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REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market

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1. THE ECN+ DIRECTIVE: ITS ORIGINS AND GOALS

EU antitrust rules seek to ensure effective competition on the internal market. Article 101 of the Treaty on the Functioning of the European Union ('TFEU') prohibits agreements between two or more companies that restrict competition, such as cartels between competitors to fix prices. Article 102 TFEU prohibits firms with a dominant market position from abusing that position, for example by providing illegal rebates or applying predatory pricing.

Since 2004, competition authorities in EU Member States ('national competition authorities') have had the power under Council Regulation (EC) No 1/2003 ([1]) to apply the EU antitrust rules alongside the European Commission.

The Commission and national competition authorities enforce EU antitrust rules in close cooperation within the European Competition Network ('the ECN'). The Commission typically investigates anticompetitive practices or agreements that have effects on competition in three or more Member States or where it is useful to set an EU-wide precedent. The national competition authorities are usually well placed to act where competition is substantially affected in their territory ([2]).

In empowering national competition authorities, Council Regulation (EC) No 1/2003 created a decentralised system for enforcing EU antitrust rules, but without laying down detailed means and instruments for applying these rules at national level. This meant that, although national competition authorities applied the same substantive rules, their investigative and decision-making powers were subject to national law.

The Commission, having gathered a decade of experience with the decentralised enforcement system, identified some areas where further action was needed ([3]). On 22 March 2017, the Commission proposed a directive to empower the competition authorities

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, ELI: http://data.europa.eu/eli/reg/2003/1/oj ('Regulation (EC) No 1/2003').

([2]) See Section 2.1 'Principles of allocation' of Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43.

([3]) Commission Communication *Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives*, COM(2014) 453 final, 9 July 2014.

of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market ([4]).

On 11 December 2018, the European Parliament and the Council duly adopted Directive (EU) 2019/1 ([5]) ('the ECN+ Directive'). It aimed to ensure that national competition authorities have: (i) basic guarantees of independence and resources; (ii) core investigative, decision-making and fining powers; (iii) leniency programmes; and (iv) mechanisms for mutual assistance.

The ECN+ Directive entered into force on 3 February 2019. Member States had to transpose the ECN+ Directive into national law by 4 February 2021.

2. SCOPE OF THIS REPORT

Under Article 35 of the ECN+ Directive, the Commission must report to the European Parliament and the Council by 12 December 2024 on the transposition and implementation of the Directive. If appropriate, the Commission may review the ECN+ Directive and, if necessary, present a legislative proposal.

This report focuses on how the main provisions of the ECN+ Directive have been transposed in those Member States that have completed the transposition process. It highlights the main improvements brought about by the ECN+ Directive in these Member States and the main issues identified regarding the transposition of the Directive. It also details expected developments in the case law of the Court of Justice of the European Union ('the CJEU') that may further shape certain aspects of the ECN+ Directive.

As many Member States did not meet the two-year deadline for transposition, it is still too early to report on how the ECN+ Directive has been implemented or carry out a meaningful review of it.

3. THE COMMISSION'S ROLE DURING AND AFTER THE TRANSPOSITION PROCESS

3.1. The Commission's technical assistance to Member States

Shortly after the ECN+ Directive was adopted, the Commission held a meeting with all Member States to discuss the provisions. As a follow-up and throughout the national legislative processes, the Commission answered queries from Member States on how to interpret the ECN+ Directive's provisions, discussed possible options for transposing it and provided informal comments on draft national transposition measures ([6]).

([4]) COM(2017)142 final of 22 March 2017.

([5]) Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, ELI: http://data.europa.eu/eli/dir/2019/1/oj ('ECN+ Directive').

([6]) For example, the Commission has been consulted on the conformity of a financing system of a national competition authority in light of the independence requirements of the ECN+ Directive (see, Article 4 and Recital 17).

3.2. Infringements for non-communication of transposition measures

Twenty-two Member States failed to meet the two-year deadline for transposition ([7]). In March 2021, the Commission opened infringement proceedings against these Member States for non-communication of transposition measures. In 2022 and 2023, the Commission took the next steps in the infringement proceedings against Member States that had still not notified it of any transposition measures: in September 2022, it addressed reasoned opinions to Estonia, Luxembourg, Poland and Slovenia for non-transposition; in July 2023, it issued a reasoned opinion against Romania and referred Estonia to the CJEU.

