

# Donner aux autorités nationales de la concurrence les moyens d'appliquer la législation de manière plus efficace

Les champs marqués d'un \* sont obligatoires.

## GUIDE PRATIQUE

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## Répondre aux questions

- Les questions précédées d'un bouton radio sont «à choix unique»: une seule réponse peut être choisie.
- Les questions précédées d'une case sont «à choix multiple»: plusieurs réponses peuvent être choisies.
- Les questions renvoyant à un encadré sont des questions en texte libre.
- Selon la réponse donnée à une question, des questions demandant des informations supplémentaires peuvent apparaître automatiquement. Tel est le cas, par exemple, lorsque la réponse choisie est «Autre».
- Veuillez utiliser les boutons «Précédent» et «Suivant» pour naviguer dans le questionnaire (n'utilisez pas les boutons de votre navigateur!).

## Sauver le projet de réponses

- Le questionnaire comprend plusieurs parties.
- À la fin de chaque partie, vous pouvez continuer à répondre (en cliquant sur «Suivant») ou sauver les réponses déjà effectuées (en cliquant sur «Sauvegarder comme projet») (*NOTE: les deux premières parties «Guide pratique» et «Introduction» ne contiennent pas de questions*).
- Si vous choisissez «Sauvegarder comme projet», le système:
  - confirmera que votre projet de réponse a bien été sauvegardé;
  - indiquera le lien que vous devrez utiliser pour continuer à répondre plus tard;
  - proposera de vous envoyer le lien par courriel (nous vous conseillons de choisir cette option).
- Vous pouvez ensuite fermer l'application et reprendre le questionnaire plus tard, en utilisant le lien.

## Envoyer le questionnaire

- Le questionnaire ne peut être envoyé qu'en cliquant sur le bouton «**Envoyer**», qui se trouve dans la dernière partie «**Conclusion et envoi**».
- Une fois que vous l'avez envoyé, vous recevrez un message avec un numéro d'identification («**Numéro de dossier**»). Veuillez le conserver, car il pourra vous servir à identifier votre questionnaire dans le cas où vous souhaiteriez le modifier ultérieurement.
- Vous aurez également la possibilité d'imprimer ou de télécharger vos réponses pour en garder une trace.

## INTRODUCTION

*Remarque préliminaire: le questionnaire ci-après a été préparé par les services de la direction générale de la concurrence afin de recueillir des avis sur l'application des règles de concurrence de l'UE par les autorités nationales de la concurrence. Il ne reflète pas l'opinion de la Commission européenne et ne préjuge en rien de décisions ultérieures éventuelles concernant ce sujet.*

## A. Objectif de la consultation

La présente consultation a pour but de recueillir des informations sur les moyens de mieux servir les citoyens grâce à la législation européenne en matière de concurrence. Elle invite les citoyens et les parties prenantes à faire part de leur expérience ou de leur connaissance de problèmes ayant une influence sur la capacité des autorités nationales de la concurrence à faire appliquer les règles de concurrence de l'UE et à proposer, le cas échéant, des mesures qui pourraient être prises à cet égard.

La Commission analysera en détail les réponses reçues avant de décider si, et dans quelle mesure, une action devrait être entreprise. Les contributions des parties prenantes pourront être prises en compte dans une analyse d'impact afin d'évaluer les mesures qui devraient éventuellement être prises pour que les autorités nationales de la concurrence puissent faire appliquer la législation de manière efficace.

## B. Contexte

La politique de concurrence en Europe constitue un rouage essentiel du [marché intérieur](#). Les règles de concurrence de l'UE ont pour but de fournir aux consommateurs européens des biens et des services innovants et de meilleure qualité, à des prix plus avantageux. La politique de concurrence consiste à appliquer des règles garantissant une concurrence loyale entre les entreprises. Elle permet de stimuler l'esprit d'entreprise, de renforcer l'efficacité, d'élargir le choix offert aux consommateurs, de réduire les prix et d'améliorer la qualité. C'est pourquoi les autorités de concurrence luttent contre les [pratiques anticoncurrentielles](#).

Les autorités nationales de la concurrence constituent des partenaires essentiels pour faire appliquer les règles de concurrence de l'UE, aux côtés de la Commission européenne. Depuis 2004, elles sont habilitées, par le règlement n° 1/2003, à faire appliquer ces règles. Elles coopèrent étroitement avec la Commission européenne au sein du réseau européen de la concurrence, afin de garantir l'application cohérente des règles de concurrence. [1]

L'application de ces règles par la Commission européenne et par les autorités nationales de la concurrence est indispensable pour mettre en place un marché unique ouvert, compétitif et innovant, et créer des emplois et de la croissance dans tous les secteurs de l'économie. Les autorités nationales de la concurrence jouent donc un rôle déterminant pour garantir que le marché unique fonctionne bien et de façon équitable, de manière à profiter aux entreprises et aux consommateurs.

Mais elles peuvent faire beaucoup plus. Il ne suffit pas de leur donner le pouvoir de faire appliquer les règles de l'UE en matière d'entente: il faut les doter des moyens et des instruments nécessaires pour qu'elles puissent agir de manière concrète.

Le 9 juillet 2014, la Commission a adopté une communication intitulée «Dix ans de mise en œuvre des règles concernant les pratiques anticoncurrentielles sous le régime du règlement n° 1/2003: bilan et perspectives» [2]. Cette communication recense les mesures qu'il faudrait prendre pour renforcer la capacité des autorités nationales de la concurrence (ANC) à faire respecter les règles. *Ces mesures consistent notamment à:*

*(1) doter les ANC d'instruments d'application efficaces;*

*(2) habiliter les ANC à infliger des amendes dissuasives;*

*(3) faire appliquer par les ANC des programmes de clémence efficaces afin d'inciter les entreprises à mettre fin aux ententes;*

*(4) donner aux ANC des ressources appropriées et une indépendance suffisante.*

Afin de donner suite à cette communication, la Commission a effectué une enquête détaillée en coopération avec les autorités nationales de la concurrence. La présente consultation publique vise à recueillir l'avis des parties prenantes, des experts et du grand public.

### **C. Remarques générales concernant la consultation**

Toute personne ou organisation intéressée est invitée à participer à la consultation. Les parties prenantes ayant des activités dans le domaine de la concurrence, notamment les entreprises, leurs conseillers juridiques et économiques, les associations de consommateurs et les associations professionnelles, ainsi que les membres du monde universitaire, sont plus particulièrement invitées à répondre au questionnaire. Les réponses peuvent être données dans n'importe quelle langue officielle de l'UE.

Tout autre commentaire ou information est bienvenu (documents, rapports, études ou autres ayant un lien avec la consultation).

Le questionnaire comprend trois parties:

- A. À propos de vous
- B. Questions générales
- C. Questions détaillées pour les parties prenantes actives dans le domaine de la concurrence

Les questions détaillées sont divisées en quatre sous-parties **facultatives**:

- C.1. Ressources et indépendance des autorités nationales de la concurrence
- C.2. Instruments d'application des autorités nationales de la concurrence
- C.3. Habilitation des autorités nationales de la concurrence à infliger des amendes
- C.4. Programmes de clémence

Nous invitons ***tous les répondants à répondre aux questions générales.***

Par ailleurs, nous invitons les ***parties prenantes ayant des activités dans le domaine de la concurrence à répondre également aux questions détaillées (parties C.1 à C.4).*** Ces questions étant facultatives, les parties prenantes peuvent choisir celles pour lesquelles elles disposent d'une expérience ou de connaissances.

Pour répondre aux questions générales, il est conseillé de lire l'introduction à chacune des sous-parties C.1 à C.4, qui donne des informations de fond sur la portée du questionnaire.

Le délai de participation est fixé au **12 février 2016**.

Vous pouvez **envoyer à [COMP-ECNPLUS@ec.europa.eu](mailto:COMP-ECNPLUS@ec.europa.eu) toute question ou information** que vous jugez utile pour donner aux autorités nationales de la concurrence les moyens de mieux faire appliquer la législation.

