Retrospective" (2013), *Journal of European Competition Law & Practice*, Vol. 4, No. 4, 299.

Overview of number of decisions adopted under Regulation No 17 (1988-2003) and under Regulation 1/2003 (2007-2022)[27]			
Year	**Number of prohibition decisions under Regulation No 17[28]**	**Year**	**Number of prohibition decisions under Regulation 1/2003**
1996	4	**2015**	5
1995	3	**2014**	14
1994	7	**2013**	7
1993	2	**2012**	4
1992	17	**2011**	5
1991	6	**2010**	8
1990	6	**2009**	6
1989	3	**2008**	8
1988	13	**2007**	12
Total	**121**	**Total**	**127**

Table 1 - Overview of number of prohibition decisions adopted under Regulation No 17 (1988-2003) versus decisions under Regulation 1/2003 (2007-2022)

23. The Table above indicates that the number of prohibition decisions adopted by the Commission under Regulation No 17 between 1988 and 2003 (a total of 121 prohibition decisions) is fairly comparable to the number of decisions adopted by the Commission under Regulation 1/2003 between 2007 and 2022 (a total of 127 prohibition decisions). However, when comparing the enforcement of Articles 101 and / or 102 under Regulation 1/2003 with the enforcement under Regulation No 17, due account should be given to the decentralisation under Regulation 1/2003 as a result of which NCAs and UK competition authorities adopted 931 prohibition decisions applying Articles 101 and / or 102 in the sample period between 2007 and 2022.

1.1.3 Sector

24. The Figure below indicates the total number of decisions adopted by the Commission by sector.[29]

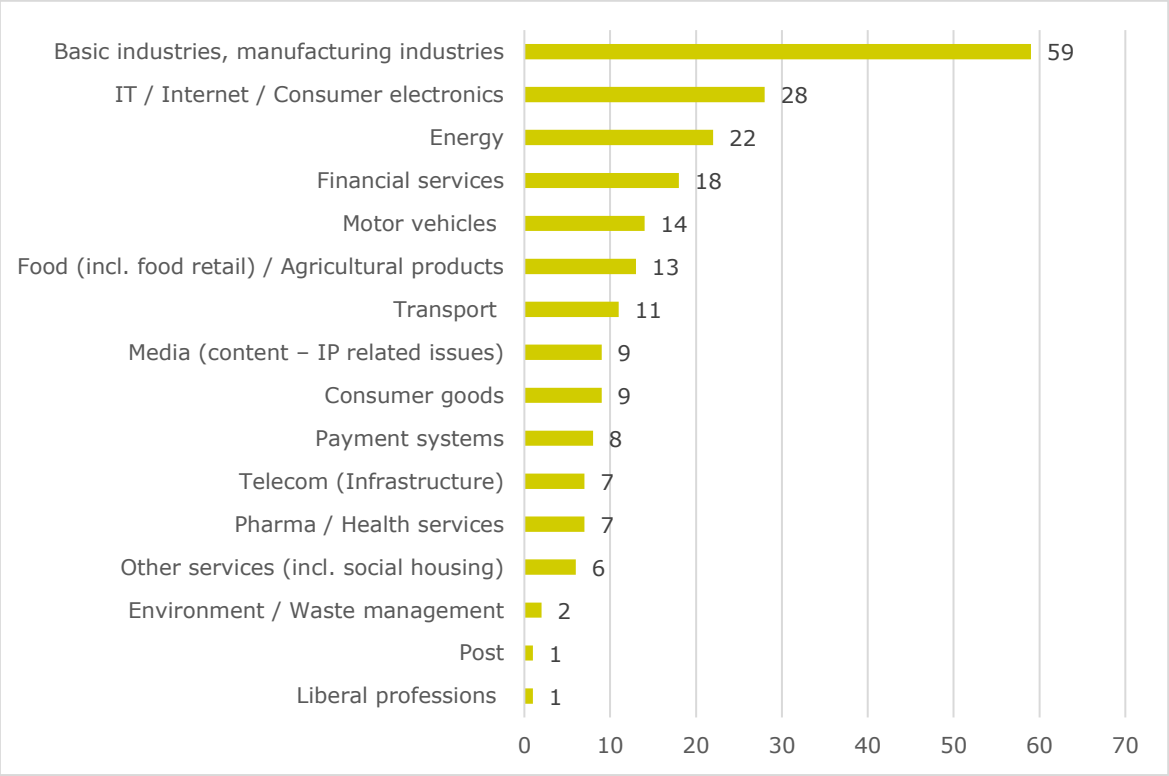

Figure 2 - Number of Commission decisions applying Articles 101 and / or 102 per sector (N=215)
Source: Annex VII

25. The Figure below indicates whether the Commission adopted the decisions in the relevant sector under Article 101 and / or under Article 102.

[29] Sectors identified by DG COMP.

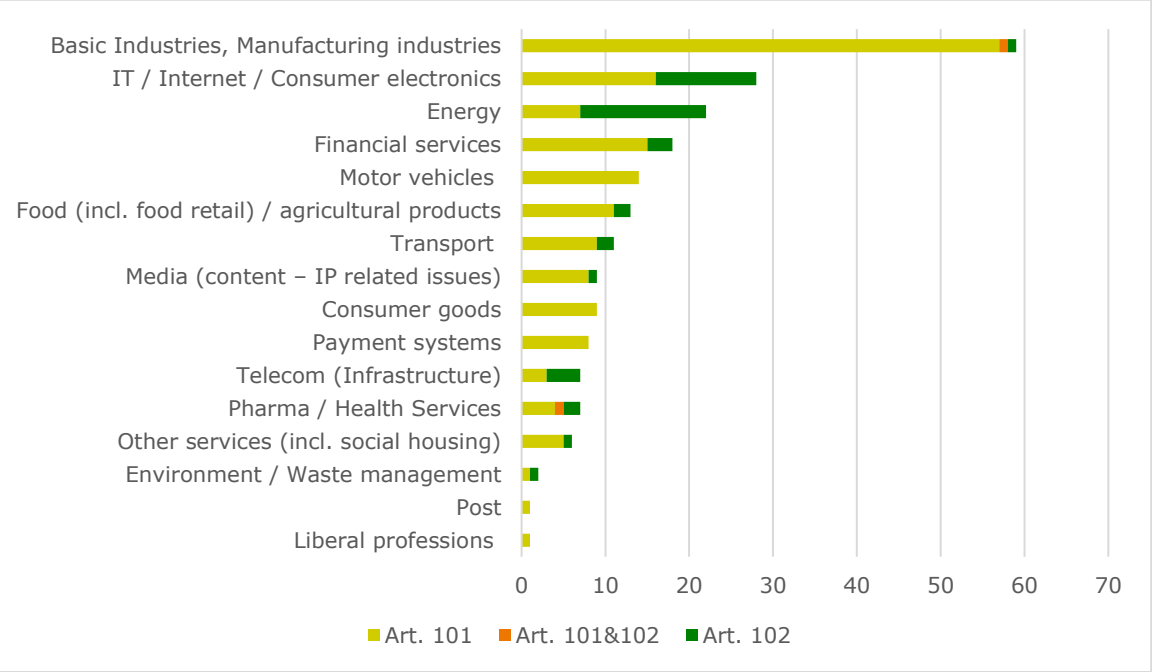

Figure 3 – Specification per sector of the number of Commission decisions adopted under Article 101, Article 102, or both Articles 101 and 102 (N=215)
Source: Annex VII

Of the decisions adopted under Article 101, the largest number applied to the sectors "Basic and manufacturing industries", "IT / Internet / Consumer electronics", "Financial services", and "Motor vehicles" sectors.

Of the decisions adopted under Article 102, the largest number applied to the sectors "Energy" and "IT / Internet / Consumer electronics".

1.1.4 Ordinary procedure / commitments / settlement / cooperation

26. Infringements or possible infringements of Articles 101 and / or 102 TFEU can lead to different types of Commission decisions. More commonly, the Commission adopts prohibition decisions under Article 7 of Regulation 1/2003. These procedures may follow an 'ordinary' route or, in some cases, a truncated administrative procedure. The cartel settlement procedure, introduced in 2008 via an amendment to Regulation 773/2004 and the adoption of the Settlement Notice, enables the Commission to conclude cartel investigations more rapidly. This quicker process is available when companies acknowledge their involvement in the infringement, in return for a 10% reduction in their fine.

Similarly, cooperation[30] procedures permit companies in antitrust proceedings to benefit from a fine reduction and a streamlined administrative process by admitting their (participation in the) infringement.

[30] "Cooperation decisions" refers to decisions where a reduction in the fine is granted by the Commission in order to reflect the effective cooperation of an undertaking with the Commission beyond its legal obligation to do so, pursuant to paragraph 37 of the *Guidelines on the method of setting fines pursuant to Article 23(2) of Regulation No 1/2003*, *OJ* C 210, 1 September 2006. See, for example: Commission, Decision of 17 December 2018, Case AT.40428, *Guess*, paragraph 18. This will not normally happen in cartel cases.

Lastly, Regulation 1/2003 introduced the possibility for the Commission to enforce binding commitments offered by companies, addressing the competition concerns identified by the Commission (Article 9 of Regulation 1/2003).

The different decision profiles adopted by the Commission under Regulation 1/2003 are further explored below.

27. Among the 215 relevant Commission decisions identified earlier (*supra*, paragraph no. 19) the Consortium identified:

— 52 Commission decisions making commitments binding;

— 40 cartel settlement decisions; eight of these settlement decisions were part of hybrid procedures in which one or more parties agreed to take part in the settlement process and one or more parties did not; and

— 17 Commission decisions adopted after cooperation (leading to a fine reduction.)

The Commission adopted 106 decisions under Article 7 of Regulation 1/2003 under an ordinary procedure which were neither settlement decisions, nor involved cooperation.

28. The following Figure illustrates the evolution in numbers over the years under study (2004-2022).

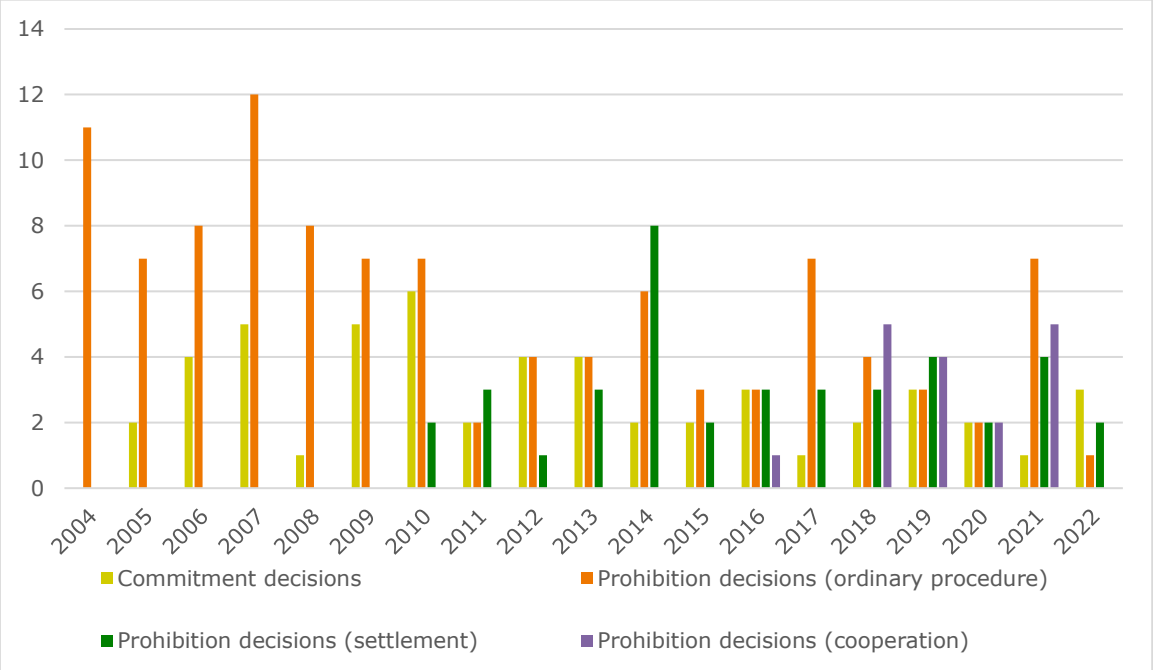

Figure 4 – Number of Commission decisions adopted via an ordinary procedure (i.e. without settlement or cooperation) / commitment / settlement / cooperation, per year for that respective year (N=215)
Source: Annex VII

1.1.5 Sources of Commission investigations (ex officio / formal complaint / leniency)

29. Of the 215 relevant Commission decisions applying Article 101 and / or Article 102:

— 94 (43.7%) decisions were adopted following investigations initiated ex officio;[31]

— 91 (42.3%) decisions originated from the submission of a leniency application; and

— 30 (14.0%) decisions followed a formal complaint.

30. Of the 94 decisions resulting from investigations initiated ex officio, 39 were commitment decisions and 55 were prohibition decisions.

The 91 decisions which originated from a leniency application are all prohibition decisions and all concern cartels. This is logical, as an EU leniency applications can only be filed in cartel cases. Of the 91 decisions, 36 are settlements.

Of the 30 decisions adopted following a formal complaint, 13 were commitment decisions and 17 were prohibition decisions.

31. If Commission decisions under Article 101 are considered separately, the following results emerge. The Commission adopted 169 decisions under Article 101, of which 112 decisions qualified as cartel decisions. Of these 112 decisions, 91 originated from a leniency application whereas 21 were the result of investigations initiated ex officio.

Of the 57 decisions adopted under Article 101 that do not qualify as cartel decisions, 44 were a result of investigations initiated ex officio and 13 followed a formal complaint.[32]

32. Out of the 44 decisions adopted under Article 102, 28 were a result of investigations initiated ex officio and 16 followed a formal complaint.

33. Proceedings opened after a formal complaint tend to take considerably longer than proceedings initiated ex officio (including on the basis of informal complaints) or after a leniency application, as illustrated in the Figure below.

[31] This includes investigations initiated on the basis of an informal complaint.
[32] No leniency applications are possible in non-cartel cases.

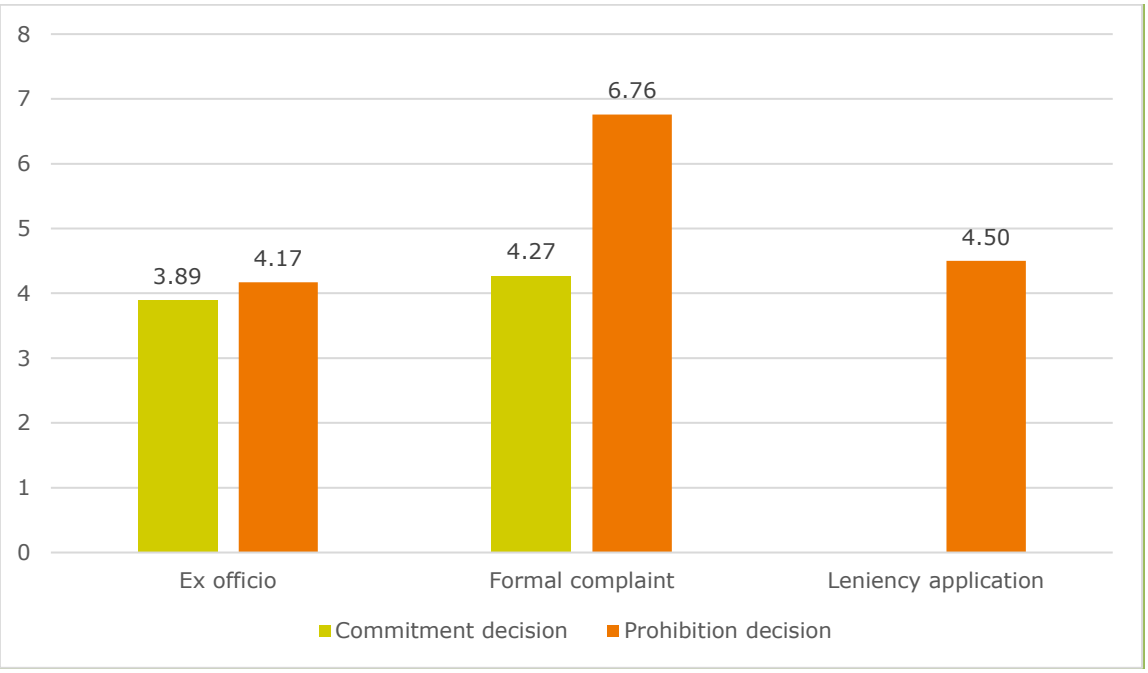

Figure 5 - Average duration (in years) of proceedings under Articles 101 and / or 102 if initiated ex officio, via formal complaint, or via leniency application separated into commitment and prohibition decisions[33] (N=188)
Source: Annex VII

The longer duration of prohibition decisions following a formal complaint is even more pronounced when looking at the median duration (see Table below). Approximately half of the prohibition decisions adopted following a formal complaint took more than 7.22 years. As the median duration for this type of decisions is longer than the average (mean) duration, and the standard deviation is more than three years, this indicates the existence of a number of prohibition decisions following a complaint which are adopted in a much shorter timeframe than the average duration for the adoption of such a decision. In general, proceedings initiated via a formal complaint show the highest

[33] This excludes two Commission decisions each of which applies both Articles 101 and 102 in one and the same decision and which have a duration respectively of 5.6 years (AT.39612 – Servier – ex officio prohibition decision) and 7.6 years (AT.39230 – Reel / Alcan – commitment decision following a formal complaint).

standard deviation in average duration, indicating a spread in the duration of these proceedings.

The medians for the other decisions are lower than the corresponding average, indicating possible outlier decisions which took much longer than the average duration.

	Ex Officio		Formal Complaint		Leniency application	
	Commitment	Prohibition	Commitment	Prohibition	Commitment	Prohibition
Median	3.56	3.97	3.67	7.22	-	4.47
Standard Deviation	1.83	2.02	2.49	3.33	-	1.57

Table 2 - Median and standard deviation for the average duration (in years) of proceedings under Articles 101 and / or 102 if initiated ex officio, via formal complaint, or via leniency application
Source: Annex VII

1.1.6 Number of addressees

34. From the 215 Commission decisions (*supra*, paragraph no. 19), it appears that a large majority (67.9%) of relevant Commission decisions involved more than two addressees whereas almost one third of the relevant decisions (32.1%) involved only one addressee or two addressees. In addition, commitment decisions generally involved a lower number of addressees, with an average of 3.35 addressees, whereas prohibition decisions on average involve 9.1 addressees.

35. The following Figure links five parameters within one and the same Figure: number of addressees, average length of decisions in pages, type of decision, number of decisions and duration in years.

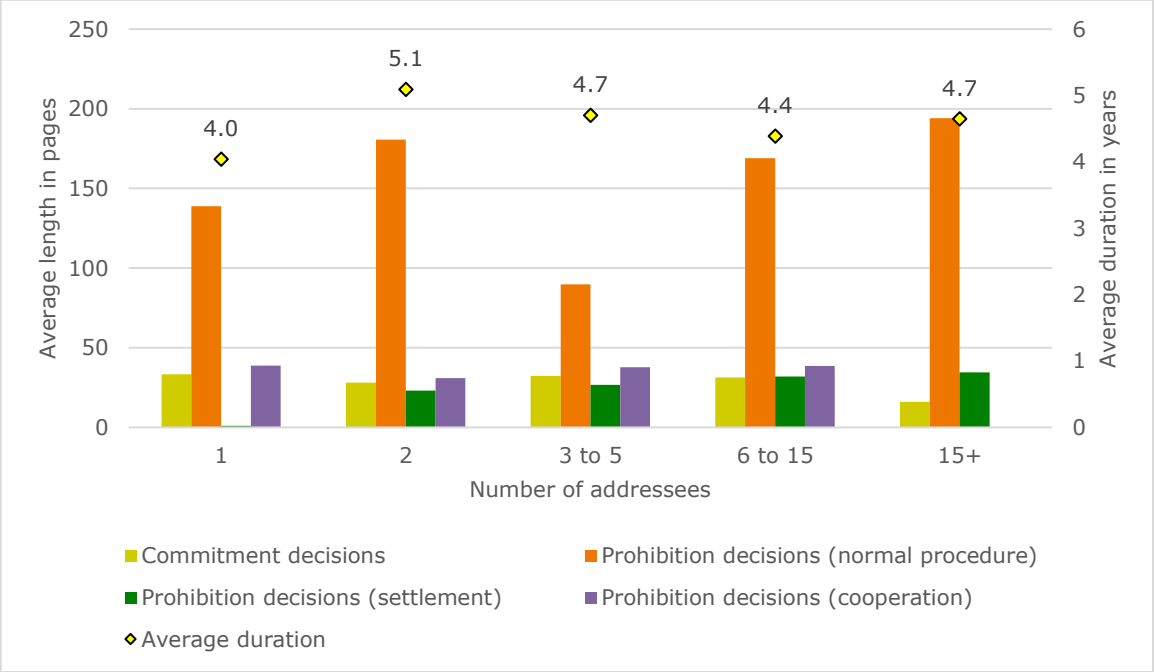

Figure 6 - Average length of decisions in pages per grouped number of addressees and per type of decision, cross-referenced with average duration of decisions in years per grouped number of addressees (N=215)[34]
Source: Annex VII

36. The Consortium considers that it is not possible to deduce from the tables above a direct link between the number of addressees and the average length of Commission decisions in pages, nor between the number of addressees and the average duration of proceedings.

1.1.7 Duration of proceedings (from date of formal complaint or date of first investigative step, whichever is earliest)

General overview

37. The starting point for investigations under Regulation 1/2003 is not always straightforward. After discussions with DG COMP, it was agreed that the most accurate approach for the Consortium would be to use either the first investigative step or the date of a formal complaint, whichever is the earliest, as the starting point. Other possible starting points, such as initial registration or formal initiation of proceedings pursuant to Article 2 of Regulation 1/2003 were not considered by DG COMP as being sufficiently reflective of the true duration of proceedings or would not give a good basis for comparability of duration.

38. Of the 215 relevant Commission decisions applying Articles 101 and / or 102 (*supra,* paragraph no. 19), the Consortium was able to use 190 decisions for the calculation of average duration.[35] The Consortium could not calculate the duration for Commission

[34] Re-adoption decisions and decisions for which no first date of reference could be determined were excluded for the dedicated average duration calculations (N=190).
[35] For 12 Commission decisions, all of which were initiated ex officio, no first date of reference could be determined. Furthermore, 13 decisions were excluded because these are re-adoptions of earlier decisions.

decisions which included neither a date[36] for the first investigative step nor a date of a formal complaint.[37] Re-adoption decisions were also excluded from the calculation of duration.

39. For the 190 relevant Commission decisions referred to above, the average duration for the Commission to adopt a decision under Article 101 and / or Article 102 was **4.54** years.

Duration and legal basis, by prohibition and commitment decisions

40. Results for the duration per legal basis are as follows.

For decisions applying Article 101[38], the average duration for the Commission to adopt a decision is 4.47 years.

For decisions applying Article 102[39], the average duration for the Commission to adopt a decision is 4.67 years.[40]

[36] The average duration of relevant proceedings is provided in years, calculated by dividing the average number of months by 12. Some Commission decisions referred to the month and year (but not the day) in which the first investigative step was initiated by the Commission, in which case the Consortium used the first day of that month as a proxy for the (exact) date of the first investigative step.
[37] The method for this sub-question was amended during the course of the Study: the words "*from date of formal complaint or if no such formal complaint, from the date of the first investigative step*" were replaced by "*counting from the date of the submission of the formal complaint or the first investigative step (e.g. inspection, RFI), whichever is earliest, until the adoption of the decision*".
[38] Of the 169 relevant decisions, it was possible to use 147 to calculate the average duration of adoption.
[39] Of 44 relevant decisions, it was possible to use 41 to calculate the average duration of adoption.
[40] For decisions applying both Articles 101 and 102, the average time taken by the Commission to adopt a decision was 6.60 years. Only two such decisions had been adopted under Regulation 1/2003 by the end of 2022.

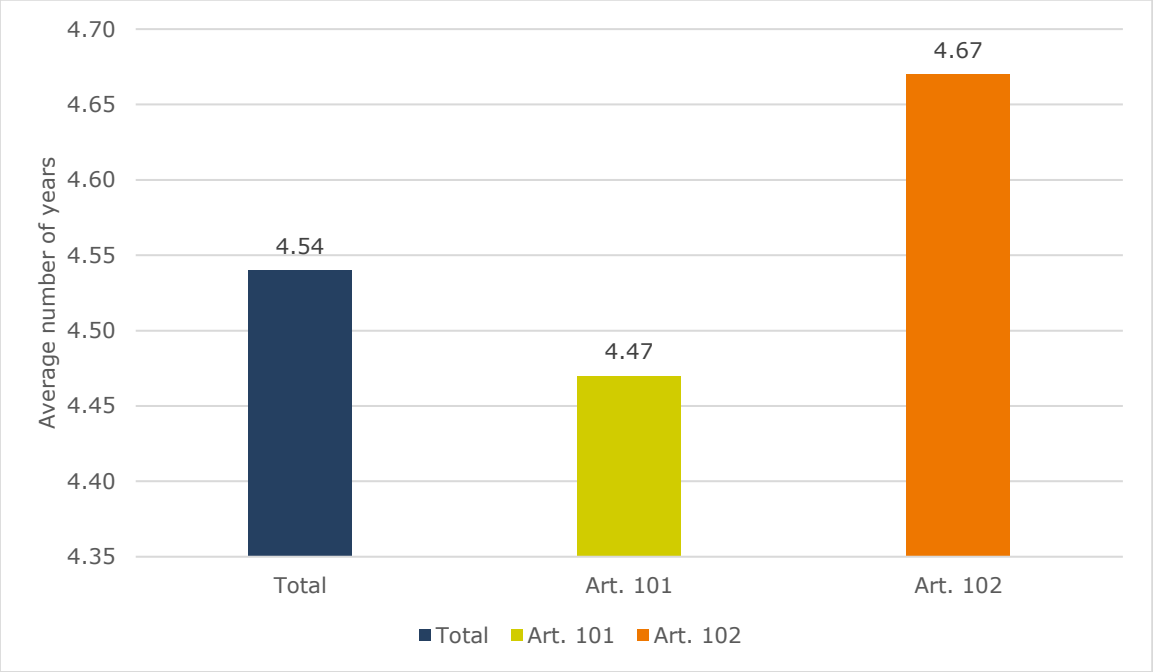

Figure 7 - Average duration (in years) for the Commission to adopt a decision (N=188)[41]
Source: Annex VII

As appears from the Table below, the median duration is lower than the average (mean) duration for both Article 101 and Article 102 decisions thus indicating a few significant outliers in terms of duration in the approx. 50% of decisions that took longer than four years.

	Total	Art. 101	Art. 102
Median	3.99	3.98	3.98
Standard Deviation	2.11	2.05	2.32

Table 3 - Median and standard deviation for the average duration (in years) for the Commission to adopt a decision
Source: Annex VII

41. The Consortium has also considered whether there is a significant difference in duration between Article 101 (cartel and non-cartel) and Article 102 investigations leading to prohibition decisions.

The Figure below compares the duration of Commission prohibition decisions under Article 101 with such decisions under Article 102. It appears that the adoption of a prohibition decision under Article 102 takes on average a year longer than the adoption of a prohibition decision under Article 101. Under Article 101, prohibition decisions in cartel cases take almost the same time as prohibition decisions in non-cartel cases.

[41] The average duration for the two decisions applying both Article 101 and Article 102 (excluded from the graph) is 6.60 years.

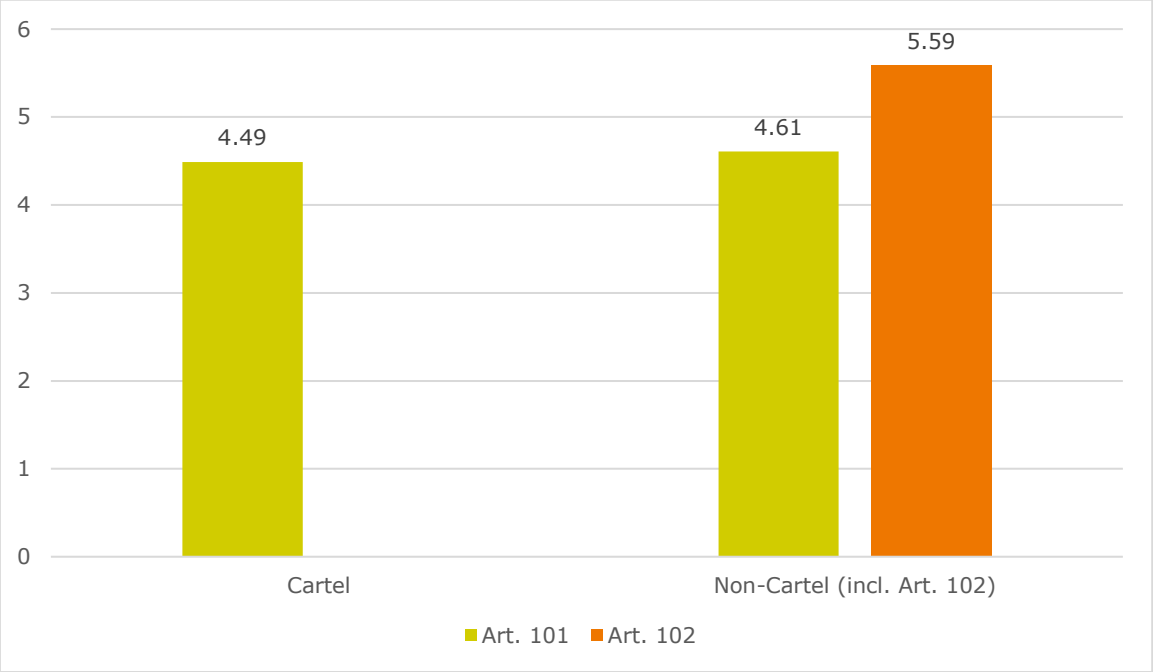

Figure 8 - Average duration in years for the Commission to adopt a prohibition decision under Article 101 (cartel and non-cartel decisions separately) and / or under Article 102 (N=149)[42]
Source: Annex VII

Comparing the average duration to the median indicates significant outliers in the 50% of Article 101 non-cartel decisions that took longer than four years. Article 102 non-cartel decisions are more evenly distributed, as the median duration is close to average duration. For both Article 101 and Article 102, the high standard deviation in non-cartel cases indicates a spread in the duration of these proceedings. Cartel cases have a significantly lower spread.

	Cartel (Art. 101)	Non-Cartel (Art. 101)	Non-Cartel (Art. 102)
Median	4.31	3.97	5.57
Standard Deviation	1.60	3.03	2.58

Table 4 - Median and standard deviation for the average duration (in years) for the Commission to adopt a prohibition decision
Source: Annex VII

42. The Consortium has also considered whether there is a significant difference in duration between Article 101 and Article 102 investigations leading to commitment decisions. The Figure below compares the duration of Commission commitment decisions under Article 101 with such decisions under Article 102. It appears that the adoption of a commitment decision under Article 101 and 102 is similar with Article 102

[42] Articles 101 and 102 were applied in one prohibition decision adopted in 2015 (Case AT.39612), excluded from the graph; the duration was 5.6 years.

taking only slightly less time on average (4 years) compared to the adoption of a commitment decision under Article 101 (4.1 years).

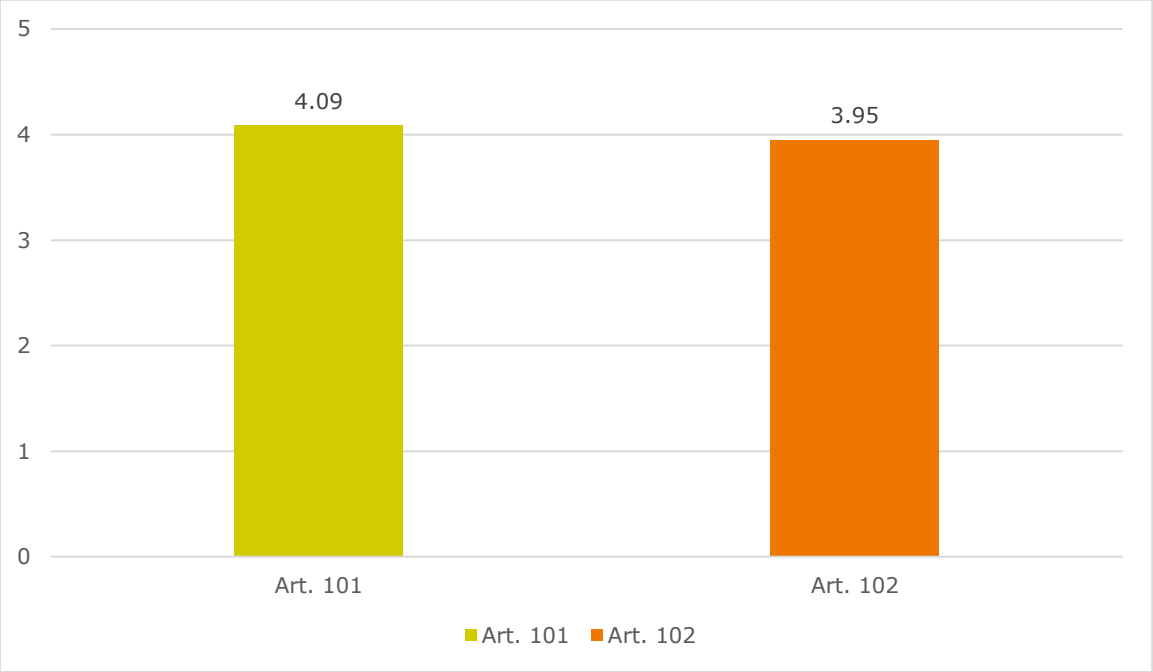

Figure 9 - Average duration in years for the Commission to adopt a commitment decision under Article 101 or under Article 102[43] (N=39)
Source: Annex VII

The median duration of Article 101 and Article 102 decisions, being lower than the average (mean) duration, indicates the existence of more extreme outliers in the 50% of decisions that took longer than 3.81 and 3.56 years respectively. The standard deviation likewise indicates that there is a larger spread in the duration of decisions adopted under Article 101 than those taken under Article 102.

	Art. 101	Art. 102
Median	3.81	3.56
Standard Deviation	2.32	1.85

Table 5 - Median and standard deviation for the average duration (in years) for the Commission to adopt a commitment decision
Source: Annex VII

43. Finally, comparing the investigations leading to commitment decisions and those leading to prohibition decisions, it is clear that the duration for commitment decisions under Article 102 is much shorter than for prohibition decisions adopted under Article 102. In this context, there is a higher proportion of commitment decisions relative to prohibition decisions under Article 102: under Article 102, there were 26 commitment

[43] Articles 101 and 102 were applied in one commitment decision adopted in 2012 (Case AT.39230); the duration was 7.6 years.

decisions versus 18 prohibition decisions, whereas, by comparison, 25 commitment decisions were adopted under Article 101 versus 144 prohibition decisions, which is to be expected given that prohibitions under Article 101 include cartel decisions.[44] [45]

The Consortium also observes that settlement and cooperation procedures (where the procedure can be expected to be less adversarial) generally lead to a shorter duration of respective investigations.

44. Comparing the time taken to adopt prohibition decisions (normal procedure) with the time for the adoption of commitment decisions and prohibition decisions adopted after cooperation or settlement, it appears that prohibition decisions (normal procedure) take on average longer to adopt as shown in the Figure below.

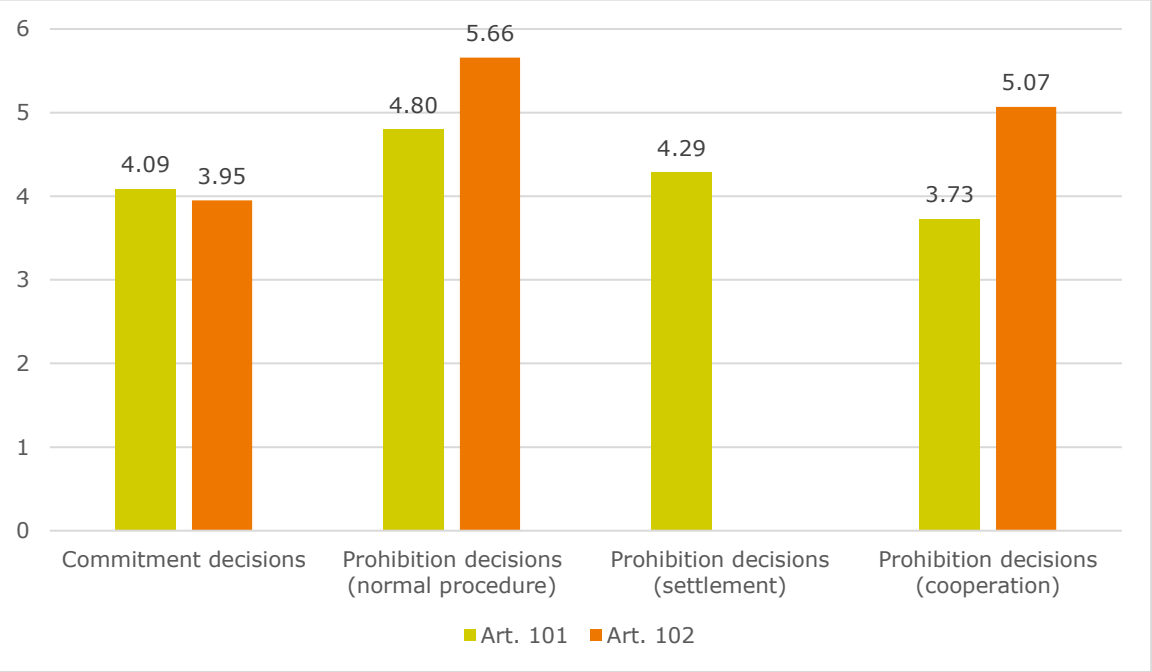

Figure 10 - Average duration in years for Commission adoption of a decision under Articles 101 or 102, split between commitment decisions and various types of prohibition decisions (N=188)[46]
Source: Annex VII

Examining duration more closely, the relevant standard deviation indicates that prohibition decisions (normal procedure) have the most significant spread in the duration required for decisions to be adopted. Article 101 commitment decisions show a similar large spread. Prohibition decisions (cooperation) deviate the least from their

[44] The Commission does not apply the Article 9 procedure to cartels that fall under the Notice on immunity from files and reduction of fines in cartel cases. See Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU [2011] OJ C 308, 6.
[45] This counts all relevant Commission decisions applying Article 101 or Article 102, including the 13 re-adoption decisions and 12 decisions for which a relevant starting date of reference could not be determined by the Consortium for the duration calculation. The two decisions applying both Article 101 and Article 102 are excluded from these calculations.
[46] The average durations for the two additional decisions applying both Article 101 and Article 102 were respectively 7.6 years (commitment decisions) and 5.6 years (prohibition decision).

average (mean) duration and the proximity of their averages and median duration values similarly indicate little to no outliers in duration.

	Commitment decisions		Prohibition decisions (normal procedure)		Prohibition decisions (settlement)		Prohibition decisions (cooperation)	
	Art. 101	Art. 102	Art. 101	Art. 102	Art. 101	Art. 102	Art. 101	Art. 102
Median	3.81	3.56	4.39	5.71	4.01	--	3.97	5.07
Standard Deviation	2.32	1.85	2.22	2.72	1.82	--	0.98	1.08

Table 6 - Median and standard deviation for the average duration (in years) for the Commission to adopt a decision under Articles 101 and / or 102
Source: Annex VII

1.1.8 Length of decisions (pages)

45. The average length of the 215 relevant Commission decisions applying Article 101 and / or 102 (*supra*, paragraph no. 19) is 94.7 pages.[47]

The 169 decisions applying Article 101 but not Article 102 are slightly shorter than the overall average mentioned above, with an average length of 88.4 pages.

The 44 decisions applying Article 102 but not Article 101 are longer (average length of 104.1 pages) and the two decisions applying both Articles 101 and 102 are markedly longer than average (422.5 pages average length).

46. Commitment decisions have an average length of 31.2 pages, which is appreciably less than the average length in pages of prohibition decisions overall (115 pages), taking into account prohibition decisions adopted under the regular procedure as well as those involving settlement or cooperation.

At a more granular level for prohibition decisions, the following results emerge: prohibition decisions under the normal procedure are on average 159.3 pages, whereas prohibition decisions involving cooperation or settlement on average span 37.2 pages and 30.5 pages respectively.

To the extent that the objective of prohibition decisions involving settlement or cooperation procedures as well as, to a certain extent, of commitment procedures is to reduce the administrative burden that falls on the Commission and the parties involved, the average length of decisions in pages would clearly support the conclusion that this objective is reached for this parameter.

47. As the Figure below shows, prohibition decisions involving settlement and / or cooperation are also over time consistently much shorter on average in pages than prohibition decisions under the normal procedure. With one exception (the outlier year of 2008), the same applies to commitment decisions which are also consistently over time much shorter on average in pages compared to prohibition decisions (normal procedure).

[47] No public version of the full decision was available at the time of the research for the Commission decision of 10 December 2021 in Case AT.40054 (*Ethanol Benchmarks*).

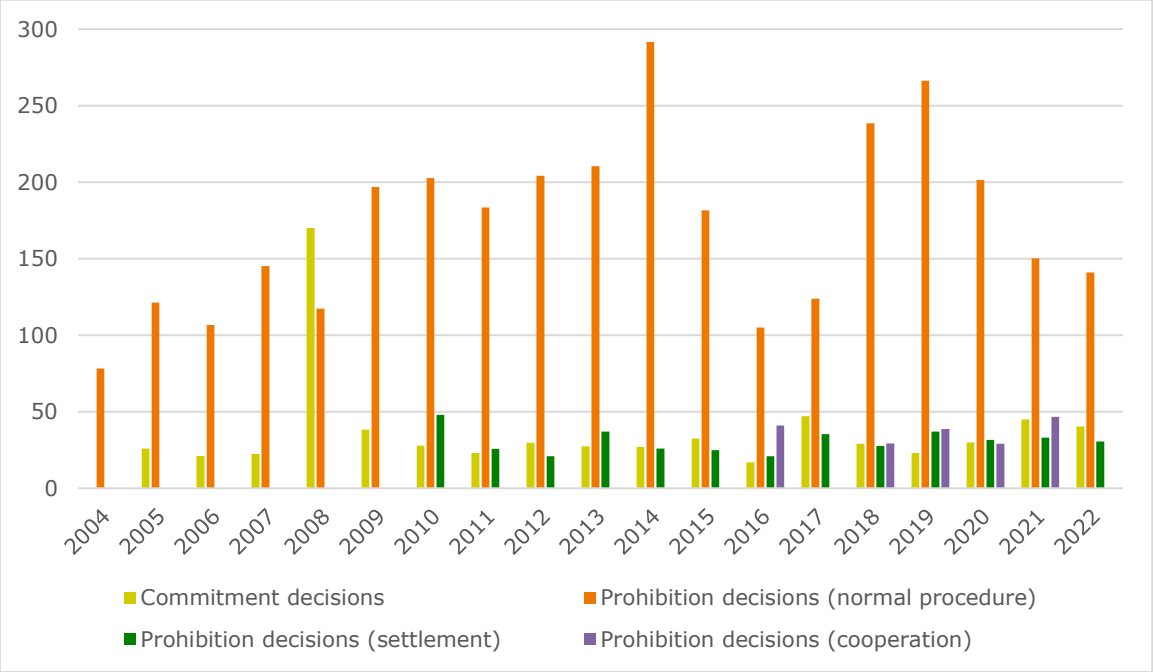

Figure 11 - Average length of decisions in pages per year, broken down by type of decision (N=215)
Source: Annex VII

The above Figure illustrates that prohibition decisions involving settlement or cooperation appear to be fairly consistent in length and are below 50 pages on average. Commitment decisions vary more in average length of pages though their average length is also shorter than the average length of prohibition decisions under the normal procedure. The latter type of prohibition decisions are by far the longest in terms of pages and, as clarified earlier in the previous sub-section, are also the longest in duration.

1.1.9 Interview feedback on duration of Commission proceedings

48. This sub-section presents relevant input from interviewed attorneys and in-house counsel. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on the duration of Commission proceedings in general. In addition, these interviewees were asked to provide feedback on potential methods for streamlining EU antitrust enforcement procedures.[48]

49. A total of 169 respondents provided input on this interview question.[49] A majority of these respondents (65.68%) are of the opinion that Commission proceedings are generally longer than would be preferable whereas 28.40% of responding interviewees state that the duration of Commission proceedings is subject to improvement. Only a minority of respondents (5.92%) consider the duration of Commission proceedings to be appropriate.

[48] See EU-27 interview question no. 18 reproduced in Annex II.
[49] Out of the 226 interviewees, a total of 169 respondents provided input to this interview question. Of these, 141 were attorneys and 28 in-house counsel. Of the 141 responding attorneys, 125 represented parties in 1one or more cartel / antitrust proceeding(s) before the Commission. Of the 28 responding in-house counsel, 20 indicated that their respective company has been involved in 1one or more cartel / antitrust proceeding(s) before the Commission.

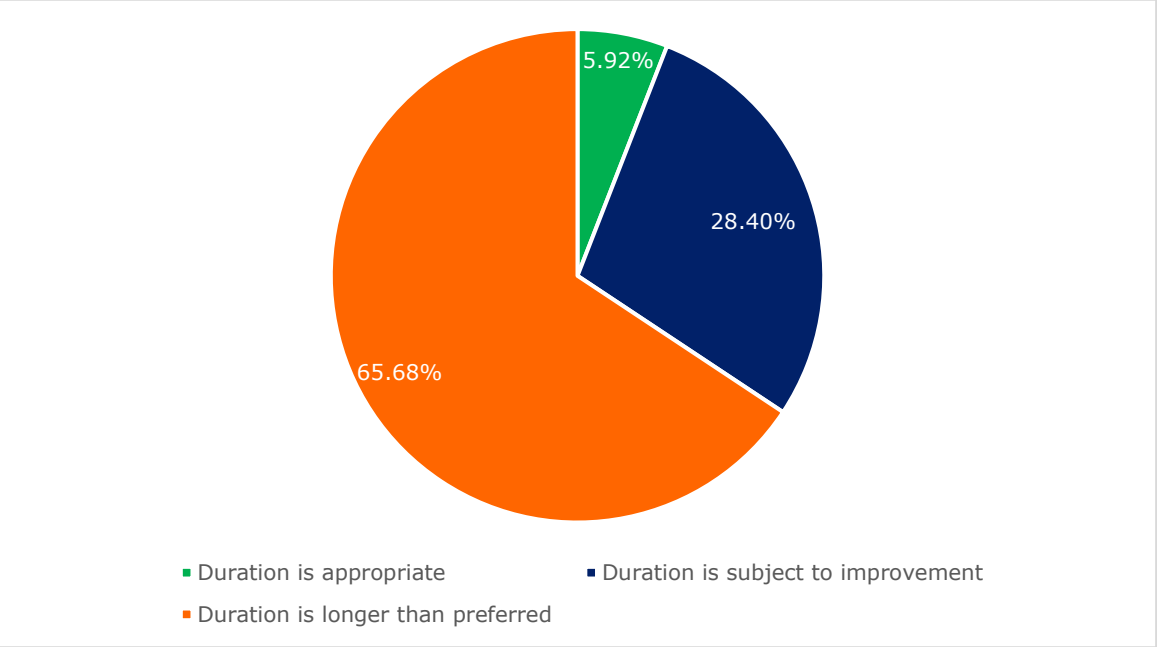

Figure 12 – Input of attorneys and in-house counsel on the duration of proceedings
Source: Standardised interviews (N=169)

50. As detailed in the Figure below on the respective case experience of respondents before the Commission, both the attorneys and in-house counsel with experience in Commission proceedings generally agree that the duration of Commission proceedings is longer than preferred.

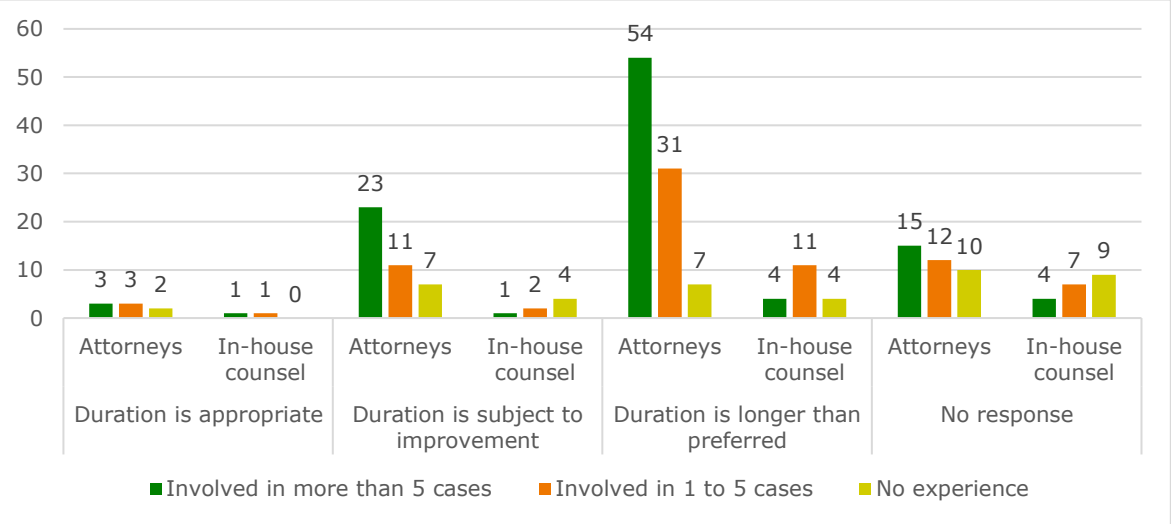

Figure 13 - Input of attorneys and in-house counsel (including respective case experience before the Commission) on the duration of proceedings
Source: Standardised interviews (N=226)

51. Interviewees note the following constructive feedback and potential concerns about the duration of Commission proceedings:

— First, 6.61% of responding interviewees consider that limiting the depth of analysis would not be an appropriate solution to speed up Commission proceedings as

interviewees are concerned that this could provide investigated parties with an opportunity to challenge Commission decisions. According to these respondents, such challenges can further complicate and delay decision-making.

— Second, 2.96% of respondents providing input on this question remark that other concerns besides the duration of Commission proceedings have to be taken into consideration. These respondents point particularly to the transparency of proceedings. Similarly, 10.65% of responding interviewees suggest focusing on providing clarity and transparency with regard to the length of Commission proceedings so that the parties would, according to these interviewees, better understand the timing of such proceedings.

— Third, of all respondents providing feedback on this question, 8.28% voice concerns with regard to the length of investigations, notably in the context of rapidly evolving markets as relevant decisions by the Commission might already be outdated by the time of their adoption. Interviewees point to the example of Microsoft noting that, by the time relevant decision-making had been adopted , the market had evolved appreciably along with the position of Microsoft in the relevant market.

— Fourth, 3.55% of respondents providing input on this interview question remark that the perceived extended duration is accompanied by uncertainty for the undertakings concerned as their operations may be hampered for several years. For example, interviewees note that companies adversely affected by anticompetitive behaviour might have to pivot their operations drastically or could be forced to exit the market entirely.

— Fifth, 2.37% of responding interviewees mention that prolonged investigations can potentially complicate enforcement. Examples referred to by respondents include (i) relevant data becoming hard to locate, (ii) key personnel no longer being present, and (iii) affected firms potentially having ceased operations. Of the total number of respondents to this interview question, 2.96% consider that potential challenges presented by extended durations are particularly acute for smaller entities. To address this issue, 4.14% of responding interviewees suggest an approach whereby the Commission would provide insights on the expected duration and potential outcomes of the investigation. According to these interviewees, this would allow small firms to more accurately evaluate their exposure.

52. According to 16.57% of respondents answering this interview question, a possible explanation for the perceived extended duration lies in the complex nature of cases and markets with which the Commission deals. In particular, these interviewees consider that such demanding cases require in-depth analyses of a considerable amount of data. Interviewees recognise that the Commission has limited resources and 8.88% of responding interviewees indicate that an increase in resources would be beneficial to handle complex cases adequately.

Additionally, 4.73% of responding interviewees suggest that any increase in resources should be accompanied by additional support from well-equipped staff with in-depth knowledge of the relevant issues. As part of a different interview question and on a related note,[50] 11 interviewees similarly underline the importance of having the necessary human and financial resources to handle complex competition cases both at

[50] See EU-27 interview question no. 17 reproduced in Annex II and Third Country interview question no. 12 reproduced in Annex III (which reads as follows: "*Do you have any other comments?*").

the EU and national level. In addition, five interviewees highlight that prolonged investigations could have negative consequences even to the extent that "delayed justice is denied justice".

53. Finally, the following suggestions were put forward by respondents to address any concerns with regard to the duration of Commission proceedings:

- Of all interviewees providing feedback on the question, 5.92% are of the opinion that the Commission should consider terminating certain investigations earlier in order to maintain a focused approach. These respondents suggest that it might be sensible to drop a case if no meaningful progress has been achieved within a certain time window. Prolonging investigations without noticeable progress is reported by these interviewees to diminish the overall value of antitrust cases as well as their relevance to the ever-evolving market landscape.
- A handful of responding interviewees (1.78%) suggest further use of settlements as they are of the opinion that these have worked rather well in the past.
- Similarly, 4.73% of interviewees providing feedback on this interview question consider it important for the Commission to focus on cases that have the potential to appreciably distort the internal market. These interviewees highlight that this approach would further bolster the efficiency of enforcement measures.
- Another suggestion on further streamlining Commission proceedings put forward by 2.37% of responding interviewees consists of more targeted and concise drafting of RFIs.
- To address potential challenges raised by prolonged proceedings, 16.57% of respondents providing feedback on this question suggest the introduction of flexible deadlines**,** including a provisional (expandable) timeframe at the outset. Interviewees believe this would help in ensuring that proceedings are sufficiently structured and transparent.
- Of the total number of interviewed respondents, 1.78% also argue in favour, in cases of delay, of reducing the fine imposed on undertakings as a measure of fairness.
- Interim measures are also highlighted by interviewed respondents as a potential tool to speed up procedures. In this context, 4.14% of responding interviewees consider that the adoption of an interim measures decision could render the overall procedure more efficient by addressing immediate concerns and removing potential obstacles.
- Upon considering potential solutions, 1.78% of responding interviewees are reluctant to the idea of outsourcing relevant analyses to external parties. Given the reportedly complex and sensitive nature of cases handled by the Commission, this group of respondents finds that the review of antitrust matters is best managed by DG COMP's internal teams.

1.2 Key data on NCA decisions applying Articles 101 and / or 102 since the applicability of Regulation 1/2003

54. This section presents relevant data on NCA decisions applying Articles 101 and / or 102 since the applicability of Regulation 1/2003 in order to support DG COMP in its evaluation of the Regulations.

1.2.1 Number, legal basis and typology of NCA decisions

55. The Consortium was requested to research the number of decisions applying Articles 101 and / or 102 as adopted by the NCAs and by the UK competition authorities since the applicability of Regulation 1/2003, regardless of whether equivalent provisions under national law were applied in parallel.[51]

The Consortium was also requested to determine how many of the above decisions might be categorised as prohibition decisions / cease and desist orders, commitment decisions, interim measures decisions, as well as decisions which combine features of prohibition decisions / cease-and-desist orders, commitment decisions, interim measures, and procedural infringements.

56. The Consortium identified 1 470 decisions adopted by the NCAs and the UK competition authorities since the applicability of Regulation 1/2003 and until December 2022[52] indicating that Articles 101 and / or 102 were applied (irrespective of whether these were applied in parallel with equivalent national provisions).

57. Of the abovementioned 1 470 decisions, the Consortium identified:

— 975 decisions adopted under Article 101 (66.33%); 400 decisions adopted under Article 102 (27.21%); and 95 decisions adopted under both Articles 101 and 102 (6.46%) (Figure 20); or

— via a different categorisation of the same decisions: 1 013 decisions qualifying exclusively as prohibition decisions / cease-and-desist orders[53] (68.91%); 356 qualifying exclusively as commitment decisions (24.22%); 51 qualifying exclusively as interim measure decisions (3.47%); 48 qualifying as decisions which combine features of prohibition decisions / cease-and-desist orders, commitment decisions, interim measures and / or procedural infringements (3.27%); and two decisions of which the type could not be determined.

[51] See desk research question no. 1.1 reproduced in Annex I. Following consultation with DG COMP and for categorisation purposes, fining decisions adopted by the German NCA and conviction decisions adopted by the Irish courts in criminal proceedings arising out of investigations by the Irish NCA have been qualified as cease-and-desist orders in the context of the Study.
[52] Until 31 January 2020 for decisions adopted by the UK competition authorities.
[53] Following consultation with DG COMP and for categorisation purposes, fining decisions adopted by the German NCA and conviction decisions adopted by the Irish courts in criminal proceedings arising out of investigations by the Irish NCA have been qualified as cease-and-desist orders in the context of the Study. See Annex VIII. NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set

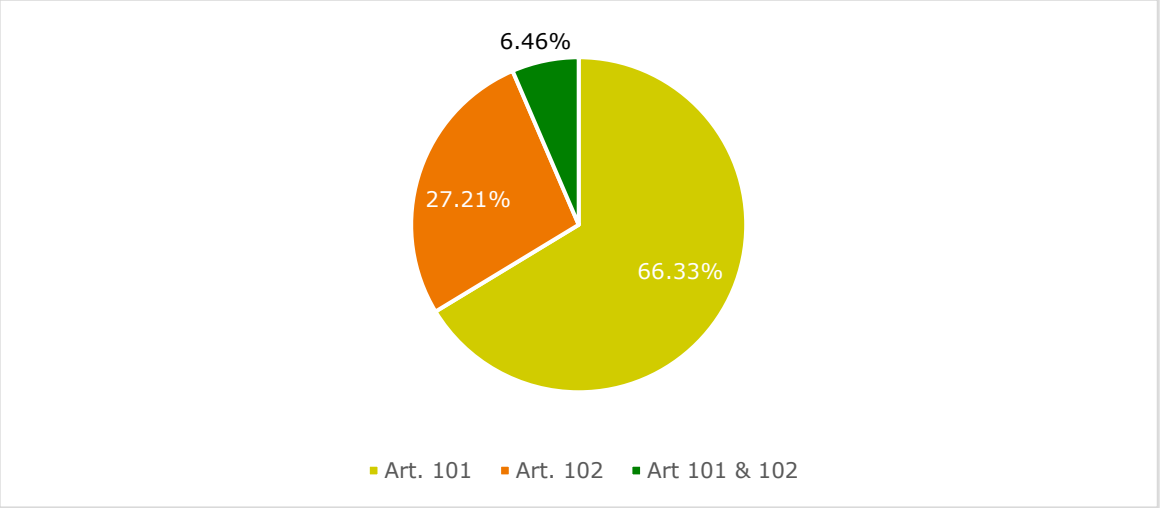

Figure 14 - Legal basis of NCA and UK competition authority decisions (including prohibition decisions, commitment decisions and interim measures decisions as well as decisions combining features of prohibition decisions, commitment decisions, interim measures and / or procedural infringements) (N=1 470)
Source: Publicly available data and further input partly provided by the NCAs (2004-2022). NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set

1.2.2 Parallel or stand-alone application of Articles 101 and / or 102 and equivalent national provisions by NCAs

58. In order to assist DG COMP in its evaluation of parallel enforcement, the Consortium was requested to determine in how many of the NCA prohibition decisions / cease-and-desist orders and commitment decisions since the applicability of Regulation 1/2003, the NCAs had:[54]

— applied Articles 101 and / or 102 on a standalone basis;

— applied Articles 101 and / or 102 in parallel with their equivalent national competition law provisions;[55] and

— applied the equivalent national competition law provisions without applying Articles 101 and / or 102.[56]

Under Article 3(1) of Regulation 1/2003, NCAs are required to apply Article 101 whenever national competition law is applied to agreements, decisions by associations of undertakings or concerted practices; NCAs are required to apply Article 102 whenever national competition law is applied to an abuse of dominance prohibited by Article 102. Both Articles 101 and 102 include the criterion that the relevant anticompetitive

[54] See desk research questions nos. 5 and 6 reproduced in Annex I. Following consultation with DG COMP and for categorisation purposes, fining decisions adopted by the German NCA and conviction decisions adopted by the Irish courts in criminal proceedings arising out of investigations by the Irish NCA are deemed to be cease-and-desist orders in the context of the Study.
[55] See desk research question no. 5 reproduced in Annex I.
[56] See desk research question no. 6 reproduced in Annex I.

agreement or practice on the part of an undertaking should be one "which may affect trade between Member States".[57]

59. The Consortium has identified 2 707 relevant decisions adopted by NCAs.[58] "Relevant" decisions are decisions which:

— can be deemed (i) prohibition decisions / cease-and-desist orders, (ii) commitment decisions, or (iii) a combination of both;[59] and

— apply Articles 101 and / or 102 and / or equivalent national law provisions.

Of these 2 707 relevant NCA decisions, 1 331 decisions, or slightly less than half (49.2%), apply Articles 101 and / or 102.[60] Of these 1 331 decisions, 191 only apply Articles 101 and / or 102 and not their national equivalents, whereas the remaining 1 140 decisions apply EU law in parallel with national law.

60. In summary, in the 2 707 relevant NCA decisions the NCAs apply:

— Article 101 and / or 102 and equivalent national provisions in parallel in 1 140 decisions (42.1% of decisions);

— only equivalent national provisions in 1 368 decisions (50.54% of decisions); and

— only Articles 101 and / or 102 in 191 decisions (7.06% of decisions).[61]

[57] The Court of Justice of the European Union (the "**CJEU**") has interpreted the effect on trade concept in its case law and the Commission has adopted *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty*, *OJ* C 101, 27.4.2004, 81 with a view to providing guidance to the courts and authorities of the Member States in their application of the effect on trade concept.

[58] This excludes the UK competition authorities as desk research questions nos. 5 and 6 do not consider decisions adopted by UK competition authorities.

[59] Of the 2 707 decisions, 2 048 (75.66%) qualify exclusively as prohibition decisions / cease-and-desist orders; 570 (21.05%) qualify exclusively as commitment decisions, and 89 (3.29%) combine elements of these two types of decisions and / or other types of decisions (e.g. interim measures, procedural infringements, or sector inquiries).

[60] This is fully coherent with the results found in paragraph no. 56 *et seq.* of the Study. There it was indicated that the NCAs and UK competition authorities combined had adopted 1 470 decisions, of which (i) 1 013 (68.91%) were prohibition decisions / cease-and-desist orders applying Articles 101 and / or 102, (ii) 356 (24.22%) commitment decisions applying Articles 101 and / or 102 and (iii) 47 (3.20%) decisions combining elements of both (not taking into account one decision combining elements of an interim measures decision and a procedural infringement decision which was considered in that section). Of these 1 416 decisions, 85 (6%) are decisions adopted by UK competition authorities. Therefore, the total number of NCA decisions under the aforementioned categories (i), (ii) and (iii) is 1 331.

[61] The remaining eight decisions (0.3% of decisions) are cases in which it was not possible to determine which EU or national legal provision was applied, for instance, because the cease-and-desist decision was only identified in a summary version from an annual report by the NCA or because the relevant commitment decisions only referred to concerns regarding abuse of dominance without further mentioning the legal basis.

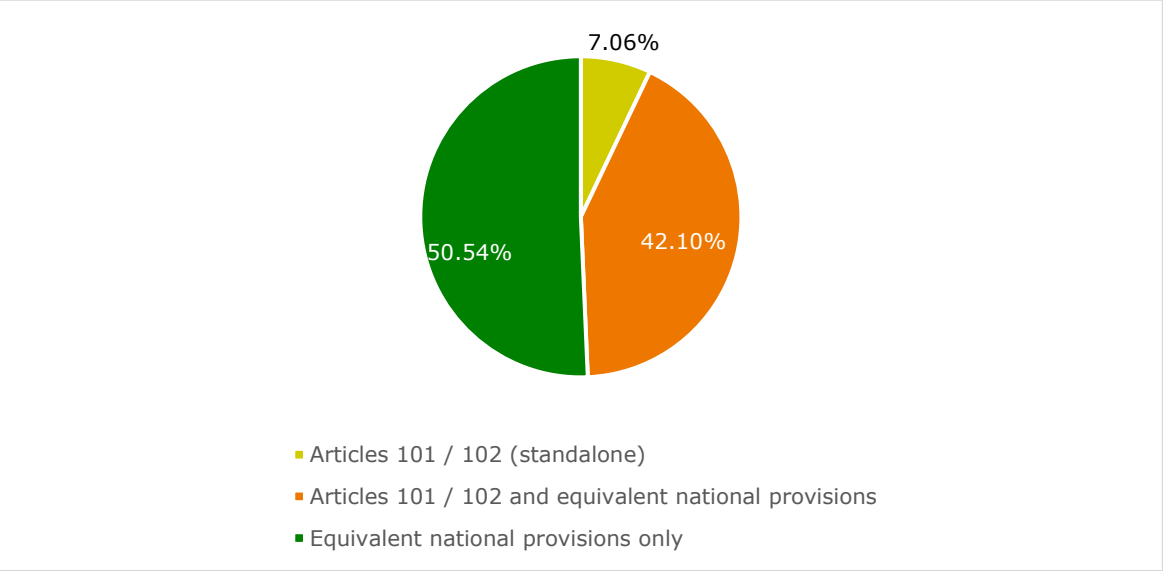

Figure 15 - Application of type of antitrust law in decisions adopted by NCAs (N=2 707)
Source: Publicly available data and further input partly provided by the NCAs (2004-2022). NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set.

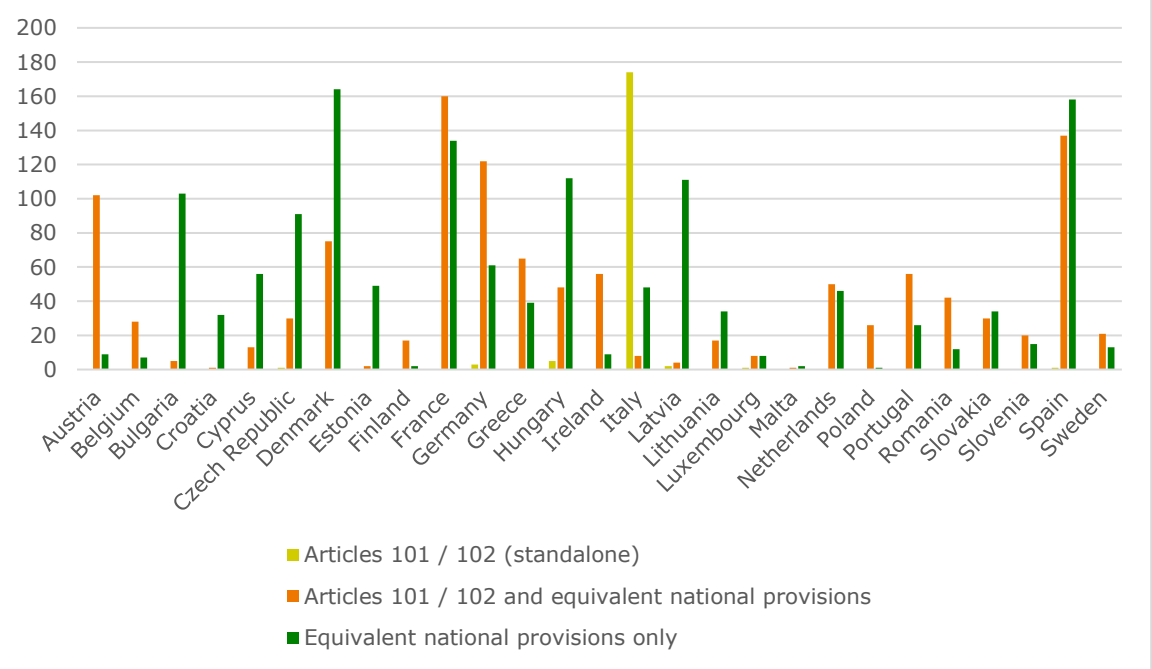

Figure 16 - Number of decisions per type of antitrust law applied adopted by NCA per jurisdiction (N=2 707).
Source: Publicly available data and further input partly provided by the NCAs (2004-2022). NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set

1.3 Perspectives collected on the overall performance of Regulations 1/2003 and 773/2004

61. This section provides input that will assist DG COMP in its overall evaluation of Regulations 1/2003 and 773/2004.

First, the Study collected views from interviewees on the effectiveness of the Regulations in achieving uniform, coherent and effective application of Articles 101 and 102, but also specifically on the performance of Article 3 of Regulation 1/2003. Interviewees were also asked to elaborate on the coherence, relevance and EU added value of the Regulations. The relevant findings are presented below.

Second, in the context of Article 3 of Regulation 1/2003 specifically, the Study also collected information from NCAs on whether their domestic legal framework includes national legislation within the meaning of Article 3(2) and 3(3) of Regulation 1/2003.

1.3.1 Interview feedback - general views on the Regulations, including on Article 3 of Regulation 1/2003

62. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Regulation 1/2003. During the interviews, respondents from the EU-27 jurisdictions were requested to assess whether Regulation 1/2003 and its Article 3 have succeeded in ensuring uniform, coherent and effective application of Articles 101 and 102.[62] The questions asked enabled the interviewees to express broad opinions on the impact of (i) Regulations 1/2003 and 773/2004 and (ii) Article 3 of Regulation 1/2003 on the application of Articles 101 and 102.[63]

On the first question with regard to the performance of Regulations 1/2003 and 773/2004 in achieving uniform, coherent and effective application of Articles 101 and 102, a total of 223 respondents provided input.[64] A majority (75.34%) of these respondents (135 attorneys; 33 in-house counsel) have provided positive feedback in relation to this topic. On the other hand, 15.70% of the respondents (32 attorneys; four in-house counsel) indicate that the performance of Regulations 1/2003 and 773/2004 has been moderate, while 8.97% (eight attorneys; 11 in-house counsel) of responding interviewees qualify the performance of the latter as negative.

[62] See EU-27 interview questions nos. 1 and 2 reproduced in Annex II.
[63] Many interviewees answered the two questions together.
[64] Of the 175 responding attorneys, 151 represented parties in one or more cartel / antitrust proceeding(s) before the Commission and 174 have represented parties in one or more cartel / antitrust proceeding(s) before NCAs. Of the 48 responding in-house counsel, 32 indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission and 46 indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before NCAs. Of the responding attorneys, 150 have represented parties in both Commission and NCA proceedings. Of the responding in-house counsel, 32 indicate that their company has been involved both in Commission and NCA proceedings.

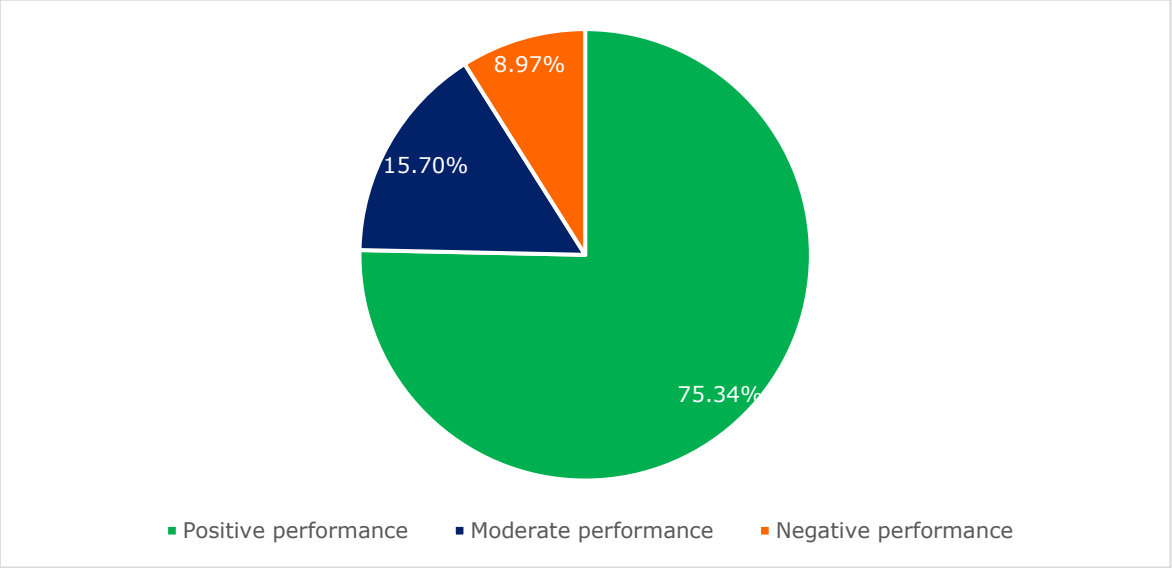

Figure 17 - Performance of Regulations 1/2003 and 773/2004 in achieving uniform, coherent and effective application of Articles 101 and 102
Source: Standardised interviews (N=223)

As detailed in the Figures below, more experienced attorneys in particular are overall positive in relation to this topic. The first Figure below shows the feedback received from attorneys and in-house counsel sorted by the respective case experience of the interviewees before the Commission; the second Figure shows the feedback received from attorneys and in-house counsel sorted by the respective case experience of the interviewees before the NCAs.

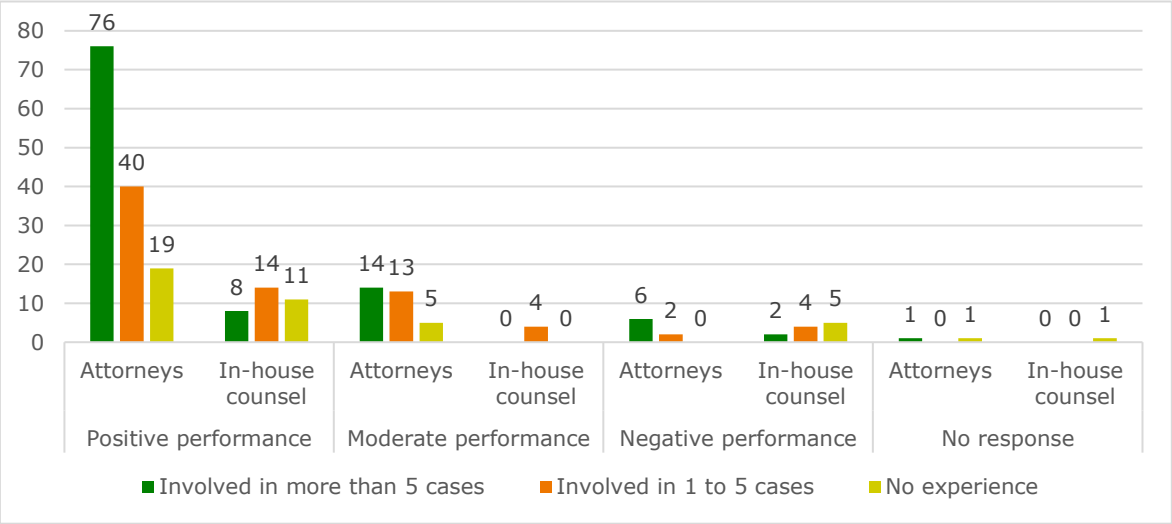

Figure 18 - Input of attorneys and in-house counsel (including respective case experience before the Commission) on the performance of Regulations 1/2003 and 773/2004
Source: Standardised interviews (N=226)

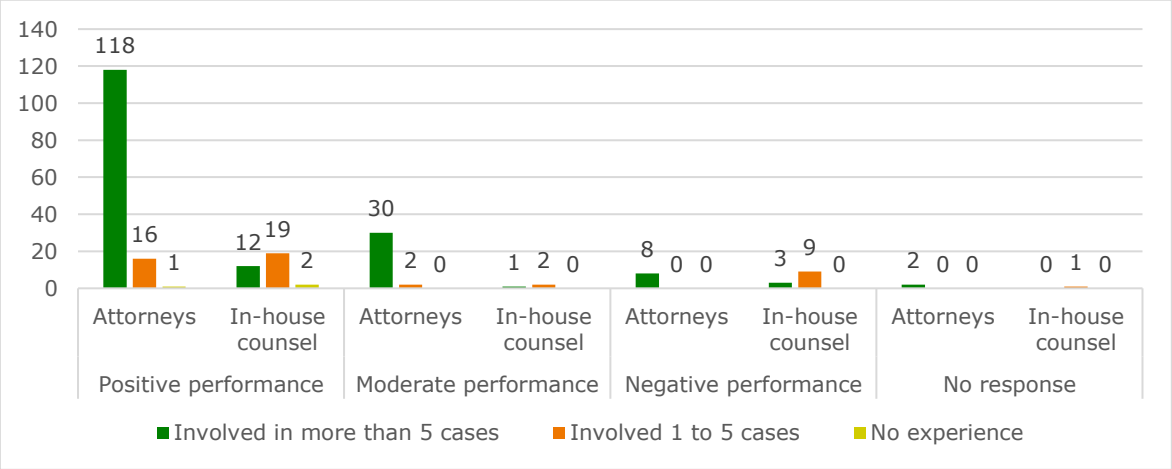

Figure 19 - Input of attorneys and in-house counsel (including respective case experience before NCAs) on the performance of Regulations 1/2003 and 773/2004
Source: Standardised interviews (N=226)

On the second question regarding the effectiveness of Article 3 of Regulation 1/2003 in ensuring a uniform and coherent application of EU competition rules, a total of 213 respondents provided input (171 attorneys; 42 in-house counsel).[65] A majority of respondents (62.26%) consider Article 3 of Regulation 1/2003 to be effective. On the other hand, 23.58% of respondents indicate that Article 3 is effective but in need of improvement while 14.15% of responding interviewees see it as ineffective.

Interviewees' overall assessment of Article 3 of Regulation 1/2003 is generally positive, as indicated by 86% of interviewees responding to Question 2, though not as positive as the overall assessment of the Regulations in general which were positively assessed by 91% of interviewees responding to question 1.

[65] Of the 171 responding attorneys, 147 have represented parties in one or more cartel / antitrust proceeding(s) before the Commission and 170 have represented parties in one or more cartel / antitrust proceeding(s) before NCAs. Of the 42 responding in-house counsel, 32 indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission and 40 indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before NCAs. Of the responding attorneys, 146 have represented parties in both Commission and NCA proceedings. Of the responding in-house counsel, 29 indicate that their company has been involved both in Commission and NCA proceedings.

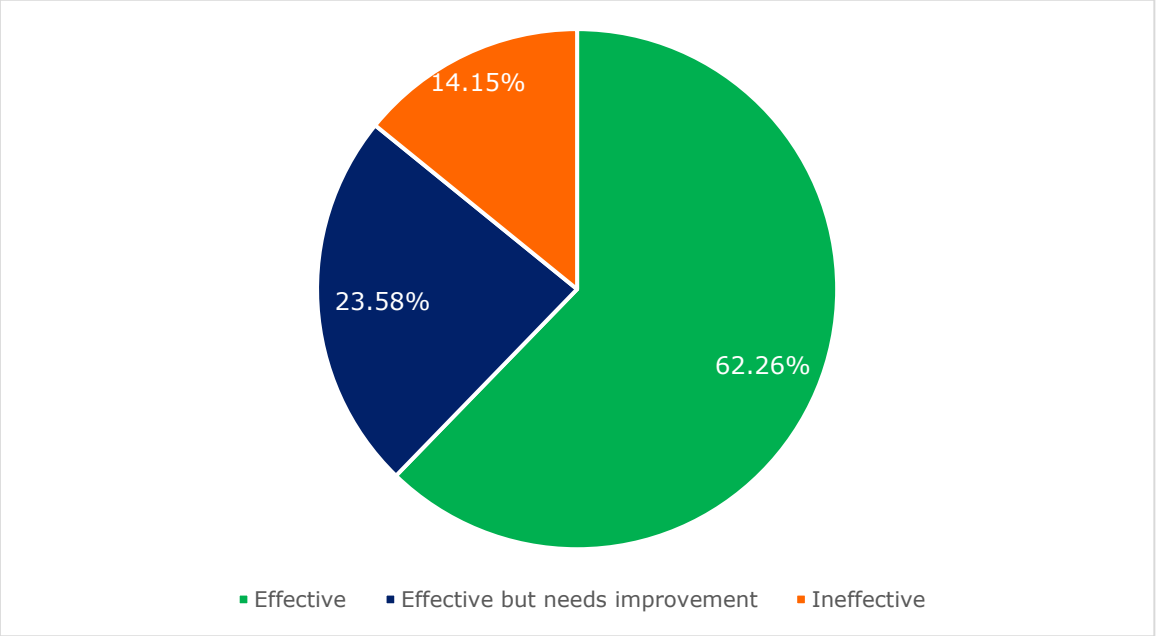

Figure 20 – Input of attorneys and in-house counsel on the effectiveness of Article 3 of Regulation 1/2003 in ensuring the uniform and coherent application of EU competition rules
Source: Standardised interviews (N=213)

As detailed in the Figures below, more experienced attorneys in particular consider Article 3 to be effective. The first Figure below shows the feedback received from attorneys and in-house counsel sorted by the respective case experience of the interviewees before the Commission; the second Figure shows the feedback received from attorneys and in-house counsel sorted by the respective case experience of the interviewees before the NCAs.

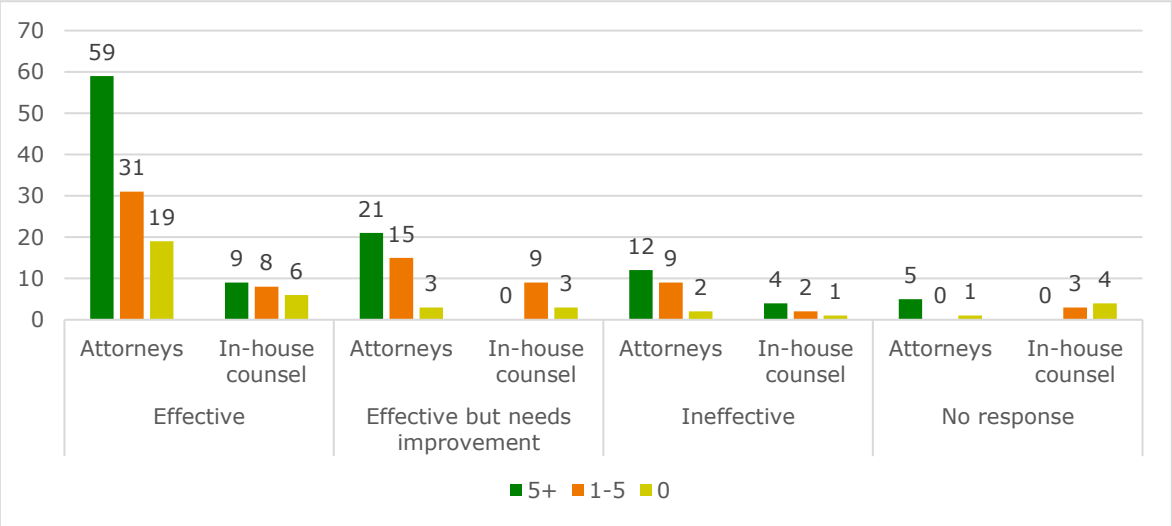

Figure 21 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness of Article 3 of Regulation 1/2003
Source: Standardised interviews (N=226)

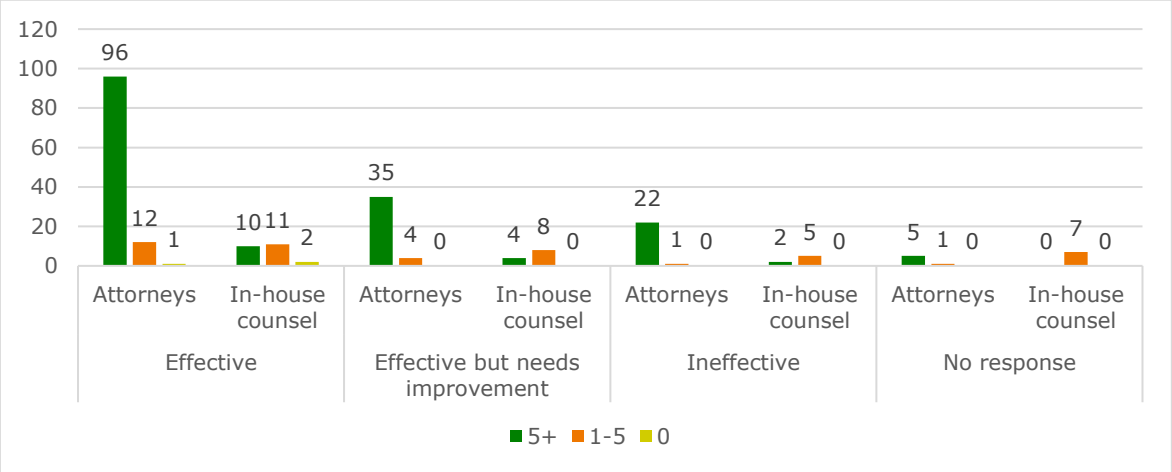

Figure 22 – Input of attorneys and in-house counsel (including respective case experience before NCAs) on the effectiveness of Article 3 of Regulation 1/2003
Source: Standardised interviews (N=226)

The following sub-sections provide an overview of positive remarks and recommendations as formulated by the interviewees.

Elements of positive assessment

63. A large majority of respondents (168 of the respondents providing input to the first question) view Regulations 1/2003 and 773/2004 as a success. They state that the Regulations have largely met expectations, particularly when considering the concerns raised at the time of their introduction two decades ago (i.e. the fear of fragmented application or even renationalisation of competition law). Even though practice has evolved over the past 20 years, the consensus among these respondents is that the overall framework remains sound and effective.

Of the respondents proving input to the first question, a minority (7.17%) elaborated on why they view the Regulations as successful, mentioning that the decentralisation in the application of EU competition law is a significant achievement of the Regulations. These respondents comment that this new approach has significantly promoted the uniform application of Articles 101 and 102, which is particularly relevant for newer EU Member States.

By abolishing the possibility of applying for individual exemptions, the Regulations introduced the obligation for companies to perform a self-assessment of their compliance with competition law. Although this emerged to be challenging for companies at first, self-assessment has gradually become the standard practice across EU Member States. In this connection, approximately 9% of the interviewees who answered the first question suggest further use of different tools that could help ensure coherence and uniformity. Of the latter interviewees, 10% suggest more frequent use of findings of inapplicability and 35% request further guidelines.

64. The feedback on Article 3 of Regulation 1/2003 is also predominantly positive, with 132 respondents considering Article 3 effective. The provision is stated to serve its purpose and is seen as crucial in ensuring a uniform application of competition law within the EU. The alignment effect, both in case law and regulation, brought about by the obligation to apply Articles 101 and 102 to all cases where trade between EU Member States may be affected is mentioned by 7.98% of the interviewees who provided an

answer to interview question no. 2. Of the latter, 3.29% indicate that there has been a cross-fertilisation of the enforcement and interpretation of EU and national competition law. These interviewees indicate that the aforementioned obligation facilitates uniform interpretation and enforcement, not only of (i) EU and national competition law, as highlighted by the frequent references to EU precedents in national decisions, but also of (ii) different national competition laws. The risk of disparities is considered to be limited. Moreover, of the 132 respondents who consider Article 3 effective, 3.79% specifically mention that by rendering processes more streamlined and effective, the Regulations have empowered NCAs to play their pivotal role as enforcers who are closer to local situations and are therefore uniquely positioned to address these situations by allowing the NCAs to apply Articles 101 / 102.

A little over 10% of respondents to the second interview question mention the strong interactions between the Commission and NCAs through the ECN as a positive outcome of Regulation 1/2003. The ECN is acknowledged as a platform for dialogue and knowledge sharing and is praised for providing guidance, especially to NCAs in smaller EU Member States. Around 8% of respondents also identify a phenomenon of "soft convergence" whereby NCAs appear to gravitate towards the guidelines and decisions set by the Commission.

Points of concern

65. A small portion of respondents address the risk of divergences in the application of Articles 101 and / or 102 between the EU and national level, or between NCAs in different Member States.

Approximately 11.66% of respondents who provided their input on interview question no. 1 pertaining to the overall performance of Regulation 1/2003 draw attention to divergences in substantive outcomes. They point to instances where NCAs take the initiative in areas where the Commission does not do so or is less outspoken. Approximately a dozen attorneys (5.83% of respondents who provided their input on Question 1) refer to sustainability agreements and the hotel booking cases at national level as examples. Some 4.93% of the respondents argue that the effectiveness of the Regulations can vary across different countries, that similar markets can be defined differently at the EU and national level, or that the decision-making practice and case law vary across EU Member States.

Interviewees who point to divergences in substantive outcomes indicate that these divergences may negatively impact a company's position. The one example most regularly referred to by 8% of respondents concerns the experience in the hotel booking cases, where the German NCA was alleged to be stricter than other NCAs. These respondents express a concern that the hotel booking platforms had to deal with different procedures and diverging outcomes, making it difficult for them to maintain a consistent business model across different EU Member States. According to these respondents, a Commission investigation would have avoided the inconsistencies.

Some 4% of the interviewees who answered the first interview question argue that nuances across countries also affect more procedural aspects like causality, proof of damage or evidence. This is illustrated by the different approaches towards granting access to documents and materials during official inspections.

Of those respondents who answered interview question no. 1, 4.5% consider that the Commission should be more assertive in ensuring uniform and coherent application of

Articles 101 and 102 and should allocate more resources to scrutinising NCA decisions. They suggest that the Commission uses its consultation and review role more frequently, notably the power to request modification of NCA decisions.

The comments above should be seen in context. While relevant, these notes of concern are only voiced by a small minority of respondents. Moreover, other respondents express contradicting views. For example, 2.25% of respondents insist that when it comes to the core of substantive law – e.g. determining the existence of an infringement – variance between the EU legal systems is minimal.

66. A second point of concern is lack of transparency.

For example, a small minority of respondents (3.14%) emphasise that the communication between the Commission and NCAs remains largely opaque. In their view, this may hinder practitioners, businesses and the public at large in understanding the existing collaboration between the Commission and NCAs.

Approximately 8.97% of respondents to interview question no. 1 point to case allocation as a specific area where more transparency would be welcome. They find the criteria for case allocation insufficiently clear and feel that this may lead to unpredictability. The Aspen and Amazon cases are referred to in this context (e.g. the Italian NCA initially led the Aspen case, but later the Commission intervened).

67. Finally, about 8% of respondents plead for more guidance by the Commission in individual cases or for more direct guidance to NCAs. In their view, the absence of more guidance, through – e.g. comfort letters, leaves companies with less legal certainty as to their position under EU competition law. They perceive the guidelines that the Commission does issue as too generic and stress that guidance, especially on essential matters like price-related infringements, needs to be provided in a timely manner because lingering ambiguities are detrimental not just to business but ultimately to consumers.

Additional comments on Article 3 of Regulation 1/2003

68. As indicated above, the feedback on Article 3 of Regulation 1/2003 is predominantly positive. The minority of respondents who raise concerns focus on the following three aspects of Article 3:

— 8.45% of respondents to interview question no. 2 (13 attorneys; five in-house counsel) criticise the possibility for EU Member States, under Article 3(2) of Regulation 1/2003 to adopt and apply on their territory stricter national laws which prohibit or sanction unilateral conduct by undertakings. They argue that the provision negatively affects uniform application of EU competition rules across EU Member States as it leads to a patchwork of national rules on – e.g. economic dependence. On the other hand, another 3.75% of respondents explicitly indicate that Article 3(2) is a useful and legitimate tool for EU Member States.

— A limited number of four attorneys (1.87%) indicate that the concept "may affect trade between EU Member States" remains rather vague and difficult to interpret, which leads to inconsistent application across EU Member States.

— Finally, the possibility in Article 3(3) of Regulation 1/2003 of applying provisions of national law that predominantly pursue an objective different from that of Articles 101 and 102 is mentioned as a cause for concern by 2.35% of respondents. While

other objectives, such as environmental protection and the safeguarding of public health are certainly considered to be important, it is feared that their integration with competition law might dilute competition law's core aim.

Other suggestions

69. Two respondents highlight that searching for competition law decisions and judgments can be difficult. Stakeholders plead for a comprehensive, accessible database that consolidates decisions by NCAs and court judgments, including national court judgments. This would improve the current provision of information.

1.3.2 Interview feedback on the coherence, relevance and EU added value of the Regulations

70. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of the Regulations. During the interviews, respondents from the EU-27 jurisdictions were asked to share their insights on three different but interconnected areas: the coherence of the Regulations in relation to other EU actions, the continuing relevance of these Regulations and the discernible "EU added value" provided by these Regulations.[66]

71. A total of 207 respondents provided input on this interview question (167 attorneys; 40 in-house counsel).[67]

72. A total of 169 interviewees expressed their views with respect to the **coherence** of the Regulations with other EU actions. Most interviewees consider that the Regulations align well with other EU initiatives. In fact, 75.74% of respondents consider the Regulations to be coherent with other key EU actions. However, 11.24% of respondents (all are attorneys) perceive the Regulations as not being coherent with other EU actions, while 13.02% of respondents consider them to be coherent with most but not all other EU actions. Over half (63.15%) of the respondents who consider that the Regulations lack coherence (accounting for 7.10% of all responding interviewees) are attorneys practicing at EU level.

[66] See EU-27 interview question no. 16 reproduced in Annex II.

[67] Of the 167 responding attorneys, 143 have represented parties in one or more cartel / antitrust proceeding(s) before the Commission and 166 have represented parties in one or more cartel / antitrust proceeding(s) before NCAs. Of the 40 responding in-house counsel, 24 indicate that their company had been involved in one or more cartel / antitrust proceeding(s) before the Commission and 38 indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before NCAs. Of the responding attorneys, 142 have represented parties in both Commission and NCA proceedings. Of the responding in-house counsel, 24 indicate that their company has been involved both in Commission and NCA proceedings.

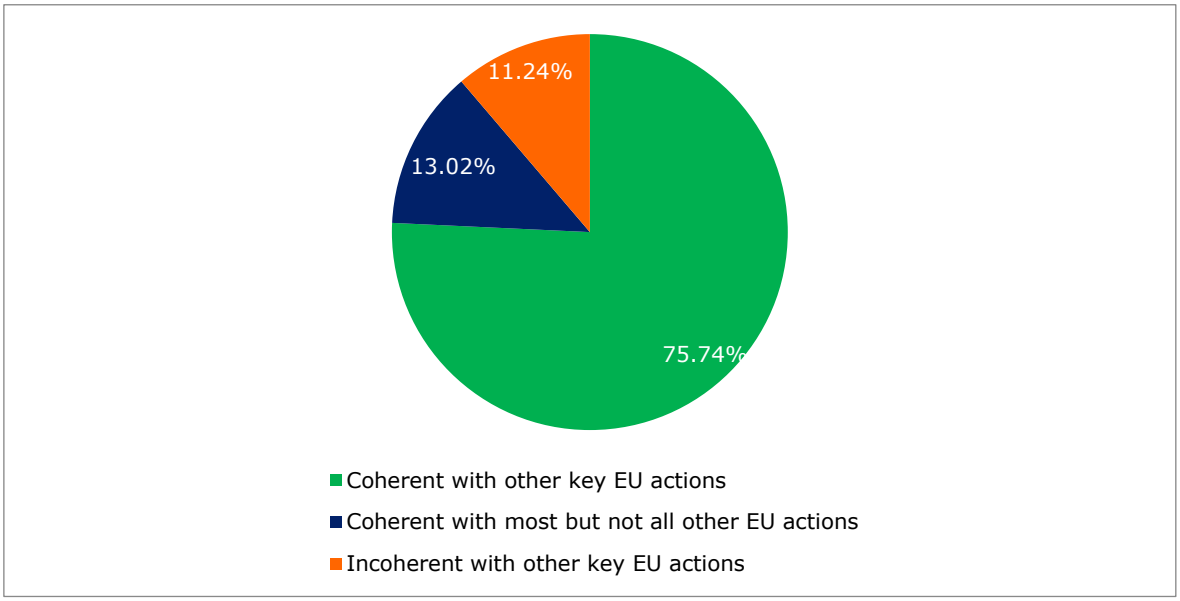

Figure 23 – Input of attorneys and in-house counsel on the coherence of Regulations 1/2003 and 773/2004 with other EU actions
Source: Standardised interviews (N=169)

73. A total of 180 interviewees addressed the topic of **relevance**. Of these respondents, 77.22% consider that the Regulations continue to hold relevance and 21.11% consider them to be relevant but in need of updates. A minority of 1.67% consider the Regulations to be irrelevant.

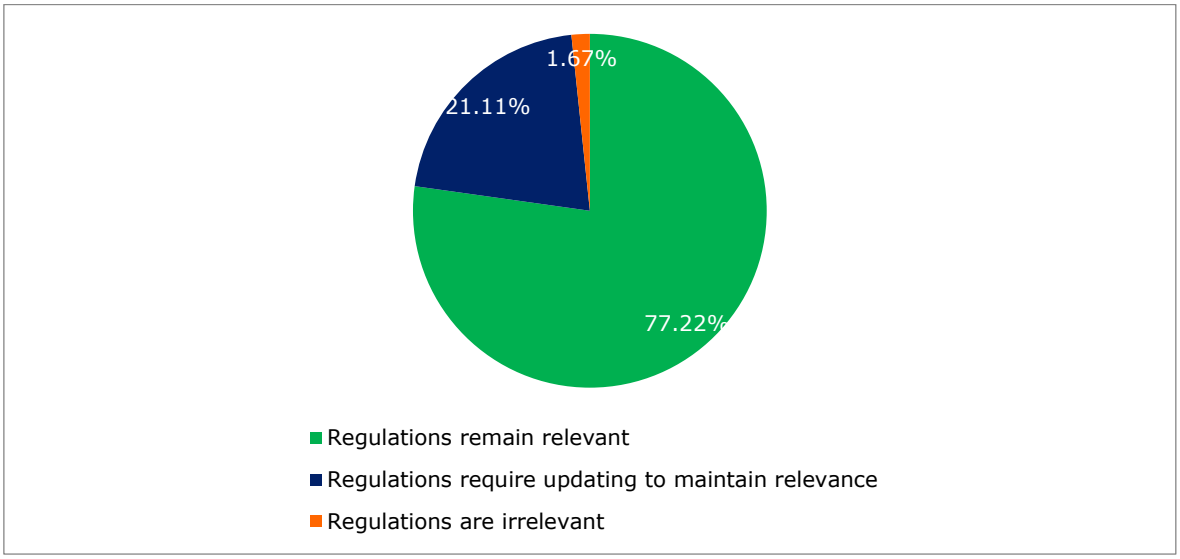

Figure 24 – Input of attorneys and in-house counsel on the relevance of Regulations 1/2003 and 773/2004
Source: Standardised interviews (N=180)

74. A total of 166 interviewees formulated their views on the **EU added value** of the Regulations. Almost all respondents to this interview question (90.96%) consider that the Regulations have EU added value. These respondents emphasise the importance of the Regulations in ensuring a smooth functioning of the EU internal market by laying down a uniform set of rules. However, 7.83% of respondents report that updates could

improve the EU added value of the Regulations. Only a minority of respondents (1.20%) argue that the Regulations have no EU added value.

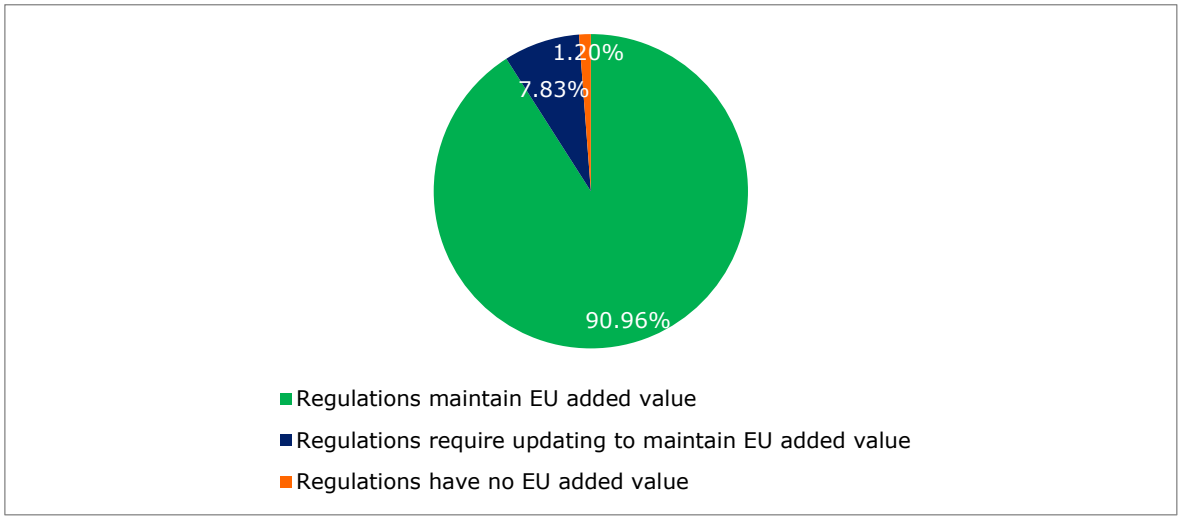

Figure 25 – Input of attorneys and in-house counsel on the EU added value of Regulations 1/2003 and 773/2004
Source: Standardised interviews (N=166)

75. In terms of the role of the Regulations in fostering EU-wide coordination and decentralisation, 5.31% of all respondents providing input on this interview question remark that the Regulations (i) enhance collaboration and coordination across EU Member States, (ii) offer a forum for an exchange of best practices, (iii) adequately address cross-border cases, and (iv) work towards a coherent application of EU competition rules. In this context, 6.66% of respondents underline that they deem the Regulations to be irreplaceable within the current overall competition law framework. According to these interviewees, there would be a risk of fragmented competition enforcement in the absence of the Regulations.

The current system is considered a successful model by 5.8% of interviewees since it enables the Commission to address broader cross-border issues leaving NCAs to focus on more national, regional and local concerns. The perceived influence of the Commission on the enforcement of competition law in smaller jurisdictions is highlighted by 8.7% of the responding interviewees, who often refer to the Commission's dissemination of best practices.

Moreover, 5.31% of all responding interviewees underline that it is important to foster a continuous dialogue between the Commission and NCAs in order to maximise the reported potential of the EU framework in promoting uniformity and a level playing field across all EU Member States.

76. Although most interviewees recognise the coherence, relevance, and EU added value of the Regulations, some set out certain challenges that are detailed below.

First, 8.88% of the 169 respondents who provided input on the coherence of the Regulations raise concerns about potential ambiguities when competition rules intersect with other EU regulations, such as the General Data Protection Regulation (the "**GDPR**"). In this context, 4.14% of interviewees refer to a significant expansion of the regulatory landscape in general as a potential source of ambiguities. Similarly, the Digital Markets

Act (the "**DMA**") and the intersection of the DMA with competition law is reported by respondents to highlight the perceived need for more clarity and coordination.

In addition to identifying challenges, a segment of respondents also proposed forward-looking recommendations. In this regard, 2.96% of interviewees providing input on the coherence of the Regulations suggest codifying soft law instruments, based on existing case law, in order to provide more clarity to both undertakings and NCAs. These respondents consider this to be particularly relevant in rapidly evolving sectors.

Finally, 3.86% of all responding interviewees highlight the complementary role of the ECN+ Directive. According to these interviewees, the collaborative elements and uniformity promoted by the ECN+ Directive will be instrumental in addressing future challenges especially within the area of sustainability.

77. With respect to the relevance of the Regulations, the consensus among responding interviewees is largely positive as indicated above. However, 8.33% of the 180 respondents providing input on the relevance of the Regulation report that the Regulations do not sufficiently take into account the rapid digitisation of the economy, the emerging sustainability frameworks and the evolving market dynamics in general.

Similarly, 6.11% of respondents in this category remark that there is scope for the Regulations to improve further by taking into account recent developments in the area of sustainability. More specifically, these respondents indicate that undertakings might be overcautious as the Regulations do not offer sufficient clarity and guidance on this topic.

A similar remark by 7.78% of respondents in this category relates to increased digitisation of the economy. According to these respondents, the Regulations should take into account the shift from traditional methods for data storage to more digital-centric approaches in order to continue being relevant and to better reflect current business operations.

78. Regarding the EU added value of the Regulations, 3.61% of the 166 respondents who provided feedback on this topic indicate a perceived lack of definitive action by the Commission on relevant cross-border issues in digital markets. These interviewees argue that this perceived trend could negatively impact the EU added value of the Regulations.

In particular, two attorneys note that the dissemination of best practices by the Commission is beneficial especially for smaller NCAs for the overall uniform application of EU competition law as well as the EU added value of the Regulations.

1.3.3 Information collected by NCAs on national rules falling within Articles 3(2) and 3(3) of Regulation 1/2003

79. In order to provide the Commission with input to evaluate Article 3, the NCAs and the Icelandic and Norwegian competition authorities were requested to indicate whether their domestic legal framework provides for national competition law provisions that

impose stricter rules on unilateral conduct than Article 102 within the meaning of Article 3(2) of Regulation 1/2003 (Table 7).[68]

The Table below does not include legal provisions of national law which do not qualify as competition laws (such as but not limited to trade law or consumer protection law) in accordance with Recital 8 of Regulation 1/2003. Such instances of stricter rules which predominantly pursue a different objective to competition rules are instead included under the summary table of NCA input to the NCA questionnaire in Table 8below.

Overview of national legislation with stricter rules on unilateral conduct		
Jurisdiction	**Stricter rules on unilateral conduct?**	**If stricter rules exist, which market is targeted?**
Austria	✓	(i) General provision on 'recommendation cartels' (*Empfehlungskartelle*) and economic dependence – no specific market targeted (ii) Multisided digital market (Cartel Court can find that an undertaking has a dominant position on a multisided digital market in so far as there is a legitimate interest in such a finding)
Belgium	✓	General provision on economic dependence – no specific market targeted
Bulgaria	✗	N/A
Croatia	✗	N/A
Cyprus	✓	General provision on economic dependence – no specific market targeted
Czechia	✗	N/A
Denmark	✗	N/A

[68] See NCA question no. 5.1 reproduced in Annex IV and question no. 2.1 in the questionnaire addressed to the Icelandic and Norwegian competition authorities as reproduced in Annex V.

Overview of national legislation with stricter rules on unilateral conduct		
Jurisdiction	**Stricter rules on unilateral conduct?**	**If stricter rules exist, which market is targeted?**
Estonia	✗	N/A
Finland	✓	Daily consumer goods (retail and procurement markets: market share threshold of minimum 30% equals dominance)
France	✓	General provision on economic dependence – no specific market targeted
Germany	✓	General provision on economic dependence / relative market power – no specific market targeted. Additional provisions with specific focus on certain actors / behaviours, including but not limited to: (i) Intermediaries on multi-sided markets; (ii) Undertakings refusing access to data for other undertakings that are dependent on such access; (iii) Undertakings with superior market power in relation to competing SMEs; (iv) Hindering of network effects of competitors by a company with superior market power; and (v) Certain companies active in digital markets.
Greece	✓	General provision – no specific market targeted
Hungary	✓	General provision but focus on relationship between retailer and supplier (abuse of buyer power)

Overview of national legislation with stricter rules on unilateral conduct		
Jurisdiction	**Stricter rules on unilateral conduct?**	**If stricter rules exist, which market is targeted?**
Ireland	✓	Grocery goods[69]
Italy	✓	General provision on economic dependence – no specific market targeted
Latvia	✗	N/A
Lithuania	✓	General provisions and focus on retailers
Luxembourg	✗	N/A
Malta	✗	N/A
Netherlands	✗	N/A
Poland	✗	N/A
Portugal	✓	General provision on economic dependence – no specific market targeted
Romania	✓	General provision to act against unfair competitive conduct (including abuse of economic dependence) – no specific market targeted
Slovakia	✗	N/A
Slovenia	✗	N/A

[69] The Irish NCA noted in response to a draft of the Study that the specific provisions of the 2002 Act on grocery goods do not imply that grocery goods constitute a unified product market for the purposes of Irish law.

Overview of national legislation with stricter rules on unilateral conduct		
Jurisdiction	**Stricter rules on unilateral conduct?**	**If stricter rules exist, which market is targeted?**
Spain	✓	General provision on unfair competitive conduct affecting the public interest (including abuse of economic dependence) – no specific market targeted
Sweden	✓	Public sector
Iceland	✓	Public sector
Norway	✓	General provision enabling possibility to adopt stricter regulations; currently one regulation in force on online advertising of homes for sale

Table 7 - Overview of jurisdictions and whether there are national rules that are more strict on unilateral conduct
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

80. In addition, as indicated in the previous paragraph, the NCAs, and the Icelandic and Norwegian competition authorities were requested to specify if their jurisdiction currently provides for national legislation predominantly pursuing an objective different from the objectives of Articles 101 and 102 within the meaning of Article 3(3) of Regulation 1/2003.[70] The Table below only includes legal provisions which do not qualify as competition law, such as but not limited to trade law or consumer protection, and excludes national provisions with different objectives which appear to be derived from the transposition of the EU acquis (for instance, transpositions of EU Directive 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain).[71]

[70] See NCA question no. 5.2 reproduced in Annex IV and question no. 2.2 in the questionnaire addressed to the Icelandic and Norwegian competition authorities as reproduced in Annex V.
[71] *Directive EU 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*, *OJ* L 111, 25.4.2019, 59.