By December 2023, all Member States, except Estonia, had transposed the ECN+ Directive. The infringement proceedings against Estonia for non-transposition are pending before the CJEU ([8]).

3.3. The Commission's compliance assessments of transposition measures

In accordance with its Better Regulation Guidelines ([9]), the Commission has monitored the transposition of the ECN+ Directive in the Member States by conducting compliance assessments on both completeness and conformity of the national transposition measures.

4. MAIN PROVISIONS OF THE ECN+ DIRECTIVE AND TRANSPOSITION

4.1. Independence and resources

Chapter III of the ECN+ Directive ensures that national competition authorities enjoy the necessary guarantees of independence when enforcing the EU antitrust rules and have the resources they need to carry out their work, which are pre-requisites for effective enforcement of EU antitrust rules.

Article 4 introduces a minimum set of independence guarantees for national competition authorities. Member States are free to lay down additional independence guarantees. The Directive envisages operational independence, which means independence in the exercise of their duties and powers (see, recitals 17, 18 and 22). Member States should ensure that the staff of national competition authorities do not seek or take instructions from government or any other public or private entity, and refrain from actions incompatible with their duties and powers; decision makers cannot be dismissed for reasons relating to the proper performance of their duties and powers, and must be selected, recruited or appointed according to clear and transparent procedures. Finally, national competition authorities should have the power to set their priorities in full and be able to reject formal complaints on priority grounds.

Article 5 introduces a requirement for Member States (i) to ensure that national competition authorities have the human, financial, technical and technological resources needed to perform their core tasks under EU antitrust rules; and (ii) to grant these authorities independence in spending the allocated budget for these tasks. Recital 17 states

([7]) Only Denmark, Germany, Hungary, Lithuania and the Netherlands notified their national transposition measures to the Commission by (or shortly after) 4 February 2021, as required by Article 34 of the ECN+ Directive.

([8]) See Case C-577/23 Commission v Estonia (Directive ECN +).

([9]) SWD(2021) 305 final, available at https://commission.europa.eu/document/download/d0bbd77f-bee5-4ee5-b5c4-6110c7605476_en?filename=swd2021_305_en.pdf, pages 39 and 40.

that the fines imposed by national competition authorities for infringements of EU antitrust rules should not be used to finance these authorities directly. This is to ensure their impartiality.

Almost all Member States currently have the minimum set of independence guarantees required by the ECN+ Directive in their national laws, including an explicit provision that guarantees the operational independence of the national competition authorities. The vast majority of Member States also guarantee that national competition authorities should have sufficient resources to carry out their tasks. There is either an explicit guarantee in the national laws, or an implicit guarantee because national competition authorities can exert an influence on the resources available to them in the budget allocation process. Other national competition authorities are mainly self-funded via mandatory contributions from undertakings.

The transposition of this Chapter of the ECN+ Directive has strengthened the independence of national competition authorities in a majority of Member States. This has been done by adopting explicit provisions guaranteeing their operational and budgetary independence, removing previous ministerial controls, introducing new rules to prevent conflicts of interest, increasing protection for their decision makers against unjustified dismissal, and introducing clear selection criteria for these decision makers. A significant improvement in some Member States is also the power to set enforcement priorities and reject formal complaints on priority grounds.

Some Member States have adopted explicit provisions establishing that the national competition authority should have sufficient resources to carry out its tasks. In a few Member States, the national competition authority has received additional resources in terms of its budget or staffing following transposition of the Directive.

The compliance assessments nevertheless show that in a few Member States, national law allows government officials to take part in national competition authorities' proceedings.

In one Member State, the protection required by Article 4(3) of the Directive against unjustified dismissals of decision makers does not cover all decision makers at the national competition authority. Moreover, in several Member States, national law does not clearly define what are the permissible grounds for dismissal, and in particular what constitutes ‘serious misconduct’ that could lead to a dismissal. One Member State also laid down an additional ground for dismissals beyond those set out in the Directive.

A few Member States lack a transparent appointment procedure and clear selection criteria for the decision makers within their national competition authorities.