[1] *En savoir plus sur le réseau européen de la concurrence:*  
[http://ec.europa.eu/competition/ecn/index\\_en.html](http://ec.europa.eu/competition/ecn/index_en.html)

[2] *COM(2014) 453, du 9.7.2014.*

## **A. À PROPOS DE VOUS**

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**\* 1. Vous répondez en tant que:**

- particulier
- organisation ou entreprise
- autorité publique ou organisation internationale

**Veillez indiquer vos coordonnées:**

**\* Nom complet**

**\* Organisation représentée**

**\* Lieu (pays)**

**\* Adresse électronique**

**• 1.1. Veillez indiquer le type d'organisation ou d'entreprise:**

- |   |  |
|---|--|
| <input type="radio"/> Établissement universitaire                             | <input type="radio"/> Association de consommateurs         |
| <input type="radio"/> Organisation non gouvernementale                        | <input type="radio"/> Autorité publique                    |
| <input type="radio"/> Entreprise/PME/micro-entreprise/entrepreneur individuel | <input type="radio"/> Association professionnelle          |
| <input type="radio"/> Groupe de réflexion                                     | <input type="radio"/> Société de conseil/cabinet juridique |
| <input type="radio"/> Médias  | <input type="radio"/> Syndicat                             |

**• 1.2. S'agit-il d'une multinationale (entreprise détenant des filiales implantées dans plusieurs pays)?**

- Oui    Non

● **1.3. Combien de salariés votre entreprise compte-t-elle?**

- 1 à 9    10 à 49    50 à 249    250 à 499    500 et plus

● **1.4. Quel est le chiffre d'affaires de votre entreprise?**

- inférieur ou égal à 2 millions d'euros    entre 2 et 10 millions d'euros    entre 10 et 50 millions d'euros    entre 50 et 750 millions d'euros
- supérieur à 750 millions d'euros

● **1.5. Quel est le total du bilan de votre entreprise?**

- inférieur ou égal à 2 millions d'euros    entre 2 et 10 millions d'euros    entre 10 et 43 millions d'euros    supérieur à 43 millions d'euros

● **1.2. De quelle autorité publique s'agit-il?**

- Autorité nationale de la concurrence  
 Gouvernement ou ministère  
 Organisation internationale ou européenne  
 Autorité réglementaire (autre qu'une autorité de la concurrence)  
 Autre organisme public

### 3. Quel est votre lieu d'établissement?

- Autriche
- Belgique
- Bulgarie
- Croatie
- Chypre
- République tchèque
- Danemark
- Estonie
- Finlande
- France
- Allemagne
- Grèce
- Hongrie
- Islande
- Irlande
- Italie
- Lettonie
- Lituanie
- Luxembourg
- Malte
- Pays-Bas
- Norvège
- Pologne
- Portugal
- Roumanie
- Slovaquie
- Slovénie
- Espagne
- Suède
- Royaume-Uni
- Liechtenstein
- Pays hors EEE

### 4. Représentez-vous des intérêts ou participez-vous à des activités:

- au niveau national (c.-à-d. uniquement dans votre pays)
- au niveau de l'UE
- au niveau international
- autre

- **4.1. Si vous avez indiqué «autre», veuillez préciser à quel niveau:**

Dans un souci de transparence, la Commission invite les organisations qui souhaitent répondre à une consultation publique à lui fournir, ainsi qu'au public, des informations expliquant qui et quels intérêts elles représentent, en s'inscrivant au [registre de transparence](#) et en souscrivant à son [code de conduite](#). Si une organisation décide de ne pas fournir ces informations, la politique déclarée de la Commission est de considérer cette contribution comme une contribution individuelle [normes applicables aux consultations: voir COM (2002) 704; lignes directrices pour l'amélioration de la réglementation, voir: SWD(2015)111 final; communication sur le suivi du livre vert «Initiative européenne en matière de transparence»: voir COM(2007) 127 du 21.3.2007].

Si vous représentez une organisation enregistrée, veuillez indiquer ci-dessous son numéro d'identification au registre lorsque vous répondez au questionnaire en ligne. Votre contribution sera alors considérée comme reflétant le point de vue de votre organisation.

Si votre organisation n'est pas encore enregistrée, vous pouvez le faire [maintenant](#). Revenez ensuite sur cette page pour continuer à répondre au questionnaire et soumettre votre contribution en tant qu'organisation enregistrée.

Il est vivement conseillé de lire la déclaration spécifique relative à la protection de la vie privée jointe à la consultation afin de connaître les modalités de traitement des données personnelles et des contributions.

**5. Pour les organisations enregistrées, indiquez le numéro d'identification au registre:**



**\* 6. Veuillez choisir une des options suivantes concernant l'utilisation de votre contribution:**

**Ma/notre contribution**

peut être directement publiée avec mes informations à caractère personnel/les informations concernant l'organisation («Je consens à la publication, en totalité ou en partie, de toutes les informations contenues dans ma contribution, y compris mon nom/le nom de mon organisation, et je déclare qu'aucun élément de ma réponse n'est illégal ou ne porte atteinte aux droits d'un tiers d'une manière qui pourrait empêcher sa publication»);

peut être directement publiée, à condition que les informations me concernant/concernant mon organisation demeurent anonymes [(«Je consens à la publication, en totalité ou en partie, de toutes les informations contenues dans ma contribution (y compris les citations et avis exprimés), à condition que ces informations soient rendues anonymes. Je déclare qu'aucun élément de ma réponse n'est illégal ou ne porte atteinte aux droits d'un tiers d'une manière qui pourrait empêcher sa publication»)];

ne peut pas être directement publiée, mais peut être utilisée à des fins statistiques («Je ne consens pas à la publication de ma contribution, mais j'accepte que mes réponses, rendues anonymes, soient utilisées à des fins statistiques, par exemple pour montrer les tendances générales se dégageant des réponses apportées à cette consultation»).

**Veillez noter que vos réponses peuvent faire l'objet d'une demande d'accès public aux documents, en vertu du règlement (CE) n° 1049/2001.**

**7. Le cas échéant, les services de la Commission peuvent-ils vous demander des précisions sur les renseignements communiqués?**

Oui  Non

## **B. QUESTIONS GÉNÉRALES POUR TOUS LES RÉPONDANTS AU QUESTIONNAIRE**

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Les règles de concurrence de l'UE ont pour but de fournir aux consommateurs européens des biens et des services innovants et de meilleure qualité, à des prix plus avantageux.

Les autorités nationales de la concurrence et la Commission sont chargées de faire appliquer les règles de concurrence de l'UE pour lutter contre les comportements anticoncurrentiels et garantir une concurrence loyale entre les entreprises.

Cette politique permet de stimuler l'esprit d'entreprise, l'innovation et la productivité, d'élargir le choix offert aux consommateurs, de réduire les prix et d'améliorer la qualité.

**1. Êtes-vous d'accord avec cette affirmation: les règles de concurrence de l'UE sont appliquées de manière efficace par les autorités nationales de la concurrence?**

- Pas du tout d'accord
- Pas d'accord
- D'accord
- Tout à fait d'accord
- Avis neutre
- Sans avis/Sans objet

- **À quel(s) État(s) membre(s) votre réponse s'applique-t-elle?:**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Irlande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

- **Si vous avez des avis différents selon les pays, veuillez indiquer ci-dessous votre avis pour chaque pays:**

**2. Êtes-vous d'accord avec cette affirmation: les autorités nationales de la concurrence pourraient faire plus pour faire appliquer les règles de concurrence de l'UE?**

- Pas du tout d'accord
- Pas d'accord
- D'accord
- Tout à fait d'accord
- Avis neutre
- Sans avis/Sans objet

- **Veillez indiquer le ou les États membres concernés par votre réponse:**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Islande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

- **Si vous avez des avis différents selon les pays, veuillez indiquer ci-dessous votre avis pour chaque pays:**

**3. Quelles sont les mesures qui pourraient aider les autorités nationales de la concurrence (ANC) à faire appliquer plus efficacement les règles de concurrence de l'UE?**

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
Garantir aux ANC qu'elles puissent faire appliquer les règles de concurrence de l'UE dans l'intérêt général de l'Union, et non en obéissant à des instructions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Garantir que les ANC disposent de ressources suffisantes pour accomplir leur mission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Garantir que les ANC disposent d'instruments d'application efficaces, p. ex. pour détecter et instruire les infractions à la législation sur la concurrence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Garantir que les ANC disposent de pouvoirs effectifs pour infliger des amendes aux entreprises en cas d'infraction à la législation sur la concurrence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Garantir que les ANC disposent de programmes de clémence efficaces, p. ex. pour inciter les entreprises à cesser leurs infractions aux règles de la concurrence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Autre	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- Si vous avez répondu «Autre», indiquez l'aspect qui devrait être renforcé:

- Vous pouvez ajouter d'autres commentaires et/ou explications.

**4. Êtes-vous d'accord avec cette affirmation: il faudrait entreprendre une action pour permettre aux autorités nationales de la concurrence d'appliquer les règles de l'UE de manière plus efficace?**

- Pas du tout d'accord
- Pas d'accord
- D'accord
- Tout à fait d'accord
- Avis neutre
- Sans avis/Sans objet

**5. Si vous pensez qu'une action devrait être entreprise pour permettre aux autorités nationales de la concurrence d'appliquer les règles de l'UE de manière plus efficace, quelle devrait être cette action?**

- Action des États membres
- Action de l'UE
- Action combinée UE/États membres
- Sans avis/Sans objet

**6. Si vous pensez que les États membres devraient entreprendre une action, laquelle serait-elle la plus appropriée?**

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications.**

**7. Si vous pensez qu'une action devrait être entreprise au niveau de l'UE, laquelle serait-elle la plus appropriée?**

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications.**

**8. Quel serait l'effet de l'action de l'UE que vous avez choisie ci-dessus sur les aspects suivants:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
Application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coopération au sein du réseau européen de la concurrence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Légitimité des décisions prises par les autorités nationales de la concurrence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Climat d'investissement/croissance économique	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(\*) *Effet négatif sur les coûts: les coûts augmentent. Effet positif sur les coûts: les coûts baissent.*

- **N'hésitez pas à ajouter des commentaires et/ou des explications, en particulier si vous estimez que l'action que vous avez choisie aurait d'autres effets. Veuillez donner des précisions ci-dessous.**

**9. N'hésitez pas à ajouter des commentaires et/ou des explications concernant l'application des règles de concurrence de l'UE par les autorités nationales de la concurrence:**

## **C. DETAILED QUESTIONS FOR STAKEHOLDERS ACTIVE IN COMPETITION MATTERS**

### **C.1. RESOURCES AND INDEPENDENCE OF THE NCAs**

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The [Communication on Ten Years of Regulation 1/2003 of 9 July 2014](#) states that: "it is necessary to further guarantee the independence of national competition authorities ("**NCAs**") in the exercise of their tasks and that they have sufficient resources".