Overview of national legislation predominantly pursuing an objective different from Articles 101 and 102		
Jurisdiction	**Existence of national legislation with different objective?**	**If such national legislation exists, which market is targeted?**
Austria	✓	General provisions – no specific market targeted
Belgium	✗	N/A
Bulgaria	✗	N/A
Croatia	✗	N/A
Cyprus	✗	N/A
Czechia	✗	N/A
Denmark	✗	N/A
Estonia	✗	N/A
Finland	✗	N/A
France	✓	(i) General provision on restrictive competitive practices – with specific rules for the agriculture and food sector; (ii) General provision on unfair B2B competition; (iii) General provision on unfair B2C commercial practices.
Germany	✓	General provisions on unfair competition and consumer protection

Overview of national legislation predominantly pursuing an objective different from Articles 101 and 102		
Jurisdiction	**Existence of national legislation with different objective?**	**If such national legislation exists, which market is targeted?**
Greece	✗	N/A
Hungary	✗	N/A
Ireland	✗	N/A
Italy	✗	N/A
Latvia	✗	N/A
Lithuania	✓	(i) Supermarkets, (ii) electronic communications, and (iii) raw milk
Luxembourg	✗	N/A
Malta	✗	N/A
Netherlands	✓	Healthcare
Poland	✓	Agricultural and food products
Portugal	✓	General provisions on unfair B2B trading practices – no specific markets targeted
Romania	✗	N/A
Spain	✗	N/A

Overview of national legislation predominantly pursuing an objective different from Articles 101 and 102		
Jurisdiction	**Existence of national legislation with different objective?**	**If such national legislation exists, which market is targeted?**
Slovakia	✗	N/A
Slovenia	✗	N/A
Sweden	✗	N/A
Iceland	✓	Media sector
Norway	✓	Grocery supply chain

Table 8 - Overview of jurisdictions and whether there are national rules predominantly pursuing a different objective
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

1.3.4 Summary of perspectives on the effectiveness, coherence and EU added value of the Regulations and the overall performance of Article 3 of Regulation 1/2003[72]

81. The contributions from interviewees regarding the overall performance of the Regulations and Article 3 of Regulation 1/2003 presented in the previous sub-sections illustrated key elements pertaining to the evaluation criteria of effectiveness, coherence, and EU added value.

With regard to the effectiveness[73] of the Regulations, the overall findings by interviewees are predominantly positive though tempered by some constructive feedback.

First, the views of respondents were not unreservedly positive on the query as to whether the goal of achieving an effective and uniform application of Articles 101 and 102 in the EU internal market have been attained. On the positive side, 11 attorneys

[72] This sub-section does not include percentages for interviewee responses given that answers are compiled from multiple interview questions, therefore lacking a singular base number for calculation of relevant percentages.
[73] For the purpose of the Study, effectiveness has been defined as the degree to which the Regulations achieved or progressed towards their intended objectives.

and six in-house counsel highlight the role played by the Regulations and Article 3 of Regulation 1/2003 in promoting a consistent application of competition law. Additionally, the obligation for NCAs to apply Articles 101 and 102 is credited by seven interviewees with fostering cross-fertilisation in the enforcement and interpretation of national competition laws. A trend among NCAs of alignment with the Commission's guidelines and decisions is also highlighted, indicating "soft convergence" in practice.

A small number of interviewees also express constructive feedback with regard to what they view as variances in decision-making practices among EU Member States, with some NCAs taking initiatives in sectors where the Commission is less active. The perceived inconsistent use of the intra-EU trade criterion by NCAs is cited by five attorneys as adding to that apparent inconsistency. Furthermore, 13 attorneys and five in-house counsel regard the discretionary power under Article 3(2) and the application of EU competition law alongside national competition laws as factors that may introduce uncertainty and complicate compliance, potentially undermining the objective of the Regulations of achieving effective enforcement of Articles 101 and 102.

82. It was also indicated by 16 interviewees that the Regulations enable the Commission to address broader cross-border issues whereas NCAs focus on more national and local concerns. However, 19 respondents point out that the rules on case allocation between the NCAs and the Commission can be perceived as unclear; this may result in cases lacking the involvement of the Commission while such respondents consider that the relevant cases may have been worthy of addressing by the Commission.

83. Approximately ten attorneys point out that, despite the Regulations, existing differences in national competition law regimes across different Member States affect legal certainty. This applies particularly to procedural aspects. These respondents refer to a perceived lack of comprehensive guidance from the Commission, which is seen as contributing to this uncertainty.

84. According to interviewees, the administrative burden for businesses may be further reduced by limiting any divergences in national proceedings and EU Treaty provisions. In particular, 11 interviewees state that such divergences can lead to increased administrative complexities for companies when the latter are required to deal with investigations in multiple jurisdictions.

85. Coherence in regulatory frameworks is generally measured by examining how different interventions, EU / international policies, or national / regional / local policy elements work together. In this context, eight respondents consider the ECN+ Directive as a supportive complement to the Regulations and consider that the application of the Regulations is coherent with the application of the ECN+ Directive. Five respondents note concerns regarding Article 3(3) of Regulation 1/2003 as they consider that allowing national laws to pursue broader objectives than Articles 101 and 102 could lead to a weakened focus on competition policy. According to these interviewees, Article 3(3) has the potential to disrupt the coherence of competition law by introducing inconsistencies and fragmentation, especially when national objectives, such as environmental and public health protections, intersect with EU competition policies. Additionally, the interaction between the Regulations and the DMA is seen by 15 interviewees as a potential source of complexity. In this respect, these interviewees suggest to carefully align both regulatory frameworks to ensure regulatory coherence and to avoid an overly intricate policy framework.

86. As evidence of the EU added value of the competition law framework, 17 attorneys and one in-house counsel point to the successful promotion of a uniform application of competition law across the EU which is deemed by these respondents to be particularly relevant for newer EU Member States. Additionally, as mentioned by five attorneys, the Commission is able to leverage its expertise and resources on complex cases achieving benefits and economies of scale unlikely to be feasible by individual EU Member States. These aspects, highlighted by interviewees, underscore the unique contributions of the Regulations in enhancing the effectiveness and coherence of competition law enforcement.

Chapter 2. Investigative tools

87. This Chapter focuses on input that will assist the Commission in its overall evaluation of Regulation 1/2003 and the different investigative tools used by the Commission and NCAs when aiming to identify potential infringements of Articles 101 and 102. It focuses on inspections and also includes trends in home working and the power to affix seals, requests for information, interviews and sector inquiries.

2.1 Inspections

88. This section focuses on the Commission's inspection powers as set out in Articles 20 (Commission's powers of inspection of business premises) and 21 (Commission's powers of inspection of other premises) of Regulation 1/2003, as well as the powers of NCAs under domestic laws.

Article 20 of Regulation 1/2003 empowers the Commission to conduct inspections or dawn raids on the premises of companies suspected of being in breach of EU competition rules. In a related manner, Article 21 of Regulation 1/2003 provides the Commission with the power to conduct inspections of other premises if there is a reasonable suspicion that books or other records related to the business and to the subject-matter of the inspection, and which may be relevant to prove a serious violation of EU competition rules, are being kept in any other premises.

2.1.1 Interview feedback on the effectiveness and efficiency of the Commission's inspections

89. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Articles 20 and 21 of Regulation 1/2003. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on the effectiveness and efficiency of unannounced inspections (of business and / or other premises, including homes and vehicles) as an investigative tool for the finding of an infringement of Articles 101 and / or 102, including in comparison to other tools such as requests for information as enshrined in Article 18 of Regulation 1/2003 and interviews as enshrined in Article 19 of Regulation 1/2003.[74]

Interview feedback on the effectiveness of inspections

90. A total of 208 respondents (164 attorneys; 44 in-house counsel) provided input on the effectiveness of inspections.[75] A large majority of 67.30% of these respondents consider inspections to be effective while 19.71% regard inspections as effective but in need of improvement. A small minority of 12.98% of respondents note that inspections are ineffective.

[74] See EU-27 interview question no. 5 reproduced in Annex II.
[75] Of the 164 responding attorneys, 85.37% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 44 responding in-house counsel, 68.18% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.

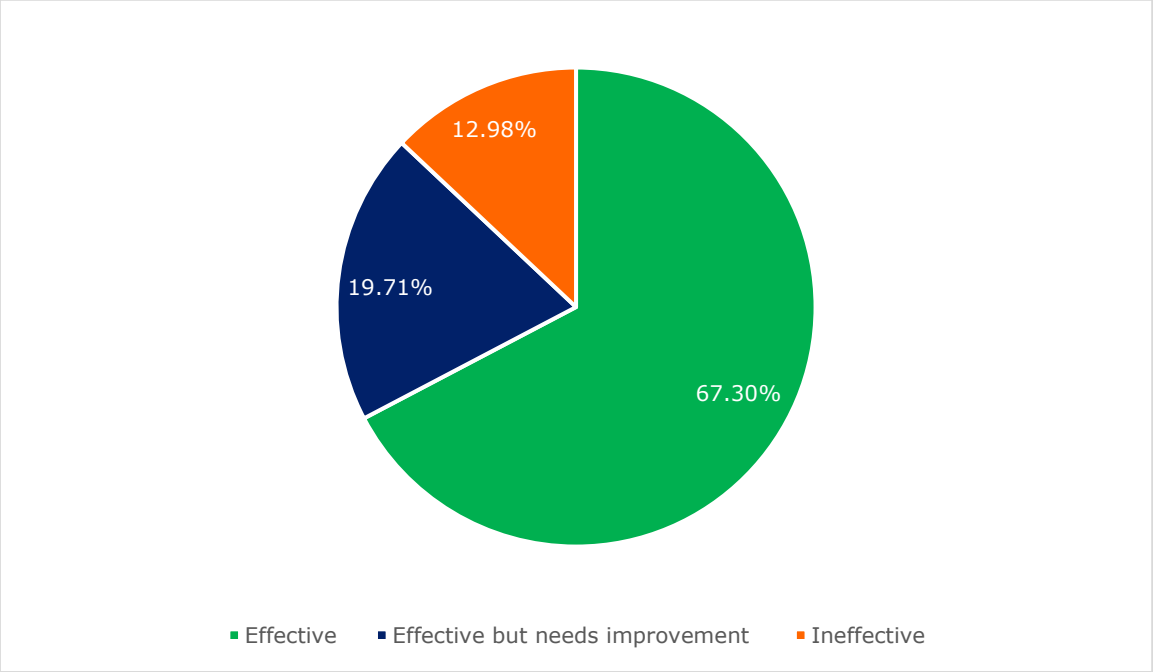

Figure 26 - Input of attorneys and in-house counsel on the effectiveness of inspections as an investigative tool
Source: Standardised interviews (N=208)

91. As detailed in the Figure below, a majority of more experienced attorneys are generally positive about this topic.

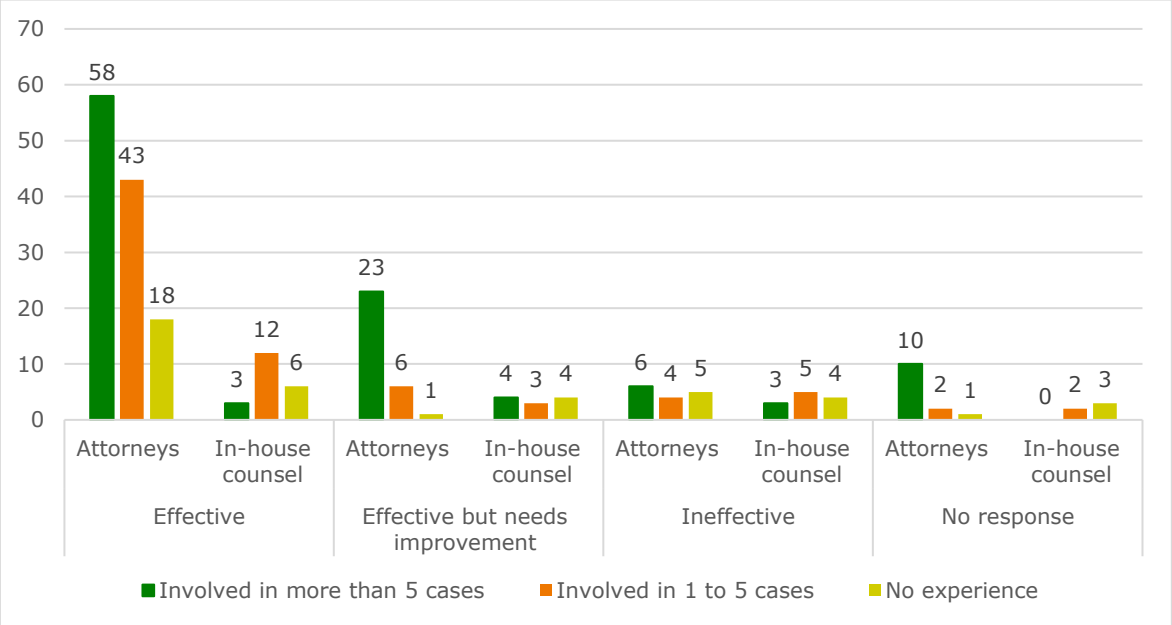

Figure 27 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness of inspections as an investigative tool
Source: Standardised interviews (N=226)

92. Among the positive experiences in relation to inspections, interviewees indicate the following:

— Nearly one tenth (10.58%) of the respondents indicate that inspections are effective mainly in identifying evidence of cartel conduct.

— In comparison to RFIs and interviews, 3.63% of respondents specifically highlight inspections as being more effective.

— Furthermore, 16.82% of respondents highlight the utility of inspections as an effective instrument to provide the Commission with objective and comprehensive evidence. Interviewees acknowledge that the often unexpected initiation of inspections may render it more difficult for undertakings under investigation to conceal relevant evidence pointing to the existence of infringements of Articles 101 and / or 102.

Interview feedback on the efficiency of inspections

93. A total of 165 respondents (130 attorneys; 35 in-house counsel) provided input on the efficiency of inspections.[76] Almost half of the respondents (47.87%) consider inspections to be an efficient investigative tool albeit in need of improvement.[77] The remaining participants are divided between 26.83% who consider inspections to be an efficient investigative tool and 25.30% who deem inspections to be inefficient overall.

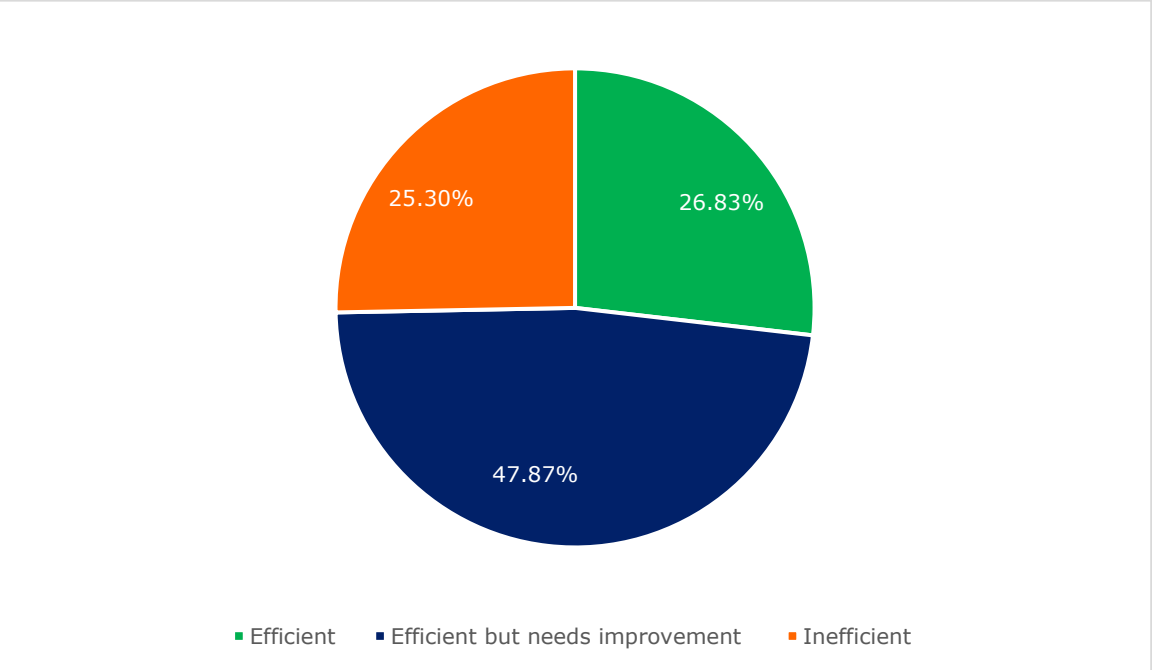

Figure 28 – Input of attorneys and in-house counsel on the efficiency of inspections as an investigative tool
Source: Standardised interviews (N=165)

[76] Of the 130 responding attorneys, 86.92% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 35 responding in-house counsel, 68.57% indicate that their company has been involved in one or more cartel / antitrust proceedings before the Commission.
[77] Of the 79 responding attorney, 70.89% have represented parties in cases before the Commission. Of the 18 responding in-house counsel, 60% indicate that their company has been involved in one or more proceeding(s) before the Commission.

94. As detailed in the Figure below, both more experienced attorneys and more experienced in-house counsel consider inspections to be efficient but in need of improvement.

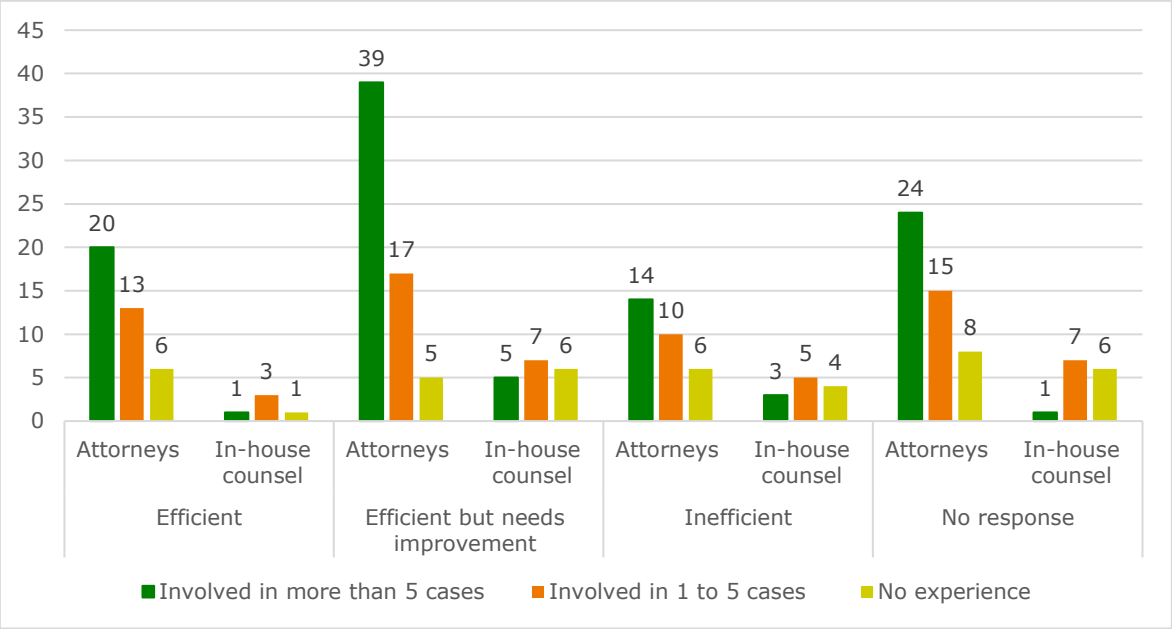

Figure 29 - Input of attorneys and in-house counsel (including respective case experience before the Commission) on the efficiency of inspections as an investigative tool
Source: Standardised interviews (N=226)

95. Interviewees provided the following feedback regarding the efficiency of inspections:

— Of the 165 interviewees who provided input on this part of the interview question, 20.60% remark that inspections can be burdensome. More specifically, 11.76% of this group of respondents emphasise the psychological effects and general burden on SMEs.

— As a recurring point of concern, nearly one fifth (19.39%) of respondents who provided input on this question point out the resource-intensive nature of inspections for both competition authorities and the undertakings being inspected. These respondents highlight the extensive planning, coordination and manpower involved in (i) carrying out the inspections, (ii) the analysis of collected evidence, and (iii) the management of subsequent investigations. Just over one tenth (12.12%) of the interviewees who provided input on this question believe that the time-consuming nature of inspections might lead to reduced efficiency.

— Nevertheless, 19.39% of responding interviewees also consider that the efficiency of inspections might increase significantly over time due to the digitisation of the work environment as opposed to an earlier time when inspections focused on physical documents and premises.

— 13.94% interviewees consider RFIs as a tool complementing inspections, especially when additional information may be needed. Only a small proportion of respondents (3.64% of all respondents) refer to inspections as a possible tool of relevance when RFIs and interviews do not bring about the desired results.

— 12.73% of respondents raise queries about the comparative efficiency of inspections in relation to other investigative tools, notably compared to RFIs which are often considered to be more targeted while producing similar results though without the disruptive and intrusive implications of inspections that the interviewees describe.

96. With regard to both the efficiency and effectiveness of inspections, interviewees indicate the following:

— From the 226 invited interviewees, 15.49% highlight the intrusive nature of inspections compared to other investigative tools, particularly inspections conducted on the private premises of employees or directors. This group of respondents also identify actions for mitigation, notably in the area of procedural fairness.[78]

— Furthermore, nearly one tenth (9.29%) of all 226 interviewees stress the importance of information security and of protecting the privacy and personal data of employees, directors and other company affiliates during inspections. This group of respondents emphasise that this requirement particularly relates to digitally stored data and mixed-use devices.

— In addition, from the 226 interviews, 5.31% share their concern regarding the potential untargeted and / or unfiltered data collection methods, which some of these respondents describe as 'fishing expeditions'.

— In the context of inspections, 6.19% of all respondents refer to the scope of legal professional privilege ("**LPP**") as a topic of relevance. In particular, these respondents observe disparities between the Commission and NCAs, as well as among NCAs, in the standard of protection and application of LPP during inspections and note that this variation may be an issue requiring further consideration.

97. Overall, interviewees refer to the particular level of effectiveness of inspections. However, the respondents remark that (i) the burdensome nature of inspections appears to be relevant for both undertakings and for competition authorities, (ii) the process of inspections has a particular effect on SMEs both when conducted by the Commission and by NCAs, and (iii) since inspections are resource-intensive, extensive planning, coordination and manpower are required to carry out an inspection properly. According to certain interviewees, differences in the scope of LPP and its protection between the Commission and NCAs, as well as among NCAs across the EU, may indicate that procedural rights and defences in proceedings could still be improved to enhance effectiveness.

Interview feedback on the impact of digitisation on inspection effectiveness and efficiency

98. Interviewees were also requested to express to what extent increased digitisation and cloud computing impact their views on the effectiveness and efficiency of inspections.[79]

[78] In relation to the safeguarding of procedural fairness, respondents referred to the necessity of integrating judicial review and emergency proceedings as well as to the protection of the privacy of employees and of their (personal) data.
[79] See EU-27 interview question no. 5a reproduced in Annex II.

99. A total of 180 respondents (148 attorneys; 32 in-house counsel) provided input on this part of the question.[80]

100. About half of the respondents who provided input on this question (47.77%) consider that digitisation enhances the **effectiveness** of inspections as large sets of company-related data are accessible online (i.e. via the cloud). In this respect, 23.89% of respondents remark that the use of keywords makes searching for specific data more simple. Moreover, 11% of respondents further note that digitisation is cost and time saving for competition authorities. This group of respondents indicate that access to servers and the use of applications enables competition authorities to gather a large amount of data in a shorter time. In addition, 10.56% of interviewees point out that it may be more difficult to delete or alter digital data because such actions can usually be detected using, for example, a backup of the data hosted on a server or via other forensic tools. A small group of responding interviewees (3.33%) also note that, as the number of devices used increases (e.g. laptops, smartphones and tablets), there may be a greater chance of detecting potential antitrust infringements.

With respect to **efficiency**, 36.11% of 180 responding interviewees similarly highlight that digitisation is having a positive impact on the Commission's ability to conduct inspections as it allows inspections to be conducted on digital devices instead of physical material.

101. Interviewees note the following constructive feedback and potential concerns with respect to the impact of digitisation on inspections:

— About one tenth (10.30%) of interviewees who provided input on this part of the question remark that searching through large data sets can still be time-consuming for both authorities and undertakings and that a significant portion of the data collected may be irrelevant for the purpose of the investigation.

— 12.22% of respondents consider that company policies and data storage locations may influence or compromise the efficiency of the investigation.

— In terms of retrieving certain information, a similar number of respondents (11.66%) stress the potential technical challenges which may arise due to issues of data sovereignty and legal barriers. For instance, 9.44% of responding interviewees highlight a potential issue of a relevant server being located in a third country where the Commission has no jurisdiction.

To increase the effectiveness and efficiency of inspections, 11.66% of respondents **suggest** that specific guidelines, practice notes and Q&A documents might help the Commission to enhance procedural fairness and data protection in the context of inspections, especially given current technological advances.

102. Interviewees remark that conducting inspections in a digital format can be an effective method of supervision of Articles 101 and / or 102 to ensure that competition in the internal market is not distorted, as it is made more difficult to delete or alter digital data as this is easy to detect using back-up data hosted on a server or other

[80] Of the 148 attorneys, 85.81% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 32 responding in-house counsel, 59.38% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.

forensic tools. In addition, responding interviewees note that the odds of identification of potential competition law infringements may be higher by virtue of digitisation as the number of devices used (e.g. laptops, smartphones and tablets) and available information expands. In conclusion, interviewees emphasise that company policies and data storage locations may influence or compromise the effectiveness of an investigation, notably when a server is located in a third country where the Commission has no jurisdiction.

Interview feedback on the power to affix seals

103. During the interviews, respondents from the EU-27 were asked whether the Commission's power to affix seals during inspections of business premises, as set out in Article 20 (2)(d) of Regulation 1/2003, is effective in preventing the removal or alteration of potential evidence. In addition, these interviewees were also requested to give their views on whether this power is an effective and efficient way to safeguard potentially relevant evidence held in a digital form, for instance, when such potential evidence is accessible remotely via cloud services.[81]

104. With respect to the effectiveness of affixing seals, a total of 168 respondents provided input on this limb of the interview question. A majority of 56.54% of the interviewees who provided input on this part of the question consider the Commission's power to affix seals during inspections of business premises to be an effective tool in preventing the removal or alteration of potential evidence and to safeguard potentially relevant evidence held in a digital form. However, 27.98% of the interviewees consider the Commission's power to affix seals ineffective while 15.48% deem this power effective but in need of improvement.

[81] See EU-27 interview question no. 5b reproduced in Annex II.

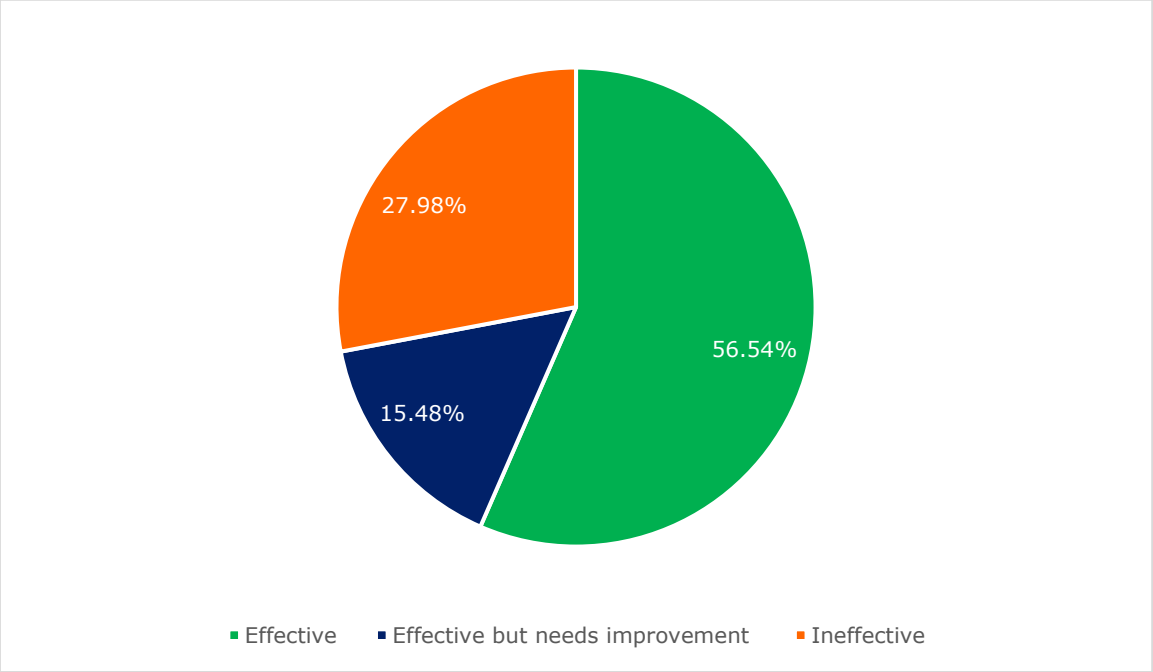

Figure 30 - Input of attorneys and in-house counsel on the effectiveness of the Commission's power to affix seals during inspections
Source: Standardised interviews (N=168)

105. Opinions are fairly evenly divided as to whether affixing seals has become obsolete. On the one hand, 33.93% of responding interviewees note that seals in a physical form still have an important role to play in safeguarding the integrity of data as evidence in physical form continues to exist. On the other hand, 30.95% of responding interviewees indicate that seals in physical form have become obsolete as most companies store data digitally and data is accessible online.

106. Just under half of responding interviewees (47.62%) highlight **the potential relevance of being able to affix seals digitally**. In particular, 22.62% of this group of respondents consider a digital form of affixing seals to potentially be an effective tool. Conversely, the remaining 25% of the interviewees who consider digitally affixing seals as important, suggest further development of 'digital seals' to prevent removal or alteration of digital data (for instance, by locking digital files in the cloud). However, respondents also warn against blocking access to overly large data sets (for instance, the entire cloud), which could otherwise disrupt an undertaking's operations. Interviewees also acknowledge the challenges of affixing seals to digital data stored on external servers located abroad, which may raise both practical and legal (jurisdictional) issues.

107. In relation to the **efficiency** of affixing seals, a total of 81 respondents provided input on this part of the interview question.[82] Of these 81 respondents, 46.91% consider the Commission's power to affix seals during inspections of business premises to be

[82] Of the 81 respondents, 81.40% have represented their respective companies in one or more cartel / antitrust proceedings before the Commission. More specifically, the 81.40% accounts for 59 attorneys and seven in-house counsel.

efficient.[83] To the contrary, a smaller number of 29.63% of interviewees who provided input on this part of the question consider the Commission's power to affix seals as inefficient while 23.46% of these respondents deem them efficient but in need of improvement.

2.1.2 Document retention measures

Interview feedback on document retention measures

108. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Regulations 1/2003 and 773/2004. During the interviews, respondents were requested to address whether, in their experience, the knowledge of a possible infringement of Articles 101 and / or 102 triggers any document retention measures ("**DRM**") within a company's organisation to prevent the destruction of potentially relevant evidence.

More in general, the EU-27 interviewees were also asked to provide insights, based on their past experience, into the duration of the retention of documents used by companies in their respective jurisdictions and to elaborate on the experience of companies with document retention orders / requests in the EU and outside the EU.[84]

109. A total of 209 respondents provided input on this interview question. As indicated in the Figure below, 28% of responding interviewees confirm that a company's knowledge of a potential infringements of Article 101 and / or 102 may result in that company taking specific action to retain relevant documents. Conversely, 10% of the respondents consider that such an action would generally not be taken. The remaining 62% of responding interviewees indicate not to know whether knowledge of possible infringements of Article 101 and / or 102 generally triggers document retention measures.

[83] Of the responding attorneys, 57.45% who have been involved in more than five antitrust and cartel proceedings before the Commission, while this is the case of 10.64% of in-house counsel.
[84] See EU-27 interview question no. 7 reproduced in Annex II.

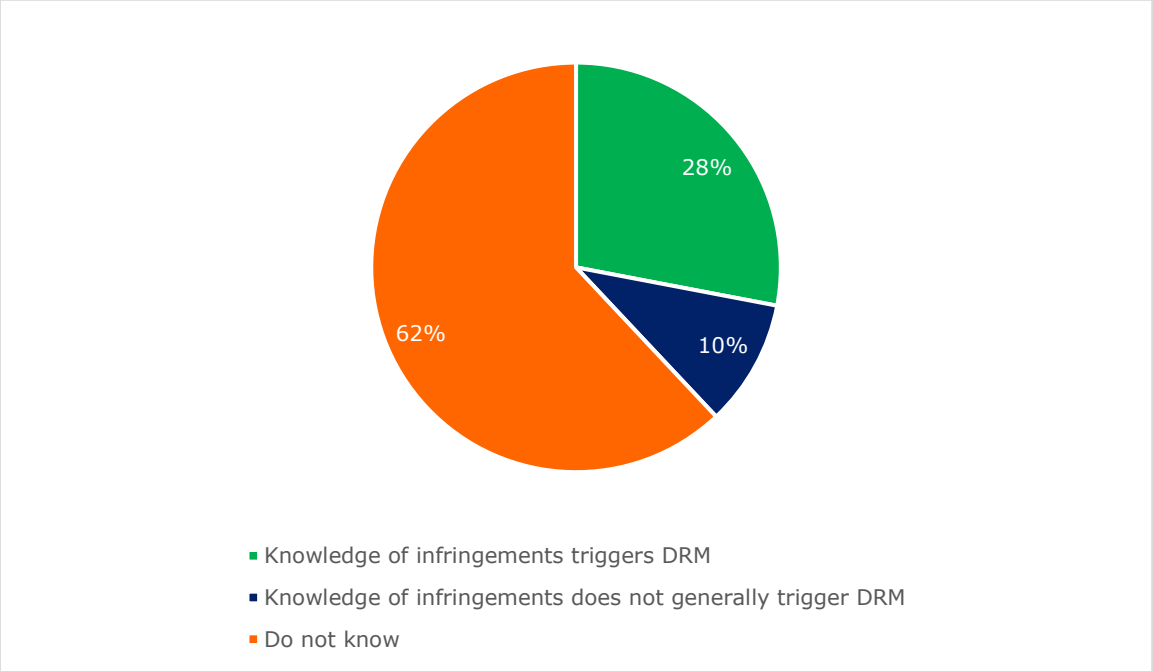

Figure 31 - Input of attorneys and in-house counsel on whether knowledge of possible infringements of Article 101 and / or Article 102 triggers document retention measures (DRM)
Source: Standardised interviews (N=209)

110. Interviewees note the following constructive feedback and potential concerns in respect of document retention measures:

- According to 24.89% of respondents, undertakings tend to develop their own general retention policies rather than implementing specific policies for antitrust investigations, resulting in different retention policies across the EU. In this connection, 6.22% of respondents refer to the USA where retention requests (so-called 'litigation holds') are more common and stringent than in the EU.
- A total of 22% of responding interviewees remark that document retention is also useful in the context of leniency applications. In this connection, 12% of responding interviewees state that, by retaining documents, companies can avoid intentional destruction or alteration of evidence.
- Additionally, 13.40% of respondents who provided feedback on this question find that it would be important to implement proper document retention measures to help preserve crucial evidence that may be needed to defend an undertaking's position and / or provide crucial information during an antitrust investigation.
- In the same context, 11% of responding interviewees note that larger companies may develop retention policies and establish procedural steps when they are being notified of an alleged violation. At the same time, 5.26% of responding interviewees, claim that, in case of an alleged violation, SMEs often lack the necessary knowledge of the proper course of action which can result in a potential loss of evidence. These interviewees remark that appropriate training for SMEs might improve their retention policies.
- Interestingly, 6.49% of responding interviewees consider document retention orders to be more common in the UK and USA than in the EU. On that note, a similar

proportion of respondents suggest introducing a new EU-level tool (for example, a retention order by the Commission) which could ensure document retention across the EU.

— A total of 6.22% of responding interviewees note that the implementation of robust document retention measures demonstrates the commitment by undertakings to transparency and cooperation with antitrust authorities. In that context, interviewees remark that document retention measures can help companies to conduct their own internal investigations. In particular, by retaining relevant documents, companies can (i) assess their own behaviour, (ii) identify potential antitrust issues and (iii) take appropriate remedial measures where necessary.

— Finally, a small group of 2.39% of responding interviewees suggest an alignment of the GDPR with document retention measures in competition law. These respondents are of the view that the regulatory framework on data protection undermines undertakings' retention policies, as documents containing personal data that could be relevant for the undertakings' defence may have required prior deletion. The same group of respondents are concerned that the GDPR requires the destruction of certain documents when an employee leaves, creating a conflict with document retention policies in competition law, particularly when such documents could be vital to a company's legal defence.

111. As to document retention periods, 73 interviewees provided input on the minimum duration of document retention while 78 interviewees provided input on the maximum duration. The responding interviewees indicate that undertakings' retention durations can vary significantly depending on the jurisdiction and the preference of a given undertaking. Overall, 72.97% of interviewees responding to this question indicate that undertakings generally retain documents between five and 10 years. A total of 18.92% of responding interviewees indicate shorter retention periods, usually between one and five years. According to 6.49% of responding interviewees, some types of documents (such as e-mails) are more commonly retained for less than one year.

Interview feedback from Third Country interviewees on document retention measures

112. In order to better understand the retention measures available in the USA (and to some extent the UK), interviewees from these jurisdictions were asked to what extent the authorities in their respective jurisdictions have the power to order the preservation of documents and, if such powers exist, whether such respondents consider preservation orders to be a useful tool for the authorities (and what practical benefits and / or downsides the interviewee sees in such preservation orders).[85]

In this regard, **US** respondents note that preservation orders, commonly known as litigation holds, play a crucial role in ensuring that companies retain relevant documents during legal proceedings and antitrust investigations. These orders are especially important in the digital age, where electronic data is prevalent. The effectiveness of preservation orders is enhanced by the severe penalties for non-compliance. However, challenges arise when trying to balance the need to preserve essential evidence and not overwhelming companies with excessive data retention.

[85] See Third Country interview question no. 5 reproduced in Annex III.

In the **UK**, preservation orders serve as a deterrent to companies contemplating the destruction of documents relevant to antitrust investigations. It is a legal offence to destroy documents during an ongoing investigation and this legal framework places a substantial obligation on companies to preserve evidence.

Respondents consider that, while any preservation orders issued by the CMA can be effective tools for safeguarding the integrity of investigations, certain challenges could arise in defining the scope of these orders especially in the early stages of an investigation.

NCA input on document retention measures

113. The NCAs as well as the Icelandic and Norwegian competition authorities were requested to indicate whether they have the ability to impose preservation orders (i.e. data retention measures).[86] Of the responding competition authorities[87], three[88] noted that they have the ability to impose such preservation orders whereas 14[89] indicated that they do not have such powers. The remaining 11 competition authorities[90] indicate that the ability to impose preservation orders may be implicitly foreseen in their antitrust procedural framework, for instance, via interim measures or during inspections.

Conclusion

114. In summary, policies on document retention measures vary significantly in EU Member States, and undertakings follow their own preferences. The majority of interviewees indicate that undertakings retain their documents for 5 to 10 years, while they also underline the importance of document retention measures in preserving evidence. Furthermore, approximately 60% of responding interviewees holds that the knowledge of a potential infringement of Articles 101 and 102 generally triggers undertakings to take action to retain relevant documents. In addition, interviewees also express the view that the effectiveness of document retention measures could be strengthened by document retention orders at EU level as well as by a better alignment of competition law with the GDPR. The extent to which NCAs and the competition authorities of Iceland and Norway have explicit or implicit powers to impose document retention varies considerably. With regard to Third Countries, particularly the US has stricter regimes, or at least this is the perception of interviewees in those countries.

2.1.3 Remote working trends and possible implications for inspections

115. This sub-section first provides an analysis and summary of existing literature on the growing importance of remote working, as well as the way it is expected to evolve in a post-COVID-19 pandemic context. This sub-section also takes into account the IT / communication systems that companies are using to facilitate home-working. This sub-section then also provides an overview of views expressed by experts on the

[86] See NCA question no. 15 reproduced in Annex IV and question no. 12 in the questionnaire addressed to the Icelandic and Norwegian competition authorities as reproduced in Annex V.
[87] The Consortium did not receive a response from the Estonian NCA.
[88] The NCAs of Czechia, Latvia and the Netherlands.
[89] The NCAs of Austria, Bulgaria, Croatia, Cyprus, Denmark, Greece, Lithuania, Luxembourg, Malta, Romania, Slovenia, Spain, Sweden and Norway.
[90] The NCAs of Belgium, Finland, France, Germany, Hungary, Ireland, Italy, Poland, Portugal, Slovakia and Iceland.

implications of remote working and the use of mixed devices in the context of inspections at non-business premises.

Trends in remote working and evolution in a post-COVID-19 context

116. Statistical data from 2020 from the Organisation for Economic Cooperation and Development ("**OECD**") indicates that remote working is prevalent across a majority of EU Member States, albeit to varying degrees.[91] In Finland, for instance, 25% of the workforce engaged in remote working in 2020, while this was the case for less than 2% in Bulgaria. It is essential to contextualise these disparities by taking into account the temporary COVID-19 restrictions and mandates which differed among EU Member States. Regardless of these fluctuations, a clear trend is apparent: the pandemic generally had an impact on remote working throughout the EU, noting that the surge in home working is particularly relevant to white-collar professions, which often involve tasks that can be easily digitised and, thus, made remote-friendly.

A study for the Joint Research Centre ("**JRC**") has shown that there has been a notable uptick in teleworking primarily among professions in the white-collar sector.[92] It highlights that some 71% of professionals in the EU have the potential to work from home, while only about one quarter (24%) have actually been doing so. For lower-level white-collar occupations, such as clerical support workers, the potential for telework was shown to be even higher (84%), yet the actual incidence of teleworking remained about 5%. In white-collar occupations where teleworking is more prevalent, there may be a higher probability of employees accessing sensitive information from home.[93]

117. Post-pandemic research on teleworking has identified several key trends.[94] First, a broad academic consensus indicates that many companies have shifted towards hybrid work models, which combine remote and in-office work to offer employees flexibility while preserving face-to-face interactions. Second, the widespread acceptance of remote work could expand job opportunities, as companies have become more open to hiring individuals regardless of their physical location. This development could also provide employees with more control over their schedules, allowing for a better integration of work and personal life. Additionally, as remote working tends to become more embedded, organisations generally are placing greater emphasis on training and skill development for their remote staff. Virtual workshops and remote training sessions are increasingly common and aim at equipping employees with the skills needed for telework. The rise of remote work has generally also entailed a rethinking of traditional

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[91] OECD, "Productivity Gains from Teleworking in the Post COVID-19 Era: How Can Public Policies Make it Happen?" (2020), *OECD Publishing* - Paris, 1, available at: http://www.oecd.org/coronavirus/policy-responses/productivity-gains-from-teleworking-in-the-post-COVID-19-era-how-can-public-policies-make-it-happen-a5d52e99/.

[92] Bisello M., Fernandez- Macías E., Hurley J., Milasi S. and Sostero M., "JRC Technical Report - Teleworkability and the COVID-19 crisis: a new digital divide?" (2020), *JRC Working Papers Series on Labour Education and Technology* 2020/05, 1, available at: https://joint-research-centre.ec.europa.eu/system/files/2020-07/jrc121193.pdf.

[93] Criscuolo C., et al., "The role of telework for productivity during and post-COVID-19: Results from an OECD survey among managers and workers" (2021), *OECD Productivity Working Papers* 31 - OECD Publishing - Paris, 1, available at: 7fe47de2-en.pdf (oecd-ilibrary.org).

[94] Criscuolo C., et al., "The role of telework for productivity during and post-COVID-19: Results from an OECD survey among managers and workers" (2021), *OECD Productivity Working Papers* 31 - OECD Publishing - Paris, 1, available at: 7fe47de2-en.pdf (oecd-ilibrary.org); Gramano E., "Digitalisation and work: challenges from the platform-economy" (2020), *Contemporary Social Science* 15 (4), 476, available at: https://www.tandfonline.com/doi/abs/10.1080/21582041.2019.1572919.

office spaces, with companies now designing more collaborative and flexible environments that complement rather than compete with remote settings. Finally, the adoption of remote working has necessitated stronger cybersecurity measures for some companies, entailing more investments in secure networks, virtual private networks ("**VPNs**"), and specialised training to protect sensitive information which may mitigate the risks associated with remote work.

118. In the aftermath of the pandemic, research has regularly underscored the pivotal role of Information and Communication Technologies ("**ICT**") and cloud technologies in ushering in the era of remote working. These digital environments mimic the interactive nature of physical offices, enabling individuals to work cohesively regardless of their physical locations. Equally important is the facility for real-time collaboration consisting of tools that enable simultaneous work on documents, spreadsheets or presentations which embody the collaborative spirit of the modern workplace.

95 Moreover, there is data to confirm that communication platforms have emerged in the EU for team interaction. In addition, the data confirm that cloud technology is central to teleworking in the EU. This includes, for example: (i) Infrastructure as a Service (IaaS) platforms, providing virtualised computing resources that can be scaled up or down to meet the demands of the business; (ii) Platform as a Service (PaaS), offering hardware and software tools over the internet, typically for application development; and (iii) Software as a Service (SaaS), delivering software applications over the internet, on a subscription model, reducing the need for local installation and maintenance. Finally, IT communication systems are multifaceted in their support for remote working. Data confirm the use of the following tools: (i) Unified Communications as a Service (UCaaS) stands out by integrating diverse methods of communication into a single, cloud-based platform; and (ii) cloud storage and file-sharing services ensure that documents and resources are accessible to team members, whenever and wherever required, thus enhancing collaborative potential.

119. The future trajectory of remote work remains uncertain. The OECD points out that the rapidly evolving nature of workplace trends and technological innovation creates a cloud of ambiguity over the long-term adoption of teleworking.[96] Additionally, the ramifications of this shift are not merely confined to productivity metrics but also influence various intangible aspects such as worker satisfaction, organisational culture, and interpersonal dynamics, which are all factors that are challenging to measure objectively.

However, Eurofound asserts that telecommuting has firmly established itself as a fixture in the contemporary work environment. In 2021, the number of remote workers across the EU reached 41.7 million, effectively doubling the count from two years earlier. Eurofound also anticipates that this upward trajectory will likely persist. Advances in technology are broadening the scope of jobs which can be performed remotely, and

[95] Mitrega M., Pfajfar G., Vuchkovski D. and Zalaznik M., "A look at the future of work: The digital transformation of teams from conventional to virtual" (2023), *Journal of Business Research* 163, 1, available at: A look at the future of work: The digital transformation of teams from conventional to virtual (sciencedirectassets.com).
[100] OECD, "Teleworking in the COVID-19 pandemic: Trends and prospects" (2021), *Tackling coronavirus (COVID-19)*, 1, available at: Teleworking in the COVID-19 pandemic - OECD (oecd-ilibrary.org).

both employers and employees are showing a growing inclination for such work arrangements.[97]

120. The increased utilisation of cloud-based platforms for the storage of information may have a significant impact on the ability of competition authorities to collect evidence by conducting inspections, as such evidence could be stored on servers or cloud-based platforms outside the remit of the inspection decision or outside the jurisdiction of the competition authority concerned.[98] The increased trend for remote working may therefore warrant additional resources and forensic IT tools and experts for competition authorities in order to search for evidence stored digitally.[99] This is also in accordance with Article 5(1) of the ECN+ Directive, which stipulates that EU Member States shall ensure at a minimum that NCAs have a sufficient number of qualified staff and sufficient technical and technological resources that are necessary for the effective performance of the duties of NCAs.[100]

Inspections at non-business premises – Implications of remote working and use of mixed devices

121. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Article 21 of Regulation 1/2003. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on the implications of remote working and the use of mixed devices[101] in the context of inspections at non-business premises pursuant to Article 21 of Regulation 1/2003 or its national equivalent.[102]

122. A total of 188 respondents (152 attorneys; 36 in-house counsel) provided input on this part of the interview question.[103] Of the 188 responding interviewees, 79.26% shared in which manner they consider digitisation may impact the need for inspections at private premises:

— Almost half of this group of respondents (44.97%) consider the digitisation of information and the use of mixed-use devices or cloud storage to reduce the need for inspections at private premises.[104]

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[97] Eurofound, "The rise in telework: Impact on working conditions and regulations" (2022), *Publications Office of the European Union - Luxembourg*, 1, available at: The rise in telework: Impact on working conditions and regulations | European Foundation for the Improvement of Living and Working Conditions (europa.eu).
[98] See also Brom H., "On-site Inspection and Legal Certainty", *EU ANTITRUST: HOT TOPICS & NEXT STEPS*, 246, available at: EU_ANTITRUST_ebook_2022.pdf (cuni.cz).
[99] See also Polanski J., "Dawn Raids and the Role of Forensic IT in Antitrust Investigations" (2020), *Yearbook of Antitrust and Regulatory Studies (YARS)* 13(32) , 187, available at: https://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-doi-10_7172_1689-9024_YARS_2020_13_21_7/c/articles-2158990.pdf.pdf.
[100] Recital 6 and Article 5 of EU Directive 2019/1 of 11 December 2018 empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, *OJ* 14 January 2019, L 11, 3.
[101] In the context of the Study, mixed devices are considered as devices used for both personal and professional purposes.
[102] See EU-27 interview question no. 5c reproduced in Annex II.
[103] Of the 152 responding attorneys, 84.86% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 36 responding in-house counsel, 61.11% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.
[104] Of these respondents 65.67% were attorneys who have been involved in one or more antitrust / cartel proceedings before the Commission.

— Among other reasons, 55.70% of these responding interviewees point to the possibility of retrieving data from mixed-use devices via the cloud at the premises of the undertaking under investigation. This group of interviewees stress the possibility of accessing information digitally, rather than conducting physical inspections at private premises.

123. Interviewees note the following constructive feedback on the subject of conducting inspections at private premises:

— A total of 28.19% of responding interviewees point out the importance of an appropriate balance between conducting inspections at private premises and respecting the right to privacy and protection of personal data. According to these interviewees, this may require making a distinction between devices used for personal and professional purposes.

— Of the 188 respondents who provided input on this part of the question, 19.68% acknowledge that inspections of private premises may remain necessary because physical evidence could still be stored at such private premises without being accessible from another location.

— Furthermore, 15.43% of responding interviewees note that RFIs and interviews may be more effective and less intrusive in certain instances for collecting evidence as opposed to conducting inspections at private premises.

— Additionally, 14.89% of responding interviewees note the importance of clear rules, procedures and training for competition authority officials with respect to inspections at private premises as competition authorities may gain access to personal information and files potentially unrelated to work. This might otherwise lead to a potential erosion of the employee's right to a private life outside of work.

— Finally, 8.51% of the responding interviewees express concerns about the relevance of labour laws in interaction with competition law enforcement as statutory protections provided to employees may be applicable in this context.

2.2 Interview feedback on requests for information

124. This section presents relevant input that will support the Commission in its evaluation of Article 18 of Regulation 1/2003. For Commission proceedings, Article 18 of Regulation 1/2003 allows the Commission, either by simple request or by decision, to require undertakings and associations of undertakings to provide all necessary information to carry out the duties assigned to it by Regulation 1/2003.

125. During the interviews, respondents from the EU-27 jurisdictions were requested to express their views on the effectiveness and efficiency of requests for information (RFIs) as an investigative tool for the finding of an infringement of Articles 101 and / or 102 (and also in comparison to other tools including interviews and inspections).[105]

[105] See EU-27 interview question no. 3 reproduced in Annex II.

Interview feedback on the effectiveness of RFIs

126. A total of 219 respondents provided input on this part of the interview question (170 attorneys; 49 in-house counsel.)[106] A majority of 57.08% of interviewees (102 attorneys; 23 in-house counsel) consider RFIs to be an effective investigative tool (Figure 32). On the other hand, 30.59% of the respondents (50 attorneys; 17 in-house counsel) were of the view that RFIs are effective but in need of improvement, while 12.33% of responding interviewees (18 attorneys; nine in-house counsel) see them as ineffective.[107]

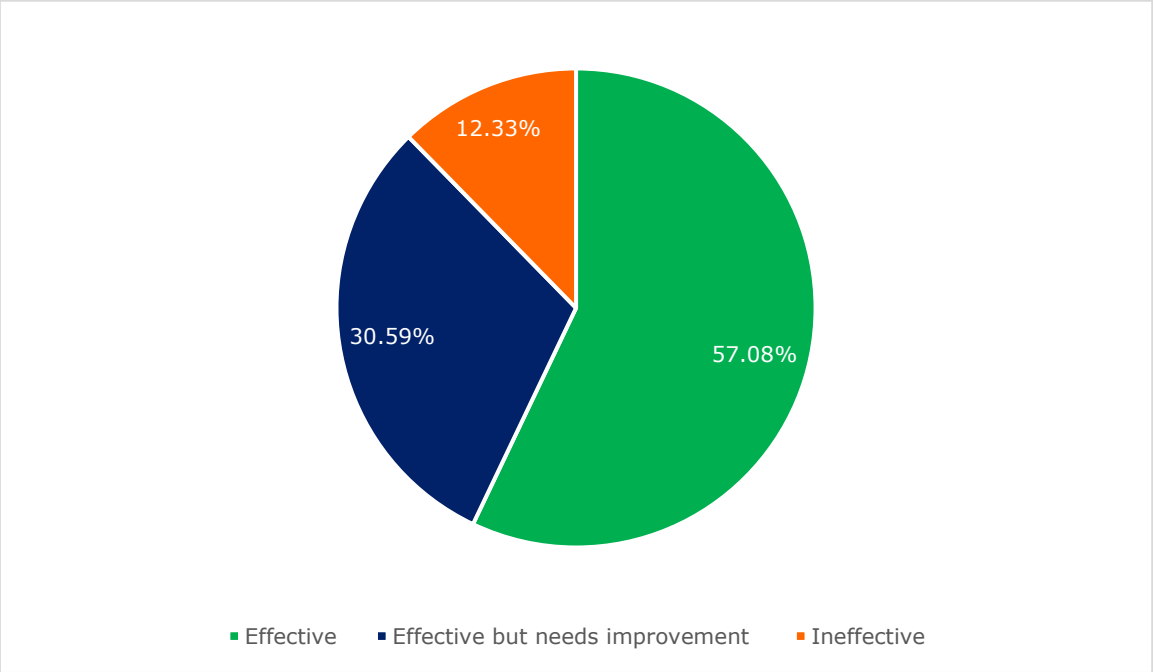


Figure 32 – Input of attorneys and in-house counsel on the effectiveness of RFIs as an investigative tool
Source: Standardised interviews (N=219)

127. The Figure below shows the feedback received from attorneys and in-house counsel sorted by the respective case experience of the interviewees, and indicates that in general more experienced attorneys consider RFIs to be an effective investigative tool.

[106] Of the 170 responding attorneys, 87.06% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 49 responding in-house counsel, 65.31% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.
[107] Of the 170 attorneys addressing the question on effectiveness, a majority of 60% view RFIs as an effective tool, 29.41% mention it as effective but in need of improvement, whereas only a minority of 10.59% evaluate it as ineffective. Of the 49 responding in-house counsel, 46.94% believe RFIs are effective, 34.69% note RFIs are effective but need further improvement, whereas 18.37% say RFIs are ineffective. Slightly more than one quarter (26.08%) of responding in-house counsel who deem RFIs to be effective have experience in more than five antitrust / cartel proceedings before the Commission. Responding attorneys who have experience in more than five cases before the Commission (52 attorneys) are particularly positive about the effectiveness of RFIs. See also Figure 33.

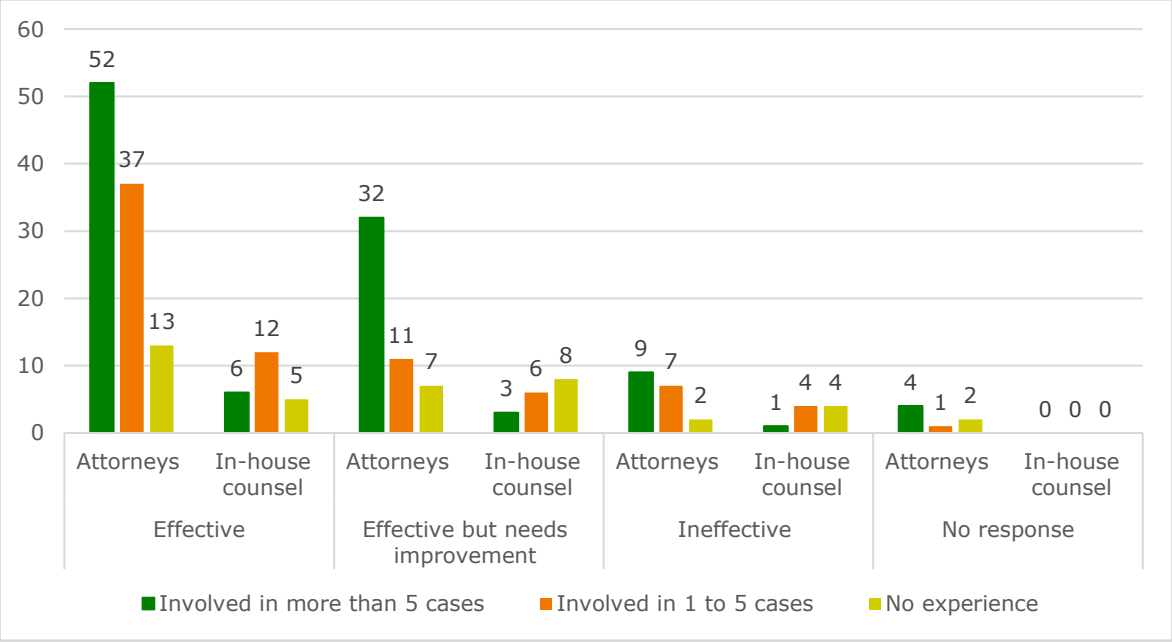


Figure 33 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on effectiveness of RFIs as an investigative tool
Source: Standardised interviews (N=226)

128. Interviewees indicate that the effectiveness of RFIs depends on accurate design and proper use. Specifically, approximately a fifth of respondents (21.92%) believe that the phrasing and clarity of the questionnaires play an important role.

— From this group of respondents, 10.42% (accounting for 2.21% of all respondents) consider it possible that poorly phrased questions may lead to misunderstandings and inefficiencies in data collection.

— In addition, 6.25% of the respondents in this group (accounting for only 1.37% of all respondents) indicate that information shared as part of RFIs may negatively affect confidentiality. This risk is especially high if a larger set of digitally stored data is passed on as part of an RFI response, as such set of data might include confidential and / or sensitive data.

— Additionally, 9.38% of attorneys in this group of respondents (accounting for only 1.39% of all respondents) are concerned about the potential "abusive" use of RFIs (e.g. by sending many follow-up RFIs after a first RFI).

Interview feedback on the efficiency of RFIs

129. A total of 165 respondents provided input on the efficiency of RFIs (127 attorneys; 38 in-house counsel).[108] As the following Figure shows, of the 165 responding interviewees, 50.03% consider RFIs to be efficient but in need of further improvement.

[108] Of the 127 responding attorneys, 88.19% have been involved in one or more cartel / antitrust proceeding(s) before the Commission. Of the 38 responding in-house counsel, 60.53% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.

Furthermore, 29.70% of respondents believe RFIs are an efficient investigative tool and 20.27% of respondents consider this investigative tool to be inefficient.[109]

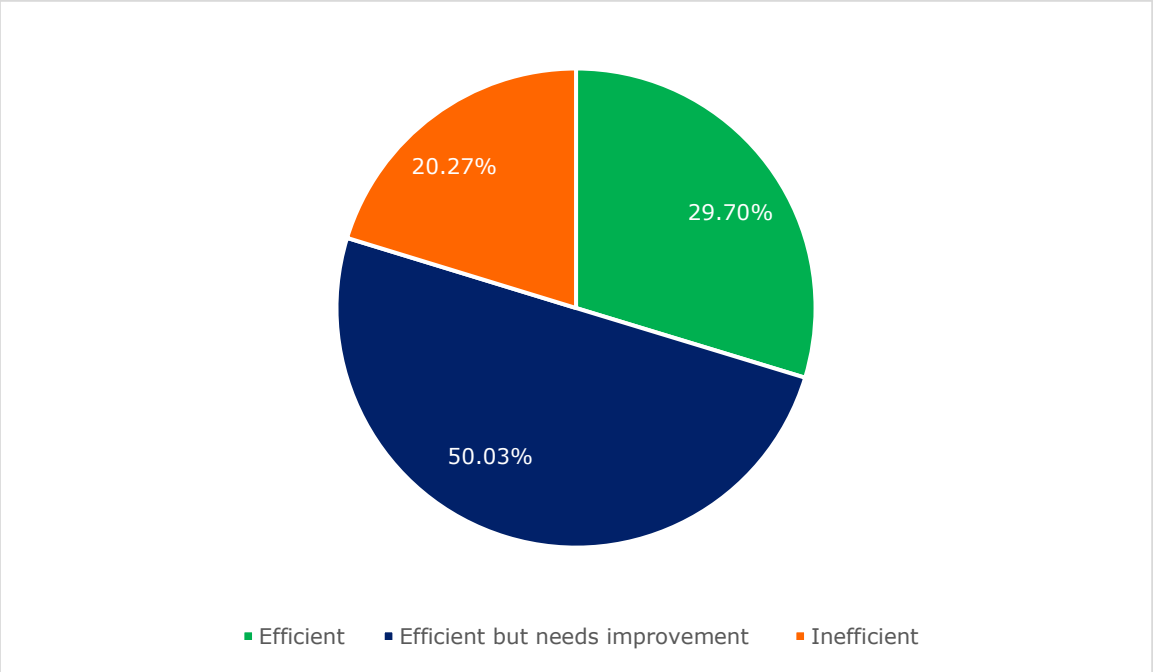


Figure 34 – Input of attorneys and in-house counsel on the efficiency of RFIs as an investigative tool
Source: Standardised interviews (N=165)

130. As detailed in the Figure below, 28.38% of attorneys who have been involved in more than five antitrust / cartel proceedings before the Commission regard RFIs as efficient. A slight majority (52.70%) of these more experienced attorneys consider RFIs to be efficient but in need of improvement, while only 18.92% indicate RFIs to be inefficient.

[109] Of the 127 attorneys addressing the question on efficiency, 33.86% say that RFIs are efficient, while half the responding attorneys (50.39%) say that RFIs are efficient but need further improvement. The remaining 15.75% of attorneys consider RFIs to be inefficient. Furthermore, of the 127 attorneys, 61.42% have experience in more than five antitrust / cartel proceedings before the Commission. Of this group of experienced attorneys, 28.38% hold RFIs to be an efficient investigative tool, whereas 52.70% consider RFIs to be efficient but in need of improvement. Of the 38 in-house counsel, 18.42% hold RFIs to be efficient (and an additional 50% consider RFIs as efficient but in need of further improvement), whereas 31.58% of in-house counsel indicate that RFIs are inefficient.

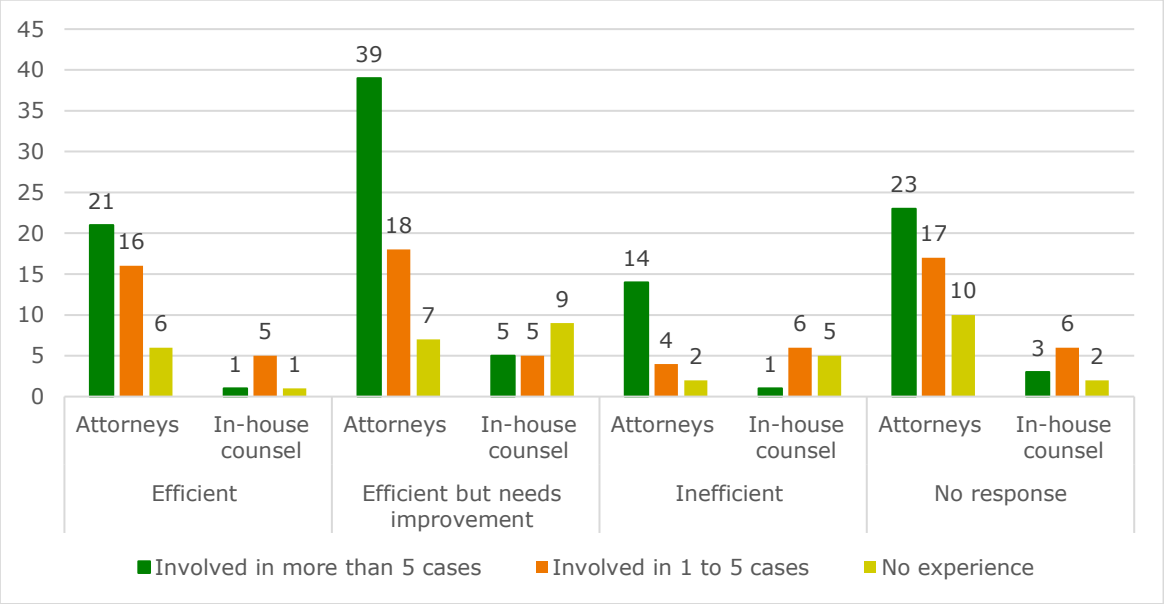


Figure 35 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the efficiency of RFIs as an investigative tool
Source: Standardised interviews (N=226)

131. According to 30.91% of respondents, RFIs can be burdensome and resource-consuming. These respondents point notably to the following when discussing the need for improvement of the efficiency of RFIs:

— These respondents indicate that the questions formulated by the Commission can be unclear, which can create uncertainty as to what may be needed from them.

— Of the respondents who note that RFIs are burdensome, 63.73% mention that questions formulated in RFIs are generally too broad in scope and require a large set of detailed information from undertakings. Consequently, these interviewees note that responding to RFIs can be resource-intensive for undertakings, as it often requires a lot of time and personnel to provide accurate and comprehensive responses which also increases the cost of responding to RFIs.

The short deadlines for replying to RFIs are another point raised by 13.93% of respondents. These respondents are of the view that the time allotted for providing answers to the usually long RFIs is insufficient and can jeopardise both the efficiency and the effectiveness of RFIs.

132. The respondents formulate several suggestions to make RFIs more effective and efficient, including the following:

— More than a third of respondents (39.39%) remark that RFIs lack a certain degree of precision and could be better targeted. Furthermore, 16.96% of respondents suggest that questions could be better formulated. According to these respondents, this would also require the Commission to have more experts with sector-specific knowledge to contribute to the drafting of RFIs.

— A total of 7.88% interviewees suggest to set in place an initial, more informal phase before sending out RFIs. These respondents indicate that the Commission may discuss envisaged questions with the undertakings during this phase (e.g. by sharing

a draft RFI). The undertaking(s) concerned could then communicate on the phrasing of questions and the feasibility of providing answers.

— Additionally, 8.48% of respondents mention that interviews preceding the issuance of RFIs could help the authorities gain a better overview of the situation and may lead to more targeted RFIs.

— A small number (4.84%) of responding interviewees remark that the efficiency of RFIs could be improved by using online platforms for document submission and leveraging Artificial Intelligence ("**AI"**) tools for data analysis.

— As part of a different interview question,[110] five interviewed in-house counsel similarly remark that the platforms and tools used for communication with the Commission can be rather time-consuming. They further highlight the inability to submit documents in different formats, such as tables or screenshots, as well as the lack of functionality for extracting or downloading questionnaires. According to said interviewees, this method creates inefficiencies, particularly when gathering information from various individuals within large organisations.[111]

RFIs are seen by 6.67% of interviewees as less invasive than both inspections and interviews. At the same time, 10% of attorneys regard inspections as more effective than RFIs. Moreover, 10.05% of respondents tend to agree that RFIs need to be complemented by interviews and / or inspections, especially in cartel cases, for a more comprehensive and efficient investigation.

133. Similarly, interviewees from the Third Countries were asked how competition authorities in these jurisdictions request undertakings to provide all necessary information for the purpose of an antitrust investigation. In this context, interviewees from the Third Countries were asked to share their views on the effectiveness and efficiency of such procedures as an investigative tool in detecting antitrust infringements, also in comparison to other tools (including interviews and inspections).[112]

From the US, 10 respondents mention the use of subpoenas, dawn raids, voluntary access letters, and civil investigative demands as methods for requesting information in antitrust investigations, though without further clarifying the legal implications as a matter of evidence preservation. Subpoenas are commonly used and generally effective according to such interviewees, while dawn raids are reportedly used for more severe criminal cases.

134. In summary, a majority of respondents (57%) consider that RFIs are an effective investigative tool (but less effective than inspections) as RFIs facilitate the collection of relevant data and evidence. However, in terms of the efficiency of RFIs, half the respondents to this interview question (50.03%) indicate that RFIs need further improvement to become more efficient insofar as RFIs can be rather burdensome (resource-intensive and subject to short deadlines) and not well-targeted in their current form. The interviewees suggest that better scoping of RFIs, as well as introducing a more informal phase preceding RFIs, would enhance their efficiency. Beyond that,

[110] See EU-27 interview question no. 17 reproduced in Annex II and Third Country interview question no. 12 reproduced in Annex III (which reads as follows: "*Do you have any other comments?*").
[111] See EU-27 interview question no. 17 reproduced in Annex II and Third Country interview question no. 12 reproduced in Annex III (which reads as follows: "*Do you have any other comments?*").
[112] See Third Country interview question no. 1 reproduced in Annex III.

interviewees believe that RFIs are a less invasive investigative tool compared to inspections. Finally, interviewees add that a combination of these three investigative tools increases effectiveness and efficiency.

2.3 Interview feedback on the power to take statements

135. This section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Article 19 of Regulation 1/2003. Article 19 of Regulation 1/2003 governs the Commission's power to take statements and allows the Commission to interview, on a consensual basis, any natural or legal person for the purpose of collecting information relating to the subject-matter of an investigation. Also relevant in this context are the provisions implementing Article 19 provided for in Article 3 of Regulation 773/2004 governing the procedural aspects of the power to take statements, including the obligation to record formal interviews. During the interviews, interviewees were requested to express their views on the effectiveness and efficiency of interviews as an investigative tool for the finding of an infringement of Articles 101 and / or 102 (also in comparison to other tools including RFIs and inspections).[113]

Interview feedback on the effectiveness of the power to take statements

136. Overall, a total of 192 respondents (156 attorneys; 36 in-house counsel), provided input on the effectiveness of interviews.[114] Interview feedback in relation to the effectiveness of interviews as a tool is mixed: 44.27% of responding interviewees indicate that interviews are an effective investigative tool, while 29.69% of respondents find them to be effective but in need of improvement. On the other hand, about one quarter (26.04%) of responding interviewees see interviews as ineffective. (See next Figure.)

[113] See EU-27 interview question no. 4 reproduced in Annex II.
[114] A total of 192 respondents provided input to this interview question, out of which 156 are attorneys and 36 are in-house counsel. Of the 156 responding attorneys, 85.26% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 36 responding in-house counsel, 72.22% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.

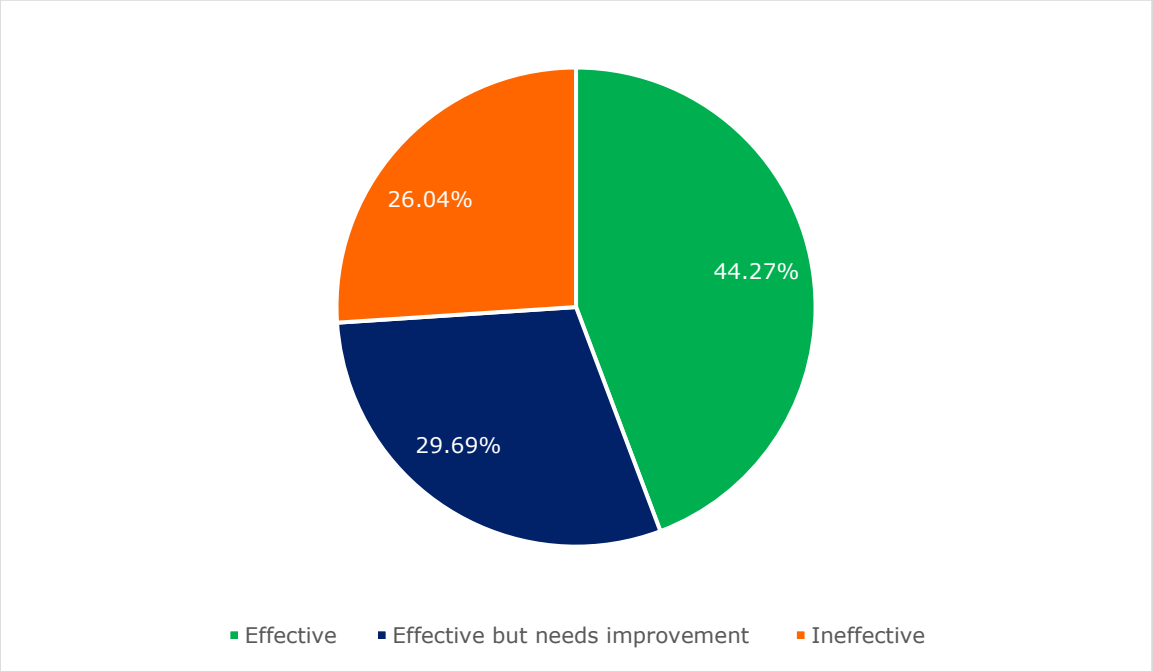


Figure 36 – Input of attorneys and in-house counsel on the effectiveness of interviews as an investigative tool
Source: Standardised interviews (N=192)

137. As indicated in the Figure below, of the 36 in-house counsel that provided input on this question, a large majority of 72.22% believe that interviews are effective. Overall, of the 156 attorneys who provided input on this question, 37.82% find interviews to be effective and 34.62% indicate that interviews are effective but need further improvement. Furthermore, 27.56% attorneys consider interviews to be ineffective.

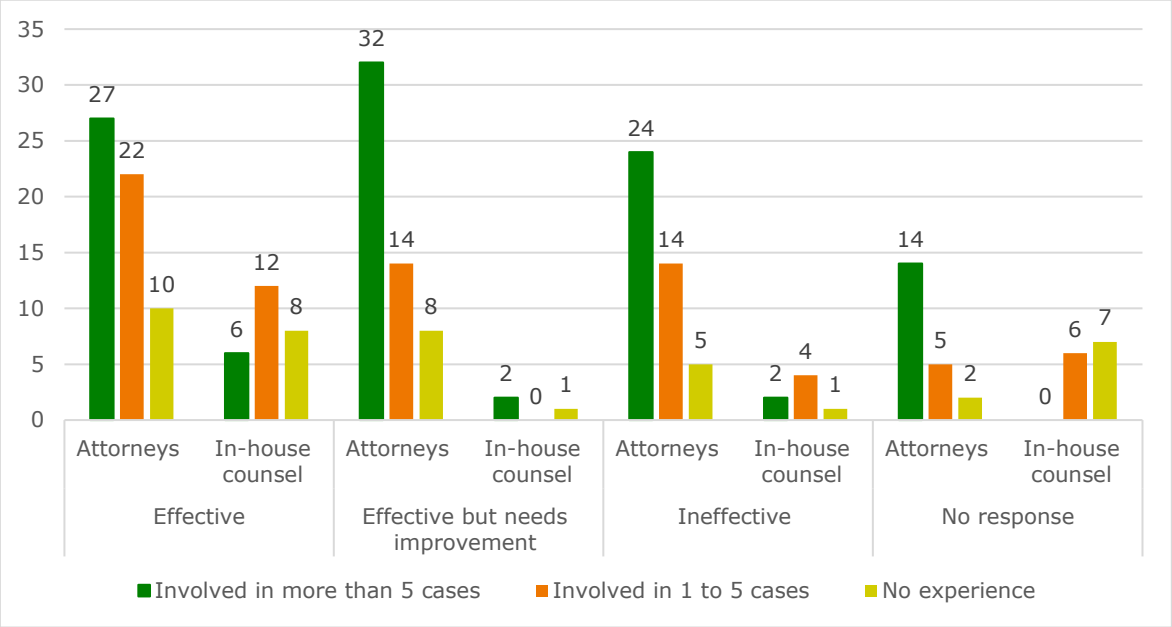


Figure 37 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness of interviews as an investigative tool
Source: Standardised interviews (N=226)

138. Among the positive views with regard to interviews, respondents indicate the following:

— It is noted by 14.58% of respondents that interviews enable face-to-face questioning and make it possible to obtain targeted and relevant information.

— A small group of 3.65% of respondents deem interviews to be particularly effective for developing an in-depth analysis of evidence which is already available to the Commission (e.g. documents collected through RFIs), since interviews make it possible to delve deeper into detail and gather additional insights and evidence.

— It is also mentioned by a handful of respondents that (i) interviews make it possible to gain a better understanding of the economic and legal aspects of cases and (ii) interviews allow undertakings to clarify and contextualise data (e.g. give meaning to message exchanges between employees).

139. Interviewees note the following constructive feedback and potential concerns regarding the effectiveness of interviews:

— In terms of compliance with parties' and third parties' procedural rights during interviews, 6.25% of respondents believe that interviewees may not always be well informed of their rights (e.g. the right not to answer) which may lead to self-incrimination. Moreover, 11.54% of respondents, all of which are attorneys,[115] perceive that there is a failure to record interviews properly (e.g. by taking minutes), which may raise questions about procedural fairness.

— It is indicated by 5,13% of all responding attorneys that, in their experience, the effectiveness of interviews can be undermined if interviewees are not cooperating

[115] Of whom almost all have been involved in one or more antitrust / cartel cases before the Commission.

(e.g., refuse to answer). Respondents suggest that a possible reason for non-cooperative behaviour could be avoidance of self-incrimination.

— According to 14.10% of all responding attorneys, the effectiveness of interviews can be affected by the inaccuracy of information shared during an interview. Respondents note that inaccurate information may be shared intentionally or unintentionally (e.g. because employees share personal opinions).

140. To ensure a balance between procedural fairness and the effectiveness of interviews, respondents make the following suggestions based on their respective past experience:

— According to 9.90% of respondents who provided input on this question, competition authorities could improve on explaining the interviewees' rights, such as the right for an attorney to be present, before the interview commences. The same proportion of respondents suggest investing in further development of interviewer skills. For example, this group of interviewees suggest to involve more interviewers with sectoral expertise and emphasise the importance of well-prepared interviews.

— Furthermore, 3.13% of interviewees who provided feedback on this question indicate that the quality of minute-keeping during interviews can vary. In this context, these respondents suggest that the Commission provides more detailed information in advance about the questions that will be raised during the interview.

— Moreover, 2.60% of these responding interviewees suggest that mandatory interviews may be more effective than interviews on a voluntary basis, possibly even at EU level.

Interview feedback on the efficiency on the power to take statements

141. A total of 120 respondents (98 attorneys; 22 in-house counsel) provided input on the efficiency of interviews.[116] Interview feedback in relation to the efficiency of interviews is mixed. While 41.67% of interviewees who provided input on this part of the question indicate that interviews are an efficient investigative tool, 31.67% of respondents remark that the latter are efficient but in need of improvement. On the other hand, about one quarter (26.67%) of responding interviewees mention that interviews are inefficient.

[116] Of the 98 responding attorneys, 89.47% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 22 responding in-house counsel, 77.27% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.

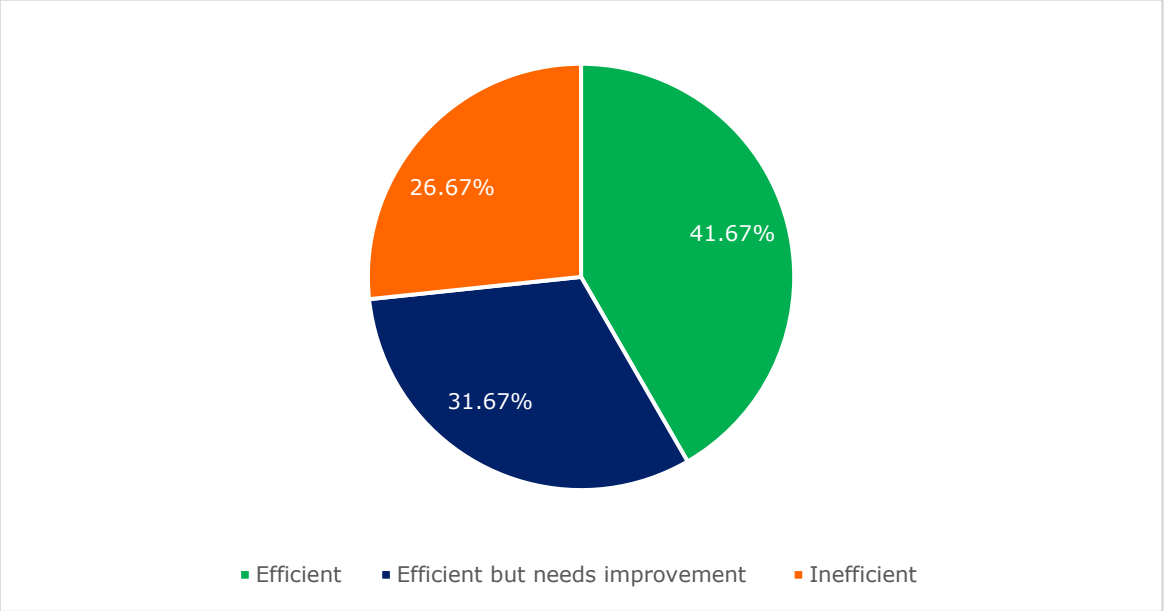


Figure 38 – Input of attorneys and in-house counsel on the efficiency of interviews as an investigative tool
Source: Standardised interviews (N=120)

As the figures in the Figure below indicate, of all 226 interviewees, nearly half (46.90%) did not provide any input on the efficiency of interviews. Of the 98 attorneys who provided input on this part of the question, 40.82% mention that interviews are efficient, while 26.53% indicate that interviews are inefficient. According to 32.65% of attorneys who provided feedback, interviews are efficient but need further improvement.[117]

[117] Of the 22 in-house counsel responding to the question on the efficiency of interviews, 45.45% think they are efficient (and an additional 27.27% view them as efficient but in need of further improvement), whereas 27.27% of in-house counsel believe interviews are inefficient.

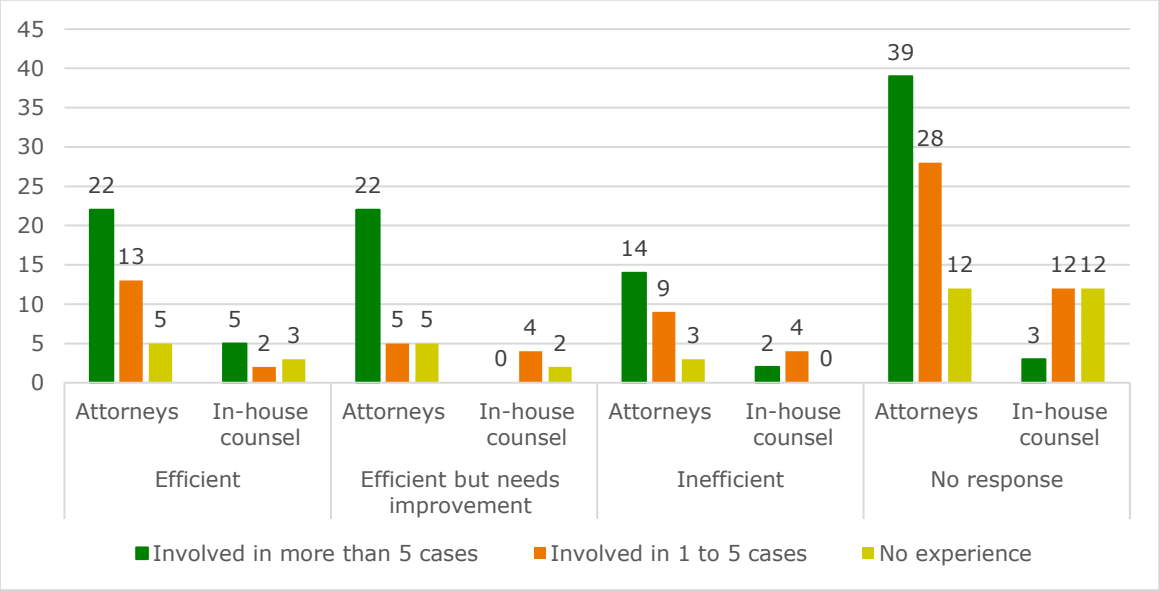


Figure 39 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the efficiency of interviews as an investigative tool
Source: Standardised interviews (N=226)

142. Interviewees note the following constructive feedback and potential concerns in respect of the efficiency of interviews based on their respective past experience:

— An observation made by 9.17% of interviewees who provided input on this question is that the Commission appears to not make use of its power to take statements on a frequent basis. There respondents note that an explanation for this perceived infrequency may lie in the additional training which may be required for the civil servants in order for them to conduct an interview.

— Of all respondents providing feedback on this question, 10.83% voice concerns with regard to the potentially burdensome nature of interviews since they require preparation by the employees of an undertaking under investigation who might, in addition, find it difficult to respond to certain interview questions.

143. Although a majority of respondents consider both RFIs and interviews to be effective, 5.75% of all interviewees indicate that RFIs are more effective than interviews. Additionally, 10.83% of respondents tend to agree that interviews can be valuable when used in combination with other investigative tools such as RFIs and inspections.

144. In conclusion, interviewees were divided as to whether interviews can be regarded as effective and efficient. Respondents who deem interviews to be effective argue that this investigative tool can help discover targeted and relevant information and could enable a better understanding of the case and / or pieces of data. Respondents also opine that the effectiveness of interviews could be improved via increased protection of procedural rights of parties and third parties, better explanations of procedural rights and proper recording of interviews.

Input by NCAs on the effectiveness and efficiency of the power to take statements

145. In addition, the NCAs and the Icelandic and Norwegian competition authorities were also asked to elaborate on their national power to conduct interviews. Article 9 of the ECN+ Directive (with European Economic Area ("**EEA**") relevance) provides that NCAs should at a minimum be "*empowered to summon any representative of an undertaking or association of undertakings, any representative of other legal persons, and any natural person, where such representative or person may possess information relevant for the application of Articles 101 and 102 TFEU, to appear for an interview*". The NCAs and the Icelandic and Norwegian competition authorities were asked whether they have additional powers to impose fines (i) on natural persons for failure to appear at an interview, and (ii) on undertakings or natural persons for failure to reply or for providing misleading information during an interview.[118] References to 'X' in the Table below indicate either that the respective NCA does not have such powers, or that no further input was provided by the respective NCA.

Fines in the context of interviews		
Jurisdiction	**Ability to impose fines on natural persons for failure to appear at an interview**	**Ability to impose fines on undertakings or natural persons for failure to reply or for providing misleading information during an interview**
Austria	✓	✓
Belgium	✓	✓
Bulgaria	✓	✓
Croatia	✗	✗
Cyprus	✓	✓
Czechia	✓	✓

[118] See NCA questions nos. 12.3-12.4 reproduced in Annex IV and questions nos. 9.3-9.4 in the questionnaire addressed to the Icelandic and Norwegian competition authorities as reproduced in Annex V.

Fines in the context of interviews		
Jurisdiction	**Ability to impose fines on natural persons for failure to appear at an interview**	**Ability to impose fines on undertakings or natural persons for failure to reply or for providing misleading information during an interview**
Denmark	✓	✓
Estonia	✗	✗
Finland	✗	✗
France	✗	✓
Germany	✓	✓
Greece	✓	✓
Hungary	✓	✓
Ireland[119]	✗	✗
Italy	✓	✓
Latvia	✓	✓
Lithuania	✓	✓

[119] In response to a draft of the Study, the Irish NCA noted that it does not have any power to impose fines for either form of conduct but that both forms of conduct could in certain circumstances amount to criminal offences under section 18(4) of the Competition and Consumer Protection Act 2014 for which the Irish courts could impose fines on natural persons.

Fines in the context of interviews		
Jurisdiction	**Ability to impose fines on natural persons for failure to appear at an interview**	**Ability to impose fines on undertakings or natural persons for failure to reply or for providing misleading information during an interview**
Luxembourg	✗	✗
Malta	✓	✓
Netherlands	✓	✓
Poland	✗	✓
Portugal	✓	✓
Romania	✓	✓
Slovakia	✓	✓
Slovenia	✗	✗
Spain	✓	✓
Sweden	✗	✗
Iceland	✗	✓
Norway	✓	✓

Table 9 – Overview of jurisdictions and the power of NCAs to impose fines in the context of interviews
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

Interview feedback from Third Country interviewees on the effectiveness and efficiency of the power to take statements

146. Interviewees from the Third Countries were asked to elaborate on any of the following points in relation to interview practices in their respective jurisdiction:[120]

— the types of procedures used by competition authorities in their respective jurisdictions to take statements from individuals;

— whether such statements are made in a formal way at all stages of the investigation (e.g. from the very beginning of the investigation or only later on), whether these are recorded and / or confirmed by the interviewee;

— any differences in the procedures / recording modalities depending on the intended use of the statements later on in the respective proceedings (for example, as evidence versus only as background information for further fact-finding); and

— personal views on the effectiveness and efficiency of these procedures as an investigative tool for identifying antitrust infringements, also in comparison with other tools (requests for information, inspections).

In the **USA**, respondents note that the primary procedures for obtaining statements in antitrust investigations include witness depositions, declarations and informal interviews. While depositions are transcribed and occasionally video-recorded, declarations are less formal. Informal interviews, on the other hand, may or may not be recorded. Both formal and informal statements can be obtained at any stage in the investigation. Depositions, while reliable and effective, are said to be resource-intensive and adversarial whereas informal interviews are efficient for gathering initial information but may not hold up as effectively in court.

In the **UK**, the CMA is reported to follow a structured approach to obtaining statements, with interviews serving as a crucial part of the investigative process. Interviews are typically conducted later in the process, with the timing varying depending on the case. Recorded or detailed notes are taken according to the respondents, and interviewees have the opportunity to review and confirm their accuracy. Legal advisors are reported to be encouraged to be present during interviews to ensure a fair process. Full transcripts of interviews are reportedly checked carefully, and individuals have the right to review relevant transcripts.

In **Norway**, interviews are reported to play an exceptionally effective role in competition investigations, serving as a means to swiftly resolve misunderstandings and misconceptions that might arise from written evidence. Interviews are reported to be a readily accessible and extensively employed tool due to relatively fewer procedural constraints. Interviewees mention that cartel cases can result in criminal proceedings against individuals, with personal punishments at stake, making interviews instrumental in uncovering concealed interactions and hidden dynamics.

[120] See Third Country interview question no. 2 reproduced in Annex III.

2.4 Sector inquiries

147. Article 17 of Regulation 1/2003 provides that the Commission may conduct an investigation into a particular sector of the economy or into a particular type of agreement across various sectors where the trend of trade between EU Member State, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted. Such sector inquiries may lead to the initiation of an investigation, which can then result in the adoption of a decision. A large majority of NCAs hold similar powers to initiate sector inquiries. This section offers a quantitative analysis of decisions adopted by the Commission and NCAs following the initiation of sector inquiries, including an overview of powers of NCAs to conduct sector inquiries and the frequency of the use of this power. This information is complemented by an examination of the perceived effectiveness and efficiency of sector inquiries as a tool for investigating and identifying infringements of Articles 101 and / or 102 as assessed by the interviewed respondents.

The Study collected information relevant to the evaluation of Article 17 through interviews with attorneys and in-house counsel as well as by analysing Commission and NCA decisions as a follow-up to sector inquiries.

2.4.1 Decisions by the Commission and NCAs following sector inquiries: Statistical overview

148. The Consortium was requested to compare, to the extent that such information can be retrieved from the relevant Commission and NCA decisions:[121]

(i) the number of decisions adopted by the Commission following investigations conducted by the Commission after the completion of a sector inquiry under Article 17 of Regulation 1/2003 in a related sector;[122] with

(ii) the number of decisions adopted by NCAs where the latter have powers to conduct sector inquiries similar to those of the Commission following investigations conducted by those respective NCAs after completion of a national sector inquiry in a related sector.[123]

Antitrust enforcement by the Commission as a follow-up to sector inquiries

149. In order to determine which decisions adopted by the Commission follow up on a sector inquiry, the Consortium considered decisions adopted by the Commission within a fifteen-year period after the relevant date of an inquiry initiated by the Commission in that sector. The relevant date is the date of the most recent report containing the initial, preliminary, or final findings of the inquiry as made public by the Commission. In the absence of any of these, the most recent update on the sector inquiry as documented by a press release issued by the Commission is used.

The Consortium considers a 15-year period to be pertinent as, for instance, the Commission adopted a decision in *Cephalon* (AT.39686) on 26 November 2020 as a

[121] See desk research question no. 4 reproduced in Annex I.
[122] At the request of DG COMP, procedural infringement decisions and decisions applying both Article 106(1) and Article 102 were omitted from the graphs and in-depth analyses unless explicitly stated otherwise.
[123] Following consultation with DG COMP and for categorisation purposes, fining decisions adopted by the German NCA and conviction decisions adopted by the Irish courts in criminal proceedings arising out of investigations by the Irish NCA have been categorised as cease-and-desist orders in the context of the Study.

follow-up to the pharmaceutical sector inquiry (of which the relevant date identified by the Consortium is 8 July 2009, see *infra*).

For the purpose of this sub-section, the Consortium uses both the general and more specific sector classifications per decision in the data set provided by DG COMP and considers the sector inquiries initiated by the Commission in the following sectors that were conducted under Regulation 1/2003:

(i) Internet of Things for consumer-related products and services (relevant date: 20 January 2022);

(ii) e-commerce (relevant date: 10 May 2017);

(iii) pharmaceutical (relevant date: 8 July 2009);

(iv) business insurance (as part of the broader financial services sector) (relevant date: 25 September 2007);

(v) retail banking (as part of the broader financial services sector) (relevant date: 31 January 2007);

(vi) gas and electricity (as part of the broader energy sector) (relevant date: 10 January 2007); and

(vii) provision of sports content over third generation (3G) mobile networks (relevant date: 21 September 2005).

The Consortium has also considered whether the following sector inquiries (that were conducted prior to the entry into force of Regulation 1/2003) gave rise to decisions under Regulation 1/2003.

(i) local loop (relevant date: 3 March 2002);

(ii) leased lines (as part of the broader telecommunications sector) (relevant date: 8 September 2000); and

(iii) mobile roaming (relevant date: 13 December 2000).

For the decisions during the relevant timeframe and in line with the above methodology, an analysis was carried out as to whether the potentially relevant decisions which the Commission has adopted in the same sector (based on the data set provided by the Commission) contain any relevant references to a sector inquiry initiated by the Commission or to Article 17 of Regulation 1/2003, or whether an official Commission press release could be identified by the Consortium which further detailed the origin of a decision as a follow-up to a sector inquiry. The Consortium then classified the Commission decisions based on this evaluation.

It is noted that:

— Commission decision in Case AT.39612 (*Perindopril – Servier*) was not included as the decision explicitly indicates that the relevant investigation did not follow up from the Commission's pharmaceutical sector inquiry (see page 14, footnote 82 of the mentioned decision); and

— Commission decision in Case AT.38700 of 5 March 2008 (*Greek Lignite*) was not included as it concerns Article 106 infringement proceedings against a Member State which are not conducted on the basis of Regulation 1/2003.

150. Of the 215 relevant Commission decisions adopted under Article 101 and / or Article 102, 16 (7.44%) were adopted as a follow-up to a sector inquiry under Article 17 of Regulation 1/2003. Of these, 10 (62.50%) are from the "IT / Internet / Consumer electronics (software, computers, iPhones…)" sector, three (18.75%) originate in "Pharma / Health services", two (12.50%) in "Energy" and one (6.25%) in "Consumer goods", specifically, "Online retail of clothing".

The above findings concern the following decisions, for which the respective investigations were each time initiated ex officio by the Commission:

Relevant sector inquiry	Date of adoption of the follow-up decision	Case number and name of the follow-up decision
Gas and electricity (energy)	26/11/2008	AT.39388-39389 – E.ON Electricity[124]
	18/03/2009	AT.39402 – RWE Gas Foreclosure
Pharmaceutical	19/06/2013	AT.39226 – Lundbeck
	10/12/2013	AT.39685 – Fentanyl
	26/11/2020	AT.39686 – Cephalon
E-commerce	24/07/2018	AT.40465 – Asus
	24/07/2018	AT.40469 – Denon & Marantz
	24/07/2018	AT.40181 – Philips
	24/07/2018	AT.40182 – Pioneer
	17/12/2018	AT.40428 – Guess
	20/01/2021	AT.40413 – Focus Home – Video Games

[124] Commission decisions adopted in Cases AT.39388-39389 (*E.ON Electricity*) and Case AT.39502 (*RWE Gas Foreclosure*) are included as the Commission's Staff Working Paper on the 5-year period following the applicability of Regulation 1/2003 indicates that the investigations leading to the aforementioned decisions follow up on the gas and electricity (energy) sector inquiry. See Commission Staff Working Paper COM(2009)206 of 29 April 2009 accompanying the Communication from the Commission to the European Parliament and Council on the functioning of Regulation 1/2003, pages 23-24.

Relevant sector inquiry	Date of adoption of the follow-up decision	Case number and name of the follow-up decision
	20/01/2021	AT.40414 – Koch Media – Video Games
	20/01/2021	AT.40420 – Zenimax – Video Games
	20/01/2021	AT.40422 – Bandai Namco – Video Games
	20/01/2021	AT.40424 – Capcom – Video Games
	20/01/2021	AT.40413, AT.40414, AT.40420, AT.40422 and AT.40424 – Valve – Video Games[125]

Table 10 – Decisions adopted as follow-up to a sector inquiry, linked to the relevant sectors
Source: Annex VII

Antitrust enforcement by the NCAs as a follow-up to sector inquiries

151. All NCAs indicated to have certain powers to conduct sector inquiries (Table 11).[126]

NCAs with powers to conduct sector inquiries similar to the powers of the Commission adopted 119 decisions[127] between 2004 and 2022 following investigations conducted after the completion of a national sector inquiry. Of these, approximately one quarter (25.21%) applied EU Treaty Article(s), either on a stand-alone basis or in combination with equivalent national provisions (Figure 40).

[125] Commission decisions adopted in Cases AT.40413, AT.40414, AT.40420, AT.40422 and AT.40424 (resp. *Focus Home*, *Koch Media*, *Zenimax*, *Bandai Namco* and *Capcom*) are included as the relevant press release (IP/21/170) states that, while the respective investigations formed part of a stand-alone procedure independent of the e-commerce sector inquiry, the investigations do follow up on some of the issues identified in that sector inquiry.
[126] However, the Irish NCA clarified as part of its response to the NCA questionnaire that it does not use a specific power, but a more general power to "*conduct or commission research, studies and analysis on matters relating to the functions of the [Irish NCA]*" with different investigative powers from those used by the Commission's sector inquiries.
[127] The Consortium considers decisions which explicitly refer to a national sector inquiry in the text of such decisions as qualifying as "*decisions adopted by EU NCAs […] following investigations conducted by those respective EU NCAs after completion of a national sector inquiry in a related sector".* In the case of NCA decisions, decisions exclusively based on the national equivalent provisions of Articles 101 / 102 were also included in the scope of the analysis, as are procedural infringement and interim measures decisions.

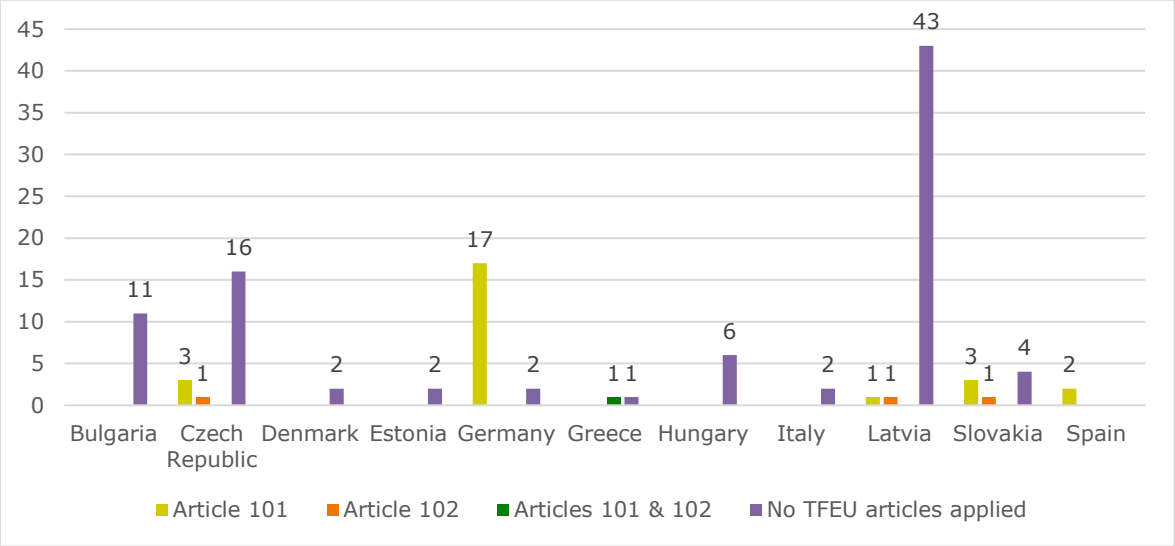


Figure 40 – Number of decisions adopted following the completion of a sector inquiry per jurisdiction (N=119) Source: Publicly available data and further input partly provided by the NCAs (2004-2022). NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set.

Input provided by NCAs and Icelandic and Norwegian competition authorities on the power to conduct sector inquiries

152. To further contextualise the legal landscape with regard to sector inquiries, the NCAs and the competition authorities of Iceland and Norway were requested to indicate whether they have the power to conduct a sector inquiry as well as the frequency with which this power is used in their jurisdictions. From this input, it appears that all NCAs as well as the competition authorities of Iceland and Norway have the power to conduct sector inquiries or at least have a power which displays features similar to the power to conduct sector inquiries of the Commission, for instance, the power to conduct market studies but without having investigative powers similar to those of the Commission.[128]

Overview of the power of NCAs to conduct sector inquiries		
Jurisdiction	**Power to conduct sector inquiry?**	**Number of sector inquiries**
Austria	✓	10
Belgium	✓	1

[128] See NCA question no. 7 reproduced in Annex IV and third-country competition authority question no. 4 reproduced in Annex V.

Overview of the power of NCAs to conduct sector inquiries			
Jurisdiction	**Power to conduct sector inquiry?**	**Number of sector inquiries**	
Bulgaria	✓	20	
Croatia	✓	7	
Cyprus	✓	1	
Czechia	✓	5	
Denmark	✓	*The Danish NCA provided a list reflecting both competition analyses and sector inquiries*	
Estonia	✓	27 *The Consortium was provided with an URL which may also include activities which would not qualify as sector inquiries*	
Finland	✓	No list provided	
France	✓	14 opinions rendered following sector-specific inquiries initiated ex-officio	
Germany	✓	Under Sec. 32e(1) re. restrictions of competition: 19	Under Sec. 32e (5) re. violation of consumer protection laws: 6

Overview of the power of NCAs to conduct sector inquiries		
Jurisdiction	**Power to conduct sector inquiry?**	**Number of sector inquiries**
Greece	✓	10 market investigations and investigations of sectors of the economy or types of agreements
Hungary	✓	31
Ireland	✓ (via general power to conduct or commission relevant research, studies and analyses, though different investigative powers apply)	*No list provided by Irish NCA*
Italy	✓	36
Latvia	✓	139 *According to the Latvian NCA, this number encompasses publicly available inquiries or inquiries referenced in a decision based on a follow-up investigation and excludes inquiries without meaningful conclusions.*
Lithuania	✓	14
Luxembourg	✓	6

Overview of the power of NCAs to conduct sector inquiries		
Jurisdiction	**Power to conduct sector inquiry?**	**Number of sector inquiries**
Malta	✓	3
Netherlands	✓	50
Poland	✓	122
Portugal	✓	29 (including market studies)
Romania	✓	No definitive list provided by Romanian NCA *The Consortium was provided with an URL listing 95 publications, which may also include activities which would not qualify as sector inquiries.*
Slovakia	✓	14
Slovenia	✓	9
Spain	✓ (market studies)	46
Sweden	✓	No definitive list provided by the Swedish NCA. The Consortium was provided with a list of 84 publications, which may also include activities which would not qualify as sector inquiries.

Overview of the power of NCAs to conduct sector inquiries		
Jurisdiction	**Power to conduct sector inquiry?**	**Number of sector inquiries**
Iceland	✓	*Question not raised with Icelandic competition authority.*
Norway	✓	*Question not raised with Norwegian competition authority.*

Table 11 – Overview of jurisdictions and the power of NCAs to sector inquiries
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire[129]

2.4.2 Interview feedback on the effectiveness and efficiency of sector inquiries

153. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Article 17 of Regulation 1/2003. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on the effectiveness and efficiency of sector inquiries as an investigative instrument for uncovering infringements of Articles 101 and / or 102.[130]

Interview feedback on the effectiveness of sector inquiries

154. Of the 226 respondents, a total of 206 interviewees provided feedback on the effectiveness of sector inquiries in uncovering infringements of Articles 101 and / or 102. A majority (51.94%) of these responding interviewees (83 attorneys; 24 in-house counsel) consider sector inquiries to be effective. On the other hand, 30.58% of the responding interviewees (48 attorneys; 15 in-house counsel) indicate that sector inquiries are effective but in need of improvement while 17.48% of respondents providing feedback on this question (31 attorneys; five in-house counsel) deem sector inquiries to be ineffective.[131]

[129] For the purpose of this table and the number of sector inquiries taken into account, please note that sector inquiries currently being conducted were also included to the extent that they are mentioned on the website of the relevant NCA insofar as they are referred to in the input of the respective NCA to the NCA questionnaire.
[130] See EU-27 interview question no. 6 reproduced in Annex II.
[131] Of the 162 responding attorneys, 84.57% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission and 99.38% have represented parties in one or more cartel / antitrust proceedings before NCAs. Of the 44 responding in-house counsel, 65.90% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission and 95.45% of respondents indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before NCAs. Of the responding attorneys, 76.69% have represented parties in both Commission and NCA proceedings. Of the responding in-house counsel, 47.72% indicate that their company has been involved both in the Commission and NCA proceedings.

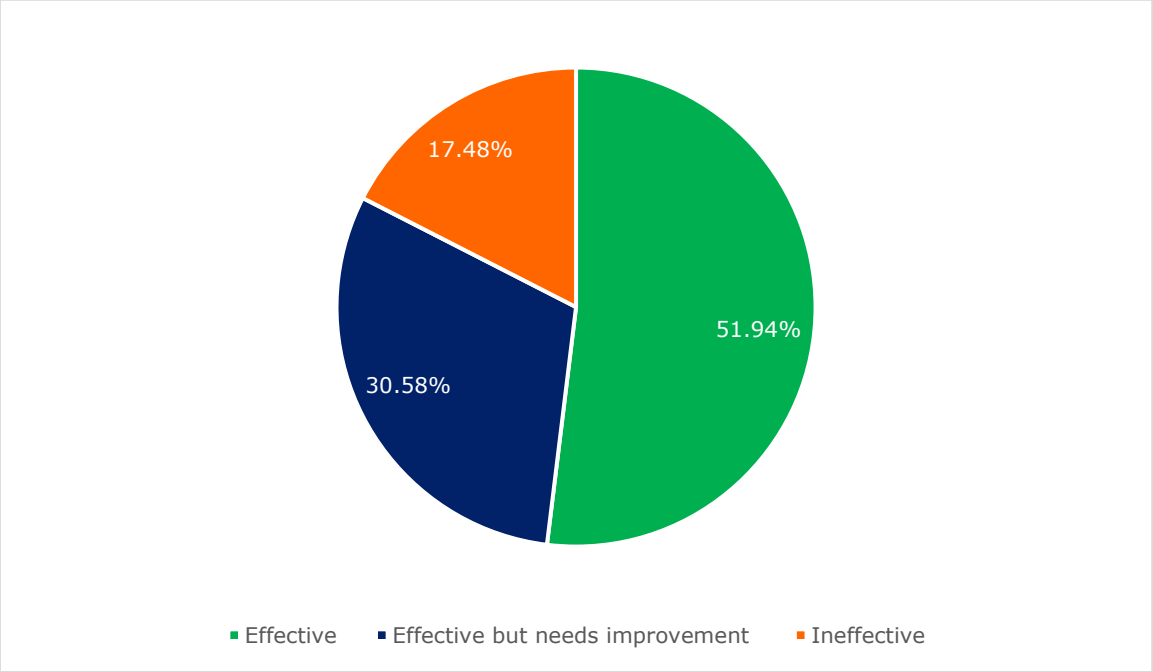


Figure 41 – Input of attorneys and in-house counsel on the effectiveness of sector inquiries as an investigative tool
Source: Standardised interviews (N=206)

155. As detailed in the Figure below, in the input of attorneys as well as in-house counsel and relative to their respective case experience before the Commission, attorneys who have been involved in one to five cases before the Commission are most likely to consider sector inquiries to be effective.