In one Member State, the national competition authority does not have an explicit power to reject formal complaints on priority grounds.

In a few Member States, there are no guarantees to ensure that sufficient resources are available to the national competition authorities.

Finally, in a few Member States, the national competition authorities are subject to certain government approvals when spending their allocated budget.

4.2. Investigative powers and decision-making powers

Chapter IV of the ECN+ Directive lays down the minimum effective powers national competition authorities must have to investigate and take decisions. The aim is to ensure that national competition authorities are not prevented from effectively bringing an infringement of EU antitrust rules to an end because of a lack of such powers or limitations in their scope.

Articles 6 to 9 ensure that national competition authorities have effective investigative tools. Under Articles 6 and 7, the authorities have the powers to carry-out unannounced inspections at business and non-business premises. Under Article 8, they have the power to issue requests for information and under Article 9, they have the power to summon representatives of undertakings, representatives of legal persons other than undertakings and natural persons for interviews.

Articles 10 to 12 introduce a minimum set of decision-making powers that national competition authorities should have. Under Article 10, these authorities have the power to find an infringement, require the undertaking to bring it to an end and impose structural and behavioural remedies. They may also find that an infringement was committed in the past. Under Article 11, they have the power to adopt interim measures on their own initiative (*ex officio*). Under Article 12, they can accept commitments by undertakings.

In terms of investigative powers, almost all Member States have aligned their national laws with the Directive. In some Member States, this has resulted in the introduction of new powers, such as the power to carry out inspections at non-business premises, conduct inspections with the assistance of the police, continue the inspection at its own or designated premises, send requests for information to other legal and natural persons and summon relevant persons for interviews. Some Member States have gone beyond the minimum requirements set out in the Directive, by giving national competition authorities the power to ask questions during inspections at non-business premises and to seal such premises and relevant documentation.

In several Member States, however, the compliance assessments show certain limitations to the national competition authority's power to conduct unannounced inspections at business and non-business premises. Most often the limitation consists of the authority being required to meet legal standards that do not comply with those provided for in the Directive. Certain limitations have also been identified in relation to the national competition authority's power to search and copy electronic documents at business premises and to continue the inspection at its own or designated premises. Not all Member States have transposed the prior judicial authorisation required by the ECN+ Directive for inspections at non-business premises.

Moreover, in a few Member States the national competition authority is prevented from requesting information from other natural and legal persons.

In a few others, the national competition authority is prevented from summoning representatives of other legal persons and/or natural persons for interviews.

In terms of decision-making powers, all the Member States now have the minimum set of powers envisaged by the ECN+ Directive in their national laws. Major improvements have been made in some Member States where the national competition authority did not yet have the power to impose behavioural and structural remedies, and in a few Member States where previously national competition authorities were unable to adopt interim measures

at their own initiative. In a few Member States a market test was established in the procedure for commitment decisions. Some Member States have used the transposition of the ECN+ Directive to empower their national competition authority to adopt settlement decisions, although this is a power not covered by the Directive.

The compliance assessments nevertheless show that in a few Member States, the national competition authority is required to show a 'legitimate interest' to find an infringement committed in the past, which is a requirement not provided for in the ECN+ Directive.

4.3. Fines and periodic penalty payments

Under Chapter V of the ECN+ Directive, national competition authorities can impose deterrent fines on undertakings.

Article 13 provides for national competition authorities to impose fines in their own administrative proceedings or seek the imposition of fines in non-criminal judicial proceedings on undertakings for infringements of EU antitrust rules. It also ensures that they can impose fines for failure to comply with investigative measures or decisions.

Article 14 introduces core parameters that national competition authorities should consider when determining the amount of the fine. It also provides for the possibility to impose fines on associations of undertakings based on the turnover of their members. Article 15 lays down a common minimum basis for the legal maximum fine that can be imposed for infringements of EU antitrust rules. Member States are free to introduce a higher legal maximum fine.

Article 16 provides for the power to impose periodic penalty payments to ensure compliance with investigative measures and decisions.

Following the transposition of the ECN+ Directive, national competition authorities in almost all Member States have the power to impose effective, proportionate and dissuasive fines, as well as periodic penalty payments on undertakings and associations of undertakings.