The NCAs directly enforce the EU Treaty provisions on competition, namely Articles [101](#) and [102](#) TFEU, alongside the Commission. EU law leaves Member States a large degree of flexibility for the design of the NCAs. The **level of resources** and **degree of independence of the NCAs are essentially determined by national law** subject to Article 35 of Regulation 1/2003, which requires Member States to designate NCA(s) in such a way that the provisions of the Regulation are effectively complied with, and that the EU law principles of effectiveness and equivalence are respected.

The Commission initial fact-finding in follow-up to the 2014 Communication shows that **significant differences exist among the NCAs in terms of human and financial resources in Member States of a similar size** in terms of GDP and that NCAs in small Member States often suffer from limited financial means or very low staff numbers. Moreover, as a result of budgetary and staffing constraints and cuts, **many NCAs have had to stop or refrain from conducting certain enforcement activities**.

Against the backdrop of cuts in the resources of several authorities, an **European Competition Network ("ECN") Resolution of Heads of Authorities was adopted on the continued need for effective institutions**.<sup>[3]</sup> The Resolution underlined, inter alia, the need for appropriate infrastructure and expert resources for all NCAs.



With regard to the functioning of the NCAs, the Commission initial fact-finding shows that while they have generally developed in the direction of greater independence, the **applicable national rules do not always safeguard them against interference from public and private bodies when carrying out their task of enforcing EU competition law.**

The Commission has also **tried to address the level of resources** and **degree of independence** of some NCAs through the Economic Adjustment Programmes with so-called Programme Countries and the European Semester where possible, as well as through direct reactions to Member States on a bilateral basis.

[3] *See the Internet (<http://ec.europa.eu/competition/ecn/ncas.pdf>).*

**C.1.(a) Your experience/knowledge of resources and independence of NCAs when enforcing EU competition law**

**1. Do you have experience/knowledge of the enforcement of the EU competition rules by the NCAs?**

Oui  Non  Sans avis/Sans objet

- **If yes, in which countries?**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Islande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

2. In its Communication on Ten Years of Regulation 1/2003 of 9 July 2014, the Commission considers it “*necessary to further guarantee the independence of NCAs in the exercise of their tasks and that they have sufficient resources*” when enforcing the EU competition rules.

**Do you agree with this finding with respect to the NCAs with which you have experience/knowledge?**

- Pas du tout d'accord
- Pas d'accord
- D'accord
- Tout à fait d'accord
- Avis neutre
- Sans avis/Sans objet

- **You are welcome to add additional comments/and or explanations:**

3. In your view, which are the main tasks NCAs should perform concerning the enforcement of the EU competition rules?

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
Enforcement in individual cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Engaging in competition advocacy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN for enforcement of the EU competition rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
autre	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- **Indicate which is the "Other" main task of the NCAs you are referring to:**

- You are welcome to add additional comments/and or explanations:

4. Do you have experience/knowledge of instances where a NCA does not have sufficient human or financial resources to carry out its main tasks concerning the enforcement of the EU competition rules (e.g. conduct simultaneous inspections at different locations)?

- Oui  Non  Sans avis/Sans objet

- You are welcome to add **additional comments and/or explanations**, in particular, explaining which NCA(s) you refer to, and if and why you consider this to be a problem.

5. Do you have experience/knowledge of instances where a NCA has been influenced by other bodies (e.g. government, other national public bodies, or private entities apart from the parties involved in the case) or subject to instructions from outside the authority when enforcing the EU competition rules in individual cases?

- Oui  Non  Sans avis/Sans objet

- If yes, please specify which NCA(s), who the influence/instructions came from and what they were trying to achieve? If possible, also indicate in which case(s)/enforcement activity?

- You are welcome to add additional comments and/or explanations, in particular, explaining if and why you consider this to be a problem.

**6. Do you have experience/knowledge of instances where members of the NCA's top management/board or decision-making body have been dismissed due to their enforcement activities (including for example the position they took during a collegiate decision making process) in individual cases?**

- Oui  Non  Sans avis/Sans objet

- **If yes, which NCA(s) and which activity?**

- **You are welcome to add additional comments and/or explanations, in particular, explaining if and why you consider this to be a problem.**

**7. Do you have experience/knowledge of instances where members of the NCA's top management/board or decision-making body had a conflict of interest or immediately after the end of their contract/mandate with the NCA, have taken up a professional position/responsibility with an undertaking which had been subject to an investigation or decision during their employment with the NCA?**

- Oui  Non  Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations, in particular, explaining which NCA(s), which activity and if and why you consider this to be a problem.**

**C.1.(b) Your views on potential action**

**8. Which measures are necessary to ensure that NCAs are functionally independent when enforcing the EU competition rules, i.e. they act in the general interest of the EU and do not take instructions when carrying out this task?**

**Please list the 3 most important measures in order of importance (starting with "1" for the most important).**

	1	2	3
Guarantees ensuring that NCAs are endowed with adequate and stable human and financial resources to perform their tasks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Guarantees that NCA's top management/board or decision-making body are not subject to instructions from any government or other public or private body	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Guarantees ensuring that dismissals of members of the NCA's top management/board or decision-making body can only take place on objective grounds unrelated to its enforcement activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on conflicts of interest for the NCA's top management/board or decision-making body	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on accountability of the NCA (e.g. requiring that NCAs report annually on their activities)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
autre	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- **Indicate which is the "Other" measure that would be necessary:**

- **You are welcome to add additional comments and/or explanations.**

**9. Should ensuring that NCAs have sufficient resources when they enforce the EU competition rules be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations.

**10. Should guarantees regarding the independence of the NCAs when enforcing the EU competition rules be addressed at Member States and/or EU level?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations.

**11. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations. If your reply is different for resources and for independence, please clarify it here.

**12. If you consider that there is a case for EU action, what type of EU action you consider most appropriate**

:

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations. If your reply is different for resources and for independence, please clarify it here.**

**13. Please clarify why you consider your preferred type of EU action more appropriate than other types of action to ensure the independence of the NCAs in the exercise of their tasks and that they have sufficient resources when they enforce the EU competition rules?**

**14. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legitimacy of NCA decisions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Climat d'investissement/croissance économique	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*(\*) Effets négatifs sur les coûts: les coûts augmentent. Effet positif sur les coûts: les coûts baissent.*



- You are welcome to add **additional comments and/or explanations**, in particular, if you consider that your preferred option would have **any other impact**.

15. Please indicate whether you have **any other comment or suggestions**, such as examples of good practice etc.

You may also provide additional information which may be relevant for this section (copies of any documents, reports, studies etc.). Please do it by uploading the relevant information in documents with a maximum size of 1 MB each using the button below.

Should you prefer to provide documents of more than 1 MB, please send them to the functional mailbox [COMP-ECNPLUS@ec.europa.eu](mailto:COMP-ECNPLUS@ec.europa.eu) after having submitted your reply to the questionnaire indicating your Case-Id, email and contact details.

## C. DETAILED QUESTIONS FOR STAKEHOLDERS ACTIVE IN COMPETITION MATTERS

### C.2. ENFORCEMENT TOOLBOX OF THE NCAs

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The [Communication on Ten Years of Regulation 1/2003 of 9 July 2014](#) provides: “it is necessary ... to ensure that NCAs have a complete set of effective investigative and decision-making powers at their disposal”.

The **tools NCAs use to apply the EU competition rules** are **essentially governed by national law**, subject only to EU general law principles of effectiveness and equivalence.

By way of follow-up to the Communication, the Commission has carried out initial fact-finding which indicates that the **vast majority of NCAs do not have a complete set of investigation and decision-making powers** which are **comprehensive in scope** and are **effective**.

Several NCAs **do not have the power to fully set their enforcement priorities, e.g. they cannot reject complaints on priority grounds**, and choose which cases to dedicate their scarce resources.

While most NCAs broadly have the same basic enforcement tools, **some lack fundamental powers** such as to adopt commitment decisions or to inspect non-business premises.

There are **significant differences in the scope of NCAs' powers**, e.g. while most NCAs have the power to inspect, some cannot effectively gather digital evidence. Similarly, while all NCAs have the power to adopt prohibition decisions, some cannot adopt behavioural or structural remedies to restore competition on the market.

**Some NCAs cannot effectively fine non-compliance** with their **investigative and decision-making powers**, as either their powers are not backed up by fines, fines are set at a very low level or there are no means to compel compliance e.g. through periodic penalty payments.

**If NCAs do not have effective tools**, their **ability to detect and find infringements suffers**. It also **impacts on cooperation within the ECN**: NCAs often ask other NCAs to carry out inspections on their behalf. However, the utility of this tool is diminished if NCAs do not have effective inspection powers. **Divergences in procedures result in legal costs and uncertainty** for companies operating cross-border, which need to acquaint themselves with different rules.

The **ECN has developed a set of seven Recommendations** on key enforcement tools to foster soft convergence. **Attempts have also been made to improve the enforcement toolbox of NCAs** through the **Memoranda of Understanding** of Specific Economic Policy Conditionality with the **so-called "Programme Countries"** and through country specific recommendations in the framework of the **European Semester**.