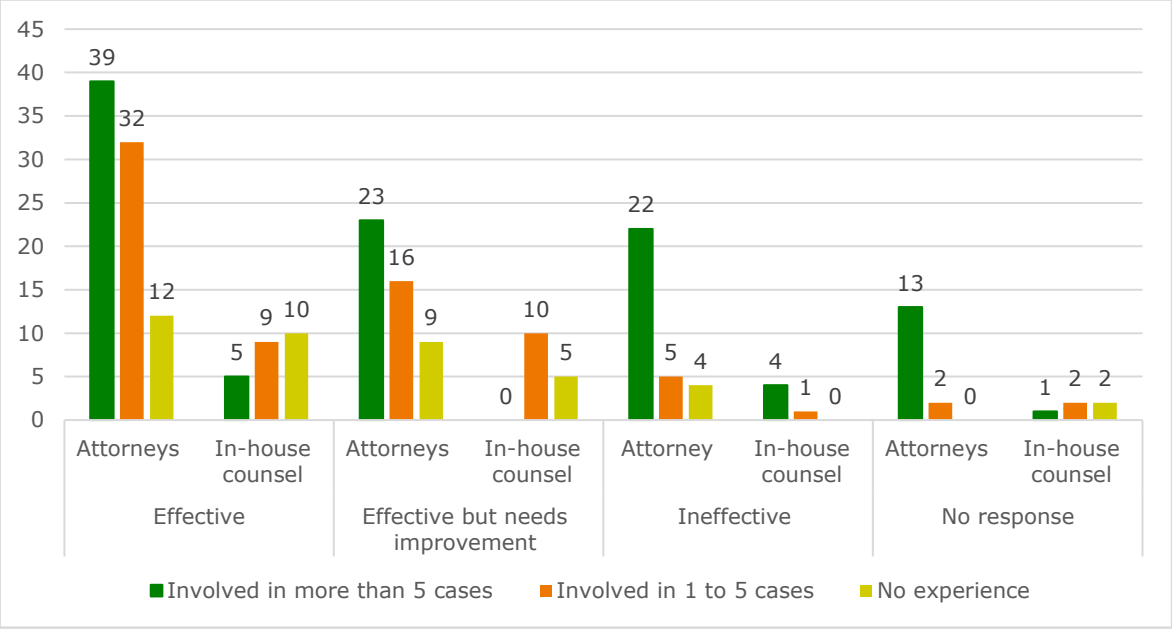


Figure 42 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness of sector inquiries as an investigative tool
Source: Standardised interviews (N=226)

156. Of all interviewees providing feedback on the effectiveness of sector inquiries, 33.98% point out that sector inquiries may be effective for collecting information on a specific market and allows for a better understanding of the business(es) involved. In particular, 16.50% of responding interviewees note that sector inquiries may enable the Commission to accurately identify practices negatively affecting competition in the sector under scrutiny, which according to these respondents would allow the Commission to take appropriate action to address any identified concerns. In this context, interviewees often refer to the pharmaceutical, energy and digital sectors as examples. Furthermore, a small minority of responding interviewees (3.85%) would welcome additional sector inquiries, both at the national and EU level.

A limited number of interviewees (9.77%) note that sector inquiries may be valuable and effective because such inquiries may prompt undertakings active in the sector under scrutiny to take action proactively to end any conduct potentially in breach of competition rules.

Furthermore, of the responding in-house counsel, 13.63% highlight that sector inquiries may serve as a first step for subsequent targeted investigations, while 11.36% of responding in-house counsel are of the opinion that sector inquiries are not appropriate for this purpose. These respondents suggest that sector inquiries may be effective for other purposes, such as improving the regulatory framework.

Finally, 7.28% of responding interviewees deem sector inquiries to be effective for obtaining an in-depth understanding of a specific market prior to initiating potential follow-up investigations.

Interview feedback on the efficiency of sector inquiries

157. A total of 133 respondents provided feedback on the efficiency of sector inquiries, with approximately one quarter (25.56%) considering sector inquiries to be efficient.

However, 36.84% of responding interviewees are of the opinion that sector inquiries are overall efficient but in need of further improvement. Finally, 37.59% of responding interviewees deem sector inquiries to be inefficient.[132]

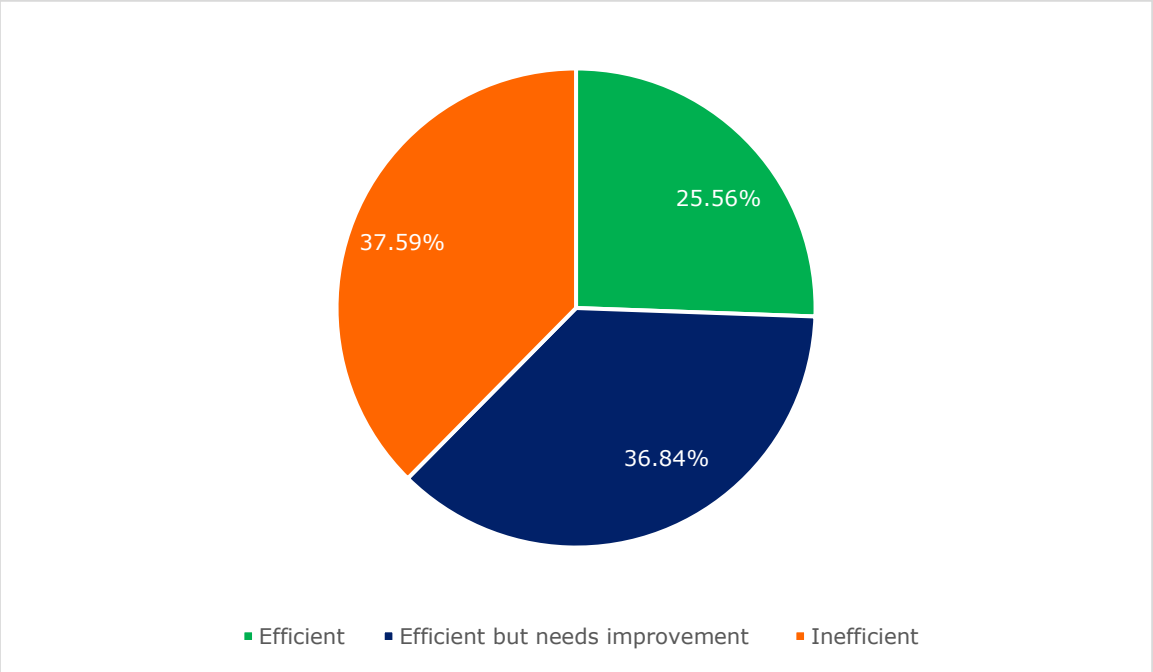


Figure 43 – Input of attorneys and in-house counsel on the efficiency of sector inquiries as an investigative tool
Source: Standardised interviews (N=133)

158. As detailed in the Figure below on the input of attorneys and in-house counsel and their respective case experience before the Commission, more experienced attorneys are generally divided on whether sector inquiries are either efficient but in need of further or rather inefficient.

[132] A total of 133 respondents provided input on this interview question, of whom 106 respondents are attorneys and 27 are in-house counsel. Of the 106 responding attorneys, 85.85% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission and all 106 attorneys have represented parties in one or more cartel / antitrust proceeding(s) before NCAs. Of the 27 responding in-house counsel, 70.37% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission and 96.30% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before NCAs. Of the responding attorneys, 76.42% have represented parties in both Commission and NCA proceedings. Of the responding in-house counsel, 48.15% indicate that their company has been involved both in Commission and NCA proceedings.

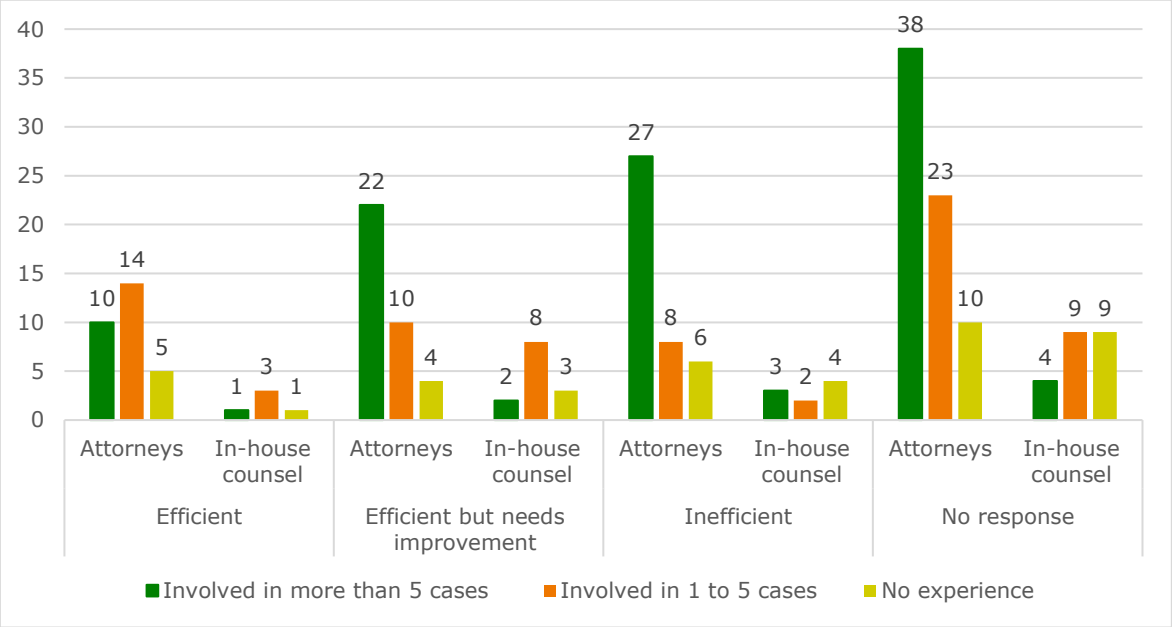


Figure 44 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the efficiency of sector inquiries as an investigative tool
Source: Standardised interviews (N=226)

159. In total, 38.35% of responding interviewees consider that sector inquiries may be inefficient as such inquiries are reported to be resource-intensive for the undertakings involved and according to these interviewees may lead to inconclusive results.

160. Furthermore, 27.81% of respondents refer to specific sectors in which sector inquiries are reported to be more effective and / or efficient. An example often referred to by respondents is the pharmaceutical sector, which is deemed by 48.65% of respondents in this category to be a sector in which sector inquiries are rather effective and / or efficient whereas 35.71% of respondents in this category refer to sector inquiries in this sector as being ineffective and / or inefficient. Another market often used as an example by interviewees is the digital sector: 8.15% of respondents in this group consider a specific sector inquiry as effective and / or efficient, whereas 25% of these respondents consider that there is still room for improvement with regard to the effectiveness and / or efficiency of sector inquiries into digital sectors.

161. Interviewees note the following constructive feedback and potential concerns in respect of the efficiency of sector inquiries, in addition to suggestions from respondents based on past experience:

— 18.05% of those providing feedback on the efficiency of sector inquiries highlight the fact that well-prepared and targeted sector inquiries may be more efficient. These respondents also suggest limiting the amount of information requested from an undertaking to what is reasonable, as this would enhance the proportionality which is deemed to be beneficial for sector inquiries.

— A total of 9.02% of responding interviewees suggest delineating the scope of sector inquiries more clearly, which would help to avoid a potentially unfiltered data collection exercise according to these respondents.

— Interviewees also raise certain concerns with regard to the transparency of sector inquiries and the protection of procedural rights. In particular, 6.05% of responding

interviewees are concerned that companies might unintentionally share self-incriminating information in the context of a sector inquiry, which might lead to a formal investigation. The same number of respondents also note a potential lack of transparency in sector inquiries, notably when undertakings may not be aware of an ongoing sector inquiry or that a formal investigation may follow. According to these interviewees, such lack of transparency might negatively impact the rights of defence. Therefore, 8.27% of responding interviewees suggest ensuring a similar standard of protection of procedural rights in the context of sector inquiries as the standard of protection that applies during a formal investigation.

— Finally, a minority of respondents (3.01%) remark that potential risks may arise in relation to invasion of privacy and politically motivated sector inquiries.

162. Interviewees from Third Countries were also requested to share their insights on the subject. More specifically, respondents were asked to indicate if the competent authority in the respective jurisdiction has the power to conduct sector inquiries. Moreover, interviewees were asked to evaluate the efficiency and effectiveness of the national sector inquiries should the competent authority have such powers.[133] The input of UK respondents was requested in particular as the CMA is reported to have both market investigation and remedy powers.

As a response to this interview question, **UK respondents** highlight the value of market investigation powers as an investigative tool which allows for a better understanding of market dynamics and to ensure compliance. Interviewees from the UK remark that, although these inquiries may be resource-intensive, their potential to induce voluntary behaviour changes in companies might be significant. These respondents indicate in this context that the mere threat of a sector inquiry may induce a voluntary change in an undertaking's conduct.

[133] See Third Country interview question no. 4 reproduced in Annex III.

Chapter 3. Decision-making powers

163. This Chapter provides the Commission with input that will assist it in the evaluation of its decision-making powers under Regulation 1/2003. In particular, this chapter focuses on prohibition decisions as stipulated in Article 7 of Regulation 1/2003, commitment decisions as stipulated in Article 9 of Regulation 1/2003, interim measures as stipulated in Article 8 of Regulation 1/2003, findings of inapplicability as stipulated in Article 10 of Regulation 1/2003 and the power to impose fines, including periodic penalty payments, as governed by Articles 23 and 24 of Regulation 1/2003.

3.1 Prohibition decisions

164. This section provides an overview of the input collected concerning the effectiveness of prohibition decisions adopted under Article 7 of Regulation 1/2003 via proxies determined by DG COMP. In particular, the following sub-sections delve into the interview feedback on prohibition decisions, the monitoring of compliance with prohibition decisions and remedies.

3.1.1 Interview feedback on prohibition decisions

165. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Article 7 of Regulation 1/2003. Under Article 7 of Regulation 1/2003, where the Commission finds that antitrust rules have been breached, it may by decision require the (associations of) undertakings concerned to bring such infringement to an end.

During the interviews, respondents from the EU-27 jurisdictions were requested to evaluate the effectiveness of prohibition decisions. In particular, this question in the interview questionnaire enquires about the capacity of prohibition decisions to ensure that conduct in relation to which an infringement was found is in fact ended.[134]

166. Of the 206 interviewees who provided input on this question, 67.48% (113 attorneys; 26 in-house counsel) consider prohibition decisions to be an effective decision-making tool. However, 20.39% of the responding interviewees (30 attorneys; 12 in-house counsel) indicate that prohibition decisions are effective but in need of improvement, while 12.13% of responding interviewees (20 attorneys; five in-house counsel) see them as ineffective.[135]

[134] See EU-27 interview question no. 10 reproduced in Annex II.

[135] In total, 206 respondents provided input on this interview question (79.13% are attorneys, 20.87% in-house counsel). Of the 163 responding attorneys, 86.50% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission and 99.39% have represented parties in one or more cartel / antitrust proceeding(s) before NCAs. Of the 43 responding in-house counsel, 60.47% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission and 95.35% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before NCAs. Of the 163 responding attorneys, 78.53% have represented parties in both Commission and NCA proceedings. Of the 43 responding in-house counsel, 46.51% indicate that their company has been involved both in the Commission and NCA proceedings.

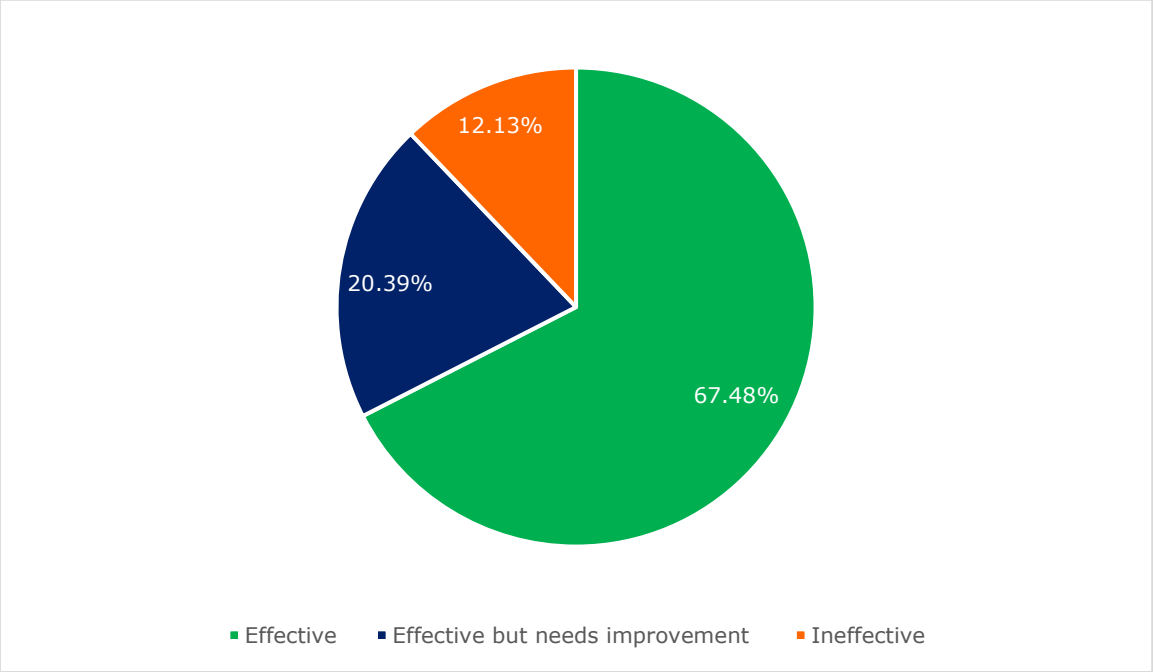


Figure 45 – Input of attorneys and in-house counsel on the capacity of prohibition decisions as a decision-making power to end an infringement
Source: Standardised interviews (N=206)

167. More experienced attorneys are generally positive about this topic, as detailed in the Figure below on the input of attorneys and in-house counsel relative to their respective case experience before the Commission.

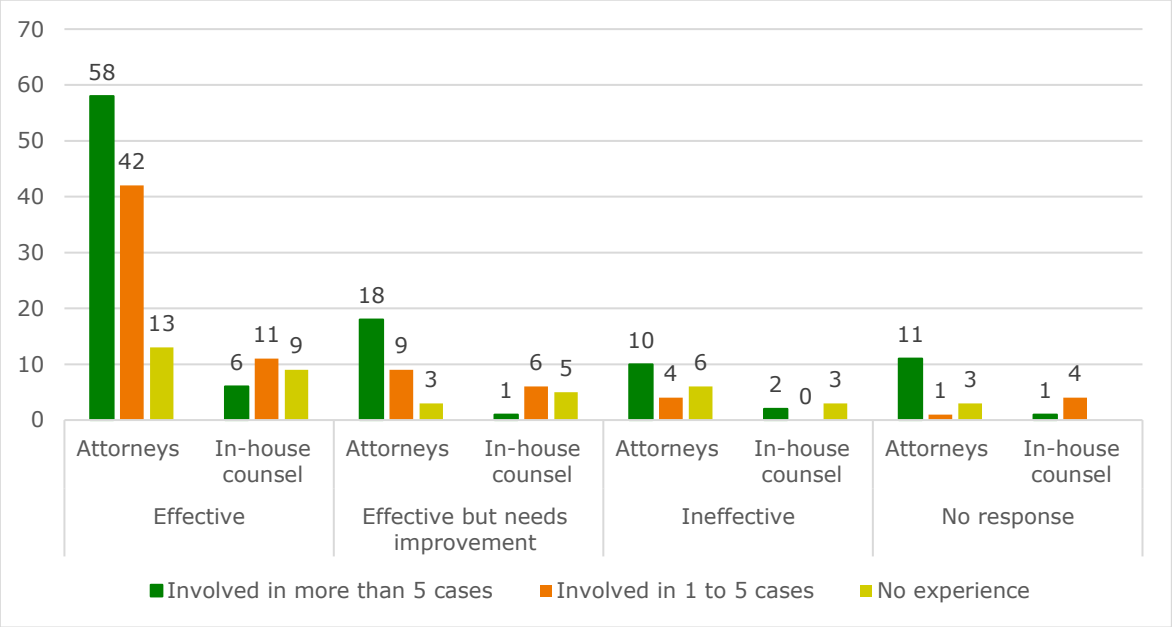


Figure 46 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness of prohibition decisions as a decision-making power
Source: Standardised interviews (N=226)

168. Among the positive experiences in respect of prohibition decisions, interviewees indicate the following:

— More than one tenth of respondents to this interview question (13.11%) agree that prohibition decisions are both clearly worded and case-specific, particularly in cartel cases.

— On another note, 2.91% of responding interviewees refer to the impact of the publication of a prohibition decision on the reputation and public relations of an undertaking as an important deterrent effect.

— Regarding the imposition of fines, 12.14% of interviewees providing feedback on this question highlight that the threat of high fines and damages are particularly useful for encouraging compliance with prohibition decisions.

169. Interviewees note the following constructive feedback and potential concerns in respect of prohibition decisions:

— Almost one tenth of the respondents to this interview question (9.22%) indicate that prohibition decisions relating to an abuse of a dominant position may be more complex and consequently may require a more careful assessment of market dynamics to ensure that the prohibition decision is effective. Respondents indicate that, as a consequence of this reported complexity, undertakings might encounter some difficulty in determining whether a given conduct is prohibited. In this context, 6.31% of responding interviewees refer to the digital sector as being characterised by a certain degree of complexity as a result of which prohibition decisions involving an abuse of a dominant position are considered to be less effective by respondents when compared to prohibition decisions adopted in relation to other sectors. On the same issue, 4.85% of the responding interviewees remark that undertakings can easily circumvent prohibition decisions in such cases by engaging in slightly different

yet similar conduct. To address this reported issue, respondents suggest defining the prohibited conduct more clearly in the final decision.

— Similarly, 5.34% of responding interviewees consider that the interpretation of the prohibited conduct as defined in the final decision can be unclear. According to these respondents, such ambiguity in the interpretation of the prohibited conduct could have a negative impact on the efficiency of prohibition decisions. Additionally, these interviewees indicate that such ambiguity might result in both overenforcement by the competition authority as well as an overcautious approach by undertakings.

— Moreover, a minority group of responding interviewees (1.94%) consider commitment decisions to be more effective than prohibition decisions noting that the latter may not address the damage and harm done to competition in a relevant market as they consider that ceasing an infringement and restoring competition do not necessarily overlap. In this respect, 4.37% of respondents who provide feedback on this topic suggest that prohibition decisions should be combined with well-designed remedies to ensure both the termination of the infringing conduct as well as the restoration of competitive conditions in the relevant market(s).

— Of the respondents providing input on this question, almost one tenth (9.71%) point to possible delays in the enforcement of prohibition decisions, which are reported by these interviewees to lead to extended proceedings. As a result of potential delays, 5.83% of respondents providing input on this interview question consider there is a possible risk of prohibition decisions becoming outdated or irrelevant due to the ever-evolving market dynamics. Furthermore, a minority group of interviewees providing feedback on the question (2.43%) indicate that other companies in the sector concerned which are not involved in the decision may also be impacted by extended Commission proceedings. These interviewees suggest that more frequent use could be made of interim measures to prevent infringing conduct from further harming competition during potential delays between the investigation of the conduct and the adoption of the final decision.

170. Almost one tenth of responding interviewees (8.74%) argue that the effectiveness of prohibition decisions depends on adequate monitoring of implementation. According to these interviewees, adequate monitoring and reporting obligations may be useful in order to ensure that prohibition decisions are effective and implemented in practice.[136] According to these respondents, there is room for improvement in this regard even though they acknowledge that this might come up against resource constraints. One interviewee in particular suggests implementing a model where third parties and / or complainants can report to the Commission when conduct has not ended or when violations have been repeated.

Interestingly, a small group of respondents (5.83%) indicate in answering this question that the effectiveness of prohibition decisions varies depending on the company involved and the type of sector / industry in which it operates. Digital and e-commerce sectors are referred to by respondents as examples of sectors where the rapidly evolving nature of markets appears to make it more difficult for companies to implement and abide by prohibition decisions. Furthermore, respondents recommend further guidance for companies operating in such relevant sectors as to the permissibility of a given conduct.

[136] For an overview of the monitoring of compliance by NCAs, see Sub-Section 3.1.2.

Finally, 5.83% of respondents provide **additional observations** on the effectiveness of prohibition decisions including that (i) it is reportedly common for undertakings to cease an infringement prior to the issuance of a final prohibition decision when they have been subject to an inspection, and that (ii) prohibition decisions reportedly have the advantage of creating a precedent, thereby setting a general rule for similar future infringements.

171. In the light of the above, interviewees generally consider prohibition decisions to be capable of ending effectively a conduct in relation to which an infringement has been found, as noted by 68% of responding interviewees. According to the respondents providing input on this interview question, the drafting of prohibition decisions requires a certain level of detail, particularly in cases involving an abuse of a dominant position and in cases relating to complex sectors. Moreover, responding interviewees indicate that prohibition decisions in which the prohibited conduct is clearly defined may provide undertakings with legal certainty as to the type of conduct prohibited by Articles 101 and 102, thereby ensuring the effectiveness and efficiency of this decision-making tool according to those respondents. Interviewees also frequently point out that prohibition decisions are effective in terminating infringements and preventing market distortion only to the extent that such decisions are adequately monitored and implemented, which interviewees consider requires relevant resource expenditure.

3.1.2 Remedies and compliance monitoring

172. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of remedies and compliance monitoring in the context of prohibition decisions.

Interview feedback on remedies in the context of prohibition decisions

173. In relation to a more general interview question on the effectiveness of prohibition decisions,[137] a small group of respondents consider that in some instances prohibition decisions do not sufficiently address the damage and harm caused to competition in a relevant market, as ceasing an infringement and restoring competition do not always overlap. In fact, 4.37% of the 206 interviewees providing input on this interview question suggest combining prohibition decisions with well-designed remedies. According to these interviewees, this would ensure not only that the infringing conduct is terminated, but also that the competitive conditions in the relevant markets are restored.

Monitoring of compliance with NCA decisions

174. NCAs and the Icelandic and Norwegian competition authorities were asked to elaborate on the frequency according to which they monitor compliance with their decisions. As an overview of their answers, the Table below sets out per jurisdiction whether such compliance is monitored on a frequent or systematic basis.[138] For the purposes of the Table, 'X' indicates that either the NCA does not

[137] See EU-27 interview question no. 10 reproduced in Annex II, which reads as follows: "*Do prohibition decisions ensure that conduct in relation to which an infringement was found is effectively brought to an end?*".
[138] See NCA question no. 21 reproduced in Annex IV and question no. 18 in the questionnaire addressed to the Icelandic and Norwegian competition authorities as reproduced in Annex V.

systematically / frequently monitor compliance with its antitrust decisions, or that no further input was provided by the respective NCA.

Monitoring compliance with antitrust decisions	
Jurisdiction	**Systematic or frequent monitoring of antitrust decisions**
Austria	✗
Belgium	✓
Bulgaria	✓
Croatia	✓
Cyprus	✓
Czechia	✗
Denmark	✓
Estonia	✗
Finland	✗
France	✓
Germany	✓
Greece	✓
Hungary	✗

Monitoring compliance with antitrust decisions	
Jurisdiction	**Systematic or frequent monitoring of antitrust decisions**
Ireland	✓
Italy	✓
Latvia	✓
Lithuania	✓
Luxembourg	✗
Malta	✓
Netherlands	✓
Poland	✓
Portugal	✓
Romania	✓
Slovakia	✓
Slovenia	✓
Spain	✓
Sweden	✗

Monitoring compliance with antitrust decisions	
Jurisdiction	**Systematic or frequent monitoring of antitrust decisions**
Iceland	✗
Norway	✓

Table 12 – Monitoring of compliance with decisions on a frequent or systematic basis, per jurisdiction
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

NCA input on market testing of potential remedies

175. In relation to prohibition decisions, the NCAs and the Icelandic and Norwegian competition authorities were requested to indicate whether their legal framework allows for a formal process to market test remedies ahead of the adoption of such remedies in prohibition decisions.[139] For the purpose of the Table below, references to 'X' indicate either that NCA does not have the ability formally to market test remedies, or that no further input was provided by the respective NCA.

Market testing remedies – prohibition decisions	
Jurisdiction	**Formal or informal process for market testing potential remedies ahead of adoption of prohibition decisions**
Austria	✗
Belgium	✓

[139] See NCA question no. 20 reproduced in Annex IV and question no. 17 in the questionnaire addressed to the Icelandic and Norwegian competition authorities as reproduced in Annex V.

Market testing remedies – prohibition decisions	
Jurisdiction	**Formal or informal process for market testing potential remedies ahead of adoption of prohibition decisions**
Bulgaria	✗
Croatia	✗
Cyprus	✗
Czechia	✗
Denmark	✗
Estonia	✗
Finland	✓
France	✗
Germany	✓
Greece	✗
Hungary	✗
Ireland	✗

Market testing remedies – prohibition decisions	
Jurisdiction	**Formal or informal process for market testing potential remedies ahead of adoption of prohibition decisions**
Italy	✗
Latvia	✗
Lithuania	✗
Luxembourg	✗
Malta	✗
Netherlands	✓
Poland	✓
Portugal	✗
Romania	✗
Slovakia	✗
Slovenia	✗
Spain	✗

Market testing remedies – prohibition decisions	
Jurisdiction	**Formal or informal process for market testing potential remedies ahead of adoption of prohibition decisions**
Sweden	✕
Iceland	✕
Norway	✕

Table 13 – Formal or informal process for market testing potential remedies ahead of the adoption of prohibition decisions per jurisdiction
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

3.2 Commitment decisions

176. The ability for the Commission to accept commitments was a novelty introduced by Regulation 1/2003. Article 9 of Regulation 1/2003 provides that in cases where the Commission intends to adopt a decision requiring that an infringement be terminated, and the involved undertakings offer commitments to address the concerns outlined by the Commission in its preliminary assessment, the Commission may, by decision, render those commitments binding on the undertakings. As can be seen from section 1 above, the Commission has made extensive use of the Article 9 tool, adopting a total of 52 commitment decisions (25 decisions under Article 101 and 26 decisions under Article 102, as well as one decision under Article 101 and 102).

Of these decisions, 43 accepted a commitment for a behavioural change, eight decisions accepted a commitment for a structural remedy and one decision accepted a combination of the two.

This section provides an overview of the input collected concerning the effectiveness of commitment decisions adopted under Article 9 of Regulation 1/2003.

In particular, the following sub-sections delve into the interview feedback on commitment decisions as well as an analysis of commitment decisions based on factual input gathered from Commission decisions.

3.2.1 Interview feedback on commitment decisions

177. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Article 9 of Regulation 1/2003. During the interviews, respondents from the EU-27 jurisdictions were requested to consider whether commitment decisions adopted by the Commission under Article 9 of Regulation 1/2003 effectively end conduct on which the Commission has raised preliminary concerns, as well as the effect of such conduct.[140]

178. Of the 204 interviewees who provided input on this question,[141] 65.20% (107 are attorneys; 26 in-house counsel) consider commitment decisions to be an effective decision-making tool. For the remainder, 27.45% of respondents (44 attorneys; 12 in-house counsel) agree that commitment decisions are effective but could be further improved. Only 11 attorneys and four in-house counsel (together accounting for 7.35%) believe that commitment decisions are ineffective.

[140] See EU-27 interview question no. 11 reproduced in Annex II.
[141] Of the 162 responding attorneys, 85.80% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the responding 42 in-house counsel, 64.29% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.

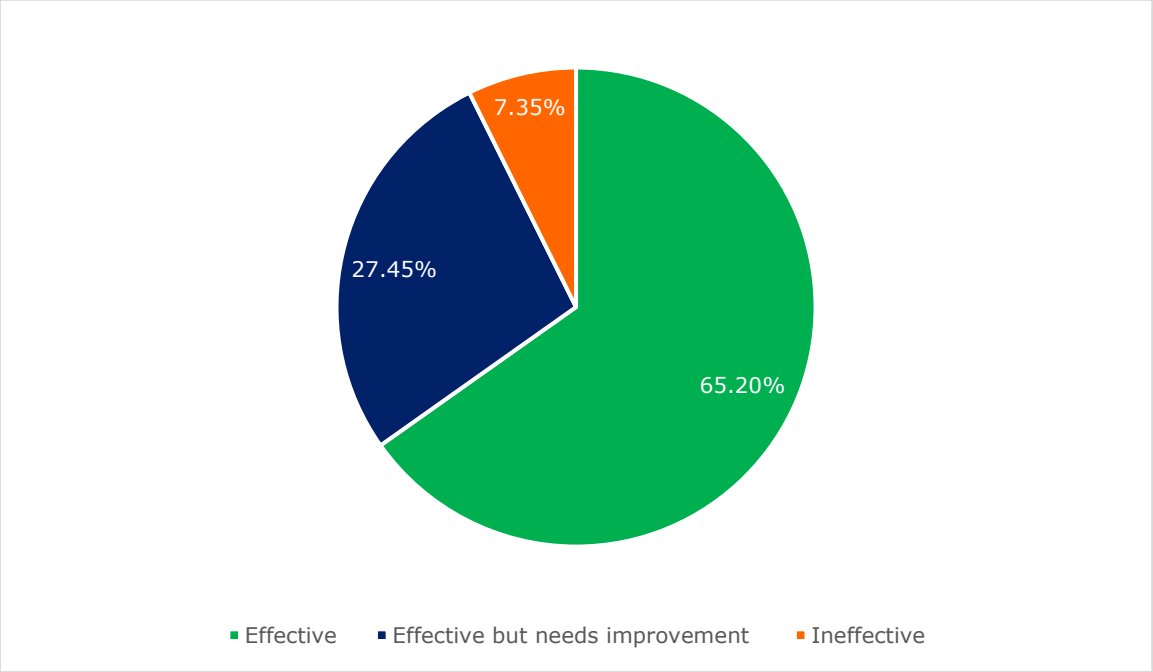


Figure 47 – Input of attorneys and in-house counsel on whether commitment decisions ensure that conduct on which the Commission has expressed preliminary concerns and the effects of such conduct are brought to an end
Source: Standardised interviews (N=204)

179. As detailed in the Figure below on the input of attorneys and in-house counsel and their respective experience as respondents in Commission proceedings, experienced attorneys in particular are generally positive in relation to this topic.

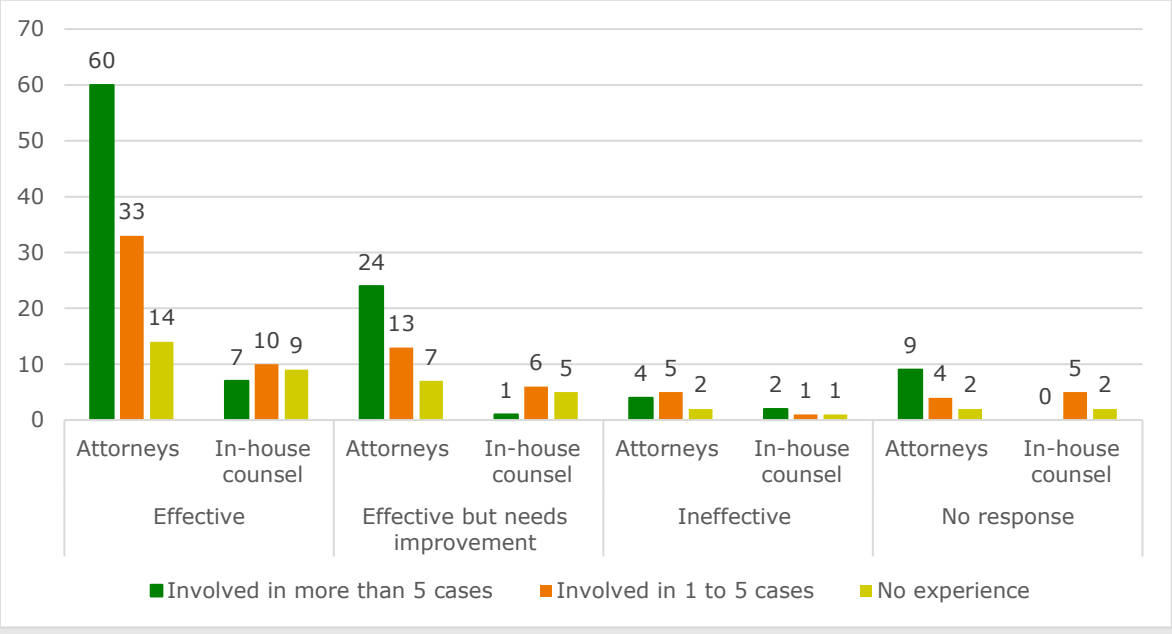


Figure 48 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness of commitment decisions as a decision making power
Source: Standardised interviews (N=226)

180. Overall, the responding interviewees are of the opinion that **commitment decisions adopted by the Commission are effective** in ending an infringing conduct and addressing its consequences. In general, commitment decisions are perceived by the respondents as a rather practical solution, particularly in cases where the boundaries between acceptable and infringing behaviour are not clearly defined (for which some respondents refer to the example of vertical restraints). Of all respondents providing feedback on this topic, 5.39% indicate that commitment decisions are clearer than prohibition decisions in terms of the behaviour expected from an undertaking. Commitment decisions are also considered by respondents to be less intrusive while still addressing the Commission's concerns.

181. Among the positive experiences in respect of commitment decisions, also in comparison to other decision-making tools, interviewees indicate the following:

— Of all respondents answering this interview question, 7.84% consider the cooperative dimension of commitment decisions to be a major advantage. In particular, as respondents indicate, the parties involved may offer commitments that fit within their overall business dynamics which according to the respondents lead to synergies and efficiencies whilst simultaneously effectively eliminating competition concerns.

— Similarly, a minority of responding interviewees (1.96%) highlight that in comparison to the potentially disruptive effects of prohibition decisions, commitment decisions allow the undertaking to cooperate with the Commission whilst providing adequate commitments on restoring competition.

— A small number of interviewees (5.39%) underline the flexibility offered by commitment decisions in terms of the choice of remedies appropriate to address competition concerns or distortion effectively. Respondents indicate that in more complex industries, commitment decisions may offer the possibility of tailoring

certain commitments in order to ensure that the undertaking addresses the competition distortion effectively (notably as commitments offered are subject to a market test).

— Of the respondents providing feedback on this question, 4.94% argue that commitment decisions are generally complied with. According to these interviewees, companies involved in commitment decisions would want to avoid future infringements and fines. Respondents indicate in this respect that compliance is essential for an undertaking to prevent new violations and maintain their commercial reputation. In addition, 4.90% of interviewees agree that commitment decisions may provide an incentive for companies to implement compliance measures.

According to some responding interviewees, benefits relating to commitment decisions include (i) a reported reduced number of litigation cases in the EU, (ii) reported pedagogical effects on the market, and (iii) the ability of third parties, if involved in the process, to provide input and test commitments in the market, which respondents consider contributes to the effectiveness of the commitments. Furthermore, in certain instances, respondents refer to commitment decisions as a 'win-win' situation, as they entail benefits for both the companies and the Commission.

182. Interviewees note the following constructive feedback and potential concerns in respect of commitment decisions.

Of all respondents providing feedback on this topic, 11.27% note that commitment decisions are likely to be more effective when they are well designed and well drafted. Interviewees point to potential challenges because in their view commitment decisions, unlike prohibition decisions, are likely to be based on preliminary concerns rather than demonstrated violations. Moreover, respondents are concerned that competition authorities may encounter difficulties engaging in reviewing adequately the commitments offered if the competition authorities lack an in-depth understanding of the relevant market. On a related note, two respondents indicate a tendency for commitment decisions to be increasingly better drafted, which these respondents consider leads to these decisions being more effective. Furthermore, respondents suggest providing companies with access to the file so that they can offer the Commission appropriate commitments.

In addition to the above, 7.84% of responding interviewees point to the importance of monitoring compliance with commitments. Reflecting on means to ensure adequate monitoring, 12.75% of respondents providing feedback on this question suggest ex-post monitoring mechanisms as these interviewees consider such mechanisms to be an essential tool in enhancing the effectiveness of commitment decisions. Similarly, 3.43% of respondents suggest appointing an independent monitoring trustee as this may further ensure compliance with the commitments made binding by the Commission decision.

183. The respondents identify the following areas of improvement based on their respective past experience:

— Two attorneys consider that extensive use of commitment decisions may create the impression that competition law violations remain unpunished;

— According to four attorneys, commitment decisions lack precedent value as they may result in only limited guidance;

— Two attorneys point to a perceived dependence of commitment decisions on the goodwill of companies. These interviewees consider that, in view of this, commitment decisions would be unlikely to be subject to judicial review; and

— Six attorneys raise concerns with regard to behavioural remedies made binding by commitments decisions. In particular, these respondents point to a potential irrelevance of such remedies in the event of appreciable changes in the relevant market.

184. In conclusion, commitment decisions are considered effective by a majority of interviewees (65.20%) as a decision-making tool for terminating infringements of antitrust rules in the internal market. Commitment decisions are reported to be less resource-intensive, which would make them more efficient than other decision-making tools. Another important advantage cited by interviewees is that commitment decisions offer flexibility in designing remedies which can allow for a faster and more effective restoration of healthy competitive conditions compared to prohibition decisions. On the other hand, 27.45% of responding interviewees consider commitment decisions effective but in need of improvement, while 7.35% view them as ineffective.

3.2.2 Analysis of commitment decisions and comparison with proceedings under Article 7 of Regulation 1/2003

185. This sub-section discusses the overall efficiency of commitment decisions adopted by the Commission under Article 9 of Regulation 1/2003.[142] In particular, the Consortium was requested to compare such decisions with prohibition decisions adopted under Article 7 of Regulation 1/2003, with respect to the duration of those decisions,[143] and the number of actions for annulment introduced before the General Court against such decisions.[144] With respect to decisions adopted under Article 9 of Regulation 1/2003, the Consortium was also requested to analyse the number of SOs issued.[145]

Comparative analysis of the average duration of commitment and prohibition decisions

186. The following methodological observations apply to the comparative analysis of the average duration of decisions adopted under Article 7 of Regulation 1/2003 and Article 9 of Regulation 1/2003.

— The Consortium only quantified the duration for those Commission decisions where either a date for the first investigative step or a date of a formal complaint was identified. Taking into consideration that some Commission decisions refer rather to the month and year (and thus, not the day) in which the first investigative step was initiated by the Commission, the Consortium opted to base calculations in those instances on the first day of that month as a proxy for the (exact) date of the first

[142] See desk research question no. 2 reproduced in Annex I. At the request of DG COMP, procedural infringement decisions and decisions applying both Article 106(1) and Article 102 have been omitted from the graphs and in-depth analyses unless explicitly mentioned otherwise.
[143] See desk research question no. 2.1 reproduced in Annex I.
[144] See desk research question no. 2.2 reproduced in Annex I.
[145] See desk research question no. 2.3 reproduced in Annex I. This question was amended during the course of the Study. The original question read as follows: "*Based on the information collected in (1), assess the efficiency of the decisions adopted by the European Commission under Article 9 of Regulation 1/2003 by: comparing the above decisions to decisions adopted by the European Commission under Article 7 of Regulation of 1/2003 in terms of duration of the antitrust proceedings, counting from the date of the formal complaint or, if no such formal complaint, from the date of the first investigative step (e.g. inspection, RFI) until the date of the final decision by the European Commission.*"

investigative step. Both procedural decisions and decisions based on the application of Articles 102 and 106 have again been excluded from the analysis.

— The Consortium identified 163 Commission decisions adopted under Article 7 of Regulation 1/2003. For all these 163 Commission decisions, a date for the first investigative step or a date of a formal complaint was identified. Out of these 163 decisions, 13 qualify as re-adoption decisions and were not included in the average duration calculations.

— The Consortium identified 52 Commission decisions adopted under Article 9 of Regulation 1/2003. For 40 of these 52 Commission decisions, a date for the first investigative step or a date of a formal complaint was identified. The decisions for which no relevant date was identified can be retrieved in Annex VII containing the list of in-scope Commission decisions.

— The average duration of relevant proceedings is provided in years. The numbers of years are calculated by dividing the respective number of days by 365.

— For further (comparative) analyses with respect to duration for prohibition and commitment decisions, reference is made to Sub-Section 1.1.7.

187. The average duration for the Commission's adoption of a decision under **Article 7** is 4.7 years.

Cartel cases are on average a bit shorter at 4.5 years, while **non-cartel** proceedings (also including Article 102 cases) overall have a slightly longer average duration of 5.0 years.

Decisions adopted under Article 7 applying **Article 102** generally have a longer duration with an average of 5.6 years, whereas proceedings leading to non-cartel decisions applying **Article 101** are generally shorter with an average duration of 4.6 years. The single decision adopted under Article 7 applying both Article 101 and 102 also lasted 5.6 years.

Proceedings involving a settlement or cooperation tend to take less time, with an average duration respectively of 4.3 and 3.9 years.

When excluding decisions involving either a settlement or cooperation:

— the average duration of decisions adopted under Article 7 is 5.0 years, which is longer than the average duration of 4.7 years for all decisions (including decisions involving settlement or cooperation) adopted under Article 7 as indicated above; and

— the average duration of proceedings leading to decisions applying Article 102 is 5.7 years and is 5.4 years for non-cartel Article 101 procedures, whereas the average duration of proceedings in cartel cases is 4.6 years.

188. The average duration for the Commission's adoption of a decision under **Article 9** is 4.1 years.

Within all proceedings leading to decisions adopted under Article 9, the average duration of those concerning possible infringements of **Article 101** but not Article 102 is 4.1 years, and of those concerning possible infringements of **Article 102** but not Article 101 is 4.0 years.

An outlier in duration is the single investigation concerning possible infringements of both Articles 101 and 102, with a duration of 7.6 years before an Article 9 decision was adopted.

189. From the above, it becomes apparent that proceedings leading to decisions adopted under Article 7 involving cooperation or a settlement and proceedings leading to decisions adopted under Article 9, not taking into account two decisions applying both Articles 101 and 102, are generally characterised by a shorter duration.

Decisions with a longer average duration are those adopted under Article 7 applying Article 102, as well as the two decisions applying both Articles 101 and 102 (one adopted under Article 7, and one adopted under Article 9 of Regulation 1/2003).

Analysis of number of actions for annulment introduced against commitment and prohibition decisions

190. With regard to the number of actions for annulment introduced before the Court of Justice of the European Union (the "**CJEU**") against Commission decisions adopted under Articles 7 and 9, the following methodological observations apply:

— The Consortium identified the number of actions for annulment exclusively for Commission decisions adopted under Articles 7 and 9.

— Whether or not an appeal was introduced before the General Court was verified on a case-by-case basis for all the 215 relevant Commission decisions. For this, both www.curia.europa.eu and https://competition-cases.ec.europa.eu/ were consulted as primary sources.

191. Overall, a significantly larger percentage of Article 7 decisions (60.12%) resulted in an action for annulment before the General Court compared to Article 9 decisions (11.54%).

In particular, the Consortium identified 98 of 163 Commission decisions adopted under Article 7 of Regulation 1/2003 against which an action for annulment was introduced before the General Court, of which five decisions involved a cartel settlement.

For decisions adopted under Article 9 of Regulation 1/2003, the Consortium identified an action for annulment as having been introduced against six of 52 Commission decisions (all by third parties). The lower number of actions for annulment introduced against commitment decisions could be regarded as a proxy for efficiency.[146]

Analysis of number of SOs issued in commitment decisions and further findings[147]

192. When the Commission adopts decisions under Article 7, it will always need to issue an SO. This is not necessarily the case for decisions under Article 9. For such decisions,

[146] Similarly, see W. Wils, "Ten years of commitment decisions under Article 9 of Regulation 1/2003: Too much of a good thing?" (2015), paper presented at New Frontiers of Antitrust, *Concurrences Journal* 6th International Conference, 1, 4, available at: The Notification Procedures in E.C. Competition Law: An Economic Analysis (ssrn.com).

[147] As a methodological observation at the outset, in the data provided by DG COMP, the reference to 'N/A' in column 'Y' ('Date of Statement of Objections') was interpreted as meaning that no SO was issued in that particular case.

our data indicates that the Commission did not issue an SO in 28 decisions of a total of 52 decisions adopted under Article 9 (53.85%).

The average duration of decisions adopted under Article 9 without an issued SO is 3.6 years, whereas the average duration of decisions adopted under Article 9 with an issued SO is 4.6 years. This may imply that the absence of SO issuance leads to shorter investigation timeframes given the difference identified here of one year on average in commitment cases.

Conclusions on efficiency of commitment decisions based on the analysis of Commission decisions

193. With regard to the efficiency of commitment decisions, decisions adopted under Article 9 of Regulation 1/2003:

(i) are generally shorter in duration, with an average duration of 4.1 years compared to an average duration of 4.7 years for prohibition decisions;

(ii) are shorter overall in terms of number of pages, with an average of 31.2 pages compared to 115.0 pages for prohibition decisions (see Sub-Section 1.1.8);

(iii) have a smaller number of actions for annulment introduced against them, i.e. 11.54% of commitment decisions compared to 60.12% of prohibition decisions;

(iv) require fewer SOs to be issued as more than half of commitment decisions (53.85%) did not see an SO issued, compared to prohibition decisions where an SO is always necessary; and

(v) generally involve a lower number of addressees (which might imply more efficient investigations) with an average of 3.35 addressees, whereas prohibition decisions on average involve 9.07 addressees (see Sub-Section 1.1.6).

194. During the interviews, respondents from the EU-27 jurisdictions were also requested to provide their views on whether commitment decisions adopted by the Commission under Article 9 of Regulation 1/2003 are efficient. For 4.90% of respondents, commitment decisions are perceived as more efficient compared to the (according to respondents) lengthy and high-cost investigations and litigation for authorities and undertakings alike of prohibition decisions. Compared to prohibition decisions, 8.64% of attorneys perceive commitment decisions as being adopted more quickly and less resource-intensive for the authorities insofar as such decisions come at an early stage when preliminary concerns arise. Commitment decisions are therefore reported by respondents to enable competition concerns to be addressed more quickly, preventing infringing behaviour from causing long-term damage to competition on the market.

3.3 Interim measures

195. This section focuses on input that will assist DG COMP in its evaluation of Article 8 of Regulation 1/2003. For Commission proceedings, Article 8 of Regulation 1/2003 allows the Commission acting on its own initiative, in cases of urgency due to the risk of serious and irreparable damage to competition, to order interim measures by a decision based on a prima facie finding of an infringement.

In particular, the following sub-sections provide an overview of interview feedback on interim measures as well as a factual analysis of interim measures adopted under Regulation 1/2003.

3.3.1 Interview feedback on interim measures

196. This sub-section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Article 8 of Regulation 1/2003. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on the effectiveness of the Commission's interim measures powers as an instrument to prevent serious and irreparable harm to competition.[148]

197. A total of 173 respondents (141 attorneys; 32 in-house counsel) provided input on this interview question.[149] Of the 173 responding interviewees, the majority consisting of 53.76% (79 attorneys; 14 in-house counsel), is convinced of the effectiveness of interim measures. Of the total respondents, 27.75% (37 attorneys; 11 in-house counsel) instead consider them as effective but in need of improvement. In contrast, only 18.49% of responding interviewees (25 are attorneys; seven in-house counsel) consider interim measures ineffective in preventing irreparable damage to competition.

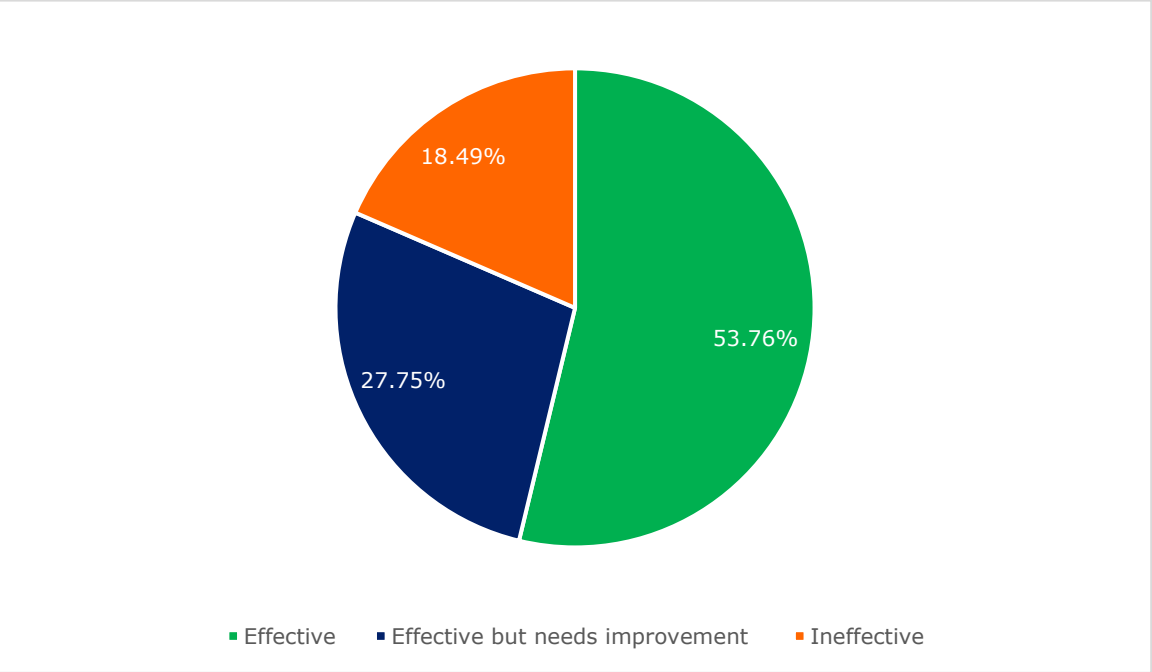


Figure 49 – Input of attorneys and in-house counsel on the effectiveness of interim measures as a decision-making power
Source: Standardised interviews (N=173)

[148] See EU-27 interview question no. 12 in Annex II.
[149] A total of 173 respondents provided input on this interview question (81.50% attorneys, 18.49% in-house counsel). Of the 141 responding attorneys, 87.23% represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 32 responding in-house counsel, 68.75% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission. Moreover, among the 18% of respondents who consider interim measures as ineffective, the majority are attorneys with experience in at least one antitrust case before the Commission.

198. As detailed in the Figure below on the respective case experience of respondents before the Commission, particularly more experienced respondents are positive in relation to this topic.

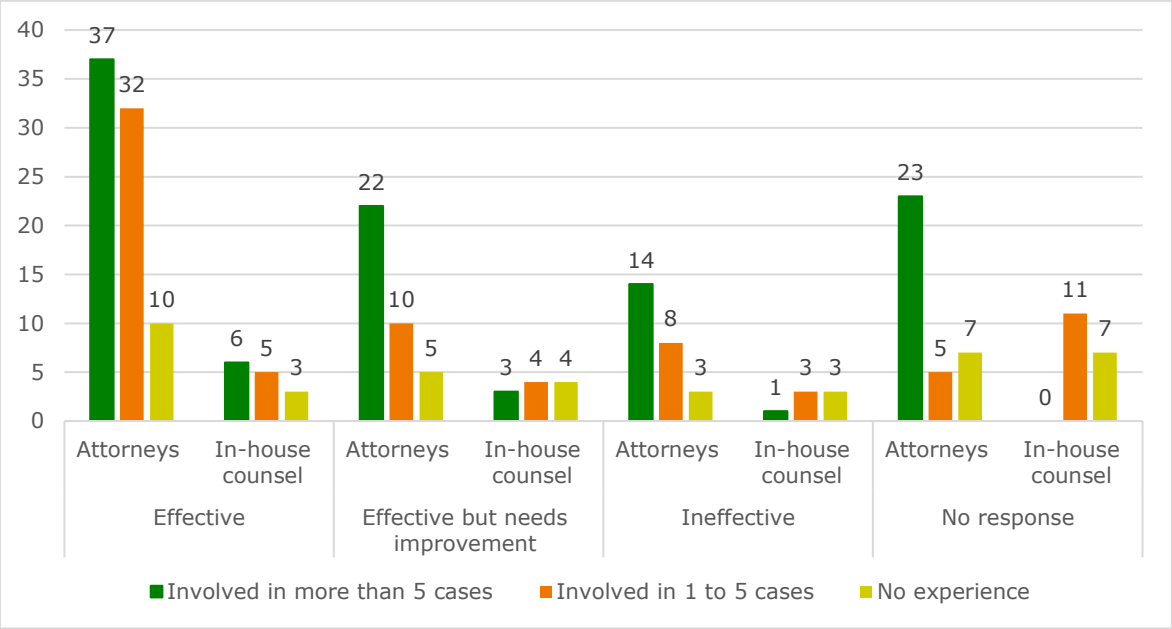


Figure 50 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness of interim measures as a decision-making power
Source: Standardised interviews (N=226)

199. Notwithstanding that interim measures are generally considered by responding interviewees to be an effective decision-making power (53.76%), almost half of the interviewees responding to this interview question (47.40%) point out that such decisions are rarely adopted in practice either by the Commission or by NCAs. Around one quarter of respondents providing feedback on the question (25.43%) argue that interim measures are effective and should therefore be adopted more often. In this context, interviewees generally consider that interim measures would help alleviate uncertainty on the side of the company and prevent exposure of the latter to potential liabilities for an extended period.

— As a recurring observation, 22.54% of responding interviewees refer to the complexity of competition law cases and the fast-moving nature of markets which, according to these interviewees, may present challenges for the Commission when considering interim measures.

— On the other hand, 12.06% of responding attorneys and 12.50% of responding in-house counsel indicate that such fast-paced industries would be particularly appropriate for interim measures, as these interviewees consider that interim measures would provide an immediate remedy in cases where prompt action is essential in order to prevent irreparable damage to competition.

— Though different in nature, a small group of respondents providing input on this topic (2.89%) compare interim measures to prohibition decisions and consider the former as more effective and immediate than the latter. In this respect, interviewees note

that interim measures would be useful in cases where delays in the adoption of a final decision would irremediably damage competition.

200. Opinions diverge among interviewees with respect to the threshold that needs to be met in order for the Commission to adopt an interim measures decision as explained below:

— A very limited number of interviewees (comprising 2.13% of responding interviewees) suggest a higher threshold for the application of interim measures. These interviewees find a requirement whereby clear evidence demonstrating an infringement that is likely to cause serious and irreparable harm is needed. The same group of respondents point to certain challenges that the Commission would have to take into account when adopting an interim measures decision. In particular, these respondents consider adopting such decisions to be risky as it would involve anticipating the outcome of a particular case.

— Slightly over one tenth of responding interviewees (12.72%) raise concerns with regard to the potentially negative effects of an interim measures decision on the parties involved, notably when such decisions are adopted in cases where no actual infringement of Article 101 and / or 102 can be demonstrated.

— However, 12.05% of attorneys providing feedback on this topic consider the current threshold for the application of Article 8 of Regulation 1/2003 to be too high and deem this threshold to be a potential reason for the low number of interim measures decisions adopted. One particular respondent raises concerns with regard to the investigation prior to the adoption of an interim measures decision, as it would potentially be equally demanding as the investigation required for the adoption of a final decision. In this context, 6.38% of responding attorneys are in favour of simplifying the legal test required for the application of Article 8 of Regulation 1/2003.

— In the same vein, 17.34% of respondents who provided input on this question remark that the burden of proof and legal requirements enshrined in the current legal framework on interim measure decisions do not allow the Commission to adopt such decisions at an early stage of the investigation. These interviewees report that this undermines the effectiveness of interim measures, notably because such interim measures are required in cases of emergency. These respondents consider the possibility for the Commission of adopting interim measures decisions swiftly to be a pre-requisite for their effectiveness. Furthermore, almost one quarter of responding interviewees (24.86%) highlight that it would be necessary to ensure that, in applying interim measures more widely, the parties' rights are simultaneously safeguarded and potential overuse of interim measures decisions is avoided.

— One respondent suggests adopting a US-style approach, which according to this interviewee would enable the Commission to request interim measures in court. Additionally, this respondent reports that such an approach would ensure an impartial and balanced decision-making process.

3.3.2 Interim measures under Regulation 1/2003

201. Only one decision was adopted under Article 8 of Regulation 1/2003 in the period covered by the Study, namely the 2019 *Broadcom* decision.[150] The procedure preceding the decision was initiated ex officio, with the first procedural step taken in 2018, leading to a duration of the proceedings of just under a year (11.7 months). An action for annulment was introduced before the General Court which was subsequently withdrawn.

3.4 Interview feedback on findings of inapplicability

202. This section presents relevant input that will support the Commission in its evaluation of Article 10 of Regulation 1/2003.

In particular, Article 10 of Regulation 1/2003 enables the Commission to issue a decision stating that Article 101 and / or 102 is not applicable to an agreement, a decision by an association of undertakings or a concerted practice. The Consortium understands that the Commission has never adopted a formal finding of inapplicability pursuant to Article 10 of Regulation 1/2003. Rather than offering input based on practical experience, the interviewees from the EU-27 jurisdictions were therefore requested to formulate their views on the potential for effectiveness of findings of inapplicability as a tool to ensure the uniform application of Articles 101 and / or 102.[151]

203. A total of 191 respondents provided input on this interview question.[152] A large majority of respondents (70.68%), including 112 attorneys[153] and 23 in-house counsel[154], consider findings of inapplicability to be a potentially effective instrument to ensure uniform application of Articles 101 and 102.

[150] Commission, Decision of 16 October 2019, Case AT.40608, *Broadcom*.
[151] See EU-27 interview question no. 13 in Annex II.
[152] Of the 157 responding attorneys, 136 (86.62%) have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the 34 responding in-house counsel, 21 (61.76%) indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.
[153] Of the 112 responding attorneys, 62 (55.36%) have represented parties in five or more cartel / antitrust proceedings before the Commission.
[154] Of the 23 in-house counsel, 15 (65.22%) indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.

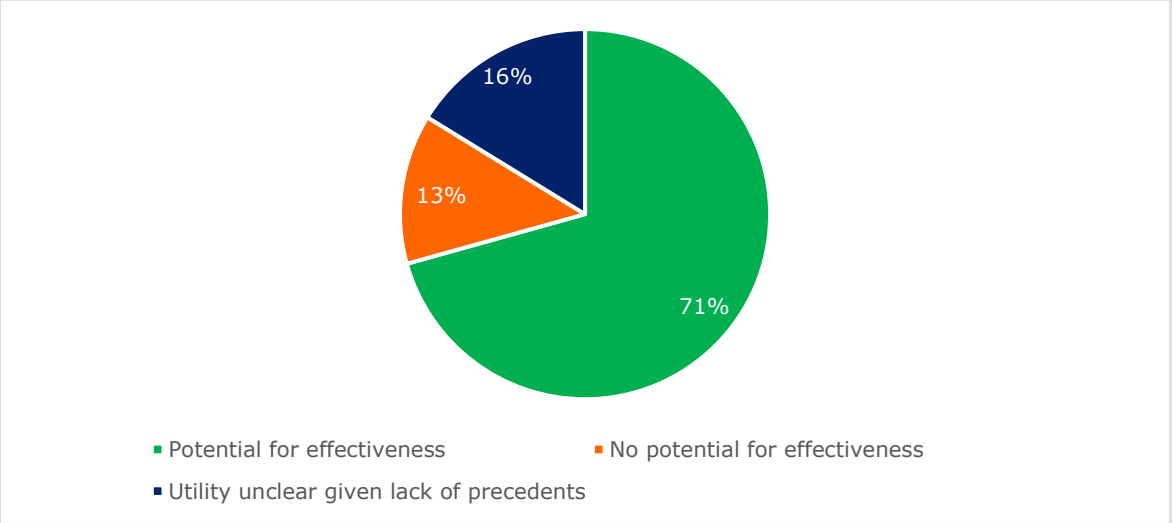


Figure 51 – Input of attorneys and in-house counsel on the potential for effectiveness of findings of inapplicability
Source: Standardised interviews (N=191)

204. As detailed in the Figure below on the respective case experience of respondents before the Commission, experienced attorneys in particular offer positive input in relation to this topic.

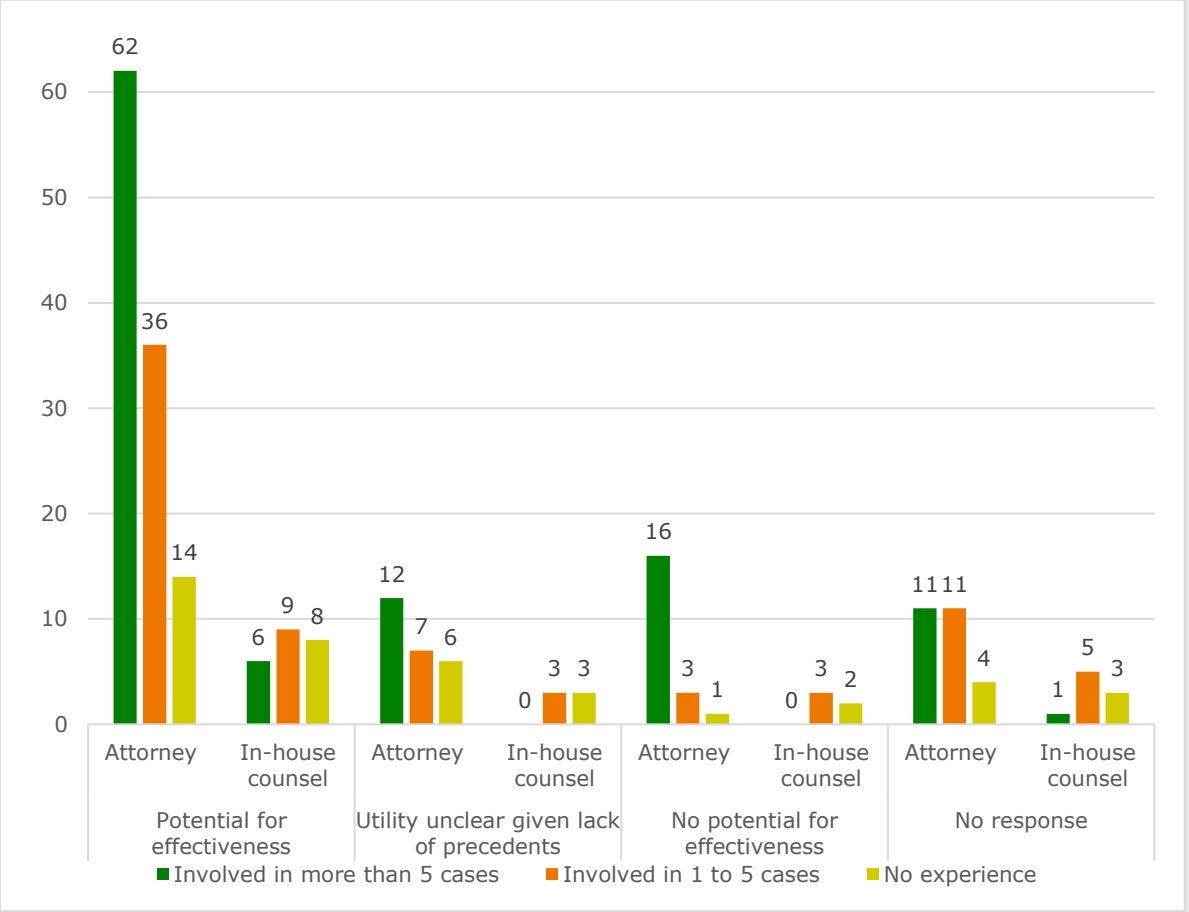


Figure 52 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on the potential for effectiveness of findings of inapplicability
Source: Standardised interviews (N=226)

205. Below is a summary of responses indicating that findings of inapplicability could potentially be an effective instrument to ensure the uniform application of Articles 101 and / or 102:

— Approximately one third of the respondents in this category (34.81%) call generically for greater clarity and guidance, notably where a case has been closed due to a lack of resources or due to the unproblematic nature of the case from a substantive competition law perspective. In addition, 13.33% of respondents in this category note that any such decisions adopted under Article 10 of Regulation 1/2003 might help avoid ambiguities. An identical number of respondents in this category (13.33%) highlight the potential usefulness of findings of inapplicability as guidance for NCAs. Finally, five respondents (3.70%) consider findings of inapplicability to be a potentially effective instrument to the extent that such findings are founded on relevant case law.

— Approximately one tenth of the interviewees in this category (10.37%) note that decisions adopted under Article 10 of Regulation 1/2003 could be used to effectively address new antitrust issues, for instance, in relation to sustainability initiatives, given that a lack of guidance on this may have a deterrent effect in relation to valuable new initiatives.

— 4.44% of respondents in this category highlight the potential utility of findings of inapplicability as alternatives to ad-hoc and block exemptions, for instance, as these might provide valuable insights into the functioning of an industry. On a similar note, 9.63% of respondents in this category would welcome more frequent use of individual guidance letters.

— Finally, 5.19% of interviewees who indicate that findings of inapplicability could potentially be effective underline the positive nature of such findings given their focus on permissible practices in contrast to the 'guidance by fining' approach which instead identifies impermissible conduct.

206. Of the respondents having provided input to this interview question, 13.09% (of whom 80% are attorneys) do not consider findings of inapplicability as a potentially effective instrument to ensure uniform application of Articles 101 and 102. Of the pool of respondents in this category, it was not overall clear why respondents consider findings of inapplicability as ineffective. Only a limited number of interviewees provided further insights in this respect. In particular, two respondents are not convinced of the necessity of increasing the use of this mechanism and highlight the potential burden on the Commission associated with such decision-making within a framework based on self-assessment. One respondent also highlights that the Commission may adopt a finding of inapplicability "*[w]here the Community public interest relating to the application of Articles 101 and 102 of the Treaty so requires*" (emphasis added) and calls for a clarification of the term 'public interest' in this context as the scope could otherwise be broadly interpreted.

207. Of the responding interviewees, 16.23% predominantly point out as part of their respective answers that the utility of findings of inapplicability is unclear given the lack of precedents.

208. As part of a different interview question and on a related note,[155] six respondents formulate their views on the regime of self-assessment in EU competition law. According to these interviewees, self-assessment could have an impact on legal certainty. According to these respondents, the absence of relevant case law, particularly in areas such as ecological transition and sustainability, makes self-assessment complex and risky for undertakings. In addition, 12 respondents to this interview question note that the reported lack of guidance exacerbates the uncertainty faced by undertakings. To address these challenges, interviewees put forward several suggestions, including a recommendation that the Commission could provide more guidance, particularly through practice notes (mentioned by three interviewees) in areas where case law is sparse. Respondents also note that informal guidance has certain benefits and refer to the example of comfort letters (mentioned by three respondents), particularly in Environmental, Social and Governance ("**ESG**") cases involving substantial and collaborative industry-wide investments. Additionally, an expanded use of soft law, such as the Horizontal Guidelines, is seen by these respondents as an effective way to keep up with rapidly evolving markets. Moreover, two respondents find that the incorporation of case law insights into the Regulations would help to provide a clearer framework for self-assessment. Finally, to ensure coherence, effectiveness, and uniform application of

[155] See EU-27 interview question no. 17 in Annex II and Third Country interview question no. 12 in Annex III (which reads as follows: "*Do you have any other comments?*").

EU law, four interviewees suggest that the EU should allow NCAs to raise questions to the CJEU similar to preliminary references.

3.5 Power to impose fines

209. This section aims to provide an overview of collected input pertaining to the power to impose fines in order to support DG COMP in its evaluation of the Regulations.

3.5.1 Analysis of Commission prohibition decisions with fines

210. The Consortium was requested to examine the fines for substantive and procedural infringements as well as periodic penalty payments imposed by the Commission under Regulation 1/2003 and to conduct a comparative analysis vis-à-vis the decisional practice of the NCAs and UK competition authorities.[156]

211. The following methodological observations apply for this analysis:

— For the analyses of fines imposed by the Commission, the Consortium relied on data sets provided by DG COMP further complemented by data collected by the Consortium.

— For relevant fines imposed by NCAs and UK competition authorities, as well as for periodic penalty payments imposed either by the Commission, NCAs or UK competition authorities, the Consortium collected the relevant data from publicly available decisions adopted by the Commission, NCAs and UK competition authorities as well as from NCAs for certain data that is not (yet) publicly available. As indicated above, NCAs were given the opportunity to verify the information collected and categorised by the Consortium but cannot exhaustively guarantee its accuracy, also given the size of the data set.

— For the Commission, NCAs and UK competition authorities, decisions adopted under Article 101, under Article 102, or under both of these Treaty provisions are taken into account. For NCAs and UK competition authorities, this includes decisions which are based on any of these Treaty provisions in parallel with their national equivalents but not decisions which are exclusively based on national equivalents. Decisions involving fines for procedural infringements are also included.

— In the case of periodic penalty payments imposed by the Commission, the Consortium distinguishes between Commission decisions under Article 24(1) and Article 24(2) of Regulation 1/2003. Article 24 of Regulation 1/2003 creates a two-phased proceeding whereby a first decision is taken to set the (provisional) amount of the daily periodic penalty payment and the starting date for the calculation (for instance, Commission Decision of 18 July 2018 in Case No. AT.40099 – *Google Android*, Article 5) and a second decision fixing the final amount (for instance, Commission Decision of 27 February 2008 in Case No. AT.37792 – *Microsoft*, Article 1). An Article 24(1) decision is a preliminary act, which announces the Commission's intention to impose provisional periodic penalty payments from a specified date in the future if by that date the undertaking concerned has not complied with an obligation. The final amount of the payment is only calculated at a later stage, i.e.

[156] See desk research question no. 9.1 reproduced in Annex I. This question was amended during the course of the Study to include fines and periodic penalty payments adopted by the UK competition authorities. At the request of DG COMP, procedural infringement decisions and decisions applying both Article 106(1) and Article 102 have been omitted from the Figures and in-depth analyses unless explicitly mentioned otherwise.

at the time of the Article 24(2) decision. Only Article 24(2) decisions have legal effects and may be challenged before the EU Courts.

212. The raw data, including the fines imposed by the Commission, and the NCAs and UK competition authorities can be retrieved from Annex VII and Annex VIII respectively.[157] Separately, Annex IX includes the following overviews:[158]

— Average fines per decision in all decisions of the Commission, NCAs and UK competition authorities where a substantive fine was adopted, per jurisdiction, including Figures (i) exclusively for Article 101 substantive fines, (ii) exclusively for Article 102 substantive fines, (iii) for Articles 101 and 102 substantive fines combined;

— 29 Figures indicating substantive fines in absolute numbers per jurisdiction (including the Commission, the NCAs and UK competition authorities) and per year, comparing Article 101 and Article 102 decisions;

— 29 Figures indicating procedural infringement fines in absolute numbers per jurisdiction (including the Commission, the NCAs and UK competition authorities) and per year;

— 29 Figures indicating the number of periodic penalty payments per jurisdiction (including the Commission and the NCAs and UK competition authorities) and per year; and

— A Figure detailing the development of the number of settlements and cooperation decisions in the context of Commission decisions across the years 2004-2022.

3.5.2 Interview feedback on the power to impose fines

213. In relation to an interview question on the effectiveness of prohibition decisions but with relevance for the power of the Commission to impose fines,[159] 3.40% of the 206 responding interviewees note that fines may not always be effective in terminating infringements. Among other reasons, interviewees highlight that companies with substantial resources may not feel obliged to comply with corrective measures even though the threat of high potential fines and damages is viewed by 12.14% of the 206 respondents as discouraging non-compliance with prohibition decisions.

3.5.3 Level of fines (including procedural fines)

214. The Consortium identified a total of 151 Commission decisions which imposed fines, not taking into account periodic penalty payments, nor re-adoption decisions for which the initial decision was adopted under Regulation 1/2003 in order to avoid double counting (it being understood that the first re-adoption decisions for which the initial

[157] NCAs were involved in the verification of the data collected by the Consortium but cannot exhaustively guarantee the accuracy of all data given the size of the data set.
[158] Following consultation with DG COMP and for categorisation purposes, fining decisions adopted by the German NCA and conviction decisions adopted by the Irish courts in criminal proceedings arising out of investigations by the Irish NCA have been categorised as cease-and-desist orders in the context of the Study.
[159] See EU-27 interview question no. 10 reproduced in Annex II, which reads as follows: "*Do prohibition decisions ensure that conduct in relation to which an infringement was found is effectively brought to an end?*".

decision was adopted under Regulation No 17 are considered as initial adoptions and thus included).

Of these 151 decisions, 147 decisions impose fines for an infringement of Articles 101 and / or 102, whereas four decisions impose fines for an infringement of procedural decisions in Regulation 1/2003. Of the 147 decisions finding an infringement of Articles 101 and / or 102, 130 concern Article 101, 16 concern Article 102 and one concerns both Articles 101 and 102.[160]

215. In order to calculate the average fine amount, the Consortium took the total amount of the fines imposed since the applicability of Regulation 1/2003 and until 31 December 2022 as well as the total number of Commission decisions imposing a fine (i.e. excluding decisions where the Commission did not issue a fine).

216. The total amount of the fines initially imposed by the Commission since the applicability of Regulation 1/2003 and until 31 December 2022, **not** taking into account re-adoptions or amendments by the Commission, but taking into account substantive and procedural fines, is: EUR 42 130 044 634.00.

The total amount of the fines imposed by the Commission since the applicability of Regulation 1/2003 and until 31 December 2022, this time taking into account re-adoptions and amendments by the Commission, as well as substantive and procedural fines, is as follows: EUR 40 581 929 976.00.

The total amount of the fines imposed by the Commission since the applicability of Regulation 1/2003 and until 31 December 2022, this time taking into account re-adoptions and amendments by the Commission as well as corrections by the EU courts until 14 December 2023, as well as substantive fines and procedural infringement decisions, is as follows: EUR 37 210 479 010.50.

217. The following average fine calculations are based on fines as initially imposed by the Commission without taking into consideration re-adoptions or amendments by the Commission, and without taking into account corrections by the EU courts:

— EUR 282 452 684.59 as an average per fining decision for infringements of Articles 101 and / or 102;

— EUR 152 375 000.00 as an average per fining decision for infringements of procedural provisions in Regulation 1/2003.[161]

On the basis of the same methodology as indicated above in this paragraph, the total fine amount is:

— EUR 41 520 544 634.00 for all fining decisions for infringements of Articles 101 and / or 102;

[160] At the request of DG COMP, procedural infringement decisions and decisions applying both Article 106(1) and Article 102 have been omitted from the Figures and in-depth analyses unless explained otherwise.
[161] Please note that this average amount is mostly the result of only one substantial fine, whereas the other three fines imposed for procedural infringements were much lower. The four fines considered as fines for procedural infringements are in the following decisions: Commission, Decision of 30 January 2008, Case AT.39326, *E.ON* (EUR 38 million); Commission, Decision of 28 March 2012, Case AT.39793, *EPH* (EUR 2.5 million); Commission, Decision of 24 May 2011, Case AT.39796, *Suez Environment* (EUR 8 million) and Commission, Decision of 6 March 2013, Case AT.39530, *Microsoft* (EUR 561 million).

— EUR 29 785 814 932.00 for fining decisions for infringements of Article 101;

— EUR 11 307 033 194.00 for fining decisions for infringements of Article 102;

— EUR 427 696 508.00 for (one) fining decision for infringements of both Articles 101 and 102.

At a more granular level and again on the basis of the same methodology indicated at the beginning of this paragraph, not taking into account decisions exclusively relating to fines for procedural infringements, the total fine amounts are:

— EUR 23 701 968 882.00 for fining decisions involving a leniency application;

— EUR 11 344 469 800.00 for fining decisions involving settlements;

— EUR 974 092 000.00 for fining decisions involving cooperation;

— EUR 16 767 497 752.00 for fining decisions involving no leniency, no settlement and no cooperation.

Below is a Figure detailing, for fining decisions for infringements of Articles 101 and / or 102, the total amount in EUR per year of fines imposed by the Commission.[162]

[162] Please note that fines for infringements of procedural infringements were imposed in only four of the years examined (2008, 2011, 2012, and 2013). Those fines amounted to (i) EUR 38 million in 2008, (ii) EUR 8 million in 2011, (iii) EUR 2.5 million in 2012, and (iv) EUR 561 million in 2013.

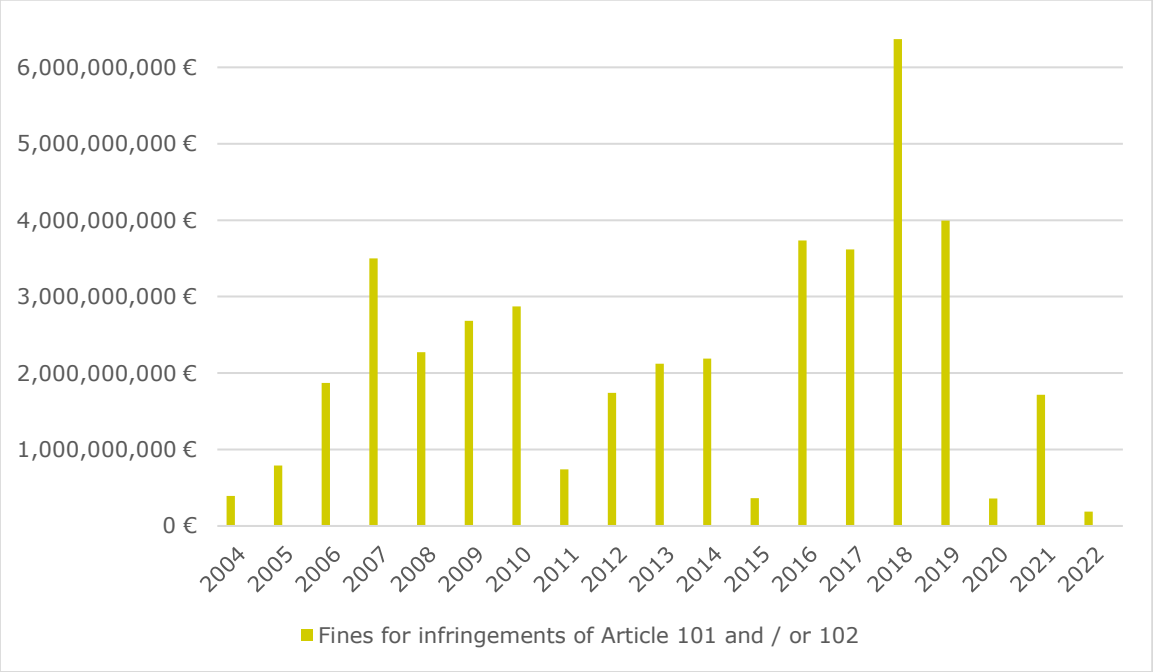


Figure 53 - Total amount of fines per year in EUR (excluding re-adoptions or amendments by the Commission, or corrections by the EU courts) as initially imposed by the Commission for infringements of Articles 101 and / or 102 (N=147)
Source: Annex VII

218. The Figure below distinguishes between fines for infringements of Article 101, Article 102 and of both Articles 101 and 102, indicating that fines for infringements of Article 102 are on average higher than fines for breach of Article 101.

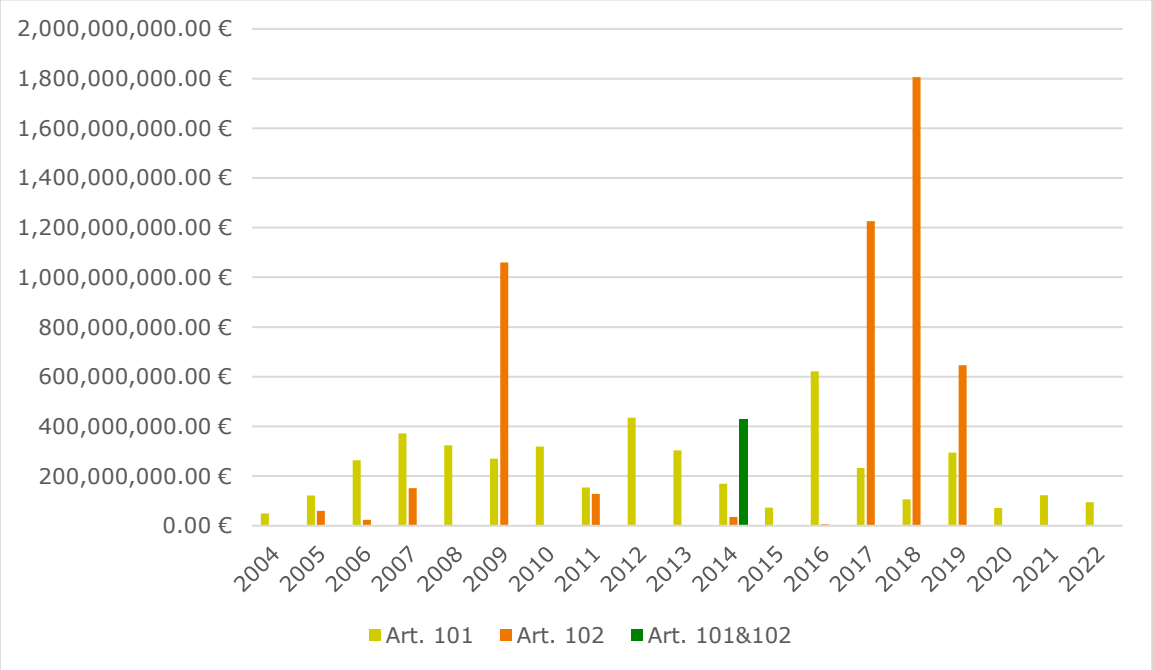


Figure 54 - Average amount in EUR of fines per fining decision per year (excluding re-adoptions or amendments by the Commission, or corrections by the EU courts) as initially imposed by the Commission under Article 101, under Article 102 and under Article 101 in combination with Article 102 (N=147)
Source. Annex VII

3.5.4 Total fines for infringement of Articles 101 and 102 TFEU by NCAs

219. The Figure below distinguishes the total amount of fines in EUR imposed by NCAs and UK competition authorities per year split between Articles 101 and 102. Overall, NCAs have imposed a higher total amount of fines for identified infringements of Article 101. In 2021, the total amount of fines for identified infringements of Article 102 surpassed the total amount for Article 101.

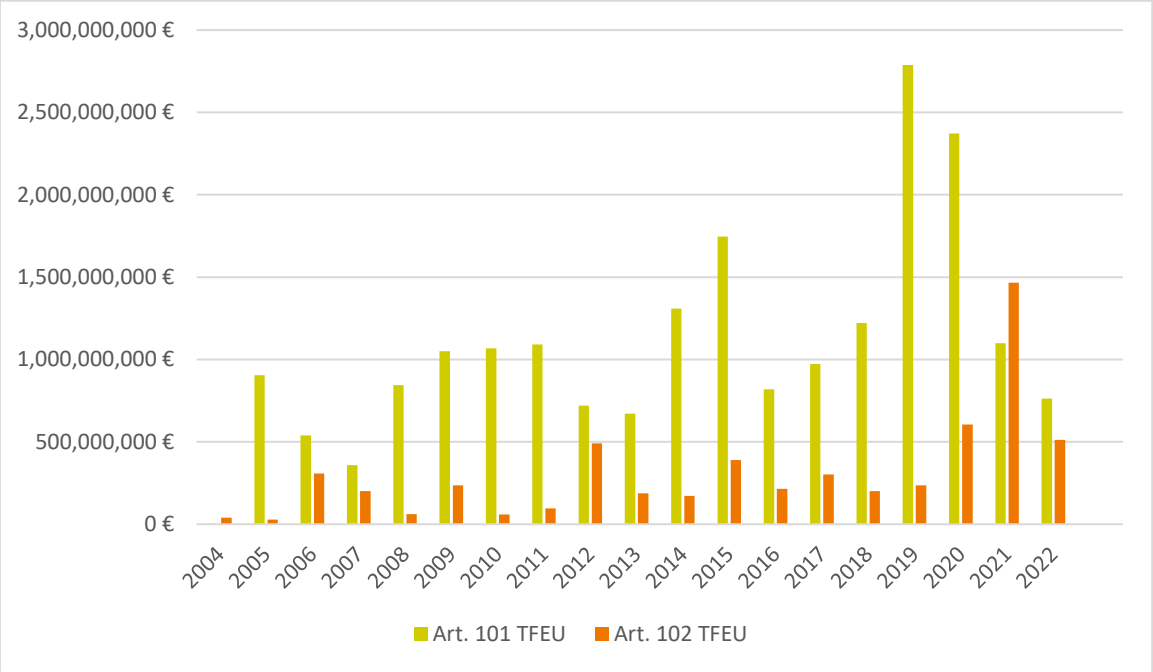


Figure 55 - Total amount in EUR of fines per year as imposed under Art. 101 and 102 TFEU by NCAs and UK Competition Authorities (N= 725 (101); 194 (102))
Source: NCA data

3.5.5 Enforcement and collection of fines

220. In the context of an overview of the powers of NCAs to impose fines, the NCAs, the Icelandic and Norwegian competition authorities were asked to indicate whether fines are collected or enforced immediately upon adoption of the decision. Alternatively, decisions may also need to become final in court before imposed fines become enforceable or collectable.[163] The Table below therefore sets out for each of these jurisdictions whether immediate enforcement or collection of the fine is (legally) feasible.

[163] See NCA question no. 24 reproduced in Annex IV and third-country competition authority question no. 21 reproduced in Annex V.

Overview of the power of NCAs to enforce / collect a fine		
Jurisdiction	**Immediate enforcement / collection of the fine?**	**Comments**
Austria	✗	N/A
Belgium	✓	The Belgian NCA indicated that the Market Court may suspend the enforcement of an appealed decision in whole or in part.
Bulgaria	✓	The Bulgarian NCA indicated that fines are collected immediately upon the decision becoming final (i.e. when the decision concerned is not appealed or when the appealed decision is upheld in court).
Croatia	✗	N/A
Cyprus	✓	The Cypriot NCA indicated that its decisions are immediately and directly enforceable, unless the undertaking concerned files for a suspension of the enforcement of the dedicated decision before the Administrative Court.
Czechia	✓	N/A
Denmark	✗	N/A
Estonia	N/A	N/A
Finland	✗	N/A
France	✓	The French NCA indicated that the President of the Paris Court of Appeal may order a suspension of execution if they consider that the enforcement of the decision concerned would have

Overview of the power of NCAs to enforce / collect a fine		
Jurisdiction	**Immediate enforcement / collection of the fine?**	**Comments**
		excessive consequences or if new facts have come to light.
Germany	✓	N/A
Greece	✓	The Greek NCA indicated that the enforcement of fines may be suspended by the Court. The suspension of payment cannot exceed 80% of the total sum of the fine concerned and, upon suspension, the Court may take any measure to ensure protection of the public interest.
Hungary	✓	The Hungarian NCA indicated that fines are collected immediately upon adoption of a decision but that under certain circumstances immediate legal protection can be requested.
Ireland	✗	N/A
Italy	✓	The Italian NCA indicated that the final decisions are immediately enforceable. Fines may be collected 90 days after the notification of the final decision concerned.
Lithuania	✓	The Lithuanian NCA indicated that if a fined undertaking is not willing to pay immediately, it has the right to provide the Lithuanian NCA with a bank guarantee that covers the full amount of the fine during court proceedings.
Latvia	✓	The Latvian NCA indicated that decisions are immediately enforceable but that an appeal before a court

Overview of the power of NCAs to enforce / collect a fine		
Jurisdiction	**Immediate enforcement / collection of the fine?**	**Comments**
		against a decision suspends the enforceability of the fine.
Luxembourg	✗	The Luxembourg NCA indicated that fines become enforceable only after the time limit for bringing an appeal has expired. If the fining decision is appealed, the collection of the fine is suspended until the final decision of the Court of Appeal.
Malta	✗	N/A
Netherlands	✓	The Dutch NCA indicated that fines become collectable six weeks after the date of the fining decision. If an administrative appeal is lodged against a fining decision, then this period is suspended for a (maximum) of 24 weeks from the date of the decision concerned.
Poland	✓	The Polish NCA indicated that if fining decisions are appealed, the latter only become effective after confirmation by the court.
Portugal	✓	The Portuguese NCA indicated that fines are enforced / collected immediately unless the undertaking concerned lodges an appeal against the decision concerned together with an application requesting the appeal to have the effect of a suspension and upon making a bank deposit of half the amount of the fine.
Romania	✓	The Romanian NCA indicated that the Bucharest Court of Appeal may order, upon request, suspension of the

Overview of the power of NCAs to enforce / collect a fine		
Jurisdiction	**Immediate enforcement / collection of the fine?**	**Comments**
		execution of the decision concerned in the context of an appeal.
Spain	✓	The Spanish NCA indicated that the Court may suspend the payment of the fine as a precautionary measure if requested by the fined undertaking in the context of an appeal.
Slovakia	✓	The Slovakian NCA indicated that a court may grant a suspensive effect to an appeal lodged against a decision adopted by the Slovakian NCA.
Slovenia	✓	N/A
Sweden	✓	The Swedish NCA indicated that the enforcement procedure starts when the fining decision becomes legally binding, meaning either after the decision of the Swedish NCA or after the decision of the Court following an appeal.
Iceland	✓	N/A
Norway	✓	The Norwegian competition authority indicated that the undertaking concerned may ask to delay payment in the context of appeal proceedings before the courts.

Table 14 - Overview of jurisdictions and whether fines are immediately enforced / collected
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaires

Chapter 4. Procedural rights of parties and third parties

221. The current section provides DG COMP with input in order to evaluate the procedural rights of the parties involved in proceedings as well as of third parties. To

this end, input was collected in the form of feedback from interviewees. This chapter focuses in particular on interview feedback on the protection of procedural rights, the transparency of proceedings, the right of access to the file, the protection of confidentiality and the organisation of oral hearings. With regard to formal and informal complaints, the current chapter provides an overview of the interview feedback as well an analysis of such complaints based on factual input.

4.1 Interview feedback on the protection of procedural rights of (third) parties

222. This section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Regulation 1/2003 and Regulation 773/2004. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on how effectively and efficiently the Regulations perform in protecting the procedural rights of parties and third parties.[164]

Article 27 of Regulation 1/2003 sets forth the procedural rights of the parties, complainants and other third parties, including the right to be heard (paragraph 1), the right of access to the file (paragraph 2), and the right of interested third parties to submit their observations. Moreover, Articles 28 and 30 of Regulation 1/2003 set forth provisions on, respectively, the protection of professional secrecy and the publication of the decisions adopted pursuant to Articles 7 to 10, 23 and 24 of Regulation 1/2003. The procedural rights of parties and third parties are further detailed in Articles 5 to 7, 9, and 10 to 17 of Regulation 773/2004.

223. Of all 226 interviewees, a total of 138 (61.06%) provided input on this question (106 attorneys; 32 in-house counsel).[165] In relation to the Figure below, it should be noted that the 39% of total respondents, who are categorised as "No response", come from interviewees who preferred not to give an answer to the general question on the effectiveness and efficiency of the Regulations in protecting parties' and third parties' procedural rights, but rather opted to provide answers to the more detailed sub-questions below.[166] Moreover, respondents who provided a reply to this question do not, in the vast majority of cases, provide a direct statement as to the (in-)effectiveness and (in-)efficiency of the protection of procedural rights. Rather, respondents provide input as to which aspects of the system could be improved regardless of whether they assess the protection of procedural rights as being respectively (generally) effective and efficient or ineffective and inefficient. For this reason, the Figure below does not show middle-ground options as adding these options to the Figure would not provide meaningful or additional indications.

[164] See EU-27 interview question no. 8 reproduced in Annex II.
[165] Of the 106 responding attorneys, 85.84% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the responding in-house counsel, 62.50% of responding interviewees indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission.
[166] Moreover, 15% of the responses categorised as "No response" came from attorneys and in-house counsel with limited experience in proceedings before the Commission. These interviewees either did not provide an answer to this question in the light of their limited experience or provided comments that related solely to their national jurisdiction.

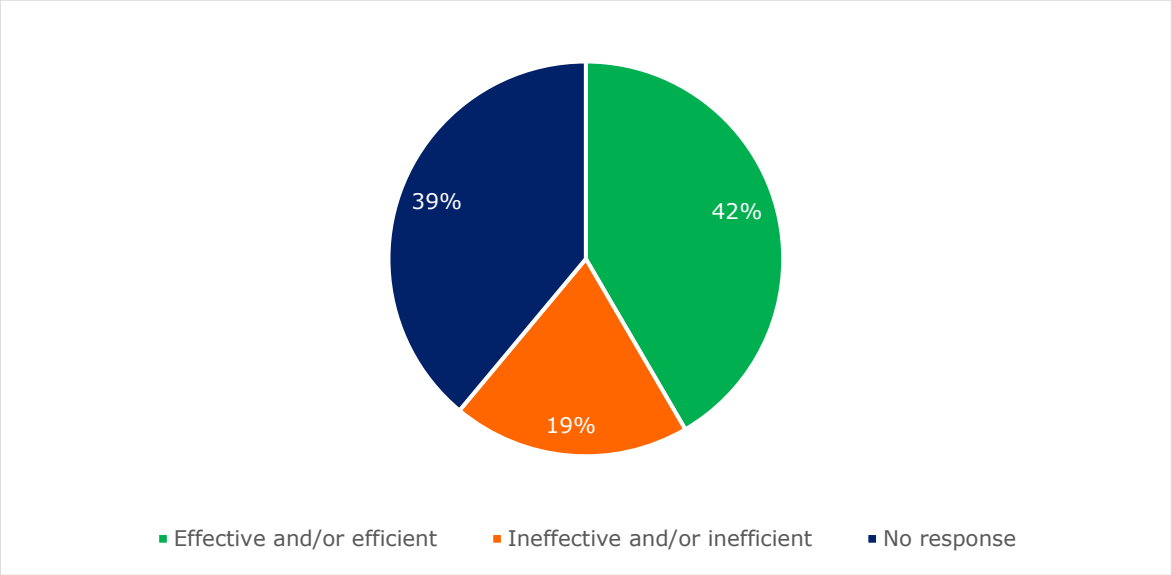


Figure 56 - Input of attorneys and in-house counsel on the effectiveness and efficiency of the protection of procedural rights of parties and third parties
Source: Standardised interviews (N=226)

224. As detailed in the Figure below on the input of attorneys and in-house counsel relative to their respective case experience before the Commission, of the total number of respondents, attorneys with experience in one or more cartel / antitrust proceeding(s) before the Commission are particularly positive in relation to this topic.

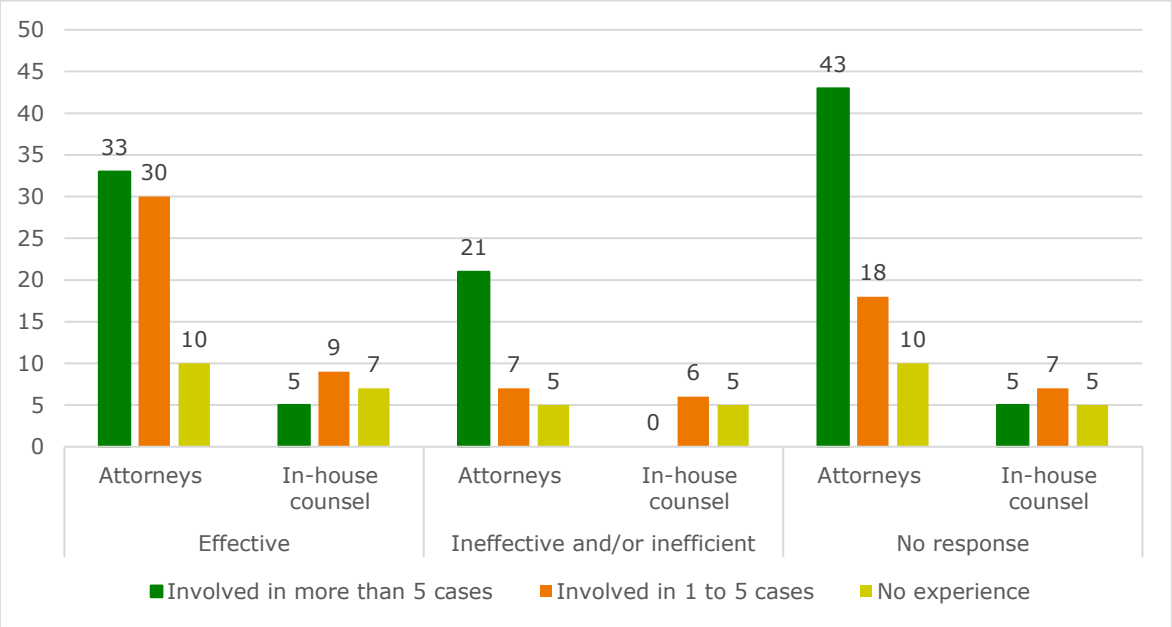


Figure 57 - Input of attorneys and in-house counsel (including respective case experience before the Commission) on the effectiveness and efficiency of the protection of procedural rights
Source: Standardised interviews (N=226)

225. Interviewees note the following constructive feedback and potential concerns in respect of the effectiveness and efficiency of the protection of procedural rights:

— Although the interviewees' assessment is generally nuanced, a trend that emerges amongst the 68.11% of respondents who provided an answer to this interview question is that the Regulations are perceived as rather effective and efficient in protecting parties' and third parties' procedural rights. However, these interviewees sometimes note that there is still room for improvement, mainly in relation to the right to be heard, transparency, confidentiality, and predictability of proceedings. On the other hand, the remaining 31.89% of interviewees providing an answer to this interview question conclude that the Regulations are ineffective and inefficient. Regardless of the specific points raised, these interviewees note the complexity of the issues stemming from the protection of procedural rights but similarly consider that there is still room for improvement, mainly in relation to the right to be heard, transparency, predictability of proceedings and how confidentiality issues are dealt with.
— The interviewees also suggest that the Regulations are more effective and efficient in protecting procedural rights of parties to the proceedings than those of third parties. This is mentioned by a limited number of respondents (4.38% of the interviewees who provided an answer to this interview question) as a potential shortcoming of the current framework.
— When proposing potential solutions to the abovementioned points of criticism, 7.24% of responding interviewees suggest that the Regulations could be more detailed and could, for example, better define some procedural rights that have been settled by CJEU case law (respondents cite in particular the right of defence and protection against self-incrimination).
— Additionally, 5.79% of the interviewees who provided an answer to this interview question note that the protection of procedural rights is often hindered by a perceived lack of transparency of the proceedings.

226. To conclude on the topic of the procedural rights of parties and third parties, the Regulations are in general reported to perform well in the creation of an effective framework allowing for the protection of procedural rights.

4.2 Interview feedback on the transparency of proceedings

227. This section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Regulation 1/2003 and Regulation 773/2004. During the interviews, respondents from the EU-27 jurisdictions were requested to provide their views on the transparency of the Commission's proceedings.[167] This question aims to further contextualise the overall effectiveness and efficiency of the relevant Regulations in safeguarding the procedural rights of (third) parties.

[167] See EU-27 interview question no. 8a reproduced in Annex II.

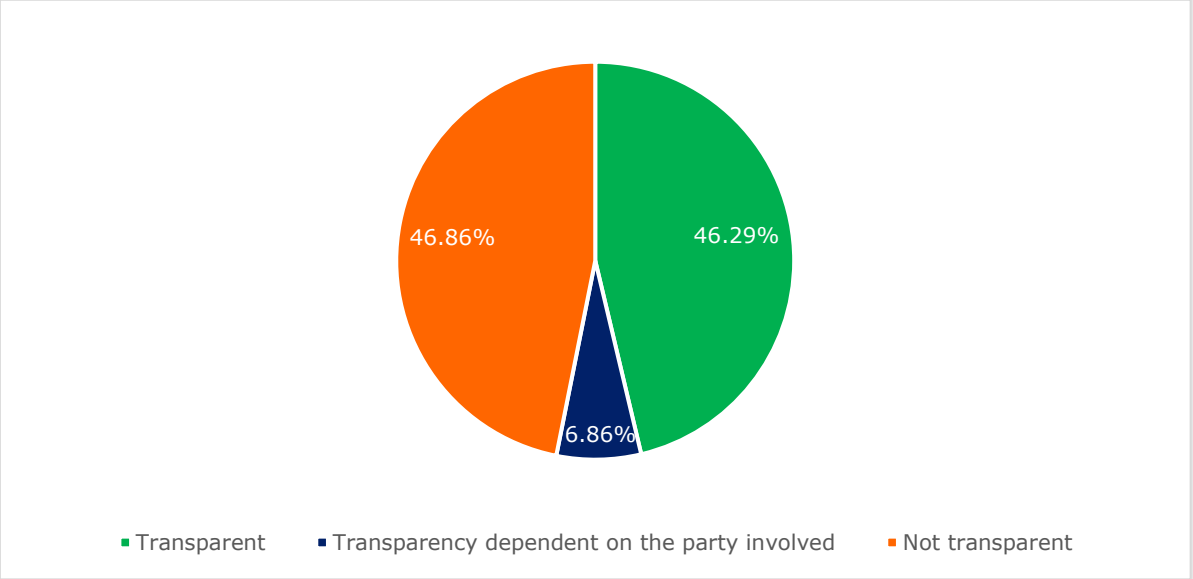


Figure 58 - Input of attorneys and in-house counsel on transparency versus non-transparency of Commission proceedings
Source: Standardised interviews (N=175)

228. Interviewees' opinions generally diverge when commenting on whether the proceedings before the Commission are transparent. More negative assessments on the transparency of proceedings are proportionally more frequent among in-house counsel than attorneys (i.e. 42.85% of in-house counsel conclude that the proceedings are not transparent, as opposed to 34.46% of attorneys).

However, 46.28% of interviewees who provided an answer to this interview question consider the proceedings before the Commission to be transparent overall. In the interviewees' views, transparency is fostered by the combination of the relevant Regulations, the Commission's practice (the Best Practice Guidelines were mentioned as particularly useful in this regard) and CJEU case law. Interviewees also suggest having rules and provisions on transparency transposed into hard law such as the Regulations, as opposed to being merely implied in good practices or in non-legally binding sources; this would help increase the degree of transparency of the proceedings according to this group of respondents. These interviewees stress that the level of transparency is lower in the initial stages of the proceedings but note that this trend is inevitably linked to the needs inherent in an investigation.

A comparable number of respondents (46.86% of interviewees who provided an answer to this interview question) conclude, on the contrary, that the degree of transparency of the proceedings before the Commission is not satisfactory. These interviewees flag that the issuance of the SO and access to the file takes place too late in the proceedings. They consider that this undermines the overall level of transparency of the proceedings and makes it hard for the investigated companies to defend themselves effectively. The lack of clear procedural timelines is also mentioned by interviewees as contributing to the opaqueness of the proceedings.

Finally, 6.86% of interviewees who provided an answer to this interview question make a distinction between investigated parties and third parties, noting that the position of the latter is less favourable in terms of transparency compared to investigated parties (e.g. according to the respondents, this is because third parties might face additional

obstacles, such as more limited possibilities in terms of access to the file and not always being informed to the same extent as the parties of how the information provided is being used). Fewer than 3.46% of interviewees who provided an answer to this interview question also note, however, that the level of transparency vis-à-vis third parties providing information to the Commission could be improved, as it would allow them to both comply with the Commission's expectations and anticipate how the Commission will use the information.

229. The responses given by interviewees do not allow for a clear-cut conclusion as to whether the proceedings can be considered transparent or not, given that there is no majority opinion. This being said, for an important number of interviewees, the (perceived) low level of transparency of the proceedings translates into less legal certainty and a weaker protection of procedural rights and defence rights. Thus, these respondents see room for improvement for the effectiveness of the Regulations as far as transparency of proceedings is concerned. On another note, according to interviewees who consider the proceedings to be transparent overall, transparency is reported to be fostered by the combination of the Regulations, the Commission's practice (e.g. best practice guidelines) and the case law of the CJEU.

4.3 Interview feedback on the right of access to the file ("access to file")

230. This section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Regulation 1/2003 and Regulation 773/2004 with regard to the right of access to the file. During the interviews, respondents from the EU-27 jurisdictions were requested to discuss the system of access to the file. In particular, respondents were requested to focus on the effectiveness and efficiency of the access to file system, the modalities of confidentiality rings, and the extent to which in-house counsel and employees of investigated companies review the Commission's file beyond the key documents cited in the SO.[168]

The right of access to the file is enshrined in Article 27(1) and (2) of Regulation 1/2003 and Article 15 of Regulation 773/2004. Under these provisions, the right of access to the file shall be granted to the parties to whom the statement of objections has been addressed, subject to the legitimate interest of undertakings in the protection of their business secrets, and it shall not extend to correspondence between the Commission and NCAs, or between the latter.