Substantial improvements were made in a couple of Member States, where implementation of the ECN+ Directive led to significant changes in their enforcement system. Two Member States moved from a purely criminal enforcement system to a mixed civil/criminal system where fines can now also be imposed or confirmed by a civil court. Two other Member States that already had an enforcement system that complied with the Directive, took the opportunity to make their system more efficient: in one Member State, the national competition authority is no longer required to apply to a court but can impose fines as part of its own administrative proceedings; in the other Member State, the national competition authority no longer needs to follow a criminal law procedure to impose fines on undertakings.

Moreover, some Member States have increased the maximum amounts of fines, while others have made it possible to impose fines for procedural infringements. The notion of 'undertaking' has been established in another Member State, where fines can now be imposed on parent companies and legal successors. In other Member States, national competition authorities now have the power to impose fines on associations of undertakings based on the turnover of their members and to oblige the association to ask for contributions from its members to cover the fine.

The compliance assessments nevertheless show that certain limitations persist in several Member States where the national competition authorities are prevented from imposing procedural fines for failure to comply with investigative measures and/or decisions or can impose such fines only for certain types of non-compliance. Moreover, in one Member State, the national competition authority would first need to hold a natural person in a leading position liable before imposing a fine on the undertaking for that infringement. In another Member State, the maximum amount of the fine that the national competition authority can impose for infringements of EU antitrust rules is not in line with the requirements of the ECN+ Directive.

4.4. Leniency

Chapter VI of the ECN+ Directive lays down harmonised rules for national leniency programmes. Leniency programmes are a key tool for detecting cartels. The aim is to increase legal certainty for undertakings that wish to apply for leniency, thereby ensuring that they have an incentive to cooperate with the Commission and the national competition authorities by reducing the differences between the leniency programmes applicable in the Member States.

Article 17 lays down uniform conditions for granting immunity from fines for undertakings that disclose their participation in secret cartels. Article 18 establishes the conditions for granting a reduction of fines for undertakings that do not qualify for full immunity but provide evidence that is of significant added value in proving the existence of a secret cartel. Article 19 details the general conditions that must be met by any applicant seeking leniency, ensuring their full cooperation and the termination of their involvement in the cartel. Article 20 provides for uniform rules on the form, submission and language of leniency statements.

Article 21 introduces harmonised rules for 'markers' for applications for immunity from fines. These abbreviated immunity applications allow undertakings to be granted a place in the leniency queue while they gather enough information and evidence to qualify for immunity from fines. Article 22 introduces a streamlined system for summary applications. It allows applicants that have applied to the Commission for leniency to submit summary applications to national competition authorities in relation to the same secret cartel.

Finally, Article 23 introduces protection against administrative and criminal sanctions for current and former staff of immunity applicants, provided that certain conditions are met.

All Member States now have leniency programmes in place that follow uniform rules and procedures. The transposition of the ECN+ Directive has led to the introduction of administrative leniency programmes in two Member States. In other Member States, the leniency programmes have been codified in primary or secondary legislation. More generally, transposition has led to greater harmonisation between the leniency programmes across the EU. In some Member States, transposition has also prompted the introduction of markers and summary applications. Other Member States have introduced protection against criminal sanctions for the staff of immunity applicants.

All Member States have implemented the ECN+ Directive's core provisions on leniency. The compliance assessments nevertheless show that in a few Member States the national competition authorities are not prevented from requesting further information from undertakings after they have submitted a summary application and/or are not required to request only in exceptional circumstances a full application before the Commission has taken a decision on whether to pursue the case.

In a few Member States, protection against administrative and/or criminal sanctions for staff of immunity applicants is either not provided for in national law or would additionally require the staff member to submit an individual immunity application. In another Member State, national law grants the public prosecutor wide discretion to decide whether to prosecute or penalise these individuals.

A related issue is that several Member States do not specifically require national competition authorities to ensure the necessary contacts between the competent prosecuting or sanctioning authorities in their Member States and the competition authorities of other Member States to guarantee that the staff of immunity applicants are protected from administrative and/or criminal sanctions in cross-border situations.