### C.2.(a) Your experience/knowledge

1. Do you have experience/knowledge of the tools NCAs use to enforce Articles 101 and 102 TFEU, e.g. to carry out inspections, to issue requests for information, to collect digital evidence and to impose structural or behavioural remedies?

Oui  Non  Sans avis/Sans objet

- **If yes, in which countries:**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Islande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

**2. Do you have experience/ knowledge of instances where NCAs do not have effective investigation and decision-making tools to enforce Articles 101 and 102 TFEU, e.g. to effectively carry out inspections, issue requests for information, adopt commitment decisions, issue interim orders?**

- Oui  Non  Sans avis/Sans objet

- Do you consider this to be a problem in terms of:

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of the EU competition rules e.g. NCAs may refrain from taking action/carry out more limited action/take action which does not meet the desired objective?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN e.g. NCAs may not have effective powers to carry out an inspection on behalf of another ECN member pursuant to Article 22?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- You are welcome to add additional comments and/or explanations, e.g. which **Member State(s)** you refer to and if you consider that this gives rise to other problems.

**3. Do you have experience/ knowledge of instances where NCAs have divergent investigation and decision-making tools to enforce Articles 101 and 102 TFEU, e.g. to gather digital evidence, to impose structural or behavioural remedies?**

- Oui    Non    Sans avis/Sans objet

- **Do you consider this to be a problem in terms of:**

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
Costs for businesses operating cross-border within the EU, e.g. costs of becoming acquainted with different rules?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Uncertainty for businesses operating cross-border within the EU, e.g. differences in terms of which data may be gathered?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN e.g. differences in terms of which evidence can be gathered on behalf of another NCA?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- **You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and if you consider that this gives rise to other problems.**

**4. Do you have experience/ knowledge of instances where NCAs do not have effective powers to:**

- **4.1. fine non-compliance with their investigative and decision-making powers, e.g. to impose finances for non-compliance with inspection powers such as breaching seals or failure to comply with a commitment decision?**

Oui  Non  Sans avis/Sans objet

- **Do you consider this to be a problem in terms of:**

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of Articles 101 and 102 TEFU by NCAs, e.g. if NCAs' inspection and investigation powers are not backed up by any power to impose fines or the fines are set at a very low level companies may not be incentivised to comply?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses operating cross-border within the EU, e.g. costs of becoming acquainted with different rules?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Uncertainty for businesses operating cross-border within the EU?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- **You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and if you consider that this gives rise to other problems.**

- **4.2. compel compliance with their investigation and decision-making powers, g. to impose periodic penalty payments to ensure that an undertaking complies with a prohibition decision?**

Oui    Non    Sans avis/Sans objet

- Do you consider this to be a problem in terms of:

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of Articles 101 and 102 TEFU by NCAs, e.g. if NCAs' inspection and investigation powers are not backed up by any power to impose fines or the fines are set at a very low level companies may not be incentivised to comply?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses operating cross-border within the EU, e.g. costs of becoming acquainted with different rules?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Uncertainty for businesses operating cross-border within the EU?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and if you consider that this gives rise to other problems.

**5. Do you have experience/ knowledge of instances where NCAs do not have the power to set their priorities and to choose which cases to investigate, including the power to reject formal complaints on priority grounds?**

- Oui  Non  Sans avis/Sans objet

- Do you consider this to be a problem in terms of:

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of Articles 101 and 102 TEFU by NCAs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses operating cross-border within the EU, e.g. costs of becoming acquainted with different rules?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Uncertainty for businesses operating cross-border within the EU?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and if you consider that this gives rise to other problems.

6. Do you have experience/ knowledge of divergent rules on prescription (limitation) periods, e.g. if the possibility for one NCA to take an enforcement decision becomes time barred but another NCA may still act?

- Oui  Non  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and if you consider that this gives rise to other problems.



- Do you consider this to be a problem in terms of:

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of Articles 101 and 102 TEFU by NCAs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses operating cross-border within the EU, e.g. costs of becoming acquainted with different rules?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Uncertainty for businesses operating cross-border within the EU?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and if you consider that this gives rise to other problems.

**7. Do you have experience/ knowledge of instances where one NCA (NCA A) does not have the power to ask another NCA (NCA B) to notify acts (e.g. Statements of Objection) or to enforce fining decisions on its behalf in the territory of NCA B, where it is not possible for NCA A to do so in its own jurisdiction, e.g. the company concerned has no legal presence there?**

- Oui  Non  Sans avis/Sans objet

- Do you consider this to be a problem in terms of:

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of Articles 101 and 102 TEFU by NCAs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses operating cross-border within the EU, e.g. costs of becoming acquainted with different rules? (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Uncertainty for businesses operating cross-border within the EU?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(\*) *Effets négatifs sur les coûts: les coûts augmentent. Effets négatifs sur les coûts: les coûts baissent.*

- You are welcome to add **additional comments and/or explanations**, e.g. which **Member State(s)** you refer to and if you consider that this gives rise to **other problems**.

**8. Please specify whether you have encountered any other problem in terms of NCAs not having sufficient tools to enforce Articles 101 and 102 TFEU?**

- Oui  Non  Sans avis/Sans objet

- Please explain your answer and in particular which Member State(s) you refer to.

**C.2.(b) Your views on potential action**

**9. Which powers do you think NCAs need in order to have an effective toolbox to enforce Articles 101 and 102 TFEU?**

• **9.1. Power to inspect business premises**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

• **9.2. Power to inspect non-business premises, e.g. homes and means of transport of directors, managers and other members of staff of the company being inspected**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

• **9.3. Power to issue requests for information**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

• **9.4. Power to effectively gather digital evidence**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.5. Power for the officials of one NCA (NCA A), which request another NCA (NCA B) to carry out an inspection on their behalf or to assist in the inspection carried out by NCA B (e.g. to be present during the inspection, to have investigative powers)**

Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.6. Power to conduct interviews with persons who might have knowledge of the subject under investigation**

Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.7. Power to conduct sector inquiries**

Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.8. Power to adopt prohibition decisions**

Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

● **9.9. Power to adopt formal settlement decisions (formal decision and reduced fine)**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

● **9.10. Power to adopt commitment decisions**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

● **9.11. Power to issue interim orders**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

● **9.12. Power to impose dissuasive fines for non-compliance with investigative and decision-making powers**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.13. Power to compel compliance with investigative and decision-making powers, e.g., power to impose effective periodic penalty payments?**

Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.14. Power to fully set enforcement priorities, including the power to reject complaints on priority grounds?**

Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.15. Power for NCAs to act within a certain time period (prescription periods)**

Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.16. Power for one NCA (NCA A) to ask another NCA (NCA B) to notify acts (e.g. a Statements of Objection) on their behalf in the territory of NCA B (e.g. if NCA A cannot notify acts to a company in its own territory because it does not have a subsidiary or other legal representation there)**

Pas du tout d'accord
  Pas d'accord
  D'accord
  Strongly agree
  Avis neutre
  Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.17. Power for one NCA (NCA A) to ask another NCA (NCA B) to enforce fining decisions on their behalf in the territory of NCA B (e.g. if NCA A cannot fine a company in its own territory because it does not have a subsidiary or other legal representation there).**

Pas du tout d'accord
  Pas d'accord
  D'accord
  Strongly agree
  Avis neutre
  Sans avis

Which aspects of this tool do you consider to be of importance?

- **9.18. autre**

Pas du tout d'accord
  Pas d'accord
  D'accord
  Strongly agree
  Avis neutre
  Sans avis

Indicate what this "Other" power would be:

Which aspects of this tool do you consider to be of importance?

**10. Should ensuring that NCAs have an effective competition toolbox be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**10.1. If you consider that there is a case for a ction by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**10.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate**

:

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet



- Vous pouvez ajouter d'autres commentaires et/ou explications

**11. Please clarify why you consider your preferred type of EU action more appropriate than other types of action to ensure that NCAs have an effective enforcement toolbox**

**12. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
The effective enforcement of the EU competition rules?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal certainty for businesses?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses? (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*(\*) Effets négatifs sur les coûts: les coûts augmentent. Effets positifs sur les coûts: les coûts baissent.*

- You are welcome to add additional comments and/or explanations, in particular if you consider that your preferred option would have any other impact.

**13. Please indicate whether you have any other comment or suggestions, such as examples of good practice etc.**

You may also provide additional information which may be relevant for this section (copies of any documents, reports, studies etc.). Please do it by uploading the relevant information in documents with a maximum size of 1 MB each using the button below.

Should you prefer to provide documents of more than 1 MB, please send them to the functional mailbox [COMP-ECNPLUS@ec.europa.eu](mailto:COMP-ECNPLUS@ec.europa.eu) after having submitted your reply to the questionnaire indicating your Case-Id, email and contact details.