231. As regards the access to file procedure, as enshrined in Article 27(1) and (2) of Regulation 1/2003 and Article 15 of Regulation 773/2004, 46.94% of respondents who provided an answer to this interview question describe the access to file procedure as being overall effective and efficient. A smaller number of interviewees who provided an answer to this interview question (36.05%) consider it rather ineffective and inefficient. A minority of interviewees who provided an answer to this interview question (17.01%) conclude that the access to file procedure has proven to be effective but inefficient.

Some of the interviewees who praise the effectiveness and efficiency of access to file, mentioned that the system for proceedings before the Commission is better and more organised than in proceedings before NCAs. These interviewees also note that the

[168] See EU-27 interview question no. 8b reproduced in Annex II.

Regulations succeed in clarifying the terms and practical modalities of access to the file, and that digital access to the file is a significant improvement.

232. Common trends among respondents are identifiable regarding the drawbacks of the system and the potential solutions:

— First, a shared criticism among 11.49% of interviewees who provided an answer to this interview question concerns the timing of access to file. Access to the file being possible only after the SO has been issued is perceived as a significant flaw in the whole procedure, which undermines the right of defence.

— Second, and linked to this, 5.75% of interviewees who provided an answer to this interview question criticise the efficiency of the system, noting that parties are granted access to a very large number of documents and are required to process these in a very short timeframe. With regard to these identified drawbacks, it is suggested that allowing access to the file at an earlier stage and engaging in meaningful discussions with the Commission already at a pre-SO stage (as is the case, at national level, in Italy and Spain) would not only increase the opportunities for defendants to exercise their right of defence more effectively, but also allow the Commission to better define its investigation, resulting in a less burdensome and more relevant file.

Another common concern about the efficiency of access to file is how the system unfolds in practice. Access to file is described by 3.45% of the responding interviewees as an old-fashioned system, requiring parties to be present at the Commission's premises and, for instance, to rewrite oral statements that are part of the file and which cannot be copied. Although acknowledging that useful digital tools are already deployed, interviewees underline that their increased use – not only to handle confidentiality claims but, more in general, to support parties throughout the whole access to file phase – would be beneficial.

233. As far as confidentiality rings are concerned, 88.75% of the interviewees who provided an answer to this interview question consider them to be a tool that can alleviate the lengthy negotiations on confidentiality that render the access to file system less efficient.

— More than 63.75% of respondents stress that, on the one hand, producing non-confidential versions of documents is burdensome for companies, but, on the other hand, if the number of redactions is excessive, it could lower the added value of being able to access key documents.

— The increased use of confidentiality rings is suggested as a viable solution to this problem. However, 5% of interviewees who provided an answer to this interview question also note that the absence of a clear legal basis governing confidentiality rings and their use, as well as the absence of clear sanctions in case such rings are breached, may increase the risk of leaks of confidential information.

— As to who should be part of the rings, as confirmed by more than 83.75% of interviewees who provided an answer to this interview question, external counsel are usually considered a safe and effective option as the latter are bound by deontological confidentiality obligations.

— A significant proportion of the interviewees who provided an answer to this interview question (18.75%) also advocate in-house counsel having access to confidentiality rings as in-house counsel have a better knowledge of the business / market at stake

than external attorneys. These interviewees note that advising clients could be harder if no one from the relevant company is part of the confidentiality ring.

— However, 10% of the interviewees who provided an answer to this interview question considered that the participation of in-house counsel in confidentiality rings would raise more concerns, in particular considering that the relevant framework does not provide for specific confidentiality obligations for in-house counsel in every Member State.

— Economists are also mentioned as an option by 6.25% of interviewees who provided an answer to this interview question, although the absence of deontological obligations for them is seen as a concern.

— Finally, 5% of interviewees who provided an answer to this interview question suggest that the composition of confidentiality rings could be assessed on a case-by-case basis, taking into account both the degree of confidentiality of the information at stake and the size of the companies involved (e.g. in large and well-structured organisations, the in-house counsel generally work separately from the business units, thus giving rise to fewer concerns about potential information leaks), and the number of people that need to be part of the ring (in order to avoid confidentiality rings including too many people).

Respondents made no comments on the Digital Markets Act Implementing Regulation, which includes a confidentiality ring system.

234. As to the extent to which the Commission's file is reviewed, 48.90% of interviewees who provided an answer to this interview question confirm that people in the business concerned and in-house counsel tend not to review the file in its entirety. They rather rely on a first filtering carried out by their external lawyers (or other advisors, e.g. financial advisors) and analyse a selected set of documents, which may not always coincide with the documents cited in the SO.

— While only 21.17% of interviewees who provided an answer to this interview question report that the entire file is thoroughly reviewed internally, another significant number of respondents who provided an answer to this interview question (29.93%) underline that the extent to which the business or its in-house counsel engage with a first-hand analysis of the file depends on a series of factors.

— The most frequently recurring factor mentioned in this regard – besides the size of the file – is how structured the organisation is and whether it has a dedicated legal / competition law department.

— Furthermore, the level of attention that the case receives, its seriousness and how damaging certain documents could be for a company can also increase the degree of involvement of the business and in-house counsel in the analysis of the file.

— One interviewee also notes that in EU Member States where in-house counsel benefit from professional legal privilege (e.g. in the case of the so-called "bedrijfsjuristen" in Belgian proceedings), such in-house counsel tend be more involved in the first-hand review of the file.

235. To conclude on the right of access to the file, the responses given by the interviewees do not allow for a clear-cut conclusion on the effectiveness of the current system. On the one hand, the current framework is described as imposing clear terms and practical modalities and allowing for the use of digital tools. On the other hand, interviewees share constructive feedback concerning the perceived large number of documents to be processed and the relatively tight timelines. The implication is that the

current access to file procedure does not appear to be unequivocally successful in lowering the administrative burden on undertakings. Improvements in this regard might arguably follow from an increased use of confidentiality rings, provided that the latter are adequately regulated in terms of composition and sanctions in case of breaches. The late stage at which access to file takes place is perceived as undermining the right of defence, resulting in a potential drawback in terms of effectiveness.

4.4 Interview feedback on the protection of confidential information

236. This section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Regulation 1/2003 and Regulation 773/2004 in respect of the protection of confidential information. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on the protection of confidential information and how important that is. The question asked was multifaceted and asks the interviewees to elaborate on the balance between the right to be heard and the protection of confidential information, the possible concerns that arise due to the lack of sanctions for breach of Article 16a of Regulation 773/2004 and the extent to which the Regulations provide comfort that information disclosed to a restricted group of persons will not be leaked.[169]

The protection of confidential information in the context of antitrust proceedings is granted by Articles 27(2) of Regulation 1/2003, as well as Articles 15, 16 and 16a of Regulation 773/2004. According to these provisions, information and documents shall not be communicated or made accessible, in so far as they contain business secrets or other confidential information of any person. Furthermore, information obtained pursuant to the provisions of Regulation 773/2004 shall only be used for the purposes of judicial or administrative proceedings for the application of Articles 101 and 102 TFEU.

[169] See EU-27 interview question no. 8c reproduced in Annex II.

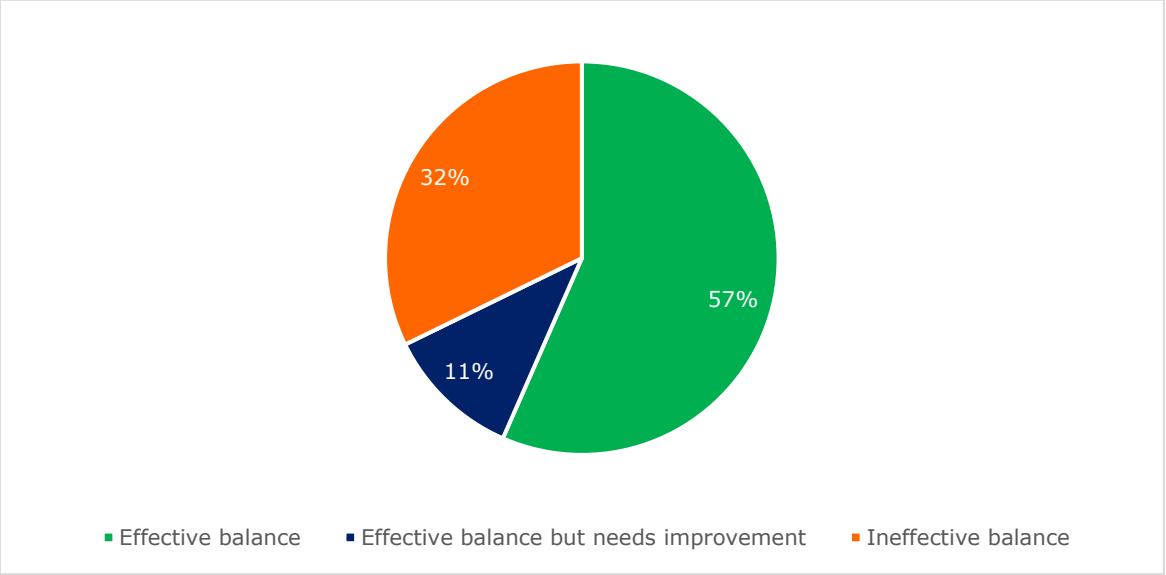


Figure 59 – Input of attorneys and in-house counsel on the balance between right to be heard and protection of confidentiality
Source: Standardised interviews (N=152)

237. A majority of 56.58% of interviewees who provided an answer to this interview question consider that the Regulations succeed in striking an effective balance between the right to be heard and the protection of confidential information. Although they acknowledge that this balancing exercise gives rise to procedural complexities, the conclusion is also drawn that these are unavoidable and that it would be hard to improve on the current balance.

238. Interviewees note the following constructive feedback and potential concerns in respect of the balance between the right to be heard and protection of confidentiality:

— Approximately 11.18% of respondents who provided an answer to this interview question believe that while an effective balance can be achieved between the right to be heard and the protection of confidential information, there is still a need for improvement.

— On the other hand, 32.24% of responding interviewees who provided an answer to this interview question note that the right to be heard and the protection of confidential information are not effectively balanced. Among these, 40.82% consider that the Commission is sometimes lenient in granting protection to information claimed to be confidential, to the detriment of the right to be heard. For example, information can sometimes be protected even if its protection is no longer justified because the passing of time means that the document is no longer confidential. It is also pointed out that companies can take advantage of the current process as a tactic to stall investigations by claiming confidentiality protection for certain documents that do not contain strictly confidential information, such as business secrets, but rather information that could be damaging to the company or that the company feels it would be unsuitable to disclose in the context of the investigation. The suggestion is made that delaying decisions on confidentiality to a later stage of the proceedings would help to strike a balance between the protection of confidentiality and the right to be heard.

— Approximately 19.08% of interviewees who provided an answer to this interview question point to several factors that contribute to the imbalance, – e.g. the more limited access to information for complainants, the complexity and length of the procedure to designate information as confidential, as well as the general fear of potential leaks of confidential information and the related risks of retaliation from customers or suppliers.
— Lastly, 5.27% of interviewees who provided an answer to this interview question stress that extended access to leniency applications is crucial for an effective balance between confidentiality and the right to be heard. They stress that the parties need strong means to defend themselves against information included in leniency applications. However, they note that the framework on leniency programmes generally works effectively, although improvements could be made to the IT tools used to protect confidentiality. Moreover, the need to provide enhanced protection of the identity of the employees providing information under a leniency programme is mentioned by one interviewee.

239. As part of a different interview question and on a related note,[170] 13 interviewees addressed the topic of LPP. In particular, of those 13 interviewees, five of the respondents are concerned that the Commission being able to access correspondence between a company and its in-house counsel (since such correspondence is not considered legally privileged) could potentially undermine efforts by in-house counsel to reinforce compliance within their companies. For instance, two respondents of that same group, both of whom are in-house counsel, argue that there is a tendency in their companies to avoid written exchanges between in-house counsel and other departments within the company to prevent misinterpretations. According to the relevant interviewees, this may hamper their ability to provide legal advice and comprehensive guidance on compliance matters. These respondents argue that reconsideration of the stance on LPP would benefit the role of in-house counsel in ensuring company compliance.

240. In relation to the protection of procedural rights, it can be seen that the majority of respondents are not seriously concerned by the lack of sanctions for breach of the confidentiality obligation in Article 16a of Regulation 773/2004. In particular, 50.40% of interviewees who provided an answer to this interview question do not consider the introduction of sanctions as necessary given the availability of other procedural safeguards that could be triggered should information be used for purposes other than those of the judicial and administrative proceedings of the given case (e.g. suits for non-contractual civil liability, disbarment, filing of a complaint before the European Ombudsman).

In spite of the above, a slightly smaller number of interviewees (44% of respondents who provided an answer to this interview question) still note that the provision of sanctions for breach of Article 16a of Regulation 773/2004 would be beneficial and increase the chances of compliance with this obligation.

In addition, 14.40% of respondents who provided an answer to this interview question provide specific comments or suggestions as to how the current framework could be improved to tackle the above-mentioned concerns stemming from the lack of sanctions

[170] See EU-27 interview question no. 17 reproduced in Annex II and Third Country interview question no. 12 reproduced in Annex III (which reads as follows: "*Do you have any other comments?*").

in relation to Article 16a of Regulation 773/2004. First, it is noted that any violation of Article 16a of Regulation 773/2004 would be extremely difficult to enforce in practice (e.g. in terms of tracing the breach, establishing a causal link or preserving the commercial value of the disclosed information) and that the knowledge obtained from the documents relating to antitrust proceedings could anyway be used indirectly. For this reason, although the introduction of fines or criminal sanctions for the breach of Article 16a of Regulation 773/2004 is suggested, it is also noted that it is not likely that financial sanctions or sanctions against individuals would be a viable solution. As for the other types of sanction that could be envisaged, procedural consequences like the invalidity of the investigation brought on the basis of the information obtained in the context of other proceedings (or the inadmissibility of such information) are considered an effective remedy, and the introduction of a specific provision in this regard in the Regulations is advocated.

To complement the considerations above with some further colour based on the available data, the conclusion that the introduction of sanctions for the violation of Article 16a of Regulation 773/2004 is not needed is given proportionally more frequently by attorneys (31.64% of the total number of attorneys) than in-house counsel (14.28% of the total number of in-house counsel). Among attorneys, this opinion is shared more frequently by those who have participated in more than five cases before the Commission (36.09% of the abovementioned category) than those who have had experience in fewer than five cases before the Commission (26.25% of the abovementioned category).

241. The input on the extent to which the Regulations ensure that information disclosed to a restricted group of persons is not leaked was diverse. In particular, 41.29% of interviewees who provided an answer to this interview question acknowledge that the provisions in the Regulations give little practical comfort in relation to potential leaks. Companies are often worried about the disclosure of business secrets or the misuse of confidential information for the purposes of starting a further investigation or regulating a certain market sector. Despite the above, these interviewees indicate that, in practice, they mostly do not have experience of cases of leaks of confidential information. Only in exceptional cases do interviewees note that they have experienced leaks, either from NCAs or in the context of confidentiality rings (in that respect, one concerned interviewee criticises the inclusion of in-house counsel as part of such rings).

On the other hand, a larger group of 52.25% of respondents who provided an answer to this interview question conclude that the Regulations provide as much comfort as possible in terms of preventing information leaks. While acknowledging that the system can never be bulletproof – as, in the end, it very much depends upon the companies involved and their advisors – this set of interviewees note that sufficient comfort is provided through soft-law guidelines (e.g. on data room access rules), the reputation of the Commission (and, to a lesser extent, that of NCAs) as a trustworthy enforcer, and the professional obligations and bar rules applicable to external advisors.

In terms of developments mentioned by interviewees as potentially capable of improving the current framework and enhancing the protection of confidential information, suggestions made include having a more consistent set of rules in place, with clearer sanctions for cases of disclosure of confidential information, the introduction of specific obligations on external advisors (e.g. to demonstrate that information is secured through the use of restricted access devices) as well as more guidance from the Commission on how to make sure that information leaks will be avoided.

242. Concluding on the topic of the protection of confidential information, respondents essentially describe the Regulations as overall effective. First, the Regulations are reported as succeeding in balancing the right to be heard and the protection of confidential information. Although some criticism is noted among interviewees (e.g. in relation to the over-protection of confidentiality or to the risks related to possible information leaks), it is also acknowledged that striking a correct balance is a complex and thorny exercise, and that the currently applicable framework provides a rather effective answer to this requirement. The conclusion that the approach of the Regulations to the protection of confidential information is effective in ensuring the parties' procedural rights appears to be further confirmed by the input of interviewees concerning Article 16a of Regulation 773/2004 and the lack of sanctions in the event of violations. The concern that information obtained in the context of antitrust proceedings might also be used for purposes other than those of the proceedings of the case in question is said to be adequately addressed through the availability of procedural safeguards (such as non-contractual civil liability, disbarment, or the possibility of filing a complaint with the European Ombudsman). According to interviewees, these safeguards could possibly be complemented by the introduction of statutory provisions mandating the invalidity of the investigation initiated on the basis of information obtained in the context of other proceedings (or the inadmissibility of the use of such information). The Regulations are reported to be coherent with soft-law guidelines (e.g. on data rules) and the Commission's best practices, thus providing sufficient comfort overall that confidential information is not leaked.

4.5 Interview feedback on oral hearings

243. This section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Regulation 1/2003 and Regulation 773/2004. During the interviews, respondents from the EU-27 jurisdictions were requested to share their views on oral hearings. In a related manner, interviewees are also asked to elaborate on the efficiency of oral hearings as a forum for the parties' right to be heard as enshrined in Chapter V of Regulation 773/2004.[171]

Pursuant to Article 12(1) of Regulation 773/2004, the Commission shall give the parties to whom it addresses a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request. Where the Commission considers it appropriate, the Commission may also invite complainants and other natural or legal persons to attend the oral hearing of parties to whom a statement of objections has been addressed (Articles 6(2) and 13(3) of Regulation 773/2004). The rules on the conduct of oral hearings are further detailed in Article 14 of Regulation 773/2004.

[171] See EU-27 interview question no. 8d reproduced in Annex II.

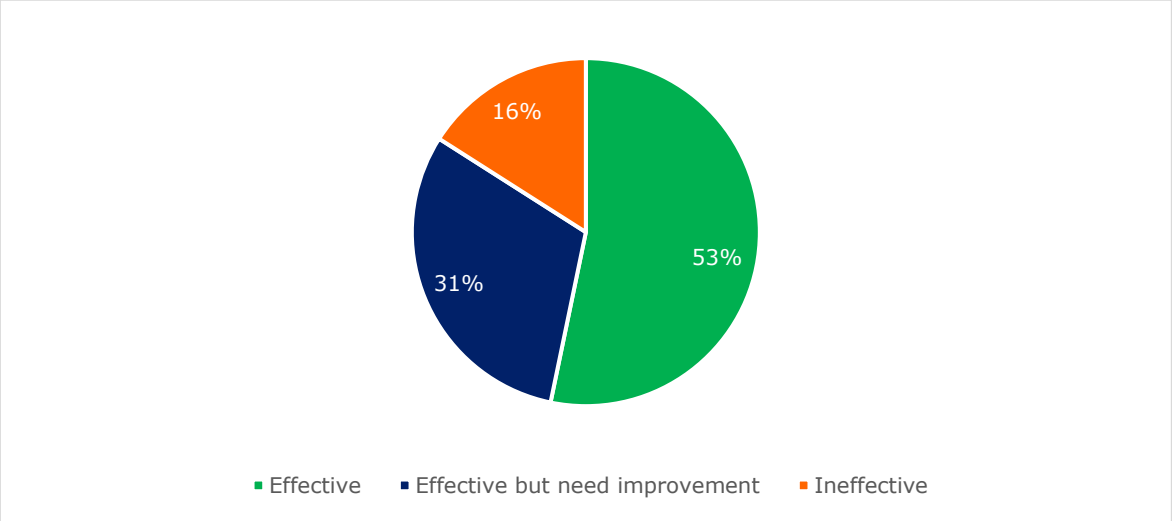


Figure 60 – Input of attorneys and in-house counsel on the effectiveness of oral hearings (N=170)
Source: Standardised interviews

244. As far as the effectiveness of oral hearings is concerned, the assessment of 53.25% of interviewees who provided an answer to this interview question is positive. However, 30.77% of respondents who provided an answer to this interview question point out that improvements may still be in order.

These interviewees describe oral hearings as a significant improvement in the proceedings before the Commission, allowing parties to rely not only on written submissions, but to substantiate their arguments orally in front of an audience that is wider than the case team (e.g. including the Commission Legal Service, cabinet members and members from other Directorates-General (the "**DGs**")) and also to confront other parties. Moreover, 5.92% of interviewees who provided an answer to this interview question advocate for an expansion of the role of the Hearing Officer, – e.g. enabling the Hearing Officer to deal with confidentiality issues (e.g. solving conflicts and conflicting claims on confidentiality rings) or strengthening their reviewing powers and their role with respect to third parties in the proceedings.

245. Interviewees note the following constructive feedback and potential concerns with respect to oral hearings:

— Approximately 7.10% of responding interviewees share the criticism that oral hearings are perceived as taking place too late in the process, when the Commission has already formed its opinion on the case and is less likely to change it. Interviewees praise some national examples (e.g. Czechia and Italy) where hearings can take place before the SO stage.

— The (lack of) independence of the Hearing Officer from the investigating body in the proceedings is mentioned by 6.50% of interviewees who provided an answer to this question as a point for improvement.

— Interviewees generally suggest enhancing on the one hand the adversarial character of oral hearings (e.g. by not holding them at the Commission's premises, by allowing parties to directly challenge statements made by other parties as part of a leniency programme, to cross-examine witnesses and to challenge evidence more frequently) and on the other the aforesaid independence of the Hearing Officer (e.g. by making

sure that the Hearing Officer's observations are made available to the parties and do not remain within the Commission's decision-making process).

— Although the way oral hearings are organised is usually praised, 3.55% of interviewees who provide an answer to this question note that the time allocated to the parties' defence arguments or to ask questions is sometimes limited and that the number of people that can participate in the oral hearings should be reduced.

— However, despite being a minority, 15.98% of interviewees who provided an answer to this interview question note that oral hearings are not effective as a forum where parties can exercise their right to be heard. The general criticism in this case is that oral hearings are often a mere formality with no real fact-finding purpose and no impact on the outcome of the proceedings. There is a perception that the Hearing Officer deals only with procedural issues and is just responsible for passing on information, whereas a more direct interaction with the decisionmakers is needed.

— 2.95% of interviewees who provided an answer to this interview question acknowledge that an effort is being made to have senior staff in the Commission, including its Legal Service, attend the oral hearings. These respondents note that the presence of key people during oral hearings can render such oral hearings more effective and enable companies to make their points effectively.

It is notable that the share of interviewees considering oral hearings not to be effective is comparatively higher among respondents with more experience representing clients before the Commission (in more than five cases) than among other categories, thus suggesting that the mechanism may be rather well structured on paper but that some shortcomings emerge in practice.

246. Interviewee responses indicate that oral hearings are overall perceived as an effective tool in that such hearings enable parties to offer arguments on an oral basis and not solely rely on written submissions, addressing a wider audience compared to the case team. In this regard, oral hearings appear to comprise an additional safeguard for the procedural rights of parties according to interviewees. Suggestions are put forward as to how oral hearings could be improved and their effectiveness could be enhanced. In particular, mention is made of the possibility that hearings could take place at an earlier stage and could be structured in a more adversarial manner. It is said that the latter would potentially strengthen the opportunities for parties to exercise their right of defence meaningfully and improve the effectiveness of the overall proceedings.

247. To conclude on the topic of the procedural rights of (third) parties, the Regulations are reported to perform well in the creation of an effective framework allowing for the protection of procedural rights. Although the overall transparency of proceedings before the Commission is said to be fostered by the combination of the Regulations, the Commission's practice and CJEU case law, interviewees also stress that the (perceived) low level of transparency of the proceedings – especially in the early stages – translates into reduced legal certainty and a weaker protection of procedural rights and defence rights in proceedings. The identification of meaningful methods to involve parties earlier could, according to respondents, simultaneously improve the degree of transparency while streamlining the subsequent stages of the proceedings and thereby contribute positively to the overall effectiveness of the framework.

Linked to the issue of transparency is the access to file procedure on which it is not possible to draw a clear-cut conclusion as to its effectiveness. Interviewees are critical

of the general administrative burden faced by undertakings involved in the proceedings. Improvements in this regard could reportedly follow from increased use of confidentiality rings. With respect to the protection of confidential information, interviewees frequently do believe that the Regulations provide for a fair and effective balance between the protection of confidential information and the right to be heard although they also underline the complexity of striking a fair balance in this respect. In this respect, interviewees note that companies are conscious of protecting business secrets and are concerned about potential leaks. Nevertheless, the view is widely held among respondents that leaks of confidential information are very rare in practice and are often caused by human error. It also emerges that the combination of the applicable framework, guidelines and good practices from the Commission provide sufficient comfort as to the confidentiality of information disclosed to a restricted group of people, as well as on the lawful use of information obtained in the context of antitrust proceedings.

Finally, although the role of the Hearing Officer is not perceived as fully independent from the case team at DG COMP, it appears that oral hearings are mostly perceived as a useful safeguard for the right to be heard. It is nonetheless argued that scheduling such hearings at an earlier stage in the process and increasing their adversarial character could strengthen the opportunities for parties to exercise their rights of defence meaningfully and could thereby increase the overall effectiveness of oral hearings.

4.6 Formal and informal complaints

4.6.1 Interview feedback on the choice of a formal or informal complaint

248. This section presents relevant input from interviewed attorneys and in-house counsel that will support DG COMP in its evaluation of Article 7(2) of Regulation 1/2003 and Articles 5 to 9 of Regulation 773/2004. During the interviews, respondents from the EU-27 jurisdictions were requested to explain under what circumstances they would encourage their clients to file a formal complaint pursuant to Article 7(2) of Regulation 1/2003, and what advantages such interviewees believe formal complaints have in comparison to an informal complaint.[172] The provision governing the complaints procedure is Article 7(1) of Regulation 1/2003, which empowers the Commission to act on the basis of the complaint to find an end to an infringement. Furthermore, the procedural status of the complainants was established by way of Article 7 of Regulation 1/2003.

Choice of a formal or informal complaint

249. A total of 181 respondents provided input on this interview question. As indicated in the Figure below, interviewees are more inclined to advise their clients to launch a formal complaint rather than an informal complaint. Of these respondents, 80.12% are attorneys and the remaining 19.88% are in-house counsel.

[172] See EU-27 interview question no. 9 reproduced in Annex II.

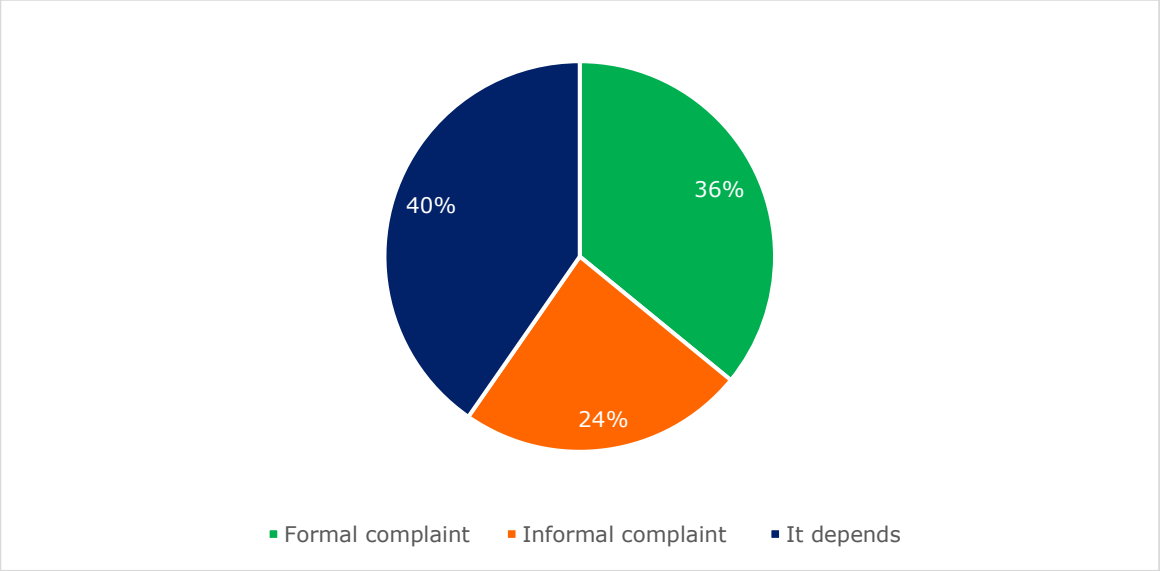


Figure 61 – Input of attorneys and in-house counsel on preference for launching a formal versus informal complaint (N=181)
Source: Standardised interviews

250. More than a third of interviewees responding to this interview question (35.91%) underline that formal complaints confer procedural rights and offer remedies, as opposed to informal complaints that reportedly do not guarantee unhindered access to the procedural rights of the parties. Moreover, 32.04% of interviewees providing an answer to this interview question are of the view that the formal complaints' procedure is clear and well established. Additionally, 9.94% of the interviewees providing a response to this interview question emphasise that the formality which characterizes the relevant procedure is indicative of the importance of the issue at hand. At the same time, 2.76% of interviewees providing an answer to this interview question hold the view that a formal complaint carries more weight, since it could spur the Commission to launch a formal investigation.

— Despite the above, one of the main concerns raised by approximately 16.02% of the interviewees responding to this interview question is that launching a formal complaint comes with the risk of retaliation from the company against which the complaint is filed.
— Furthermore, 23.75% of interviewees who provided an answer to this interview question indicate that they would prefer to launch an informal complaint than a formal complaint. Anonymity is cited as one of the main advantages of informal complaints. Other advantages of the informal complaints system include, according to these interviewees, a more rational use of resources and the possibility from the company's perspective of easily putting an end to the complaint.

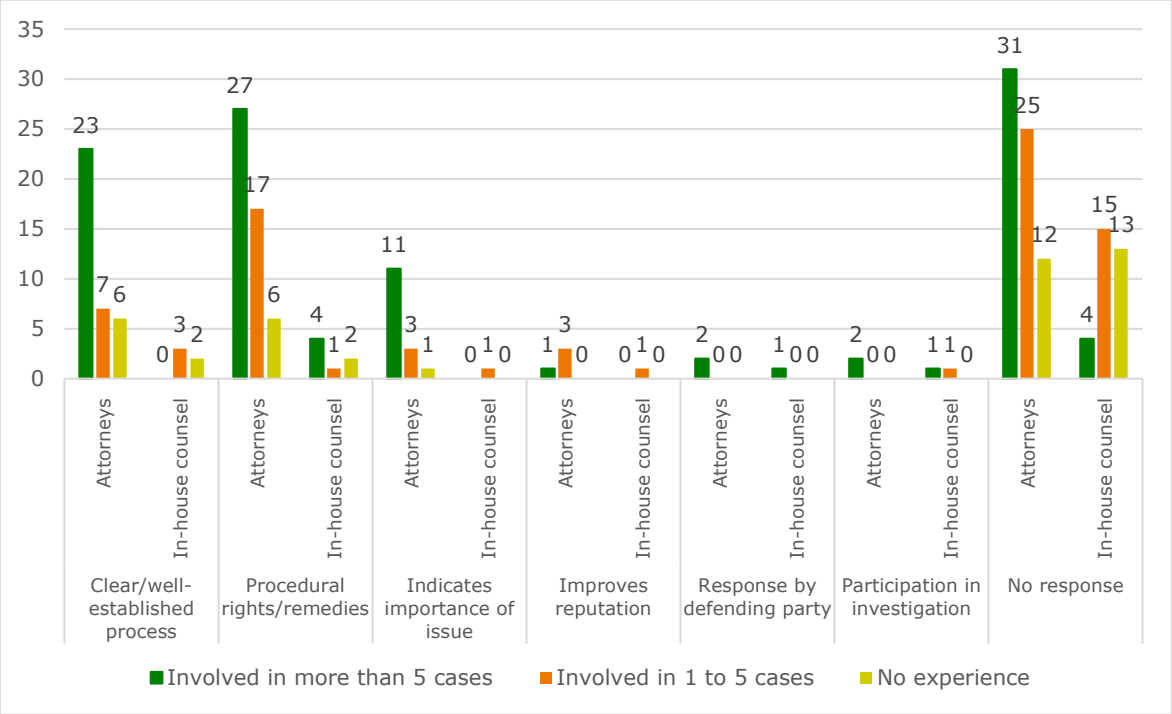


Figure 62 – Input of attorneys and in-house counsel on advantages of the formal complaints procedure
Source: Standardised interviews (N=226)

251. Over 39.82% of the respondents who provided an answer to this interview question indicate that the choice of launching a formal or an informal complaint should be evaluated on a case-by-case basis, depending on the specificities and characteristics of the issue at hand. Of these respondents, 84.07% are attorneys and 15.93% are in-house counsel. In this context, 16.37% of the interviewees who remark that the choice between formal and informal complaints should be evaluated on a case-by-case basis state that this depends on the nature of the relationship between the parties.

Furthermore, according to 5.55% of the same group of interviewees, there is a greater possibility in smaller markets that other companies become aware of the complaint that has been filed, which could lead to the risk of severing other business relationships. It is also evident that interviewees who have experience in more than five cases in antitrust proceedings before the Commission are more inclined to see business relationships as a crucial factor in determining whether to launch a formal or an informal complaint, with 28.22% of respondents stating this.

According to 27.78% of the interviewees who would choose between formal and informal complaints on a case-by-case basis, filing an informal complaint would be advisable as anonymity is ensured. Of the same group of respondents, 11.11% state that an applicant would do better to file an informal complaint if they fear public knowledge could harm their reputation or when there is a possibility of retaliation by the company against which the complaint is brought. However, according to 4.55% of the same group of interviewees, in other instances, gaining publicity is seen as an advantage, namely when the applicant wants to make the market aware of the issue so that it is addressed promptly. According to 4.75% of the same group of respondents, this is more common amongst trade associations as individual companies prefer to be more discreet.

The financial position of the complainant needs to be taken into consideration as well, according to 26.99% of the interviewees who provided an answer to this interview question. For instance, if parties are looking to save costs, an informal complaint procedure is recommended by these respondents. Also, if an alleged infringement poses a substantial risk to the complainant's financial stability, there is reportedly a greater incentive for them to pursue a formal complaint.

Additionally, 26.10% of the interviewees who provided an answer to this interview question mention that the importance of a successful outcome for the client should also be considered. There is consensus among 33.18% of the interviewees who provided an answer to this interview question that the complainants are better off filing a formal complaint when they want the case to be considered, since the Commission does not have the same discretion as to whether to investigate formal complaints as it does for informal complaints. Finally, the last factor identified by 8.84% of respondents who provided an answer to this interview question when choosing between a formal or an informal complaint, is the complexity and importance of the issue at hand for the relevant parties. These respondents notably refer to the relevance of the parties' professional activities and whether the matter is aligned with the issues the Commission would be interested in pursuing at a specific point in time given its enforcement priorities.

252. There are clear instances, according to the interviewees, where the formal procedure is preferred. According to 33.18% of the respondents who provided an answer to this interview question, this would be the case when the claimant wants to maintain their procedural rights. Approximately 8% of these interviewees share the preference of advising their client to file a formal complaint, if possible. The reason for this is, according to these respondents, that only the formal procedure would be truly effective: the Commission is required to take the formal complaint into consideration (even for its rejection, pursuant to Article 7 of Regulation 773/2004), and formal complaints may well be followed by stronger enforcement actions.

On the other hand, around 49.85% of interviewees responding to this interview question agree that an advantage of an informal complaint is avoidance of publicity, as such publicity in turn can result in retaliation, public exposure and reputational damage. Furthermore, 10.17% of interviewees who provided a response to this interview question express the view that an informal complaint could be launched when parties are looking to save time and costs as the formal complaints procedure is rather time-consuming, lengthy and expensive. This opinion is shared predominantly amongst interviewees from Denmark, Greece and amongst attorneys interacting with the Commission. The *Intel* and *Panini* cases are provided as examples of lengthy discussions and debates that followed the filing of a formal complaint. Furthermore, around 19.91% of the interviewees raise the points that formal complaints are time-consuming and that informal complaints reduce the workload for both the complainant and the Commission, lessening the risk of either side feeling unnecessarily overburdened. An informal complaint allows the client to hold discussions with the Commission and only file a formal complaint when the Commission states this should be done, thus preventing resources from being wasted.

Advantages of formal and informal complaints

253. Of the 127 respondents who provided an answer to this question on the advantages of formal and informal complaints, 85.82% are attorneys and the remaining

14.18% are in-house counsel. Of the responding attorneys, 87.50% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission. Of the responding in-house counsel, 76.92 % indicated that their respective company had been involved in one or more cartel / antitrust proceeding(s) before the Commission.

254. Interviewees note the following constructive feedback and potential concerns in respect of the advantages that a formal complaint presents:

— Almost half of the interviewees who provided input in this regard (44.88%) observe that the advantages of a formal complaint relate to the provision to the parties of unhindered access to their procedural rights and remedies (e.g. right to a decision, right to defence and right to access to information). Around one quarter (24.58%) of this group of respondents are attorneys who have experience in more than five cases in antitrust proceedings before the Commission, and they view access to procedural rights as an important feature of the formal complaints' procedure.

— Additionally, 32.23% of interviewees providing input on the advantages of formal complaints state that the formal complaints' procedure is clear and well-established. Launching a formal complaint prompts, according to these respondents, the regulator to examine the issue. Additionally, according to 12.60% of the same group of respondents, the formal procedure indicates the importance of the issue and approximately 3.94% of the same group of interviewees take the view that the publicity that usually comes with a formal complaint (if the outcome is no breach of competition law) can be a way for a party to repair or improve its reputation in the eyes of the public. Around 3.99% of the same group of interviewees mention that it is advantageous that parties can participate in the investigation process more actively. Further, 2.36% of the interviews answering this question stated that it is an advantage that the defending party can also respond to the complaint. Apart from the mentioned advantages of the formal complaint procedure, 4.16% of the same group of interviewees also mention that the latter provides the client with the right of appeal. For instance, in the event of the Commission deciding to halt an investigation, the respondents note that the Commission has to follow a specific procedure, which in turn can be appealed before the courts. Similarly, these respondent remark that a negative decision issued by the Commission can also be appealed by the client. Lastly another advantage that 4.72% of the same group of responding interviewees point out is the possibility of gaining procedural benefits from launching a formal complaint.

255. Interviewees note the following constructive feedback and potential concerns in respect of the advantages of an informal complaint:

— First, 50% of the respondents providing input in this regard cite anonymity as an advantage of the informal complaints procedure. A majority of 56.25% of this group of respondents have experience of more than five cases in antitrust proceedings before the Commission, which could indicate that first-hand experience with Commission proceedings may reinforce the view that remaining anonymous may be beneficial, at least at the early stages of the process. According to these respondents, concealing the identity of the complainant can reduce the risk of retaliation and severance of business relationships with parties that the client might be dependent on.

— Second, 36.45% of the respondents providing input on the advantages of an informal complaint answer that informal complaint may be used as a tool to gauge the

Commission's reaction and interest in the matter to determine whether a formal complaint could be pursued (as stated by respondents in Denmark and France). Additionally, 9.38% of the same group of respondents note that, as opposed to the formal complaint procedure, informal complaints also offer other advantages due to a lack of formalities when preparing the complaint, which may result in a speedier process.

— Furthermore, 4.17% of the interviewees providing input in relation to the advantages of an informal complaint cite an easier termination of the process as an advantage of such an informal complaint procedure.

256. Interviewees note the following constructive feedback and potential concerns in respect of formal and informal complaints:

— There is a general concern voiced by 25.36% of interviewees who provided an answer to this interview question that the EU complaints procedure can be lengthy and is often resource-intensive for the complainant. This is more apparent for formal complaints, according to interviewees in Portugal and Finland.

— On the other hand, 5.23% of interviewees who provided an answer to this interview question state that informal complaints could be faster in addressing a resolution for the case though not necessarily in offering a definitive solution for the complainant.

— Of the respondents who provided an answer to this interview question, 7.25% were critical of formal complaints. They argue that, unless the matter concerns an important topic or the defendant is a large company or corporation, formal complaints can be ineffective. These respondents namely remark that formal complaints can dismissed as the Commission does not consider it appropriate to take them up or for lack of resources. Furthermore, it is reported by these respondents that formal complaints can only be beneficial if the complainant is a strong stakeholder and that formal complaints would place a disproportionate burden on the complainant.

— Moreover, 5.60% of interviewees who provided a reply to this interview question tend to prefer triggering a complaint process within their jurisdiction's NCA rather than complaining directly to the Commission as a first step. They explain this on the grounds that, depending on the jurisdiction involved, NCAs allow more informal contacts and do not require potential infringements to be of a certain size or scale. They also note that a large number of cases are not retained by the Commission, while NCAs reportedly deal with more complaints received, including those requiring enforcement of Articles 101 and 102.

— Additionally, 3.78% of the interviewees who provided a reply to this interview question indicate that during the process of a formal complaint, the information the Commission requests is usually too broad in scope.

— Furthermore, 2.85% of the interviewees who provided a reply to this interview question regard NCAs as more reactive than the Commission. Similarly, NCAs are reportedly more inclined to take on a case via the formal procedure.

257. In conclusion, although the choice of pursuing a formal or an informal complaint generally appears to be evaluated on a case-by-case basis, the respondents generally prefer formal complaints as these tend to carry more weight and would also ensure that the procedural rights of the parties involved are guaranteed. In this respect, formal

complaint options may, depending on the case, be considered a more effective route when compared to the informal complaint procedure when it comes to ensuring parties' procedural rights and the right of defence. Nevertheless, informal complaints are also reported to offer numerous advantages and, therefore, careful deliberation is highlighted as key in deciding on the form (and timing) of the complaint.

4.6.2 Decisions adopted after the submission of a formal complaint

258. The Consortium was requested to examine and analyse decisions adopted since the applicability of Regulation 1/2003 after the submission of a formal complaint and, in particular, to compare relevant decisions adopted by the Commission and by the NCAs with a system for submission of complaints comparable to that of the Commission.[173]

Analysis of the number of decisions adopted after the submission of a formal complaint

259. The Consortium was requested to provide an assessment of the number of (i) decisions following submission of a formal complaint, as opposed to decisions for which investigations were not initiated following a formal complaint, adopted by the Commission and by NCAs that have a formal complaints system comparable to that of the Commission (defined in the methodological observations below) and (ii) decisions adopted by NCAs that do not have a formal complaints system comparable to that of the Commission.[174]

260. The following methodological observations apply with regard to this analysis:

— The Consortium identified 18 EU Member States where the system of complaints is or at least was (for a period of time) comparable to the Commission's formal complaints system, meaning that during the period since the applicability of Regulation 1/2003 until December 2022 such systems in principle required a formal decision to reject the complaint. NCAs which indicated that they reject complaints through letters which can be appealed (in response to question no. 2 of the NCA questionnaire) were also included as systems of complaints which are comparable to the Commission's formal complaints system. A specific footnote in this respect is included for each of the NCAs concerned. For this purpose, the Consortium took into account the following EU Member States: Belgium, Bulgaria, Croatia, Cyprus, Estonia[175], France, Greece, Hungary, Italy[176], Latvia[177], Lithuania, Luxembourg,

[173] See desk research question no. 3 reproduced in Annex I. At the request of DG COMP, procedural infringement decisions and decisions applying both Article 106(1) and Article 102 are omitted from the graphs and in-depth analyses unless explicitly mentioned otherwise.
[174] See desk research question no. 3.1 reproduced in Annex I.
[175] In response to question no. 2 of the NCA questionnaire, the Estonian NCA indicated that, in administrative proceedings, the Estonian NCA "*usually respond[s] with a letter if there is no obvious infringement*" but that it is possible to challenge such a letter in court. In the event of a competition law infringement qualifying as a misdemeanour, the Consortium understands that the Estonian NCA or the relevant prosecutor's office is required to notify the person who filed a misdemeanour report of a decision not to commence criminal proceedings within a statutory time period. However, the Estonian NCA indicates that it does not have any readily available information on the number of decisions adopted following any formal complaint in the time since the applicability of Regulation 1/2003 in Estonia.
[176] In response to question no. 2 of the NCA questionnaire, the Italian NCA indicated that it has a "*system of formal rejection of complaints, through formal letters, that can be appealed*".
[177] In response to a draft of the Study, the Latvian NCA indicated that (i) from 1 May 2004 until 14 June 2016, the Latvian NCA was required to reject a complaint by means of a formal decision or immediately open a

Malta, the Netherlands, Poland[178], Portugal, Romania and Spain (see Figure below). Such formal complaints system may coexist with other systems.

— For both the Commission and the NCAs, the analysis considers decisions adopted under Article 101, under Article 102, and under both of these Treaty provisions.[179] For NCAs, this includes decisions which are based on any of the aforementioned Treaty provisions in parallel with their equivalent national provisions but not decisions which are exclusively based on national equivalents. NCA decisions which only apply national competition law equivalents without applying at least Article 101 or Article 102 are not included as part of the calculations for the purpose of this sub-section.[180]

— In terms of the type of decisions, the Consortium took into account (i) prohibition decisions / cease-and-desist orders, (ii) commitment decisions and (iii) decisions combining elements of the aforementioned types of decisions with other types of decisions.

— The Consortium considers "NCAs that do not have formal complaints systems" in question (ii) above to refer to NCAs of Member States where the system of complaints is <u>not</u> "comparable to the Commission's formal complaints system" (meaning that such systems "in principle [do not] require a formal decision to reject the complaint", as indicated by the NCAs in response to the NCA questionnaire inquiring whether NCAs were required to adopt a formal decision in order to reject a complaint[181]).

— The Hungarian NCA indicated that it makes use of both formal and informal complaint mechanisms which have different legal consequences. As a result, the Consortium understands that a formal complaint system is (also) in use in the Hungarian jurisdiction. However, the review by the Consortium of the relevant decisions published on the website of the Hungarian NCA indicates that a vast majority of decisions do not identify the source / origin of initiation of investigations / proceedings. Only a minority of decisions identify the origin of proceedings. The Consortium categorised these decisions as follows: decisions which do not include further detail in this regard are marked as opened on an ex officio basis.

261. In the case of the Commission, 30 of the 215 relevant Commission decisions (13.95%) were adopted after the submission of a formal complaint.

In the case of the NCAs that <u>do</u> have a formal complaints system comparable to that of the Commission, 363 of the 854 relevant NCA decisions (42.51%) were adopted after

formal case; (ii) as from 15 June 2016 and until 31 December 2021, the earlier requirement was lifted and as a result the Latvian NCA could reject complaints with a simple letter; and that (iii) as of 1 January 2022, the Latvian NCA is again required to refuse complaints by means of a formal decision, though, should the Latvian NCA decide not to reject the complaint, the Latvian NCA would not immediately be required to open a formal investigation.

[178] In response to question no. 2 of the NCA questionnaire, the Polish NCA indicated that it does not have a formal complaints system comparable to that of the European Commission as of 2023 but that "*such a system was in place at a time overlapping with the period relevant from the point of view of the enforcement of Regulation 1/2003*" (in particular, from 1 May 2004 until 20 April 2007).

[179] Procedural infringement decisions and decisions applying both Articles 102 and 106 (in combination) are excluded from the relevant figures.

[180] This originates from the nature of desk research question no. 3, which itself refers to desk research question no. 1 (and which does not concern stand-alone applications of equivalent national provisions by NCAs).

[181] The relevant NCAs did not generally provide detailed input on their system.

the submission of a formal complaint. Of the remaining decisions, the majority were initiated ex officio (382 decisions), while 73 decisions were initiated after a request for leniency, 31 decisions after submission of an informal complaint, four as a follow-up to a sector inquiry, and one decision where the type of initiation could not be categorised on the basis of the classifications used.

NCAs that do not have a formal complaints system adopted 477 relevant decisions during the period covered. Of these decisions, 285 were initiated ex officio, 114 after the submission of an informal complaint, 46 after a request for leniency, and 25 as a follow-up to a sector inquiry. There were seven decisions where the type of initiation could not be categorised on the basis of the classifications used.

Figure 63 – Map of the NCAs with a formal complaints system during (part of) the period since the applicability of Regulation 1/2003 until December 2022
Source: Data provided by the NCAs (2004-2022)

Comparison with the total number of decisions

262. In addition, the Consortium was requested to compare (i) the abovementioned findings with the total number of decisions adopted by the Commission and NCAs that have a formal complaints system comparable to that of the Commission with (ii) the number of decisions of NCAs that do not have formal complaints systems.[182] For this analysis, the same methodological observations apply as above.

[182] See desk research question no. 3.2 reproduced in Annex I.

263. As indicated above, NCAs that do not have a formal complaints system adopted477 relevant decisions.

The Commission adopted 215 decisions in total under Articles 101 and / or 102 (excluding procedural infringement decisions and decisions based on both Articles 102 and 106 in combination) while NCAs that do have a formal complaints system comparable to that of the Commission adopted 854 relevant decisions, jointly encompassing a total of 1 069 decisions adopted by the Commission and the relevant NCAs.

Divergences

264. The Consortium was asked to analyse possible divergences that might appear from the analyses described above.[183]

265. It is apparent from the analyses above that the proportion of decisions adopted following a formal complaint is much higher at the national level than at Commission level. Conversely, the proportion of decisions initiated following leniency applications is considerably lower at the national level than at the Commission level. At the national level, leniency applications are at the root of 73 (8.55%) of 854 relevant decisions whereas leniency applications at the EU level constitute the basis for 91 (42.33%) of the 215 relevant decisions.

The numbers as such do not allow the Consortium to explain these divergences considering that the size of the countries involved and their activity rate may differ substantially.

[183] See desk research question no. 3.3 reproduced in Annex I.

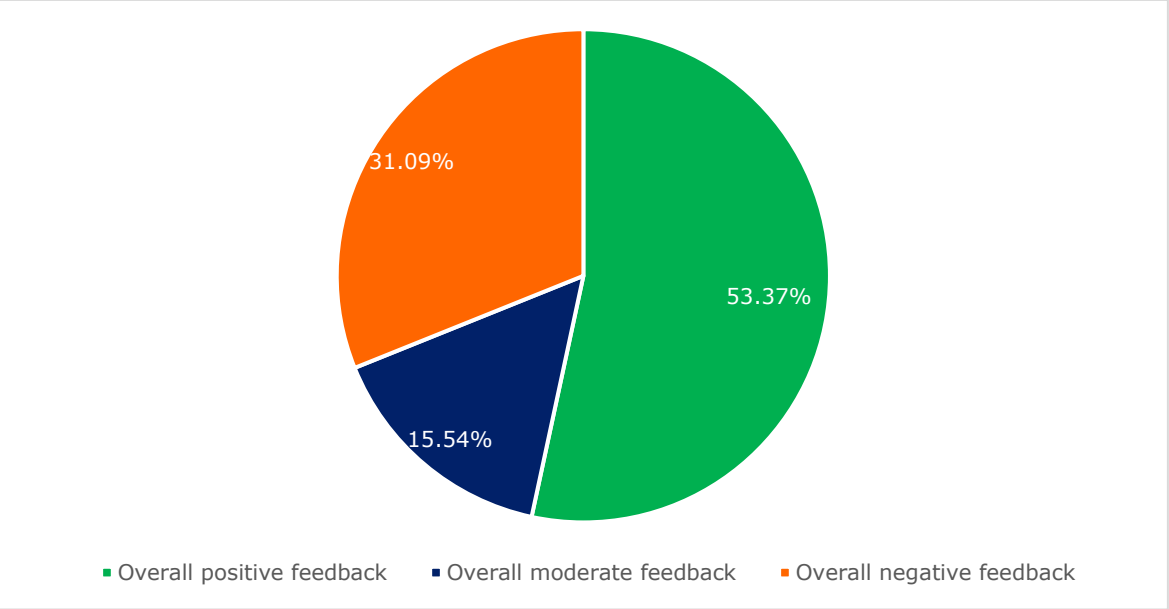
Chapter 5. Functioning of the ECN and NCA procedural features

266. This Chapter includes viewpoints from interviewees on the (perceived) case allocation and cooperation between the Commission and the NCAs. Respondents were also requested to provide opinions on the efficiency and effectiveness of national (procedural) antitrust enforcement regimes.

5.1 Interview feedback on case allocation and cooperation within the ECN

267. This section presents relevant input from interviewed attorneys and in-house counsel. During the interviews, respondents from the EU-27 jurisdictions were requested to formulate their views on the efficiency of the case allocation and cooperation between the Commission and NCAs, and the effectiveness of this case allocation and cooperation in ensuring uniform, coherent and effective application of Articles 101 and 102.[184]

268. Of the 226 interviewees, a total of 193 respondents (158 attorneys; 35 in-house counsel) provided input on this interview question.[185] Of the 193 responding interviewees, a majority (53.37%) (87 attorneys; 16 in-house counsel) are positive overall with regard to the case allocation and cooperation within the ECN and their efficiency and effectiveness. On the other hand, 15.54% of responding interviewees (26 attorneys; four in-house counsel) think the effectiveness and efficiency are moderate, while 31.09% of respondents (45 attorneys; 15 in-house counsel) have a rather negative viewpoint.



[184] See EU-27 interview question no. 14 reproduced in Annex II.
[185] Of the 158 responding attorneys, 136 have represented parties in one or more cartel / antitrust proceeding(s) before the Commission and all before NCAs. Of the 36 responding in-house counsel, 24 indicated that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission and 34 before NCAs.

Figure 64 – Input of attorneys and in-house counsel on case allocation and cooperation between the Commission and NCAs regarding the efficiency and effectiveness in ensuring uniform, coherent and effective application of Articles 101 and 102
Source: Standardised interviews (N=193)

269. As detailed in the Figures below, more experienced interviewees are generally positive in relation to this topic. The first Figure below shows the input of attorneys and in-house counsel and the respective case experience of the interviewees before the Commission whereas the second Figure shows the input of attorneys and in-house counsel sorted by their respective case experience before the NCAs.

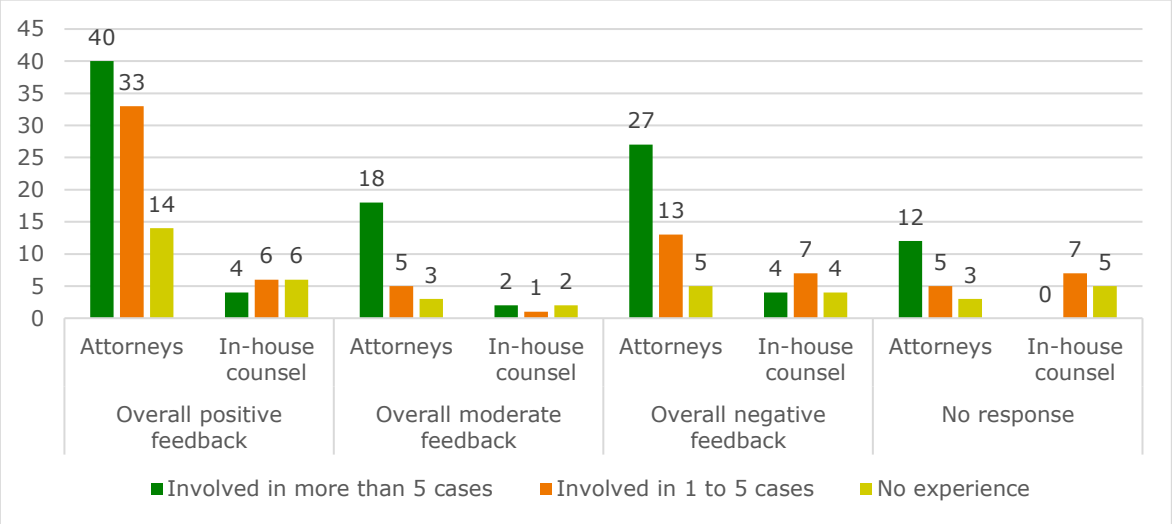


Figure 65 – Input of attorneys and in-house counsel (including respective case experience before the Commission) on case allocation
Source: Standardised interviews (N=226)

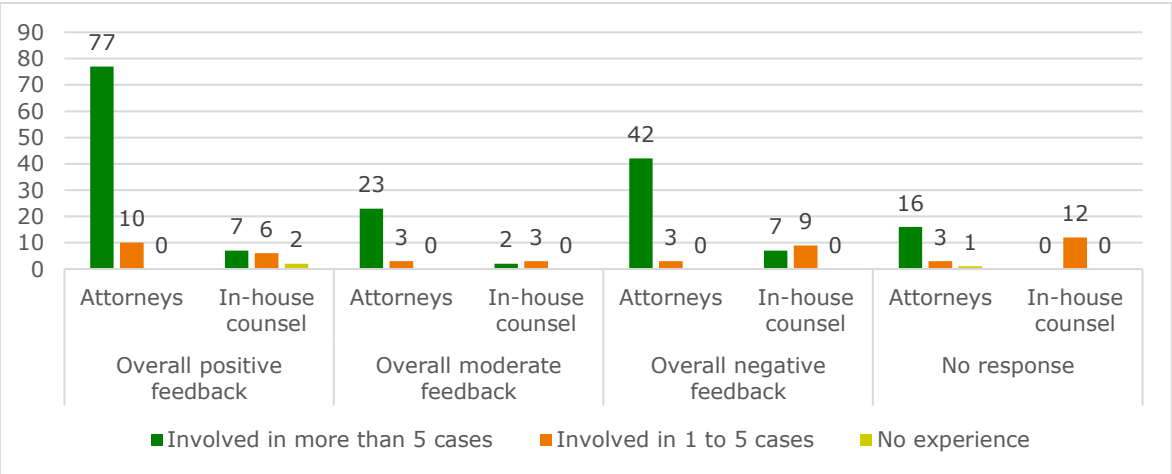


Figure 66 – Input of attorneys and in-house counsel (including respective case experience before NCAs) on case allocation
Source: Standardised interviews (N=226)

270. Among the positive experiences in respect of the case allocation and cooperation between the Commission and NCAs, interviewees indicate the following:

— Of the respondents who consider the system of case allocation to be efficient and effective, 70% (accounting for 39.18% of all respondents providing input on this question) consider the collaboration between the Commission and NCAs to be a major advantage. One fifth of respondents in this category (20%) highlight that cases where difficulties arise with respect to case allocation or cooperation may receive more public attention and could therefore (in perception) overshadow other instances where case allocation and cooperation have worked well.

— Of all responding interviewees, 8.25% underline in particular their appreciation for the ECN, which is reported to foster dialogue between the Commission and NCAs, as well as between NCAs. Interviewees consider that the ECN could serve as a baseline to increase coordination and thus ensure coherent application of Articles 101 and 102.

— Furthermore, 8.25% of the respondents providing input on this interview question remark that the antitrust procedural framework of Regulation 1/2003 has significantly enhanced and harmonised enforcement.

— Moreover, 11.86% of responding interviewees provided feedback on the ECN. These respondents generally perceive the network as essential to ensure a uniform application of Articles 101 and 102. According to these interviewees, ECN meetings are a platform for rich discussions, fostering understanding and avoiding potential jurisdictional overlaps. Additionally, these interviewees point out that the ECN's value in facilitating robust antitrust enforcement transcends the formal stipulations of Regulation 1/2003.

271. Interviewees note the following constructive feedback and potential concerns in respect of the case allocation and cooperation between the Commission and NCAs:

— More than one third of responding interviewees (35.57%) point to a perceived lack of transparency. In particular, these respondents find that it is often not possible to determine the rationale behind the allocation of cases. Almost one tenth of responding interviewees (9.79%) are of the opinion that in certain instances, non-legal considerations appear to influence case allocation rather than established procedures or a purely competition-based rationale.

— Another remark made by 8.76% of responding interviewees relates to perceived inconsistencies across different jurisdictions. In this context, respondents refer (only) to the example of Most Favoured Nation ("**MFN**") clauses, in relation to which respondents note a lack of consistency between jurisdictions.

— Respondents also raise what they see as diverging priorities of different competition authorities as a potential risk compromising coherent application of Articles 101 and 102. In this connection, 5.15% of interviewees believe that NCAs, especially from smaller jurisdictions, might not be equipped with the resources and expertise needed for detailed and intricate assessments in complex markets. As an example, interviewees are of the view that an experienced authority such as the Commission would be best suited to handle cases in digital markets, given the complexities characterizing such markets.

— Besides transparency, respondents also highlight what they see as other challenges regarding the case allocation and cooperation system. Of all respondents, 4.12% provided feedback on the intricacies of the leniency programmes. According to the respondents, the disparities and lack of uniformity between these programmes across jurisdictions may result in uncertainty as to the extent to which a competition

authority can pursue a given case when a leniency application has already been filed before a different competition authority.

— Of all respondents, 7.22% voice concerns in relation to a potential situation where companies have been subject to the scrutiny of multiple NCAs for the same alleged infringement, followed by an investigation by the Commission. In these interviewees' views, parallel investigations are resource-intensive for companies which, according to these respondents, thus may compromise the efficiency of the system. Within this group, 35.71% of the interviewees suggest enhancing communication and bolstering the information-sharing protocols between the Commission and NCAs as a potential solution for potential overlapping investigations.

— Furthermore, 4.12% of all interviewees remark that the dynamics between the Commission and NCAs, and between NCAs themselves, sometimes appear to be based more on competition among themselves than cooperation.

272. To address any challenges such as described above, a variety of interviewees put forward several general suggestions based on their past experience and impressions:

— A recurring recommendation is to increase the transparency of the cooperation processes to address the current perceived absence of transparency, especially in terms of case allocation. Enhancing collaboration between the Commission and NCAs is considered paramount by the respondents. In addition, two respondents propose seconding personnel from NCAs to the Commission to foster improved communication and a more efficient information exchange.

— As part of a separate interview question and on a related note,[186] six respondents argue that Articles 11(3)-11(4) of Regulation 1/2003 would benefit from some clarifications, notably to increase transparency in the application of those provisions. These interviewees report that it can it unclear how the Commission deals with the proposal sent by the NCA when making use of the procedure set out in Article 11(3), as well as how the Commission handles the draft decision sent by an NCA pursuant to Article 11(4) of Regulation 1/2003.

— In order to further improve uniform and coherent application of Articles 101 and 102 across jurisdictions, 5.57% of respondents argue that the expertise and guidance of the Commission are essential, even when competition professionals are active in the NCAs of the different EU Member States. Suggestions from respondents include sharing methodologies, providing training sessions for smaller NCAs and expert training for national courts in the field of competition law. In complex cases, such as scenarios involving digital markets, 2.06% of all respondents deem the Commission to be the most appropriate authority as NCAs in smaller EU Member States may lack the required resources or expertise.

— Moreover, 9.79% of interviewees consider that the Commission is in certain instances insufficiently proactive. Of these interviewees, 26.32% (accounting for 2.58% of all respondents) suggest adopting an objective criteria-based approach on case allocation, akin to the method used for merger control. Another 26.32% of interviewees considering that the Commission may benefit from a more proactive approach (accounting for 2.58% of all respondents as well) suggest the Commission

[186] See EU-27 interview question no. 17 reproduced in Annex II and Third Country interview question no. 12 reproduced in Annex III (which reads as follows: "*Do you have any other comments?*").

to function as a "one-stop-shop" for **leniency** applications, so that, after the submission of a leniency application, the Commission would determine which competition authority was best suited to handle the case. These respondents propose that this centralised approach not only be used for leniency applications, but also for cases spanning multiple jurisdictions. These interviewees consider that such a unified approach would simplify proceedings and ensure coordinated and efficient case management across jurisdictions.

— Finally, 2.06% of responding interviewees suggest establishing a formal timeline indicating when the Commission can intervene, as this would increase the predictability of proceedings. Similarly, the *amicus curiae* procedure whereby the Commission can decide to intervene before a national court is also put forward by respondents as a potential solution if used more frequently. In addition, 3.09% of respondents consider that allowing companies under investigation to request the Commission's intervention in national proceedings could enhance efficiency.

273. In conclusion, interviewees predominantly provide insights on the evaluation criteria of effectiveness, efficiency and coherence of the Regulations.

— The responding interviewees note that a degree effectiveness has certainly been achieved although some effort is still required. In terms of the goal of focusing the Commission's resources on addressing serious infringements that may distort competition across the EU, interviewees highlight the positive impact of the collaborative dynamics between the Commission and NCAs within the ECN network. 13.40% of responding interviewees emphasise that the cooperation between the Commission and NCAs within the ECN allows cases to be assigned to the authority best equipped to handle them. In this context, two attorneys explicitly state that effective cooperation enables NCAs to focus on national cases with distinct local characteristics, while the Commission is better suited for addressing broader, EU-wide cases. However, in terms of the objective of effective and uniform enforcement of Articles 101 and 102, 8.76% of responding interviewees point to the inconsistency of decisions across different jurisdictions as an obstacle to uniform enforcement. As an (albeit the only) example, respondents refer to disparities in how jurisdictions handle MFN clauses.
— With regard to efficiency, 7.22% of the responding interviewees state that the current system is efficient but in need of improvement, especially in relation to the objectives of reducing the administrative burden on undertakings and maintaining the principle that no case should be handled by multiple authorities simultaneously. Some respondents argue that this inefficiency stems from a duplication of the effort demanded of companies, as evidenced by cases where companies have been investigated concurrently for the same alleged infringement by multiple national competition authorities and subsequently by the Commission. These interviewees believe that parallel investigations require excessive resources from the companies involved.
— In considering coherence, approximately 8% of respondents provide the feedback that the ECN fosters a dialogue between the Commission and the NCAs, as well as among NCAs themselves. Furthermore, 8.76% of responding interviewees consider that the ECN is fundamental in enhancing coordination and ensuring a consistent application of Articles 101 and 102.

5.2 Procedural features of NCA regimes

274. This sub-section provides additional input regarding certain procedural features of NCAs that might provide useful insights for the Commission's evaluation of the Regulations. To this end, both interview feedback as well as information provided by NCAs is collected and will be set out.

5.2.1 Interview feedback on procedural features of NCA regimes

275. This sub-section presents relevant input from interviewed attorneys and in-house counsel. During the interviews, respondents from the EU-27 jurisdictions were requested to indicate which procedural features from different NCAs lead to effective and efficient enforcement of competition rules at Member State level.[187] A total of 169 respondents provided input on this interview question (141 attorneys; 28 in-house counsel).[188]

276. Of the 169 respondents, 15.98% specifically suggest the introduction of **legal deadlines** for the duration of antitrust proceedings before the Commission in order to ensure that cases are handled within a reasonable timeframe. In this regard, respondents refer to the system of legal deadlines in Spain, which according to those interviewees ensures that the Spanish NCA adopts an antitrust decision within a reasonable timeframe. Conversely, a minority of responding interviewees (1.78%) do not deem legal deadlines to be useful as these respondents are concerned that such deadlines could have a negative impact on the quality of the decisions adopted.

Furthermore, a total of 18.34% of responding interviewees are of the opinion that there is room for improvement when it comes to guidance on the application and interpretation of both substantive and procedural rules at EU level. According to these interviewees, such guidance would increase legal certainty and ensure uniform application of Articles 101 and 102. On a related note, one respondent refers to the German NCA, which reportedly issues letters of comfort to provide guidance for the undertakings involved, for other market players and for legal advisors. Respondents indicate that the Dutch and Portuguese NCAs provide useful informal guidance. The guidance provided by the Dutch NCA on sustainability is considered to be particularly useful by one interviewee.

In addition, 12.43% of responding interviewees emphasise a perceived need to foster a more open dialogue between the Commission and the undertakings involved in a particular case. Interviewees state that the Danish, Dutch, Italian and Swedish NCAs stimulate such dialogue with undertakings via informal meetings.

Another suggestion made by 4.73% of interviewees providing feedback on this question entails granting access to file at an earlier stage in the investigation. Interviewees refer to the procedural systems in Czechia, Denmark, Italy and Spain as models, indicating

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[187] See EU-27 interview question no. 15 reproduced in Annex II.

[188] Of the 141 responding attorneys, 87.94% have represented parties in one or more cartel / antitrust proceeding(s) before the Commission while almost all 141 have represented parties in one or more cartel / antitrust proceeding(s) before NCAs. Of the 28 responding in-house counsel, 71.43% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before the Commission and 92.85% indicate that their company has been involved in one or more cartel / antitrust proceeding(s) before NCAs. Of the responding attorneys, 70.92% have represented parties in both Commission and NCA proceedings. Of the responding in-house counsel, 71.43% indicate that their company has been involved both in Commission and NCA proceedings.

that it would be desirable if access to the file were granted before the issuance of the SO. According to these interviewees, this early access could strengthen the rights of defence of the parties under investigation and possibly avoid subsequent challenges in court. In addition, three respondents indicate that granting access to file at an early stage of the investigation can enhance transparency and fairness, potentially even resulting in a higher quality of final decisions.

Additionally, 7.69% of responding interviewees are in favour of a functional separation within a competition authority between the investigative team and the decision-making body. According to them, such a separation allows for a fresh perspective on the case by the decision-making body, which would separate it from any potential position adopted by the investigative team. Respondents refer to multiple jurisdictions that reportedly have such a separation, including Austria, Belgium, France, Italy, Ireland and Spain.

On a different note, a limited percentage of respondents (5.33%) indicate that certain NCAs provide mechanisms to bolster sector-specific expertise. For example, an interviewee points to the Italian NCA, which is reportedly divided into units with experts specialised in specific sectors. Another recurrent comment from respondents is that some NCAs, including the Dutch and Latvian NCAs, communicate and share information with other (specialised) national authorities about specific cases. This is reported as potentially enhancing competition law enforcement and speeding investigations.

A limited number of interviewees provided feedback on the efficiency and effectiveness of their jurisdictions' antitrust procedures, as further detailed in what follows:

— According to 4.14% of responding interviewees, effective settlement procedures can enhance the timeframe for the adoption of a final decision, especially in the context of cartels. Respondents recurrently refer to the framework in Austria, which reportedly provides flexibility and incentives for undertakings to settle (such as significant discounts on fines).

— In Austria and Poland, respondents consider the reported possibility of filing leniency applications for vertical infringements as an efficient way of enforcing competition rules.

Finally, 6.94% of interviewees also suggest the following concrete additions to Commission proceedings:

— the establishment of special units / teams in charge of monitoring compliance with remedies, commitment decisions and interim measures (as reportedly done in Spain);

— two rounds of written submissions during the proceedings (as reportedly done in France), which would allow for a more in-depth examination of the file;

— more frequent use of interim measures, for example, by lowering the thresholds for applying them (the French and Belgian systems are cited as useful examples in this context);[189]

[189] See Section 3.3 for an overview of interview feedback with regard to interim measure decisions as well as an analysis on interim measures adopted under Regulation 1/2003.

— increased use of interviews at the EU level, in relation to which respondents notably refer to the Austrian, Croatian and Dutch NCAs as examples.[190]

5.2.2 Investigative powers in the light of digitisation

277. The Consortium was requested to provide an overview of whether any EU Member State, the United States, the UK or Norway have adapted or is contemplating adapting the investigative powers of their NCA(s) / competition authorit(y)(ies) in the light of digitisation and, if so, how.[191]

278. The following methodological observations apply:

— The overview below is based in the first instance on answers provided by the NCAs of the EU Member States in response to the NCA questionnaire.[192]

— For the US, UK and Norwegian jurisdictions, the overview is based on additional desk research.

— For the US jurisdiction, only the investigative powers of the NCAs enforcing federal antitrust laws are taken into account.

Digitisation and the investigative powers of the NCAs

279. The Table below sets out the answers provided by the consulted NCAs. In particular, NCAs were requested to provide input on adaptations of their respective investigative powers in the light of digitisation. In this context, the relevant NCAs also indicated where they are contemplating such legislation (which might not always be in the public domain). References to 'N/A' in the Table below indicate either that no legislative initiatives have been taken or are envisaged or that no further input was provided by the respective NCA.

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
Austria	✓	Although not strictly related to the desk research question, which pertains to investigative powers, the Austrian NCA indicated that a legislative amendment has introduced the possibility for the Cartel Court to find that an undertaking has a dominant position on a multisided digital market in so far as there is a legitimate interest in such a finding. If the relevant circumstances change subsequent to such a finding, the Cartel Court may, at the request of the

[190] See Section 2.3 with respect to interviews.
[191] See desk research question no. 8 reproduced in Annex I.
[192] See NCA question no. 5.3 reproduced in Annex IV.

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
		undertaking concerned, find that it is no longer dominant on the market.
Belgium	✗	N/A
Bulgaria	✗	N/A
Croatia	✓	The Croatian NCA indicated that certain updates to its investigative powers / procedural rules are envisaged, but did not provide any additional information as discussions on the matter remain informal.
Cyprus	✓	The Cypriot NCA has indicated that a legislative amendment is being considered.
Czechia	✓	The Czech NCA indicated that there have been multiple updates regarding its investigative powers in the context of digitisation: ▪ use of special forensic IT software (NUIX); ▪ seizure of documents in electronic format (until recently documents had to be printed); ▪ insistence on managing directors or other key persons coming to the inspected premises with their electronic devices in cases where the persons concerned are nearby in order to enable the NCA to search the electronic devices; ▪ focus on mobile phones during inspections; ▪ insistence on searching mailboxes which may be stored anywhere (in cloud or on a server in other countries or continents) provided that the mailbox is used by the inspected undertaking and that the mailbox can be accessed from the inspected premises; and ▪ enabling remote access to file.
Denmark	✓	The Danish NCA indicated that it has the power to seize evidence regardless of the medium on which

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
		the information is stored. The Danish NCA may obtain a copy of the data content from electronic media covered by the inspection for subsequent review of the copy at the Danish NCAs premises or at other designated premises. If the information is stored or processed by an external data processor, the Danish NCA is entitled to be given access to the premises of the external data processor to gain sight of and make copies of the information stored on the site.
Estonia	✗	N/A
Finland	✓	The Finnish NCA indicated that three new sections entered into force relatively recently (in 2019) regarding its power to conduct inspections in order to face the challenges resulting from digitisation, namely: ▪ In the context of inspections at the business premises of an undertaking: "*The Finnish Competition and Consumer Authority may […] carry out the inspection of temporary copies of data in its own premises. At the end of the inspection, the Finnish Competition and Consumer Authority shall destroy the temporary copies of data*"; ▪ In the context of inspections in other premises: "*The Finnish Competition and Consumer Authority may […] conduct the inspection of temporary copies of data in its own premises. At the end of the inspection, the Finnish Competition and Consumer Authority shall destroy the temporary copies of data*"; and ▪ In the context of the inspection procedure (as of 2019 'irrespective of the data storage medium' amendment): "*[…]The official carrying out the inspection is entitled, irrespective of the data storage medium, to examine the business correspondence, accounts, data processing records, any other records and data of the undertaking or association of undertakings which*

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
		may be relevant to the supervision of compliance with this Act or the provisions issued under it, and to take copies thereof".
France	✗	N/A
Germany	✓	The German NCA indicated that the German legislator adopted a new legislative measure in 2021 allowing the German NCA to impose certain remedies on undertakings with paramount significance for competition across markets. According to the German NCA, the foreseen two-step-procedure (designation and imposition of remedies) allows it to react to anti-competitive developments in digital markets more quickly, while taking into account the particularities and rapid developments on digital markets.
Greece	✓	The Greek NCA indicated that two provisions have been included in its antitrust legislation in order to face the challenges resulting from digitisation: ▪ in the context of RFIs, the Greek NCA may request the submission of certain types of information through the use of an online platform or through an electronic interface and access to electronic data stored online; and ▪ in the context of inspections, officials of the Greek NCA may be authorised to inspect and collect information and data from the cloud of investigated undertakings.
Hungary	✓	The Hungarian NCA indicated that an amendment to its antitrust legislation was envisaged to allow hearings to be held via electronic communication networks. The amendment had been adopted by the Hungarian Parliament and was in the process of being published.
Ireland	✓	The Irish NCA indicated that the new Competition (Amendment) Act 2022 extended or modified its

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
		investigative powers, including to deal with challenges resulting from digitisation. According to the input provided by the Irish NCA, the following updates have been made to the Irish antitrust legal framework: ▪ explicit provision is made for the powers of authorised officers related to searches / inspections to be exercised in the course of carrying out an inspection or other fact-finding measure on behalf of another NCA or when assisting the Commission; ▪ authorised officers may be allowed to use their search / inspection powers in relation to places at which business books, documents or records are kept (even if business activity is not carried on at those places) and in relation to vehicles used for business activities; ▪ certain changes have been made to the Irish NCA's power of seizure, including making explicit provision (i) for computers and other storage media to be seized, (ii) for copies of or extracts from books, documents or records to be taken, and (iii) for continued inspections of seized books, documents or records; ▪ amendments have been made to the Irish Criminal Justice (Surveillance) Act 2009 in order to allow the Irish NCA to exercise certain powers of surveillance in the context of investigations into suspected offences such as price-fixing, limitation of output or sales, sharing of markets or customers, or bid-rigging.
Italy	✓	Although not strictly related to the desk research question, which pertains to investigative powers, the Italian NCA indicated that the Italian legislation on abuse of economic dependence had recently been brought in line with the digital era, with the introduction of a rebuttable presumption of economic dependence for digital platforms that represent key gateways for reaching end-users or suppliers.

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
Latvia	✓	The Latvian NCA indicated that an initiative currently in the Parliament to grant the NCA the power to perpetuate the contents of interviews by way of an audio recording, which could then be included into the file, might be considered to be a contemplation of adaptation of the Latvian NCAs investigative powers to cover digitised context. This legislative initiative would apply both to interviews during inspections and as a standalone fact-finding measure.
Lithuania	✗	N/A
Luxembourg	✓	The Luxembourg NCA referred to Article 26(5) of the Law on Competition of 30 November 2022.[193]
Malta	✓	The Maltese NCA indicated that a legislative amendment was introduced in 2021 regarding its power to conduct inspections in order to deal with the challenges resulting from digitisation. Based on the legal amendment and the information provided by the Maltese NCA, its officials may be empowered to (to the extent of the authorisation): ▪ *"inspect and examine any object or document, including books and other records related to the*

[193] This citation reads as follows (see below):

"Data stored, processed or transmitted in an automated data processing or transmission system may be recorded either by recording the physical support of the data or by making a copy of the data in the presence of the persons attending the inspection.

"Where it is physically impossible to sort the data on site, an undifferentiated seizure of data may be made, either by seizing the physical support of the data or by making a copy of the data in the presence of the persons attending the inspection, as the investigating councilor must not identify, on site, only the data falling within the scope of the order. The data seized indiscriminately shall be sealed and subsequently sorted in the presence of the representative(s) of the undertaking at the Authority's premises or at any other premises designated. This subsequent sorting does not constitute a continuation of the inspection. The data retained at the end of the screening shall be recorded in a record. The record of the computer data extraction is signed by the undertaking representatives who attended. If they refuse to sign, this shall be noted in the minutes.

"A copy of the minutes of the extraction of the computer data shall be given to the representatives of the undertaking who were present."

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
		business, irrespective of the medium on which they are stored and access any information or document which are accessible to the entity subject to the inspection: *Provided that this includes the power to search for documents, files or data on devices which are not precisely identified in advance:* *Provided further that the power to examine books or records covers all forms of correspondence, including electronic messages irrespective of whether they appear to be unread or have been deleted*"; and ▪ "*require any information which is stored in a computer or any other object or device including external servers and cloud services which are accessible from the premises, land or means of transport, and which the Director General and, or his officers consider relevant to the investigation, to be delivered in a form in which it can be taken away and in which it is visible and legible*".
Netherlands	✓	The Dutch NCA indicated that its procedure for the inspection of digital data was updated in 2014. The procedure clarifies which safeguards the Dutch NCA has to observe when inspecting digital data. The procedure also clarifies which tools can be used by the individuals involved in order to verify whether these safeguards have been observed.
Poland	✗	N/A
Portugal	✓	The Portuguese NCA indicated that it has the power to seize any digital evidence, including evidence stored on mobile devices. Although not strictly related to the desk research question, which pertains to investigative powers, the Portuguese NCA also mentioned that its procedural rules allow for parties involved in proceedings regarding Articles 101 and / or 102 and equivalent

Adaptations (or contemplation thereof) to adapt NCA investigative powers to digitisation		
Jurisdiction	**Yes / No**	**Type of adaptation (or contemplation thereof)**
		national provisions to interact with the Portuguese NCA solely by electronic means.
Romania	✓	The Romanian NCA indicated that it is empowered to seize any digital evidence, including evidence stored on mobile devices.
Sweden	✓	Although not strictly related to the desk research question, which pertains to investigative powers, the Swedish NCA indicated that the Swedish government has recently launched an inquiry to look into the question of possible new tools that can complement the current competition rules and correct structural competition problems that concern entire markets or sectors.
Slovakia	✗	N/A
Slovenia	✗	N/A
Spain	✓	The Spanish NCA indicated that a recent amendment to the Spanish Competition Act included the power to conduct inspections remotely, and at the premises of the Spanish NCA. The amendment also clarified the powers of the Spanish NCA to obtain information from electronic devices.

Table 15 - NCA comments on adaptations of their respective investigative powers to properly handle the continuing digitisation
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

Digitisation and the investigative powers of the FTC and DoJ

280. Both the Federal Trade Commission (the "**FTC**") and the Department of Justice (the "**DoJ**") (the "**US competition authorities**"), possess the authority to access data

stored on servers within the United States during antitrust investigations. [194] This access is typically facilitated through mechanisms like subpoenas, search warrants, or RFIs. Parties involved in these investigations commonly submit significant amounts of data, primarily in electronic form. To effectively manage and analyse this data influx, the FTC and DoJ are allocating additional resources towards processing, uploading, and integrating the received information.[195] Consequently, the DoJ is increasingly relying on algorithms to enhance its capacity for interrogating large datasets.[196]

281. Accessing data stored on servers located outside the US adds another layer of complexity to investigations, which is highlighted by the Microsoft case[197] and the subsequent legislative changes. While US courts can issue warrants for data stored overseas, companies can benefit from certain mechanisms to challenge such search, particularly when the search would conflict with the laws of the country where the data is stored. Therefore, it can be concluded that the US competition authorities' access to data stored on foreign servers is not absolute can be subject to legal challenges.[198]

282. The legal controversy between Microsoft Corp and the DoJ serves as an example of the above. It revolved around the question of whether US prosecutors possess the authority to compel technology companies to hand over data stored overseas. Initially a matter for the courts, the dispute ultimately found resolution not through a judicial decision but via legislative intervention. In March 2018, the Cloud Act clarified that US courts, upon receiving requests from agencies, could indeed issue warrants for data stored overseas by US companies. At the same time, it also provided a framework for companies to challenge such warrants if compliance would be in conflict with foreign laws.[199]

Digitisation and the investigative powers of the CMA

283. The CMA possesses certain powers to access data stored on servers in the UK as part of its antitrust investigation procedures, including when an inspection is carried out under a warrant. In this context, Section 28A(2)(f) of the Competition Act of 1998 entitles the inspecting CMA officers "*to require any information which is stored in any electronic form and is accessible from the premises, and which the named officer considers relates to any matter relevant to the investigation, to be produced (…)"*.

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[194] Amthauer J. et al., "Ready or not? A systematic review of case studies using data-driven approaches to detect real-world antitrust violations" (2023), *Computer Law & Science Review*, 49, 4-5, available at: https://doi.org/10.1016/j.clsr.2023.105807. Several concerns have recently arisen regarding computational antitrust within US antitrust law scholarship, especially when AI is involved. These mainly revolve around algorithmic bias, due process and a possible lack of transparency.
[195] David A Higbee, Djordje Petkoski and Memmi Rasmussen, "US DOJ tests new approaches to boost cartel enforcement revival efforts" (2023), Global Competition Review, available at: The Antitrust Review of the Americas – Global Competition Review.
[196] *Ibid*.
[197] *Microsoft Corp. v. United States*, 584 U.S., 138 S. Ct. 1186 (2018).
[198] Zhe Jin G., Sokol, D. and Wagman, L., "Towards a Technological Overhaul of American Antitrust, Antitrust" (2023), *Antitrust*, 37:1, 1-7, available at: https://ssrn.com/abstract=4312406.
[199] US Department of Justice, "Promoting Public Safety, Privacy, and the Rule of Law Around the World - The Purpose and Impact of the CLOUD Act" (2019), available at: https://www.justice.gov/d9/press-releases/attachments/2019/04/10/department_of_justice_cloud_act_white_paper_2019_04_10_final_0.pdf.

The Digital Markets, Competition and Consumers Bill[200] is designed to confer new investigative powers on the CMA when conducting an investigation into a digital market. Clause 75, sub-section 2, concerning the power to enter premises under a warrant, empowers the authorised officers to request the production of any information accessible from the premises including material stored remotely or online in electronic form.[201] In addition, the fourth sub-section of Clause 75 allows other personnel, such as technical and IT experts, to aid the CMA officials in exercising these powers.

Interestingly, Clause 111 provides that the Bill and the digital markets regime shall apply to persons outside of the UK unless specified otherwise.[202] Consequently, the powers conferred on the CMA by Clause 75 can also be relied upon in cases where the information is stored outside of the UK.[203]

284. In cases where downloading data could significantly disrupt business operations, the CMA might conclude a voluntary agreement with the undertaking under investigation in order to access the server.[204] At the moment of the Study, no legal challenge before UK courts has been introduced on the extent of the CMA's authority to seize data during an onsite inspection. The scope of these powers, which facilitate the collection of data during inspections, is yet to be further tested in concrete cases.

285. The UK government is considering extending the application of these powers to inspections of domestic premises under a search warrant.[205] This expansion aligns with the directives of the UK's Financial Conduct Authority, emphasising the authority's right to conduct visits at any work-related location, including employees' homes. The FCA's directives underscore the necessity for the authority to conduct inspections at any workplace-associated site, explicitly including the residences of employees. This initiative reflects a strategic response to the evolving landscape of remote work, acknowledging that professional activities are no longer confined to traditional office environments. The inclusion of domestic premises in the scope of inspections is a recognition of this shift and represents an adaptation of regulatory practices to contemporary work modalities. By broadening the investigatory reach to encompass employee homes, the government aims to ensure that regulatory oversight remains robust and effective, even in scenarios where work-related activities occur outside conventional corporate settings.[206]

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[200] Available at: Digital Markets, Competition and Consumers Bill (parliament.uk). At the time of writing of the Study, the Bill is at the stage of approval in the House of Lords.
[201] See Clause 75 of the Digital Markets, Competition and Consumers Bill, available at: Digital Markets, Competition and Consumers (parliament.uk).
[202] See Clause 111, available at: Digital Markets, Competition and Consumers Bill (parliament.uk). At the time of writing of the Study, the Bill is at the stage of approval in the House of Lords.
[203] This can be deduced from the combined reading of Clause 111 on the extra-territorial application of Part 1 of the Bill and Clause 75.
[204] Norton Rose Fulbright, "Competition world A global survey of recent competition and antitrust law developments with practical relevance" (2016), available at: https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/imported/competition-world--2016-third-edition.pdf?la=en-fr&revision=.
[205] Digital Markets, Competition and Consumers Bill, which will amend the Competition Act 1998 and the Enterprise Act 2002, currently under discussion in the House of Lords, available at: https://bills.parliament.uk/bills/3453.
[206] FCA, "Remote or hybrid working: FCA expectations for firms" (2023), last updated on 13 February 2023, available at: https://www.fca.org.uk/firms/remote-hybrid-working-expectations.

286. Accessing data on servers located outside the UK is more complex.[207] The CMA's jurisdiction generally extends only to the UK, and its authority to compel the production of data stored overseas is limited. In December 2022, the CMA marked a significant precedent by imposing its first penalty on an overseas corporation for failure to comply with a request to submit information and documents located outside the UK. This action was taken against the German automobile manufacturer BMW AG, which was fined for refusing to provide information and documents requested under section 26 of the Competition Act of 1998. This request was part of the CMA's investigation into a cartel involving the recycling of old or scrapped vehicles. Following this, BMW AG contested the penalty through an appeal to the UK's Competition Appeal Tribunal (CAT). In a parallel development, Volkswagen AG (VW AG), which had received a similar demand from the CMA in the context of the same investigation, initiated a judicial review challenge against the CMA in the High Court. Both cases, intrinsically linked and hinging on the same legal issues, were consolidated and adjudicated in a unified judgment. The ruling, delivered on 8 February 2023, marked a significant turn in the case. The CAT concluded that the CMA lacked the authority to compel foreign entities which are not controlled by a UK legal person, like BMW AG and VW AG, and thus with no territorial connection to the UK to submit information and documents they hold.[208] The implications of this ruling extend beyond the immediate case involving BMW AG and VW AG: it sets a legal precedent, potentially influencing future cases involving international companies and the extent to which UK regulatory bodies can enforce compliance for information and documents that are not controlled by UK legal persons.[209] However, as set out above, the envisaged Digital Markets, Competition and Consumer Bill provides that the CMA may request the production of documents, during an onsite visit under a warrant, from undertakings under investigation which are active in digital markets.

Digitisation and the investigative powers of the Norwegian competition authority

287. The Norwegian Competition Authority has the power to conduct investigations and access necessary data, including data stored on servers in Norway, as part of its antitrust enforcement activities, e.g. when issuing an RFI or conducting an inspection.[210] With respect to the Norwegian Competition Authority's efforts to access data stored on servers located outside of Norway, there are no leading court cases at the moment of the Study that definitively establish the scope or limitations of its powers. In 2023, the Government of Norway issued a consultation paper proposing amendments to the Competition Act.[211] The draft legislation proposes that the Norwegian Competition Authority should acquire enhanced authority to initiate sector inquiries in any market segment, including digital markets. This development comes in response to indications

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[207] See Section 26 of the Competition Act 1998 and judgement CAT 7/2023, CO/2721/2022, 8 February 2023, available at: https://www.catribunal.org.uk/sites/cat/files/2023-.

[208] Judgment CAT 7/2023, CO/2721/2022, 8 February 2023, available at: https://www.catribunal.org.uk/sites/cat/files/2023-02/20230208%201574%20BMW%20VW%20v%20CMA%20and%202721%20R%20%28on%20Application%20of%20VW%20AG%29%20v%20CMA%20__%20Judgment_0.pdf.

[209] Ashurst, "UK Court of Appeal confirms the CMA's information gathering powers apply extra-territorially" (2024), available at: https://www.ashurst.com/en/insights/uk-court-of-appeal-confirms-the-cmas-information-gathering-powers-apply-extra-territorially/.

[210] Current Competition Act on competition between undertakings and control with concentrations including amendments in Act of 20 June 2008 nr. 43 Norwegian Competition Authority, available at: https://www.regjeringen.no/en/dokumenter/the-competition-act/id440593/.

[211] The Norwegian consultation paper (2023) is available at: https://www.regjeringen.no/contentassets/ade08fba20b6430e82cbdb5441c62a75/horingsnotat.pdf.

that competition within these markets is either currently restricted or at risk of becoming so.[212]

5.2.3 Overview of procedural features of NCAs

288. This sub-section further examines the procedural features of the various NCAs. In what follows, this sub-section first provides an overview of the extent to which domestic antitrust procedures include formal or informal deadlines. Subsequently, an outline of the applicable national limitation periods is provided. Finally, this sub-section ascertains and categorises the decision-making processes of the NCAs.

289. The NCAs and the Icelandic and Norwegian competition authorities were requested to provide an overview of deadlines applicable in domestic antitrust proceedings. The NCAs were asked to indicate if relevant deadlines are binding or indicative, and to elaborate on the legal consequences of missing them.[213] The Table below summarises the input from the NCAs. For the purpose of the Table below, hard deadlines are understood as deadlines that are binding and thus where non-compliance has legal consequences, whereas indicative deadlines are understood to be the contrary. Excluded from the analysis are bespoke deadlines that are determined individually per matter and generally formulated deadlines which leave room for determination by the NCA (such as a 'reasonable' deadline or 'without undue delay'). Additionally, the reference to 'statutory' refers to a situation where the deadline is stipulated in a legal provision. Such references are included to the extent that relevant information was provided by the NCA.

Hard and indicative procedural deadlines		
Jurisdiction	**Hard deadlines**	**Indicative deadlines**
Austria	✗	✗
Belgium	✓ (statutory)	✗
Bulgaria	✗	✓ (statutory)

[212] OECD, "Annual Report on Competition Policy Developments in Norway" (2023), *Directorate for Financial and Enterprise Affairs Competition Committee*, 3-4, available at: https://one.oecd.org/document/DAF/COMP/AR(2023)28/en/pdf.
[213] See NCA question no. 8 reproduced in Annex IV and question no. 5 in the questionnaire addressed to the Icelandic and Norwegian competition authorities as reproduced in Annex V.

Hard and indicative procedural deadlines		
Jurisdiction	**Hard deadlines**	**Indicative deadlines**
Croatia	✓ (statutory and non-statutory)	✓
Cyprus	✗	✗
Czechia	✗	✗
Denmark	✗	✗
Estonia	✓ (statutory)	✗
Finland	✗	✓
France	✗	✗
Germany	✗	✗
Greece	✗	✓ (statutory)
Hungary	✓ (statutory)	✓ (non-statutory)
Ireland	✗	✗
Italy	✗	✓

Hard and indicative procedural deadlines		
Jurisdiction	**Hard deadlines**	**Indicative deadlines**
Latvia	✓ (statutory)	✓ (non-statutory)
Lithuania	✓ (statutory)	✓
Luxembourg	✓ (statutory)	✗
Malta	✓[214]	✗
Netherlands	✓ (statutory)	✗
Poland	✗	✓
Portugal	✗	✓ (statutory)
Romania	✓ (statutory)	✗
Slovakia	✓ (statutory)	✗
Slovenia	✗	✓ (statutory)

[214] The Maltese NCA indicated that procedural deadlines only apply to complaints of general interest submitted by a 'qualified entity'.

Hard and indicative procedural deadlines		
Jurisdiction	**Hard deadlines**	**Indicative deadlines**
Spain	✓ (statutory)	✗
Sweden	✗	✓
Iceland	✗	✗
Norway	✗	✗

Table 16 - Overview of jurisdictions and the applicable hard and indicative deadlines in antitrust proceedings
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

290. The NCAs and the Icelandic and Norwegian competition authorities were additionally asked to provide information on the existence of legal limits with regard to the length of submissions from parties involved in the proceedings and from third parties.[215] Generally, there are no legal limits on the length of submissions by investigated or third parties in any of the jurisdictions concerned based on the input provided by the relevant NCAs. However, not all respondents interpreted this question in the same manner.[216]

291. Furthermore, the NCAs and the Icelandic and Norwegian competition authorities were asked to expand on their investigative and decision-making processes.[217] Based on the answers provided by the NCAs, the Consortium categorised the decision-making process of each NCA as one of the following:

(i) 'Single-structured administrative process', i.e. a decision-making process where one and the same administrative body is responsible for both the investigation into the conduct as well as the adoption of the final decision (e.g. the Commission);
(ii) 'Dual-structured administrative process', i.e. a decision-making process where one part of the administrative body is in charge of the investigation (e.g. a service), and another (e.g. the decisions-maker) is responsible for the adoption of the final decision. Administrative appeal bodies are not considered to be a separate decision-making body; or

[215] See NCA question no. 9 reproduced in Annex IV.
[216] Some respondents refer to time limits, while others refer to page limits. A small number of respondents do not specify how they interpret the question.
[217] See NCA question no. 10 reproduced in Annex IV.

(iii) 'Mixed administrative and judicial process', i.e. a decision-making process with an administrative body in charge of the investigation (the NCA) which is not competent to adopt all of the different types of decisions (such as, for example, a fining decision). In this type of process, a court has to intervene for the adoption of a particular type of decision.

Decision-making process			
Jurisdiction	**Single-structured administrative process**	**Dual-structured administrative process**	**Mixed administrative and judicial process**
Austria			✓
Belgium		✓	
Bulgaria		✓	
Croatia		✓	
Cyprus		✓	
Czechia	✓		
Denmark			✓
Estonia			✓
Finland			✓
France		✓	
Germany	✓		

Decision-making process			
Jurisdiction	**Single-structured administrative process**	**Dual-structured administrative process**	**Mixed administrative and judicial process**
Greece		✓	
Hungary		✓	
Ireland			✓
Italy		✓	
Latvia		✓	
Lithuania		✓	
Luxembourg		✓	
Malta			✓
Netherlands		✓	
Poland	✓		
Portugal		✓	
Romania		✓	
Slovakia	✓		
Slovenia		✓	

Decision-making process			
Jurisdiction	**Single-structured administrative process**	**Dual-structured administrative process**	**Mixed administrative and judicial process**
Spain		✓	
Sweden	✓		
Iceland	✓		
Norway	✓		

Table 17 - Investigative and decision-making processes by NCAs and the Icelandic and Norwegian competition authorities
Source: Input provided by NCAs and the Icelandic and Norwegian competition authorities in response to the NCA questionnaire

Chapter 6. Concluding remarks

292. Regulations 1/2003 and 773/2004 have set out the antitrust procedural framework for the enforcement of Articles 101 and 102 TFEU in the EU for the last 20 years, providing for effective enforcement of competition rules capable of supporting a healthy and well-functioning economy. In general, the Regulations have performed well in their purpose of streamlining and updating the previously applicable antitrust procedural rules. However, in a world that has been rapidly evolving since the entry into force of the Regulations, the question arises as to whether the relevant framework is still fit for the challenges posed by modern business and enforcement. The Study aimed to collect relevant information from attorneys and in-house counsel throughout the EU as well as information on the enforcement practice by the Commission and NCAs to support the Commission in its ongoing evaluation of the Regulations.

293. The findings of the Study make it possible to draw some general conclusions on the overall performance of the Regulations based on the application of EU competition rules by the Commission and NCAs. The combined data collection methods employed throughout the Study demonstrate that the Regulations have been largely successful in achieving a uniform, coherent and effective application of Articles 101 and 102 TFEU, although certain broader patterns of interest are identified, for example, in relation to the duration of Commission proceedings. The Study also gives voice to some limited concerns about the manner in which Regulation 1/2003 governs the relationship between EU and national competition rules.

294. The Study also provides insights into the investigative powers and tools available to the Commission and NCAs to identify potential infringements of Articles 101 and 102 TFEU. The feedback gathered through the interviews conducted with attorneys and in-

house counsel makes it possible to conclude that the investigative toolkit provided for by the Regulations (inspections, requests for information, interviews, sector inquiries) is effective overall, with some room for improvement particularly in light of digitisation.

295. Moving on from investigation to enforcement, the Study gathers meaningful insights into the decision-making powers under the Regulations. The input collected appears largely positive as the different types of decisions available are reported to be generally effective. Commitment decisions in particular are seen as efficient if compared with prohibition decisions (e.g. they tend overall not to involve lengthy and costly investigations and litigation processes). Interim measures and findings of inapplicability are also considered effective, although the overall view seems to be that greater use should be made of these powers. Overall, the Regulations appear to provide for decision-making powers adequate to ensure the effective enforcement of Article 101 and 102 TFEU.

296. This assessment of the performance of the Regulations in the last 20 years also covers the procedural rights of parties to the proceedings and third parties. The data collected throughout the Study points to the protection of procedural rights as being effective overall, and to the current framework striking an appropriate balance between the right to be heard and the protection of confidentiality. Nevertheless, some drawbacks and room for improvements were identified (e.g. in relation to the access to file process).

297. As a final thematic area, the Study focused on the functioning of the ECN and the cooperation between the Commission and NCAs. With the decentralisation of competition enforcement being a major achievement of the Regulations, cooperation within the ECN is praised as it allows for better resource allocation. Although some attorneys and in-house counsel interviewed draw attention to some limited inconsistencies across different jurisdictions (particularly clustered around a single example, i.e., that of the hotel booking cases), the ECN is nonetheless perceived as a valid and effective forum for promoting dialogue and coordination between the Commission and the NCAs, as well as amongst the NCAs themselves.

298. To conclude, the Study indicates that the Regulations have, overall, performed remarkably well in ensuring the effective and uniform application of Articles 101 and 102 TFEU across the EU. The feedback collected during the Study has facilitated the identification of some aspects that would benefit from further reflection, and possibly an update, to keep pace with the rapid digitalisation and evolution of business while safeguarding the rights of parties and third parties to the proceedings.

Annex I – Desk research questionnaire

Question	
1.	Based on publicly available information and the information provided by the European Commission and the EU NCAs, research the number of decisions applying Articles 101 and/or 102 TFEU (or their predecessors Articles 81 and 82 EC treaty) adopted by the European Commission, the EU NCAs (also including national courts designated as 'competition authorities' pursuant to Article 35 Regulation 1/2003) since the applicability of Regulation 1/2003 in the respective jurisdiction, irrespective of whether the EU NCAs have (not) applied equivalent national competition law provisions in parallel with Articles 101 and/or 102 TFEU. Please identify whether these decisions were taken under Article 101 TFEU, Article 102 TFEU, both Article 101 and 102 TFEU, whether they are interim measures decisions, commitment decisions, procedural infringements or periodic penalties.[218] How do the above figures compare to the total number of decisions applying Articles 101 and/or 102 TFEU (then Articles 85/81 and 86/82 EEC/EC Treaty) adopted by the European Commission under Regulation No. 17? For **Commission decisions** adopted under Regulation 1/2003, conduct appropriate statistical analyses of[219]: • length of decisions (pages), • number of parties, • duration of proceedings (from date of formal complaint or if no such formal complaint, from the date of the first investigative step)[220], • ex officio/(formal or informal) complaint • leniency, • follow-up to sector inquiry, • interim measures, • level of fines (including procedural) • commitments/settlement/cooperation, • Article 101 TFEU (indicate cartel/non-cartel); or Article 102 TFEU • sector
2.	Based on the information collected in (1), assess the efficiency of the decisions adopted by the European Commission under Article 9 Regulation 1/2003 by: — comparing the above decisions to decisions adopted by the European Commission under Article 7 Regulation 1/2003 in terms of duration of the antitrust proceedings, counting from the date of date of the formal complaint or, if no such formal complaint,

[218] For the purposes of this question, please include decisions of the UK competition authorities (OFT/CMA, and concurrent regulators that applied Article 101 and 102 TFEU).
[219] This will be based on a dataset provided by the Commission and publicly available information on Commission decisions.
[220] To the extent that the first investigative step is not identified in the public version of decisions, please flag this to us and we will provide you with the relevant dates.

	from the date of the first investigative step (e.g. inspection, RFI) until the date of the final decision by the European Commission[221] ; — indicating whether any appeals have been lodged before the Court of Justice of the EU against the aforementioned European Commission decisions adopted under Article 7 and 9 Regulation 1/2003 (including by third parties); and — whether or not there was a statement of objections in the case or not.
3.	Based on the information in (1) and on the decisions of EU NCAs with systems that are comparable to the Commission's formal complaints system, meaning that such systems in principle require a formal decision to reject the complaint, retrieved since the applicability of Regulation 1/2003 in the respective jurisdiction: • Provide an assessment of the number of (i) decisions adopted after the submission of a formal complaint as opposed to decisions for which investigations were not initiated by formal complaint (but e.g. ex officio/by informal complaint/leniency) by the European Commission and by EU NCAs that have a formal complaints system comparable to that of the European Commission (as described above) and (ii) decisions adopted by EU NCAs that do not have formal complaints systems; • Compare the total number of decisions of the European Commission and EU NCAs that have a formal complaints system comparable to that of the European Commission with the number of decisions of EU NCAs that do not have formal complaints systems; and • Analyse possible reasons for divergences as may appear in the benchmarking.
4.	To the extent that such information can be retrieved from the relevant European Commission and EU NCA decisions themselves, research on the number of decisions adopted by the European Commission following investigations conducted by the European Commission after the completion of a sector inquiry under Article 17 Regulation 1/2003 in a related sector and how this compares to the number of decisions adopted by EU NCAs (where the latter have powers to conduct sector inquiries similar to the European Commission's) following investigations conducted by those respective EU NCAs after completion of a national sector inquiry in a related sector.
5.	Analyse in how many of the decisions adopted by EU NCAs since the applicability of Regulation 1/2003 (meaning cease and desist orders with or without fines/remedies and decisions making commitments binding), the EU NCAs have applied Articles 101 and/or 102 TFEU (or their predecessors Articles 81 and 82 EC Treaty) in parallel with their equivalent national competition law provisions. Please indicate the product and geographic markets.
6.	Analyse in how many of the decisions adopted by the EU NCAs since the applicability of Regulation 1/2003 (meaning cease and desist orders with or without fines/remedies and decisions making commitments binding), the EU NCAs have applied equivalent national

[221] The information on duration will be collected for question 1.

	competition law provisions without applying Articles 101 and/or 102 TFEU (or their predecessors Articles 81 and 82 EC treaty) in parallel. Please indicate the product and geographic markets.
7.	Review and summarise publicly available statistics and specialised literature on the growing importance of home working (e.g. industry/consultancy reports), as well as the expected evolution thereof in a post Covid-19 pandemic context, also as regards the IT/communication systems that companies are using to facilitate home-working.
8.	Research whether any EU Member State jurisdiction or non-EU jurisdiction (meaning the UK, US and Norway) adapted (or contemplates to adapt) the investigative powers of their NCA in the face of digitisation and, if so, how. (For the US jurisdiction, only the investigative powers of the NCAs enforcing federal antitrust laws will be taken into account for this desk research question.)
9.	On the basis of the information collected under (1)[222] and the EU NCA data, provide a general overview of the fines imposed by the European Commission under Regulation 1/2003 and how they compare with fines for infringements of Article 101 and 102 TFEU imposed by the EU NCAs over the same period: **Fines for substantive infringements** • amount of fines per case for infringements of 101 TFEU; and • amount of fines per case for infringements of 102 TFEU. **Fines for procedural infringements** • overview of fines imposed by the European Commission and EU NCAs for supplying incorrect or misleading information, or not replying within the time-limit in response to RFIs (either in the context of infringement cases or sector inquiries); • overview of fines imposed by the European Commission and EU NCAs for non-compliance with inspections: o failure to produce the required books or other records; o refusal to submit to inspections; o providing incorrect or misleading answers to questions during inspections; o failure to rectify within the set time-limit incorrect, incomplete or misleading answer given by a member of staff, o breach of seals • overview of fines imposed by the European Commission and EU NCAs for failure to comply with interim measures; • overview of fines imposed by the European Commission and EU NCAs for failure to comply with a commitment decision; • overview of fines imposed by the European Commission and EU NCAs for failure to comply with a cease and desist order.

[222] Please also include fines imposed by the UK authorities, per the decisions collected in question 1.

	Periodic penalty payments Overview of periodic penalties (imposed (not simply threatened) by the European Commission and EU NCAs) to compel compliance with: • cease and desist order; • interim measures; • commitments; • RFI (in sector inquiries and in infringement proceedings); • Inspection.
10.	On the basis of the responses to the EU NCA questions, (provided either in writing or during interviews with EU NCAs) compile a comparative table of the different procedures to which the questions relate.

Annex II - Contractor questions by evidence gathering method

Introduction

Interviewee anonymity

The results of this interview are intended to be integrated into a support study for the evaluation of Regulations 1/2003 and 773/2004 (the "**Regulations**") which comprise the foundations of the EU antitrust enforcement framework for the application of Articles 101 and 102 TFEU.

As its principal objective, the support study intends to provide the European Commission (DG COMP) with information to evaluate the framework created by the Regulations.

Information collected during this interview will solely be used for the purpose of the abovementioned evaluation. The responses of interviewees will be treated confidentially, compiled and anonymised into reports to be provided to the European Commission. In order to analyse the information in question according to categories of respondents, we kindly request you to respond to the following questions.