4.5. Mutual assistance

Chapter VII of the ECN+ Directive introduces harmonised rules that facilitate mutual assistance between national competition authorities. These mechanisms of mutual assistance empower national competition authorities to enforce competition law beyond their borders effectively, thereby allowing the decentralised system for enforcing EU antitrust rules to work as a cohesive whole.

Article 24 permits officials from national competition authorities to attend and provide assistance for inspections and interviews conducted by another national competition authority on their behalf. It also empowers national competition authorities to use their investigative powers to establish non-compliance with measures and decisions taken by other national competition authorities. Under Articles 25 and 26, national competition authorities can ask each other to notify documents and enforce decisions on their behalf, using a uniform instrument.

Articles 27 and 28 lay down general principles for cooperation, for instance in relation to the applicable law, the content of the uniform instrument, language requirements, coverage of costs, the possibility to refuse assistance and the handling of disputes concerning requests for mutual assistance.

The ECN+ Directive has strengthened cooperation between national competition authorities. It has provided a new power for these authorities to use their investigative measures to establish non-compliance with investigative measures and decisions adopted by other national competition authorities. It has also introduced the ‘uniform instrument’, which now makes it easier for national competition authorities to have their acts notified or enforced in other Member States.

The compliance assessments nevertheless show that in several Member States national competition authorities are not explicitly empowered to use investigative measures to verify compliance with investigative measures and decisions taken by other national competition authorities, or to request such mutual assistance, or to exchange information collected in that context to be used as evidence in their enforcement proceedings.

In several Member States, there is either no explicit power to request the notification of acts or the enforcement of decisions by other national competition authorities, or this power is subject to stricter conditions than those provided for in the Directive. Finally, a few Member States do not rule out the possibility of applying national limitation periods to fining decisions taken by other national competition authorities, which could prevent those authorities from providing the mutual assistance requested.

4.6. Limitation periods

Chapter VIII of the ECN+ Directive contains rules on limitation periods for the imposition of fines and periodic penalty payments by national competition authorities.

Under Article 29(1), national limitation periods must be suspended or interrupted for the duration of enforcement proceedings with respect to the same infringement of EU antitrust rules by another national competition authority or the Commission. This ensures that the system of parallel powers within the ECN works effectively, and other national competition authorities are not prevented from subsequently investigating the conduct in question or taking a decision.

Article 29(2) requires Member States to ensure that their limitation periods are suspended or interrupted while the fining decisions of their national competition authorities are subject to judicial review. This prevents lengthy appeal proceedings from affecting the power of national competition authorities to impose fines or periodic penalty payments.

A major improvement brought about by the ECN+ Directive is that all Member States now have a rule ensuring that their national competition authorities are not time-barred from imposing fines and periodic penalty payments when the Commission or another national competition authority is dealing with the same infringement.

The compliance assessments nevertheless show that a few national laws are ambiguous about whether the suspension or interruption extends to all undertakings involved in the infringement. Other national laws only allow the suspension or interruption to be triggered conditional on certain steps having been taken (for example, formal opening of proceedings).

4.7. General provisions

Chapter IX of the ECN+ Directive includes general provisions concerning the role of national administrative competition authorities before national courts, access to files by parties, limitations on the access and use of information, and the admissibility of evidence before national competition authorities.

Article 30 ensures that national administrative competition authorities have the power to bring and/or defend their cases before national courts.

Article 31 seeks to limit the use of certain categories of information that undertakings submit to national competition authorities during enforcement proceedings. By increasing legal certainty about the protection of this information, the ECN+ Directive seeks to ensure the effectiveness of enforcement procedures, and of leniency and settlement programmes.

Article 31(2) provides for a general obligation of professional secrecy for national competition authorities and their staff. Article 31(3) restricts the access to leniency statements and settlement submissions in any relevant proceedings where these documents may end up, for instance in criminal proceedings when national competition authorities are required to transfer their files to the public prosecutor. Article 31(4) limits how parties that have obtained access to the file of the enforcement proceedings of national competition authorities can use information from leniency statements and settlement submissions. Article 31(5) prohibits parties from using certain categories of information in proceedings before national courts pending enforcement proceedings by the national competition

authority. Finally, Article 31(6) lays down specific conditions for the exchange of leniency statements between national competition authorities.