## C. DETAILED QUESTIONS FOR STAKEHOLDERS ACTIVE IN COMPETITION MATTERS

### C.3. POWER OF THE NCAS TO IMPOSE FINES ON UNDERTAKINGS

The [Communication on Ten Years of Regulation 1/2003 of 9 July 2014](#) provides: "... it is necessary to ensure that all NCAs have effective powers to impose deterrent fines on undertakings and on associations of undertakings"

**Fines imposed on undertakings and associations of undertakings** at national level for breaches of Articles 101 and 102 TFEU are **not regulated by EU law**, and each Member State has its own legal framework and methodology for imposing fines. **Members States must ensure that the fines applied are effective, proportionate and dissuasive.**

However, the fact-finding carried out by the Commission since the adoption of the Communication has **confirmed the existence of several issues which may lead to differences in the level of enforcement of Articles 101 and 102 TFEU**. These issues relate mainly to: (1) the nature of the fines imposed (administrative, civil or criminal), (2) who can be fined, and (3) certain aspects of the methodologies to determine the fines.

Regarding **the nature of the fines imposed on undertakings**, generally Member States enforce Articles 101 and 102 TFEU according to either: (i) administrative (non-criminal) systems, in which the findings of infringements and the fines imposed are decided by the NCA, (ii) civil systems, in which the finding of an infringement can be done either by the NCA or by a civil court, but the fines are imposed by civil courts only, or (iii) criminal systems, in which fines are imposed pursuant to criminal procedures, normally by criminal courts or in some cases by the NCA but according to quasi-criminal (misdemeanour) procedures.

Regarding **who can be fined**, **some competition authorities do not apply the concept of "undertaking" as established in EU law** and cannot hold the parent companies liable for infringements of their subsidiaries. Others **cannot hold liable the legal successor of an infringer** (for example after a merger into another company) or its **economic successor**. In other cases, the finding of the infringement is subject to finding liability of natural persons in the first place. In addition, **some competition authorities cannot fine associations of undertakings**, while others that can do it are prevented from imposing dissuasive fines when the infringement relates to the activities of its members because the fine cannot take account of the sales of such members.

Finally, with respect to **the methodologies to determine the fines** the differences relate mainly to the following aspects: (i) the **legal maximum** of the fines, (ii) the **type of methodology** used, which can be based on an "overall assessment", on a "basic amount", or set at a given level in a range between a minimum and a maximum amount, including aspects such as the gravity and duration of the infringement, and (iii) the **aggravating and mitigating circumstances** considered and other factors applied to achieve appropriate levels of deterrence.

For example, **the legal maximum of the fines is not consistent across the EU**. The **methodologies for the determination of the fines also differ** amongst Member States. Some are rather systematic and are explained in more or less detail in national guidelines, while others are based on a less systematic assessment of the facts of the case. Generally, fines are based on essential aspects such as the gravity of the infringement, its duration and some type of sales linked to the infringement or to the undertakings involved in it. These aspects are however not always applied or done in different ways. Also the **aggravating and mitigating circumstances and other factors are not always the same in all jurisdictions**.

The questions below **exclusively concern the imposition of fines on undertakings for breaches of the EU competition rules** and **do not relate** to the imposition of fines on **natural persons**.

### **C.3.1. NATURE OF FINES**

#### **C.3.1.(a) Your experience/knowledge**

**1. For each system of competition enforcement[4], indicate the advantages and disadvantages for the enforcement of fines imposed on companies for breach of Articles 101 and 102 TFEU, both in terms of their effectiveness and their efficiency (i.e. in terms of time, use of resources, administrative burden or any other aspect you consider as relevant).**

[4] *Generally Member States enforce Articles 101 and 102 TFEU according to either: (i) administrative (non-criminal) systems, in which the findings of infringements and the fines imposed are decided by the NCA, (ii) civil systems, in which the finding of an infringement can be done either by the NCA or by a civil court, but the fines are imposed by civil courts only, or (iii) criminal systems, in which fines are imposed pursuant to criminal procedures, normally by criminal courts or in some cases by the NCA but according to quasi-criminal (misdemeanour) procedures.*

- **Administrative (NCA): Advantages of the system**

- **Administrative (NCA): Disadvantages of the system**

- **Civil (Civil court): Advantages of the system**

- **Civil (Civil court): Disadvantages of the system**

- **Criminal/Misdemeanour (NCA): Advantages of the system**

- **Criminal/Misdemeanour (NCA): Disadvantages of the system**

- **Criminal (Criminal court): Advantages of the system**

- **Criminal (Criminal court): Disadvantages of the system**

**2. Do you have experience/knowledge of instances where Member States cannot impose administrative fines for infringements of Articles 101 and 102 TFEU?**

- Oui  Non  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and concrete examples of cases supporting your arguments.

**3. Do you consider it to be a problem that in some Member States only/primarily criminal fines can be imposed for infringements of Articles 101 and 102 TFEU (e.g. for the consistent and effective enforcement of these Articles)?**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and concrete examples of cases supporting your arguments.

**4. Do you consider it to be a problem that in some Member States only/primarily civil fines can be imposed for infringements of Articles 101 and 102 TFEU (e.g. for the consistent and effective enforcement of these Articles)?**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and concrete examples of cases supporting your arguments.

**C.3.1.(b) Your views on potential action**

**5. To the extent that you consider it to be a problem that in some Member States it is not possible to impose administrative fines on companies for infringements of Articles 101 and 102 TFEU, which measures do you think should be taken to address this issue?**

- Replacing civil/criminal fines by a system of administrative fines
- Introducing administrative fines for NCAs which do not have this possibility in addition to their already existing civil/criminal fines
  - Take measures to make civil/criminal enforcement/imposition of fines more effective, e.g. giving
- NCAs the power to initiate proceedings before civil/criminal courts instead of the public prosecutor having (sole) competence to initiate proceedings
- autre
- Sans avis/Sans objet

- Indicate what these "Other" measures would be:

- **Should your suggested measure cover:**

- All infringements of Articles 101 and 102 TFEU?
- Only some infringements of Articles 101 and 102 TFEU?
- All types of proceedings (such as normal proceedings, formal settlements, etc)
- Only some types of proceedings

- **If only some infringements, which ones?**

- **If only some types of proceedings, which ones?**

- You are welcome to add additional comments and/or explanations.

**6. Should your preferred measure be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations.

**6.1. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations.

**6.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate**

:

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**7. Please clarify why you consider your preferred type of EU action more appropriate than other types of action.**

**8. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The consistent enforcement of the EU competition rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Infringements being fined	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The level of such fines (**)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



(\*) *Effets négatifs sur les coûts: les coûts augmentent. Effets négatifs sur les coûts: les coûts baissent.*

(\*\*) *Negative impact on level of fines means that fines are less deterrent. Positive impact on level of fines means that fines are more deterrent.*

- You are welcome to add **additional comments and/or explanations, in particular if you consider that your preferred option would have any other impact.**

### **C.3.2. WHO IS FINED**

#### **C.3.2.1. Concept of undertaking and the application of parent liability and succession in line with EU law**

##### **C.3.2.1.(a) Your experience/knowledge**

**1. Do you have experience/knowledge of instances where the EU concept of undertaking, and in particular the application of parental liability and legal and economic succession, was not applied for establishing liability for infringements of Article 101 and 102 TFEU?[5]**

[5] *Some competition authorities do not apply the concept of "undertaking" as established in EU law and cannot hold the parents liable for infringements of their subsidiaries. Others cannot hold liable the legal successor of an infringer (for example after a merger into another company) or its economic successor. In other cases, the finding of the infringement is subject to finding liability of natural persons in the first place. In addition, some competition authorities cannot fine associations of undertakings, while others that can do it are prevented from imposing dissuasive fines when the infringement relates to the activities of its members because the fine cannot take account of the sales of such members.*

Oui  Non  Sans avis/Sans objet

- You are welcome to add **additional comments and/or explanations**, e.g. which **Member State(s)** you refer to and **concrete examples** where possible.

**2. Do you consider that the non-application of the concept of undertaking, parental liability and succession in line with EU law has had concrete negative effects on the consistent and effective enforcement of Articles 101 and 102 TFEU in your Member State/Member States with which you have contact?**

- Pas du tout d'accord     Pas d'accord     D'accord     Strongly agree     Avis neutre     Sans avis

- You are welcome to add **additional comments and/or explanations**, in particular if you consider that this can give rise to other problems, and indicating which Member State(s) you refer to.

#### **C.3.2.1.(b) Your views on potential action**

**3. To the extent that you consider this to be a problem for the consistent and effective enforcement of Articles 101 and 102 TFEU, which measures do you think should be taken to address this issue?**

- Ensure the EU-wide application of the concept of undertaking as established in EU law  
 autre  
 Sans avis/Sans objet

- Indicate what these "Other" measures would be:

- If you have chosen the option of "*Ensure the EU-wide application of the concept of undertaking as established in EU law*", do you think that this should include:

- the ability of NCAs to apply the EU law notion of parental liability (ability to fine entities directly involved in the infringement as well as parent companies that exercised a decisive influence over them)?
- the ability of NCAs to hold legal and economic successors of the infringing company liable in line with the case law of the European Court of Justice?

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**4. Should your preferred measure be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**4.1. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Non-legislative action (e.g. best practices, advocacy)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**4.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate**

:

- Non-legislative action (e.g. best practices, advocacy)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**5. Please clarify why you consider your preferred type of EU action more appropriate than other types of action.**

**6. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The consistent enforcement of the EU competition rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of Infringements being fined	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The level of such fines (**)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(\*) *Effets négatifs sur les coûts: les coûts augmentent. Effets négatifs sur les coûts: les coûts baissent.*

(\*\*) *Negative impact on level of fines means that fines are less deterrent. Positive impact on level of fines means that fines are more deterrent.*

- You are welcome to add **additional comments and/or explanations**, in particular if you consider that your preferred option would have **any other impact**.