For lawyers:

- In how many cases have you represented parties in antitrust/cartel proceedings before the European Commission:
  0 ❑ 1-5 ❑ +5 ❑

- In how many cases have you represented parties in antitrust/cartel proceedings before national competition authorities:
  0 ❑ 1-5 ❑ +5 ❑

- In how many cases has your law firm represented parties in antitrust/cartel proceedings before the European Commission:
  0 ❑ 1-5 ❑ +5 ❑

- In how many cases has your law firm represented parties in antitrust/cartel proceedings before national competition authorities:
  0 ❑ 1-5 ❑ +5 ❑

- Have you represented clients in antitrust proceedings before the European Commission or national competition authorities as:

  parties to proceedings ❑

  third parties ❑

  both ❑

- Have you represented or do you currently represent SMEs in competition proceedings before the European Commission or before NCAs, whether in their capacity as defendants or as third parties / complainants?

yes ❑ no ❑

For in-house counsel:

- In how many cases has your company been involved in antitrust/cartel proceedings before the European Commission since the entry into force of Regulation 1/2003:
  0 ❑ 1-5 ❑ +5 ❑

- In how many cases has your company been involved in antitrust/cartel proceedings before national competition authorities since the entry into force of Regulation 1/2003:
  0 ❑ 1-5 ❑ +5 ❑
- Has your company participated in antitrust proceedings before the European Commission or national competition authorities as:

  party to proceedings ❑

  third party ❑

  both ❑

Practical examples

Interviewees should be encouraged to refer to specific examples of their experience, if at all possible.
no

Interview questions

General	
1.	How have the Regulations 1/2003 and 773/2004 performed in achieving the uniform, coherent and effective application of Articles 101 and 102 TFEU?
2.	To what extent is Article 3 Regulation 1/2003 (on the relationship between Articles 101 and 102 TFEU and national competition laws) effective in ensuring the uniform and coherent application of EU competition rules?
ıvestigative tools	
3.	What are your views on the effectiveness and efficiency of requests for information as an investigative tool for the finding of an infringement of Article 101 TFEU or Article 102 TFEU, also in comparison to other tools (interviews, inspections)? *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements.*
4.	What are your views on the effectiveness and efficiency of interviews as an investigative tool for the finding of an infringement of Articles 101 and/or 102 TFEU, also in comparison to other tools (requests for information, inspections)? *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements.*
5.	What are your views on the effectiveness and efficiency of inspections (of business and/or other premises, including homes and vehicles) as an investigative tool for the finding of an infringement

	of Articles 101 and/or 102 TFEU, also in comparison to other tools (requests for information, interviews)? *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements.* Please expand on the above in view of the following sub-questions: a) To what extent do increased digitisation and cloud computing impact your views on the above main question? b) Is the European Commission's power to affix seals during inspections of business premises effective in preventing the removal or alteration of potential evidence? To what extent would you see this power as an effective and efficient way to also safeguard potentially relevant evidence held in a digital form, for instance, when such potential evidence is remotely accessible via cloud services? c) Does the increased trend of home-working/mixed use of devices impact your views on inspections of other premises?
6.	What are your views on the effectiveness and efficiency of sector inquiries as an investigative tool for the finding of an infringement of Article 101 TFEU and/or Article 102 TFEU? *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements.*
7.	In your experience, does the knowledge of a possible infringement of Art 101 and/or 102 TFEU trigger any document retention measures within a company's organisation to prevent the destruction of potentially relevant evidence? More in general, in your experience, for how long do companies in your jurisdiction generally retain documents? What experience do companies have with document retention orders/requests in the EU and outside the EU?
Procedural rights of parties and third parties	
8.	How effective and efficient are the Regulations' provisions to protect parties' and third parties' procedural rights (e.g. right to be heard(including the right of access to file) and right to confidentiality)? a. Transparency of proceedings – To what extent do you consider European Commission proceedings to be transparent? b. Right of access to file a. Is the system of access to file effective and efficient? b. *Prompt if confidentiality rings are proposed by the interviewee*: could you please elaborate on the modalities of such confidentiality rings, for instance, with respect to whom should form part of the ring?

	c. Do in-house counsel/business people review the European Commission's file beyond the key documents cited in the SO? How often? c. Importance of the protection of confidential information a. Does the current system effectively balance the right to be heard with the right to protection of confidential information? b. Does the lack of sanctions for breach of Article 16a of Regulation 773/2004 give rise to concerns as to whether information obtained in the context of antitrust proceedings (e.g. through access to file) is only used for the purposes of the judicial and administrative proceedings of the case in question? c. To what extent do the Regulations currently give comfort to information providers that information only disclosed to a restricted group of persons (in particular, external advisors) will not be "leaked"? d. Oral hearings/Role of the Hearing Officer a. Do you consider oral hearings as an effective forum for parties to be heard? Do you have any other comments on oral hearings, for instance, in relation to their format or timing?
9.	In which circumstances would you advise your (internal) client to launch a formal complaint pursuant to Article 7(2) of Regulation 1/2003? What advantages do you see in submitting a formal complaint compared to an informal complaint?
Decision-making powers	
10.	Do prohibition decisions ensure that conduct in relation to which an infringement was found is effectively brought to an end?
11.	Do commitment decisions ensure that conduct in relation to which the European Commission had expressed preliminary concerns, as well as the effects of such conduct, is effectively brought to an end?
12.	What are your views on the effectiveness of the European Commission's interim measures powers in view of the intended purpose of such measures to prevent serious and irreparable damage to competition?
13.	To what extent do you consider that findings of inapplicability under Article 10 of Regulation 1/2003 could (in principle) be an effective tool to ensure the uniform application of Articles 101 and 102 TFEU?
Functioning of the ECN	
14.	To what extent do you consider that case allocation and cooperation between the European Commission and the NCAs are dealt with efficiently and are effective in ensuring the uniform, coherent and effective application of Articles 101 and 102 TFEU?
Other	
15.	In your experience, are there any procedural features of NCA regimes that lead to effective and efficient enforcement of competition rules at Member State level?

	Prompt: For the purpose of this question, you may also consider examples from other EU jurisdictions than your own. *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements*
16.	In your view, are the Regulations overall coherent with other EU actions; do the Regulations remain relevant; and do the Regulations continue to have "EU added value"? *Prompt: For the purpose of evaluating coherence, please consider whether the Regulations are aligned and consistent with other EU legislation, EU case law, EU policies and international agreements.* *For the purpose of evaluating relevance, please consider whether the Regulations continue to be appropriate, especially in light of economic evolutions such as increased digitisation and teleworking, but also considering legislative developments such as the adoption of the ECN+ Directive.* *For the purpose of evaluating "EU added value", please consider whether the Regulations and their application have achieved results beyond those that could have been achieved by Member States on their own.*
17.	Do you have any other comments?

Question to be asked orally towards the end of the interview (i.e. not shared with interviewees in advance)

- What are your views on the duration of the European Commission's proceedings?

Prompt if the interviewee suggests that further procedural steps and/or additional protection should be introduced: would you have any suggestions as to how existing EU antitrust enforcement procedures could be further streamlined in light of these further procedures that you suggest introducing?

Final prompt: We have been asked to pass on the European Commission's gratitude for your participation in this interview. The European Commission is very happy to invite you for the Conference celebrating 20 years of EU enforcement under Regulation 1/2003 on 20 June 2023 (see 20 Years of Reg. 1/2003 conference (europa.eu)).

Annex III - Contractor questions by evidence gathering method

Introduction – Interview questions for third-country experts

Interviewee anonymity

The results of this interview are intended to be integrated into a support study for the evaluation of EU Regulations 1/2003 and 773/2004 (the "**Regulations**"), which comprise the foundations of the EU antitrust enforcement framework for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (respectively containing the prohibition of anticompetitive agreements / concerted practices and the prohibition of abuse of dominance).

As its principal objective, the support study intends to provide the European Commission ("**DG COMP**") with information to evaluate the framework created by these Regulations. In addition, DG COMP has also requested to interview experts with respect to the local antitrust procedural framework of non-EU jurisdictions as a comparative benchmark for the study of the mentioned Regulations.

Information collected during this interview will solely be used for the purpose of the abovementioned evaluation. The responses of interviewees will be treated confidentially, compiled and anonymised into reports to be provided to DG COMP. In order to analyse the information in question according to categories of respondents, we kindly request you to respond to the following questions.

For the queries below, please note that 'antitrust/cartel proceedings' refer to proceedings in your jurisdiction involving the application of prohibitions of anticompetitive agreements, concerted practices and/or abusive behaviour by dominant undertakings.

Practical examples

Interviewees should be encouraged to refer to specific examples of their experience, if at all possible.

Interview questions

ıvestigative tools	
18.	How do competition authorities in your jurisdiction request information from companies (requiring undertakings to provide all necessary information for the purpose of an antitrust investigation)? What are your views on the effectiveness and efficiency of such procedures as an investigative tool for the finding of such antitrust infringements, also in comparison to other tools (interviews, inspections)? *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements.*
19.	What types of procedures do competition authorities in your jurisdiction have to take statements from individuals? Are these statements made in a formal way at all stages of the investigation (e.g. from the very beginning of the investigation or only later on)? Are they recorded? Are they confirmed by the interviewee?

	Is there a difference in the procedures/recording modalities depending on the intended use of the statements later on in your proceedings (for example, as evidence vs. only as background info for further fact-finding)? What are your views on the effectiveness and efficiency of these procedures as an investigative tool for the finding of antitrust infringements, also in comparison to other tools (requests for information, inspections)? *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements.*
20.	How do competition authorities conduct "inspections" (in particular, on business premises and/or non-business premises in the context of an antitrust investigation)? What are your views on the effectiveness and efficiency of inspections (on business and/or non-business premises, including homes and vehicles) as an investigative tool for the finding of antitrust infringements, also in comparison to other tools (requests for information, interviews)? *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements.* UK/NORWAY: Please expand on the above in view of the following sub-questions: d) To what extent do increased digitisation and cloud computing impact your views on the above question on the effectiveness and efficiency of inspections? e) Do competition authorities in your jurisdiction have the power to affix seals during inspections of business premises and, if so, how effective is this power in preventing the removal or alteration of potential evidence? If competition authorities in your jurisdiction have the power to affix seals during inspections of business premises, to what extent would you see this power as an effective and efficient way to also safeguard potentially relevant evidence held in a digital form, for instance, when such potential evidence is remotely accessible via cloud services? f) Does the increased trend of home-working/mixed use of devices impact your views on inspections of non-business premises?
21.	FOR UK/NORWAY: Do competition authorities in your jurisdiction have the power to conduct inquiries into a particular sector of the economy or into a particular type of agreements across various sectors (so-called 'sector inquiries')? If so, what are your views on the effectiveness and efficiency of such sector inquiries as an investigative tool for the finding of antitrust infringements?

	Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements. FOR UK: What are your views on whether the CMA's market investigation powers lead to tackling competitiveness issues in markets? Do market investigations also lead to the possible discovery of antitrust problems in markets?
22.	Do the authorities in your jurisdiction have the powers to order the preservation of documents? If yes, do you consider preservation orders to be a useful tool for the authorities? What are the practical benefits and/or downsides of preservation orders?
Procedural rights of parties and third parties	
23.	How do your procedures protect parties' and third parties' procedural rights (e.g. potentially, rights to be heard (including the right of access to file) and rights to confidentiality)? e. UK/NORWAY: Right of access to file a. How is access to file given in your jurisdiction? b. Does the antitrust procedural framework in your jurisdiction enable confidentiality rings and, if so, what are the modalities for such confidentiality rings, for instance, with respect to whom should form part of the ring? c. To what extent do in-house counsel/business people review (all) documents contained in the file of your competition authorities regarding a specific investigation/proceeding? f. UK/NORWAY: Importance of the protection of confidential information a. How does the antitrust procedural framework in your jurisdiction effectively balance the right to be heard with the right to protection of confidential information (to the extent that such rights exist in your jurisdiction)? b. Does the antitrust procedural framework in your jurisdiction restrict the use of information obtained in the context of antitrust proceedings and, if so, how are breaches of such restrictions sanctioned? c. To what extent does the antitrust procedural framework in your jurisdiction give comfort to information providers that information only disclosed to a restricted group of persons (in particular, external advisors) will not be "leaked"? g. UK/NORWAY: Oral hearings a. Does the antitrust procedural framework in your jurisdiction provide for oral hearings as a forum for parties to be heard and, if so, to what extent do you consider oral hearings to be an effective forum in that respect? Do you have any other comments on oral hearings, for instance, in relation to their format or timing? UNITED STATES: a. To what extent do companies under investigation obtain any documents that are on file before trial?

	b. How is confidential information protected (either during discovery or (if relevant) at other stages)? c. In your experience, are court-sanctioned confidentiality orders an effective way of protecting confidentiality/providing companies with relevant documents for their defence? d. Are there situations when it would be relevant for your (internal) client's defence to share documents subject to confidentiality orders with them but you were prevented from doing so because of the confidentiality order?
24.	Is there a possibility to submit complaints in your jurisdiction? If yes, how does the authority in your jurisdiction dispose of such complaints? Does it need to adopt a decision? Can a decision not to pursue a complaint be challenged in Court? What are your views on the efficiency of the complaints system in your jurisdiction?
Decision-making powers	
25.	Do competition authorities in your jurisdiction have the decision-making power to make commitments offered by the concerned undertakings binding on the latter, in order to address anti-trust concerns that would have led to the imposition of a prohibition decision (so-called 'commitment decisions')? If so, do such commitment decisions ensure that conduct in relation to which the relevant competition authority had expressed preliminary concerns, as well as the effects of such conduct, is effectively brought to an end?
26.	Do competition authorities in your jurisdiction have the decision-making power to adopt interim measures, for instance, in situations of urgency to prevent serious and irreparable damage to competition? How often are they used? Is the procedure for adopting such interim measures the same as the procedure for finding an infringement and imposing fines/remedies in terms of rights of defence and overall duration? If so, do such interim measures ensure that conduct in relation to which the relevant competition authority had expressed preliminary concerns, as well as the effects of such conduct, is effectively brought to an end?
27.	Do competition authorities in your jurisdiction have the power to issue findings of inapplicability, meaning that the relevant antitrust prohibitions are ruled to be inapplicable to the fact pattern at hand? How often are they used?
Other	

28.	In your experience, are there any procedural features of the antitrust procedural framework in your jurisdiction or jurisdictions in the EU that lead to a particularly effective and efficient enforcement of antitrust rules? *Prompt: For the purpose of this question, you may also consider examples from other jurisdictions than your own.* *Prompt: For the purpose of evaluating efficiency, please consider the amount of time and resources (people and costs) allocated to the relevant investigative tool by undertakings involved, as well as the extent to which such efforts lead to findings of potential infringements*
29.	Do you have any other comments?

Question to be asked orally towards the end of the interview (i.e. not shared with interviewees in advance)

- What are your views on the duration of the antitrust proceedings before competition authorities in your jurisdiction?

Prompt if the interviewee suggests that further procedural steps and/or additional protection should be introduced: would you have any suggestions as to how existing antitrust enforcement procedures could be further streamlined in light of these further procedures that you suggest introducing?

Annex IV - NCA QUESTIONS[223]

Data collection questions

1. Please provide full text decisions (and, if possible, existing summaries) of your authority or national court (to the extent that this national court is a designated "competition authority" pursuant to Article 35 of Reg. 1/2003)[224] applying Articles 101 and/or 102 TFEU, either on a stand-alone basis or applying these Articles in parallel to the equivalent national competition law provisions, since the entry into force of Regulation 1/2003 in your country (i.e. 1 May 2004 or with your accession to the EU). Please provide full texts also of any decisions (and, if possible, existing summaries) applying the national competition law provisions on a standalone basis that were adopted during the same period.

   Please also include any decisions on interim measures, commitment decisions, procedural fines and periodic penalty payments that were adopted during this period.

   (a) If such decisions are available on your authority's website, you do not need to provide these, but we would still ask that you to confirm that the website contains the complete up-to-date set of decisions and that such decisions can be downloaded directly and efficiently by the contractor without technical restrictions (e.g. log-in walls, relevant bugs).[225]

   (b) If such decisions are not publicly available, please let the contractor team and the Commission know as soon as possible, so that we can consider alternative options.

2. Do you have a **formal complaints system** comparable to that of the European Commission, meaning that you need to reject a complaint made by a party by adopting a formal rejection decision (instead of, for example, a simple letter)?

   If yes,
   - Have you ever adopted a decision finding an infringement/making commitments binding following a successful challenge in court of your earlier decision to *reject* a complaint?
   - Since the applicability of Regulation 1/2003 in your jurisdiction, do you have readily available information that you could provide regarding the number of **decisions** adopted following such a formal complaint?

3. Since the applicability of Regulation 1/2003 in your jurisdiction, do the texts of your decisions/press releases/other publications indicate the precise amount of the fine whenever such a fine was issued? If no,
   - For the decisions where the precise amount of the fine is not indicated, please provide this amount for relevant decisions adopted since the applicability of Regulation 1/2003. If it would not be possible to do this, please let the contractor team and the Commission know as soon as possible, so that we can consider alt

4. Only to the extent that such lists would be readily available, could you share how many decisions by your NCA (i) have applied Articles 101 and 102 TFEU in parallel with their respective equivalent national competition law provisions and (ii) have applied only the latter equivalent national competition law provisions without applying Articles 101 and 102 TFEU?

Question for which written response is needed

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[223] The contractor should also contact the Norwegian and Icelandic competition authorities if they would want to respond to questions 2-24. It is not necessary to collect Norwegian, Icelandic or ESA decisions under question 1.
[224] We are not intending for the contractor to collect judgments on appeals of competition authority decisions.
[225] To the extent that you have a readily available list of decisions adopted since 1 May 2004, such a list would be useful for the contractor to verify that they have accurately collected all the relevant decisions from your website.

5. Do you have (or is your government planning legislation to introduce)
    - stricter (than Article 102 TFEU) national competition laws on unilateral conduct within the meaning of Article 3(2) of Reg 1/2003 (for example laws which prohibit or impose sanctions on abusive behaviour toward economically dependent undertakings)?
    - other provisions of national law that predominantly pursue an objective different from that pursued by Articles 101 and 102 TFEU within the meaning of Article 3(3) of Reg 1/2003?
    - Updates to its investigative powers/procedural rules, particularly to face challenges resulting from digitisation?[226]

6. By which authorities are these rules enforced in your Member State?[227]

7. Do you have a power to conduct sector inquiries? If yes,
    - What are the conditions for starting one and what is the relevant scope?
    - What powers do you have to follow-up on a sector inquiry?
    - Please list the sector inquiries you have conducted and any follow-up investigations and related decisions since the applicability of Regulation 1/2003 in your country.

Questions that would be asked during an interview by the contractor

Given that the following questions concern procedures and how they are applied in practice, we considered that the answers might be more efficiently collected by the contractor during an interview with a few persons from your authorities familiar with the specific issues. The contractor could then send you a summary note of the interview for your verification. We can discuss this proposal further during the CIDP WG meeting.

8. Do your antitrust procedures include **deadlines** and, if so, what are these deadlines?[228]
    - Are they binding/indicative and what is the legal consequence of missing these deadlines?
    - If the deadlines are extendable, how and under which conditions?
    - Are formal/informal timelines communicated publicly and/or to the parties subject to or involved in the proceedings?
    - What is your experience with these deadlines in practice and their impact on your procedures/decisions?

9. Are there any legal limits on the **length of submissions** by investigated or third parties? If yes, what are these?

10. Please describe the set-up of your investigative and **decision-making process** (vis-à-vis that of the European Commission). For example, is the decision-making body separate from the service that is responsible for the investigation and the draft statement of objections?

11. Please describe the **case-handling process** at your authority by answering the questions below:
    - Please describe the major procedural and practical steps in the antitrust case handling process from the start of the case to the adoption of the decision.
    - Is the same case-team responsible for the entire proceeding?

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[226] To the extent that you have responded to this question in response to the NCA consultation (Q54 and Q55) and there is no change in your position or no need to update your reply, please simply *confirm* this when responding to this question and indicate that you ***agree*** for us to provide your response to this question to the contractor directly.
[227] Idem.
[228] To the extent that your response to the earlier detailed questionnaire of the NCA consultation (Q35) covers (partly) the above questions and there is no change in your position or no need to update your reply, there is no need to respond to this question (on the parts already covered in writing). If you ***agree***, we can provide your response to this question to the contractor directly before the interview; if appropriate, you could then orally further explain your reply and the practice in your country.

- Do you have a “legal service” team that reviews draft decisions? Are they part of the case-team?

12. Do you make use of **interviews** frequently? If yes, do you mainly interview representatives of parties/complainants or also others?
    - Do you make use of a right to summon interviewees and in what situations? Does it appear frequently?
    - What is your general experience with interviews and their usefulness?
    - Are you able to impose fines not only on undertakings for the failure of their representatives to appear at interviews (as mandated by ECN+) but also on natural persons for not appearing at an interview?
    - Are you able to impose fines on undertakings/or natural persons for failure to reply or for providing misleading information during an interview?
    - Have you ever imposed such fines in any of the above situations?

13. Do you have powers to fine for procedural infringements beyond those listed in Article 13(2) of ECN+?

14. How are **reports of meetings** with parties/third parties registered and put on file? Do you give undertakings and/or natural persons the opportunity to review/confirm such reports to the extent they are drafted by your authority?

15. Do you have the ability to impose **preservation orders**, i.e. data retention measures?

16. As regards **inspections**, how does your authority adapt to a digitised world (or plan to do so), e.g.:
    - Do you have the power to conduct remote inspections?
    - Have you conducted inspections of non-business premises (e.g. homes)? If yes, how frequently have you used this power?
    - Have you conducted continued inspections, (i.e. when an on-site inspection is continued at your premises with the review of sealed data/material)? If yes, how frequently have you used this power?

17. How does the **access to file** process work?
    - What types of documents/information are registered in the file?
    - Timing: when is access to file granted? Is it granted once and, and if yes at what stage of the proceedings, or more frequently? If granted once, under which conditions will it need to be granted again (e.g. if there is a change of orientation in the case)?
    - What is provided in terms of access to file – *all* the file, only the documents cited in the SO? Other?)
    - How do you deal with confidentiality requests by information providers?
    - How do you balance the need to protect confidentiality with the right to be heard?
    - Do you have/use procedures for facilitating the exchange of confidential information between parties? (e.g. data rooms, confidentiality rings)
    - Would bar rules in your jurisdiction prevent restricted disclosure (e.g. if lawyers have a duty to their client to reveal all information)?

18. Are administrative **oral hearings** available? At what stage(s) in the procedure do they take place? Who participates and how are they conducted?

19. Does a different standard for the protection of legal professional privilege (**LPP**) apply when you apply Articles 101 and 102 TFEU and when you apply the equivalent national competition law provisions on a stand-alone basis? If yes, what is the standard of LPP protection in your jurisdiction as compared to the EU standard?

20. Do you have a formal or informal process for **market testing possible remedies** before a prohibition decision? Please specify the process and how it works in practice. Do you report on the feedback you received to the parties, publicly or in the decision?

21. How does **monitoring compliance** with antitrust decisions work in practice and is it done systematically or frequently?

22. As regards **limitation periods**, please indicate:
    - the length of limitation period for (i) imposing fines and (ii) for finding an infringement, if applicable;
    - the starting event (end of infringement? For ongoing infringements?);
    - investigative measures that suspend or interrupt the limitation period;
    - whether there is an absolute limitation period regardless of interruptions or suspensions (what is the length?).

23. Are there any instances in which you were unable to impose fines due to passage of the absolute limitation period (while investigation was ongoing or after Court proceedings, for example because the time remaining after the interruption during Court proceedings was not sufficient)?

24. Are **fines** enforced/collected immediately upon adoption of a decision or do they have to become final in Court?

Annex V - Questionnaire for Norwegian and Icelandic competition authorities

Questions for which a written response is needed

25. Do you have a **formal complaints system** comparable to that of the European Commission, meaning that you need to reject a complaint made by a party by adopting a formal rejection decision (instead of, for example, a simple letter)?

If yes,

- Have you ever adopted a decision finding an infringement/making commitments binding following a successful challenge in court of your earlier decision to *reject* a complaint?

26. Do you have (or is your government planning legislation to introduce)
    - stricter (than Article 54 EEA Agreement) national competition laws on unilateral conduct within the meaning of Article 3(2) of Protocol 4, Chapter II, to the EFTA Surveillance and Court Agreement (for example laws which prohibit or impose sanctions on abusive behaviour toward economically dependent undertakings)?
    - other provisions of national law that predominantly pursue an objective different from that pursued by Articles 53 and 54 EEA Agreement within the meaning of Article 3(3) of Protocol 4, Chapter II, to the EFTA Surveillance and Court Agreement?
    - Updates to its investigative powers/procedural rules, particularly to face challenges resulting from digitisation?[1]

27. By which authorities are these rules enforced in your jurisdiction?[2]

28. Do you have a power to conduct sector inquiries? If yes,
    - What are the conditions for starting one and what is the relevant scope?
    - What powers do you have to follow-up on a sector inquiry?

Questions that can be answered during an interview or in writing

Given that the following questions concern procedures and how they are applied in practice, we considered that the answers might be more efficiently collected by the contractor during an interview with a few persons from your authorities familiar with the specific issues. The contractor could then send you a summary note of the interview for your verification. We can discuss this proposal further during the CIDP WG meeting.

29. Do your antitrust procedures include **deadlines** and, if so, what are these deadlines?[3]
    - Are they binding/indicative and what is the legal consequence of missing these deadlines?
    - If the deadlines are extendable, how and under which conditions?
    - Are formal/informal timelines communicated publicly and/or to the parties subject to or involved in the proceedings?
    - What is your experience with these deadlines in practice and their impact on your procedures/decisions?

[1] To the extent that you have responded to this question in response to the NCA consultation (Q54 and Q55) and there is no change in your position or no need to update your reply, please simply *confirm* this when responding to this question and indicate that you ***agree*** for DG Competition to provide your response to this question to the contractor directly.
[2] Idem.
[3] To the extent that your response to the earlier detailed questionnaire of the NCA consultation (Q35) covers (partly) the above questions and there is no change in your position or no need to update your reply, there is no need to respond to this question (on the parts already covered in writing). If you ***agree***, DG Competition can provide your response to this question to the contractor directly before the interview; if appropriate, you could then orally further explain your reply and the practice in your country.

30. Are there any legal limits on the **length of submissions** by investigated or third parties? If yes, what are these?

31. Please describe the set-up of your investigative and **decision-making process**. For example, is the decision-making body separate from the service that is responsible for the investigation and the draft statement of objections?

32. Please describe the **case-handling process** at your authority by answering the questions below:
    - Please describe the major procedural and practical steps in the antitrust case handling process from the start of the case to the adoption of the decision.
    - Is the same case-team responsible for the entire proceeding?
    - Do you have a "legal service" team that reviews draft decisions? Are they part of the case-team?

33. Do you make use of **interviews** frequently? If yes, do you mainly interview representatives of parties/complainants or also others?
    - Do you make use of a right to summon interviewees and in what situations? Does it appear frequently?
    - What is your general experience with interviews and their usefulness?
    - Are you able to impose fines not only on undertakings for the failure of their representatives to appear at interviews (as mandated by ECN+) but also on natural persons for not appearing at an interview?
    - Are you able to impose fines on undertakings/or natural persons for failure to reply or for providing misleading information during an interview?
    - Have you ever imposed such fines in any of the above situations?

34. Do you have powers to fine for procedural infringements beyond those listed in Article 13(2) of ECN+?

35. How are **reports of meetings** with parties/third parties registered and put on file? Do you give undertakings and/or natural persons the opportunity to review/confirm such reports to the extent they are drafted by your authority?

36. Do you have the ability to impose **preservation orders**, i.e. data retention measures?

37. As regards **inspections**, how does your authority adapt to a digitised world (or plan to do so), e.g.:
    - Do you have the power to conduct remote inspections?
    - Have you conducted inspections of non-business premises (e.g. homes)? If yes, how frequently have you used this power?
    - Have you conducted continued inspections, (i.e. when an on-site inspection is continued at your premises with the review of sealed data/material)? If yes, how frequently have you used this power?

38. How does the **access to file** process work?
    - What types of documents/information are registered in the file?
    - Timing: when is access to file granted? Is it granted once and, and if yes at what stage of the proceedings, or more frequently? If granted once, under which conditions will it need to be granted again (e.g. if there is a change of orientation in the case)?
    - What is provided in terms of access to file – *all* the file, only the documents cited in the SO? Other?)
    - How do you deal with confidentiality requests by information providers?
    - How do you balance the need to protect confidentiality with the right to be heard?
    - Do you have/use procedures for facilitating the exchange of confidential information between parties? (e.g. data rooms, confidentiality rings)
    - Would bar rules in your jurisdiction prevent restricted disclosure (e.g. if lawyers have a duty to their client to reveal all information)?

39. Are administrative **oral hearings** available? At what stage(s) in the procedure do they take place? Who participates and how are they conducted?

40. Does a different standard for the protection of legal professional privilege (**LPP**) apply when you apply Articles 53 and 54 EEA Agreement and when you apply the equivalent national competition law provisions on a stand-alone basis? If yes, what is the standard of LPP protection in your jurisdiction as compared to the EEA standard (and the EU standard)?

41. Do you have a formal or informal process for **market testing possible remedies** before a prohibition decision? Please specify the process and how it works in practice. Do you report on the feedback you received to the parties, publicly or in the decision?

42. How does **monitoring compliance** with antitrust decisions work in practice and is it done systematically or frequently?

43. As regards **limitation periods**, please indicate:
    - the length of limitation period for (i) imposing fines and (ii) for finding an infringement, if applicable;
    - the starting event (end of infringement? For ongoing infringements?);
    - investigative measures that suspend or interrupt the limitation period;
    - whether there is an absolute limitation period regardless of interruptions or suspensions (what is the length?).

44. Are there any instances in which you were unable to impose fines due to passage of the absolute limitation period (while investigation was ongoing or after Court proceedings, for example because the time remaining after the interruption during Court proceedings was not sufficient)?

45. Are **fines** enforced/collected immediately upon adoption of a decision or do they have to become final in Court?

Annex VI - DG COMP - Evaluation of Regulations 1/2003 and 773/2004
Final list of interviewed attorney and in-house counsel

The views of the interviewees do not necessarily represent the views of their employers

No	Jurisdiction	Employer	Occupation
1	Austria	DLA Piper	Attorney
2	Austria	Bpv Hügel	Attorney
3	Austria	ÖBB-Holding	In-house counsel
4	Austria	ÖBB-Holding	In-house counsel
5	Austria	Wolf Theiss	Attorney
6	Austria	DORDA	Attorney
7	Austria	Barnert Egermann Illigasch	Attorney
8	Austria	OMV Group	In-house counsel
9	Belgium	CMS	Attorney
10	Belgium	Contrast Law	Attorney
11	Belgium	Faros	Attorney
12	Belgium	Cisco	In-house counsel
13	Belgium	Cisco	In-house counsel
14	Belgium	Solvay	In-house counsel
15	Belgium	AB Inbev	In-house counsel
16	Belgium	Quinz	Attorney
17	Bulgaria	Vivacom Bulgaria	In-house counsel
18	Bulgaria	Kinstellar	Attorney
19	Bulgaria	Hristov & Partners Law Firm	Attorney
20	Croatia	Liszt and Partners Law Firm	Attorney
21	Croatia	DTB	Attorney
22	Croatia	A1 Hrvatska	In-house counsel
23	Cyprus	Antoniou McCollum & Co.	Attorney
24	Cyprus	Bank of Cyprus	In-house counsel
25	Cyprus	Harris Kyriakides	Attorney
26	Cyprus	Harris Kyriakides	Attorney
27	Czechia	Allen & Overy	Attorney
28	Czechia	White & Case	Attorney
29	Czechia	Výzkumný Ústav Železniční	In-house counsel
30	Czechia	Havel & Partners	Attorney
31	Czechia	Vodafone	In-house counsel
32	Denmark	Horten	Attorney
33	Denmark	Arla Food	In-house counsel
34	Denmark	Gorrissen Federspiel	Attorney
35	Denmark	Kromann Reumert	Attorney
36	Denmark	DLA Piper	Attorney
37	Denmark	Bech Brunn	Attorney
38	Denmark	Bruun & Hjejle	Attorney
39	Denmark	TDC Net	In-house counsel
40	Estonia	Tallink Grupp	In-house counsel
41	Estonia	Sorainen	Attorney
42	Estonia	TGS Baltic	Attorney
43	EU attorneys (Brussels)	Norton Rose Fulbright	Attorney
44	EU attorneys (Brussels)	Garrigues	Attorney
45	EU attorneys (Brussels)	Jones Day	Attorney
46	EU attorneys (Brussels)	Van Bael & Bellis	Attorney
47	EU attorneys (Brussels)	Van Bael & Bellis	Attorney
48	EU attorneys (Brussels)	Bird & Bird	Attorney
49	EU attorneys (Brussels)	Wilmer Hale	Attorney

50	EU attorneys (Brussels)	Clifford Chance	Attorney
51	EU attorneys (Brussels)	White & Case	Attorney
52	EU attorneys (Brussels)	Mayer Brown	Attorney
53	EU attorneys (Brussels)	Linklaters	Attorney
54	EU attorneys (Brussels)	Squire Patton Boggs	Attorney
55	EU attorneys (Brussels)	Jones Day	Attorney
56	EU attorneys (Brussels)	Gibson Dunn	Attorney
57	EU attorneys (Brussels)	Hogan Lovells	Attorney
58	EU attorneys (Brussels)	Slaughter and May	Attorney
59	EU attorneys (Brussels)	Geradin Partners	Attorney
60	EU attorneys (Brussels)	Bryan Cave Leighton Paisner	Attorney
61	EU attorneys (Brussels)	Ashurst	Attorney
62	EU attorneys (Brussels)	Allen & Overy	Attorney
63	EU attorneys (Brussels)	CMS	Attorney
64	EU attorneys (Brussels)	Sherman & Sterling	Attorney
65	EU attorneys (Brussels)	Baker McKenzie	Attorney
66	EU attorneys (Brussels)	Wilmer Hale	Attorney
67	EU attorneys (Brussels)	Linklaters	Attorney
68	EU attorneys (Brussels)	McDermott Will & Emery	Attorney
69	EU attorneys (Brussels)	Skadden Arps Slate Meagher & Flom	Attorney
70	EU attorneys (Brussels)	Cleary Gottlieb Steen & Hamilton	Attorney
71	EU attorneys (Brussels)	Reed Smith	Attorney
72	EU attorneys (Brussels)	Sidley Austin	Attorney
73	EU attorneys (Brussels)	Shepard Mullin	Attorney
74	EU attorneys (Brussels)	Dentons	Attorney
75	EU attorneys (Brussels)	Wilson Sonsini	Attorney
76	EU attorneys (Brussels)	Crowell & Moring	Attorney
77	EU attorneys (Brussels)	Sidley Austin	Attorney
78	EU attorneys (Brussels)	Simmons & Simmons	Attorney
79	EU attorneys (Brussels)	Baker McKenzie	Attorney
80	EU attorneys (Brussels)	Faros	Attorney
81	EU attorneys (Brussels)	Baker Botts	Attorney
82	EU attorneys (Brussels)	Norton Rose Fulbright	Attorney
83	EU attorneys (Brussels)	Clifford Chance	Attorney
84	EU attorneys (Brussels)	Norton Rose Fulbright	Attorney
85	EU attorneys (Brussels)	Arnold & Porter	Attorney
86	EU attorneys (Brussels)	& De Bandt	Attorney
87	EU attorneys (Brussels)	Cleary Gottlieb Steen & Hamilton	Attorney
88	EU attorneys (Brussels)	Freshfields Bruckhaus Deringer	Attorney
89	EU attorneys (Brussels)	Quinn Emanuel Urquhart & Sullivan	Attorney
90	EU attorneys (Brussels)	White & Case	Attorney
91	EU attorneys (Brussels)	Quinn Emanuel Urquhart & Sullivan	Attorney
92	EU attorneys (Brussels)	Gleiss Lutz	Attorney
93	EU attorneys (Brussels)	Liedekerke	Attorney
94	EU attorneys (Brussels)	Hogan Lovells	Attorney
95	EU attorneys (Brussels)	Dentons	Attorney
96	Finland	Borenius	Attorney
97	Finland	Hannes Snellman	Attorney
98	Finland	Neste	In-house counsel
99	Finland	Nokia	In-house counsel
100	Finland	Nordea	In-house counsel
101	France	Cleary Gottlieb Steen & Hamilton	Attorney
102	France	Willkie Farr & Gallagher	Attorney
103	France	Darrois Villey Maillot Brochier	Attorney
104	France	Hogan Lovells	Attorney
105	France	Jones Day	Attorney
106	France	Willkie Farr & Gallagher	Attorney

107	France	Baker McKenzie	Attorney
108	France	Dechert	Attorney
109	France	Mayer Brown	Attorney
110	France	Wilhelm & Associés	Attorney
111	France	De Pardieu, Brocas, Maffei	Attorney
112	France	Herbert Smith Freehills	Attorney
113	France	Cleary Gottlieb Steen & Hamilton	Attorney
114	France	TotalEnergies	In-house counsel
115	Germany	Dentons	Attorney
116	Germany	Linklaters	Attorney
117	Germany	Siemens	In-house counsel
118	Germany	Deutsche Telekom	In-house counsel
119	Germany	Latham & Watkins	Attorney
120	Germany	Latham & Watkins	Attorney
121	Germany	Jones Day	Attorney
122	Germany	Noerr	Attorney
123	Germany	Robert Bosch	In-house counsel
124	Germany	Latham & Watkins	Attorney
125	Germany	Squire Patton Boggs	Attorney
126	Germany	Bayer	In-house counsel
127	Germany	Gleiss Lutz	Attorney
128	Germany	Dentons	Attorney
129	Germany	Deutsche Bahn	In-house counsel
130	Germany	Heinz & Zagrosek	Attorney
131	Germany	Hengeler	Attorney
132	Germany	Freshfields Bruckhaus Deringer	Attorney
133	Greece	Kyriakides Georgopoulos	Attorney
134	Greece	Public Power Corporation	In-house counsel
135	Greece	Dryllerakis & Associates	Attorney
136	Greece	Bernitsas	Attorney
137	Greece	Zepos & Yannopoulos	Attorney
138	Greece	Public Power Corporation	In-house counsel
139	Hungary	Szecskay	Attorney
140	Hungary	Baker McKenzie	Attorney
141	Hungary	MOL	In-house counsel
142	Hungary	Szántó Tibor Law Firm	Attorney
143	Hungary	DLA Piper	Attorney
144	Ireland	Mason Hayes & Curran	Attorney
145	Ireland	Ryanair	In-house counsel
146	Ireland	Ryanair	In-house counsel
147	Ireland	LK Shields	Attorney
148	Ireland	McCann FitzGerald	Attorney
149	Ireland	Arthur Cox	Attorney
150	Ireland	ServiceNow	In-house counsel
151	Ireland	Arthur Cox	Attorney
152	Ireland	A&L Goodbody	Attorney
153	Italy	DLA Piper	Attorney
154	Italy	UniCredit	In-house counsel
155	Italy	Bonelli Eredi	Attorney
156	Italy	Allen & Overy	Attorney
157	Italy	Freshfields Bruckhaus Deringer	Attorney
158	Italy	Gianni & Origoni	Attorney
159	Italy	Cleary Gottlieb Steen & Hamilton	Attorney
160	Italy	Enel	In-house counsel
161	Italy	ENI	In-house counsel
162	Italy	Hogan Lovells	Attorney
163	Italy	Gattai, Minoli, Partners	Attorney

164	Italy	White & Case	Attorney
165	Latvia	TGS Baltic	Attorney
166	Latvia	Ellex	Attorney
167	Latvia	TGS Baltic	Attorney
168	Latvia	Olympic Group	In-house counsel
169	Lithuania	TGS Baltic	Attorney
170	Lithuania	Ellex	Attorney
171	Lithuania	Motieka & Audzevičius	Attorney
172	Lithuania	EPSO-G	In-house counsel
173	Luxembourg	Bonn & Schmitt	Attorney
174	Luxembourg	Post Telecom	In-house counsel
175	Luxembourg	Elvinger Hoss Prussen	Attorney
176	Luxembourg	Post Telecom	In-house counsel
177	Malta	Mamo TCV	Attorney
178	Malta	Iuris Advocates	Attorney
179	Malta	GO	In-house counsel
180	Norway	Kvale	Attorney
181	Norway	Simonsen Vogt Wiig	Attorney
182	Norway	Wikborg Rein	Attorney
183	Norway	Equinor	In-house counsel
184	Norway	Wikborg Rein	Attorney
185	Poland	LOT Polish Airlines	In-house counsel
186	Poland	Orlen	In-house counsel
187	Poland	WKB	Attorney
188	Poland	Hansberry - Tomkiel	Attorney
189	Poland	Markiewicz & Sroczynski	Attorney
190	Poland	SK&S	Attorney
191	Poland	Allegro	In-house counsel
192	Poland	Kancelaria Malgorzaty Kozak	Attorney
193	Poland	Modzelewska & Pasnik	Attorney
194	Portugal	Sérvulo & Associados	Attorney
195	Portugal	Morais Leitão	Attorney
196	Portugal	Linklaters	Attorney
197	Portugal	CTT	In-house counsel
198	Portugal	DLA Piper	Attorney
199	Portugal	Jeronimo Martins	In-house counsel
200	Portugal	Cruz Vilaça Advogados	Attorney
201	Portugal	SRS Legal	Attorney
202	Romania	eMAG	In-house counsel
203	Romania	Wolf Theiss	Attorney
204	Romania	DLA Piper	Attorney
205	Romania	Vodafone	In-house counsel
206	Romania	eMAG	In-house counsel
207	Romania	D&B David şi Baias	Attorney
208	Romania	Nestor Nestor Diculescu Kingston Petersen (NNDKP)	Attorney
209	Romania	RTPR	Attorney
210	Romania	Mircea & Partners	Attorney
211	Slovakia	Dentons	Attorney
212	Slovakia	PwC Legal	Attorney
213	Slovakia	Havel & Partners	Attorney
214	Slovakia	Slovak Telecom	In-house counsel
215	Slovenia	Janezic & Jarkovic	Attorney
216	Slovenia	Zavarovalnica Triglav	In-house counsel
217	Slovenia	Law Firm Fatur Menard	Attorney
218	Spain	CMS Albiñana & Suárez de Lezo	Attorney
219	Spain	Amazon	In-house counsel
220	Spain	Zalando	In-house counsel

221	Spain	Telefonica	In-house counsel
222	Spain	CMS Albiñana & Suárez de Lezo	Attorney
223	Spain	Amazon	In-house counsel
224	Spain	Amazon	In-house counsel
225	Spain	Freshfields Bruckhaus Deringer	Attorney
226	Spain	Gómez-Acebo y Pombo	Attorney
227	Spain	Pérez-Llorca	Attorney
228	Spain	DLA Piper	Attorney
229	Spain	Pérez-Llorca	Attorney
230	Spain	Zalando	In-house counsel
231	Spain	Garrigues	Attorney
232	Spain	BBVA	In-house counsel
233	Spain	Gómez-Acebo y Pombo	Attorney
234	Spain	Garrigues	Attorney
235	Spain	MLAB Abogado	Attorney
236	Spain	Ashurst	Attorney
237	Spain	Garrigues	Attorney
238	Sweden	Roschier	Attorney
239	Sweden	Delphi	Attorney
240	Sweden	Kastell Advokatbyra	Attorney
241	Sweden	Cederquist	Attorney
242	Sweden	Per Karlsson & Co	Attorney
243	Sweden	Vinge	Attorney
244	The Netherlands	Prosus	In-house counsel
245	The Netherlands	Pels Rijcken	Attorney
246	The Netherlands	ASML	In-house counsel
247	The Netherlands	De Brauw Blackstone Westbroek	Attorney
248	The Netherlands	Allen & Overy	Attorney
249	The Netherlands	Philips	In-house counsel
250	The Netherlands	Dentons	Attorney
251	The Netherlands	NautaDutilh	Attorney
252	The Netherlands	Freshfields Bruckhaus Deringer	Attorney
253	The Netherlands	Bird & Bird	Attorney
254	The Netherlands	Brinkhof	Attorney
255	The Netherlands	Stibbe	Attorney
256	The Netherlands	Freshfields Bruckhaus Deringer	Attorney
257	UK	Clifford Chance	Attorney
258	UK	Hogan Lovells	Attorney
259	UK	Linklaters	Attorney
260	UK	Addleshaw Goddard	Attorney
261	UK	Unilever	In-house Counsel
262	UK	Kirkland & Ellis	Attorney
263	UK	London Stock Exchange Group	In-house Counsel
264	UK	London Stock Exchange Group	In-house Counsel
265	UK	Allen & Overy	Attorney
266	UK	Allen & Overy	Attorney
267	UK	Freshfields Bruckhaus Deringer	Attorney
268	UK	Baker McKenzie	Attorney
269	UK	Baker McKenzie	Attorney
270	US	Arnold & Porter	Attorney
271	US	Crowell & Moring	Attorney
272	US	Amazon	In-house counsel
273	US	Microsoft	In-house counsel
274	US	Sullivan & Cromwell	Attorney
275	US	Freshfields Bruckhaus Deringer	Attorney
276	US	Mintz	Attorney
277	US	Lewis Brisbois Bisgaard & Smith	Attorney

278	US	McGuireWoods	Attorney
279	US	Bona Law	Attorney

Annex VII - All antitrust decisions, including cartels

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Case number + name	Date of the adoption	Sector	*Specific sector/product concerned (eg. Cars, gas, derivatves…) + indicate if online retail or price manipulation by e.g. use of index or benchmark*	Legal Basis	If procedural case: legal basis	Cartel (only applicable to Art. 101 cases)	Type of decision	Origin of the case	*Number of addressees*	*Date of opening of proceedings*	*Date of Statement of Objections*	*Date of Preliminary Assessment*	*Number of pages of the decision*	*Cartel settlement?*	*Article 7 cooperation?*	*If there is a complaint (see column I), does it concern a formal complaint?*	*If there is a formal complaint (see column O), on which date has the (first) formal complaint has been lodged?*	*Date of the first investigative step (e.g. date of the first inspection or RFI)*	*Was the decision taken as a follow-up on a sector inquiry?*	*Has there been an (non-withdrawn) action for annulment against the decision before EU Courts?*	*If there was a settlement in the decision (see column O), did it concern a hybrid settlement?*	*For commitment decisions: has an action for annulment been lodged by a third party?*
37980 - Souris Bleue/Topps	26/05/2004	Consumer Goods	Collectibles (pokemon stickers, trading cards, tatoos)	Art. 101		No	Art 7 fine	Complaint	5	16/06/2003	16/06/2003	N/A	41			Yes	10/10/2000	07/11/2000	No	No	No	No
38096 - Clearstream	02/06/2004	Financial Services	Securities clearing and settlement services	Art. 102			Art 7 no fine	Ex officio	2	27/03/2003	28/03/2003	N/A	112			N/A	N/A	22/03/2001	No	Yes	No	No
38549 - Architectes belges	24/06/2004	Liberal Professions	Services provided by architects	Art. 101		No	Art 7 fine	Ex officio	1	24/10/2002	31/10/2003	N/A	30			N/A	N/A	31/01/2003	No	No	No	No
38069- Copper plumbing tubes	03/09/2004	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Copper plumbing tubes	Art. 101		Yes	Art 7 fine	Leniency	21	29/08/2003	29/08/2003	N/A	213			N/A	N/A	22/03/2001	No	Yes	No	No
36756 - Sodium gluconate re-adoption	29/09/2004	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Sodium gluconate	Art. 101		Yes	Art 7 fine	Ex officio	4	22/04/2004	22/04/2004	N/A	83			N/A	N/A	21/12/1997	No	Yes	No	No
37750 - French beer	29/09/2004	Food (including food retail) / agricultural products	Beer	Art. 101		Yes	Art 7 fine	Ex officio	4	04/02/2004	04/02/2004	N/A	32			N/A	N/A	23/12/1999	No	No	No	No
38238 -Spanish Raw Tobacco	20/10/2004	Food (including food retail) / agricultural products	Raw tobacco	Art. 101		Yes	Art 7 fine	Ex officio	13	11/12/2003	11/12/2003	N/A	102			N/A	N/A	03/10/2001	No	Yes	No	No
38745 - BdKEP/Deutsche Post	20/10/2004	Post	Letter below 100 grams	Art. 102&106			Art 106(3)	Complaint	1	02/10/2003	01/04/2004	N/A	38			Yes	06/05/2003	N/A	No	No	No	No
38338 - Hard haberdashery (needles)	26/10/2004	Consumer Goods	Needles (sewing and other special business)	Art. 101		Yes	Art 7 fine	Leniency	6	15/03/2004	15/03/2004	N/A	82			N/A	N/A	07/11/2001	No	Yes	No	No
38662 - GdF/ENI	26/10/2004	Energy	Natural gas	Art. 101		No	Art 7 no fine	Ex officio	2	26/02/2004	26/02/2004	N/A	32			N/A	N/A	10/02/2003	No	No	No	No
38662 - GdF/ENEL	26/10/2004	Energy	Natural gas	Art. 101		No	Art 7 no fine	Ex officio	3	26/02/2004	26/02/2004	N/A	46			N/A	N/A	06/02/2003	No	No	No	No
37533 - Choline Chloride	09/12/2004	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Choline Chloride (Vitamin B4 - animal feed)	Art. 101		Yes	Art 7 fine	Leniency	11	22/05/2003	22/05/2003	N/A	77			N/A	N/A	26/05/1999	No	Yes	No	No
37773 -MCAA	19/01/2005	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Monochloroacetic acid (employed in the manufacture of detergents, adhesives)	Art. 101		Yes	Art 7 fine	Leniency	12	07/04/2004	07/04/2004	N/A	67			N/A	N/A	14/03/2000	No	Yes	No	No
37214 - Bundesliga	19/01/2005	Media (content – IP related issues)	Exploitation rights of matches in the first and second national football divisions for men	Art. 101		No	Art 9 behavioural remedy	Ex officio	1	22/10/2003	N/A	18/06/2004	23			N/A	N/A	N/A	No	No	No	No
37507- AstraZeneca	15/06/2005	Pharma / Health Services	Omeprazole-based medicines	Art. 102			Art 7 fine	Complaint	2	25/07/2003	29/07/2003	N/A	214			Yes	12/05/1999	09/02/2000	No	Yes	No	No
39116 - Coca-Cola	22/06/2005	Food (including food retail) / agricultural products	Carbonated soft drinks	Art. 102			Art 9 behavioural remedy	Complaint	4	29/09/2004	N/A	15/10/2004	29			Yes	01/01/1996	01/01/1999	No	No	No	No
38337 -PO/Thread	14/09/2005	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Thread for automotive and other industrial customers	Art. 101		Yes	Art 7 fine	Leniency	16	15/03/2004	18/03/2004	N/A	151			N/A	N/A	07/11/2001	No	Yes	No	No
36623 - 36820 - 37275 Peugeot SA	05/10/2005	Motor vehicles (specify whether new BER applied)	Passenger cars	Art. 101		No	Art 7 fine	Complaint	2	29/04/2004	29/04/2004	N/A	85			Yes	17/07/1997	10/09/1999	No	Yes	No	No
38281 - Raw Tobacco Italy	20/10/2005	Food (including food retail) / agricultural products	Raw tobacco	Art. 101		Yes	Art 7 fine	Ex officio	8	25/02/2004	25/02/2004	N/A	112			N/A	N/A	15/01/2002	No	Yes	No	No
37792 - Microsoft Penalty Payment	10/11/2005	IT / Internet/Consumer electronics (software, computers, iphones…)	Software Interoperability Information	Procedural	Art. 24		Art 23/24	Ex officio	1	24/03/2004	N/A	N/A	54			N/A	N/A	30/07/2004	No	Yes	No	No
38354 - Industrial Bags	30/11/2005	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Plastic industrial bags	Art. 101		Yes	Art 7 fine	Leniency	25	29/04/2004	29/04/2004	N/A	114			N/A	N/A	20/06/2002	No	Yes	No	No
38443 - Rubber Chemicals	21/12/2005	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Rubber chemicals	Art. 101		Yes	Art 7 fine	Leniency	8	12/04/2005	12/04/2005	N/A	106			N/A	N/A	26/09/2002	No	Yes	No	No
38381 - De Beers	22/02/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Mining and quarrying of rough diamonds	Art. 102			Art 9 behavioural remedy	Ex officio	1	14/01/2003	14/01/2003	N/A	18			N/A	N/A	N/A	No	Yes	No	Yes
38173 - FAPL	22/03/2006	Media (content – IP related issues)	Television programming and broadcasting activities, sale of media rights of Premier League football matches	Art. 101		No	Art 9 behavioural remedy	Ex officio	1	17/12/2002	17/12/2002	N/A	12			N/A	N/A	N/A	No	No	No	No
38113 - Prokent/Tomra	29/03/2006	Other services (including social housing)	Reverse vending machines (RVMs)	Art. 102			Art 7 fine	Complaint	7	22/07/2004	01/09/2004	N/A	163			Yes	26/03/2001	26/09/2001	No	Yes	No	No
38348 - Repsol	12/04/2006	Energy	Automotive fuel	Art. 101		No	Art 9 behavioural remedy	Ex officio	1	16/06/2004	N/A	17/06/2004	42			N/A	N/A	N/A	No	Yes	No	Yes
38620 - Hydrogen Peroxide	03/05/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Hydrogen peroxide and sodium perborate	Art. 101		Yes	Art 7 fine	Leniency	17	26/01/2005	26/01/2005	N/A	134			N/A	N/A	25/03/2003	No	Yes	No	No
38645 - Methacrylates	31/05/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	PMMA-moulding compounds, PMMA-solid sheet and PMMA-sanitary ware	Art. 101		Yes	Art 7 fine	Leniency	14	17/08/2005	17/08/2005	N/A	77			N/A	N/A	20/12/2002	No	Yes	No	No
37792 - Microsoft (Penalty Payment)	12/07/2006	IT / Internet/Consumer electronics (software, computers, iphones…)	Software Interoperability Information	Procedural	Art. 24		Art 23/24	Ex officio	1	10/11/2005	01/03/2007	N/A	58			N/A	N/A	30/07/2004	No	Yes	No	No
38456 - Bitumen Netherlands	13/09/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Bitumen	Art. 101		Yes	Art 7 fine	Leniency	31	18/10/2004	18/10/2004	N/A	124			N/A	N/A	01/10/2002	No	Yes	No	No
38121 - Fittings	20/09/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Copper and copper alloy fittings	Art. 101		Yes	Art 7 fine	Leniency	30	22/09/2005	22/09/2005	N/A	128			N/A	N/A	22/03/2001	No	Yes	No	No
38681 - Cannes Agreement	04/10/2006	Media (content – IP related issues)	Central Licensing Agreements	Art. 101		No	Art 9 behavioural remedy	Complaint	18	23/01/2006	N/A	23/01/2006	13			Yes	27/02/2003	N/A	No	No	No	No
38907 - Steel beams re-adoption	08/11/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Manufacture of structural metal products (steel beams)	Art. 101		Yes	Art 7 fine	Ex officio	3	08/03/2006	08/03/2006	N/A	116			N/A	N/A	16/01/1991	No	Yes	No	No
38638 - Butadiene Rubber/ Emulsion Styrene	29/11/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Butadiene Rubber	Art. 101		Yes	Art 7 fine	Leniency	13	12/04/2005	07/06/2005	N/A	66			N/A	N/A	27/03/2003	No	Yes	No	No
39234 - AlloySurcharge re-adoption	20/12/2006	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Stainless steel, alloys	Art. 101		Yes	Art 7 fine	Ex officio	1	05/04/2006	05/04/2006	N/A	46			N/A	N/A	16/03/1995	No	Yes	No	No
38899 - Gas insulated switchgear	24/01/2007	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Gas-insulated Switchgear	Art. 101		Yes	Art 7 fine	Leniency	20	20/04/2006	20/04/2006	N/A	122			N/A	N/A	11/05/2004	No	Yes	No	No
38823 - Elevators and escalators	21/02/2007	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Elevators and escalators including maintenance and modernization services	Art. 101		Yes	Art 7 fine	Ex officio	25	07/10/2005	07/10/2005	N/A	150			N/A	N/A	28/01/2004	No	Yes	No	No
37766 - Netherlands beer market	18/04/2007	Food (including food retail) / agricultural products	Beer	Art. 101		Yes	Art 7 fine	Leniency	6	30/08/2005	30/08/2005	N/A	146			N/A	N/A	13/07/1999	No	Yes	No	No
38784 - Telefónica SA	04/07/2007	Telecom (Infrastructure)	Broadband internet access	Art. 102			Art 7 fine	Complaint	2	20/02/2006	20/02/2006	N/A	233			Yes	11/07/2003	N/A	No	Yes	No	No
39140 -DaimlerChrysler	13/09/2007	Motor vehicles (specify whether new BER applied)	Repair and maintenance services for passenger cars	Art. 101		No	Art 9 behavioural remedy	Ex officio	4	01/12/2006	N/A	01/12/2006	23			N/A	N/A	N/A	No	No	No	No
39141 - Fiat	13/09/2007	Motor vehicles (specify whether new BER applied)	Repair and maintenance services for passenger cars	Art. 101		No	Art 9 behavioural remedy	Ex officio	4	01/12/2006	N/A	01/12/2006	23			N/A	N/A	N/A	No	No	No	No
39142 - Toyota Motor Europe	13/09/2007	Motor vehicles (specify whether new BER applied)	Repair and maintenance services for passenger cars	Art. 101		No	Art 9 behavioural remedy	Ex officio	4	01/12/2006	N/A	01/12/2006	23			N/A	N/A	N/A	No	No	No	No
39143 - Opel	13/09/2007	Motor vehicles (specify whether new BER applied)	Repair and maintenance services for passenger cars	Art. 101		No	Art 9 behavioural remedy	Ex officio	4	01/12/2006	N/A	01/12/2006	23			N/A	N/A	N/A	No	No	No	No
39168 - Fasteners	19/09/2007	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Zip fasteners, other metal and plastic fasteners, attaching machines	Art. 101		Yes	Art 7 fine	Ex officio	13	17/09/2004	16/09/2004 (SO); 7/	N/A	147			N/A	N/A	07/11/2001	No	Yes	No	No

Annex VII - All antitrust decisions, including cartels

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Case number + name	Date of the adoption	Sector	*Specific sector/product concerned (eg. Cars, gas, derivatves…) + indicate if online retail or price manipulation by e.g. use of index or benchmark*	Legal Basis	If procedural case: legal basis	Cartel (only applicable to Art. 101 cases)	Type of decision	Origin of the case	*Number of addressees*	*Date of opening of proceedings*	*Date of Statement of Objections*	*Date of Preliminary Assessment*	*Number of pages of the decision*	*Cartel settlement?*	*Article 7 cooperation?*	*If there is a complaint (see column I), does it concern a formal complaint?*	*If there is a formal complaint (see column O), on which date has the (first) formal complaint has been lodged?*	*Date of the first investigative step (e.g. date of the first inspection or RFI)*	*Was the decision taken as a follow-up on a sector inquiry?*	*Has there been an (non-withdrawn) action for annulment against the decision before EU Courts?*	*If there was a settlement in the decision (see column O), did it concern a hybrid settlement?*	*For commitment decisions: has an action for annulment been lodged by a third party?*
38710 - Bitumen Spain	03/10/2007	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Penetration bitumen	Art. 101		Yes	Art 7 fine	Leniency	13	22/08/2006	22/08/2006	N/A	137			N/A	N/A	01/10/2002	No	Yes	No	No
37860 - Morgan Stanley Dean Witter	03/10/2007	Payment Systems	Payment cards	Art. 101		No	Art 7 fine	Complaint	2	02/08/2004	02/08/2004	N/A	84			Yes	12/04/2000	N/A	No	Yes	No	No
37966 - Distrigas	11/10/2007	Energy	Supply of high-calorific gas	Art. 102			Art 9 behavioural remedy	Ex officio	1	26/02/2004	26/02/2004	N/A	20			N/A	N/A	N/A	No	No	No	No
38606 - Groupement Cartes Bancaires	17/10/2007	Payment Systems	Payment cards	Art. 101		No	Art 7 no fine	Ex officio	1	07/07/2004	18/07/2006	N/A	170			N/A	N/A	20/05/2003	No	Yes	No	No
38432 - Professional videotapes	20/11/2007	IT / Internet/Consumer electronics (software, computers, iphones…)	Professional videotape formats	Art. 101		Yes	Art 7 fine	Ex officio	8	08/03/2007	08/03/2007	N/A	59			N/A	N/A	28/05/2002	No	No	No	No
39165 - Flat Glass	28/11/2007	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	flat glass products for use in buildings	Art. 101		Yes	Art 7 fine	Ex officio	9	03/01/2006	09/03/2007	N/A	119			N/A	N/A	22/02/2005	No	Yes	No	No
38629 - Chloroprene Rubber	05/12/2007	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Chloroprene Rubber	Art. 101		Yes	Art 7 fine	Leniency	11	13/03/2007	13/03/2007	N/A	133			N/A	N/A	27/03/2003	No	Yes	No	No
34579 - Mastercard 36518 - EuroCommerce 38580 - Commerical Cards	19/12/2007	Payment Systems	Multilateral interchange fees (MIF) for cross-border payment card transactions	Art. 101		No	Art 7 no fine/remedies beyond cease and desist	Complaint	3	06/05/1999	06/05/1999	N/A	241			Yes	30/03/1992	01/01/1992	No	Yes	No	No
38628 - Synthetic Rubber (NBR)	23/01/2008	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Nitrile Butadiene Rubber	Art. 101		Yes	Art 7 fine	Leniency	4	03/05/2007	04/05/2007	N/A	34			N/A	N/A	27/03/2003	No	No	No	No
39326 - E.on (breach of seals)	30/01/2008	Energy	Electricity	Procedural	Art. 23.1		Art 23/24	Ex officio	1	29/09/2006	02/10/2006	N/A	43			N/A	N/A	24/05/2006	No	Yes	No	No
37792 - Microsoft (penalty payment)	27/02/2008	IT / Internet/Consumer electronics (software, computers, iphones…)	Windows Work Group Server Operating Systems	Procedural	Art. 24		Art 23/24	Ex officio	1	12/07/2006	01/03/2007	N/A	70			N/A	N/A	30/07/2004	No	Yes	No	No
38700 - Greek lignite	05/03/2008	Energy	Lignite	Art. 102&106			Art 106(3)	Ex officio (informal com	1	01/04/2004	N/A	N/A	77			No	N/A	N/A	Yes	Yes	No	No
38543 - International removal services	11/03/2008	Other services (including social housing)	International removing services	Art. 101		Yes	Art 7 fine	Ex officio	31	18/10/2006	18/10/2006	N/A	153			N/A	N/A	23/08/2003	No	Yes	No	No
38695 - Sodium Chlorate	11/06/2008	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Sodium chlorate	Art. 101		Yes	Art 7 fine	Leniency	8	27/07/2007	27/07/2007	N/A	85			N/A	N/A	10/09/2004	No	Yes	No	No
39180 - Aluminium Fluoride	25/06/2008	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Aluminium fluoride	Art. 101		Yes	Art 7 fine	Leniency	6	24/04/2007	24/04/2007	N/A	75			N/A	N/A	25/05/2005	No	Yes	No	No
38698 - CISAC	16/07/2008	Media (content – IP related issues)	Collecting societies	Art. 101		No	Art 7 no fine/remedies beyond cease and desist	Complaint	24	31/01/2006	31/01/2006	N/A	77			Yes	01/11/2000	11/03/2005	No	Yes	No	No
39181 - Candle waxes	01/10/2008	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Paraffin waxes and slack wax	Art. 101		Yes	Art 7 fine	Leniency	28	25/05/2007	25/05/2007	N/A	180			N/A	N/A	28/04/2005	No	Yes	No	No
39562 - Slovakian postal law	07/10/2008	Post	Hybrid mail	Art. 102&106			Art 106(3)	Ex officio	1	17/06/2008	N/A	N/A	42			N/A	N/A	28/03/2008	No	Yes	No	No
39188 - Bananas	15/10/2008	Food (including food retail) / agricultural products	Bananas	Art. 101		Yes	Art 7 fine	Leniency	8	14/06/2007	20/07/2007	N/A	140			N/A	N/A	02/06/2005	No	Yes	No	No
39125 - Carglass	12/11/2008	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Carglass	Art. 101		Yes	Art 7 fine	Ex officio	18	18/04/2007	18/04/2007	N/A	195			N/A	N/A	22/02/2005	No	Yes	No	No
39388-39389 - E.on electricity	26/11/2008	Energy	Electricity	Art. 102			Art 9 structural remedy	Ex officio (informal com	1	07/05/2008	N/A	07/05/2008	170			No	N/A	01/05/2006	Yes	No	No	No
39406 - Marine Hoses	28/01/2009	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Marine hoses	Art. 101		Yes	Art 7 fine	Leniency	11	28/04/2008	29/04/2008	N/A	126			N/A	N/A	02/05/2007	No	Yes	No	No
39402 - RWE gas foreclosure	18/03/2009	Energy	Gas	Art. 102			Art 9 structural remedy	Ex officio	1	20/04/2007	N/A	05/10/2008	58			N/A	N/A	05/05/2006	Yes	No	No	No
37990 - Intel	13/05/2009	IT / Internet/Consumer electronics (software, computers, iphones…)	Central Processing Units x86	Art. 102			Art 7 fine	Complaint	2	26/07/2007	26/07/2007	N/A	518			Yes	18/10/2000	01/07/2005	No	Yes	No	No
39401 - E.on/GDF	08/07/2009	Energy	Gas	Art. 101		Yes	Art 7 fine	Ex officio	3	30/07/2007	10/06/2008	N/A	123			N/A	N/A	05/05/2006	No	Yes	No	No
39396 - Calcium Carbide	22/07/2009	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Calcium carbide power and magnesium granulates	Art. 101		Yes	Art 7 fine	Leniency	15	24/06/2008	25/06/2008	N/A	94			N/A	N/A	16/01/2007	No	Yes	No	No
38700 - Greek lignite	04/08/2009	Energy	Lignite	Art. 102&106			Art 106(3)	Ex officio	1	01/04/2004	N/A	N/A	18			N/A	N/A	N/A	No	Yes	No	No
37956 - Reinforcing steel bars (re-adoption)	30/09/2009	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Concrete reinforcing bar and other long steel products	Art. 101		Yes	Art 7 fine	Ex officio	11	25/10/2007	26/03/2002	N/A	256			N/A	N/A	19/10/2000	No	Yes	No	No
39129 - Power transformers	07/10/2009	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Power transformers, autotransformers and shunt reactors	Art. 101		Yes	Art 7 fine	Leniency	9	30/09/2008	20/11/2008	N/A	68			N/A	N/A	11/05/2004	No	Yes	No	No
39416 - Ship classification	14/10/2009	Other services (including social housing)	Classification services for merchant ships	Art. 101		No	Art 9 behavioural remedy	Ex officio	2	12/05/2009	N/A	12/05/2009	54			N/A	N/A	29/01/2008	No	No	No	No
38589 - Heat Stabilisers	11/11/2009	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Tin stabilisers, epoxidised soybean oil (ESBO) and esters	Art. 101		Yes	Art 7 fine	Leniency	22	17/03/2009	17/03/2009	N/A	193			N/A	N/A	12/02/2003	No	Yes	No	No
39316 - GDF foreclosure	03/12/2009	Energy	Gas	Art. 102			Art 9 structural remedy	Ex officio	2	16/05/2008	N/A	22/06/2009	21			N/A	N/A	05/05/2006	No	No	No	No
38636 - Rambus	09/12/2009	IT / Internet/Consumer electronics (software, computers, iphones…)	Dynamic Random Access Memory interface technologies	Art. 102			Art 9 behavioural remedy	Complaint	1	27/07/2007	27/07/2007	N/A	17			Yes	18/12/2002	N/A	No	No	No	No
39530 - Microsoft (tying)	16/12/2009	IT / Internet/Consumer electronics (software, computers, iphones…)	Web browsers for client PC operating systems	Art. 102			Art 9 behavioural remedy	Complaint	1	21/12/2007	14/01/2009	N/A	41			Yes	13/12/2007	N/A	No	No	No	No
39386 - Long term electricity contracts in France	17/03/2010	Energy	Electricity	Art. 102			Art 9 behavioural remedy	Ex officio	2	18/07/2007	19/12/2008	N/A	23			N/A	N/A	07/11/2006	No	No	No	No
39351 - Svenska Kraftnät	14/04/2010	Energy	Electricity transmission	Art. 102			Art 9 structural remedy	Complaint	1	01/04/2009	N/A	25/06/2009	25			Yes	20/07/2006	N/A	No	No	No	No
39317 - E.on Gas Foreclosure	04/05/2010	Energy	Gas	Art. 102			Art 9 structural remedy	Ex officio	3	22/12/2009	N/A	22/12/2009	21			N/A	N/A	N/A	No	No	No	No
38511 - Drams	19/05/2010	IT / Internet/Consumer electronics (software, computers, iphones…)	Dynamic Random Access Memory	Art. 101		Yes	Art 7 fine	Leniency	24	10/02/2009	04/02/2010	N/A	41	Yes		N/A	N/A	01/03/2003	No	No	No	No
39092 - Bathroom fittings & fixtures	23/06/2010	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Bathroom fittings and fixtures (taps, fittings, ceramic sanitary ware, shower enclosures)	Art. 101		Yes	Art 7 fine	Leniency	62	08/03/2007	26/03/2007	N/A	377			N/A	N/A	01/11/2004	No	Yes	No	No
36212 - Carbonless paper (CLP) (re-adoption)	23/06/2010	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Carbonless paper	Art. 101		Yes	Art 7 fine	Leniency	1	03/09/2009	26/07/2000	N/A	146			N/A	N/A	23/01/1997	No	Yes	No	No
38344 - Pre-stressing steel	30/06/2010	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Prestressing steel	Art. 101		Yes	Art 7 fine	Ex officio	36	30/09/2008	30/09/2008	N/A	296			N/A	N/A	19/09/2002	No	Yes	No	No
39596 - BA/AA/IB (Oneworld)	14/07/2010	Transport	Transatlantic routes (between Europe and North America)	Art. 101		No	Art 9 structural+behavioural remedy	Complaint	3	08/04/2009	29/09/2009	N/A	52			Yes	30/01/2009	N/A	No	No	No	No
38866 - Animal Feed (phosphates)	20/07/2010	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Feed phosphates	Art. 101		Yes	Art 7 fine	Leniency	11	19/01/2009	23/11/2009	N/A	55	Yes		N/A	N/A	10/02/2004	No	No	Yes	No
38866 - Animal Feed (phosphates)	20/07/2010	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Feed phosphates	Art. 101		Yes	Art 7 fine	Leniency	2	19/01/2009	23/11/2009	N/A	108			N/A	N/A	10/02/2004	No	Yes	No	No
39315 - ENI	29/09/2010	Energy	Gas	Art. 102			Art 9 structural remedy	Ex officio	1	21/12/2007	06/03/2009	N/A	27			N/A	N/A	05/05/2006	No	No	No	No
39258 - Airfreight	09/11/2010	Transport	Air cargo services	Art. 101		Yes	Art 7 fine	Leniency	21	18/12/2007	19/12/2007	N/A	224			N/A	N/A	14/02/2006	No	Yes	No	No
39398 - Visa Debit	08/12/2010	Payment Systems	Multilateral interchange fees (MIF)	Art. 101		No	Art 9 behavioural remedy	Complaint	1	06/03/2008	03/04/2009	N/A	19			Yes	15/06/2009	N/A	No	No	No	No
39510 - LABCO/ONP	08/12/2010	Pharma / Health Services	Clinical laboratory tests	Art. 101		No	Art 7 fine	Complaint	1	19/10/2009	19/10/2009	N/A	149			Yes	12/10/2007	12/11/2008	No	Yes	No	No
39309 - LCD	08/12/2010	IT / Internet/Consumer electronics (software, computers, iphones…)	LCD panels	Art. 101		Yes	Art 7 fine	Leniency	8	27/05/2009	27/05/2009	N/A	119			N/A	N/A	07/12/2006	No	Yes	No	No

Annex VII - All antitrust decisions, including cartels

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Case number + name	Date of the adoption	Sector	*Specific sector/product concerned (eg. Cars, gas, derivatves…) + indicate if online retail or price manipulation by e.g. use of index or benchmark*	Legal Basis	If procedural case: legal basis	Cartel (only applicable to Art. 101 cases)	Type of decision	Origin of the case	*Number of addressees*	*Date of opening of proceedings*	*Date of Statement of Objections*	*Date of Preliminary Assessment*	*Number of pages of the decision*	*Cartel settlement?*	*Article 7 cooperation?*	*If there is a complaint (see column I), does it concern a formal complaint?*	*If there is a formal complaint (see column Q), on which date has the (first) formal complaint has been lodged?*	*Date of the first investigative step (e.g. date of the first inspection or RFI)*	*Was the decision taken as a follow-up on a sector inquiry?*	*Has there been an (non-withdrawn) action for annulment against the decision before EU Courts?*	*If there was a settlement in the decision (see column O), did it concern a hybrid settlement?*	*For commitment decisions: has an action for annulment been lodged by a third party?*
39579 - Consumer detergents	13/04/2011	Consumer Goods	Heavy duty laundry detergent powders	Art. 101		Yes	Art 7 fine	Leniency	5	21/12/2009	09/02/2011	N/A	25	Yes		N/A	N/A	01/06/2008	No	Yes	No	No
39796 - Suez Environment (breach of seal)	24/05/2011	Environment / Waste management	Water and waste water management	Procedural	Art. 23.1		Art 23/24	Ex officio	2	21/05/2010	19/10/2010	N/A	21			N/A	N/A	23/03/2010	No	No	No	No
39525 - Polish Telecom	22/06/2011	Telecom (Infrastructure)	Wholesale broadband access, wholesale network infrastructure access, retail mass market	Art. 102			Art 7 fine	Ex officio	1	17/04/2009	26/02/2010	N/A	268			N/A	N/A	23/09/2008	No	Yes	No	No
39482 - Exotic fruit	12/10/2011	Food (including food retail) / agricultural products	Bananas	Art. 101		Yes	Art 7 fine	Leniency	6	10/12/2009	10/12/2009	N/A	99			N/A	N/A	28/11/2007	No	Yes	No	No
39605 - CRT glass bulbs	19/10/2011	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Cathode Ray Tubes Glass	Art. 101		Yes	Art 7 fine	Leniency	4	29/06/2010	29/07/2011	N/A	27	Yes		N/A	N/A	01/03/2009	No	No	No	No
39592 - ISIN vs. Standard and Poor's	15/11/2011	Financial Services	US International Securities Identification Numbers	Art. 102			Art 9 behavioural remedy	Complaint	1	06/01/2009	13/11/2009	N/A	26			Yes	16/07/2008	N/A	No	No	No	No
39600 - Refrigeration compressors	07/12/2011	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Household and commercial refrigeration compressors	Art. 101		Yes	Art 7 fine	Leniency	10	13/10/2010	11/10/2011	N/A	25	Yes		N/A	N/A	01/02/2009	No	No	No	No
39692 - IBM - Maintenance services	13/12/2011	IT / Internet/Consumer electronics (software, computers, iphones…)	Mainframe computers and mainframe maintenance services	Art. 102			Art 9 behavioural remedy	Ex officio	1	23/07/2010	N/A	01/08/2011	20			N/A	N/A	23/07/2010	No	No	No	No
39452 - Mountings for windows and window-doors	28/03/2012	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Mountings for windows and window doors	Art. 101		Yes	Art 7 fine	Leniency	11	16/06/2010	16/06/2010	N/A	174			N/A	N/A	03/07/2007	No	No	No	No
39462 - Freight Forwarding	28/03/2012	Post	International freight forwarding services	Art. 101		Yes	Art 7 fine	Leniency	44	05/02/2010	05/02/2010	N/A	262			N/A	N/A	10/10/2007	No	Yes	No	No
39793 - EPH (obstruction case)	28/03/2012	Energy	Electricity	Procedural	Art. 23.1		Art 23/24	Ex officio	2	17/05/2010	17/12/2010	N/A	26			N/A	N/A	16/11/2009	No	Yes	No	No
39736 - Siemens/Areva	18/06/2012	Energy	Civil nuclear technologies	Art. 101		No	Art 9 behavioural remedy	Complaint	2	21/05/2010	N/A	16/12/2011	29			Yes	16/10/2009	N/A	No	No	No	No
39611 - Water management products	27/06/2012	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Water management products (pressurisation systems and products for quality assurance)	Art. 101		Yes	Art 7 fine	Leniency	7	27/01/2011	25/04/2012	N/A	21	Yes		N/A	N/A	01/12/2008	No	No	No	No
39966 - Gas insulated switchgear (re-adoption)	27/06/2012	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Gas insulated switchgear	Art. 101		Yes	Art 7 fine	Leniency	2	12/07/2011	N/A	N/A	20			N/A	N/A	11/05/2004	No	Yes	No	No
39437 - TV and computer monitor tubes	05/12/2012	IT / Internet/Consumer electronics (software, computers, iphones…)	Cathode ray tubes (colour display tubes and colour picture tubes)	Art. 101		Yes	Art 7 fine	Leniency	12	23/11/2009	23/11/2009	N/A	361			N/A	N/A	08/11/2007	No	Yes	No	No
39847 - E-books	12/12/2012	Media (content – IP related issues)	E-books	Art. 101		No	Art 9 behavioural remedy	Ex officio	9	01/12/2011	N/A	13/08/2012	34			N/A	N/A	01/03/2011	No	No	No	No
39230 - Reel/Alcan	20/12/2012	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Aluminium reduction (smelting) technology and pot tending assemblies	Art. 101&102			Art 9 behavioural remedy	Complaint	6	20/02/2008	20/02/2008	N/A	36			Yes	24/05/2005	N/A	No	No	No	No
39654 - Reuters instruments codes	20/12/2012	Financial Services	Reuters Instrument Code (consolidated real-time datafeeds)	Art. 102			Art 9 behavioural remedy	Ex officio	2	30/10/2009	N/A	19/09/2011	20			N/A	N/A	01/06/2009	No	Yes	No	Yes
39839 - Telefónica, Portugal Telecom	23/01/2013	Telecom (Infrastructure)	Telecommunication business	Art. 101		No	Art 7 fine	Ex officio	2	19/01/2011	21/10/2011	N/A	114			N/A	N/A	05/01/2011	No	Yes	No	No
39530 - Microsoft	06/03/2013	IT / Internet/Consumer electronics (software, computers, iphones…)	Web browsers for client PC operating systems	Procedural	Art. 23.2		Art 23/24	Ex officio	1	16/07/2012	24/10/2012	N/A	17			N/A	N/A	05/07/2012	No	No	No	No
39727 - CEZ & Others	10/04/2013	Energy	Electricity	Art. 102			Art 9 structural remedy	Ex officio	1	11/07/2011	N/A	26/06/2012	20			N/A	N/A	24/11/2009	No	No	No	No
39595 - Star	23/05/2013	Transport	Transatlantic air transport	Art. 101		No	Art 9 structural remedy	Ex officio	3	08/04/2009	N/A	10/10/2012	35			N/A	N/A	31/07/2008	No	No	No	No
39226 - Lundbeck	19/06/2013	Pharma / Health Services	Citalopram	Art. 101		No	Art 7 fine	Ex officio	12	07/01/2010	24/07/2012	N/A	464			N/A	N/A	01/10/2005	Yes	Yes	No	No
39748 - Automotive Wire Harnesses	10/07/2013	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Wire Harnesses	Art. 101		Yes	Art 7 fine	Leniency	10	09/08/2012	31/05/2013	N/A	38	Yes		N/A	N/A	01/02/2010	No	No	No	No
39847 - E-books (Penguin)	25/07/2013	Media (content – IP related issues)	E-books	Art. 101		No	Art 9 behavioural remedy	Ex officio	2	01/12/2011	N/A	13/08/2012	27			N/A	N/A	01/03/2011	No	No	No	No
39633 Shrimps	27/11/2013	Food (including food retail) / agricultural products	Shrimps	Art. 101		Yes	Art 7 fine	Leniency	10	12/07/2012	12/07/2012	N/A	117			N/A	N/A	24/03/2009	No	Yes	No	No
39861 Yen Interest Rate Derivatives (YIRD)	04/12/2013	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	12	12/02/2013	29/10/2013	N/A	43	Yes		N/A	N/A	20/04/2011	No	No	Yes	No
39914 Euro Interest Rate Derivatives	04/12/2013	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	12	05/03/2013	29/10/2013	N/A	30	Yes		N/A	N/A	18/10/2011	No	No	Yes	No
39685 - Fentanyl	10/12/2013	Pharma / Health Services	Pain-killer fentanyl	Art. 101		No	Art 7 fine	Ex officio	4	18/10/2011	30/01/2013	N/A	147			N/A	N/A	01/07/2010	Yes	No	No	No
39678 - Deutsche Bahn I and 39731 Deutsche Bahn II	18/12/2013	Transport	supplying traction current to railway companies	Art. 102			Art 9 behavioural remedy	Complaint	5	13/06/2012	N/A	06/06/2013	28			Yes	11/05/2009	29/03/2011	No	No	No	No
39801 Polyurethane foam	29/01/2014	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	polyurethane foam	Art. 101		Yes	Art 7 fine	Leniency	30	15/11/2012	23/10/2013	N/A	32	Yes		N/A	N/A	27/07/2010	No	No	No	No
39398 - Visa credit	26/02/2014	Payment Systems	Multilateral interchange fees (MIF)	Art. 101		No	Art 9 behavioural remedy	Complaint	1	26/03/2008	31/07/2012	N/A	27			Yes	15/06/2009	N/A	No	No	No	No
39984 - OPCOM	05/03/2014	Energy	Power exchanges	Art. 102			Art 7 fine	Ex officio	2	11/12/2012	29/05/2013	N/A	73			N/A	N/A	22/02/2013	No	No	No	No
39952 Power exchanges	05/03/2014	Energy	Power exchanges	Art. 101		Yes	Art 7 fine	Ex officio	2	22/03/2013	11/12/2013	N/A	23	Yes		N/A	N/A	07/02/2012	No	No	No	No
39922 - Bearings	19/03/2014	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Automotive bearings	Art. 101		Yes	Art 7 fine	Leniency	19	22/01/2013	21/01/2014	N/A	32	Yes		N/A	N/A	08/11/2011	No	No	No	No
39792 - Steel abrasives	02/04/2014	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Steel abrasives	Art. 101		Yes	Art 7 fine	Leniency	6	16/01/2013	13/02/2014	N/A	27	Yes		N/A	N/A	15/06/2010	No	No	Yes	No
39610 - Power cables	02/04/2014	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	High voltage power cables	Art. 101		Yes	Art 7 fine	Leniency	26	30/06/2011	30/06/2011	N/A	264			N/A	N/A	01/01/2009	No	Yes	No	No
39939 - Samsung	29/04/2014	IT / Internet/Consumer electronics (software, computers, iphones…)	UMTS standards essential patents	Art. 102			Art 9 behavioural remedy	Ex officio	5	30/01/2012	21/12/2012	N/A	27			N/A	N/A	13/10/2011	No	No	no	No
39985 - Motorola Mobility	29/04/2014	IT / Internet/Consumer electronics (software, computers, iphones…)	GPRS standard essential patents	Art. 102			Art 7 no fine/remedies beyond cease and desist	Complaint	1	02/04/2012	06/05/2013	N/A	99			Yes	14/02/2012	03/05/2012	No	No	No	No
39965 - Canned mushrooms	25/06/2014	Food (including food retail) / agricultural products	Canned mushrooms	Art. 101		Yes	Art 7 fine	Leniency	8	16/01/2013	15/05/2014	N/A	26	Yes		N/A	N/A	28/02/2012	No	No	Yes	No
39612 - Servier	09/07/2014	Pharma / Health Services	Perindopril	Art. 101&102			Art 7 fine	Ex officio	13	02/07/2009	27/07/2012	N/A	809			N/A	N/A	24/11/2008	No	Yes	No	No
39574 - Smart card chips	03/09/2014	IT / Internet/Consumer electronics (software, computers, iphones…)	Smart card chips	Art. 101		Yes	Art 7 fine	Leniency	6	28/03/2011	18/04/2013	N/A	123			N/A	N/A	21/10/2008	No	Yes	No	No
39523 - Slovak Telekom	15/10/2014	Telecom (Infrastructure)	Broadband internet access	Art. 102			Art 7 fine	Ex officio	2	08/04/2009	07/05/2012	N/A	381			N/A	N/A	13/06/2008	No	Yes	No	No
39924 - Derivatives based on Swiss Franc LIBOR	21/10/2014	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	10	24/07/2013	23/09/2014	N/A	18	Yes		N/A	N/A	22/03/2012	No	No	No	No
39924 - Bid-ask spreads charged on Swiss franc rates deri	21/10/2014	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	8	24/07/2013	23/09/2014	N/A	20	Yes		N/A	N/A	22/03/2012	No	No	No	No
39780 - Envelopes	10/12/2014	Consumer Goods	Envelopes	Art. 101		Yes	Art 7 fine	Ex officio	16	10/12/2013	18/11/2014	N/A	30	Yes		N/A	N/A	14/09/2010	No	Yes	No	No
39861 - Yen Interest Rate Derivatives (YIRD)	04/02/2015	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	3	29/10/2013	06/06/2014	N/A	90			N/A	N/A	20/04/2011	No	Yes	No	No
39964 - Air France-KLM / Delta / Alitalia	12/05/2015	Transport	Transatlantic air transport	Art. 101		No	Art 9 behavioural remedy	Ex officio	4	23/01/2012	N/A	26/09/2014	40			N/A	N/A	16/03/2012	No	No	No	No
40055 - Parking Heaters	17/06/2015	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Cars and trucks	Art. 101		Yes	Art 7 fine	Leniency	6	24/07/2014	06/05/2015		25	Yes		N/A	N/A	23/07/2013	No	No	No	No

Annex VII - All antitrust decisions, including cartels

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Case number + name	Date of the adoption	Sector	*Specific sector/product concerned (eg. Cars, gas, derivatves…) + indicate if online retail or price manipulation by e.g. use of index or benchmark*	Legal Basis	If procedural case: legal basis	Cartel (only applicable to Art. 101 cases)	Type of decision	Origin of the case	*Number of addressees*	*Date of opening of proceedings*	*Date of Statement of Objections*	*Date of Preliminary Assessment*	*Number of pages of the decision*	*Cartel settlement?*	*Article 7 cooperation?*	*If there is a complaint (see column I), does it concern a formal complaint?*	*If there is a formal complaint (see column Q), on which date has the (first) formal complaint has been lodged?*	*Date of the first investigative step (e.g. date of the first inspection or RFI)*	*Was the decision taken as a follow-up on a sector inquiry?*	*Has there been an (non-withdrawn) action for annulment against the decision before EU Courts?*	*If there was a settlement in the decision (see column O), did it concern a hybrid settlement?*	*For commitment decisions: has an action for annulment been lodged by a third party?*
39563 - Retail Food Packaging	24/06/2015	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Packaging materials / retail food packaging	Art. 101		Yes	Art 7 fine	Leniency	41	21/09/2012	21/09/2012		283			N/A	N/A	04/06/2008	No	Yes	No	No
40098 - Blocktrains	15/07/2015	Transport	Cargo train services	Art. 101		Yes	Art 7 fine	Leniency	10	10/06/2014	26/05/2015		25	Yes		N/A	N/A	18/06/2013	No	No	No	No
39639 - Optical Disk Drives	21/10/2015	IT / Internet/Consumer electronics (software, computers, iphones…)	Optical disk drives	Art. 101		Yes	Art 7 fine	Leniency	15	18/07/2012	18/07/2012		172			N/A	N/A	29/06/2009	No	Yes	No	No
39767 - BEH Electricity	10/12/2015	Energy	Supply of electricity	Art. 102			Art 9 behavioural remedy	Ex officio	1	27/11/2012	12/08/2014	N/A	25			N/A	N/A	24/04/2013	No	No	No	No
40028 - Alternators and starters	27/01/2016	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Car parts (alternators and starters)	Art. 101		Yes	Art 7 fine	Leniency	4	24/09/2015	23/11/2015		26	Yes		N/A	N/A	22/07/2011	No	No	No	No
39965 - Canned mushrooms	06/04/2016	Food (including food retail) / agricultural products	Canned mushrooms	Art. 101		Yes	Art 7 fine	Leniency	2	16/01/2013	27/05/2015		33			N/A	N/A	28/02/2012	No	Yes	No	No
39792 - Steel abrasives	25/05/2016	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Steel abrasives	Art. 101		Yes	Art 7 fine	Leniency	1	16/01/2013	03/12/2014		61			N/A	N/A	15/06/2010	No	Yes	No	No
39850 - Container Shipping	07/07/2016	Transport	Container shipping	Art. 101		No	Art 9 behavioural remedy	Ex officio	27	21/11/2013	N/A	26/11/2015	19			N/A	N/A	17/05/2011	No	No	No	No
39824 - Trucks	19/07/2016	Motor vehicles (specify whether new BER applied)	Trucks	Art. 101		Yes	Art 7 fine	Leniency	15	20/11/2014	20/11/2014		32	Yes		N/A	N/A	18/01/2011	No	No	Yes	No
39745 - CDS - Information Market (ISDA)	20/07/2016	Financial Services	Credit default swaps	Art. 101		No	Art 9 behavioural remedy	Ex officio	2	20/04/2011	01/07/2013		13			N/A	N/A	N/A	No	No	No	No
40023 - Cross-border access to pay-TV	26/07/2016	Media (content – IP related issues)	Pay-TV	Art. 101		No	Art 9 behavioural remedy	Ex officio	2	13/01/2014	23/07/2015		19			N/A	N/A	18/07/2012	No	Yes	No	Yes
39759 - ARA foreclosure	20/09/2016	Environment / Waste management		Art. 102			Art 7 fine/remedies beyond cease and desist	Ex officio	1	15/07/2011	17/07/2013		41		Yes	N/A	N/A	23/11/2010	No	No	No	No
39914-Euro Interest Rate Derivatives	07/12/2016	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	8	05/03/2013	29/10/2013		221			N/A	N/A	18/10/2011	No	Yes	No	No
39904-Rechargeable batteries	12/12/2016	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Manufacture of batteries and accumulators	Art. 101		Yes	Art 7 fine	Leniency	3	04/03/2015	28/09/2016		5	Yes		N/A	N/A	01/06/2012	No	No	No	No
40018-Car battery recycling	08/02/2017	Environment / Waste management	Recycling of car and truck batteries	Art. 101		Yes	Art 7 fine	Leniency	11	24/06/2015	24/06/2015		93			N/A	N/A	26/09/2012	No	Yes	No	No
39960-Thermal systems	08/03/2017	Motor vehicles (specify whether new BER applied)	Air conditioning and engine cooling components for cars	Art. 101		Yes	Art 7 fine	Leniency	14	21/12/2015	16/01/2017		39	Yes		N/A	N/A	22/07/2011	No	No	No	No
39258 - Airfreight (re-adoption)	17/03/2017	Transport	Air cargo services	Art. 101		Yes	Art 7 fine	Leniency	19	18/12/2007	18/12/2007		241			N/A	N/A	14/02/2006	No	Yes	No	No
40153-Amazon e-books	04/05/2017	Media (content – IP related issues)	E-books	Art. 102			Art 9 behavioural remedy	Ex officio	4	11/06/2015 9/12/2016	N/A	09/12/2016	47			N/A	N/A	01/12/2013	No	No	No	No
39780 - Envelopes readoption	16/06/2017	Consumer Goods	Envelopes	Art. 101		Yes	Art 7 fine	Ex officio	5	10/12/2013	18/11/2014		19			N/A	N/A	14/09/2010	No	Yes	No	No
40013 - Lighting Systems	21/06/2017	Motor vehicles (specify whether new BER applied)	Lightning systems	Art. 101		Yes	Art 7 fine	Leniency	6	18/05/2016	10/05/2017		28	Yes		N/A	N/A	31/07/2012	No	No	No	No
39740 - Google Search	27/06/2017	IT / Internet/Consumer electronics (software, computers, iphones…)	Search engine	Art. 102			Art 7 fine/remedies beyond cease and desist	Complaint	2	30/11/2010	15/04/2015		215			Yes	03/11/2009	N/A	No	Yes	No	No
39824 - Trucks	27/09/2017	Motor vehicles (specify whether new BER applied)	Trucks	Art. 101		Yes	Art 7 fine	Leniency	3	20/11/2014	20/11/2014		107			N/A	N/A	18/01/2011	No	Yes	No	No
39813-Baltic rail transport	02/10/2017	Transport	Rail transport	Art. 102			Art 7 fine/remedies beyond cease and desist	Complaint	1	06/03/2013	05/01/2015		106			Yes	14/07/2010	08/03/2011	No	Yes	No	No
39881-Occupant Safety Systems	22/11/2017	Motor vehicles (specify whether new BER applied)	Cars	Art. 101		Yes	Art 7 fine	Leniency	6	04/04/2016	26/09/2017		39	Yes		N/A	N/A	07/06/2011	No	No	No	No
40208 - International Skating Union's Eligibility rules	08/12/2017	Other services (including social housing)	Sports	Art. 101		No	Art 7 no fine	Complaint	1	05/10/2015	27/09/2016		86			Yes	23/06/2014	N/A	No	Yes	No	No
40220-Qualcomm exclusivity	24/01/2018	It / Internet/Consumer electronics (software, computers, iphones…)	Chipsets	Art. 102			Art 7 fine	Ex officio	1	16/07/2015	08/12/2015		136			N/A	N/A	12/08/2014	No	Yes	No	No
40009-Maritime Car Carriers	21/02/2018	Transport	Maritime car transport of vehicles	Art. 101		Yes	Art 7 fine	Leniency	12	12/10/2016	08/12/2017		32	Yes		N/A	N/A	01/09/2012	No	No	No	No
40113-Spark plugs	21/02/2018	Motor vehicles (specify whether new BER applied)	Car parts (spark plugs)	Art. 101		Yes	Art 7 fine	Leniency	4	17/10/2016	04/12/2017		25	Yes		N/A	N/A	22/07/2011	No	No	No	No
39920-Braking systems	21/02/2018	Motor vehicles (specify whether new BER applied)	Car parts (electronic and hydraulic braking systems)	Art. 101		Yes	Art 7 fine	Leniency	7	22/09/2016	04/12/2017		26	Yes		N/A	N/A	22/11/2011	No	No	No	No
40136-Capacitors	21/03/2018	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Capacitors (electrical components that store energy electrostatically in an electric field, and are used in a wide variety of electric and electronic products).	Art. 101		Yes	Art 7 fine	Leniency	15	04/11/2015	04/11/2015		324			N/A	N/A	28/03/2014	No	Yes	No	No
38700 - Greek lignite	17/04/2018	Energy	Lignite	Art. 102&106			Art 106(3)	Ex officio (informal com	1	01/04/2004	N/A	N/A	19			No	N/A	N/A	No	No	No	No
39816 Upstream gas supplies in Central and Eastern Europ	24/05/2018	Energy	Gas	Art. 102			Art 9 behavioural remedy	Ex officio	2	31/08/2012	22/04/2015	N/A	36			N/A	N/A	27/09/2011	No	Yes	No	Yes
40099 Google Android	18/07/2018	IT / Internet/Consumer electronics (software, computers, iphones…)	Mobile application	Art. 102			Art 7 fine/remedies beyond cease and desist	Complaint	2	15/04/2015	20/04/2016	N/A	328			Yes	25/03/2013	12/06/2013	No	Yes	No	No
40465 Asus	24/07/2018	IT / Internet/Consumer electronics (software, computers, iphones…)	consumer electronics products	Art. 101		No	Art 7 fine	Ex officio	3	02/02/2017	24/05/2018		24		Yes	N/A	N/A	10/03/2015	Yes	No	No	No
40469 Denon & Marantz	24/07/2018	IT / Internet/Consumer electronics (software, computers, iphones…)	consumer electronics products	Art. 101		No	Art 7 fine	Ex officio	3	02/02/2017	13/06/2018		26		Yes	N/A	N/A	10/03/2015	Yes	No	No	No
40181 Philips	24/07/2018	IT / Internet/Consumer electronics (software, computers, iphones…)	consumer electronics products	Art. 101		No	Art 7 fine	Ex officio	2	02/02/2017	07/06/2018		19		Yes	N/A	N/A	03/12/2013	Yes	No	No	No
40182 Pioneer	24/07/2018	IT / Internet/Consumer electronics (software, computers, iphones…)	consumer electronics products	Art. 101		No	Art 7 fine	Ex officio	3	03/02/2017	07/06/2018		34		Yes	N/A	N/A	03/12/2013	Yes	No	No	No
40461 TenneT	07/12/2018	Energy	electricity	Art. 102			Art 9 behavioural remedy	Ex officio	1	19/03/2018	N/A	19/03/2018	22			N/A	N/A	01/06/2014	No	No	No	No
40428 Guess	17/12/2018	Consumer Goods	online retail of clothing	Art. 101		No	Art 7 fine	Ex officio	3	06/06/2017	12/11/2018		43		Yes	N/A	N/A	06/06/2017	Yes	No	No	No
39849 BEH Gas	17/12/2018	Energy	natural gas infrastructure	Art. 102			Art 7 fine	Ex officio	3	04/07/2013	23/03/2015		166			N/A	N/A	03/07/2010	No	Yes	No	No
40049 MasterCard II	22/01/2019	Payment systems	Cross-border aquiring rules	Art. 101		No	Art 7 fine	Ex officio	3	09/04/2013	09/07/2015		27		Yes	N/A	N/A	26/04/2013	No	No	No	No
40481 Occupant safety systems 2	05/03/2019	Motor vehicles (specify whether new BER applied)	Car parts (seatbelts, airbags, steering wheels)	Art. 101		Yes	Art 7 fine	Leniency	7	07/07/2017	10/01/2019		33	Yes		N/A	N/A	07/06/2011	No	No	No	No
40023 - Cross-border access to pay-TV	07/03/2019	Media (content – IP related issues)	Pay-TV	Art. 101		No	Art 9 behavioural remedy	Ex officio	12	13-01-2014 23-07-2015 12-01-2018	23-07-2015 12-01-2018 (SSO)		24			N/A	N/A	18/07/2012	No	Yes	No	Yes
40411 - Google AdSense	20/03/2019	IT / Internet/Consumer electronics (software, computers, iphones…)	Online search advertising	Art. 102			Art 7 fine	Complaint	2	30/11/2010	14-07-2016 (SO) ; 06-06-2017 (First	13/03/2013	204			Yes	22/01/2010	10/02/2010	No	Yes	No	No
40436 - Sports merchandise -Nike	25/03/2019	Consumer Goods	Licensing of IPRs for manufacture and distribution of products	Art. 101		No	Art 7 fine	Ex officio	6	14-06-2017 14-02-2019	14/02/2019		39		Yes	N/A	N/A	01/09/2016	No	No	No	No
39398 Visa Inter-regional MIF	29/04/2019	Payment Systems	Multilateral interchange fees (MIF)	Art. 101		No	Art 9 behavioural remedy	Ex officio (informal com	2	26/03/2008	SO 25-05-2009; SSO 30-07-2012; SSO		23			No	N/A	04/09/2009	No	No	No	No
40049 MasterCard Inter-regional MIF	29/04/2019	Payment Systems	Multilateral interchange fees (MIF)	Art. 101		No	Art 9 behavioural remedy	Ex officio (informal com	3	09/04/2013	09/07/2015		22			No	N/A	N/A	No	No	No	No
40134 InBev	13/05/2019	Food (including food retail) / agricultural products	Beer	Art. 102			Art 7 fine/remedies beyond cease and desist	Ex officio	3	29/06/2016	30/11/2017		60		Yes	N/A	N/A	22/01/2015	No	No	No	No
40135 Forex (Essex)	16/05/2019	Financial Services	Foreign currency spot trading (partial manipulation of benchmark)_	Art. 101		Yes	Art 7 fine	Leniency	9	27/10/2016	24/07/2018		43	Yes		N/A	N/A	27/10/2016	No	No	No	No

Annex VII - All antitrust decisions, including cartels

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Case number + name	Date of the adoption	Sector	*Specific sector/product concerned (eg. Cars, gas, derivatves…) + indicate if online retail or price manipulation by e.g. use of index or benchmark*	Legal Basis	If procedural case: legal basis	Cartel (only applicable to Art. 101 cases)	Type of decision	Origin of the case	*Number of addressees*	*Date of opening of proceedings*	*Date of Statement of Objections*	*Date of Preliminary Assessment*	*Number of pages of the decision*	*Cartel settlement?*	*Article 7 cooperation?*	*If there is a complaint (see column I), does it concern a formal complaint?*	*If there is a formal complaint (see column Q), on which date has the (first) formal complaint has been lodged?*	*Date of the first investigative step (e.g. date of the first inspection or RFI)*	*Was the decision taken as a follow-up on a sector inquiry?*	*Has there been an (non-withdrawn) action for annulment against the decision before EU Courts?*	*If there was a settlement in the decision (see column O), did it concern a hybrid settlement?*	*For commitment decisions: has an action for annulment been lodged by a third party?*
40135 Forex (TWBS)	16/05/2019	Financial Services	Foreign currency spot trading (partial manipulation of benchmark)_	Art. 101		Yes	Art 7 fine	Leniency	12	27/10/2016	24/07/2018		45	Yes		N/A	N/A	27/10/2016	No	No	No	No
37956 - Reinforcing steel bars (second re-adoption)	04/07/2019	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Concrete reinforcing bar and other long steel products	Art. 101		Yes	Art 7 fine	Ex officio	6	26/03/2002	26/03/2002	N/A	223			N/A	N/A	19/10/2000	No	Yes	No	No
40432 Character merchandise -Sanrio	09/07/2019	Consumer Goods	Licensing of IPRs for manufacture and distribution of products	Art. 101		No	Art 7 fine	Ex officio	3	14/06/2017	29/05/2019		29		Yes	N/A	N/A	01/09/2016	No	No	No	No
39711 Qualcomm predation	18/07/2019	It / Internet/Consumer electronics (software, computers, iphones…)	Chipsets	Art. 102			Art 7 fine	Complaint	1	16/07/2015	08/12/2015		372			Yes	30/06/2009	07/06/2010	No	Yes	No	No
40127 Canned vegetables settlement	27/09/2019	Food (including food retail) / agricultural products	Food / Other processing and preserving of fruit and vegetables	Art. 101		Yes	Art 7 fine	Leniency	9	17/02/2017	25/07/2019		27	Yes		N/A	N/A	01/10/2013	No	No	Yes	No
40608 - Broadcom	16/10/2019	It / Internet/Consumer electronics (software, computers, iphones…)	Chipsets	Procedural	Article 8		Art 8 interim measures	Ex officio	1	26/06/2019	26/06/2019		128			N/A	N/A	24/10/2018	No	Yes	No	No
40433 - Film merchandise - Universal	30/01/2020	Consumer Goods	Licensing of IPRs for manufacture and distribution of products	Art. 101		No	Art 7 fine	Ex officio	10	14/06/2017	29/11/2019		38		Yes	N/A	N/A	01/09/2016	No	No	No	No
40528 - Melia	21/02/2020	Other services (including social housing)	Hotel accommodation	Art. 101		No	Art 7 fine	Ex officio	1	02/02/2017	04/11/2019		20		Yes	N/A	N/A	02/03/2016	No	No	No	No
40335 - Romanian gas interconnectors	06/03/2020	Energy	Natural gas infrastructure	Art. 102			Art 9 behavioural remedy	Ex officio	1	30/05/2017	N/A	10/09/2018	27			N/A	N/A	06/06/2016	No	No	No	No
40410 Ethylene	14/07/2020	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Ethylene	Art. 101		Yes	Art 7 fine	Leniency	11	10/07/2018	07/02/2020		32	Yes		N/A	N/A	16/05/2017	No	Yes	No	No
40299 - Closure systems	29/09/2020	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Closure systems for cars	Art. 101		Yes	Art 7 fine	Leniency	10	09/07/2019	30/06/2020		31	Yes		N/A	N/A	12/01/2016	No	No	No	No
40608 - Broadcom	07/10/2020	Telecom (Infrastructure)	Manufacture of communication equipment (chipset for modems and set-top boxes)	Art. 102			Art 9 behavioural remedy	Ex officio	1	26/06/2019	26/06/2019	26/06/2019	33			N/A	N/A	24/10/2018	No	No	No	No
39686 - Cephalon	26/11/2020	Pharma / Health Services	A modafinil-based medicine used for the treatment of excessive daytime sleepiness	Art. 101		No	Art 7 fine	Ex officio	2	28/04/2011	17/07/2017		379			N/A	N/A	09/12/2009	Yes	Yes	No	No
39563 - Retail Food Packaging - readoption	17/12/2020	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Packaging materials / retail food packaging	Art. 101		Yes	Art 7 fine	Leniency	3	21/09/2012	21/09/2012		24			N/A	N/A	04/06/2008	No	Yes	No	No
40413 - Focus Home - Video Games	20/01/2021	IT / Internet/Consumer electronics (software, computers, iphones…)	Video games	Art. 101		No	Art 7 fine	Ex officio	1	02/02/2017	05/04/2019		55		Yes	N/A	N/A	02/02/2017	Yes	No	No	No
40414 - Koch Media - Video Games	20/01/2021	IT / Internet/Consumer electronics (software, computers, iphones…)	Video games	Art. 101		No	Art 7 fine	Ex officio	3	02/02/2017	05/04/2019		53		Yes	N/A	N/A	02/02/2017	Yes	No	No	No
40420 - Zenimax - Video Games	20/01/2021	IT / Internet/Consumer electronics (software, computers, iphones…)	Video games	Art. 101		No	Art 7 fine	Ex officio	3	02/02/2017	05/04/2019		43		Yes	N/A	N/A	02/02/2017	Yes	No	No	No
40422 - Bandai Namco - Video Games	20/01/2021	IT / Internet/Consumer electronics (software, computers, iphones…)	Video games	Art. 101		No	Art 7 fine	Ex officio	2	02/02/2017	05/04/2019		43		Yes	N/A	N/A	02/02/2017	Yes	No	No	No
40424 - Capcom - Video Games	20/01/2021	IT / Internet/Consumer electronics (software, computers, iphones…)	Video games	Art. 101		No	Art 7 fine	Ex officio	3	02/02/2017	05/04/2019		39		Yes	N/A	N/A	02/02/2017	Yes	No	No	No
(Valve) 40413 - Focus Home - Video Games 40414 - Koch media - Video Games 40420 - Zenimax - Video Games 40422 - Bandai Namco - Video Games 40424 - Capcom - Video Games	20/01/2021	IT / Internet/Consumer electronics (software, computers, iphones…)	Video games	Art. 101		No	Art 7 fine	Ex officio	1	02/02/2017	05/04/2019		136			N/A	N/A	02/02/2017	Yes	Yes	No	No
40394 - Aspen	10/02/2021	Pharma / Health Services	Cancer medicines	Art. 102			Art 9 behavioural remedy	Ex officio	2	15/05/2017	N/A	19/06/2020	45			N/A	N/A	06/02/2017	No	No	No	No
40330 - Rail cargo	20/04/2021	Transport	Rail transport	Art. 101		Yes	Art 7 fine	Leniency	8	04/04/2019	04/12/2020		30	Yes		N/A	N/A	29/09/2015	No	No	No	No
40346 - SSA Bonds	28/04/2021	Financial Services	Bonds	Art. 101		Yes	Art 7 fine	Leniency	9	20/12/2018	21/12/2018		264			N/A	N/A	04/12/2015	No	Yes	No	No
40324 - EGB	20/05/2021	Financial Services	Bonds	Art. 101		Yes	Art 7 fine	Leniency	13	31/01/2019	31/01/2019		248			N/A	N/A	20/03/2017	No	Yes	No	No
39861 - Yen Interest Rate Derivatives (YIRD) re-adoption	28/05/2021	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	3	29/10/2013	06/06/2014		15			N/A	N/A	20/04/2011	No	No	No	No
39914 Euro Interest Rate Derivatives - re-adoption	28/06/2021	Financial Services	Financial derivatives	Art. 101		Yes	Art 7 fine	Leniency	3	05/03/2013	19/05/2014		41			N/A	N/A	18/10/2011	No	No	No	No
40178 - Car Emissions	08/07/2021	Motor vehicles (specify whether new BER applied)	Car manufacture	Art. 101		Yes	Art 7 fine	Leniency	5	18/09/2018	5/04/2019 21/05/2021 (Settl)		53	Yes		N/A	N/A	01/10/2017	No	No	No	No
40127 - Canned Vegetables	19/11/2021	Food (including food retail) / agricultural products	Food / Other processing and preserving of fruit and vegetables	Art. 101		Yes	Art 7 fine	Leniency	2	17/02/2017	05/10/2020	17/02/2017	157			N/A	N/A	01/10/2013	No	Yes	No	No
40135 - Forex (Sterling Lads)	02/12/2021	Financial Services	Foreign currency spot trading (partial manipulation of benchmark)	Art. 101		Yes	Art 7 fine	Leniency	8	27/10/2016	24/07/2018 (Settl.) 18/03/2021 (SSO)		48	Yes		N/A	N/A	25/07/2014	No	Yes	Yes	No
40135 - Forex (Sterling Lads)	02/12/2021	Financial Services	Foreign currency spot trading (partial manipulation of benchmark)	Art. 101		Yes	Art 7 fine	Leniency	3	27/10/2016	24/07/2018		191			N/A	N/A	25/07/2014	No	Yes	No	No
40054 - Ethanol benchmarks	10/12/2021	Energy	Wholesale of solid, liquid and gaseous fuels and related products	Art. 101		Yes	Art 7 fine	Ex officio	1	14.05.2013	07/07/2022	14/05/2013	1	Yes		N/A	N/A	14/05/2013	No	No	No	No
39839 - Telefónica and Portugal Telecom re-adoption	25/01/2022	Telecom (Infrastructure)	Telecommunication business	Art. 101		No	Art 7 fine	Ex officio	2	19/01/2011	21/10/2011	N/A	141			N/A	N/A	05/01/2011	No	Yes	No	No
40511 - Insurance Ireland: Insurance claims database and conditions of access	30/06/2022	Other services (including social housing)	Motor vehicle insurance services	Art. 101		No	Art 9 behavioural remedy	Ex officio	1	14/05/2019	18/06/2021	18/06/2021	30			N/A	N/A	04/07/2017	No	No	No	No
40305 - Network sharing - Czech Republic	11/07/2022	Telecom (Infrastructure)	Retail mobile telecommunication services, wholesale market for access and call origination on public mobile networks	Art. 101		No	Art 9 behavioural remedy	Complaint	5	25/10/2016	07/08/2019	27/08/2021	44			Yes	08/05/2015	N/A	No	No	No	No
40522 - Metal packaging	12/07/2022	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Metal closures coated with BPA-free lacquers or BPA-containing lacquers, Metal cans coated with BPA-free lacquers	Art. 101		Yes	Art 7 fine	Ex officio	7	19/04/2018	19/05/2022	N/A	23	Yes		N/A	N/A	24/04/2018	No	Yes	No	No
40547 - Styrene monomer	29/11/2022	Basic Industries, manufacturing industries (chemicals, mechanical industries and other manufacture, construction)	Styrene monomer	Art. 101		Yes	Art 7 fine	Leniency	16	17/07/2020	29/09/2022	N/A	38	Yes		N/A	N/A	05/06/2018	No	No	No	No
40462 - Amazon Marketplace 40703 - Amazon Buy Box	20/12/2022	IT / Internet/Consumer electronics (software, computers, iphones…)	E-commerce markets	Art. 102			Art 9 behavioural remedy	Ex officio	4	AT.40462: 17/07/2019 AT.40703: 10/11/2020	AT.40462: 10/11/2020	AT.40703: 15/06/2022	47			N/A	N/A	25/11/2016	No	No	No	No