Article 32 ensures that all types of proof are admissible as evidence before the national competition authorities, irrespective of the form they take and the medium on which they are stored.

Following transposition of the ECN+ Directive, national competition authorities in all Member States have the power to bring and/or defend their cases before national courts. However, the compliance assessments show that, in some Member States, the national competition authorities do not have the right to appeal a refusal by a national judicial authority to grant prior authorisation for inspections.

In all Member States, the national competition authorities and their staff are subject to an obligation of professional secrecy. Moreover, all Member States provide in their national laws for some limitations on the use of certain categories of information, in particular leniency statements and settlement submissions.

The compliance assessments nevertheless show certain limitations. In the vast majority of Member States, national law does not restrict the access to leniency statements and settlement submissions in all relevant proceedings where these documents may end up. In a few Member States, the use of information obtained from leniency statements and settlement submissions through access to the files is not expressly limited to the specific circumstances described by the ECN+ Directive. Moreover, in some Member States the restriction regarding the use of certain categories of information pending enforcement proceedings by the national competition authority is either not provided for or does not extend to all national court proceedings.

In all Member States, all types of proof are admissible as evidence before the national competition authorities, irrespective of the form they take and the medium on which they are stored.

5. EXPECTED CASE LAW DEVELOPMENTS RELATING TO THE ECN+ DIRECTIVE

Following the adoption of the ECN+ Directive, a number of requests for a preliminary ruling were made to the CJEU concerning obligations under the ECN+ Directive.

Case C-2/23 *FL und KM Baugesellschaft and S* is a request from Austria seeking guidance on whether national law can allow criminal prosecutors to access and use leniency statements and settlement submissions. The CJEU ruling is expected to provide guidance on the safeguarding of leniency statements and settlement submissions (Article 31(3)) in the context of cooperation between national competition authorities and other regulatory or prosecuting authorities.

Joined Cases C-258/23 to C260/23 *Imagens Médicas Integradas and Others*, as well as Cases C-132/24 *Apap and Others* and C-195/24 *Blueotter and Others*, are requests from Portugal seeking guidance on whether email correspondence can be seized during inspections in business premises without a prior judicial authorisation. Case C-619/23 *Ronos* is a request from Bulgaria seeking guidance on whether constitutional safeguards could limit the power to search chat correspondence in an application on a laptop found during inspections of business premises. These CJEU rulings are expected to provide clarifications on inspection powers (Article 6), the admissibility of evidence (Article 32),

and the duty of Member States to design procedural safeguards in a way that strikes a balance between the fundamental rights of undertakings and the duty to ensure that EU antitrust rules are effectively enforced (Recital 14).

Case C-511/23 *Caronte & Tourist SpA* is a request from Italy seeking guidance on whether time limits for national competition authorities' pre-investigations of complaints are compatible with the effective enforcement of EU antitrust rules. The CJEU ruling may also address the impact such time limits could have on the power of national competition authorities to set enforcement priorities (Article 4(5)).

Finally, Case C-588/24 *Imballaggi Piemontesi* is a request from Italy seeking guidance on whether a national provision that allows the competition authority, under certain conditions and with a reasoned justification, to extend the time limits within which enforcement proceedings must be concluded is compatible with the duty to conduct proceedings within a reasonable timeframe (Article 3(3)).

6. CONCLUSION

The ECN+ Directive aims to empower national competition authorities to be more effective enforcers of EU antitrust rules by introducing a minimum set of independence guarantees and of investigative, decision-making, and fining powers, harmonising leniency programmes and enhancing cooperation between national competition authorities. The ECN+ Directive thereby complements the decentralised enforcement system introduced by Regulation (EC) No 1/2003, which empowered national competition authorities to enforce EU antitrust rules without conferring harmonised enforcement powers on them.

All Member States except one have transposed the Directive's main provisions, although most of them have done so with a delay.

The Commission will continue to assess and monitor Member States' compliance with the ECN+ Directive and will take appropriate measures, including infringement proceedings where necessary, to ensure its full and correct transposition throughout the EU. The Commission will also continue to monitor the developments in the Member States in this area with a view to reviewing the ECN+ Directive once sufficient experience from the application of the new rules has accumulated.