### **C.3.2.2. Power to impose effective fines on association of undertakings**

#### **C.3.2.2.(a) Your experience/knowledge**

**7. Do you have experience/knowledge of instances where N CAs cannot impose fines on associations of undertakings f or infringements of the EU competition rules?**

- Oui  Non  Sans avis/Sans objet

- Do you **consider this to be a problem?**

- Pas du tout d'accord  Pas d'accord  D'accord  Strongly agree  Avis neutre  Sans avis

- You are welcome to add **additional comments and/or explanations**, e.g. which **Member State(s)** you refer to and concrete examples where possible.

**8. Do you have experience/knowledge of instances where the sales of the members of the associations of undertakings cannot be taken into account for imposing a fine on the association?**

- Oui  Non  Sans avis/Sans objet

- Do you consider this to be a problem?

- Pas du tout d'accord
  Pas d'accord
  D'accord
  Strongly agree
  Avis neutre
  Sans avis

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and concrete examples where possible.

### C.3.2.2.(b) Your views on potential action

#### **9. To the extent that you consider it to be a problem that NCAs cannot effectively fine associations of undertakings which measures should be taken to address this issue?**

- All NCAs should have the power to find infringements committed by associations of undertakings and impose fines.
- autre
- Sans avis/Sans objet

- Indicate what these "Other" measures would be:

- If you have chosen the option of "*All NCAs should have the power to find infringements committed by associations of undertakings and impose fines*", do you think that this should also include:

- the power to take into account the turnover of the members in order to calculate the fine and
- determine the legal maximum, when the infringement of the association relates to the activities of its members?
- the means to require the payment of part of the fine from the members of the association if this is necessary to ensure the full payment of the fine?

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**10. Should your preferred measure be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**10.1. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**10.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate**

:

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**11. Please clarify why you consider your preferred type of EU action more appropriate than other types of action.**

**12. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The consistent enforcement of the EU competition rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Infringements being fined	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The level of such fines (**)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN (e.g. infringements in several Member States treating associations of undertakings differently)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



(\*) *Effets négatifs sur les coûts: les coûts augmentent. Effets négatifs sur les coûts: les coûts baissent.*

(\*\*) *Negative impact on level of fines means that fines are less deterrent. Positive impact on level of fines means that fines are more deterrent.*

- You are welcome to add **additional comments and/or explanations**, in particular if you consider that your preferred option would have **any other impact**.

### **C.3.3. AMOUNT OF FINES: LEGAL MAXIMUM, FINES METHODOLOGIES AND OTHER FACTORS**

#### **C.3.3.1. Legal maximum of fines**

##### **C.3.3.1.(a) Your experience/knowledge**

1. Do you have **experience/knowledge** of the existence of **divergences in the legal maximum** of the level of fines imposed by NCAs for infringements of Articles 101 and 102 TFEU?

- Oui  Non  Sans avis/Sans objet

- Do you **consider this to be a problem**?

- Pas du tout d'accord  Pas d'accord  D'accord  Strongly agree  Avis neutre  Sans avis

- You are welcome to add **additional comments and/or explanations**, e.g. which Member State(s) you refer to and concrete examples where possible.

##### **C.3.3.1.(b) Your views on potential action**

**2. To the extent that you consider this to be a problem, which measures do you think should be taken to address this issue?**

- Establishing a common legal maximum for the level of fines imposed by NCAs across the EU
- Establishing a minimum legal maximum for the level of fines imposed by NCAs across the EU
- autre
- Sans avis/Sans objet

- Indicate what this "Other" measure would be:

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**C.3.3.2. Fines methodologies**

In the questions below "methodologies" are understood as the methods by which NCAs or national courts determine the initial value of the fine prior to considering other factors that can aggravate or mitigate the fines or increase it to achieve an appropriate level of deterrence (these factors are dealt with in the next section). It does not take into account either the way in which the legal maximum of the fine is set (already assessed in the previous section) or reductions in the fines as a result of leniency programmes.

**C.3.3.2.(a) Your experience/knowledge**

**3. Do you have experience/knowledge of the existence of divergences in the fines methodologies applied by NCAs?**

- Oui
- Non
- Sans avis/Sans objet

- **Do you consider this to be a problem?**

- Pas du tout d'accord
- Pas d'accord
- D'accord
- Strongly agree
- Avis neutre
- Sans avis

- Please explain in more detail your reply, adding additional comments and/or explanations, e.g. which Member State(s) you refer to and concrete examples where possible.

**C.3.3.2.(b) Your views on potential action**

**4. To the extent that you consider this situation to be a problem, which measures do you think should be taken to address this issue?**

- Establish a set of minimum core elements to be taken into account in fining methodologies of all NCAs
- Establish a more detailed common methodology to be taken into account in fining methodologies of all NCAs
- autre
- Sans avis/Sans objet

- Indicate what this "Other" measure would be:

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

5. If you were to consider that there should be a set of minimum core elements to be taken into account by all methodologies, what these elements should be?

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
Gravity of the infringement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Duration of the infringement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Value of sales linked to the infringement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Any other(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- Indicate what these "other" minimum core elements would be:

- You are welcome to add additional comments and/or explanations, in particular if you consider that there are other elements that can be included in the set of minimum core elements.

### C.3.3.3. Aggravating and mitigating circumstances and other factors

#### C.3.3.3.(a) Your experience/knowledge

6. Do you have experience/knowledge of the existence of divergences in the sets of aggravating and mitigating circumstances and other factors applied by NCAs to calculate fines?

- Oui    Non    Sans avis/Sans objet

- Do you consider this to be a problem?

Pas du tout d'accord       Pas d'accord       D'accord       Strongly agree       Avis neutre       Sans avis

- You are welcome to add additional comments and/or explanations, e.g. which Member State(s) you refer to and concrete examples where possible.

#### C.3.3.3.(b) Your views on potential action

#### **7. To the extent that you consider this to be a problem, which measures do you think should be taken to address this issue?**

- Establish a common set of minimum aggravating and mitigating elements to be taken into account in fining methodologies of all NCAs
- Establish a more detailed common set of aggravating and mitigating elements to be taken into account by in fining methodologies of all NCAs
- autre
- Sans avis/Sans objet

- Indicate what this "Other" measure would be:

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

*Please reply to the questions below with respect to each of the three issues addressed above.*

#### **8. Should your preferred measures be addressed by the Member States and/or by EU action?**

- **8.1. Measure on legal maximum of fines**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

- **8.2. Measure on fines methodologies**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

- **8.3. Measure on aggravating and mitigating circumstances and other factors**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**9. If you consider that there is a case for acti on by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Action à la fois législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations. If your reply is different for the measures on legal maximum, fines methodologies and aggravating/mitigating circumstances, please clarify it here.**

**10. If you consider that there is a case for EU action, what type of EU action you consider most appropriate:**

- **10.1. For the measure on legal maximum of fines:**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

- **10.2. For the measure on fines methodologies:**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

- **10.3. For the measure on aggravating and mitigating circumstances and other factors:**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**11. Please clarify why you consider your preferred type of EU action more appropriate than other types of action:**

- **11.1. For legal maximum of fines:**



- 11.2. For fines methodologies:

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- 11.3. For aggravating and mitigating circumstances and other factors:

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**12. What would be the impact of your preferred option for EU action on the following aspects?**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The consistent enforcement of the EU competition rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The effectiveness of fines (**)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN (e.g. treatment of an infringement in several Member States in a coherent manner as regards these factors)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
NCA's flexibility to adapt to the specific circumstances of each case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(\*) *Effets négatifs sur les coûts: les coûts augmentent. Effets positifs sur les coûts: les coûts baissent.*

(\*\*) *Negative impact on effectiveness of fines means that fines are less deterrent. Positive impact on effectiveness of fines means that fines are more deterrent.*

- You are welcome to add additional comments and/or explanations, in particular if you consider that your preferred option would have any other impact.

13. Please indicate whether you have any other comment or suggestions, such as examples of good practice etc.

You may also provide additional information which may be relevant for this section (copies of any documents, reports, studies etc.). Please do it by uploading the relevant information in documents with a maximum size of 1 MB each using the button below.

Should you prefer to provide documents of more than 1 MB, please send them to the functional mailbox [COMP-ECNPLUS@ec.europa.eu](mailto:COMP-ECNPLUS@ec.europa.eu) after having submitted your reply to the questionnaire indicating your Case-Id, email and contact details.

## C. DETAILED QUESTIONS FOR STAKEHOLDERS ACTIVE IN COMPETITION MATTERS

### C.4. LENIENCY PROGRAMMES

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The [Communication on Ten Years of Regulation 1/2003 of July 2014](#) identifies the following **areas for action** "*[to] ensure that [...] well designed leniency programmes are in place in all Member States and consider measures to avoid disincentives for corporate leniency applicants.*" To this end, the Communication provides: "*It is necessary to ensure that the achievements made in leniency programmes are secured.*" [...] "*It is appropriate to consider possibilities to address the issue of interplay between corporate leniency programmes and sanctions on individuals that exist at Member State level.*"

Secret cartels are difficult to detect and investigate. Cooperation by parties is often crucial to uncover and punish these highly detrimental illegal practices. Therefore, **leniency programmes are among the most effective tools for the detection, investigation and punishment of secret cartels** as well as for providing effective deterrence against cartelisation.