Year	Case number	Case title	Re-adoption or amendment	Total amount in EUR [as adopted by Commission]	Total amount for calculation in EUR [re-adoptions and amendments taken into account]	Total amount for calculation in EUR [corrections by GC and/or ECJ taken into account]	Fined procedural infringement(s)
2004	AT.37533	Choline Chloride		€ 66,340,000.00	€ 66,340,000.00	€ 57,884,000.00	
2004	AT.37980	Souris Bleue/Topps		€ 1,590,000.00	€ 1,590,000.00	€ 1,590,000.00	
2004	AT.38549	Architectes belges		€ 100,000.00	€ 100,000.00	€ 100,000.00	
2004	AT.36756	Sodium gluconate re - adoption	Adoption in 2001	€ 19,040,000.00	€ 19,040,000.00	€ 19,040,000.00	
2004	AT.37750	French beer		€ 2,500,000.00	€ 2,500,000.00	€ 2,500,000.00	
2004	AT.38238	Spanish Raw Tobacco	Amendment in 2017	€ 20,038,000.00	€ 19,795,000.00	€ 13,388,800.00	
2004	AT.38338	Hard haberdashery (needles)		€ 60,000,000.00	€ 60,000,000.00	€ 47,000,000.00	
2004	AT.38069	Copper plumbing tubes		€ 222,291,100.00	€ 222,291,100.00	€ 214,953,800.00	
2005	AT.37773	MCAA		€ 216,910,000.00	€ 216,910,000.00	€ 209,507,000.00	
2005	AT.38337	PO/Thread		€ 43,497,000.00	€ 43,497,000.00	€ 43,374,800.00	
2005	AT.36623	Peugeot SA		€ 49,500,000.00	€ 49,500,000.00	€ 44,550,000.00	
2005	AT.38281	Raw Tobacco Italy		€ 56,052,000.00	€ 56,052,000.00	€ 55,002,000.00	
2005	AT.38354	Industrial Bags		€ 290,710,000.00	€ 290,710,000.00	€ 279,430,000.00	
2005	AT.38443	Rubber Chemicals		€ 75,860,000.00	€ 75,860,000.00	€ 75,860,000.00	
2005	AT.37507	AstraZeneca		€ 60,000,000.00	€ 60,000,000.00	€ 52,500,000.00	
2006	AT.38113	Prokent/Tomra		€ 24,000,000.00	€ 24,000,000.00	€ 24,000,000.00	
2006	AT.38620	Hydrogen Peroxide		€ 388,128,000.00	€ 388,128,000.00	€ 328,060,000.00	
2006	AT.38645	Methacrylates		€ 344,562,500.00	€ 344,562,500.00	€ 343,812,500.00	
2006	AT.38456	Bitumen Netherlands		€ 266,717,000.00	€ 266,717,000.00	€ 238,517,000.00	
2006	AT.38121	Fittings		€ 314,760,000.00	€ 314,760,000.00	€ 210,100,000.00	
2006	AT.38907	Steel beams re - adoption	Adoption in 1994	€ 10,000,000.00	€ 10,000,000.00	€ 10,000,000.00	
2006	AT.38638	Butadiene Rubber/ Emulsion Styrene		€ 519,050,000.00	€ 519,050,000.00	€ 406,950,000.00	
2006	AT.39234	AlloySurcharge re - adoption	Adoption in 1998	€ 3,168,000.00	€ 3,168,000.00	€ 3,168,000.00	
2007	AT.39165	Flat Glass		€ 486,900,000.00	€ 486,900,000.00	€ 442,500,000.00	
2007	AT.38629	Chloroprene Rubber		€ 247,635,000.00	€ 247,635,000.00	€ 221,675,000.00	
2007	AT.38432	Professional Videotapes		€ 74,790,000.00	€ 74,790,000.00	€ 74,790,000.00	
2007	AT.38823	Elevators and escalators		€ 992,312,200.00	€ 992,312,200.00	€ 832,422,250.00	
2007	AT.37766	Netherlands beer market		€ 273,783,000.00	€ 273,783,000.00	€ 218,698,312.50	
2007	AT.38784	Telefónica SA		€ 151,875,000.00	€ 151,875,000.00	€ 151,875,000.00	
2007	AT.39168	Fasteners	Amendment in 2011	€ 328,644,000.00	€ 303,644,000.00	€ 287,186,800.00	
2007	AT.37860	Morgan Stanley Dean Witter		€ 10,200,000.00	€ 10,200,000.00	€ 10,200,000.00	
2007	AT.38710	Bitumen Spain		€ 183,651,000.00	€ 183,651,000.00	€ 182,452,000.00	
2007	AT.38899	Gas insulated switchgear	Amendment in 2012	€ 750,712,500.00	€ 545,887,500.00	€ 539,185,000.00	
2008	AT.39125	Carglass	Amendments in 2009 and 2013	€ 1,383,896,000.00	€ 1,354,896,000.00	€ 1,185,500,000.00	
2008	AT.39181	Candle waxes		€ 676,011,400.00	€ 676,011,400.00	€ 471,743,496.00	
2008	AT.38695	Sodium Chlorate	Amendment in 2012	€ 79,120,900.00	€ 73,401,000.00	€ 73,401,000.00	
2008	AT.39188	Bananas		€ 60,300,000.00	€ 60,300,000.00	€ 55,400,000.00	
2008	AT.38628	Synthetic Rubber (NBR)		€ 34,230,000.00	€ 34,230,000.00	€ 34,230,000.00	
2008	AT.38543	International removal services	Amendment in 2009	€ 32,755,500.00	€ 31,535,500.00	€ 30,506,500.00	
2008	AT.39180	Aluminium fluoride		€ 4,970,000.00	€ 4,970,000.00	€ 4,970,000.00	
2008	AT.39326	E.on breach of seal		€ 38,000,000.00	€ 38,000,000.00	€ 38,000,000.00	Non-compliance with inspections: breach of seals: € 38,000,000.00
2009	AT.37990	Intel	Re-adopted in 2023	€ 1,060,000,000.00	€ -	€ -	
2009	AT.39401	E.ON/GdF		€ 1,106,000,000.00	€ 1,106,000,000.00	€ 640,000,000.00	
2009	AT.38589	Heat Stabilizers RE	Amendment decision in 2016	€ 173,860,400.00	€ 91,127,400.00	€ 90,721,400.00	
2009	AT.39406	Marine hoses		€ 131,510,000.00	€ 131,510,000.00	€ 125,845,728.00	
2009	AT.37956	Reinforcing steel bars re-adoption	Adoption in 2002 and re-adopted in 2019	€ 83,250,000.00	€ 25,105,000.00	€ 25,105,000.00	
2009	AT.39129	Power Transformers		€ 67,644,000.00	€ 67,644,000.00	€ 64,674,000.00	
2009	AT.39396	Calcium Carbide		€ 61,120,000.00	€ 61,120,000.00	€ 58,520,000.00	
2010	AT.39258	Airfreight RE	Re-adopted in 2017	€ 799,445,000.00	€ 8,880,000.00	€ 8,880,000.00	
2010	AT.39309	LCD		€ 648,925,000.00	€ 648,925,000.00	€ 631,925,000.00	
2010	AT.39092	Bathroom Fittings & Fixtures		€ 622,250,782.00	€ 622,034,024.00	€ 406,297,229.00	
2010	AT.38511	DRAMs		€ 331,273,800.00	€ 331,273,800.00	€ 331,273,800.00	
2010	AT.38344	Pre-stressing steel		€ 269,872,350.00	€ 269,872,350.00	€ 254,623,350.00	
2010	AT.38866	Animal Feed Phosphates		€ 115,797,000.00	€ 115,797,000.00	€ 115,797,000.00	
2010	AT.38866	Animal Feed Phosphates		€ 59,850,000.00	€ 59,850,000.00	€ 59,850,000.00	
2010	AT.36212	Carbonless paper (CLP) re-adoption	Adoption in 2001	€ 21,262,500.00	€ 21,262,500.00	€ 21,262,500.00	
2010	AT.39510	LABCO/ONP		€ 5,000,000.00	€ 5,000,000.00	€ 4,750,000.00	
2011	AT.39579	Consumer Detergents		€ 315,200,000.00	€ 315,200,000.00	€ 315,200,000.00	
2011	AT.39600	Refrigeration compressors		€ 161,198,000.00	€ 161,198,000.00	€ 161,198,000.00	
2011	AT.39605	CRT glass bulbs		€ 128,736,000.00	€ 128,736,000.00	€ 128,736,000.00	
2011	AT.39482	Exotic fruit		€ 8,919,000.00	€ 8,919,000.00	€ 6,689,000.00	
2011	AT.39525	Polish Telecom		€ 127,554,194.00	€ 127,554,194.00	€ 127,554,194.00	
2011	AT.39796	Suez Environment breach of seal		€ 8,000,000.00	€ 8,000,000.00	€ 8,000,000.00	Non-compliance with inspections: breach of seals: € 8,000,000.00
2012	AT.39437	TV and Computer Monitor Tubes		€ 1,470,515,000.00	€ 1,470,515,000.00	€ 1,409,588,000.00	
2012	AT.39462	Freight forwarding		€ 169,382,000.00	€ 169,382,000.00	€ 169,279,000.00	
2012	AT.39966	Gas insulated switchgear re-adoption	Adoption in 2007	€ 136,260,000.00	€ 136,260,000.00	€ 136,260,000.00	

2012	AT.39452	**Mountings for windows and window doors**		€ 85,876,000.00	€ 85,876,000.00	€ 85,876,000.00		
2012	AT.39611	**Water Management Products**		€ 13,661,000.00	€ 13,661,000.00	€ 13,661,000.00		
2012	AT.39793	**EPH obstruction**		€ 2,500,000.00	€ 2,500,000.00	€ 2,500,000.00	Non-compliance with inspections: failure to produce the required books or other records: € 2,500,000.00	
2013	AT.39530	**Microsoft failure to comply**		€ 561,000,000.00	€ 561,000,000.00	€ 561,000,000.00	Failure to comply with a commitment decision: € 561,000,000.00	
2013	AT.39226	**Lundbeck**		€ 146,005,000.00	€ 146,005,000.00	€ 146,005,000.00		
2013	AT.39914	**Euro Interest Rate Derivatives**	Amendment in 2016	€ 1,042,749,000.00	€ 824,583,000.00	€ 824,583,000.00		
2013	AT.39861	**Yen Interest Rate Derivatives (YIRD)**		€ 669,719,000.00	€ 669,719,000.00	€ 669,719,000.00		
2013	AT.39748	**Wire Harnesses**		€ 141,791,000.00	€ 141,791,000.00	€ 141,791,000.00		
2013	AT.39633	**Shrimps**		€ 28,716,000.00	€ 28,716,000.00	€ 27,584,000.00		
2013	AT.39839	**Telefónica, Portugal Telecom**	Re-adopted in 2022	€ 79,184,000.00	€ -	€ -		
2013	AT.39685	**Fentanyl**		€ 16,291,000.00	€ 16,291,000.00	€ 16,291,000.00		
2014	AT.39612	**Servier**		€ 427,696,508.00	€ 427,696,508.00	€ 315,028,198.00		
2014	AT.39922	**Bearings**		€ 953,306,000.00	€ 953,306,000.00	€ 953,306,000.00		
2014	AT.39610	**Power Cables**		€ 301,639,000.00	€ 301,639,000.00	€ 301,439,000.00		
2014	AT.39574	**Smart Card Chips**		€ 138,048,000.00	€ 138,048,000.00	€ 132,135,600.00		
2014	AT.39801	**Polyurethane Foam**		€ 114,077,000.00	€ 114,077,000.00	€ 114,077,000.00		
2014	AT.39924	**Swiss Franc Interest Rate Derivatives**		€ 61,676,000.00	€ 61,676,000.00	€ 61,676,000.00		
2014	AT.39924	**Bid-ask spreads charged on Swiss franc rates derivatives**		€ 32,355,000.00	€ 32,355,000.00	€ 32,355,000.00		
2014	AT.39965	**Canned mushrooms**		€ 32,225,000.00	€ 32,225,000.00	€ 32,225,000.00		
2014	AT.39792	**Steel Abrasives**		€ 30,707,000.00	€ 30,707,000.00	€ 30,707,000.00		
2014	AT.39780	**Envelopes**	Re-adopted in 2017	€ 19,485,000.00	€ 14,756,000.00	€ 14,756,000.00		
2014	AT.39952	**Power Exchanges**		€ 5,979,000.00	€ 5,979,000.00	€ 5,979,000.00		
2014	AT.39523	**Slovak Telekom**		€ 69,908,000.00	€ 69,908,000.00	€ 57,092,944.00		
2014	AT.39984	**OPCOM**		€ 1,031,000.00	€ 1,031,000.00	€ 1,031,000.00		
2015	AT.39639	**Optical Disk Drives**		€ 116,377,000.00	€ 116,377,000.00	€ 116,377,000.00		
2015	AT.39563	**Retail Food Packaging**	Re-adopted in 2020	€ 115,865,000.00	€ 115,865,000.00	€ 82,171,000.00		
2015	AT.40055	**Parking Heaters**		€ 68,175,000.00	€ 68,175,000.00	€ 68,175,000.00		
2015	AT.40098	**Blocktrains**		€ 49,154,000.00	€ 49,154,000.00	€ 49,154,000.00		
2015	AT.39861	**Yen Interest Rate Derivatives (YIRD)**	Re-adopted in 2021	€ 14,960,000.00	€ -	€ -		
2016	AT.39824	**Trucks**		€ 2,926,499,000.00	€ 2,926,499,000.00	€ 2,926,499,000.00		
2016	AT.39914	**Euro Interest Rate Derivatives**	Re-adoption and amendment in 2021	€ 485,456,000.00	€ 451,850,000.00	€ 451,850,000.00		
2016	AT.39904	**Rechargeable batteries**		€ 165,841,000.00	€ 165,841,000.00	€ 165,841,000.00		
2016	AT.40028	**Alternators and Starters**		€ 137,789,000.00	€ 137,789,000.00	€ 137,789,000.00		
2016	AT.39792	**Steel abrasives**		€ 6,197,000.00	€ 6,197,000.00	€ 2,633,895.00		
2016	AT.39965	**Canned Mushrooms**		€ 5,194,000.00	€ 5,194,000.00	€ 5,194,000.00		
2016	AT.39759	**ARA foreclosure**		€ 6,015,000.00	€ 6,015,000.00	€ 6,015,000.00		
2017	AT.39740	**Google Search (Shopping)**		€ 2,424,495,000.00	€ 2,424,495,000.00	€ 2,424,495,000.00		
2017	AT.39824	**Trucks**		€ 880,523,000.00	€ 880,523,000.00	€ 880,523,000.00		
2017	AT.39258	**Airfreight re-adoption**	Adoption in 2010	€ 776,465,000.00	€ 776,465,000.00	€ 730,762,616.00		
2017	AT.39960	**Thermal Systems**		€ 155,575,000.00	€ 155,575,000.00	€ 155,575,000.00		
2017	AT.39813	**Baltic rail transport**		€ 27,873,000.00	€ 27,873,000.00	€ 20,068,650.00		
2017	AT.40018	**Car Battery Recycling**		€ 67,609,000.00	€ 67,609,000.00	€ 63,726,648.00		
2017	AT.39881	**Occupant Safety Systems supplied to Japanese Car Manufacturers**		€ 34,011,000.00	€ 34,011,000.00	€ 34,011,000.00		
2017	AT.40013	**Lighting systems**		€ 26,744,000.00	€ 26,744,000.00	€ 26,744,000.00		
2017	AT.39780	**Envelopes re-adoption**	Adoption in 2014	€ 4,729,000.00	€ 4,729,000.00	€ 4,729,000.00		
2018	AT.40099	**Google Android**		€ 4,342,865,000.00	€ 4,342,865,000.00	€ 4,125,000,000.00		
2018	AT.40220	**Qualcomm (Exclusivity)**		€ 997,439,000.00	€ 997,439,000.00	€ -		*Please note that the amount in column I reflects the initial fine adopted by the Commission, which has been annulled by the EU judiciary, as no re-adoption and/or amendment decision has yet been adopted by the Commission in this matter.*
2018	AT.39849	**BEH Gas**		€ 77,068,000.00	€ 77,068,000.00	€ -		*Please note that the amount in column I reflects the initial fine adopted by the Commission, which has been annulled by the EU judiciary, as no re-adoption and/or amendment decision has yet been adopted by the Commission in this matter.*
2018	AT.40465	**Asus**		€ 63,522,000.00	€ 63,522,000.00	€ 63,522,000.00		
2018	AT.40428	**Guess**		€ 39,821,000.00	€ 39,821,000.00	€ 39,821,000.00		
2018	AT.40181	**Philips**		€ 29,828,000.00	€ 29,828,000.00	€ 29,828,000.00		
2018	AT.40009	**Maritime Car Carriers**		€ 395,288,000.00	€ 395,288,000.00	€ 395,288,000.00		
2018	AT.40136	**Capacitors**		€ 253,935,000.00	€ 253,935,000.00	€ 253,935,000.00		
2018	AT.40182	**Pioneer**		€ 10,173,000.00	€ 10,173,000.00	€ 10,173,000.00		
2018	AT.40113	**Spark Plugs**		€ 76,099,000.00	€ 76,099,000.00	€ 76,099,000.00		
2018	AT.40469	**Denon & Marantz**		€ 7,719,000.00	€ 7,719,000.00	€ 7,719,000.00		

2018	AT.39920	**Braking Systems**		€ 75,426,000.00	€ 75,426,000.00	€ 75,426,000.00		
2019	AT.40411	**Google AdSense**		€ 1,494,459,000.00	€ 1,494,459,000.00	€ 1,494,459,000.00		
2019	AT.40049	**MasterCard II**		€ 570,566,000.00	€ 570,566,000.00	€ 570,566,000.00		
2019	AT.39711	**Qualcomm (Predation)**		€ 242,042,000.00	€ 242,042,000.00	€ 242,042,000.00		
2019	AT.40436	**Nike**		€ 12,555,000.00	€ 12,555,000.00	€ 12,555,000.00		
2019	AT.40432	**Character merchandise**		€ 6,222,000.00	€ 6,222,000.00	€ 6,222,000.00		
2019	AT.40135	**Forex (TWBS)**		€ 811,197,000.00	€ 811,197,000.00	€ 811,197,000.00		
2019	AT.40481	**Occupant Safety Systems 2**		€ 368,277,000.00	€ 368,277,000.00	€ 368,277,000.00		
2019	AT.40135	**Forex (Essex)**		€ 257,682,000.00	€ 257,682,000.00	€ 257,682,000.00		
2019	AT.37956	**Reinforcing steel bars 2nd re-adoption**	Adoption in 2002	€ 16,074,000.00	€ 16,074,000.00	€ 16,074,000.00		
2019	AT.40127	**Canned vegetables**		€ 31,647,000.00	€ 31,647,000.00	€ 31,647,000.00		
2019	AT.40134	**InBev**		€ 200,409,000.00	€ 200,409,000.00	€ 200,409,000.00		
2020	AT.40433	**Film merchandise**		€ 14,327,000.00	€ 14,327,000.00	€ 14,327,000.00		
2020	AT.40528	**Melia (Holiday pricing)**		€ 6,678,000.00	€ 6,678,000.00	€ 6,678,000.00		
2020	AT.40410	**Ethylene**		€ 260,443,000.00	€ 260,443,000.00	€ 260,443,000.00		
2020	AT.40299	**Closure Systems**		€ 18,196,000.00	€ 18,196,000.00	€ 18,196,000.00		
2020	AT.39686	**Cephalon**		€ 60,480,000.00	€ 60,480,000.00	€ 60,480,000.00		
2020	AT.39563	**Retail Food Packaging - re-adoption**	Adoption in 2015	€ 9,441,000.00	€ 9,441,000.00	€ 9,441,000.00		
2021	AT.40413	**Focus Home - Video Games**		€ 2,880,000.00	€ 2,880,000.00	€ 2,880,000.00		
2021	AT.40414	**Koch Media - Video Games**		€ 977,000.00	€ 977,000.00	€ 977,000.00		
2021	AT.40420	**Zenimax - Video Games**		€ 1,664,000.00	€ 1,664,000.00	€ 1,664,000.00		
2021	AT.40422	**Bandai Namco - Video Games**		€ 340,000.00	€ 340,000.00	€ 340,000.00		
2021	AT.40424	**Capcom - Video Games**		€ 396,000.00	€ 396,000.00	€ 396,000.00		
2021	AT.40413 AT.40414 AT.40420 AT.40422 AT.40424	**Valve - Video Games**		€ 1,624,000.00	€ 1,624,000.00	€ 1,624,000.00		
2021	AT.40330	**Rail cargo**		€ 48,594,000.00	€ 48,594,000.00	€ 48,594,000.00		
2021	AT.40346	**SSA Bonds**		€ 28,494,000.00	€ 28,494,000.00	€ 28,494,000.00		
2021	AT.40324	**EGB**		€ 371,393,000.00	€ 371,393,000.00	€ 371,393,000.00		
2021	AT.39861	**Yen Interest Rate Derivatives (YIRD) re-adoption**	Adoption in 2015	€ 6,450,000.00	€ 6,450,000.00	€ 6,450,000.00		
2021	AT.39914	**Euro Interest Rate Derivatives re-adoption**	Adoption in 2016	€ 31,739,000.00	€ 31,739,000.00	€ 31,739,000.00		
2021	AT.40178	**Car Emission**		€ 875,189,000.00	€ 875,189,000.00	€ 875,189,000.00		
2021	AT.40127	**Canned vegetables**		€ 20,000,000.00	€ 20,000,000.00	€ 20,000,000.00		
2021	AT.40135	**Forex (Sterling Lads)**		€ 83,294,000.00	€ 83,294,000.00	€ 83,294,000.00		
2021	AT.40135	**Forex (Sterling Lads)**		€ 261,101,000.00	€ 261,101,000.00	€ 261,101,000.00		
2021	AT.40054	**Ethanol benchmarks**		€ 20,000,000.00	€ 20,000,000.00	€ 20,000,000.00		
2022	AT.39839	**Telefónica and Portugal Telecom re-adoption**	Adoption in 2013	€ 79,040,000.00	€ 79,040,000.00	€ 79,040,000.00		
2022	AT.40522	**Metal packaging**		€ 31,522,000.00	€ 31,522,000.00	€ 31,522,000.00		
2022	AT.40547	**Styrene monomer**		€ 157,072,000.00	€ 157,072,000.00	€ 157,072,000.00		
2023	AT.37990	**Intel re-adoption**	Adoption in 2009	€ 376,358,000.00	€ 376,358,000.00	€ 376,358,000.00		*Please note that Commission decisions adopted in 2023 have generally not been considered in view of the temporal scope of the Support Study. The Intel decision has been included in this sheet given its nature as a re-adoption decision at the request of the Commission.*

Year	Case number	Case title	Amount of the periodic penalty payment in EUR	Periodicity of the periodic penalty payment	Reason for periodic penalty payment(s)	Comments
2005	**AT.37792**	**Microsoft penalty payment**	€ 2,000,000.00	per day	Compliance with a cease-and-desist order	
2006	**AT.37792**	**Microsoft penalty payment**	€ 3,000,000.00	per day	Compliance with a cease-and-desist order	Failure to comply with the cease-and-desist order from 2004. Periodic payment as increased by the decision in 2006: € 280,500,000.00.
2007	**AT.34579**	**Mastercard (Multilateral exchange fees)**	3.5% of daily consolidated global turnover in the preceding business year	per day	Compliance with a cease-and-desist order; compliance with notification and/or reporting requirements; compliance with a publication requirement	
2008	**AT.37792**	**Microsoft penalty payment**			Compliance with a cease-and-desist order	Failure to comply with the cease-and-desist order from 2004. Periodic payment as increased by the decision in 2006: € 899.000.000 (reduced to € 860.000.000 by the GC)
2016	**AT.39759**	**ARA Foreclosure**	2.5% of the daily consolidated group turnover in the business year preceding an infringement	per day	Compliance with structural remedy (divestment of infrastructure)	
2017	**AT.39740**	**Google Search (Shopping)**	5% of the average daily turnover in the business year preceding such a failure to comply	per day	Compliance with a cease-and-desist order; compliance with notification and reporting requirements	
2017	**AT.40208**	**International Skating Union's Eligibility rules**	5% of the average daily turnover in the business year preceding such a failure to comply	per day	Compliance with a cease-and-desist order	
2018	**AT.40099**	**Google Android**	5% of the average daily turnover in the business year preceding such a failure to comply	per day	Compliance with a cease-and-desist order; compliance with notification and reporting requirements	
2019	**AT.40608**	**Broadcom**	2% of the average daily turnover in the business year preceding such failure to comply	per day	Compliance with a cease-and-desist order; compliance with interim measures; compliance with notification requirements	
2022	**AT.40462 / AT.40703**	**Amazon Marketplace / Amazon Buy Box**	5% of the average daily turnover in the business year preceding such a failure to comply	per day	Compliance with commitments made binding	

Annex IX – Graphs on fines, periodic penalty payments, and procedural infringement decisions adopted by the Commission, NCAs and UK competition authorities

For the purpose of this Annex IX, please note that jurisdiction-specific graphs are only included insofar as the relevant NCA in the relevant jurisdiction has imposed or adopted relevant fines, periodic penalty payments or procedural infringement decisions.

Section 1. Average fines per decision in each of the jurisdictions

1.1 Article 101

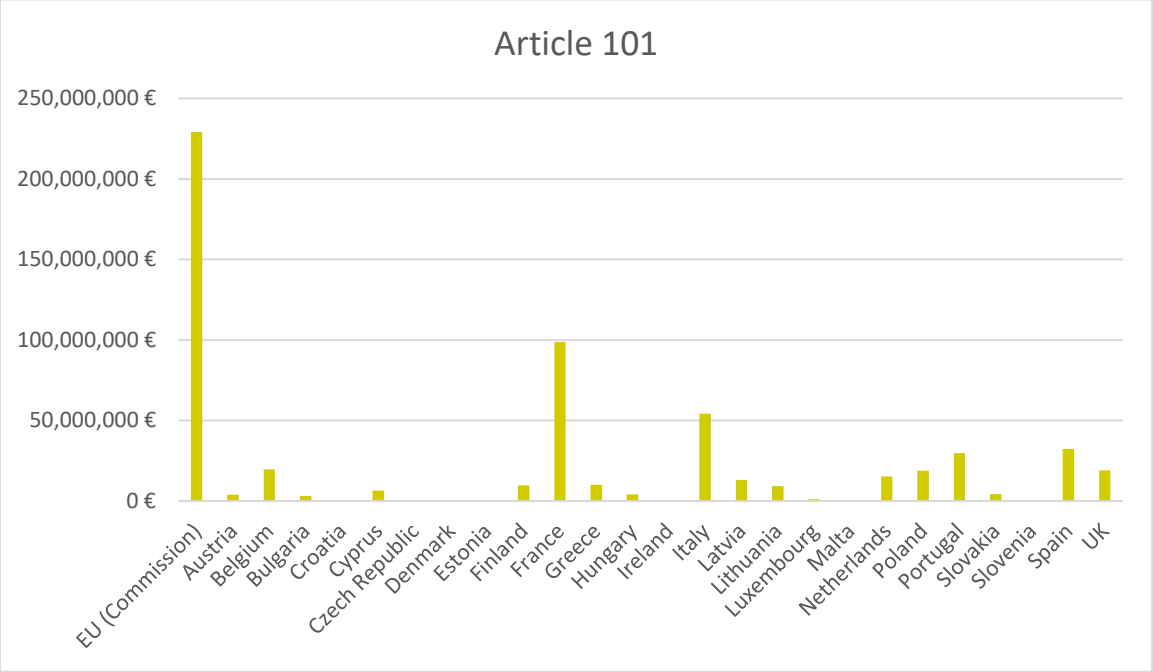

Figure 1 - Average fine for decisions taken under Article 101 per jurisdiction, including the Commission and excluding Germany, Romania and Sweden for confidentiality reasons

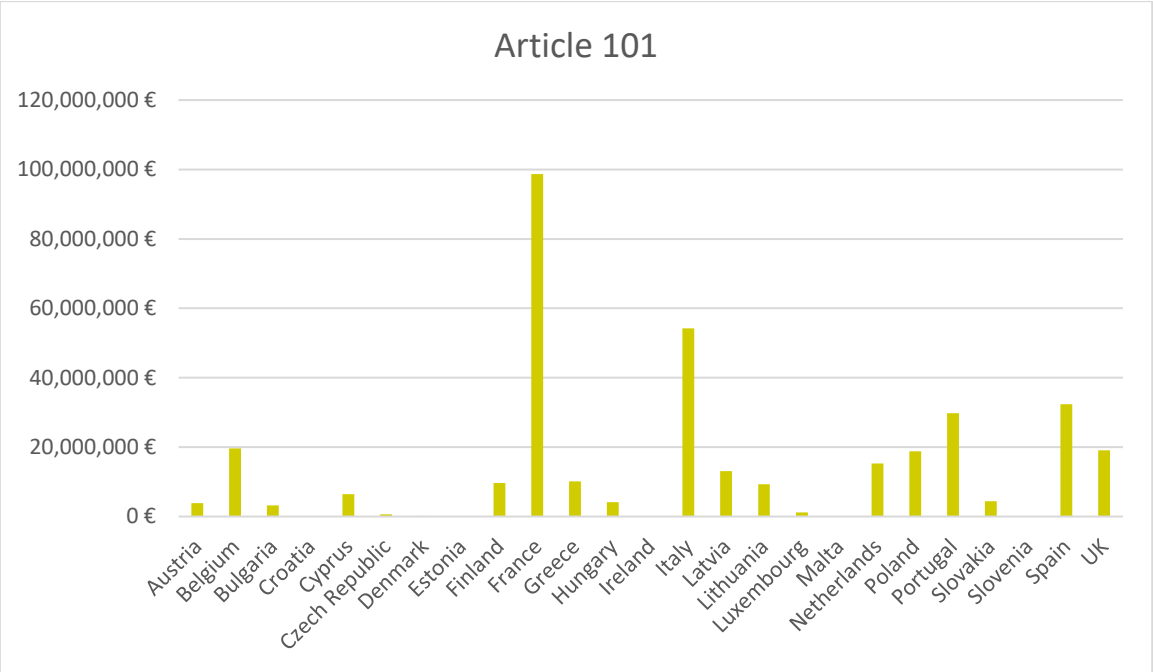

Figure 2 – Average fine for decisions taken under Article 101 per jurisdiction and excluding Germany, Romania and Sweden for confidentiality reasons

1.2 Article 102

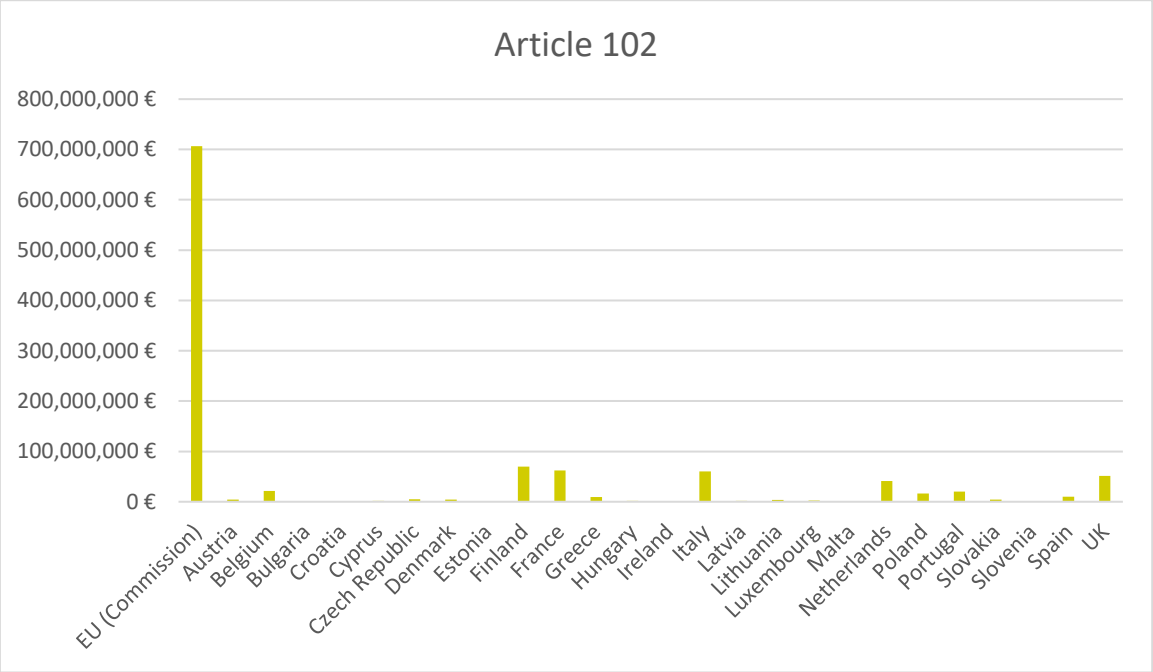

Figure 3 – Average fines for decisions taken under Article 102, including the Commission and excluding Germany, Romania and Sweden for confidentiality reasons

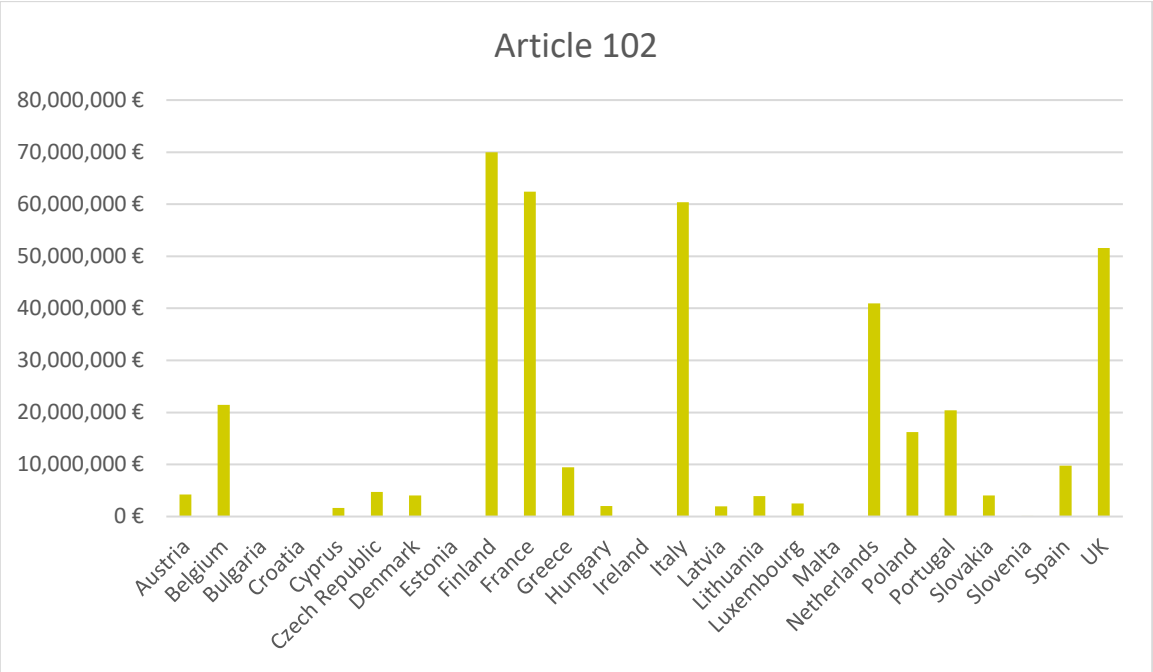

Figure 4 - Average fines for decisions taken under Article 102 and excluding Germany, Romania and Sweden for confidentiality reasons

1.3 Article 101&102

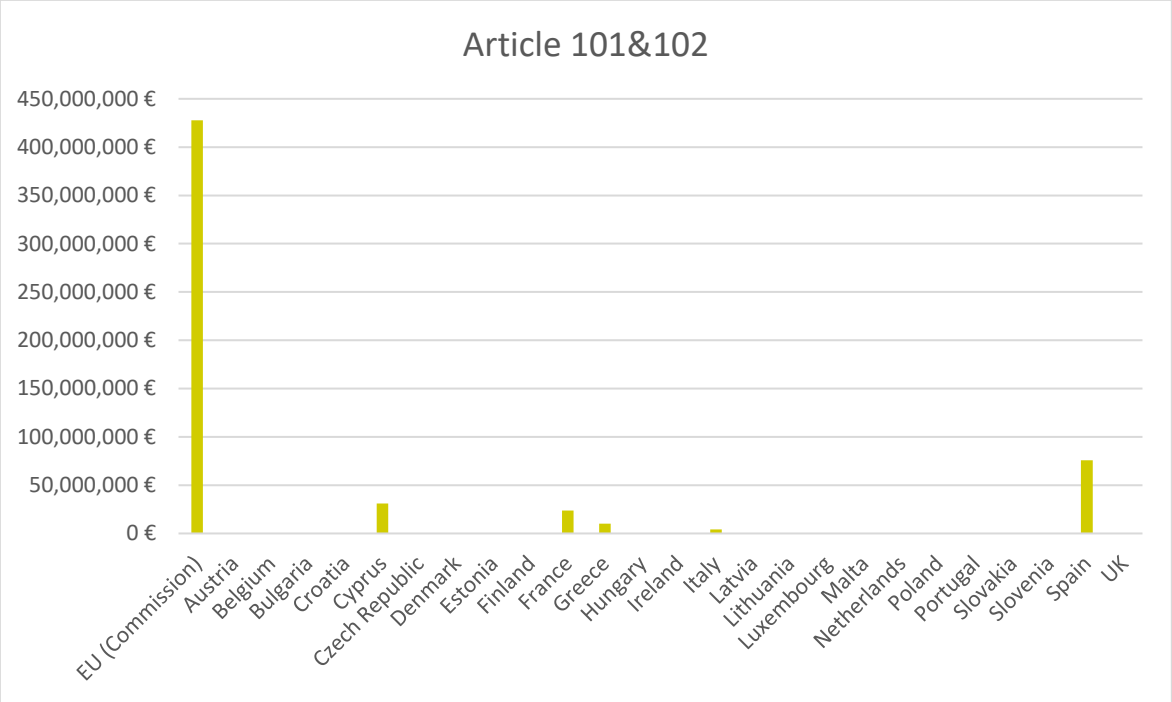

Figure 5 - Average fine for decisions taken under Article 101&102 per jurisdiction, including the Commission and excluding Germany, Romania and Sweden for confidentiality reasons

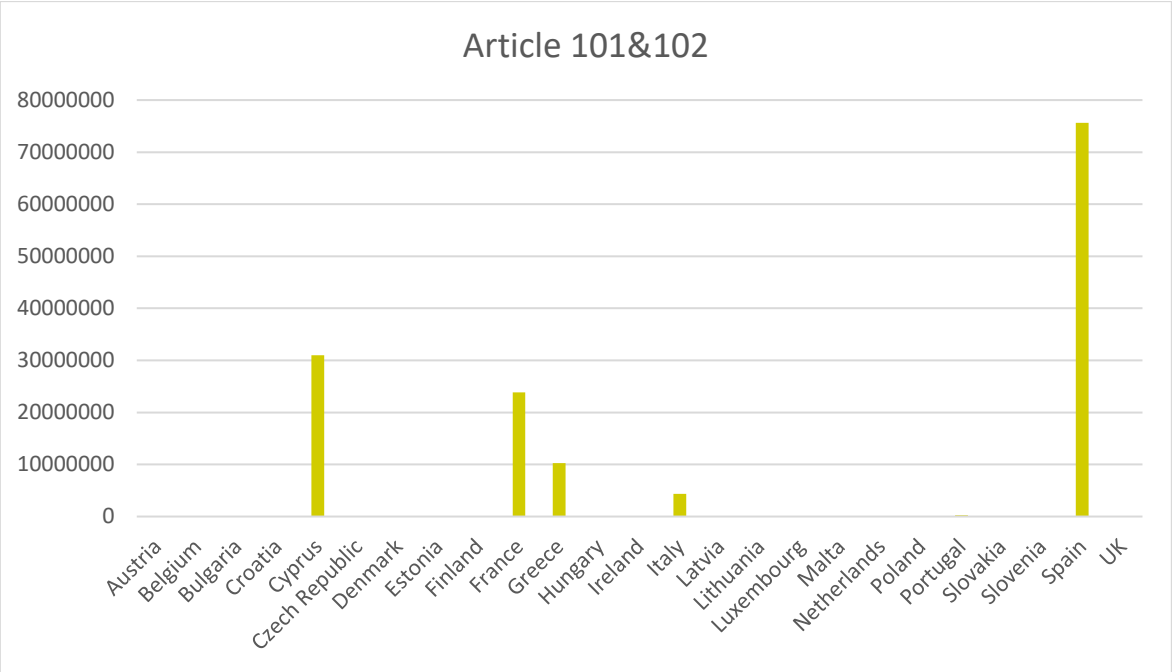

Figure 6 - Average fine for decisions taken under Article 101&102 per jurisdiction and excluding Germany, Romania and Sweden for confidentiality reasons

Section 2. Total sum of fines per year in each of the jurisdictions (and excluding Germany, Romania and Sweden for confidentiality reasons)

2.1 Commission

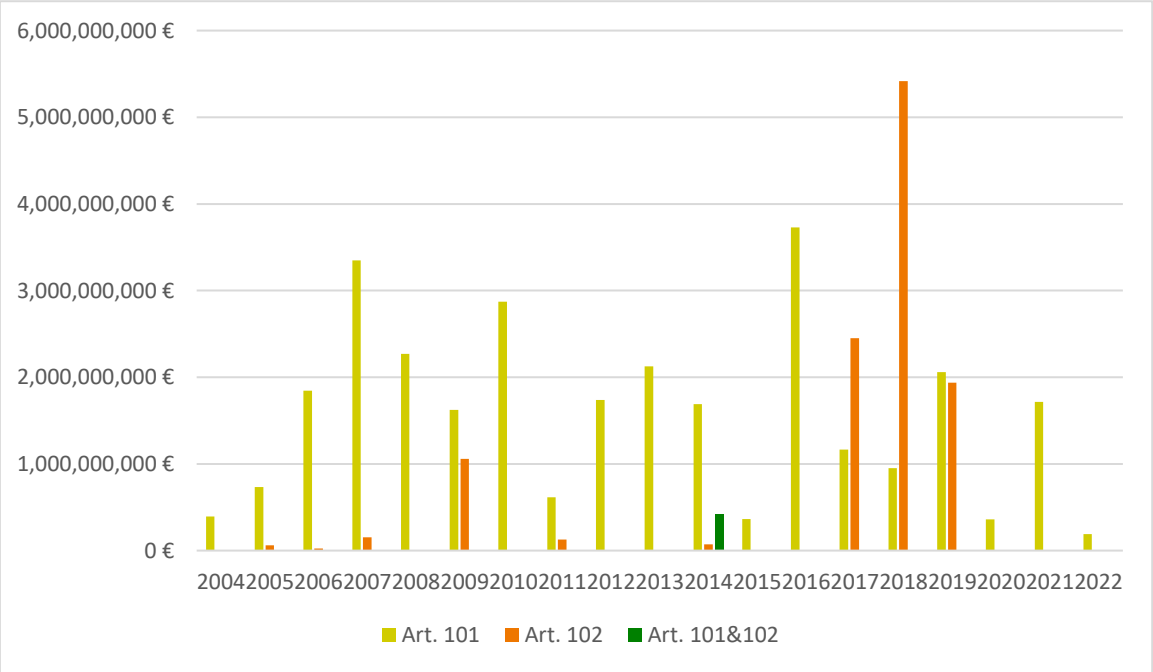

Figure 7 - Commission - Sum of fines per year, split into decisions taken under Article 101 (N=130), Article 102 (N=16), and Article 101&102 (N=1)

2.2 Austria

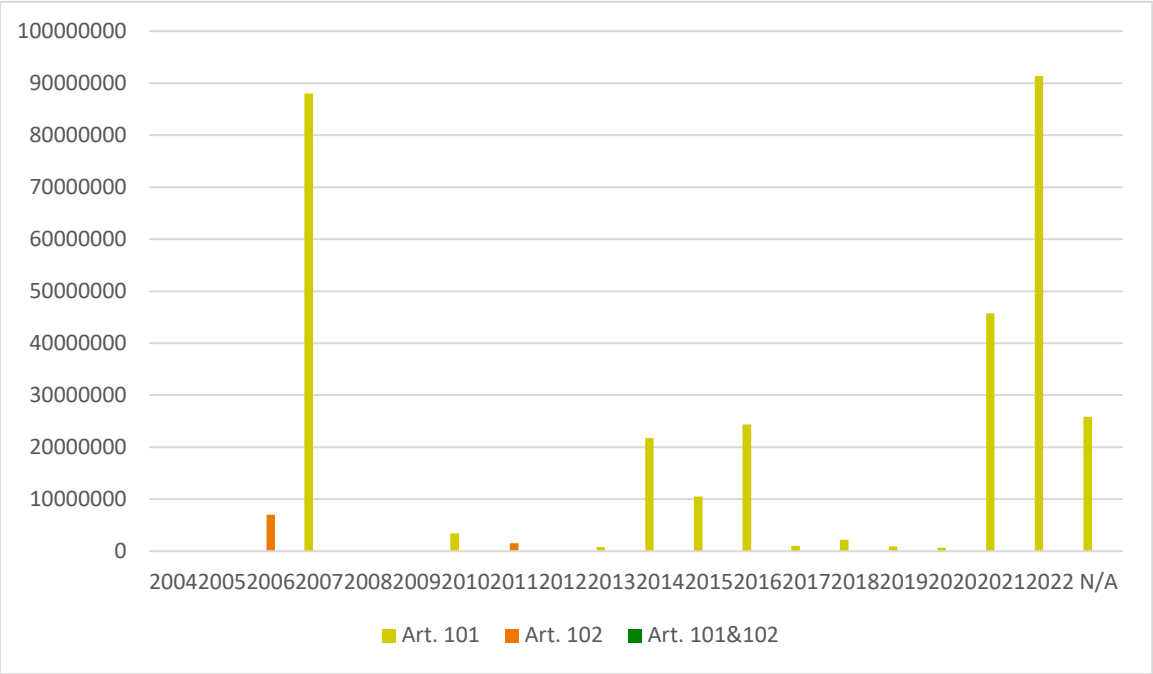

Figure 8 - Austria - Sum of fines per year, split into decisions taken under Article 101 (N=82), Article 102 (N=2), and Article 101&102 (N=0)

2.3 Belgium

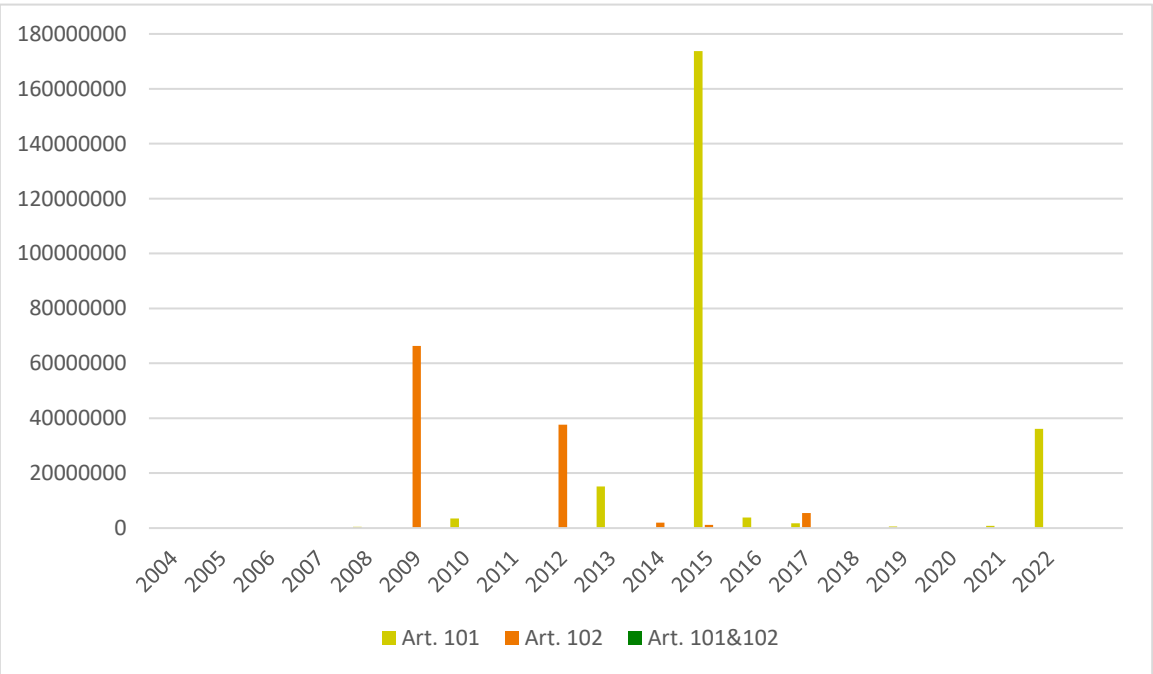

Figure 9 - Belgium - Sum of fines per year, split into decisions taken under Article 101 (N=12), Article 102 (N=6), and Article 101&102 (N=0)

2.4 Bulgaria

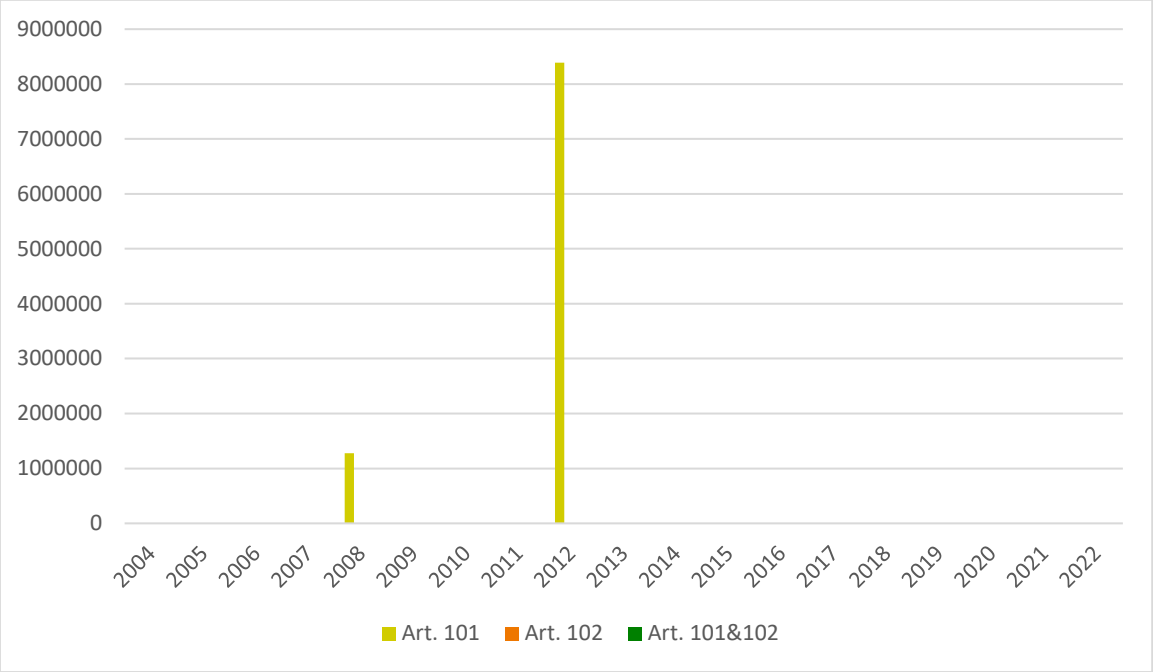

Figure 10 - Bulgaria - Sum of fines per year, split into decisions taken under Article 101 (N=3), Article 102 (N=0), and Article 101&102 (N=0)

2.5 Cyprus

Figure 11 - Cyprus - Sum of fines per year, split into decisions taken under Article 101 (N=5), Article 102 (N=5), and Article 101&102 (N=1)

2.6 Czechia

Figure 12 - Czechia - Sum of fines per year, split into decisions taken under Article 101 (N=21), Article 102 (N=8), and Article 101&102 (N=0)

2.7 Denmark

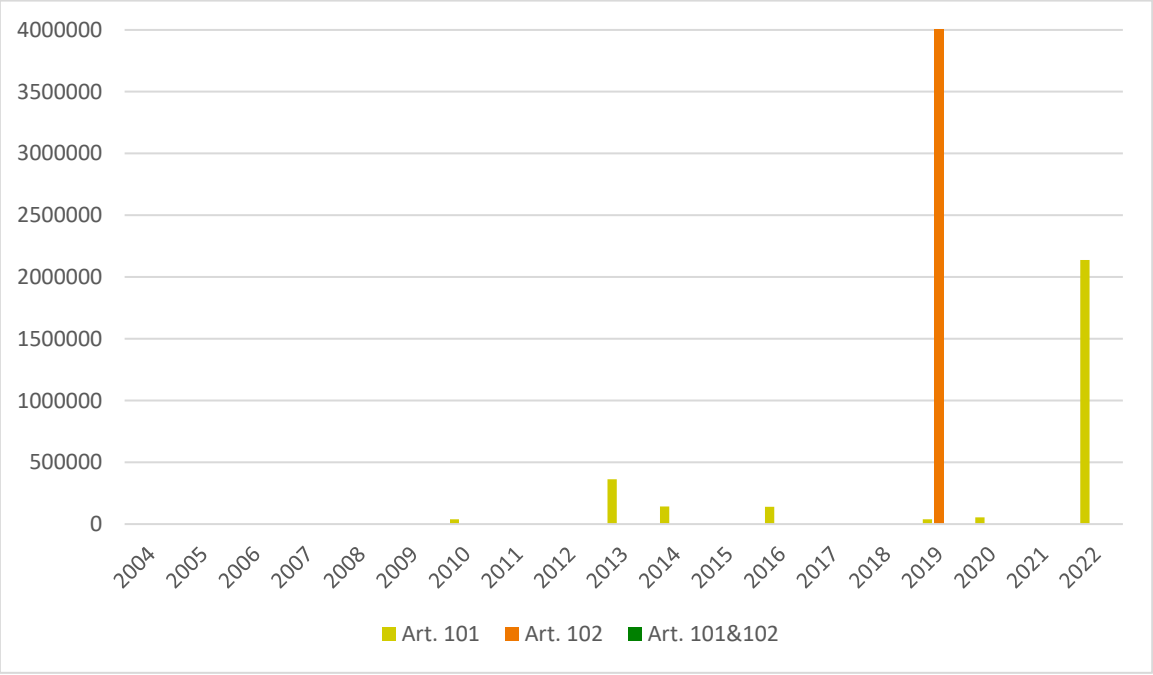

Figure 13 - Denmark - Sum of fines per year, split into decisions taken under Article 101 (N=19), Article 102 (N=1), and Article 101&102 (N=0)

2.8 Finland

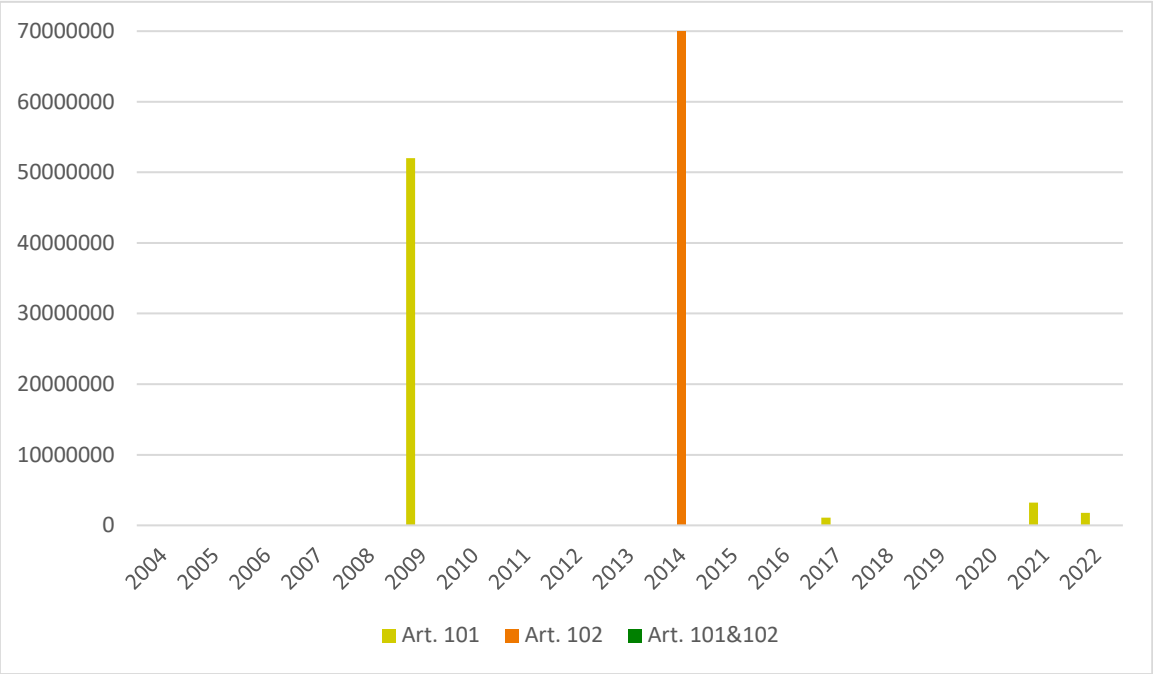

Figure 14 - Finland - Sum of fines per year, split into decisions taken under Article 101 (N=6), Article 102 (N=1), and Article 101&102 (N=0)

2.9 France

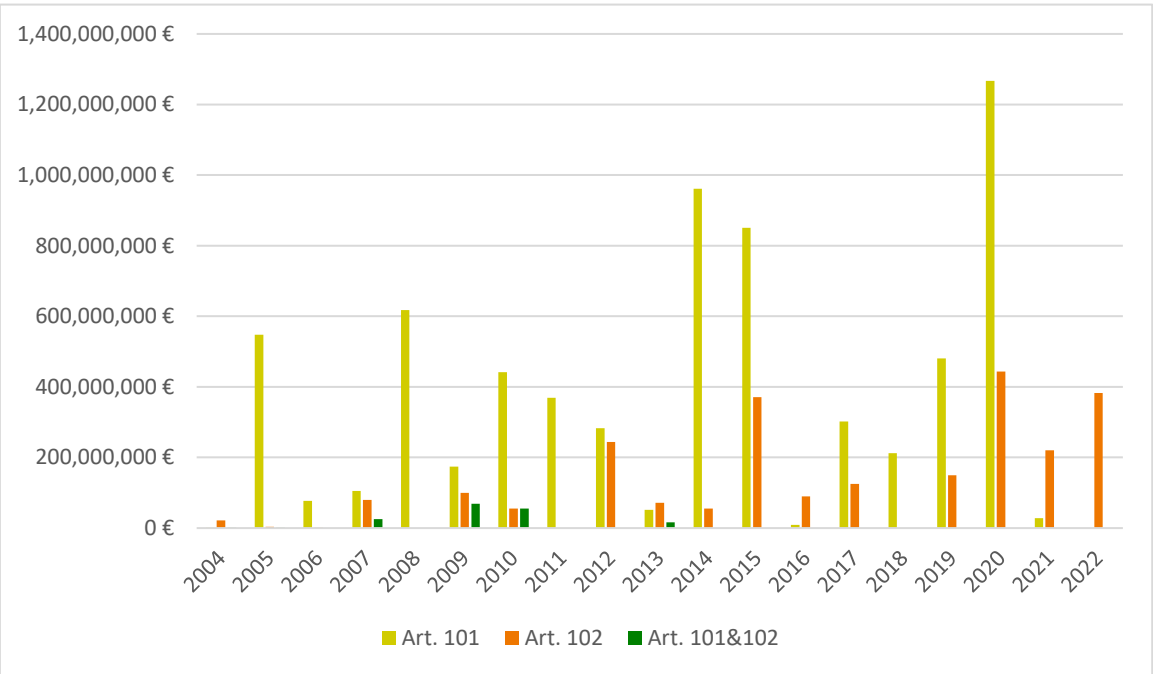

Figure 15 - France - Sum of fines per year, split into decisions taken under Article 101 (N=74), Article 102 (N=43), and Article 101&102 (N=7)

2.10 Germany

[CONFIDENTIAL]

2.11 Greece

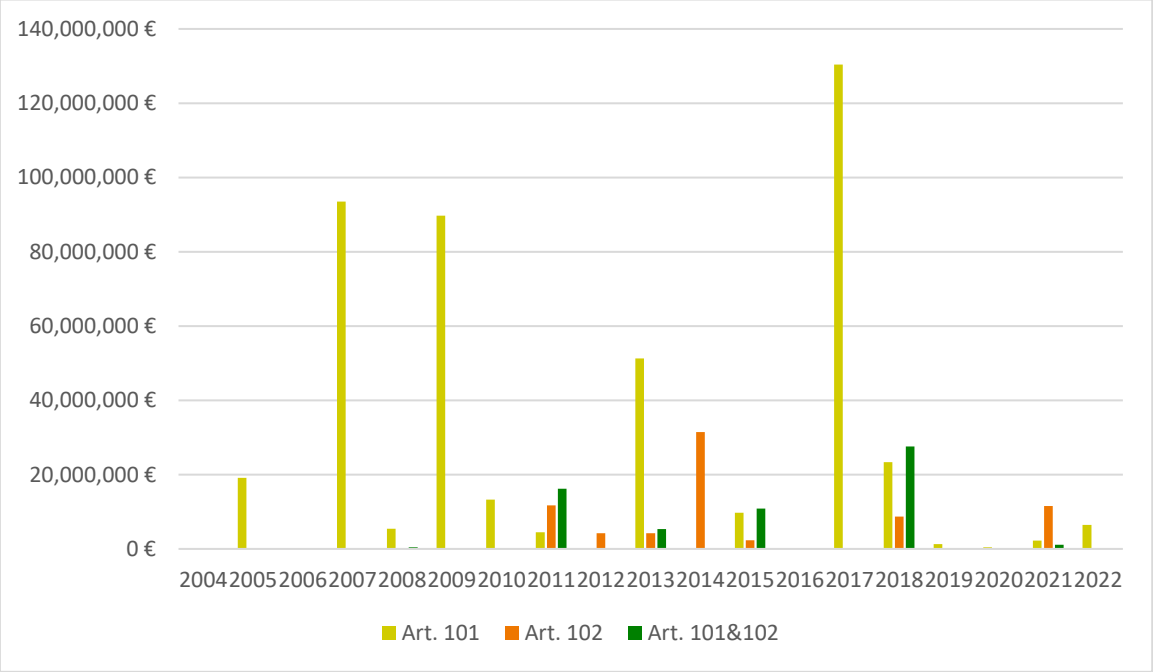

Figure 16 - Greece - Sum of fines per year, split into decisions taken under Article 101 (N=45), Article 102 (N=11), and Article 101&102 (N=6)

2.12 Hungary

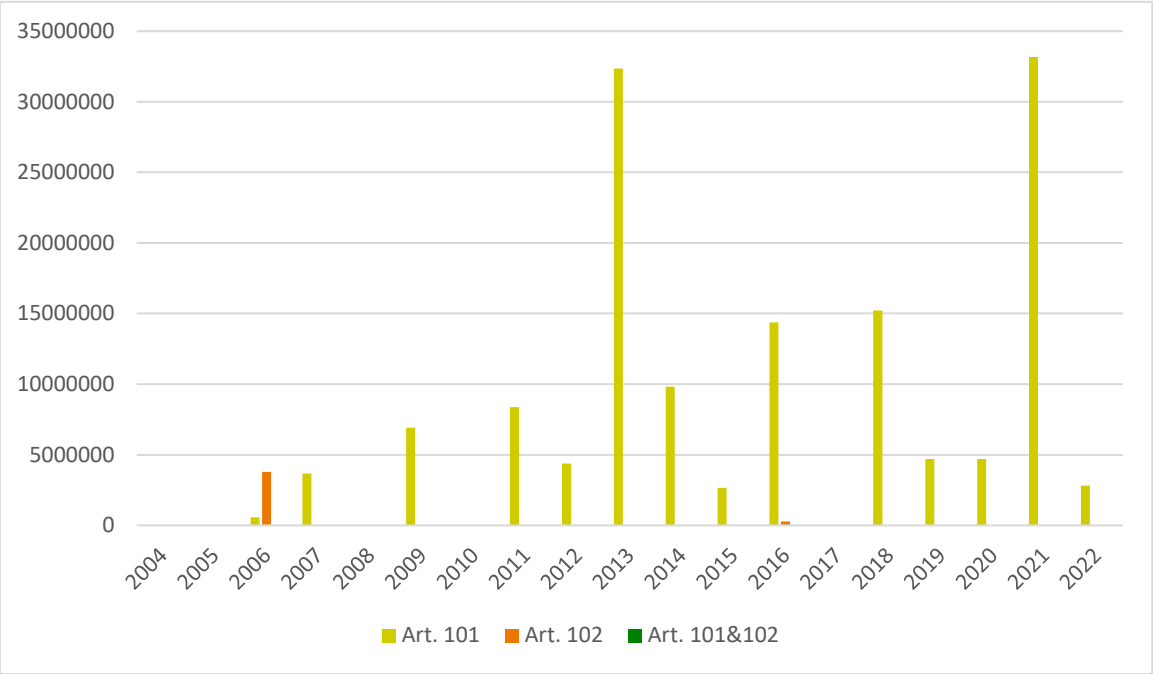

Figure 17 - Hungary - Sum of fines per year, split into decisions taken under Article 101 (N=35), Article 102 (N=2), and Article 101&102 (N=0)

2.13 Ireland

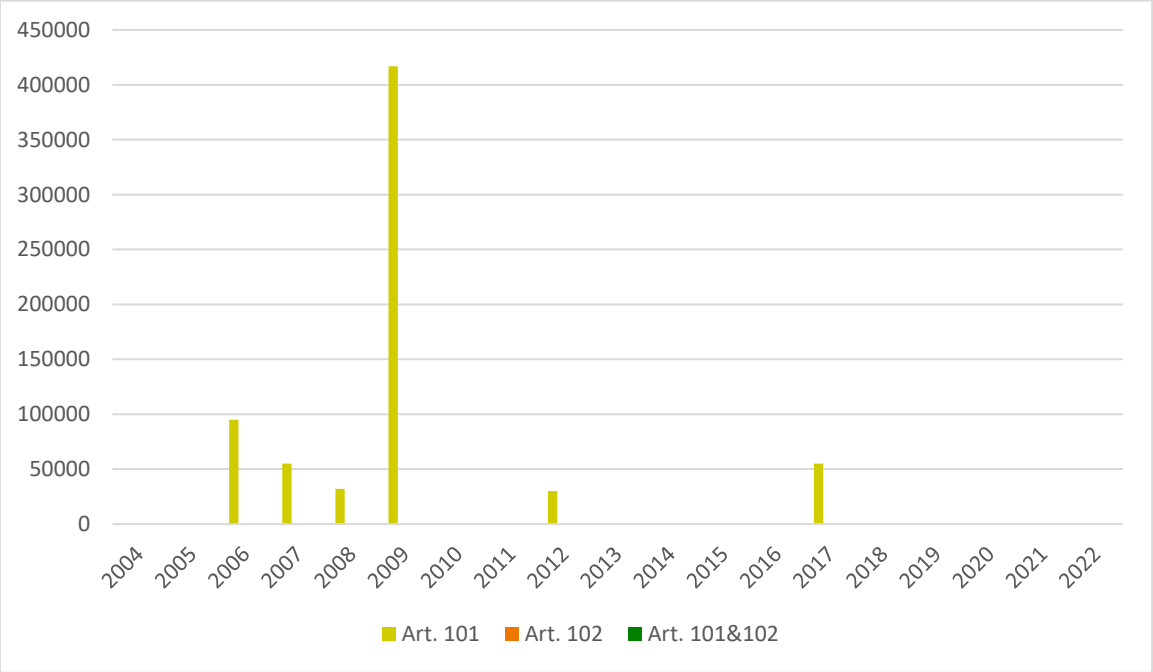

Figure 18 - Ireland - Sum of fines per year, split into decisions taken under Article 101 (N=31), Article 102 (N=0), and Article 101&102 (N=0)

2.14 Italy

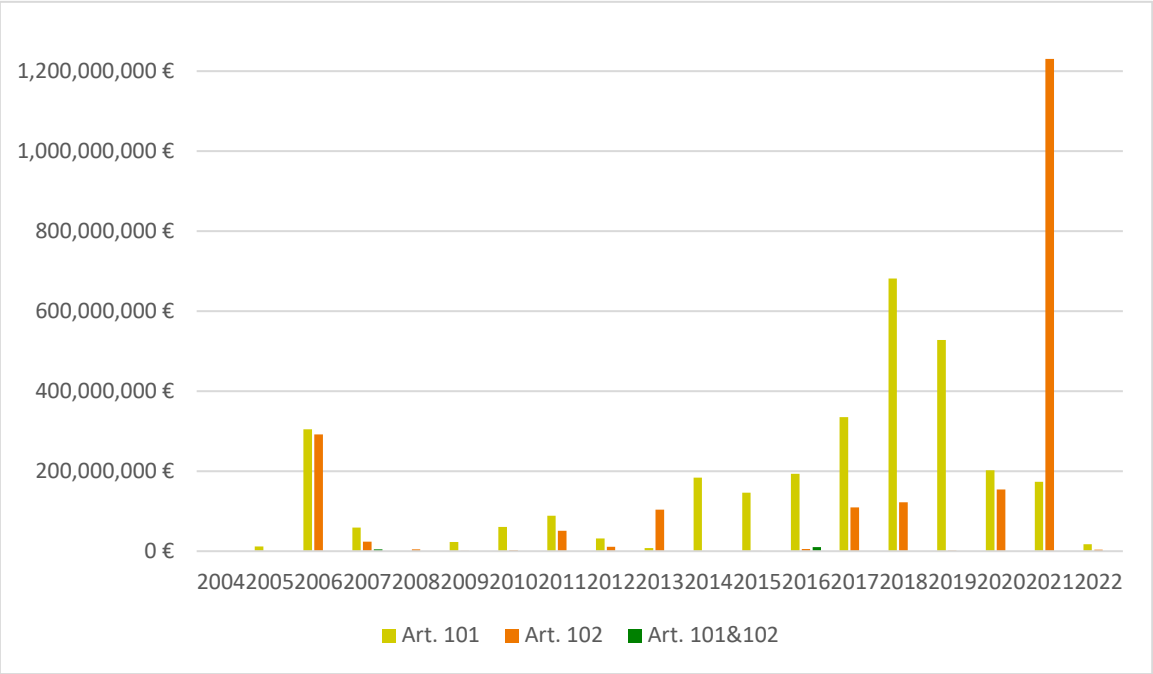

Figure 19 - Italy - Sum of fines per year, split into decisions taken under Article 101 (N=59), Article 102 (N=37), and Article 101&102 (N=2)

2.15 Latvia

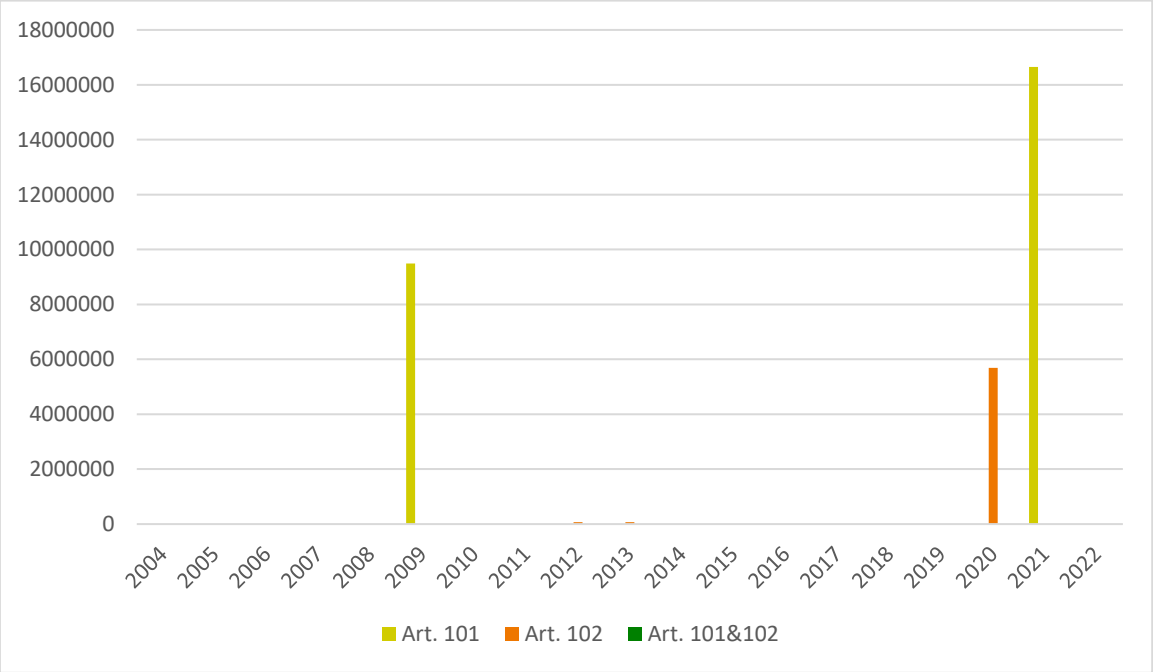

Figure 20 - Latvia - Sum of fines per year, split into decisions taken under Article 101 (N=2), Article 102 (N=3), and Article 101&102 (N=0)

2.16 Lithuania

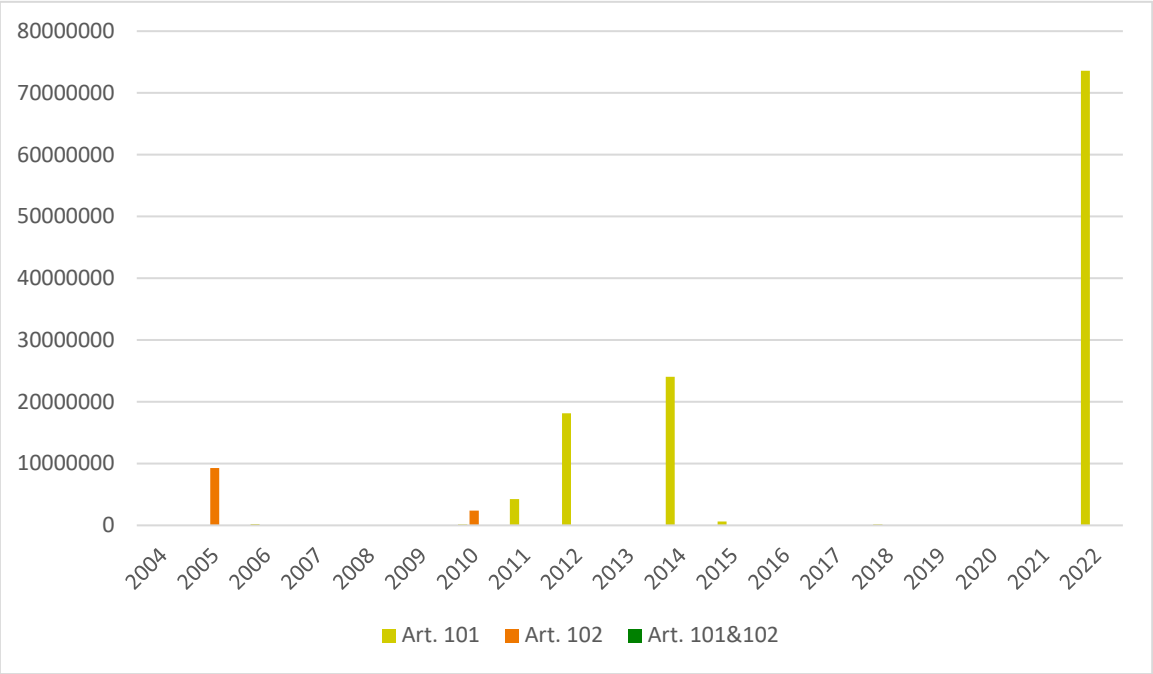

Figure 21 - Lithuania - Sum of fines per year, split into decisions taken under Article 101 (N=13), Article 102 (N=3), and Article 101&102 (N=0)

2.17 Luxembourg

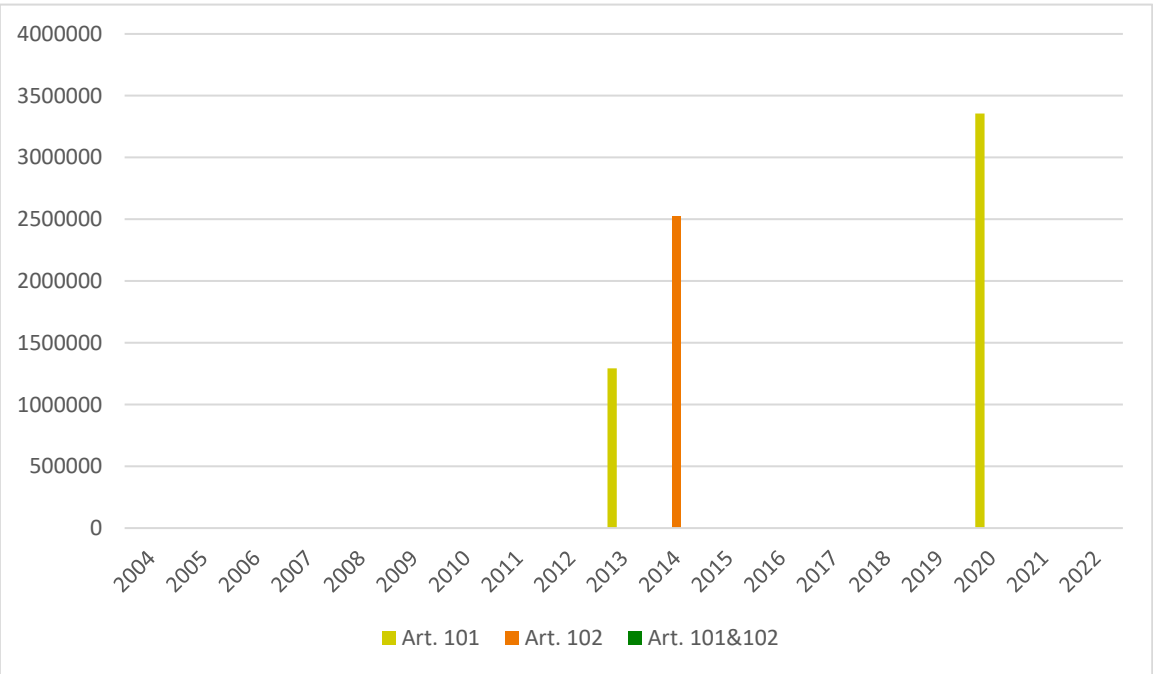

Figure 22 - Luxembourg - Sum of fines per year, split into decisions taken under Article 101 (N=4), Article 102 (N=1), and Article 101&102 (N=0)

2.18 Netherlands

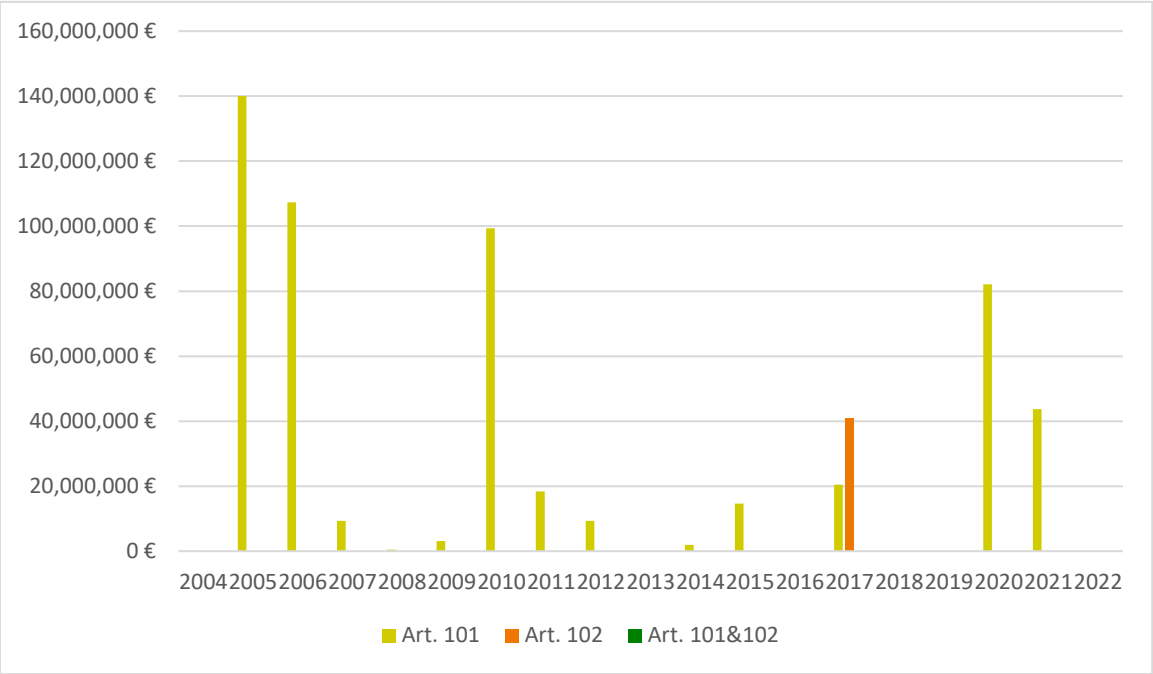

Figure 23 - Netherlands - Sum of fines per year, split into decisions taken under Article 101 (N=36), Article 102 (N=1), and Article 101&102 (N=0)

2.19 Poland

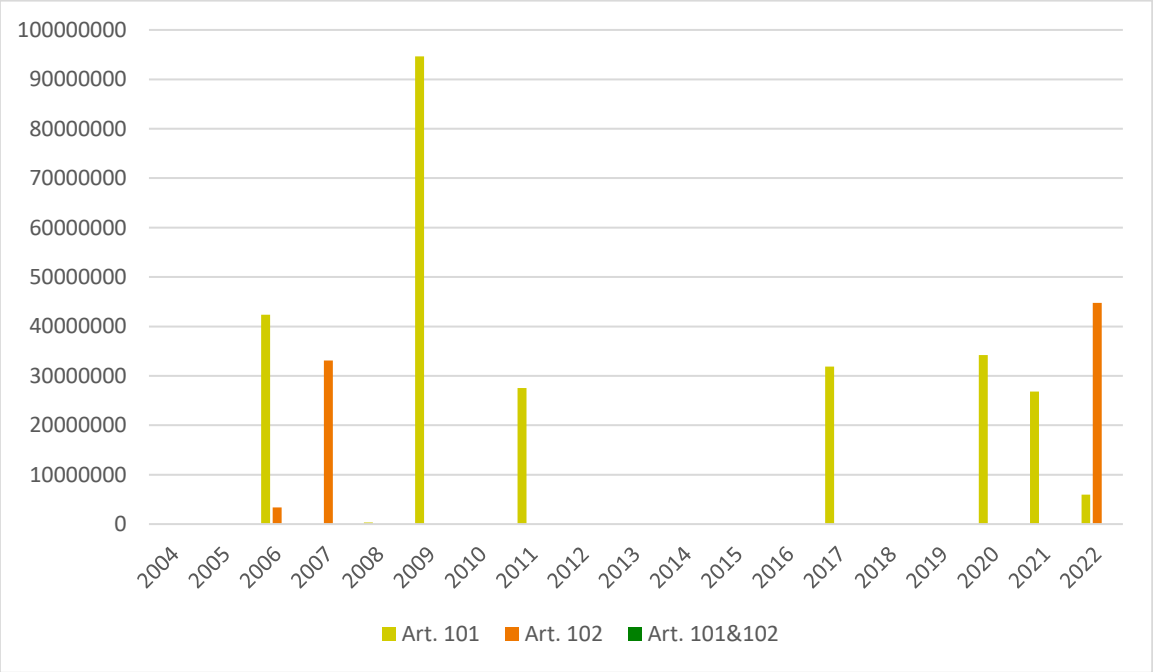

Figure 24 - Poland - Sum of fines per year, split into decisions taken under Article 101 (N=14), Article 102 (N=5), and Article 101&102 (N=0)

2.20 Portugal

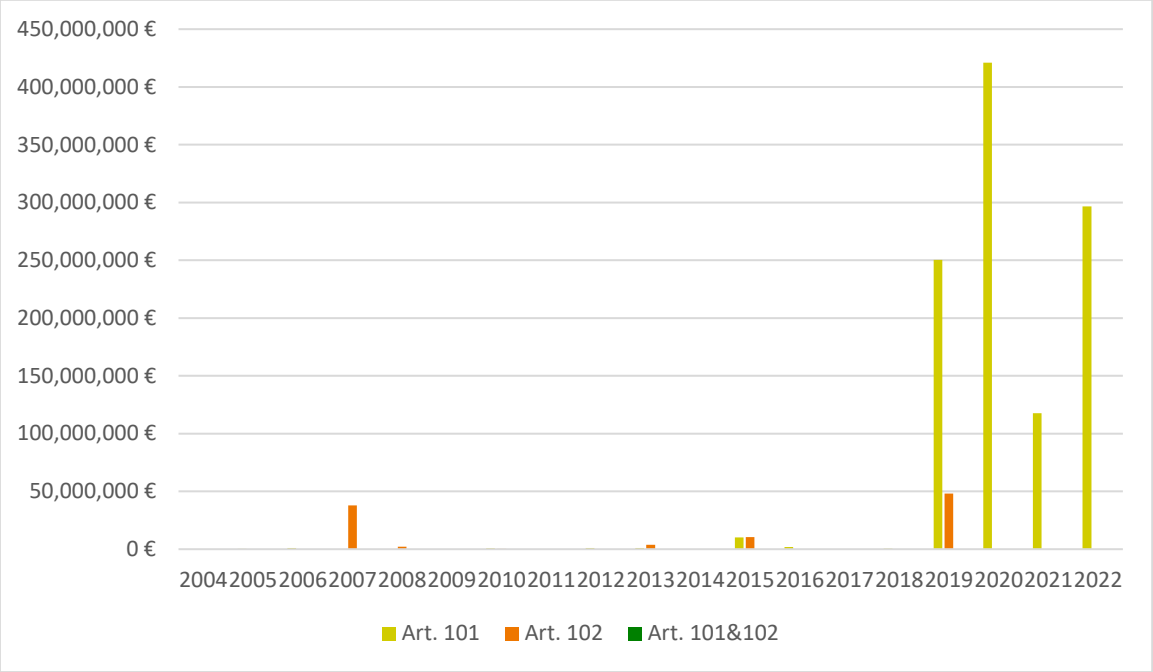

Figure 25 - Portugal - Sum of fines per year, split into decisions taken under Article 101 (N=38), Article 102 (N=7), and Article 101&102 (N=1)

2.21 Romania

[CONFIDENTIAL]

2.22 Slovakia

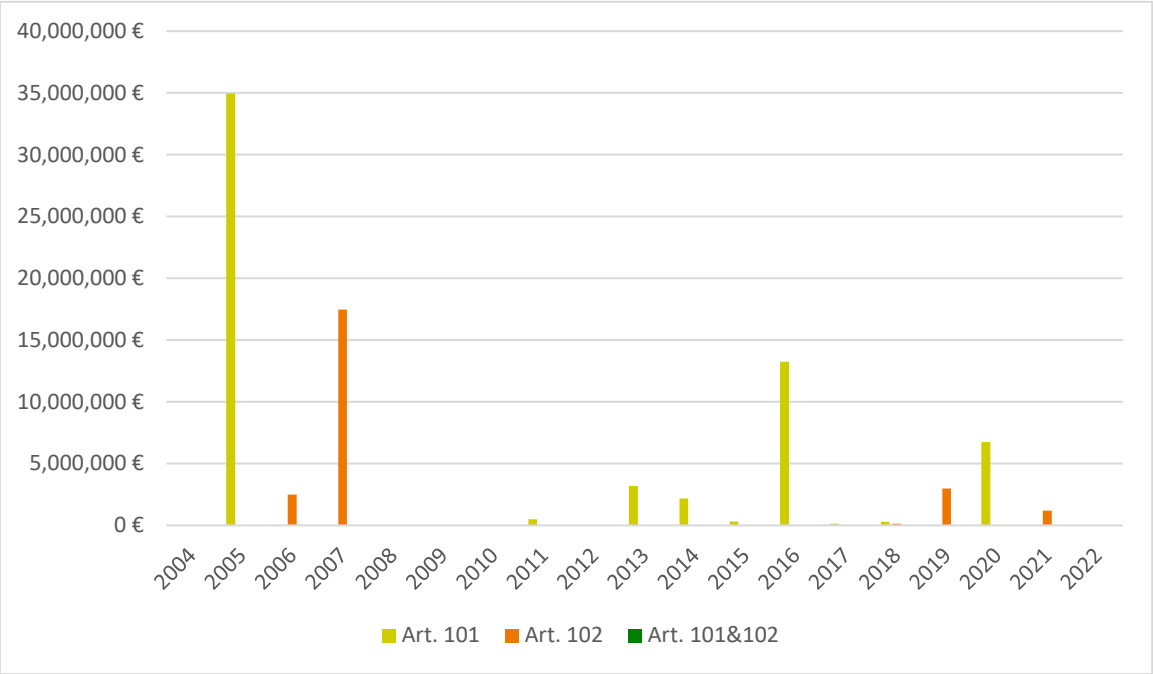

Figure 26 - Slovakia - Sum of fines per year, split into decisions taken under Article 101 (N=14), Article 102 (N=6), and Article 101&102 (N=0)

2.23 Slovenia

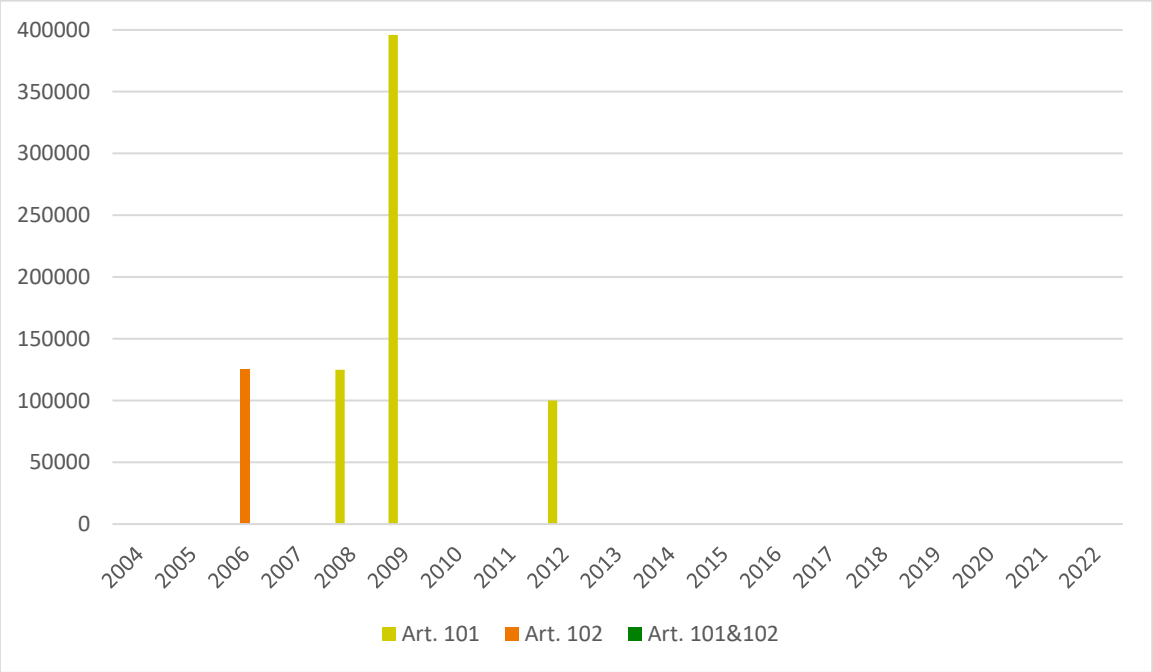

Figure 27 - Slovenia - Sum of fines per year, split into decisions taken under Article 101 (N=3), Article 102 (N=1), and Article 101&102 (N=0)

2.24 Spain

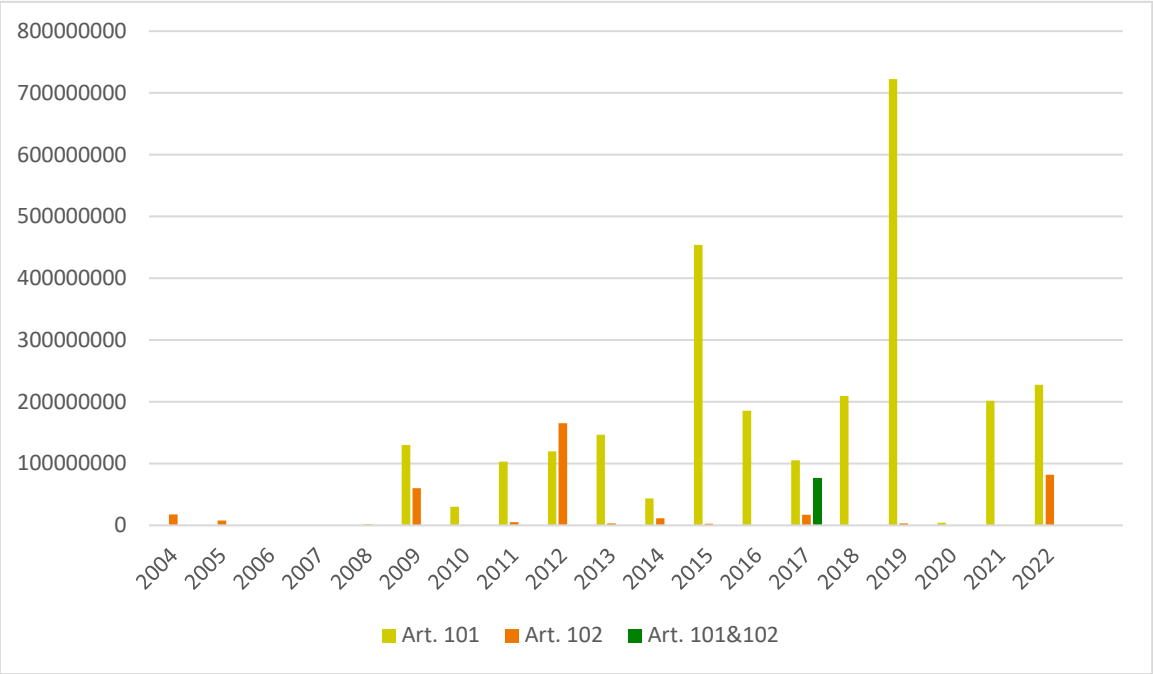

Figure 28 - Spain - Sum of fines per year, split into decisions taken under Article 101 (N=81), Article 102 (N=39), and Article 101&102 (N=1)

2.25 Sweden

[CONFIDENTIAL]

2.26 UK

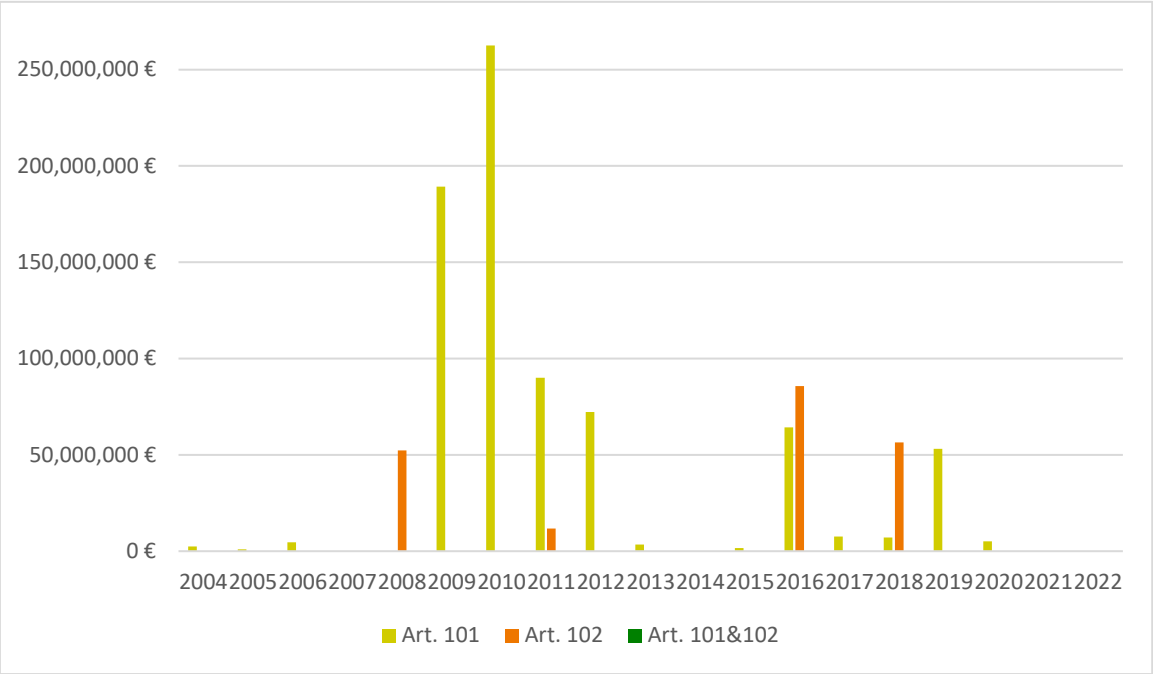

Figure 29 - UK - Sum of fines per year, split into decisions taken under Article 101 (N=40), Article 102 (N=4), and Article 101&102 (N=0)

Section 3. Total sum of procedural infringement fines per year in each of the jurisdictions (and excluding Germany, Romania, Slovenia and Sweden for confidentiality reasons)

3.1 Commission

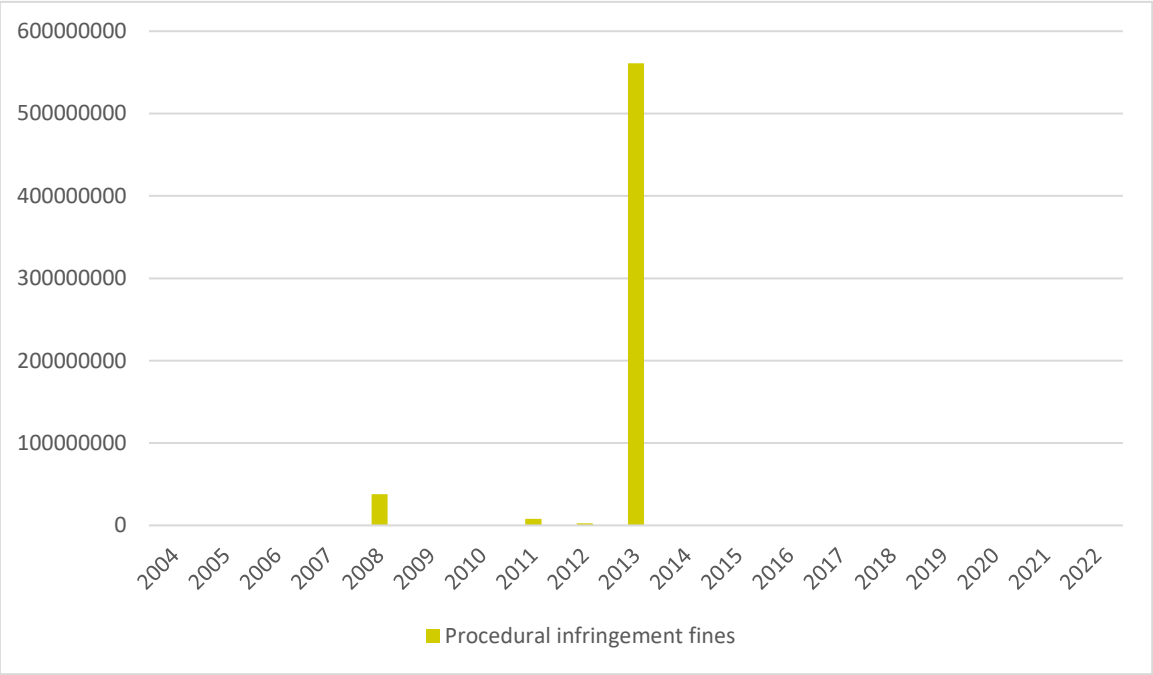

Figure 30 - Commission - Sum of procedural infringement fines per year (N=4). Please note that the above graph also contains data on procedural fines imposed in 2012 but that these are not visible due to significantly higher procedural fines in other years.

3.2 Bulgaria

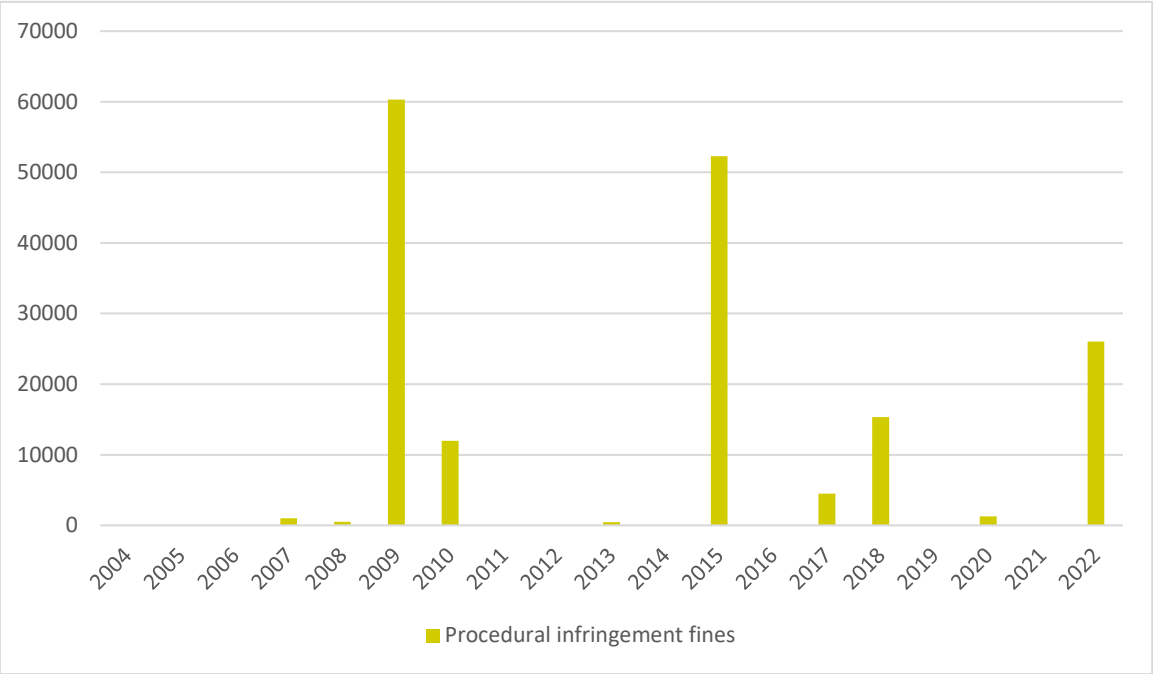

Figure 31 - Bulgaria - Sum of procedural infringement fines per year (N=15)

3.3 Cyprus

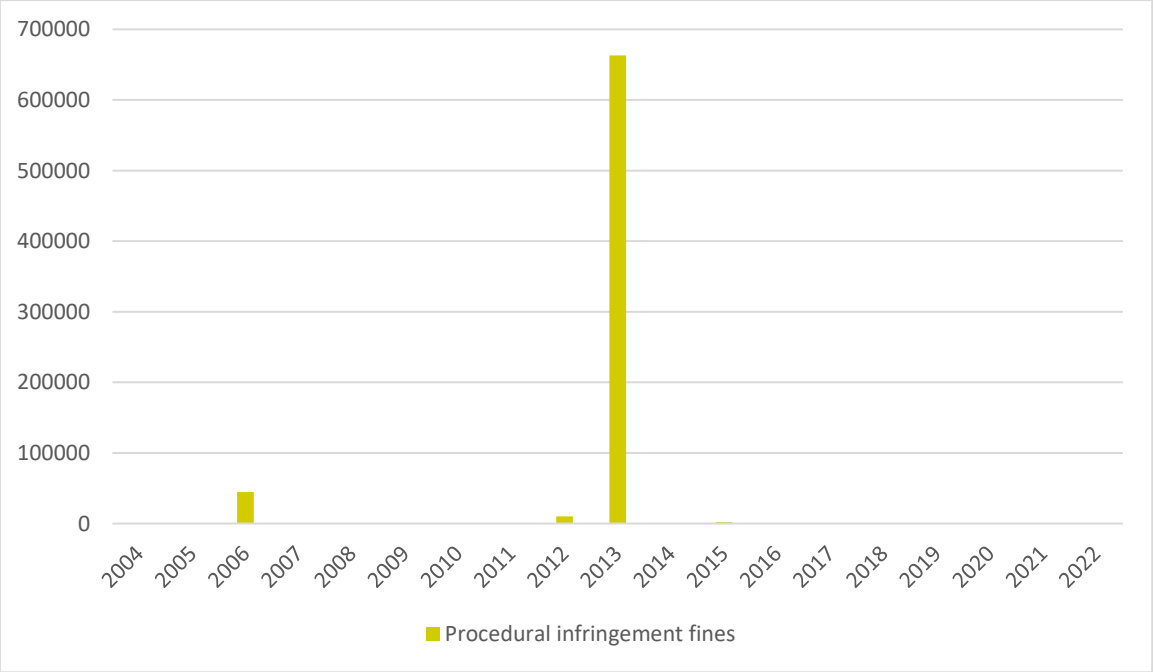

Figure 32 - Cyprus - Sum of procedural infringement fines per year (N=7). Please note that the above graph also contains data on procedural fines imposed in 2015 and 2022 but that these are not visible due to significantly higher procedural fines in other years.