**Leniency programmes operate in all Member States except Malta.** A common denominator in the European Union is that all leniency programmes cover secret cartels. This questionnaire thus addresses leniency programmes insofar as secret cartels are concerned.

As the **Commission and the NCAs have parallel competences to apply the EU competition rules**, their **leniency programmes are interlinked**. Therefore, **limitations in one jurisdiction** (such as who can benefit from the leniency programme and under which conditions) may have a **spill-over effect for other EU jurisdictions**.

The ECN Model Leniency Programme (MLP) was endorsed by the ECN in 2006, and sets out the principal elements which the ECN members believe should be common in all programmes.[6] In addition to the introduction of a uniform summary application system (see below), its aim is to provide a greater degree of predictability for potential leniency applicants and to avoid applicants being faced with uncertainty and contradictory demands when more than one leniency programme is applicable.

In the questions below, and unless otherwise specified, leniency includes both immunity from fines and reduction of fines.

[6] See further <http://ec.europa.eu/competition/ecn/documents.html>

#### **C.4.1. LEGAL BASIS FOR LENIENCY AND DIVERGENCES IN LENIENCY PROGRAMMES**

The ECN **Model Leniency Programme (MLP)**[7] **does not bind national courts**[8]. While the MLP stimulated voluntary convergence among leniency programmes of Member States, the initial fact finding shows that a **number of divergences remain**, including for features which impact on **who can benefit from leniency and under which conditions**. Divergence in such leniency features **may lead to different outcomes** such as when it comes to deciding **which applicants benefit from leniency**.

[7] See further the introduction to section C.4 above

[8] See the judgments in Case C-360/09, *Pfleiderer AG v Bundeskartellamt* and Case C-536/11, *Bundeswettbewerbsbehörde v Donau Chemie*.

##### **C.4.1.(a) Your experience/knowledge**

**1. Do you have experience/knowledge about the functioning of Member States' leniency programmes covering secret cartels?**

Oui  Non

- **1.1. In which countries?**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Islande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

- **1.6. In which capacity?**

- Leniency applicant
- Representative of a leniency applicant
- autre

- Please specify in which "Other" capacity:

**2. Do you consider it to be a problem that there is no legal basis in EU law[9] for Member States' leniency programmes covering secret cartels which infringe EU competition law?**

[9] *The European Court of Justice has held that the ECN Model Leniency Programme is not legally binding: Case C-360/09, Pfeleiderer AG v Bundeskartellamt and Case C-536/11, Bundeswettbewerbsbehörde v Donau Chemie.*

- Pas du tout d'accord     Pas d'accord     D'accord     Tout à fait d'accord     Avis neutre     Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

**3. In your view, are there divergences in the features of Member States' leniency programmes which could have an impact on who can benefit from leniency and under which conditions?**

- Oui     Non     Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

- Do you consider this to be a problem in terms of:

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of the EU competition rules by NCAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The consistent enforcement of the EU competition rules by NCAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal certainty for business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
autre	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- Please specify what the "Other" problem would be:

- You are welcome to add additional comments and/or explanations, indicating which **Member States** you refer to.

**4. Does the ECN Model Leniency Programme[10] ensure a sufficient degree of alignment of the leniency programmes of Member States?**

[10] See further <http://ec.europa.eu/competition/ecn/documents.html>

- Oui  Non  Sans avis/Sans objet

- **4.1. If "No", please indicate why:**

- The current rules of the ECN Model Leniency Programme are not clear/adequate
- Additional rules are needed in the ECN Model Leniency Programme
- There is a lack of implementation of the ECN Model Leniency Programme by the Member States/NCAs
- autre

- **Please specify what the "Other" reasons would be:**

- **You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.**

**C.4.1.(b) Your views on potential action**

**5. To the extent that you consider the lack of an EU legal basis for leniency programmes and/or divergences between national leniency programmes to be a problem, which measures do you think should be taken to address this issue?**

- Introduction of an EU legal basis for leniency programmes for secret cartels in all Member States
- Introduction of core principles for leniency programmes in all Member States
- autre
- Sans avis/Sans objet

- Indicate what this "Other" measure would be:

- **5.1. If you have chosen the option of "*Introduction of core principles for leniency programmes in all Member States*", which core principles should be covered?**

- Establishing uniform leniency thresholds
- Ensuring that a leniency applicant has a duty to cooperate with the competition authorities to which it has applied for leniency
- Ensuring the availability of oral leniency statements in all EU Member States
- autre

- Indicate what these "Other" core principles would be:

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**6. Should the lack of an EU legal basis for national leniency programmes and divergences between such programmes be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**



**6.1. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**6.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate**

:

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **Vous pouvez ajouter d'autres commentaires et/ou explications**

**7. Please clarify why you consider your preferred type of EU action more appropriate than other types of action.**

**8. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*(\*) Effets négatifs sur les coûts: les coûts augmentent. Effets positifs sur les coûts: les coûts baissent.*

- **You are welcome to add additional comments and/or explanations, in particular, if you consider that your preferred option would have any other impact.**

**C.4.2. DEALING WITH MULTIPLE LENIENCY APPLICATIONS**

The ECN Model Leniency Programme (MLP) created a **system of summary applications**, which is aimed **at facilitating multiple leniency filings** in cases where a secret cartel has effects on competition in more than three Member States.[11]

However, according to the initial fact finding **summary applications are not available in all Member States. A few Member States**, which accept summary applications in practice, **do not have rules on this in their leniency programmes**. Also, in certain jurisdictions summary applications are available for immunity applicants **but not for subsequent leniency applicants**. The initial fact finding shows that the **criteria for the assessment of summary applications are not aligned across the EU**, which may **impact on the availability of leniency and lead to divergent assessments** in cases covering a number of jurisdictions.

[11] *The system is intended to work as follows: if a full application for leniency has been made to the Commission concerning a case for which the Commission is particularly well placed to act, NCAs can accept temporarily to protect the applicant's position in the leniency queue on the basis of very limited information (the so-called summary application) that they can give orally. This protects leniency applicants from losing their leniency protection because of re-allocation of cases from the Commission to NCAs, because, for example, the Commission does not take up a part or the entire case. It also allows leniency applicants to focus their cooperation efforts on the Commission without having to provide detailed information to several NCAs. Should any of the NCAs become active, it will grant the leniency applicant additional time to complete its application.*

#### **C.4.2.(a) Your experience/knowledge**

**1. Do you have experience/knowledge about multiple leniency filings in the EU concerning secret cartels?**

Oui  Non

- **1.1. In which countries?**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Islande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

- **1.6. In which capacity?**

- Leniency applicant
- Representative of a leniency applicant
- autre

- Please specify in which "Other" capacity:

**2. Do you have experience/knowledge of summary applications?**

- Oui  Non  Sans avis/Sans objet

- Please describe your experience and the reasons for your choice whether to use (or not) summary applications, indicating which Member State(s) you refer to.

**3. Have you experienced any problems with summary applications?**

- Pas du tout d'accord  Pas d'accord  D'accord  Tout à fait d'accord  Avis neutre  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

**4. Does the ECN Model Leniency Programme ensure a sufficient degree of alignment of summary applications in the Member States?**

- Oui  Non  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

- **4.1. If not, do you consider this to be a problem?**

- Pas du tout d'accord     Pas d'accord     D'accord     Tout à fait d'accord     Avis neutre     Sans avis/Sans objet

**5. Are you aware of any divergences in Member States:**

- **5.1. In national rules on summary applications?**

- Oui     Non     Sans avis/Sans objet

- **5.2. In their application in practice?**

- Oui     Non     Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.**

- **5.3. Do you consider this to be a problem in terms of:**

	Pas du tout d'accord	Pas d'accord	D'accord	Tout à fait d'accord	Avis neutre	Sans avis
The effective enforcement of the EU competition rules by NCAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The consistent enforcement of the EU competition rules by NCAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal certainty for business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Incentives to apply for leniency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
autre	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- **Please specify what the "Other" problem would be:**

- **You are welcome to add additional comments and/or explanations, in particular, if you consider it could give rise to other problems.**

**C.4.2.(b) Your views on potential action**

**6. To the extent that you consider any divergences in national rules on summary applications or their application in practice in Member States to be a problem, which measures do you think should be taken to address this issue?**

- Ensuring the availability of summary applications in all Member States
- Aligning the features of summary applications in all Member States on the basis of the ECN Model Leniency Programme
- autre
- Do not know/not applicable

- Indicate what these "Other" measures would be:

- **You are welcome to add additional comments and/or explanations.**

**7. Should this problem be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**



**7.1. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**7.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate?**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**8. Please clarify why you consider your preferred type of EU action for an effective and coherent leniency system in the EU more appropriate than other types of action.**

**9. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*(\*) Effets négatifs sur les coûts: les coûts augmentent. Effets positifs sur les coûts: les coûts baissent.*

- You are welcome to add **additional comments and/or explanations**, in particular, if you think that your preferred option would have any other impact.