3.4 Czechia

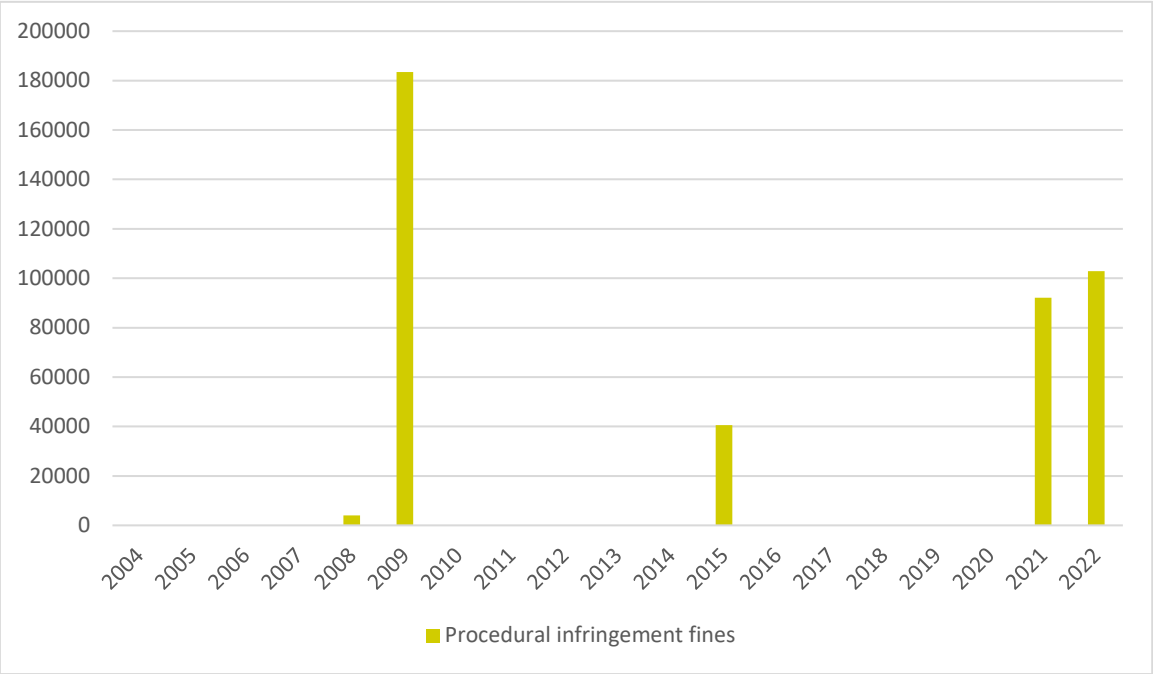

Figure 33 - Czechia - Sum of procedural infringement fines per year (N=7)

3.5 France

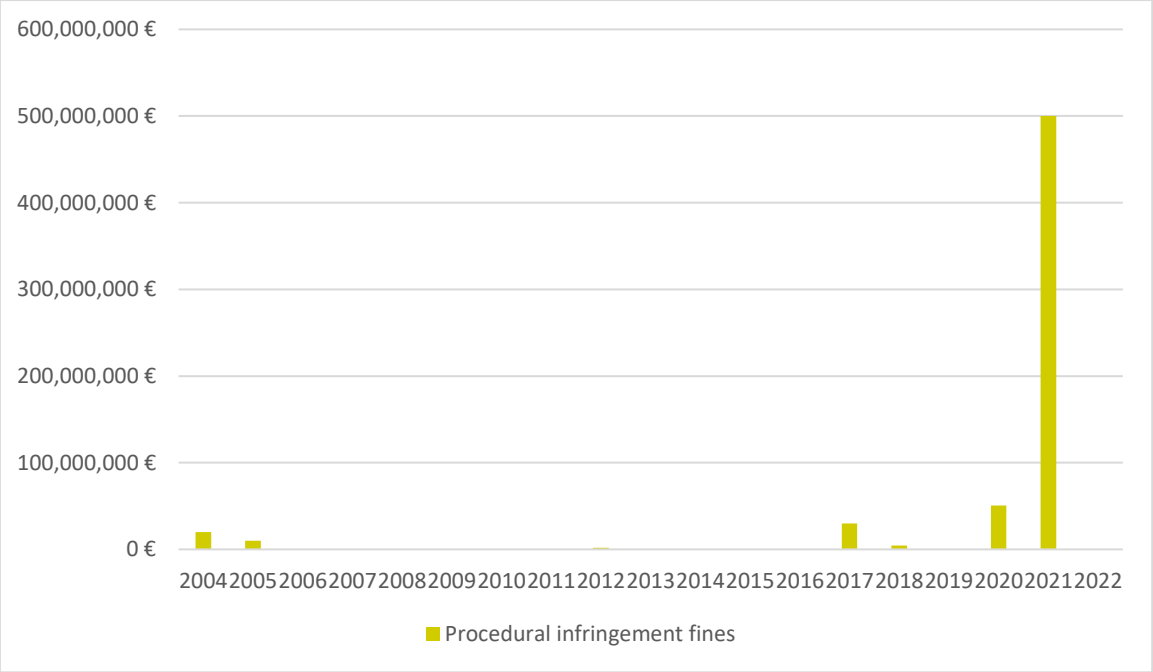

Figure 34 - France - Sum of procedural infringement fines per year (N=16). Please note that the above graph also contains data on procedural fines imposed in 2008, 2010, 2011 and 2015 but that these are not visible due to significantly higher procedural fines in other years.

3.6 Greece

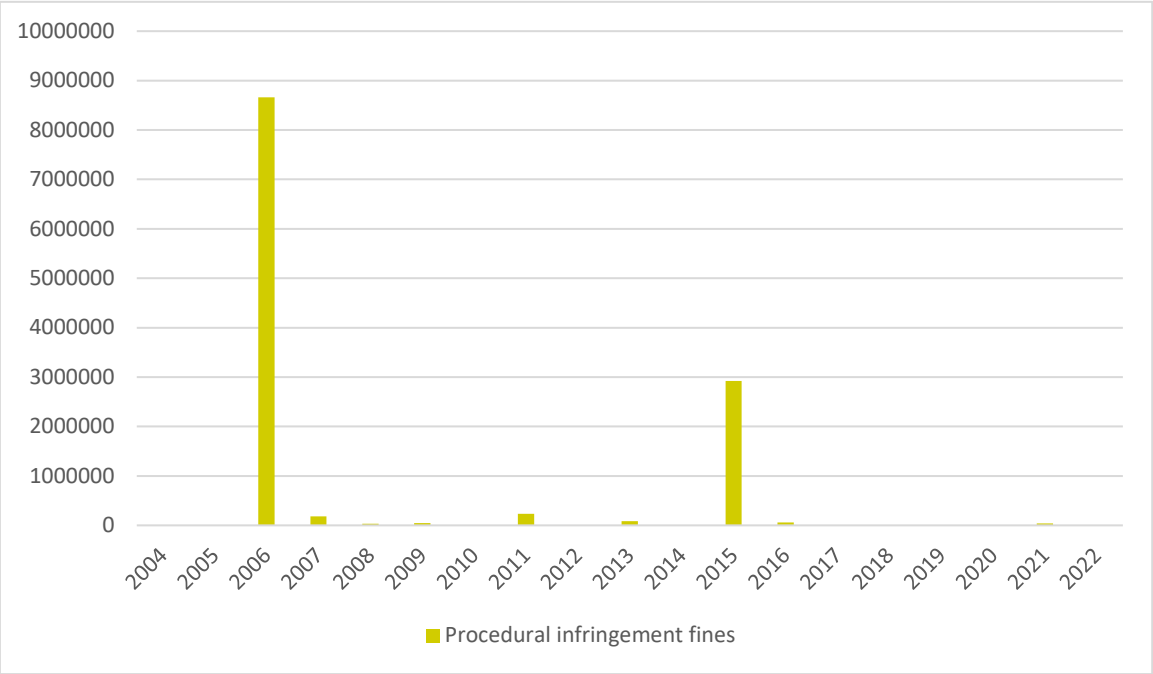

Figure 35 - Greece - Sum of procedural infringement fines per year (N=16). Please note that the above graph also contains data on procedural fines imposed in 2008, 2009, 2020, and 2021 but that these are not visible due to significantly higher procedural fines in other years.

3.7 Hungary

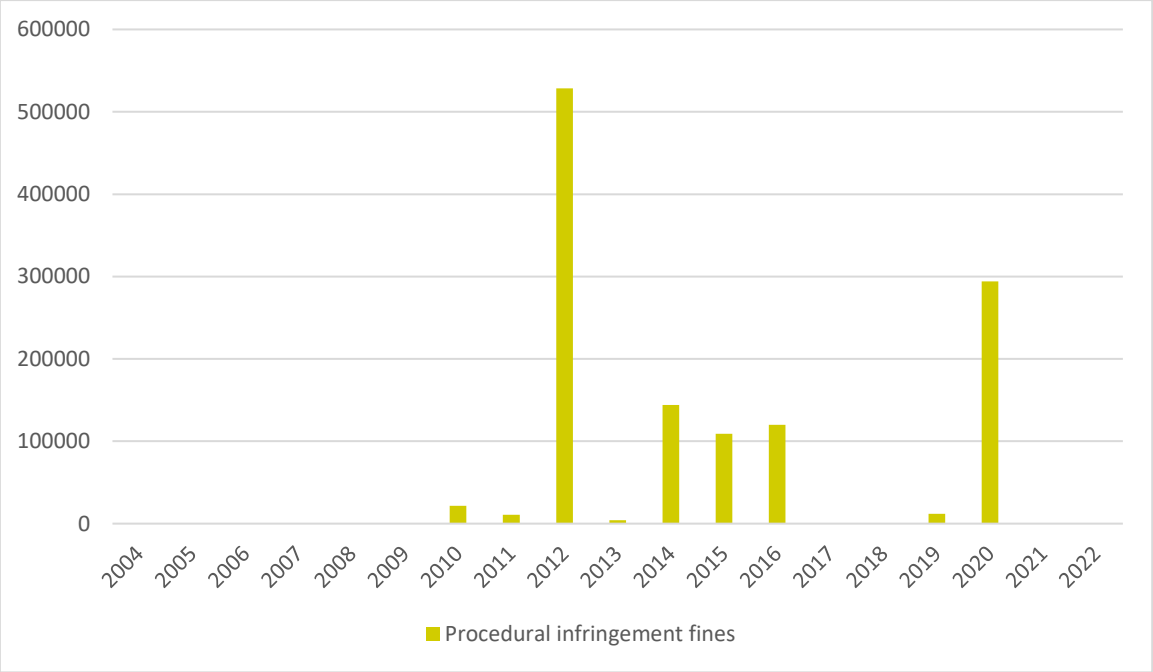

Figure 36 - Hungary - Sum of procedural infringement fines per year (N=24). Please note that the above graph also contains data on procedural fines imposed in 2008 but that these are not visible due to significantly higher procedural fines in other years.

3.8 Italy

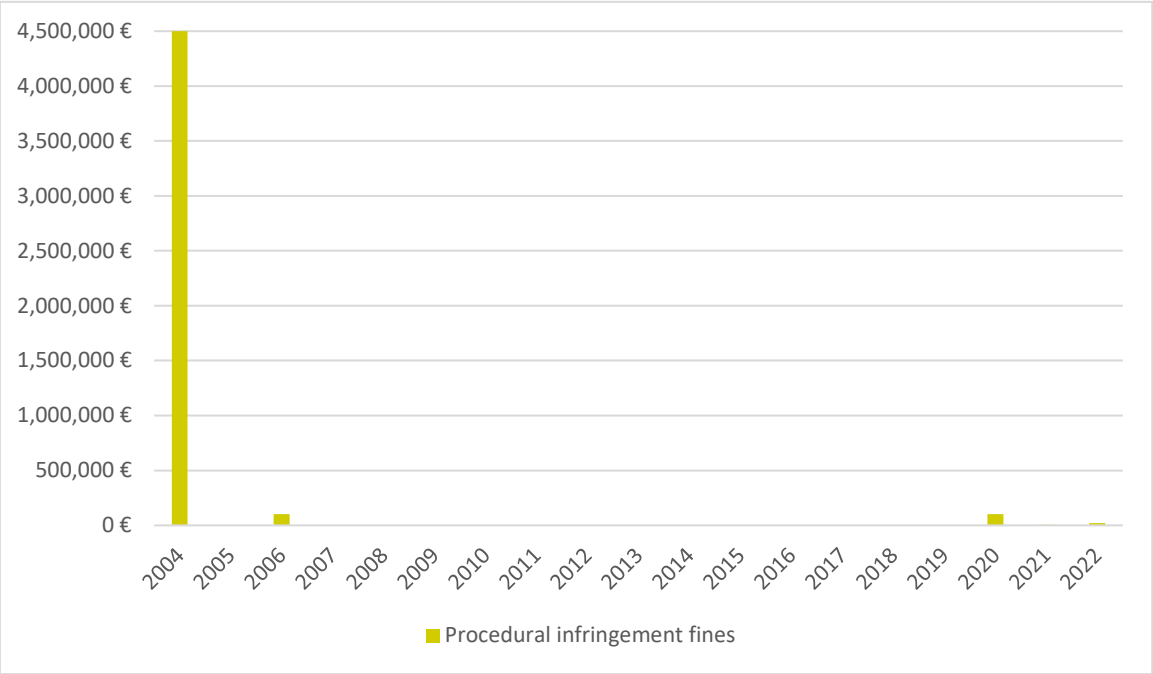

Figure 37 - Italy - Sum of procedural infringement fines per year (N=6). Please note that the above graph also contains data on procedural fines imposed in 2021 and 2022 but that these are not visible due to significantly higher procedural fines in other years.

3.9 Latvia

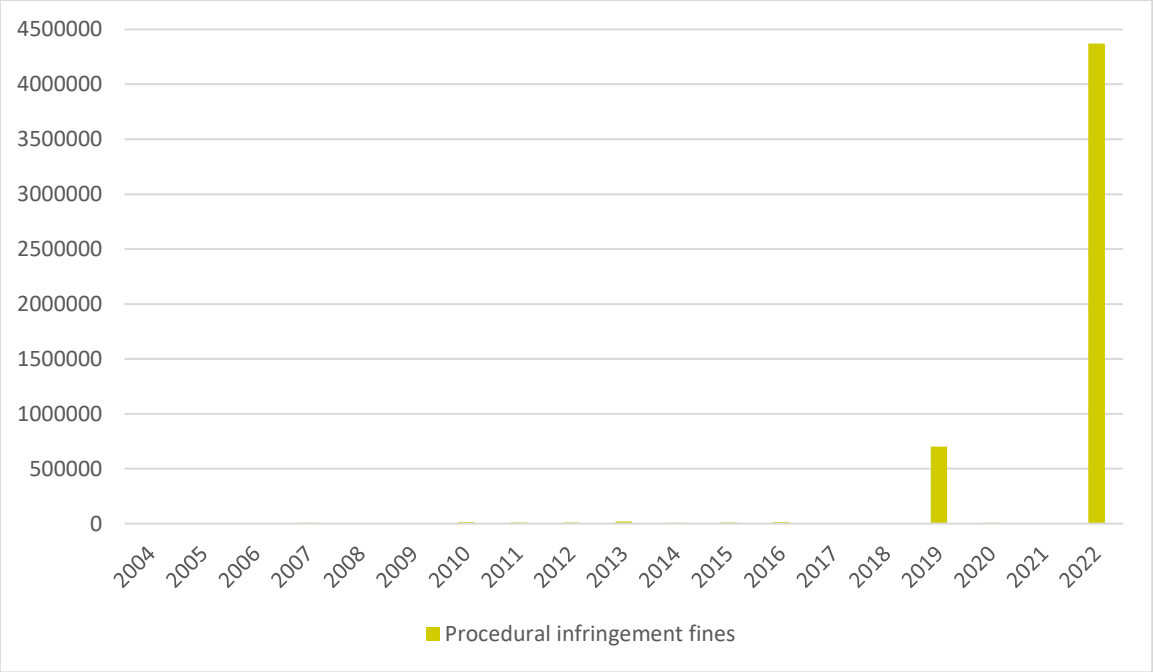

Figure 38 - Latvia - Sum of procedural infringement fines per year (N=40). Please note that the above graph also contains data on procedural fines imposed in 2006, 2007, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2020 but that these are not visible due to significantly higher procedural fines in other years.

3.10 Lithuania

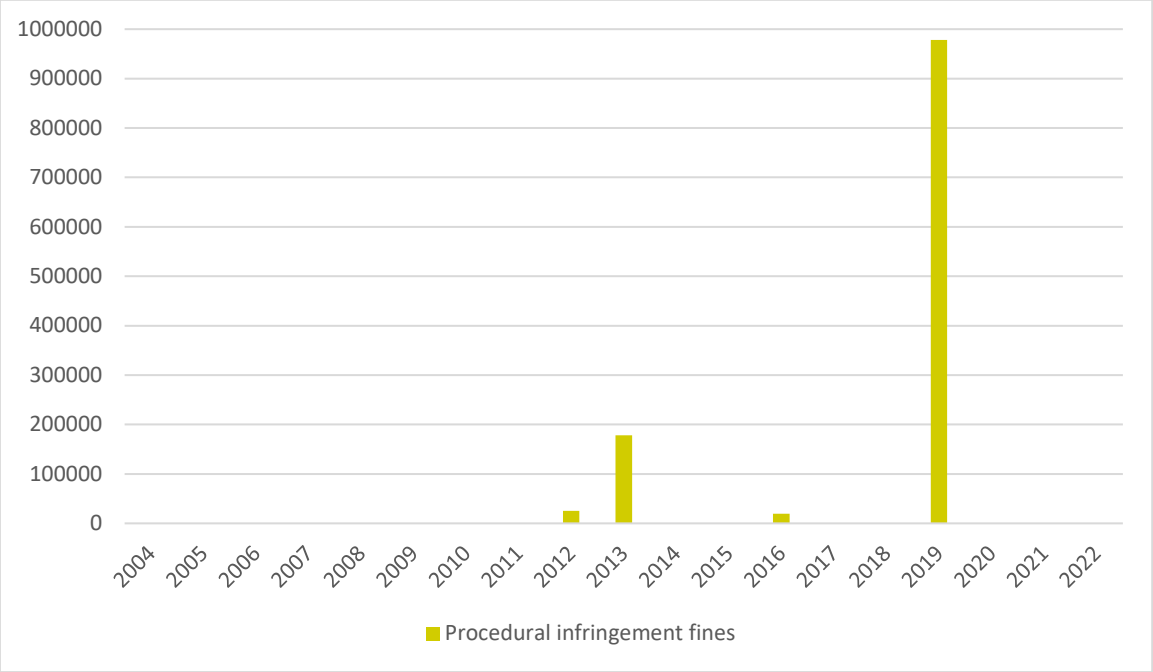

Figure 39 - Lithuania - Sum of procedural infringement fines per year (N=4)

3.11 Luxembourg

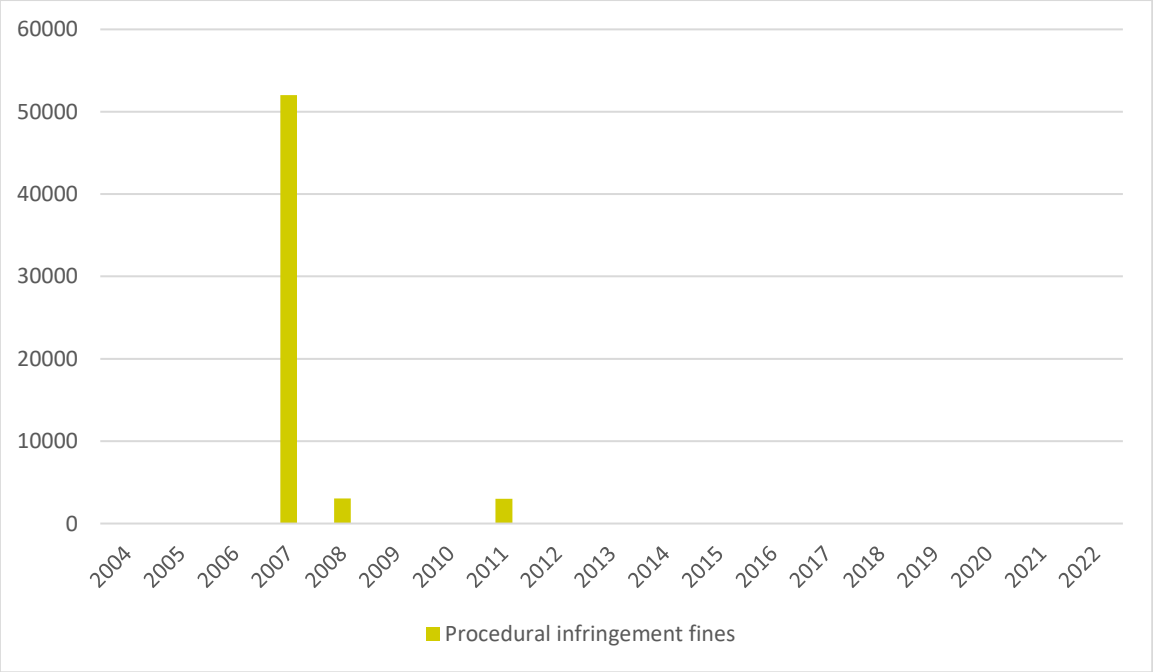

Figure 40 - Luxembourg - Sum of procedural infringement fines per year (N=10)

3.12 Netherlands

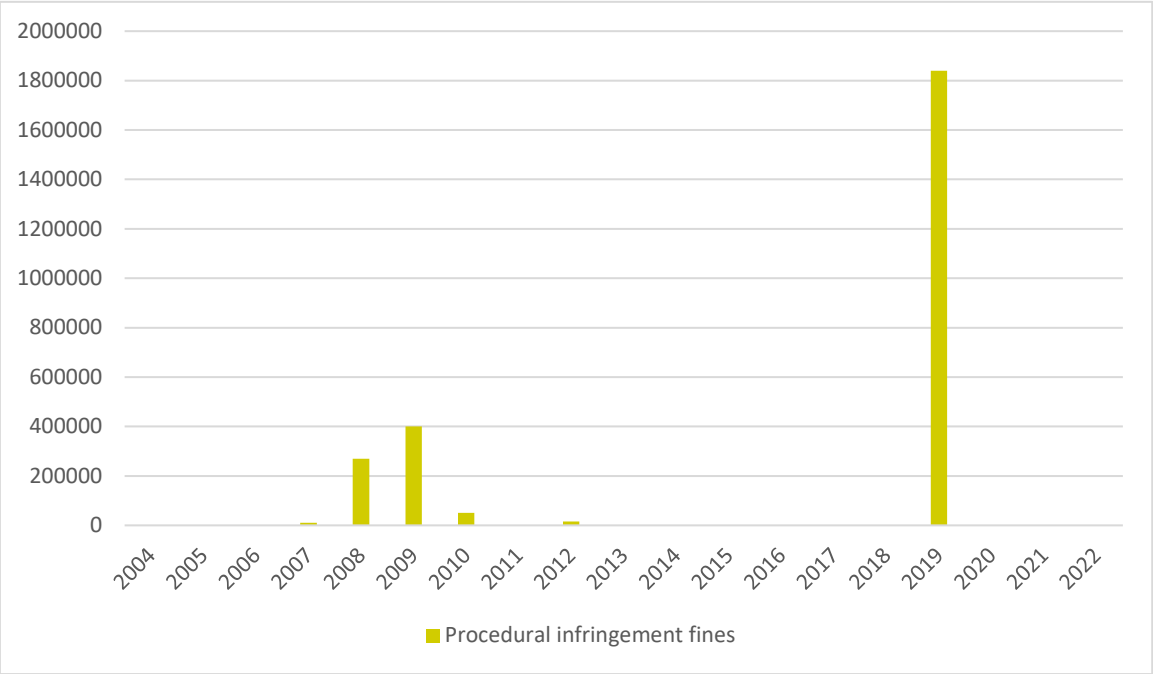

Figure 41 - Netherlands - Sum of procedural infringement fines per year (N=8). Please note that the above graph also contains data on procedural fines imposed in 2007 but that these are not visible due to significantly higher procedural fines in other years.

3.13 Poland

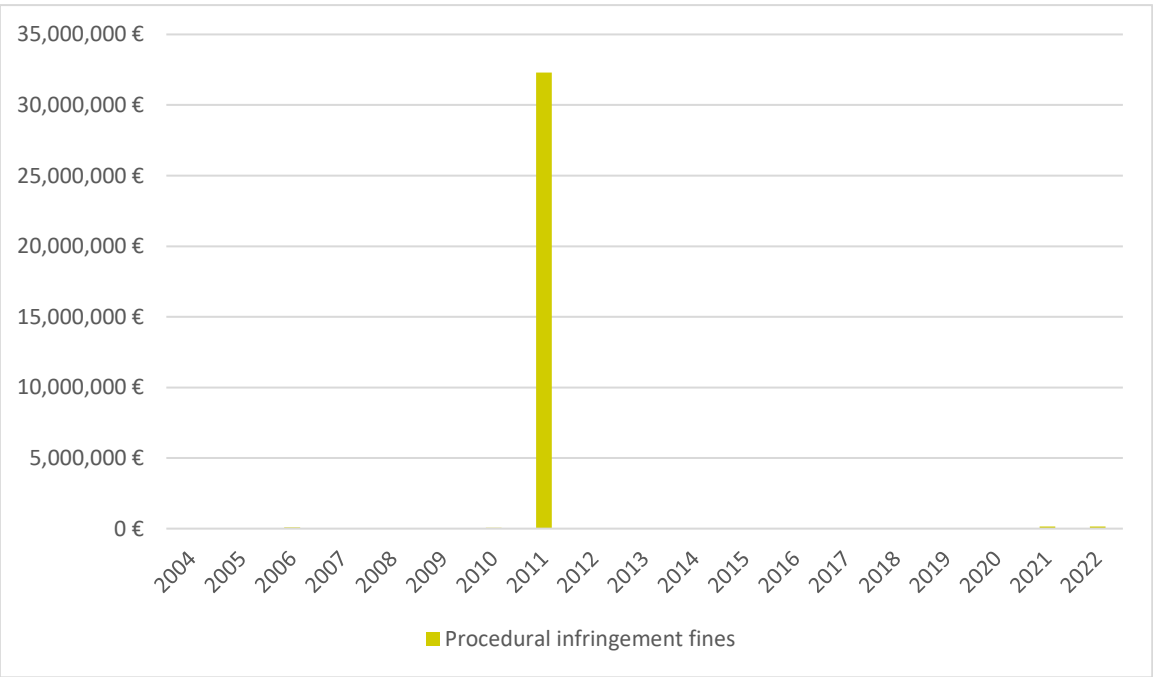

Figure 42 - Poland - Sum of procedural infringement fines per year (N=42). Please note that the above graph also contains data on procedural fines imposed in 2004, 2006, 2007, 2008, 2009, 2010, 2012, 2015, 2016, 2020, 2021 and 2022 but that these are not visible due to significantly higher procedural fines imposed in 2011.

3.14 Portugal

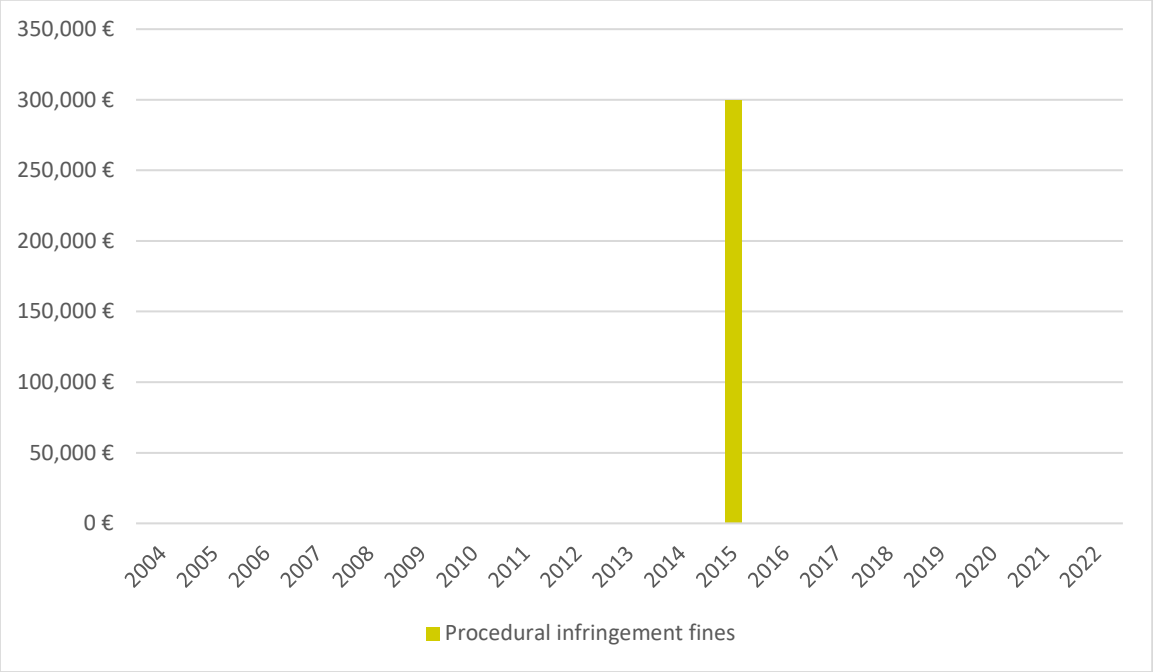

Figure 43 - Portugal - Sum of procedural infringement fines per year (N=1)

3.15 Romania

[CONFIDENTIAL]

3.16 Slovakia

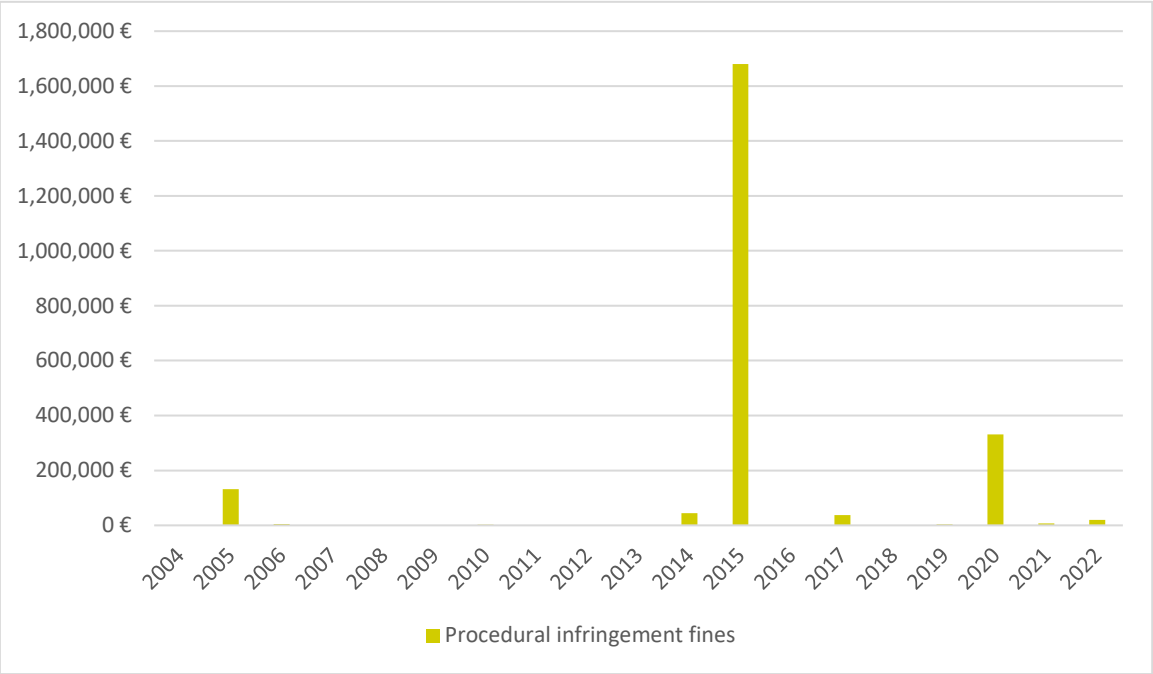

Figure 44 - Slovakia - Sum of procedural infringement fines per year (N=29). Please note that the above graph also contains data on procedural fines imposed in 2004, 2006, 2008, 2010, 2012, 2016, 2018, 2019, and 2021 but that these are not visible due to significantly higher procedural fines in other years.

3.17 Slovenia

[CONFIDENTIAL]

3.18 Spain

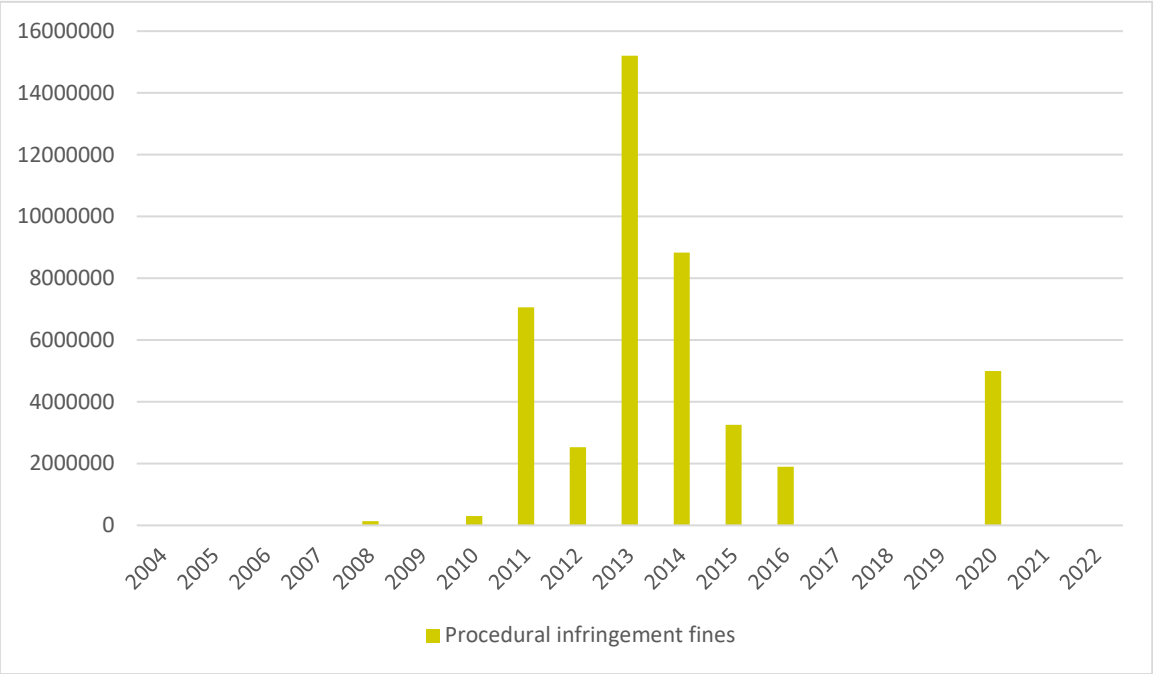

Figure 45 - Spain - Sum of procedural infringement fines per year (N=22)

Section 4. Number of periodic penalty payment decisions per year in each of the jurisdictions (and excluding Germany, Romania, Slovenia and Sweden for confidentiality reasons)

7.1 Commission

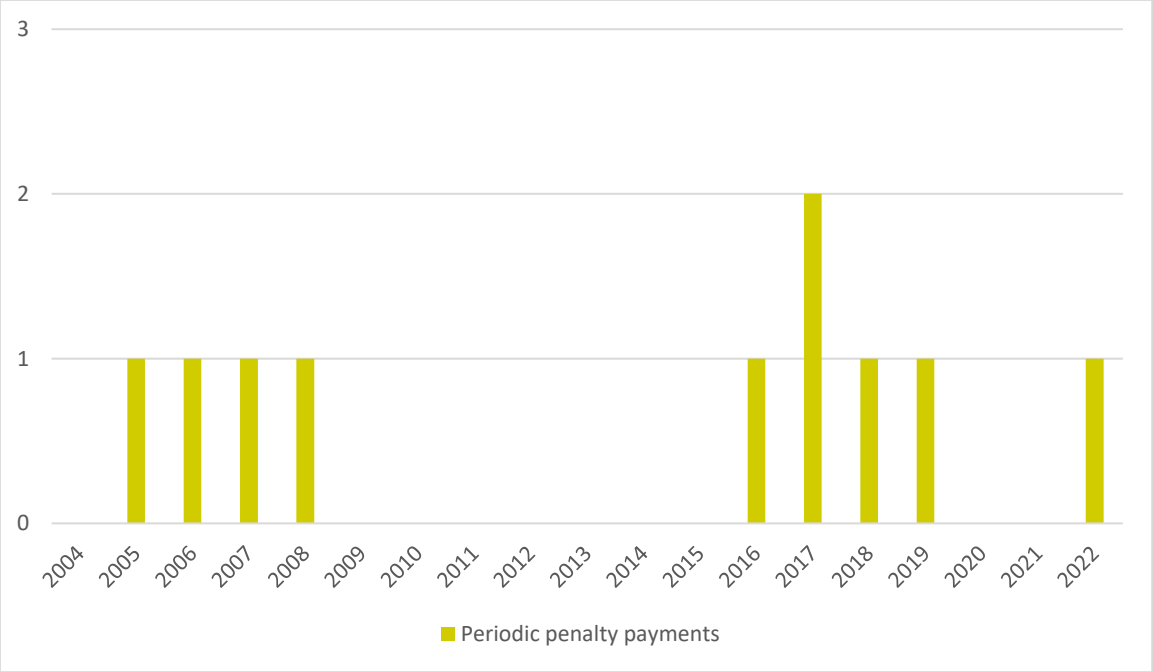

Figure 46 - Commission - Count of periodic penalty payment decisions per year (N=10)

7.2 Belgium

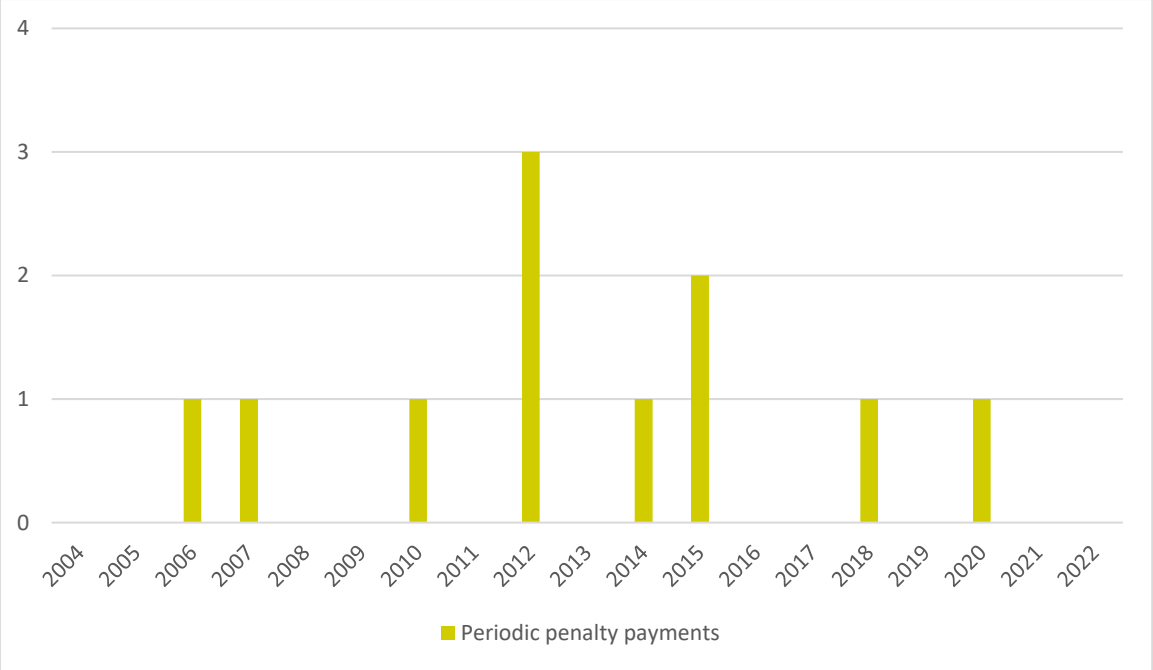

Figure 47 - Belgium - Count of periodic penalty payment decisions per year (N=11)

7.3 Bulgaria

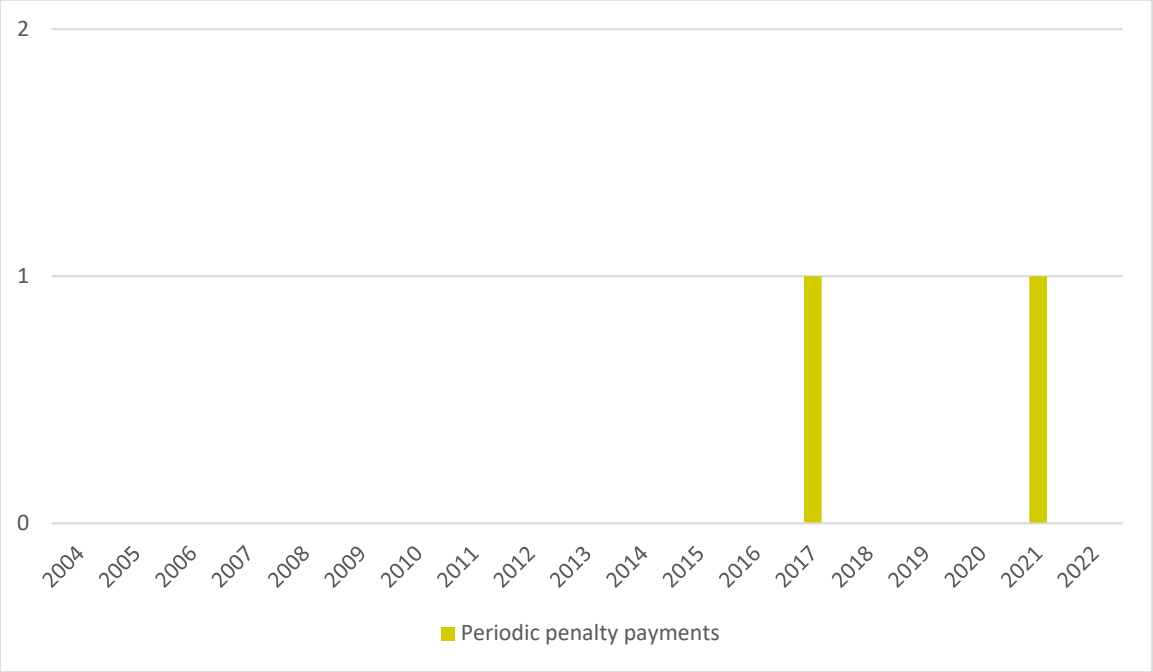

Figure 48 - Bulgaria - Count of periodic penalty payment decisions per year (N=2)

7.4 Cyprus

Figure 49 - Cyprus - Count of periodic penalty payment decisions per year (N=1)

7.5 Finland

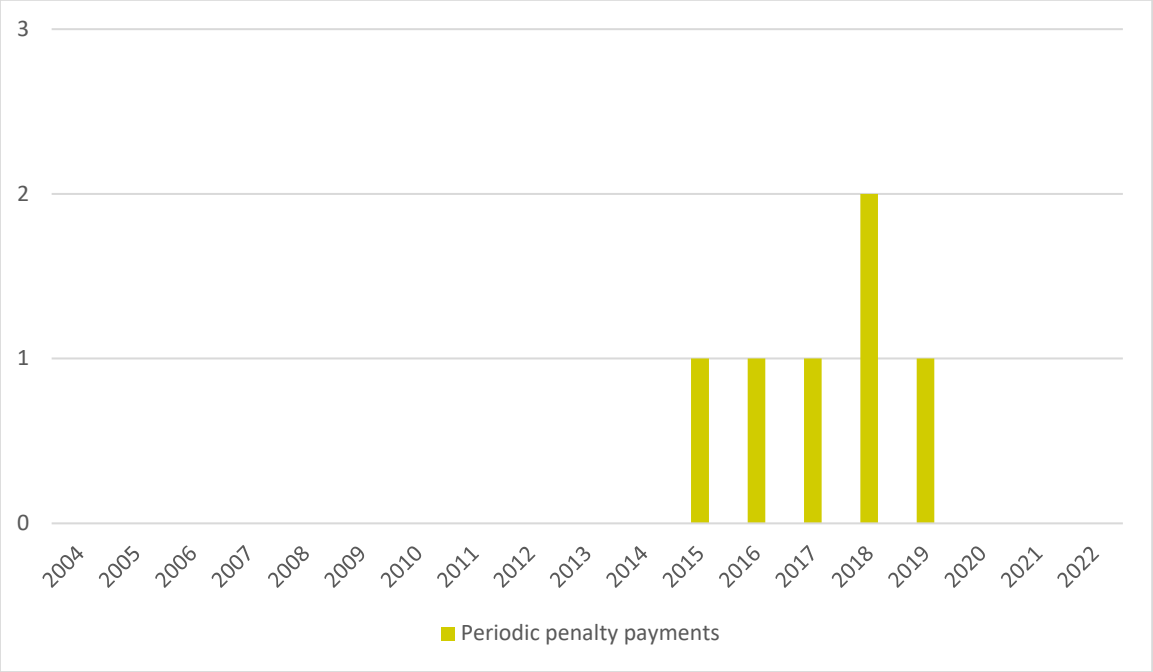

Figure 50 - Finland - Count of periodic penalty payment decisions per year (N=6)

7.6 France

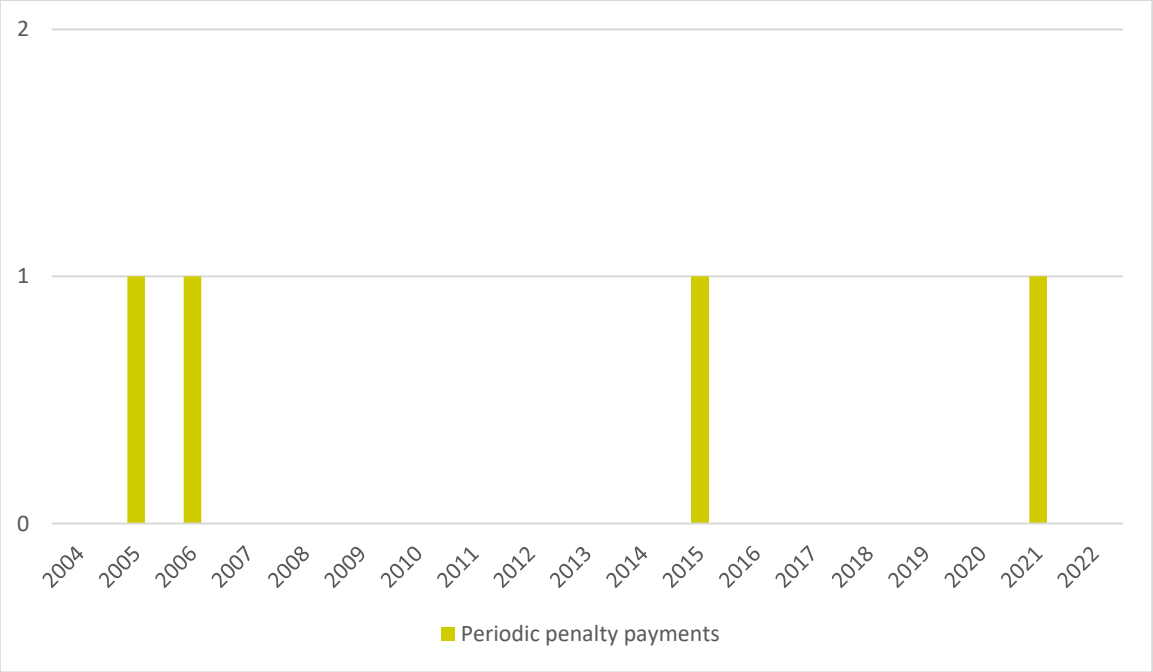

Figure 51 - France - Count of periodic penalty payment decisions per year (N=4)

7.7 Greece

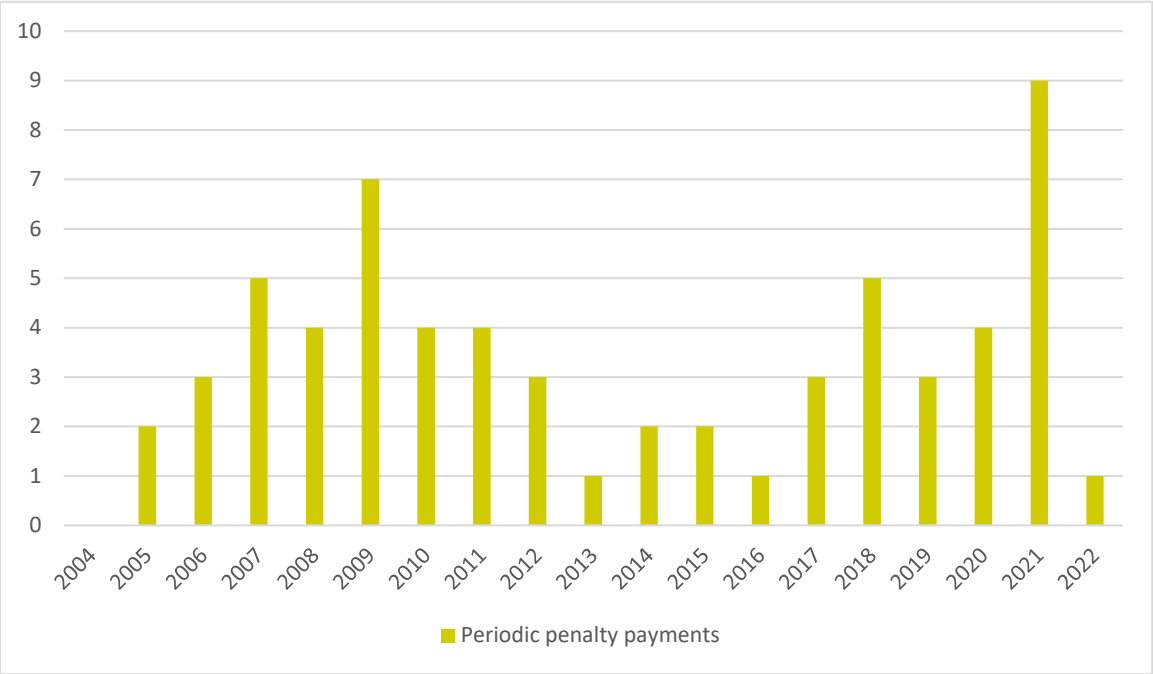

Figure 52 - Greece - Count of periodic penalty payment decisions per year (N=63)

7.8 Hungary

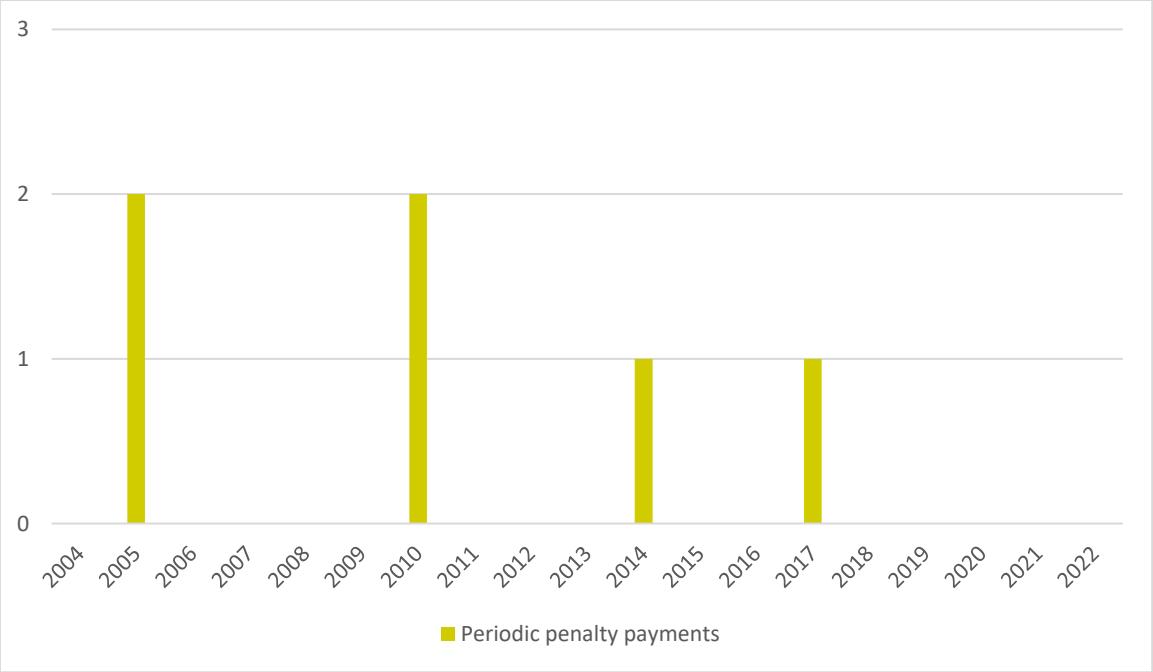

Figure 53 - Hungary - Count of periodic penalty payment decisions per year (N=6)

7.9 Italy

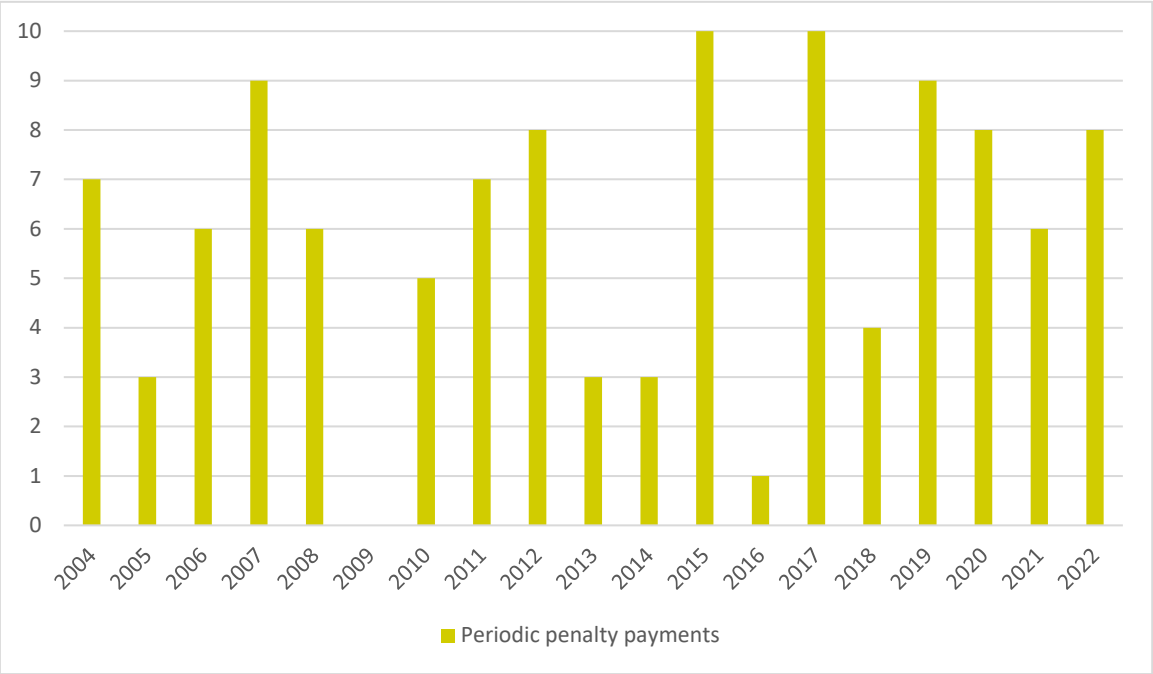

Figure 54 - Italy - Count of periodic penalty payment decisions per year (N=113)

7.10 Luxembourg

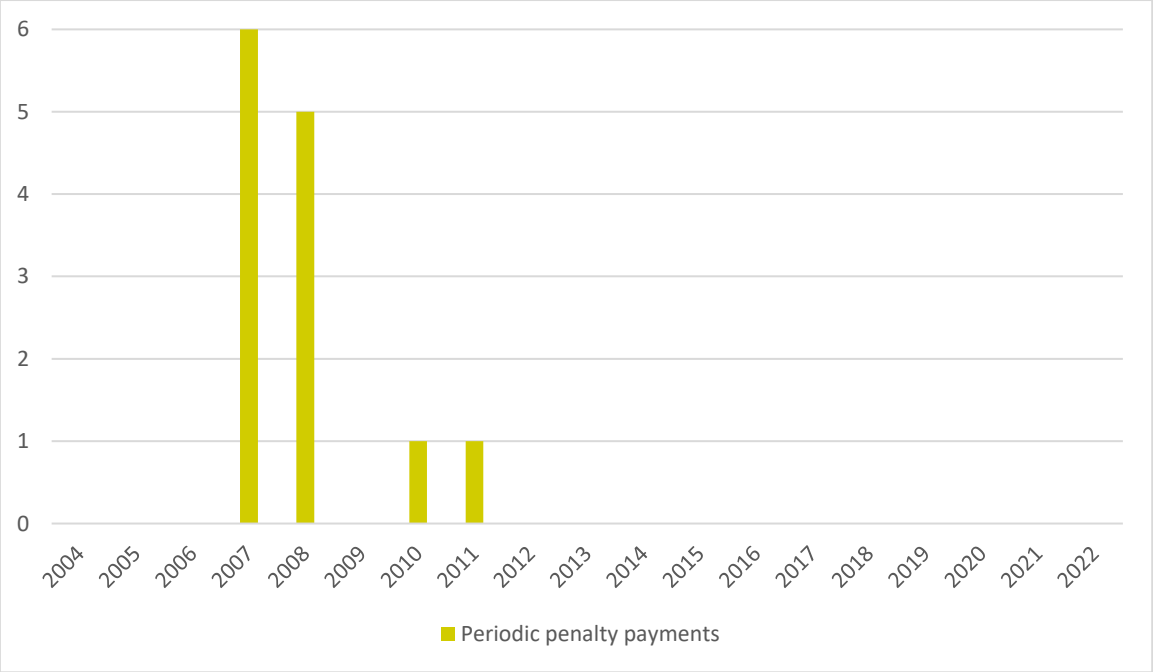

Figure 55 - Luxembourg - Count of periodic penalty payment decisions per year (N=13)

7.11 Netherlands

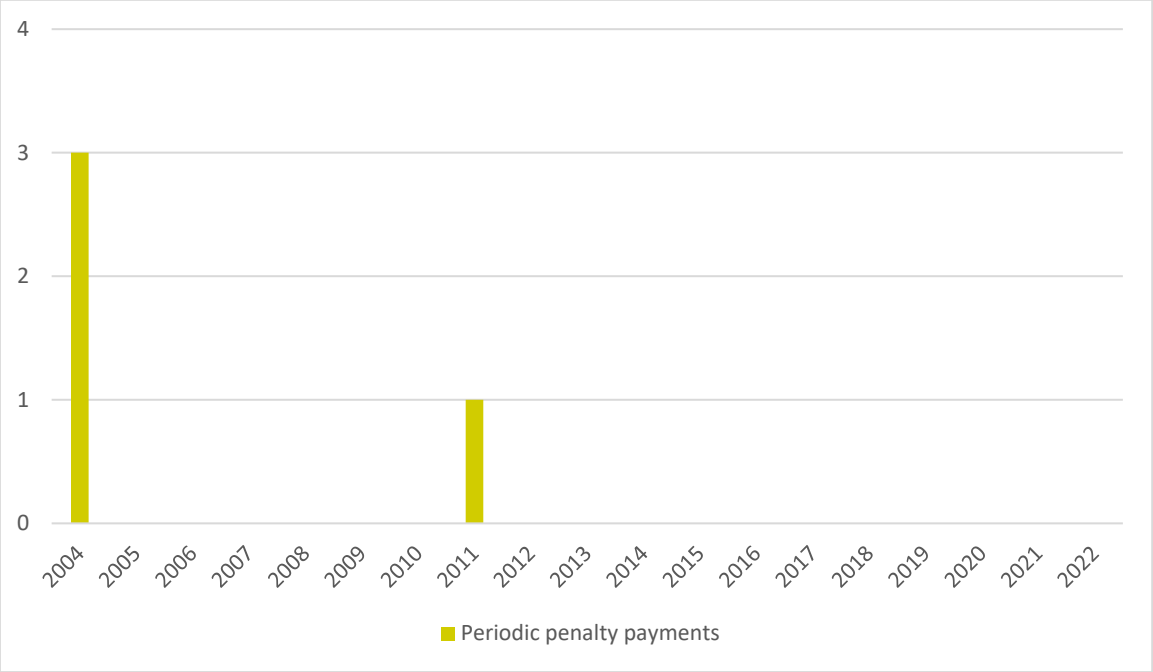

Figure 56 - Netherlands - Count of periodic penalty payment decisions per year (N=4)

7.12 Portugal

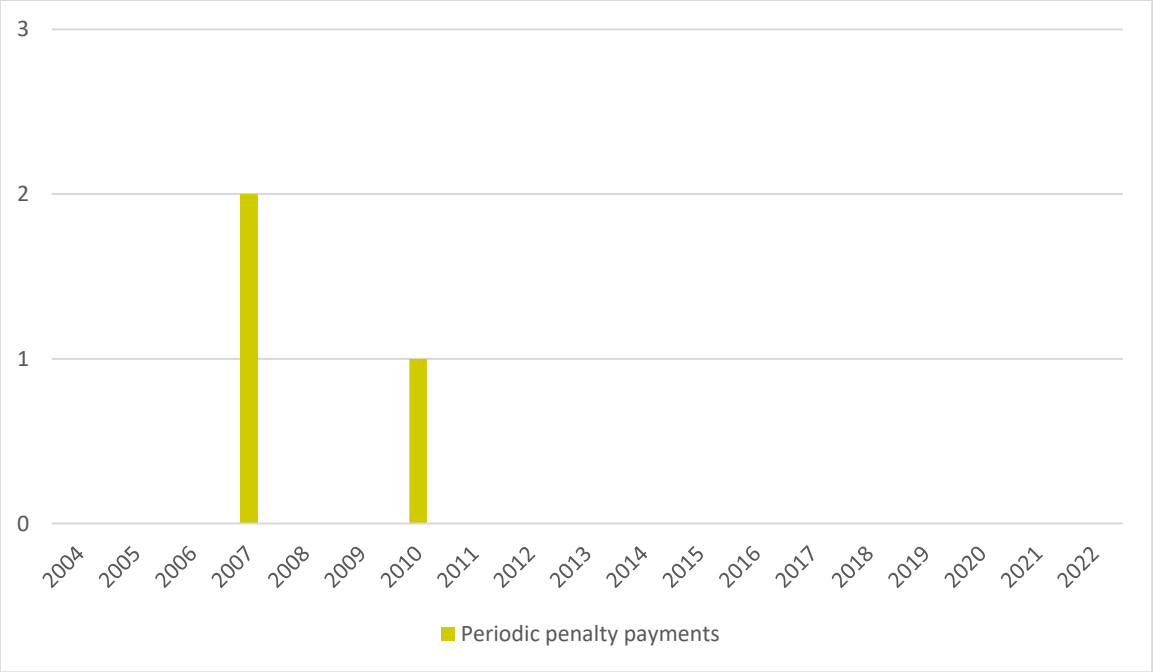

Figure 57 - Portugal - Count of periodic penalty payment decisions per year (N=3)

7.13 Romania

[CONFIDENTIAL]

7.14 Spain

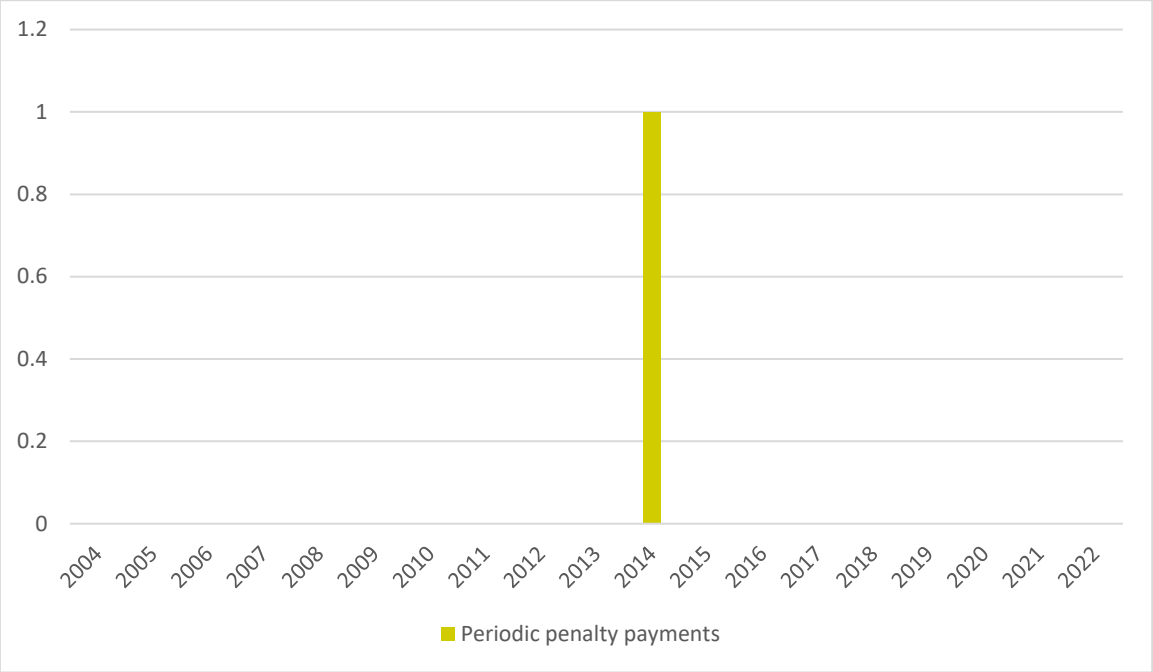

Figure 58 - Spain - Count of periodic penalty payment decisions per year (N=1)

7.15 Sweden

[CONFIDENTIAL]

Section 5. Number of settlement and cooperation decisions taken by the Commission per year

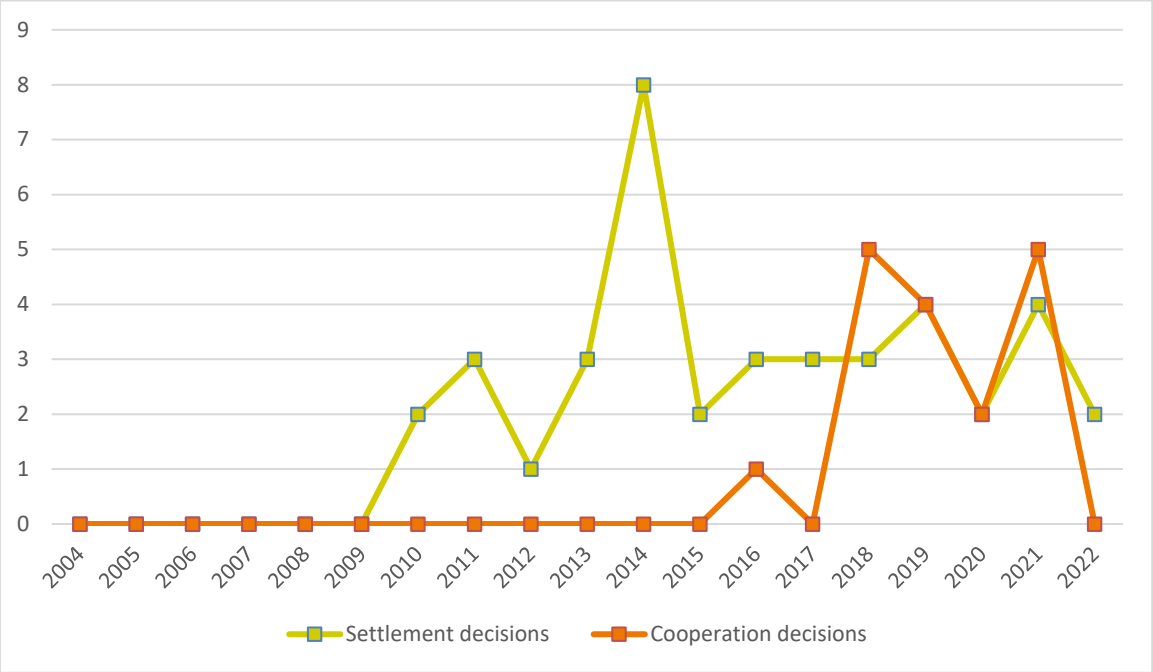

Figure 59 – Settlement (N=40) and cooperation (N=17) decisions taken by the Commission per year (N=57)

Annex IX – Graphs on fines, periodic penalty payments, and procedural infringement decisions adopted by the Commission, NCAs and UK competition authorities

For the purpose of this Annex IX, please note that jurisdiction-specific graphs are only included insofar as the relevant NCA in the relevant jurisdiction has imposed or adopted relevant fines, periodic penalty payments or procedural infringement decisions.

Section 1. Average fines per decision in each of the jurisdictions

1.1 Article 101

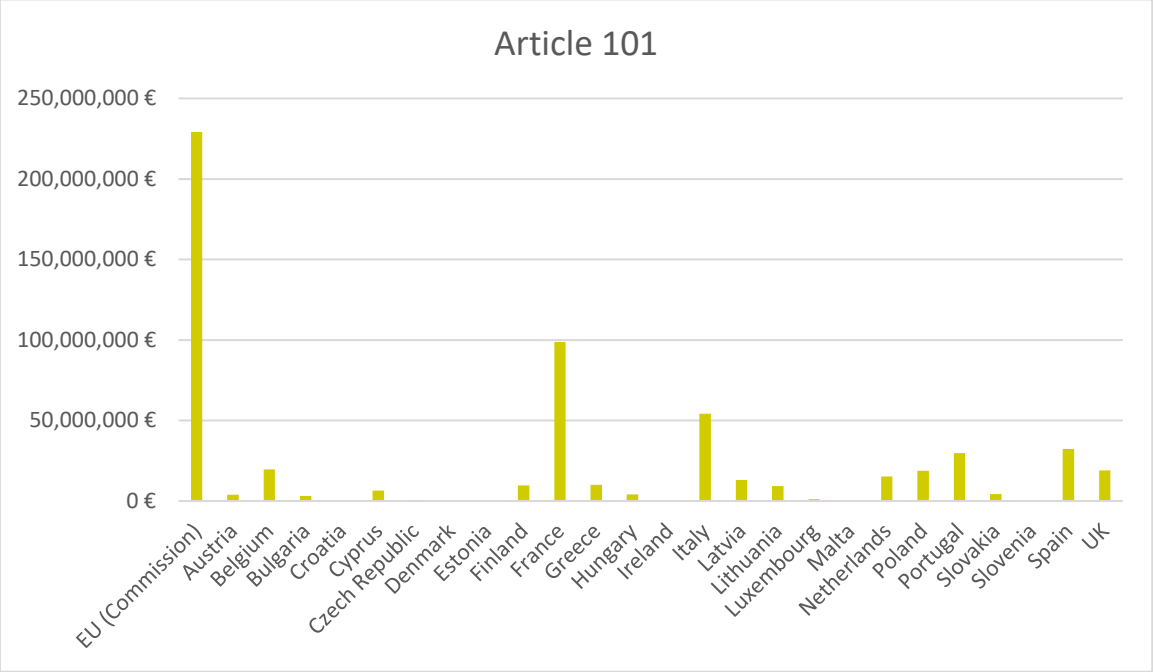

Figure 1 - Average fine for decisions taken under Article 101 per jurisdiction, including the Commission and excluding Germany, Romania and Sweden for confidentiality reasons

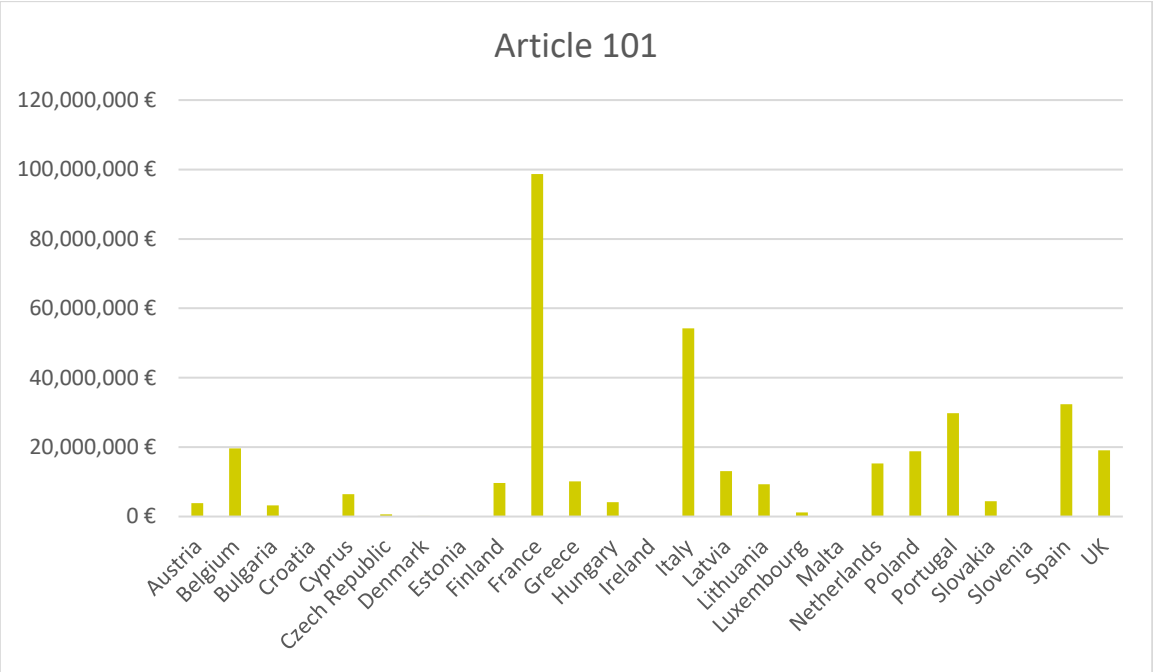

Figure 2 – Average fine for decisions taken under Article 101 per jurisdiction and excluding Germany, Romania and Sweden for confidentiality reasons

1.2 Article 102

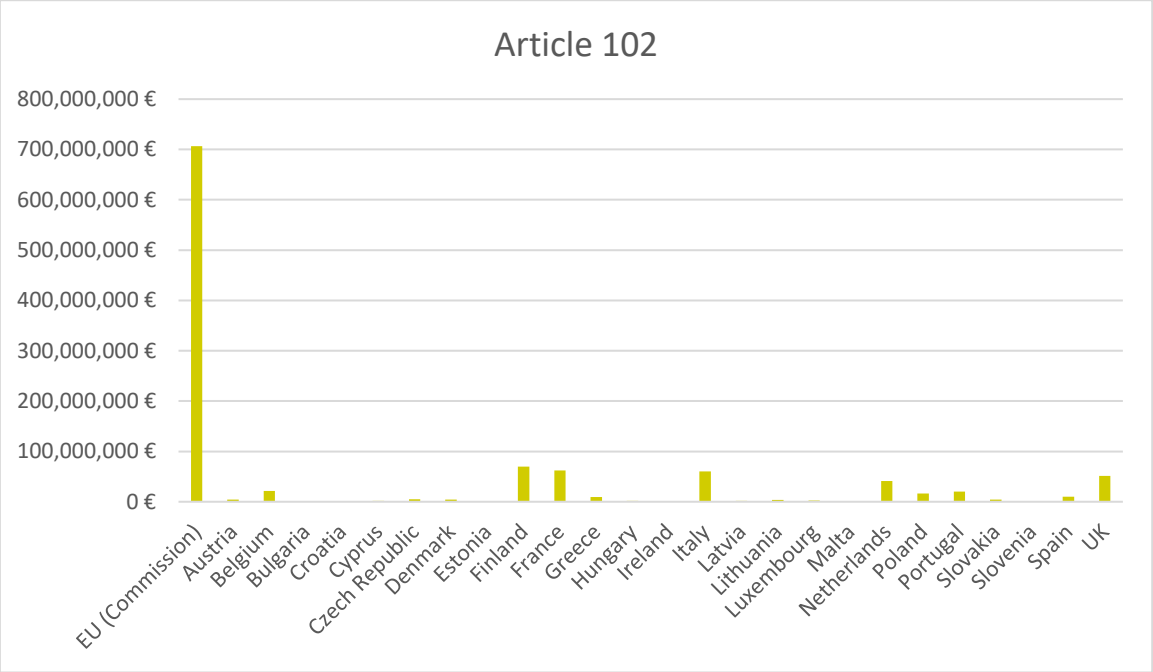

Figure 3 – Average fines for decisions taken under Article 102, including the Commission and excluding Germany, Romania and Sweden for confidentiality reasons

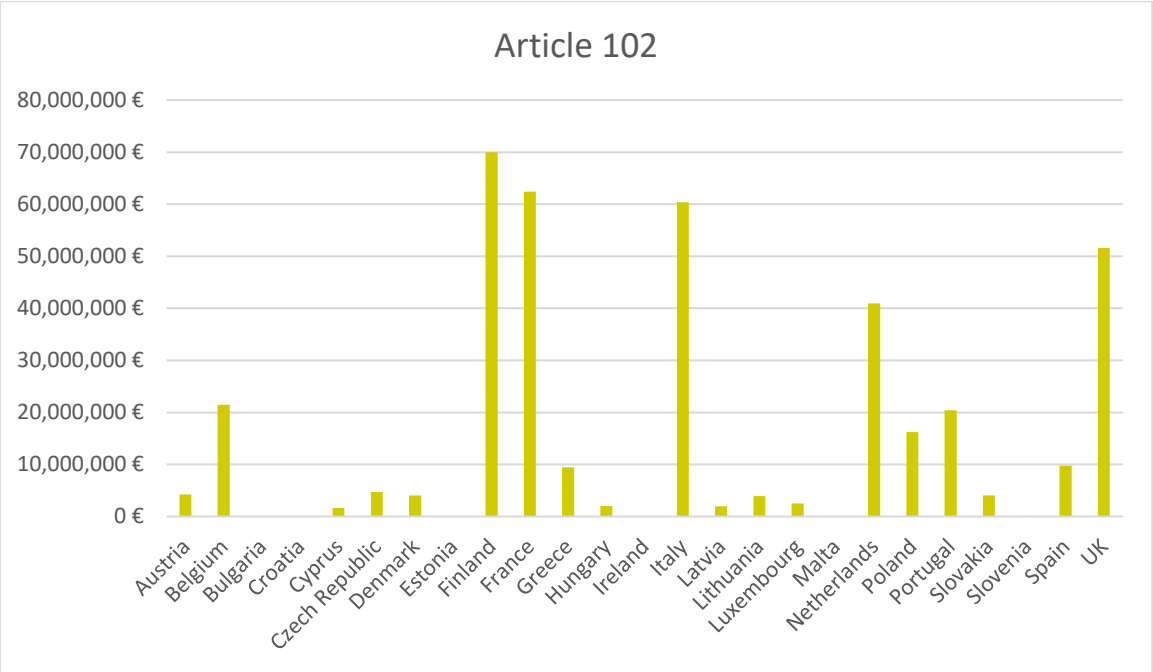

Figure 4 - Average fines for decisions taken under Article 102 and excluding Germany, Romania and Sweden for confidentiality reasons

1.3 Article 101&102

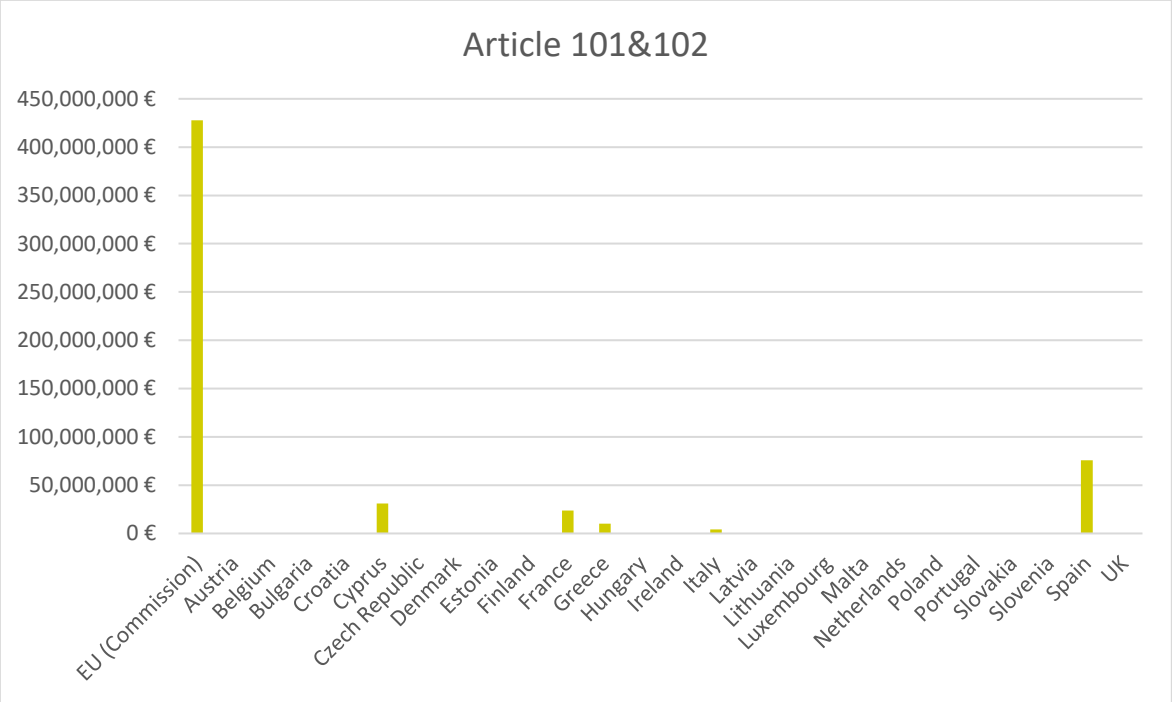

Figure 5 - Average fine for decisions taken under Article 101&102 per jurisdiction, including the Commission and excluding Germany, Romania and Sweden for confidentiality reasons

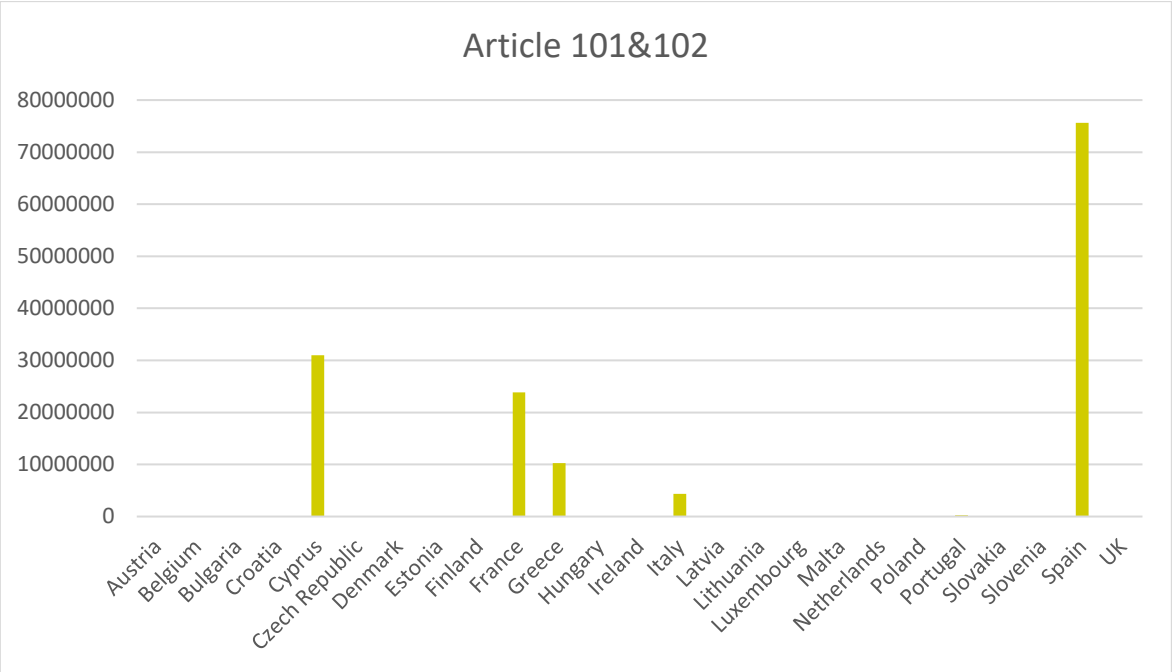

Figure 6 - Average fine for decisions taken under Article 101&102 per jurisdiction and excluding Germany, Romania and Sweden for confidentiality reasons

Section 2. Total sum of fines per year in each of the jurisdictions (and excluding Germany, Romania and Sweden for confidentiality reasons)

2.1 Commission

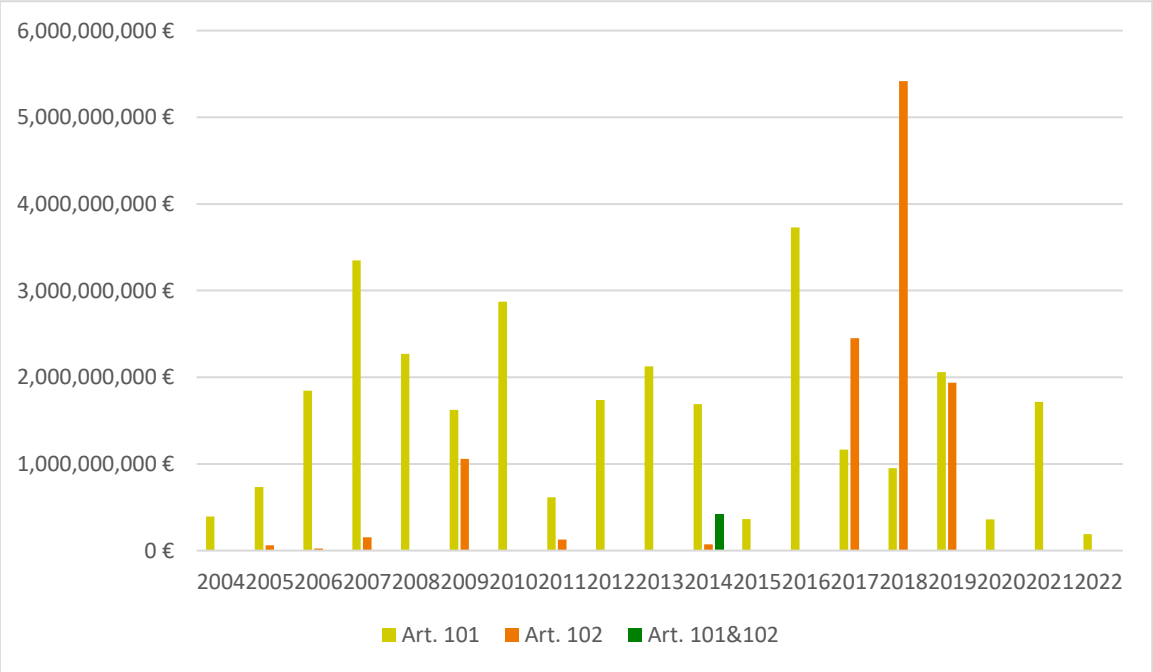

Figure 7 - Commission - Sum of fines per year, split into decisions taken under Article 101 (N=130), Article 102 (N=16), and Article 101&102 (N=1)

2.2 Austria

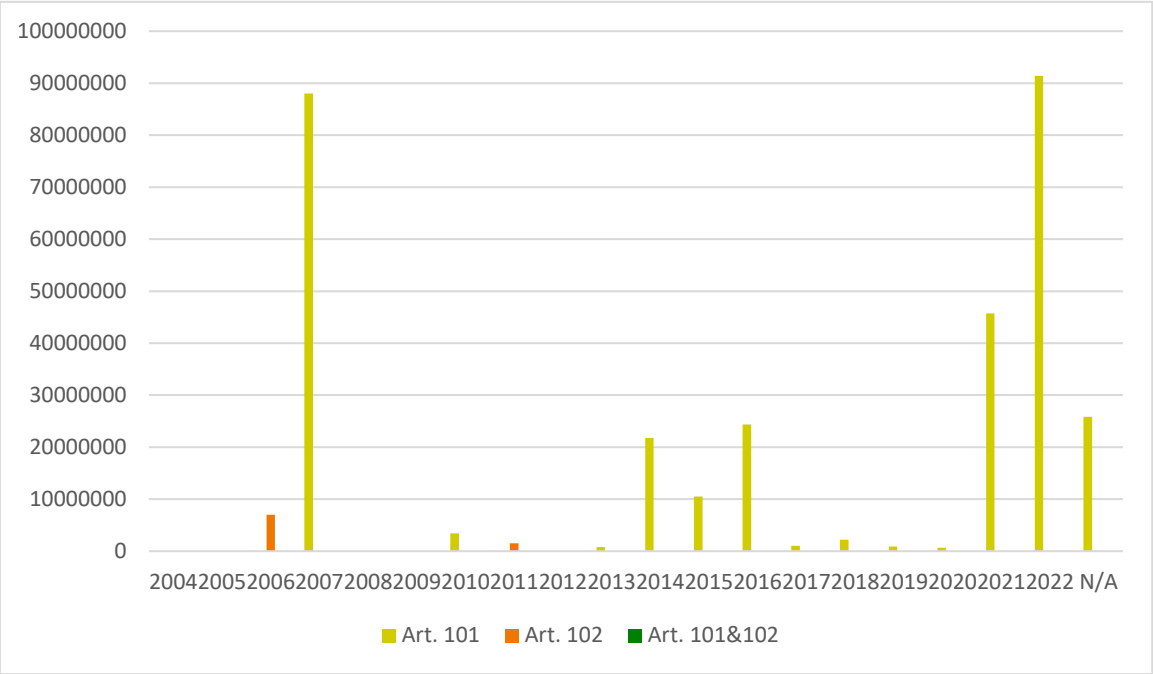

Figure 8 - Austria - Sum of fines per year, split into decisions taken under Article 101 (N=82), Article 102 (N=2), and Article 101&102 (N=0)

2.3 Belgium

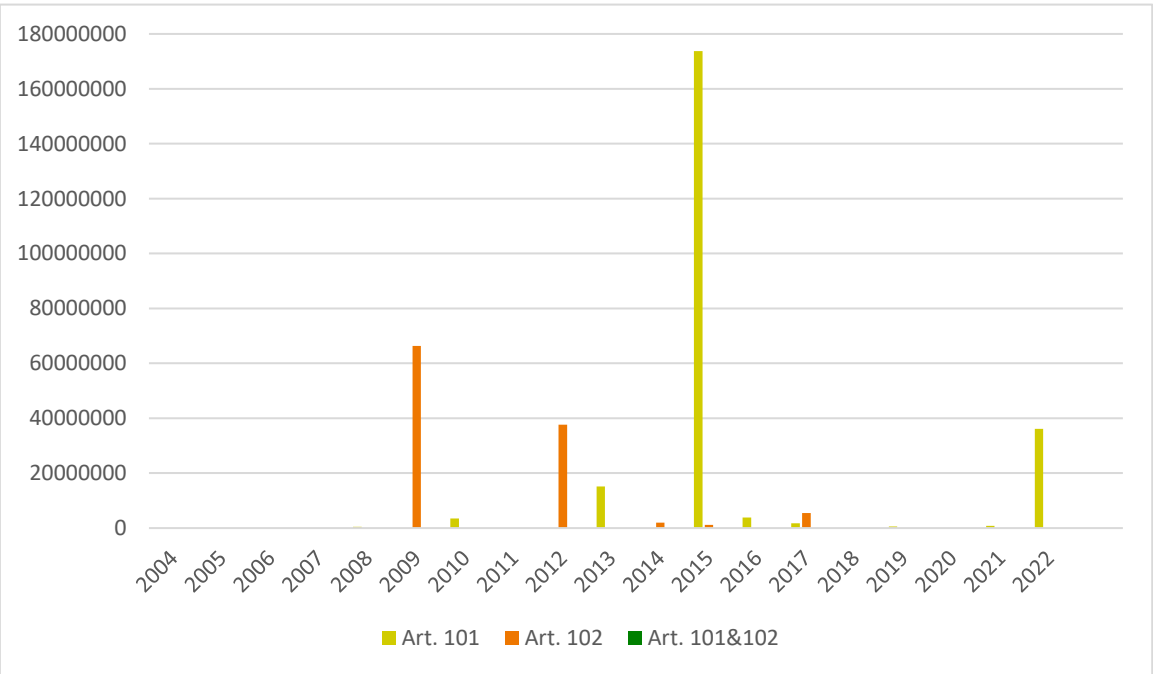

Figure 9 - Belgium - Sum of fines per year, split into decisions taken under Article 101 (N=12), Article 102 (N=6), and Article 101&102 (N=0)

2.4 Bulgaria

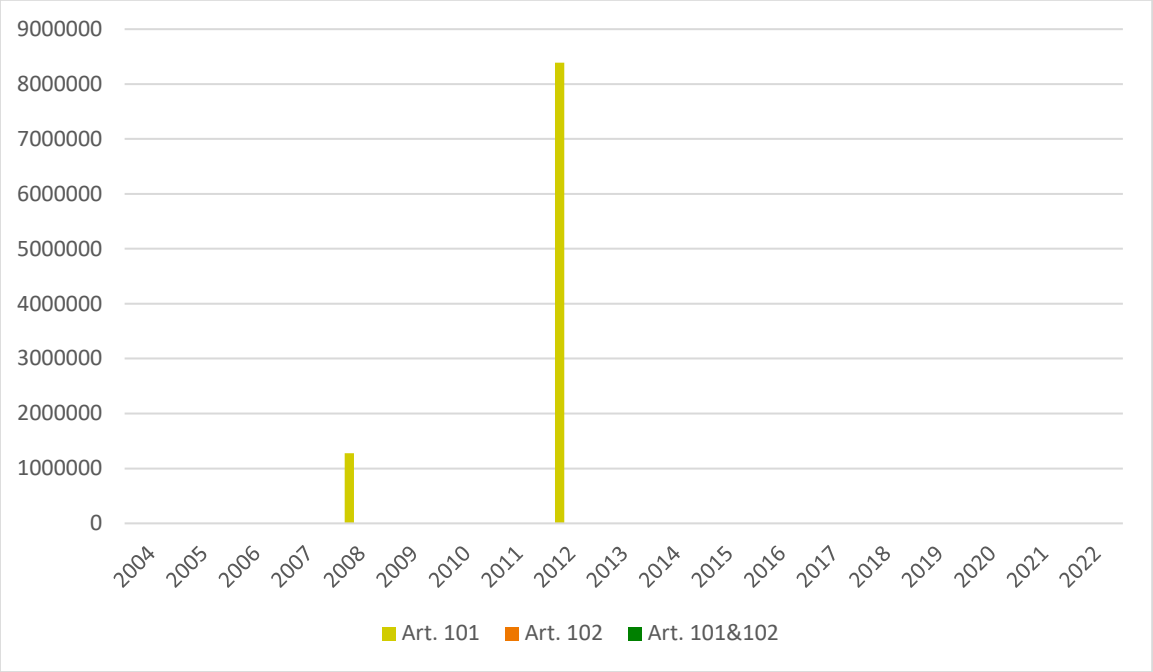

Figure 10 - Bulgaria - Sum of fines per year, split into decisions taken under Article 101 (N=3), Article 102 (N=0), and Article 101&102 (N=0)

2.5 Cyprus

Figure 11 - Cyprus - Sum of fines per year, split into decisions taken under Article 101 (N=5), Article 102 (N=5), and Article 101&102 (N=1)

2.6 Czechia

Figure 12 - Czechia - Sum of fines per year, split into decisions taken under Article 101 (N=21), Article 102 (N=8), and Article 101&102 (N=0)

2.7 Denmark

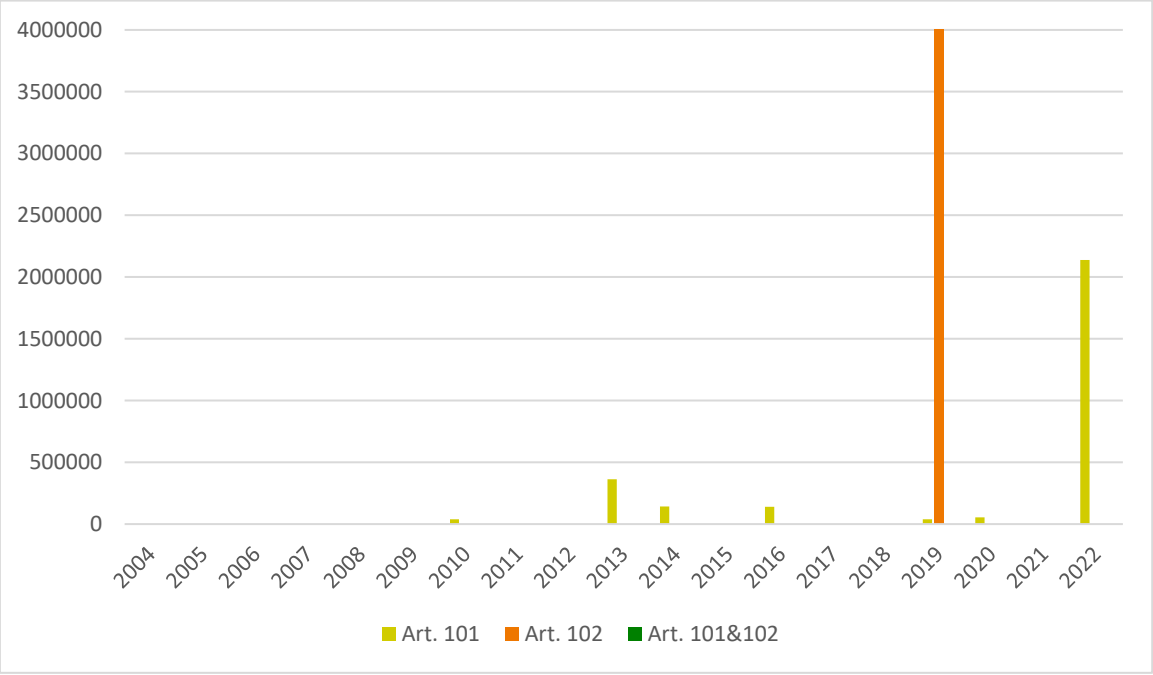

Figure 13 - Denmark - Sum of fines per year, split into decisions taken under Article 101 (N=19), Article 102 (N=1), and Article 101&102 (N=0)

2.8 Finland

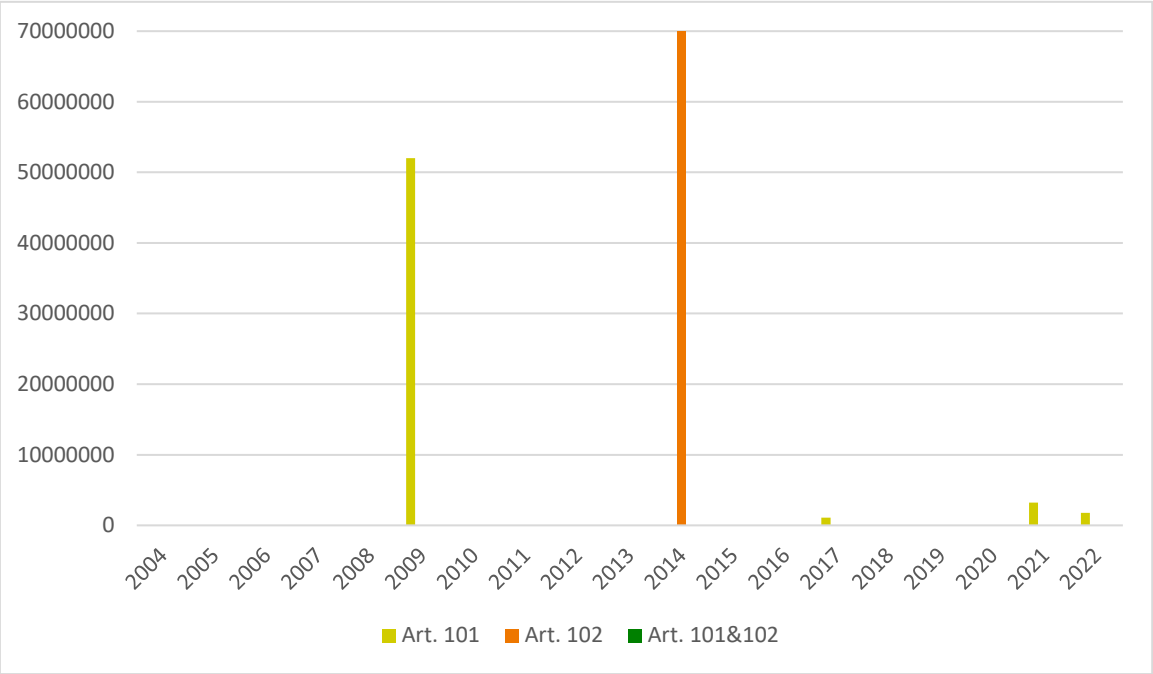

Figure 14 - Finland - Sum of fines per year, split into decisions taken under Article 101 (N=6), Article 102 (N=1), and Article 101&102 (N=0)

2.9 France

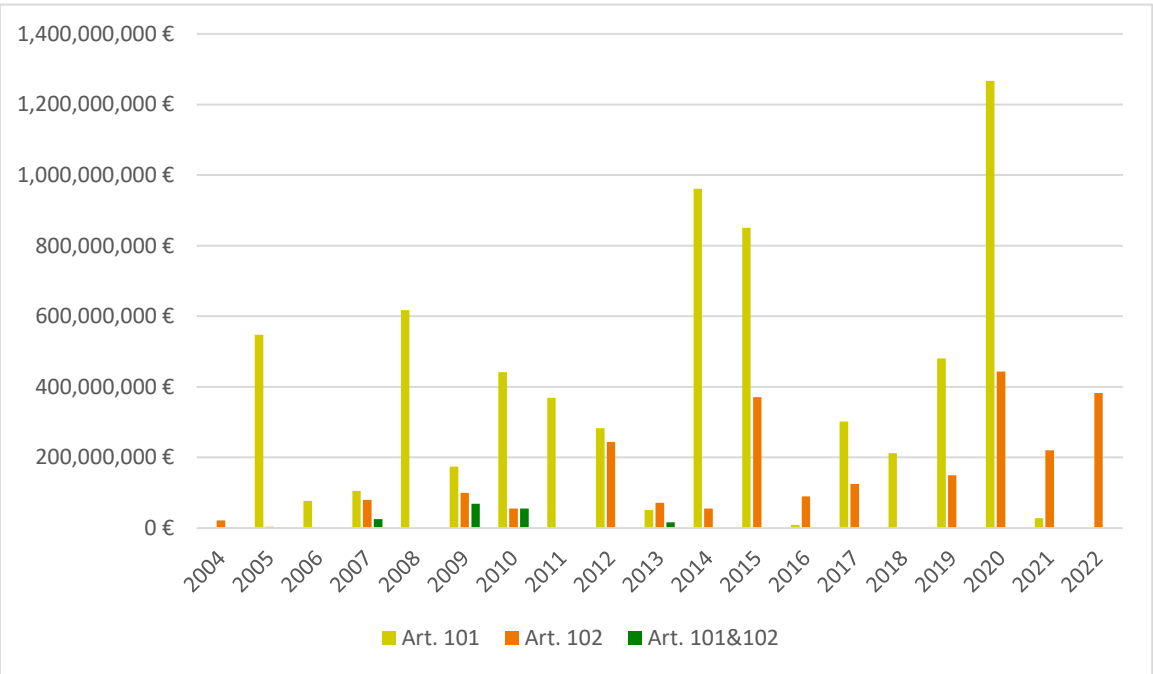

Figure 15 - France - Sum of fines per year, split into decisions taken under Article 101 (N=74), Article 102 (N=43), and Article 101&102 (N=7)

2.10 Germany

[CONFIDENTIAL]

2.11 Greece

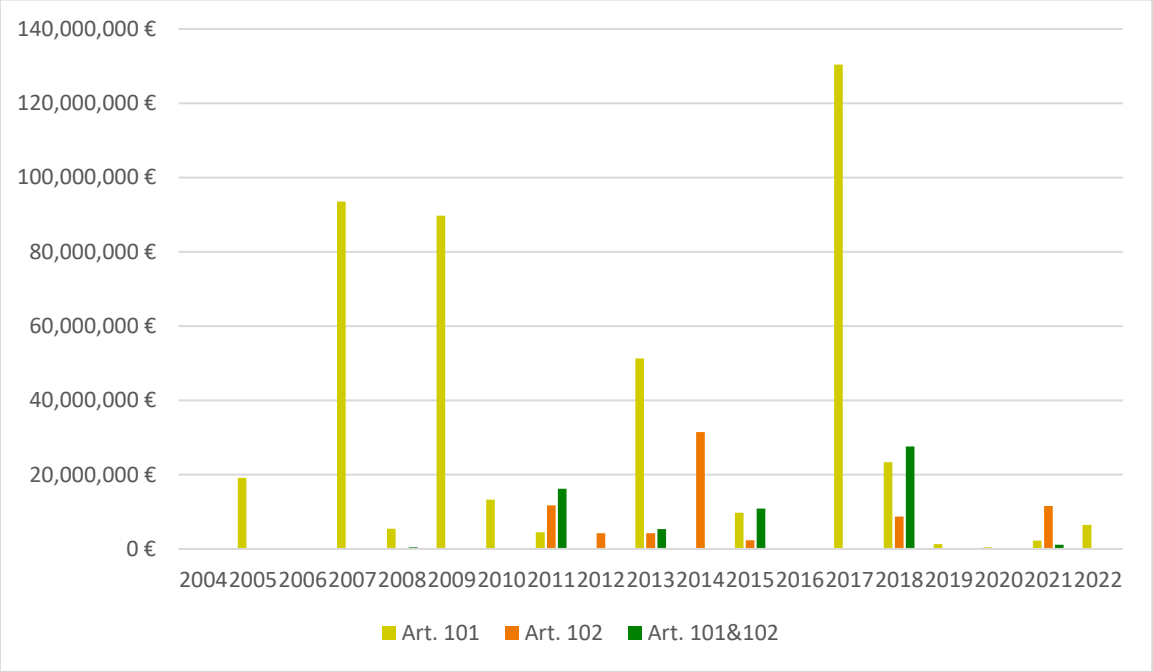

Figure 16 - Greece - Sum of fines per year, split into decisions taken under Article 101 (N=45), Article 102 (N=11), and Article 101&102 (N=6)

2.12 Hungary

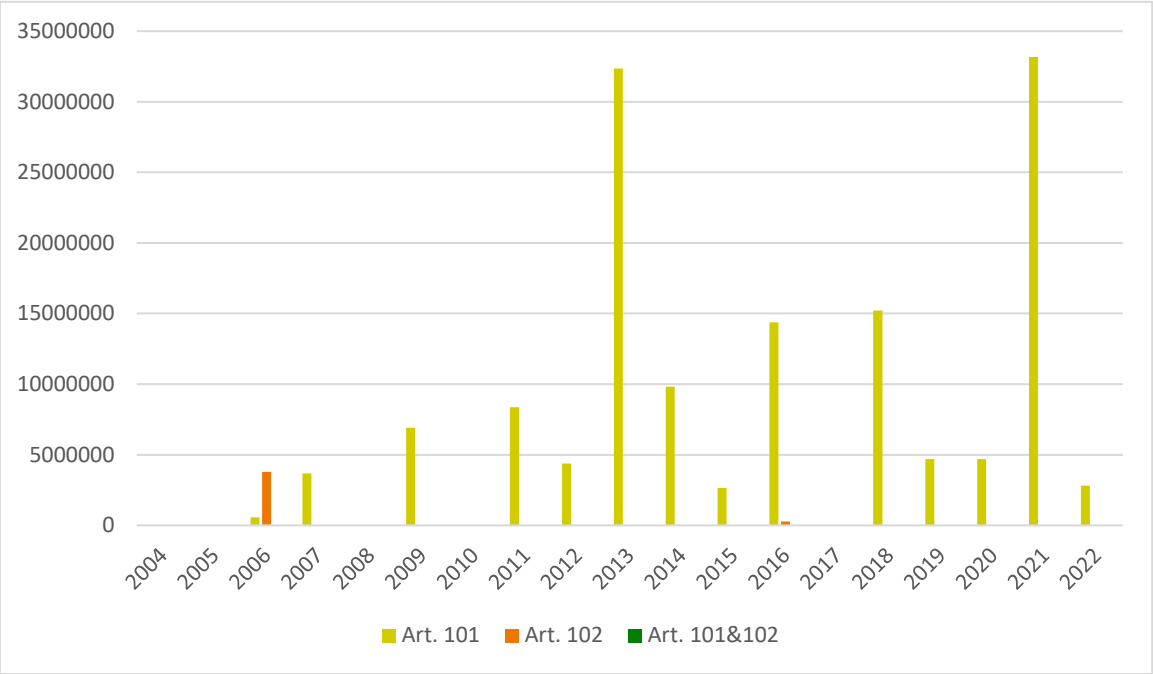

Figure 17 - Hungary - Sum of fines per year, split into decisions taken under Article 101 (N=35), Article 102 (N=2), and Article 101&102 (N=0)

2.13 Ireland

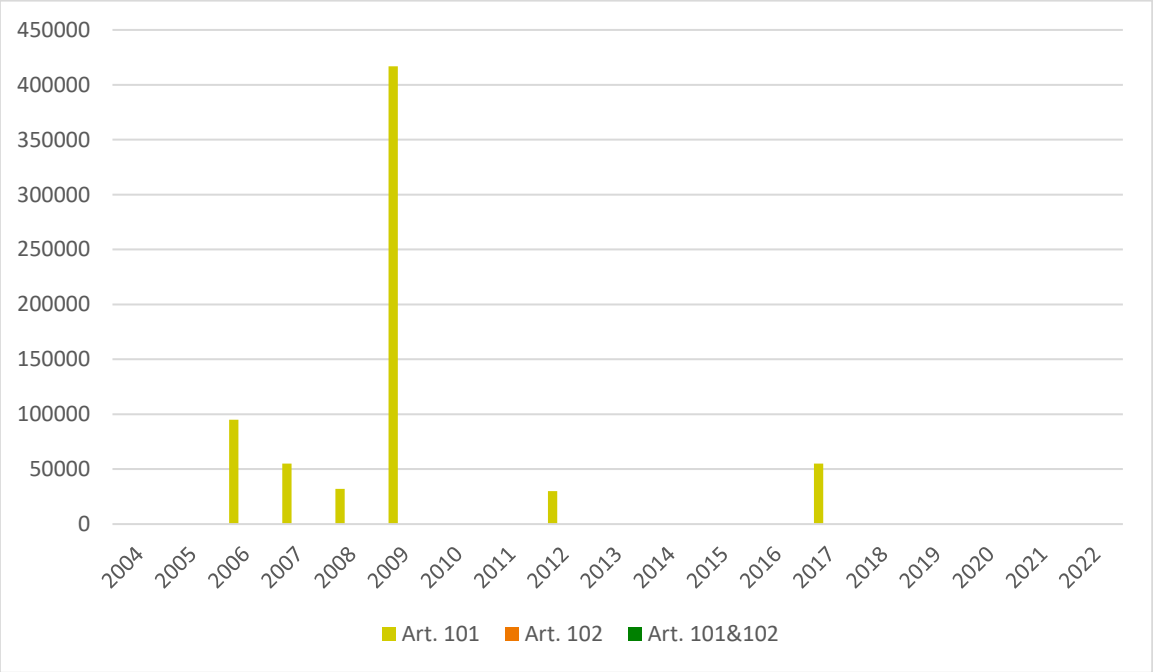

Figure 18 - Ireland - Sum of fines per year, split into decisions taken under Article 101 (N=31), Article 102 (N=0), and Article 101&102 (N=0)

2.14 Italy

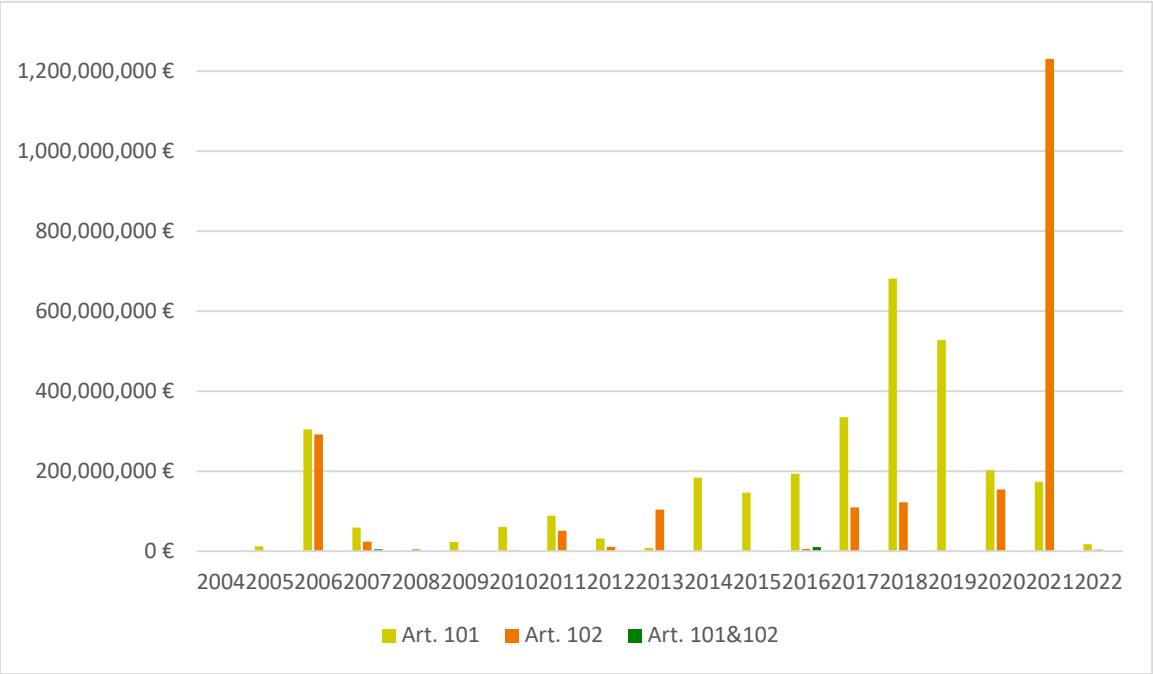

Figure 19 - Italy - Sum of fines per year, split into decisions taken under Article 101 (N=59), Article 102 (N=37), and Article 101&102 (N=2)

2.15 Latvia

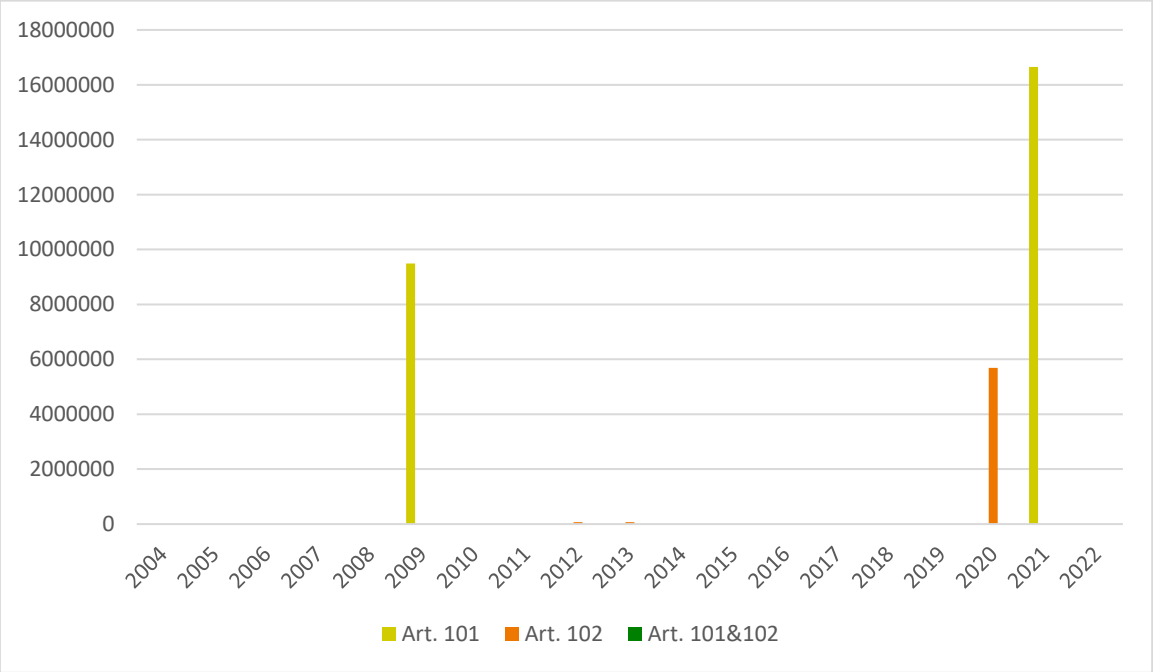

Figure 20 - Latvia - Sum of fines per year, split into decisions taken under Article 101 (N=2), Article 102 (N=3), and Article 101&102 (N=0)

2.16 Lithuania

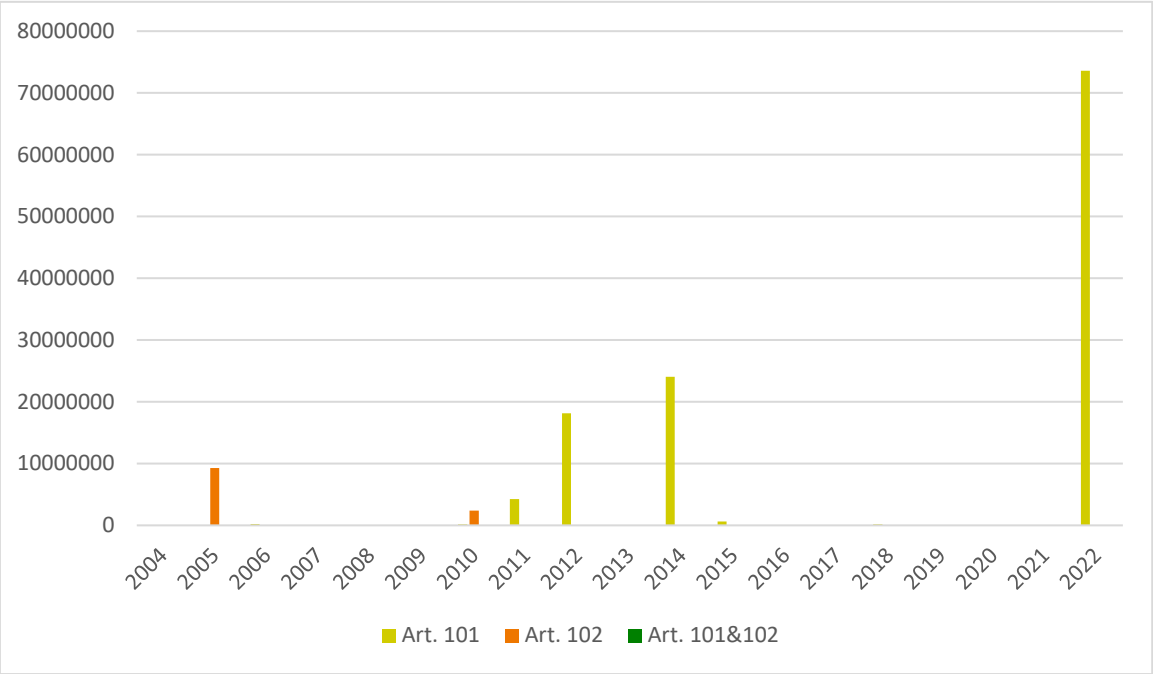

Figure 21 - Lithuania - Sum of fines per year, split into decisions taken under Article 101 (N=13), Article 102 (N=3), and Article 101&102 (N=0)

2.17 Luxembourg

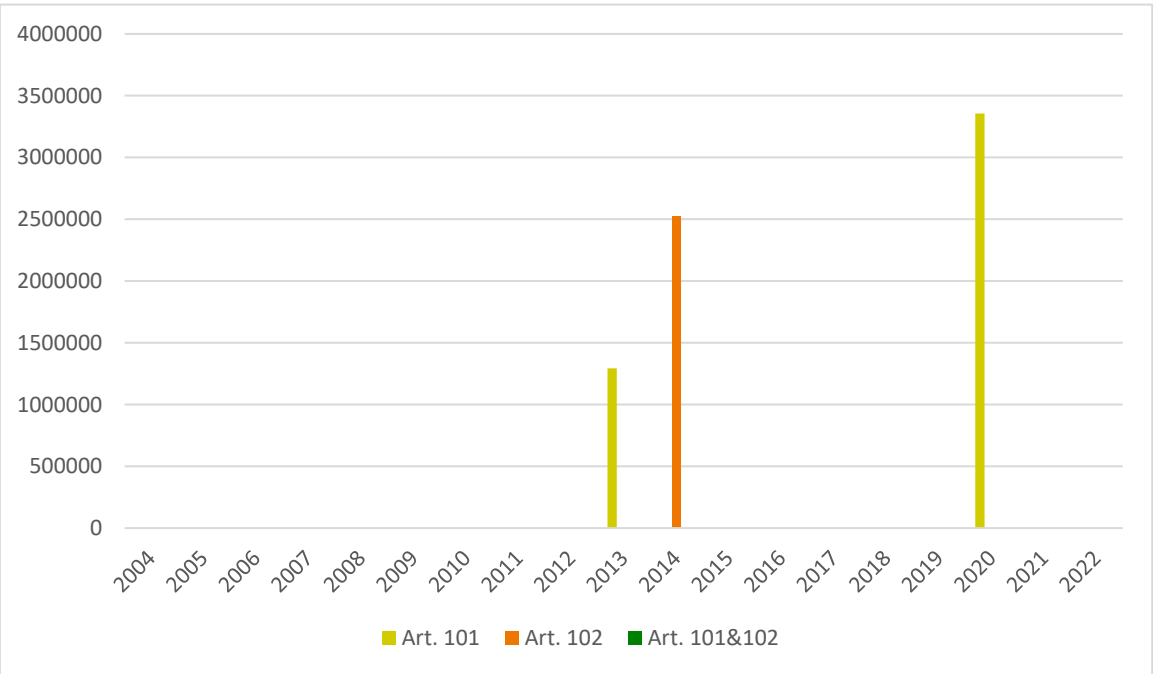

Figure 22 - Luxembourg - Sum of fines per year, split into decisions taken under Article 101 (N=4), Article 102 (N=1), and Article 101&102 (N=0)

2.18 Netherlands

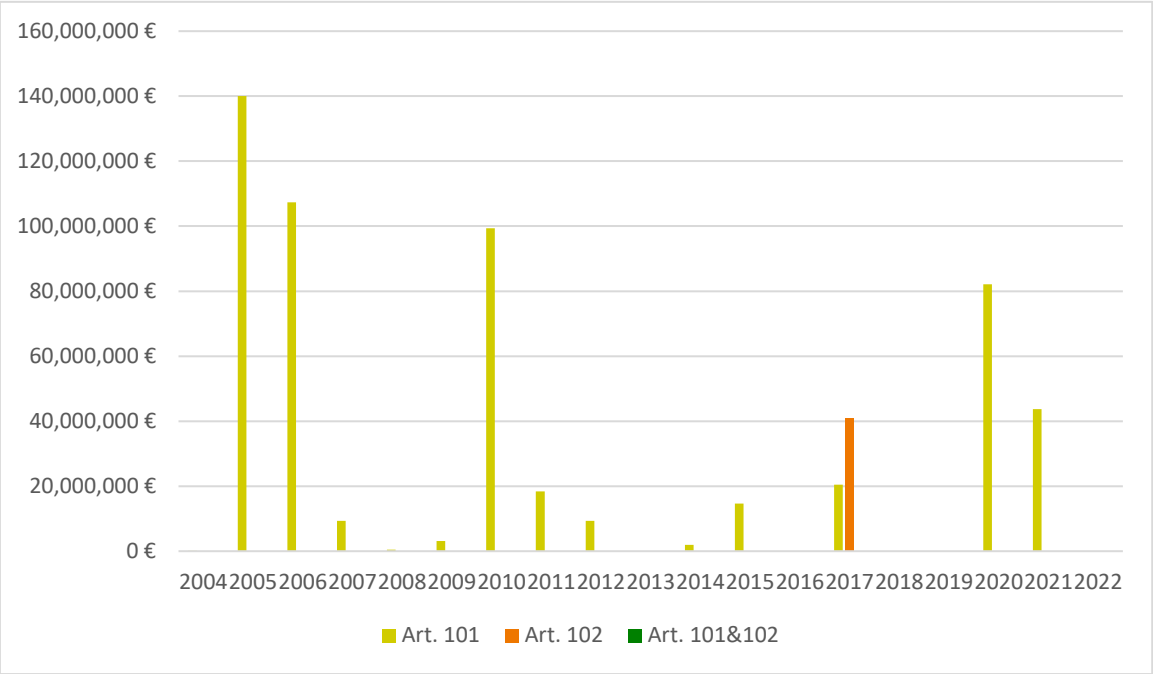

Figure 23 - Netherlands - Sum of fines per year, split into decisions taken under Article 101 (N=36), Article 102 (N=1), and Article 101&102 (N=0)

2.19 Poland

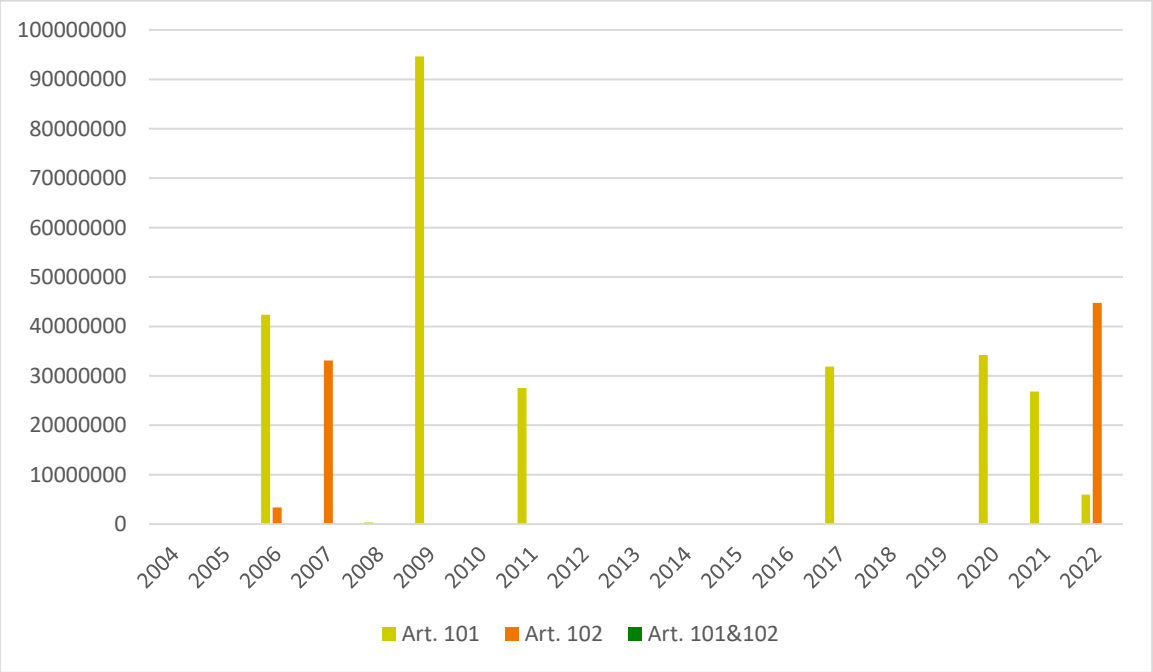

Figure 24 - Poland - Sum of fines per year, split into decisions taken under Article 101 (N=14), Article 102 (N=5), and Article 101&102 (N=0)

2.20 Portugal

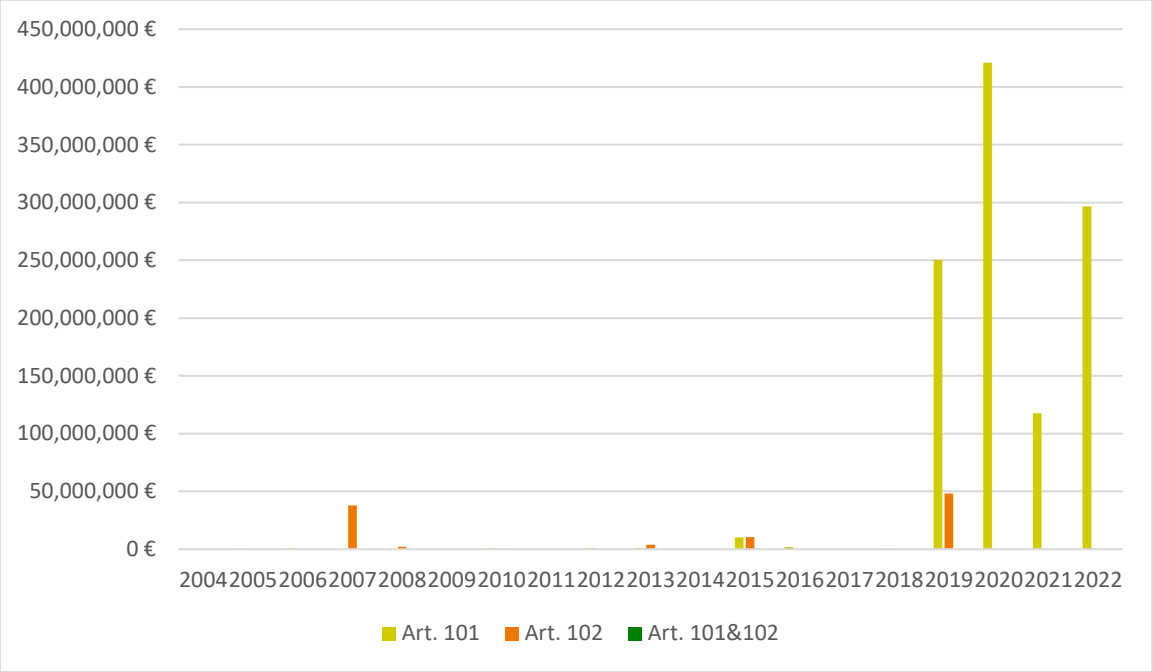

Figure 25 - Portugal - Sum of fines per year, split into decisions taken under Article 101 (N=38), Article 102 (N=7), and Article 101&102 (N=1)

2.21 Romania

[CONFIDENTIAL]

2.22 Slovakia

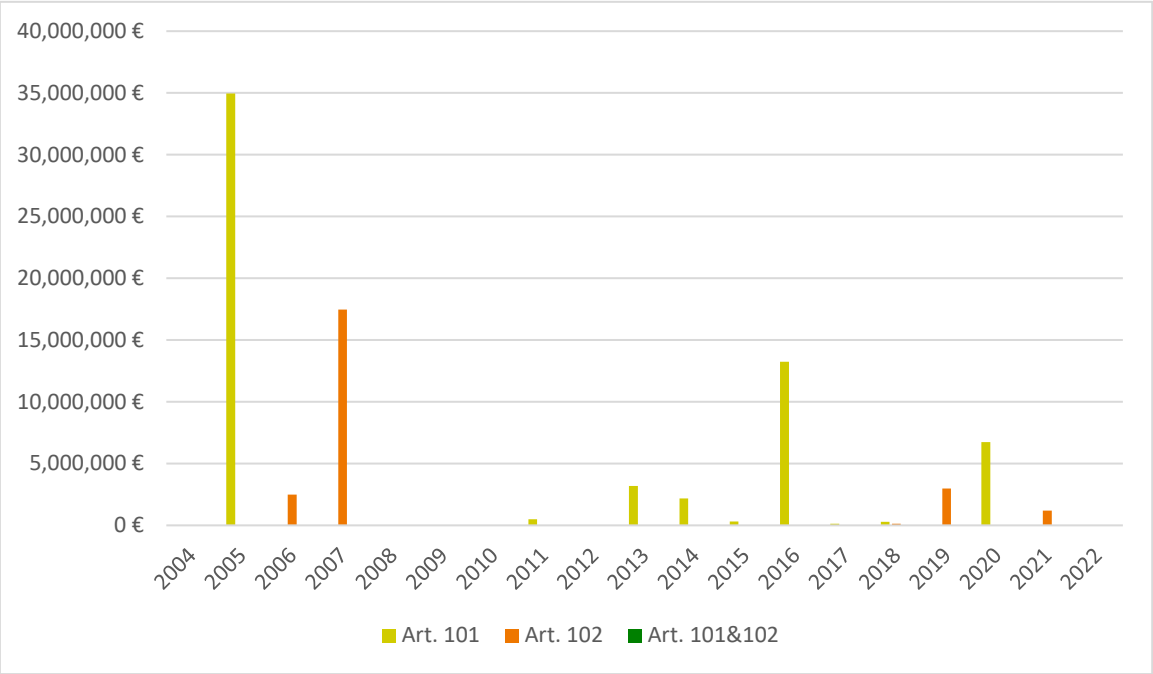

Figure 26 - Slovakia - Sum of fines per year, split into decisions taken under Article 101 (N=14), Article 102 (N=6), and Article 101&102 (N=0)

2.23 Slovenia

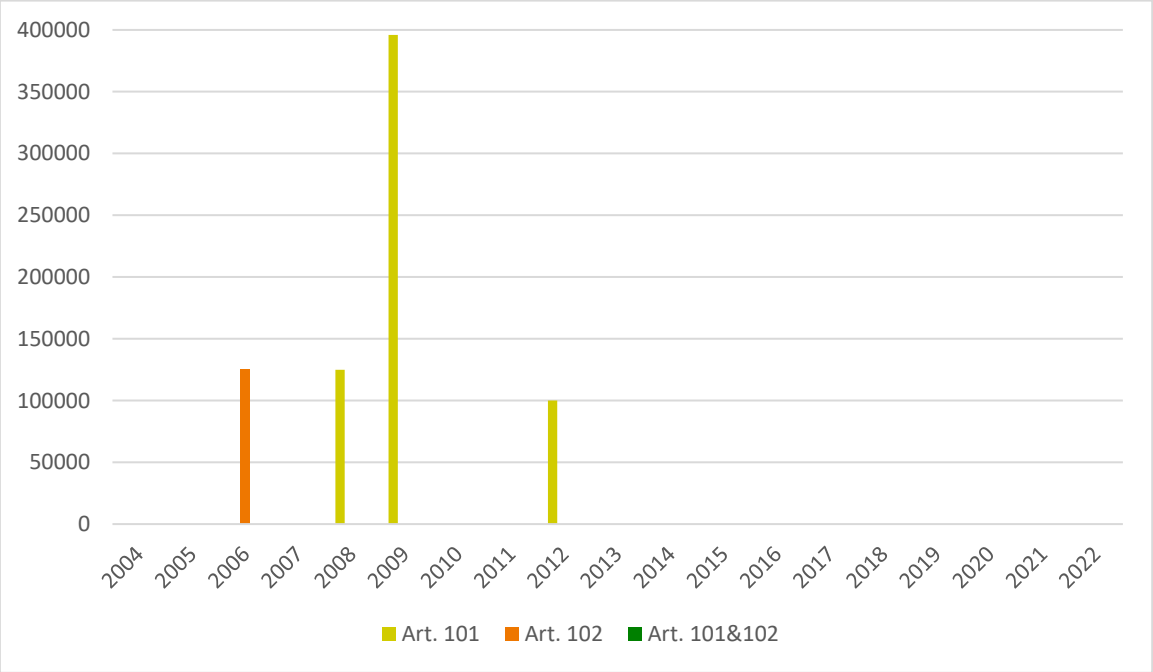

Figure 27 - Slovenia - Sum of fines per year, split into decisions taken under Article 101 (N=3), Article 102 (N=1), and Article 101&102 (N=0)

2.24 Spain

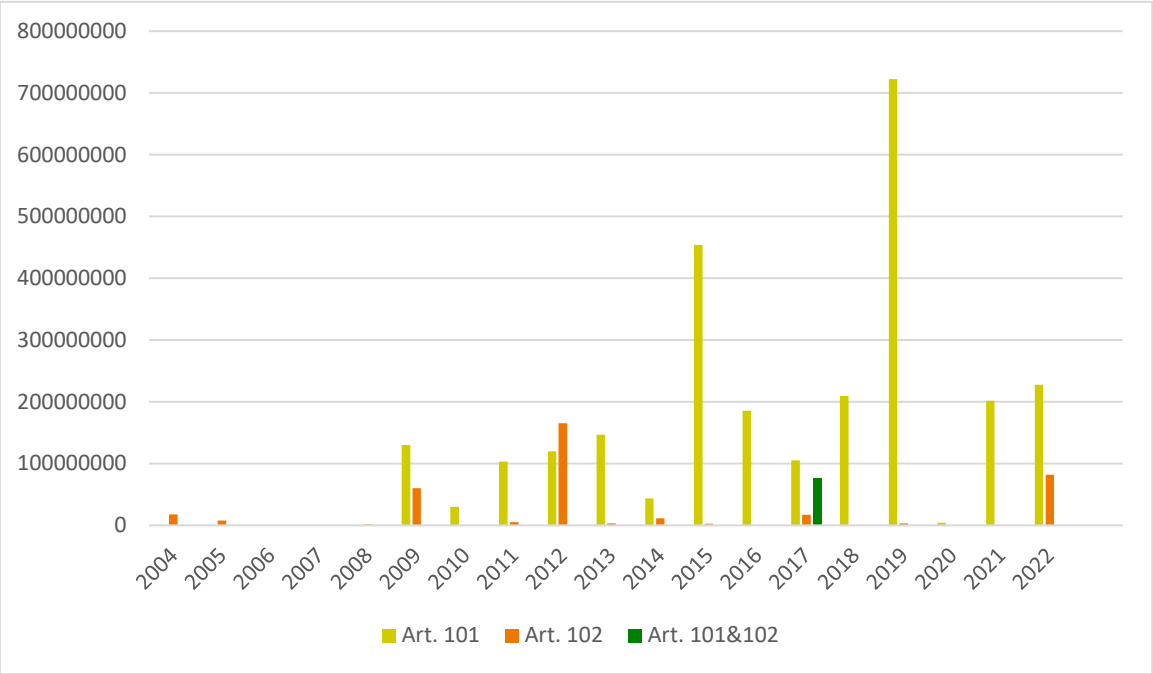

Figure 28 - Spain - Sum of fines per year, split into decisions taken under Article 101 (N=81), Article 102 (N=39), and Article 101&102 (N=1)

2.25 Sweden

[CONFIDENTIAL]

2.26 UK

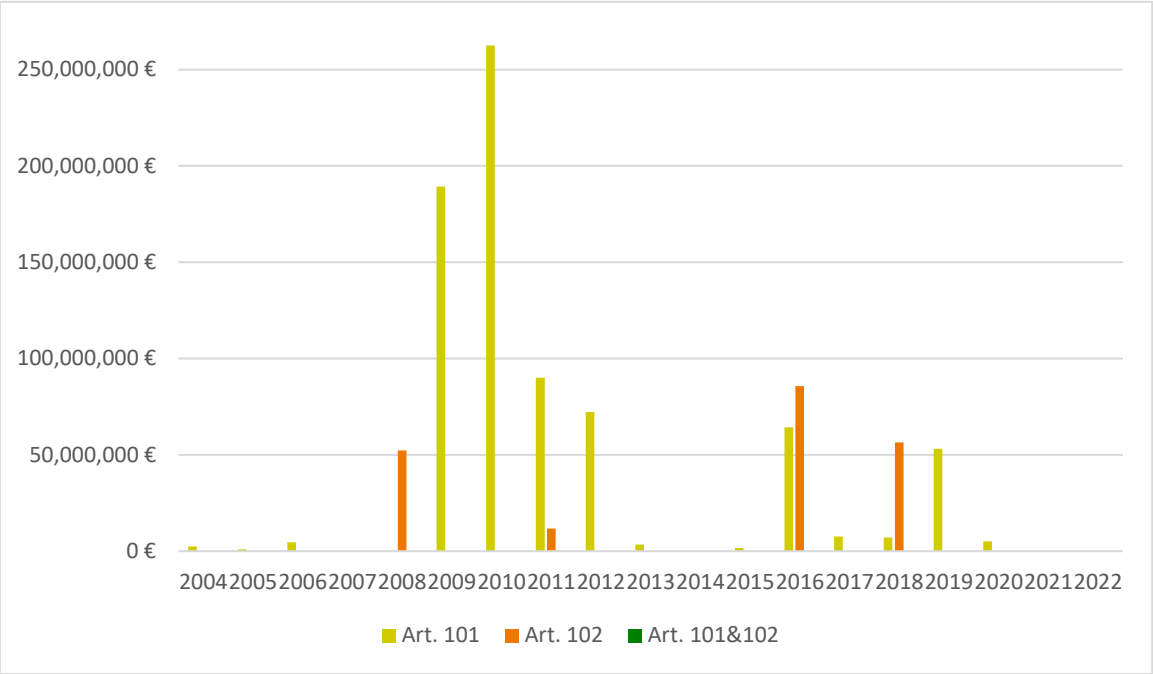

Figure 29 - UK - Sum of fines per year, split into decisions taken under Article 101 (N=40), Article 102 (N=4), and Article 101&102 (N=0)

Section 3. Total sum of procedural infringement fines per year in each of the jurisdictions (and excluding Germany, Romania, Slovenia and Sweden for confidentiality reasons)

3.1 Commission

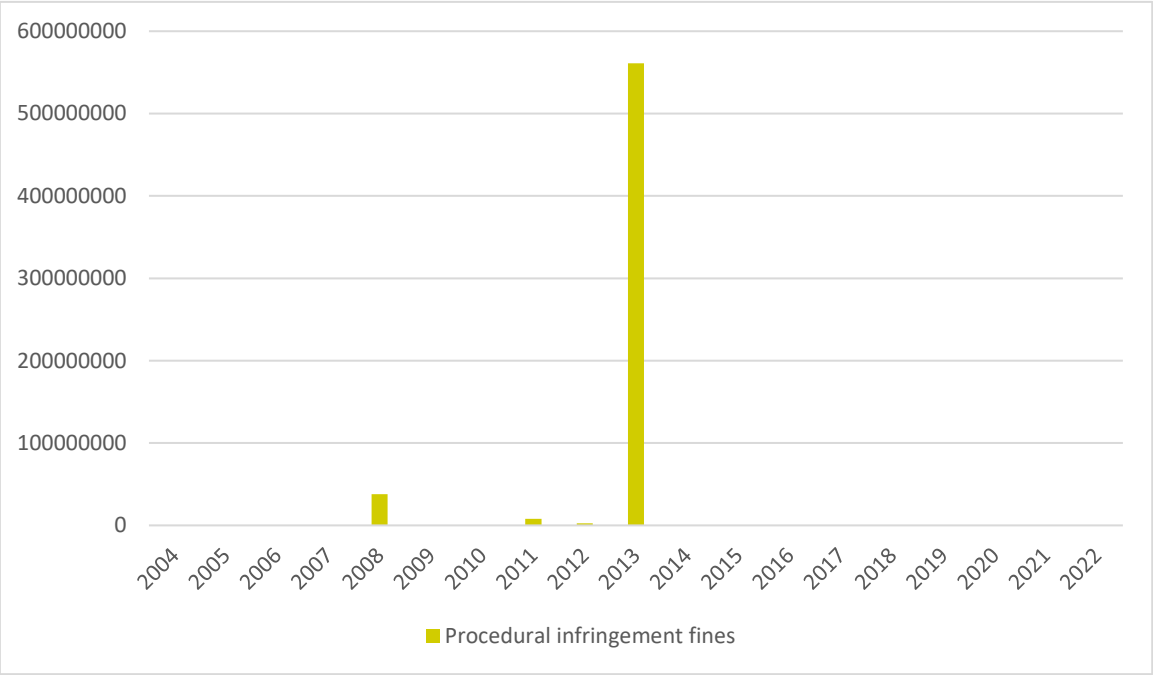

Figure 30 - Commission - Sum of procedural infringement fines per year (N=4). Please note that the above graph also contains data on procedural fines imposed in 2012 but that these are not visible due to significantly higher procedural fines in other years.

3.2 Bulgaria

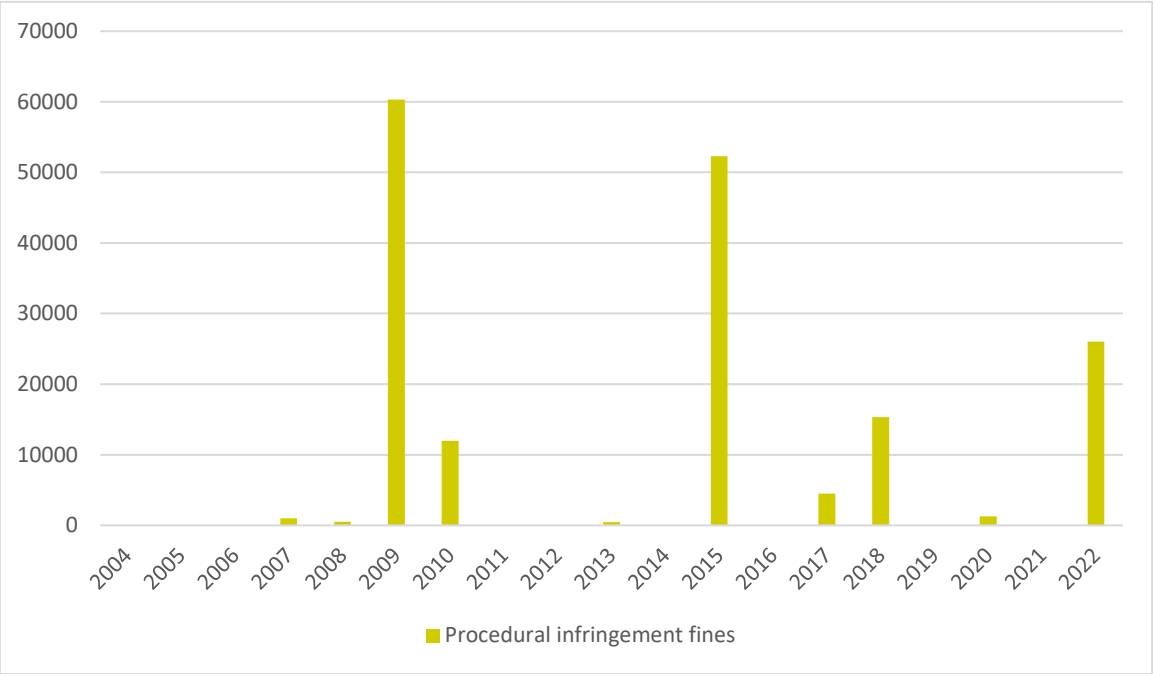

Figure 31 - Bulgaria - Sum of procedural infringement fines per year (N=15)

3.3 Cyprus

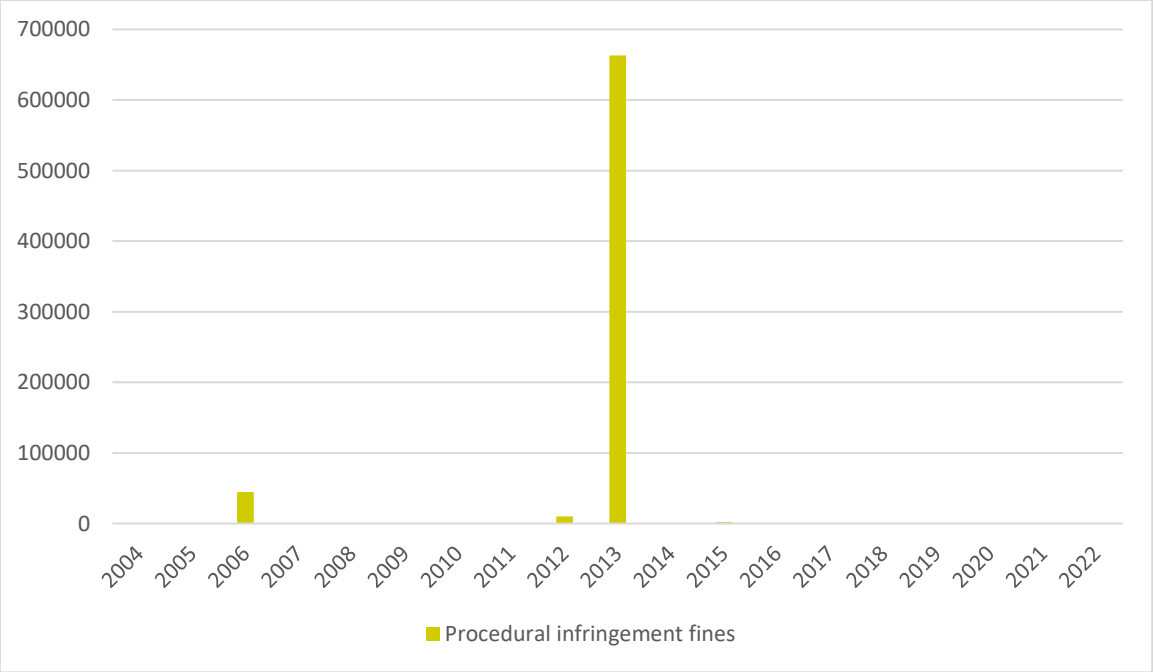

Figure 32 - Cyprus - Sum of procedural infringement fines per year (N=7). Please note that the above graph also contains data on procedural fines imposed in 2015 and 2022 but that these are not visible due to significantly higher procedural fines in other years.

3.4 Czechia

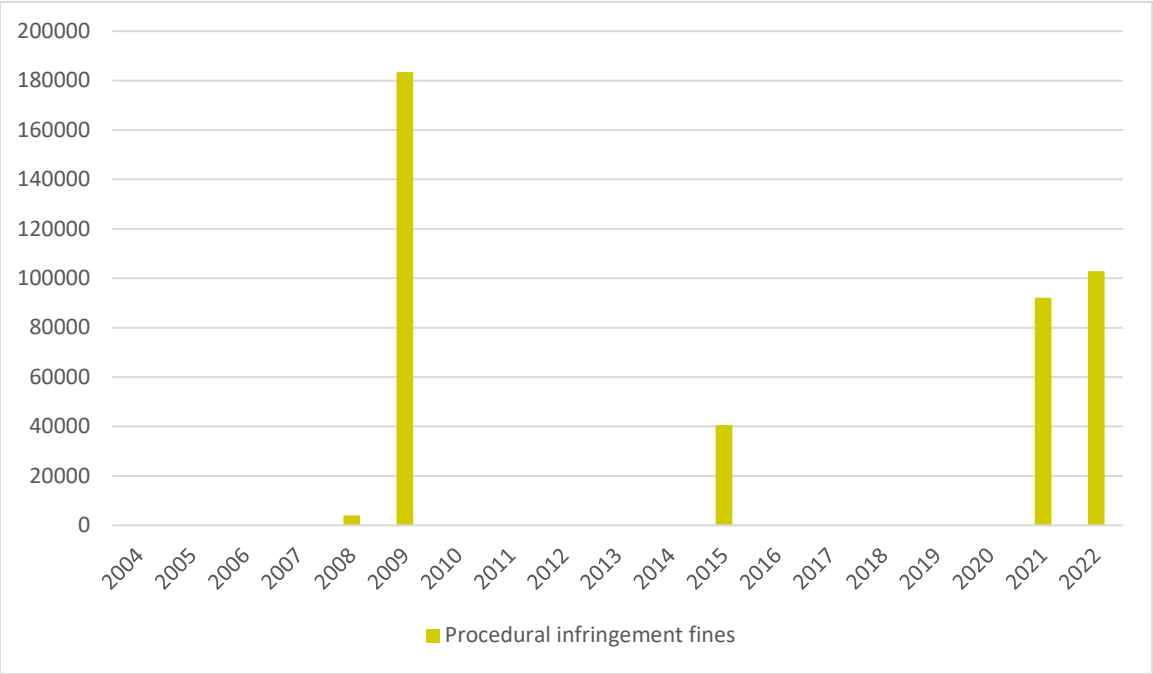

Figure 33 - Czechia - Sum of procedural infringement fines per year (N=7)

3.5 France

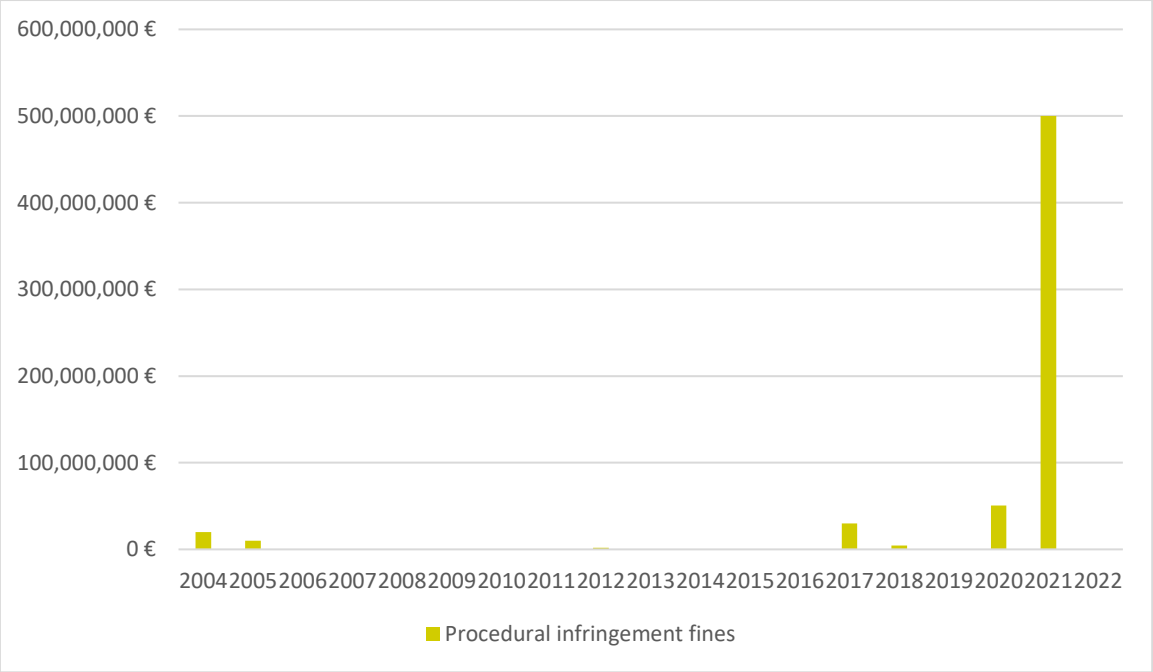

Figure 34 - France - Sum of procedural infringement fines per year (N=16). Please note that the above graph also contains data on procedural fines imposed in 2008, 2010, 2011 and 2015 but that these are not visible due to significantly higher procedural fines in other years.

3.6 Greece

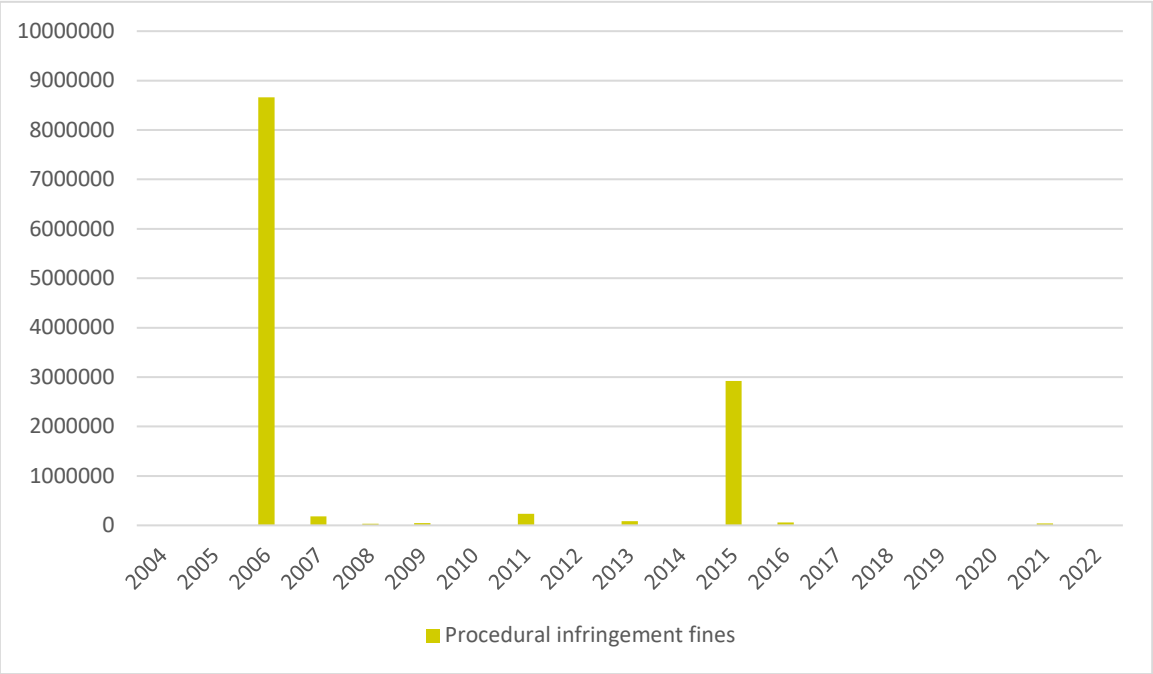

Figure 35 - Greece - Sum of procedural infringement fines per year (N=16). Please note that the above graph also contains data on procedural fines imposed in 2008, 2009, 2020, and 2021 but that these are not visible due to significantly higher procedural fines in other years.

3.7 Hungary

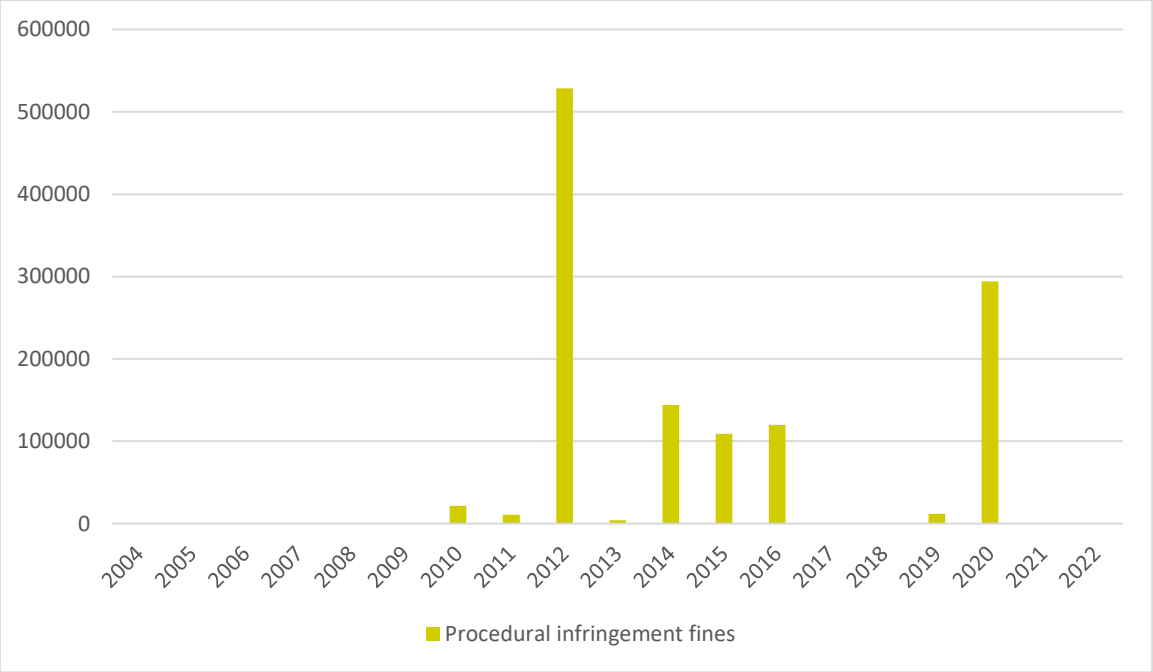

Figure 36 - Hungary - Sum of procedural infringement fines per year (N=24). Please note that the above graph also contains data on procedural fines imposed in 2008 but that these are not visible due to significantly higher procedural fines in other years.

3.8 Italy

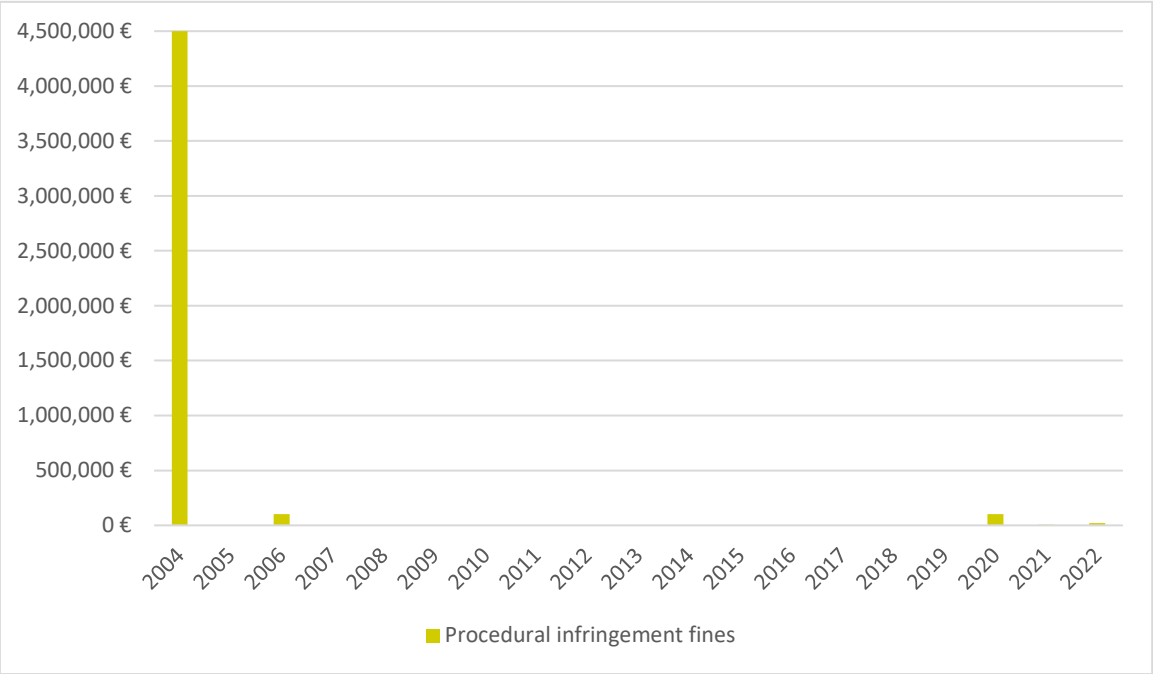

Figure 37 - Italy - Sum of procedural infringement fines per year (N=6). Please note that the above graph also contains data on procedural fines imposed in 2021 and 2022 but that these are not visible due to significantly higher procedural fines in other years.

3.9 Latvia

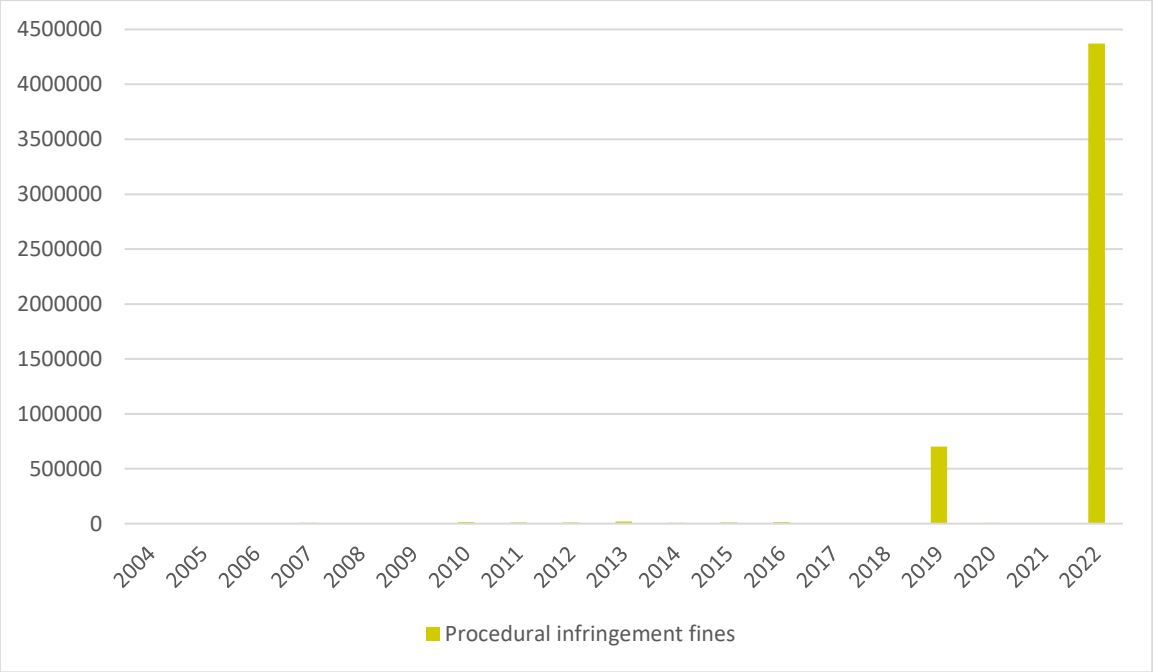

Figure 38 - Latvia - Sum of procedural infringement fines per year (N=40). Please note that the above graph also contains data on procedural fines imposed in 2006, 2007, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2020 but that these are not visible due to significantly higher procedural fines in other years.

3.10 Lithuania

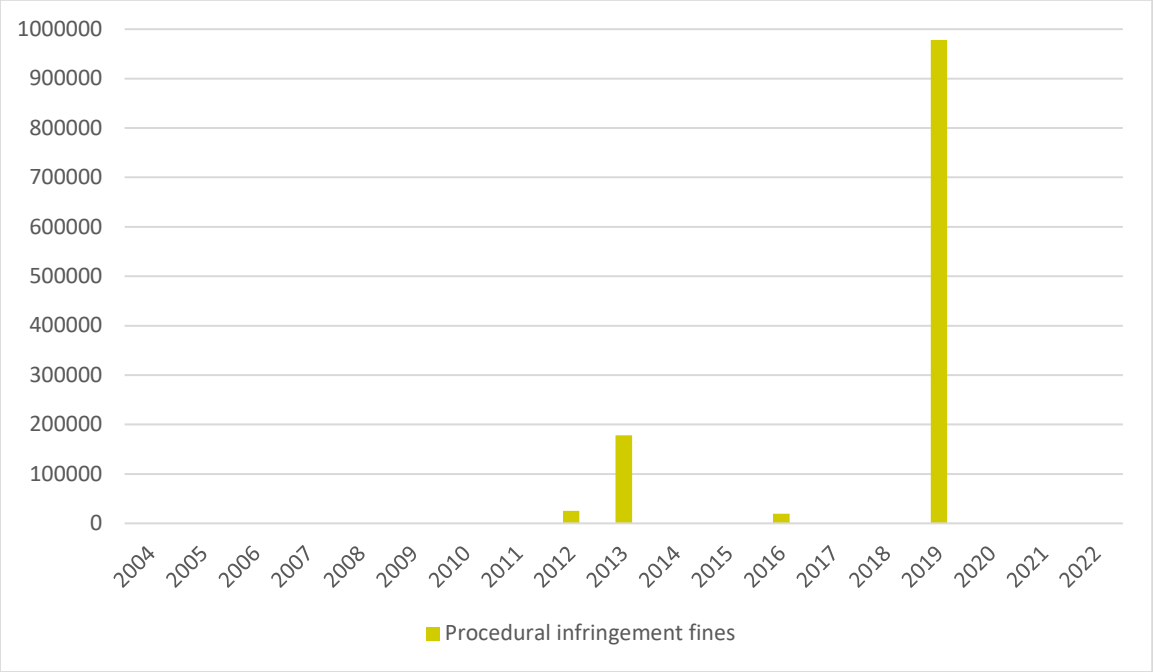

Figure 39 - Lithuania - Sum of procedural infringement fines per year (N=4)

3.11 Luxembourg

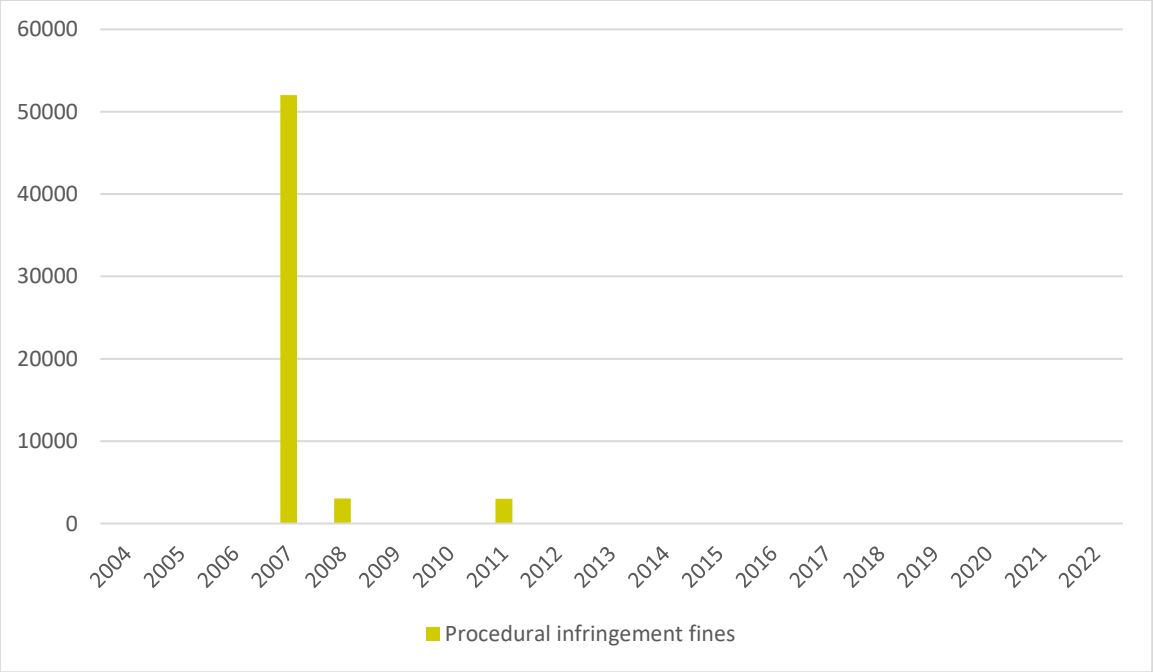

Figure 40 - Luxembourg - Sum of procedural infringement fines per year (N=10)

3.12 Netherlands

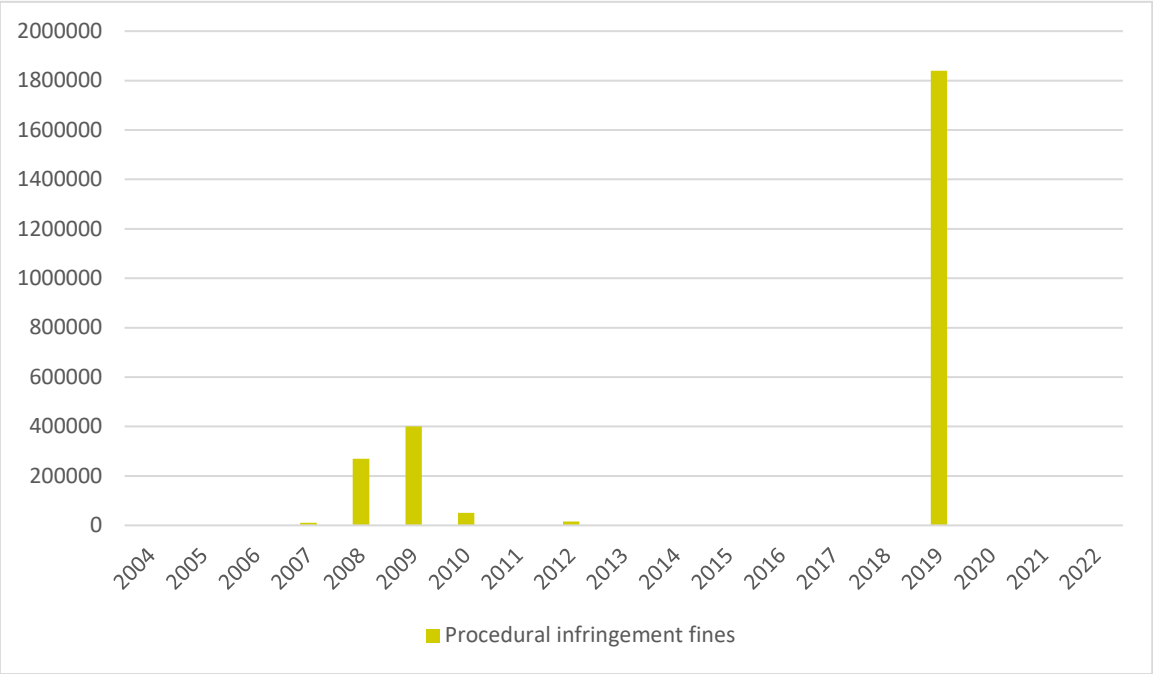

Figure 41 - Netherlands - Sum of procedural infringement fines per year (N=8). Please note that the above graph also contains data on procedural fines imposed in 2007 but that these are not visible due to significantly higher procedural fines in other years.

3.13 Poland

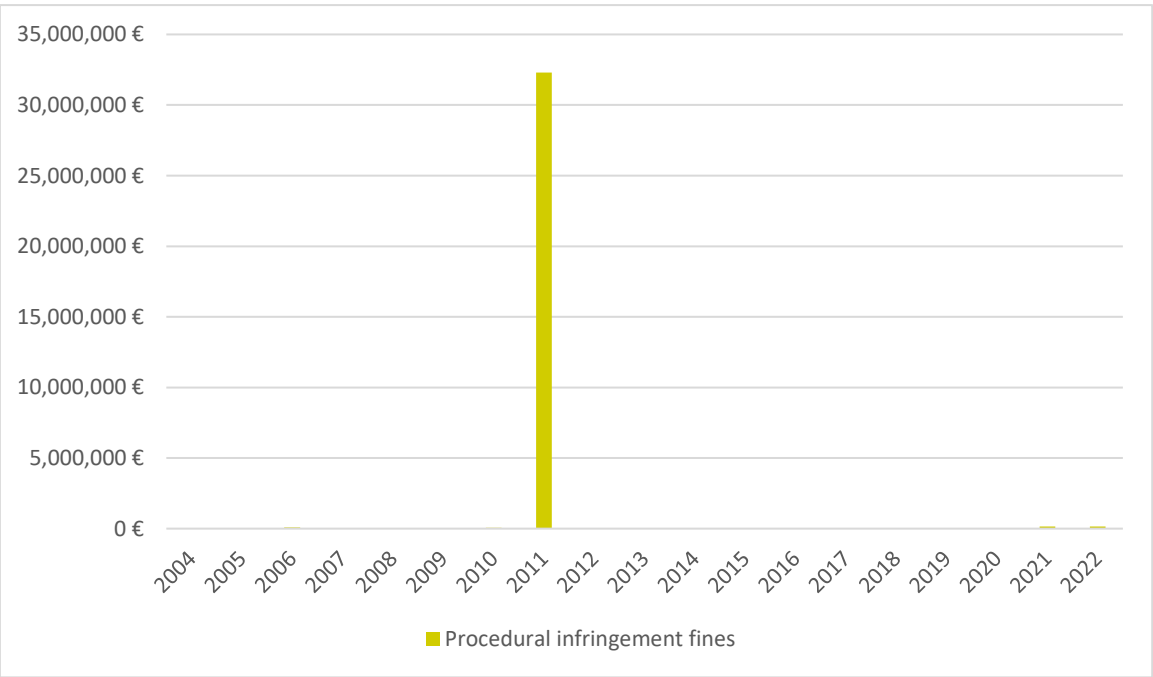

Figure 42 - Poland - Sum of procedural infringement fines per year (N=42). Please note that the above graph also contains data on procedural fines imposed in 2004, 2006, 2007, 2008, 2009, 2010, 2012, 2015, 2016, 2020, 2021 and 2022 but that these are not visible due to significantly higher procedural fines imposed in 2011.

3.14 Portugal

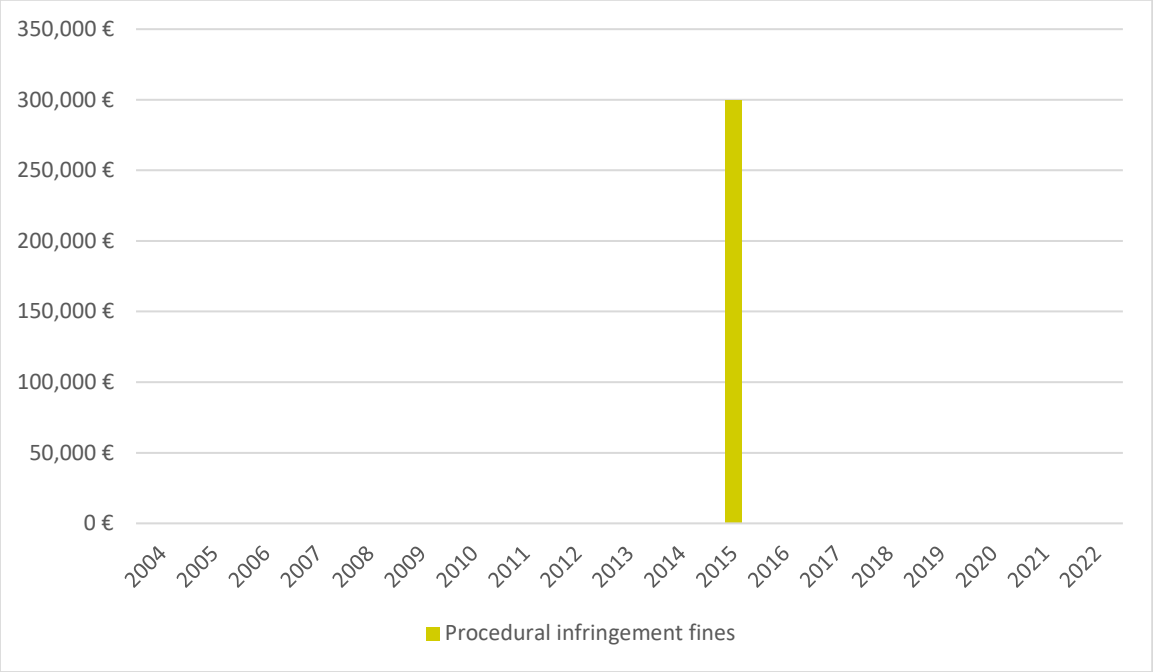

Figure 43 - Portugal - Sum of procedural infringement fines per year (N=1)

3.15 Romania

[CONFIDENTIAL]

3.16 Slovakia

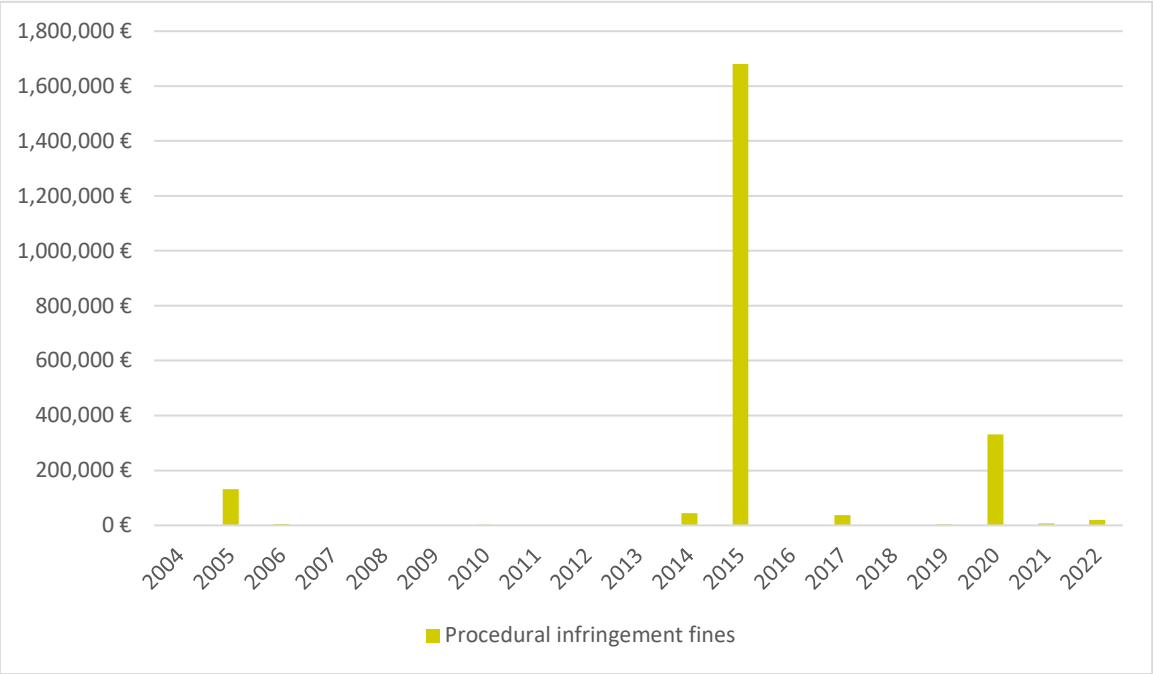

Figure 44 - Slovakia - Sum of procedural infringement fines per year (N=29). Please note that the above graph also contains data on procedural fines imposed in 2004, 2006, 2008, 2010, 2012, 2016, 2018, 2019, and 2021 but that these are not visible due to significantly higher procedural fines in other years.

3.17 Slovenia

[CONFIDENTIAL]

3.18 Spain

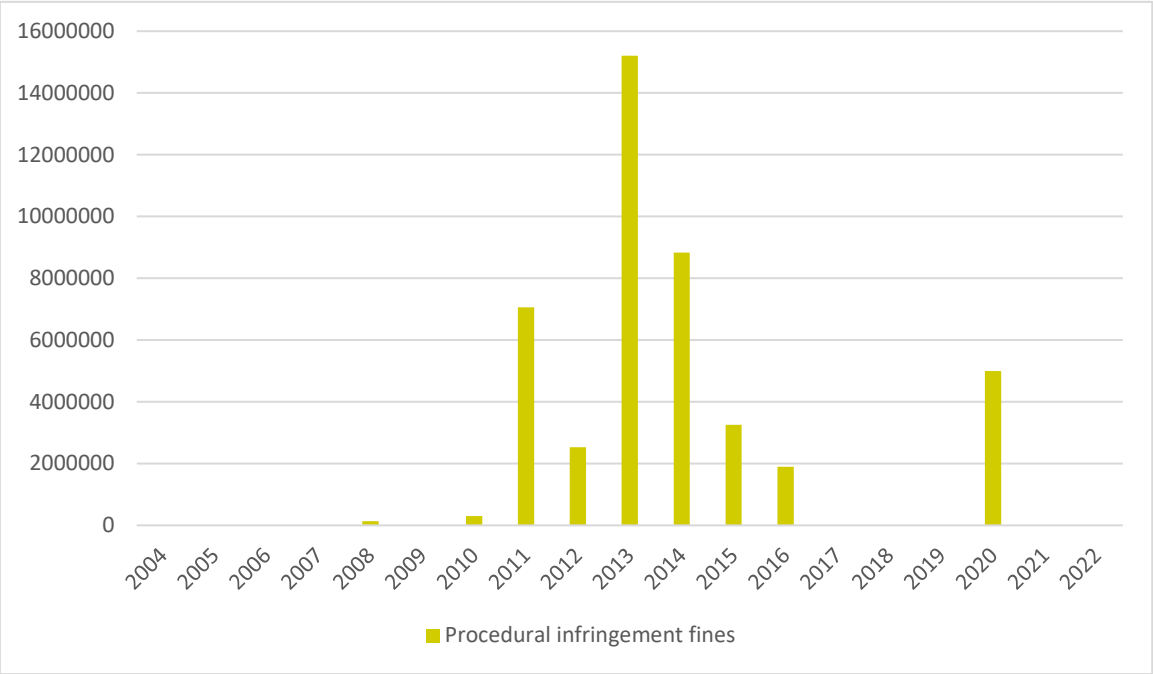

Figure 45 - Spain - Sum of procedural infringement fines per year (N=22)

Section 4. Number of periodic penalty payment decisions per year in each of the jurisdictions (and excluding Germany, Romania, Slovenia and Sweden for confidentiality reasons)

7.1 Commission

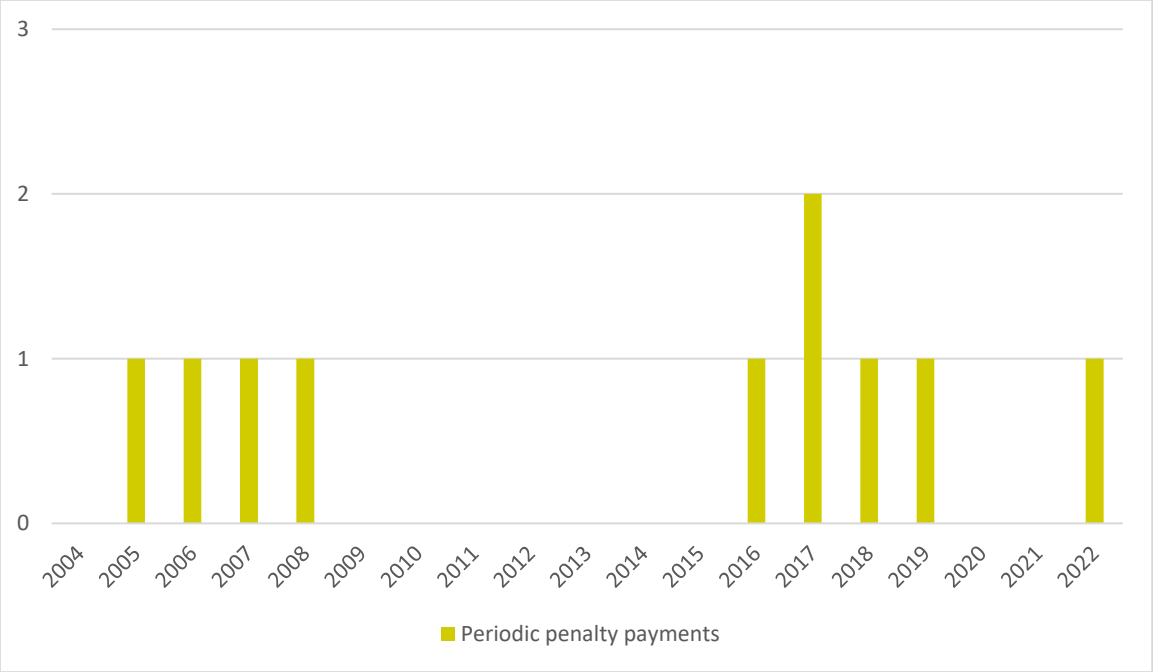

Figure 46 - Commission - Count of periodic penalty payment decisions per year (N=10)

7.2 Belgium

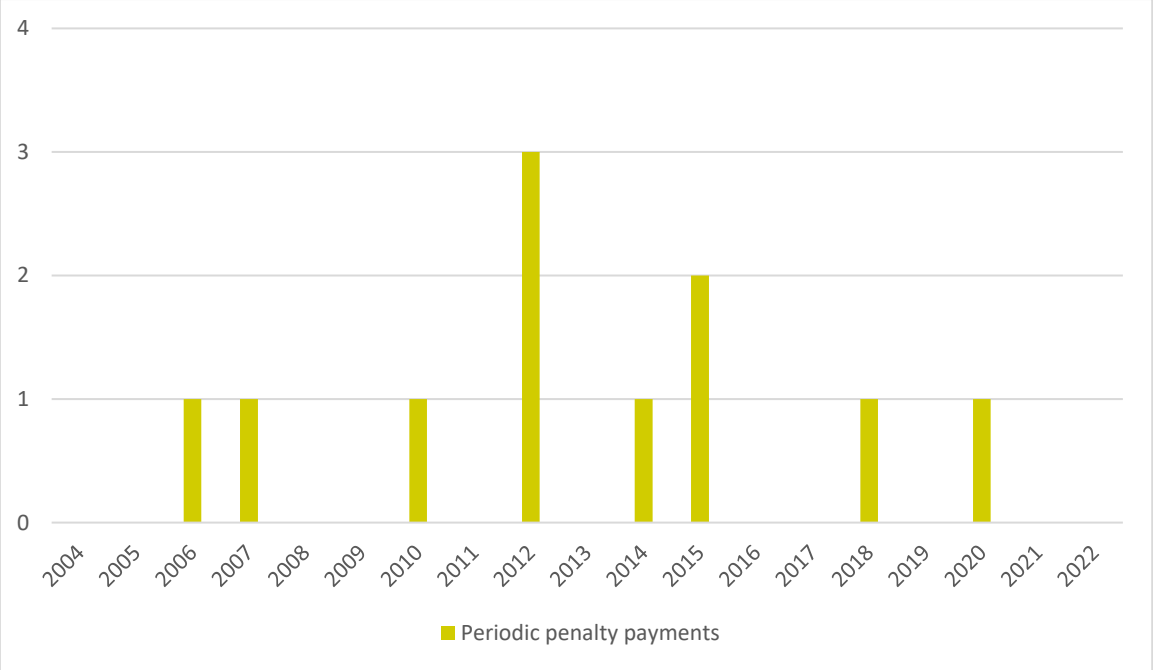

Figure 47 - Belgium - Count of periodic penalty payment decisions per year (N=11)

7.3 Bulgaria

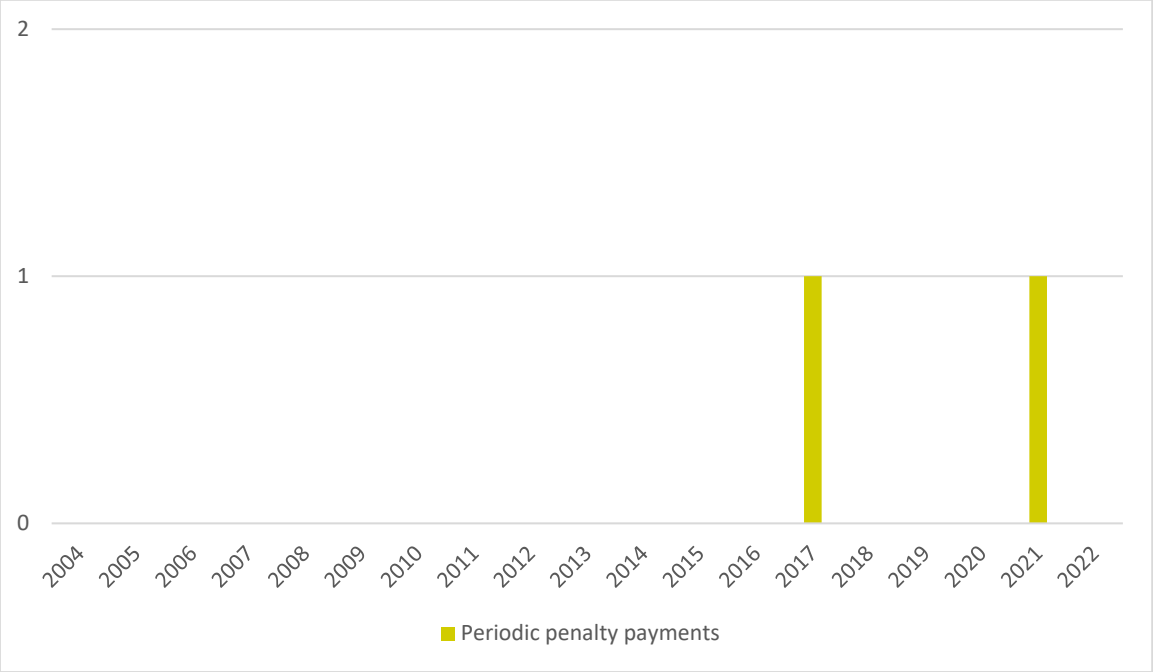

Figure 48 - Bulgaria - Count of periodic penalty payment decisions per year (N=2)

7.4 Cyprus

Figure 49 - Cyprus - Count of periodic penalty payment decisions per year (N=1)

7.5 Finland

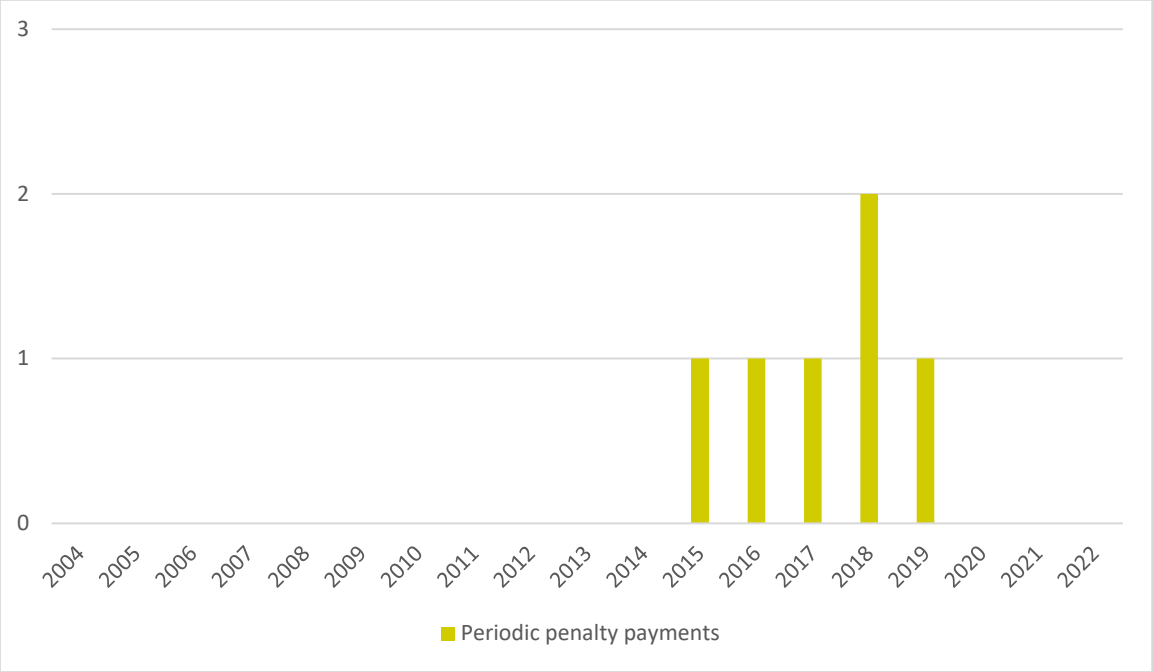

Figure 50 - Finland - Count of periodic penalty payment decisions per year (N=6)

7.6 France

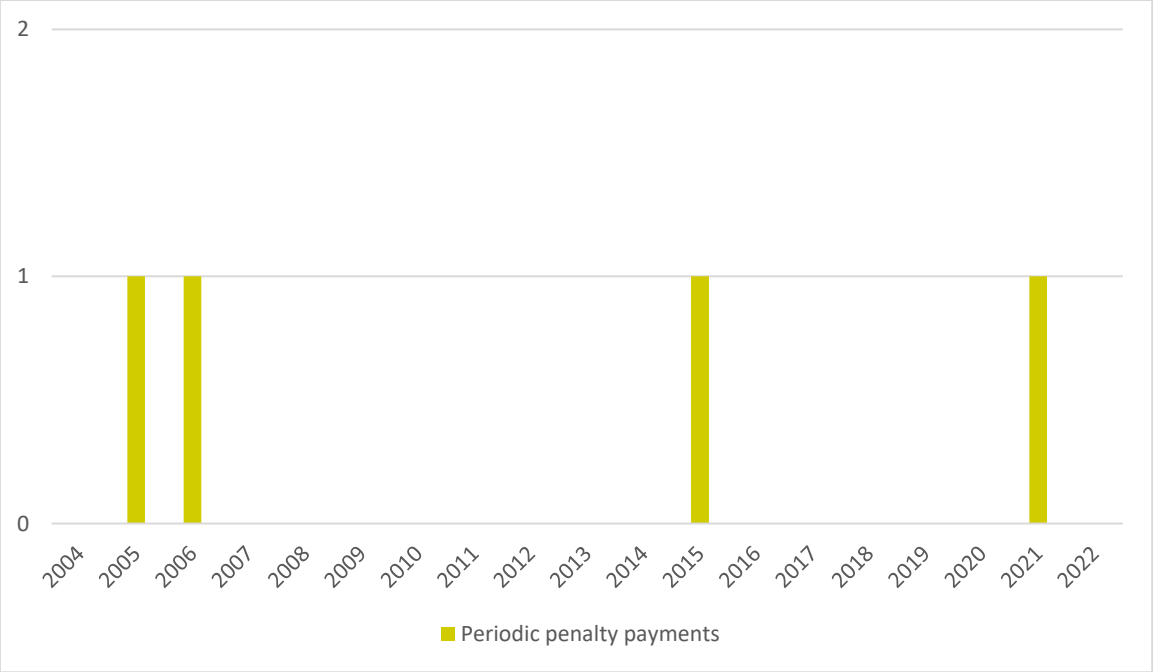

Figure 51 - France - Count of periodic penalty payment decisions per year (N=4)

7.7 Greece

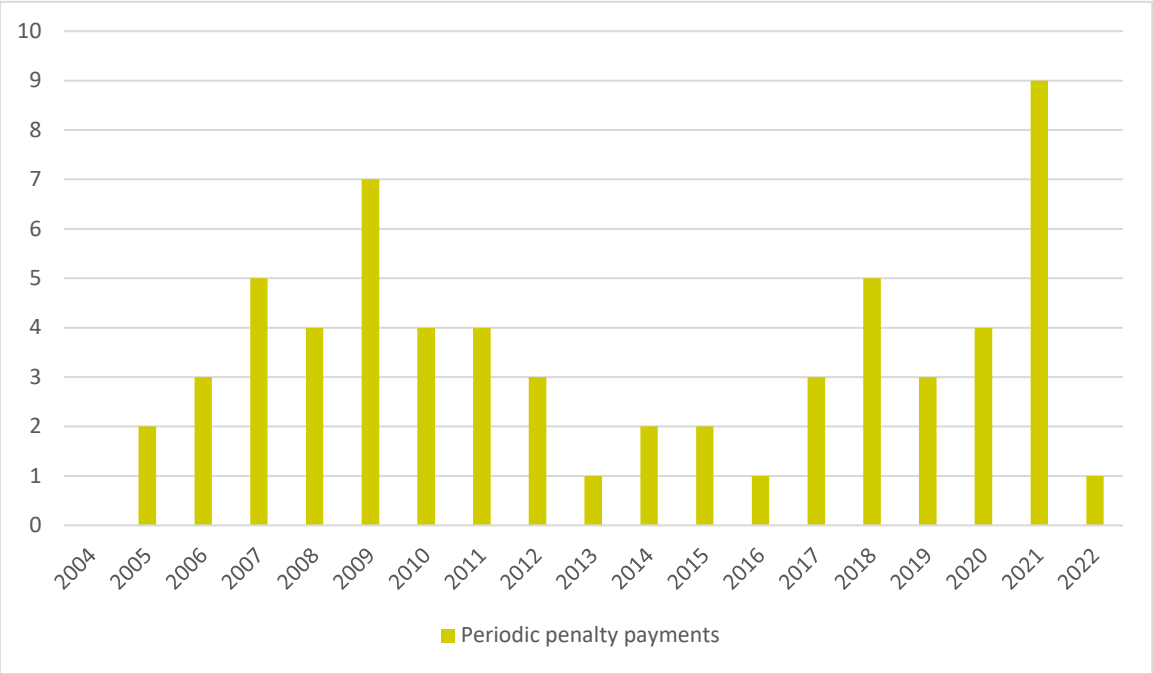

Figure 52 - Greece - Count of periodic penalty payment decisions per year (N=63)

7.8 Hungary

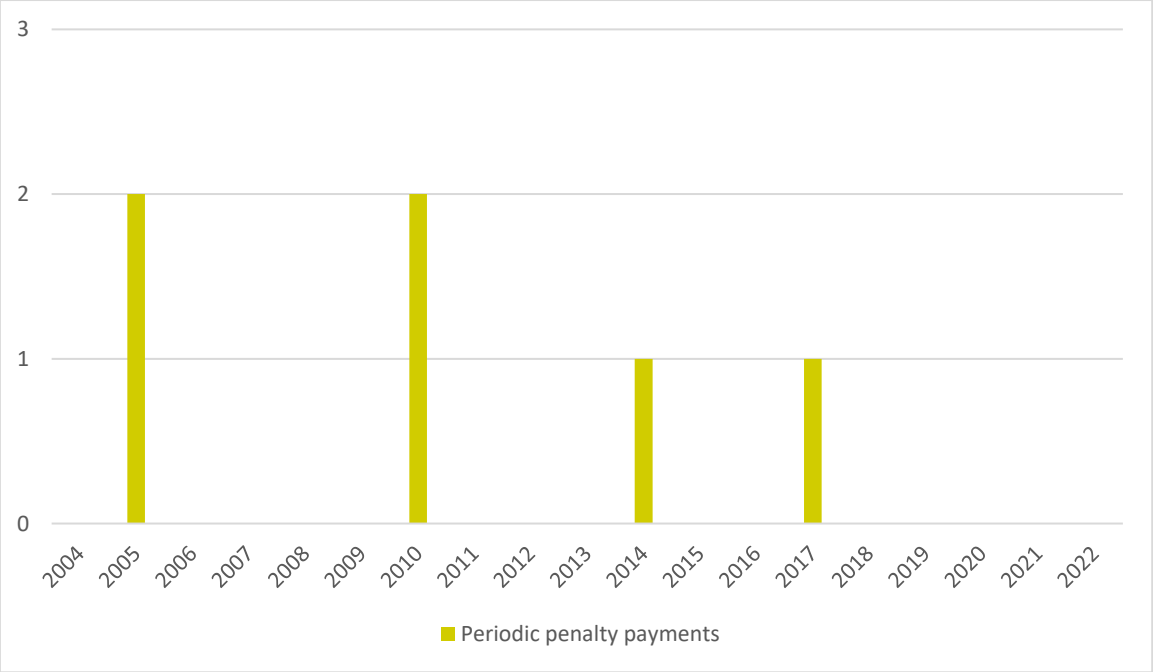

Figure 53 - Hungary - Count of periodic penalty payment decisions per year (N=6)

7.9 Italy

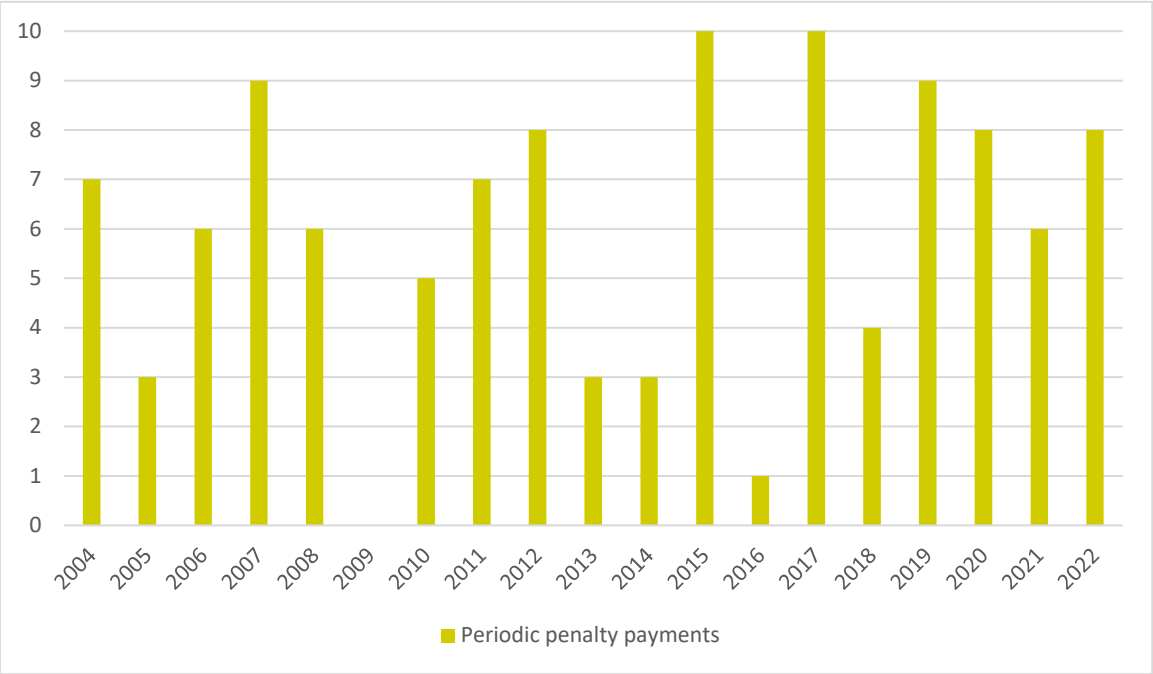

Figure 54 - Italy - Count of periodic penalty payment decisions per year (N=113)

7.10 Luxembourg

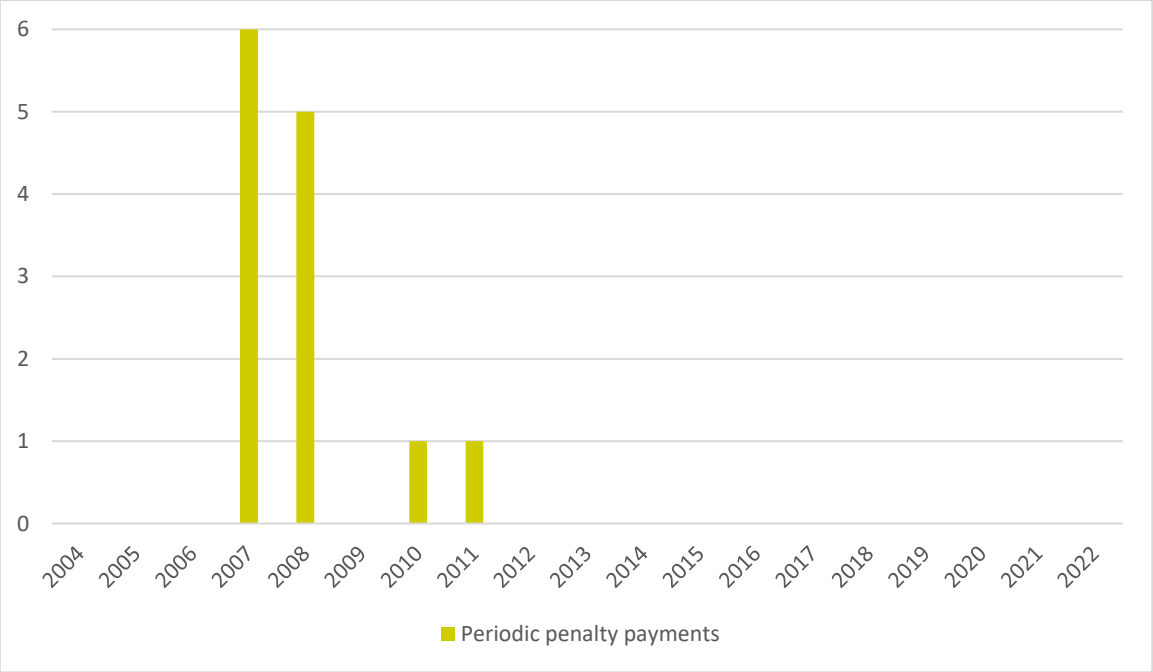

Figure 55 - Luxembourg - Count of periodic penalty payment decisions per year (N=13)

7.11 Netherlands

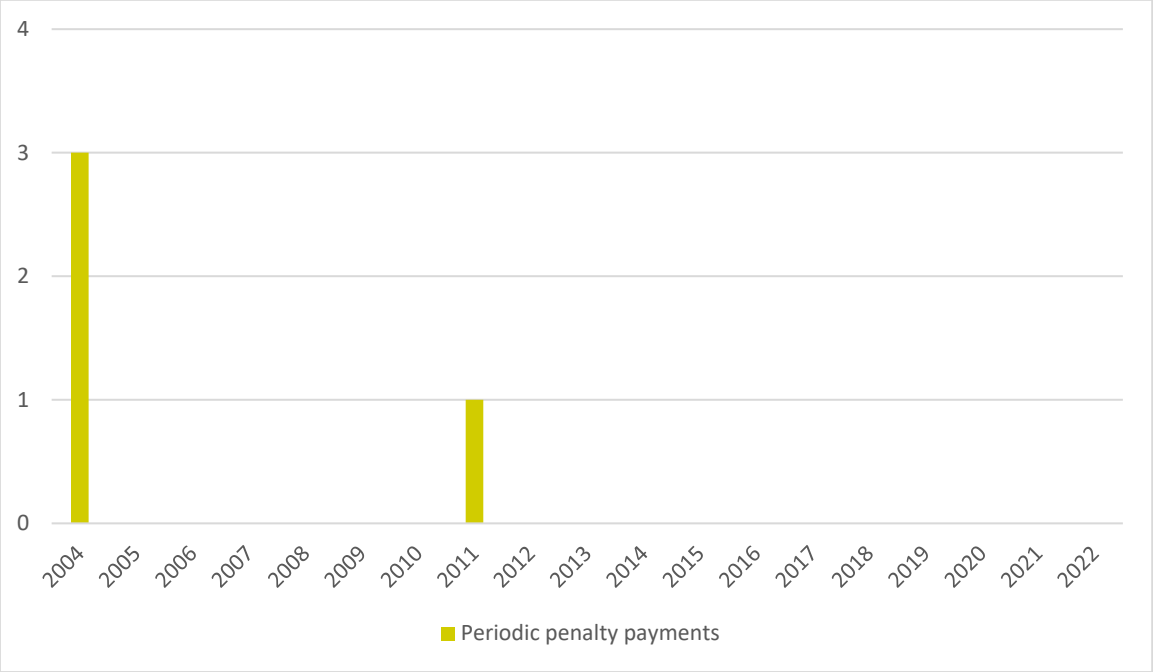

Figure 56 - Netherlands - Count of periodic penalty payment decisions per year (N=4)

7.12 Portugal

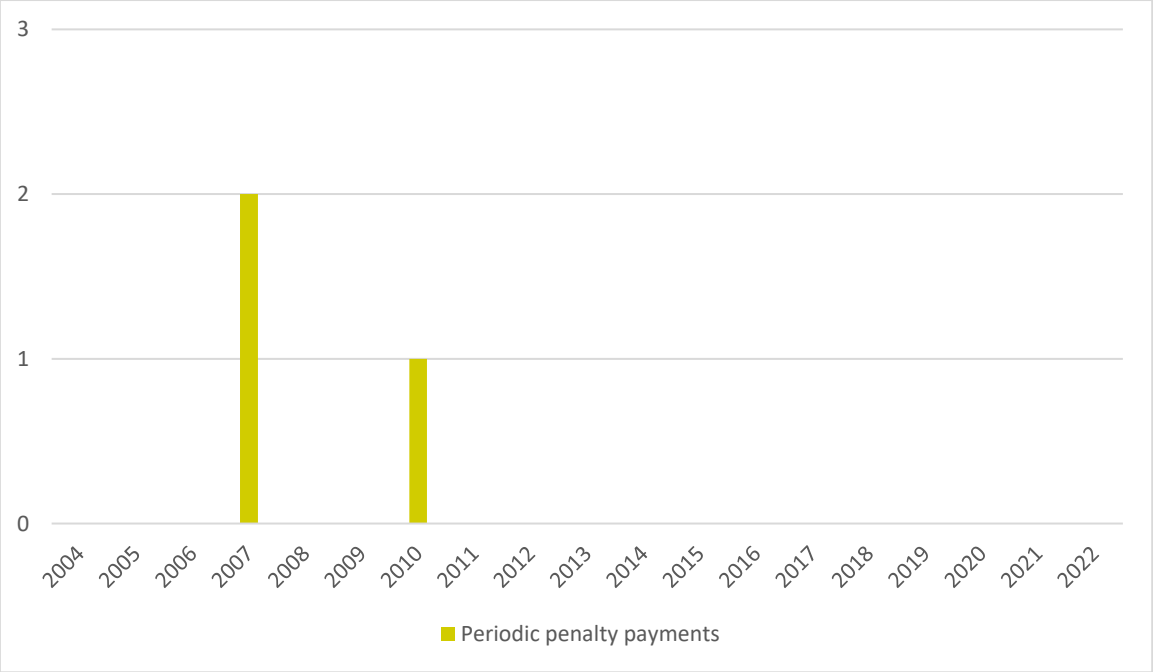

Figure 57 - Portugal - Count of periodic penalty payment decisions per year (N=3)

7.13 Romania

[CONFIDENTIAL]

7.14 Spain

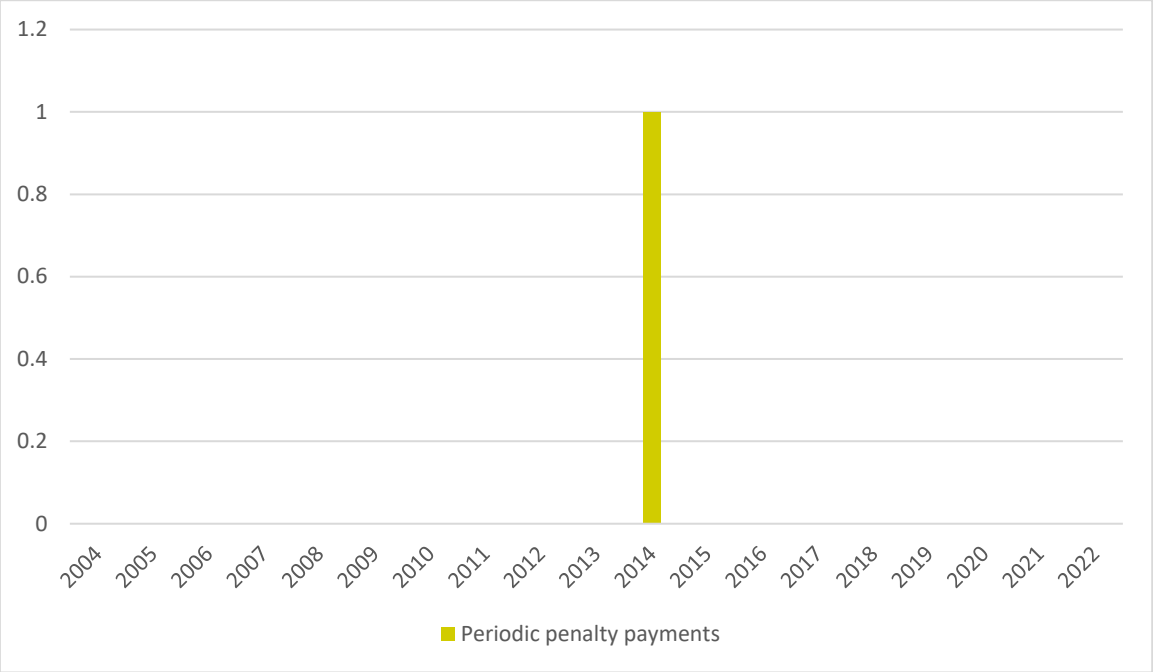

Figure 58 - Spain - Count of periodic penalty payment decisions per year (N=1)

7.15 Sweden

[CONFIDENTIAL]

Section 5. Number of settlement and cooperation decisions taken by the Commission per year

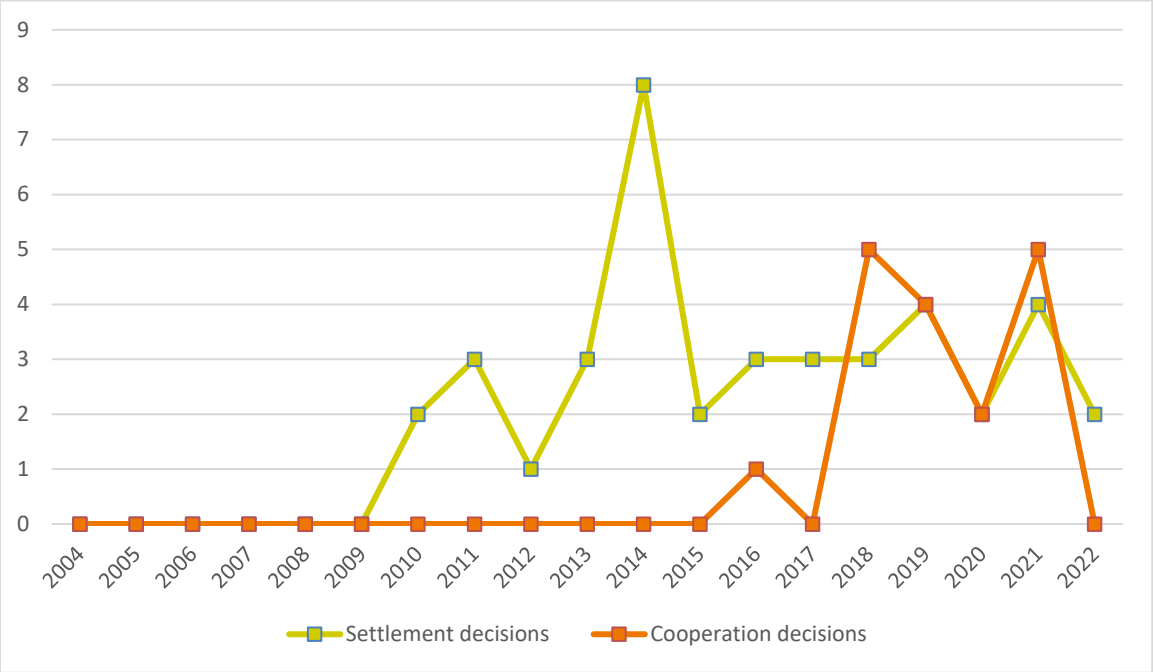

Figure 59 – Settlement (N=40) and cooperation (N=17) decisions taken by the Commission per year (N=57)

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