**C.4.3. PROTECTION OF LENIENCY, SETTLEMENT AND OTHER MATERIAL IN THE FILE OF THE COMPETITION AUTHORITY**

Parties that choose to cooperate **under leniency programmes** are required to **disclose their participation in a secret cartel** and **provide self-incriminating** leniency material. In case of formal **settlement procedures**, the parties are required to **acknowledge their participation in and liability for the infringement**. In this framework, **the parties provide the NCAs with material which, if disclosed** and used outside the context of the investigation in which it has been provided, could seriously **harm their commercial interests**. Furthermore, ongoing investigations of competition authorities could be seriously harmed if **materials specifically prepared** for the purpose of such investigations, either by the parties or by the competition authority, **are disclosed when the competition authority has not yet closed its investigation**.

The initial fact finding shows that the level of protection granted for such material varies between Member States. The **Damages Directive[12] harmonises protection of leniency and settlement material**, as well as of **disclosure** of documents during ongoing investigations, in the context of civil damages actions before EU national courts. However, this **Directive does not explicitly address other scenarios**, such as the **use of material in other civil matters** or in **third jurisdictions** or **access by the public at large** through "transparency" rules/public access to documents.

Under the **Directive, national courts are not allowed to order the disclosure of leniency statements and settlement submissions**. Furthermore, national courts cannot order the disclosure of documents that are **specifically prepared for the proceedings of a competition authority as long as those proceedings are ongoing**. If someone obtains any of these documents through access to the file, (s)he can (temporarily) not use them before a national court.

[12] *Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L349/1 of 5.12.2014.*

#### **C.4.3.(a) Your experience/knowledge**

**1. Do you have experience/knowledge about the protection of leniency and settlement material and about the protection of documents from disclosure during ongoing investigations?**

Oui  Non  Sans avis/Sans objet

- **1.1. In which countries?**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Islande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

- **You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.**

**2. In your view, is there a sufficient level of protection of leniency and settlement material in the Member States for which you have experience/knowledge?**

Oui  Non  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

**3. In your view, is there a sufficient level of protection of materials specifically prepared for the purpose of the investigation of a competition authority (either by the parties or by the competition authority) whilst that investigation is still ongoing in the Member States for which you have experience/knowledge?**

Oui  Non  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

#### **C.4.3.(b) Your views on potential action**

**4. To the extent that you consider that in the Member States for which you have experience/knowledge the level of protection of leniency and settlement material is insufficient, which measures do you think should be taken to address this issue?**

- Extend the same protection put in place for leniency statements and settlement submissions by the Damages Directive to other situations
- autre
- Do not know/not applicable

- Indicate what these "Other" measures would be:

- **4.1. If you have chosen the option extending the protection put in place for leniency statements and settlement submissions to other situations, what these situations would be ?**

- Civil proceedings other than damages actions covered by the Damages Directive (for example injunctive relief)
- Administrative proceedings (such as proceedings before tax authorities or regulators)
- Criminal proceedings
- Proceedings under the "transparency" rules/public access to documents
- Other (clarify in new box below)

- Indicate what this "other" would be:

- **You are welcome to add additional comments and/or explanations.**

**5. To the extent that you consider that in the Member States for which you have experience/knowledge the level of protection for documents prepared for the investigation of a competition authority whilst that investigation is still ongoing is insufficient, which measures do you think should be taken to address this issue?**

- Extend the same protection put in place for documents specifically prepared for the purpose of an investigation of a competition authority whilst that investigation is still ongoing by the Damages Directive to other situations
- autre
- Do not know/not applicable

- Indicate what these "Other" measures would be:

- **5.1. If you have chosen the option extending the protection of documents to other situations, what these situations would be?**

- Civil proceedings other than damages actions covered by the Damages Directive (for example injunctive relief)
- Administrative proceedings (such as proceedings before tax authorities or regulators)
- Criminal proceedings
- Proceedings under the "transparency" rules/public access to documents
- autre

- Indicate what this "other" situation would be:

- **You are welcome to add additional comments and/or explanations.**

**6. Should the protection of leniency and settlements material, as well as of material specifically prepared for the purpose of the investigation of a competition authority whilst that investigation is still ongoing, be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**6.1. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**6.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate?**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**7. Please clarify why you consider your preferred type of EU action for an effective and coherent leniency system in the EU more appropriate than other types of action.**



**8. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*(\*) Effets négatifs sur les coûts: les coûts augmentent. Effets positifs sur les coûts: les coûts baissent.*

- You are welcome to add **additional comments and/or explanations**, in particular, if you think that your preferred option would have any other impact.

**C.4.4. INTERPLAY BETWEEN LENIENCY PROGRAMMES AND SANCTIONS ON INDIVIDUALS**

**Most Member States provide for various sanctions on individuals for competition law infringements**, in addition to fines on undertakings. However, the initial fact finding shows that **arrangements to protect employees of undertakings from such sanctions**, if the **companies cooperate under the corporate leniency programme of a NCA or the Commission, exist only in a few Member States** (referred to as “interplay”).

**C.4.4.(a) Your experience/knowledge**

**1. Do you have experience with or knowledge of sanctions that can be imposed on individuals for their participation in secret cartels?**

- Oui    Non    Sans avis/Sans objet

- **1.1. In which countries?**

Autriche  
Belgique  
Bulgarie  
Croatie  
Chypre  
République tchèque  
Danemark  
Estonie  
Finlande  
France  
Allemagne  
Grèce  
Hongrie  
Islande  
Irlande  
Italie  
Lettonie  
Lituanie  
Luxembourg  
Malte  
Pays-Bas  
Norvège  
Pologne  
Portugal  
Roumanie  
Slovaquie  
Slovénie  
Espagne  
Suède  
Royaume-Uni  
Liechtenstein

- **1.6. In which capacity?**

- Corporate leniency applicant
- Representative of a corporate leniency applicant
- Individual subject to investigation
- Representative of an individual subject to investigation
- autre

- If "Other", please specify:

**2. Do you have experience with or knowledge of arrangements in Member States to protect employees of undertakings, which cooperate under the corporate leniency programmes of NCAs or the Commission, from individual sanctions?**

- Oui  Non  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

- **2.1. Do you consider it to be a problem that such arrangements only exist in a few Member States**

- Pas du tout d'accord  Pas d'accord  D'accord  Tout à fait d'accord  Avis neutre  Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations, indicating which Member State(s) you refer to.

**C.4.4.(b) Your views on potential action**

**3. To the extent that you consider the lack of national arrangements to protect employees of undertakings, which cooperate under the corporate leniency programmes of NCAs or the Commission, to be a problem, which measures do you think should be taken to address this issue?**

- Establish safeguards to protect employees of companies which cooperate under corporate leniency programmes from the imposition of individual sanctions for the same cartel conduct
- autre
- Sans avis/Sans objet

- Indicate what this "other" measure would be:

- **3.1. If you have chosen the option establishing safeguards to protect employees of companies which cooperate under corporate leniency programmes, what should this cover?**

- current employees
- former employees
- protection from administrative sanctions in all Member States, e.g. director disqualification orders
- protection from criminal sanctions in all Member States, e.g. imprisonment
- employees of companies which obtain **immunity** under corporate leniency programmes
- employees of companies which benefit from a **reduction in fines** under corporate leniency programmes
- employees of companies which cooperate under the corporate leniency programmes of **any** NCA
- employees of companies which cooperate under the **European Commission's leniency programme**

- **You are welcome to add additional comments and/or explanations.**

**4. Should the interplay between corporate leniency programmes and sanctions on individuals be addressed by the Member States and/or by EU action?**

- Action des États membres
- EU action
- Action combinée UE/États membres
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**4.1. If you consider that there is a case for action by the Member States, please specify what type of action you consider most appropriate:**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- **You are welcome to add additional comments and/or explanations.**

**4.2. If you consider that there is a case for EU action, what type of EU action you consider most appropriate?**

- Action non législative (meilleures pratiques, p. ex.)
- Mélange d'action législative et non législative
- Action législative
- Sans avis/Sans objet

- You are welcome to add additional comments and/or explanations.

**5. Please clarify why you consider your preferred type of EU action for an effective and coherent leniency system for the enforcement of the EU competition rules across the EU more appropriate than other types of action.**

**6. What would be the impact of your preferred option for EU action on the following aspects:**

	Très négatif	Négatif	Positif	Très positif	Avis neutre	Sans avis
L'application efficace des règles de concurrence de l'UE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La certitude juridique pour les entreprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Les coûts supportés par les entreprises (*)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation within the ECN	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*(\*) Effets négatifs sur les coûts: les coûts augmentent. Effets positifs sur les coûts: les coûts baissent.*

- You are welcome to add additional comments and/or explanations, in particular, if you think that your preferred option would have any other impact.

**7. Please indicate whether you have any other comment or suggestions, such as examples of good practice etc.**

You may also provide additional information which may be relevant for this section (copies of any documents, reports, studies etc.). Please do it by uploading the relevant information in documents with a maximum size of 1 MB each using the button below.

Should you prefer to provide documents of more than 1 MB, please send them to the functional mailbox [COMP-ECNPLUS@ec.europa.eu](mailto:COMP-ECNPLUS@ec.europa.eu) after having submitted your reply to the questionnaire indicating your Case-Id, email and contact details.

## CONCLUSION ET ENVOI

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1. Que pensez-vous du questionnaire?

2. Y a-t-il des questions importantes qui auraient dû être posées?

3. Seriez-vous d'accord pour participer à un court entretien téléphonique pour que nous puissions mieux comprendre vos réponses?