



ECN Working Group on Cooperation Issues

Results of the questionnaire on the reform of Member States (MS) national competition laws after EC Regulation No. 1/2003

(as of April 14, 2008)

"DISCLAIMER:

The present table is based on information provided on a voluntary basis by the ECN National Competition Authorities (hereinafter, NCAs) and reflects their replies to a questionnaire.

For the purpose of this table, the term "convergence" should be construed as referring to a voluntary process of approximation of national antitrust legislation to EC Regulation No 1/2003 (hereinafter, Reg. 1/2003), and does not imply that such approximation is mandatory in respect of all the provisions of the Regulation referred to in the table.

The table is not meant to express or reflect any view as to the compliance of national antitrust legislation with certain mandatory provisions of the Reg. 1/2003 and, more generally, may not be regarded as reflecting or stating an official position of the European Commission or any NCA.

Answers received from all the 27 Member States: AUSTRIA AT, BELGIUM BE, BULGARIA BG, CYPRUS CY, CZECH REP. CZ, DENMARK DK, ESTONIA EE, FINLAND FI, FRANCE FR, GERMANY DE, GREECE GR, HUNGARY HU, IRELAND IE, ITALY IT, LATVIA LV, LITHUANIA LT, LUXEMBOURG LU, MALTA MT, NETHERLANDS NL, POLAND PL, PORTUGAL PT, ROMANIA RO, SLOVAK REP. SK, SLOVENIA SI, SPAIN ES, SWEDEN SE, UNITED KINGDOM UK.

RESULTS OF QUESTIONNAIRE ON CONVERGENCE OF NATIONAL COMPETITION LAWS, BASED ON THE ANSWERS RECEIVED FROM THE NCAS				
MAJOR CHANGES INTRODUCED BY EC REG. 1/2003 OR ORIGINATING FROM EC PRACTICE	CORRESPONDING NATIONAL PROVISIONS			
	<i>Fully convergent</i>	<i>Partially convergent</i>	<i>Amendments proposed (or still under consideration)</i>	<i>No Convergence</i>
1) Abolition of notification system for agreements and introduction of a legal exception system (Art. 1)	AT ^{AT1} , BE ^{BE1} , CZ, DE ^{DE1} , EE ^{EE1} , ES ^{ES1} , FI, FR, HU, IE, NL ^{NL1} , LT, LU, MT, PL, SE, SI, SK, UK	PT	BG ^{BG1} , CY, RO	DK ^{DK1} , GR ^{GR1} , IT ^{IT1} , LV ^{LV1}

^{AT1} The positions indicated in this table for Austria take into account the new provisions published in the official journal on July 5, 2005 (the Competition Act, BGBl I no. 62/2002 as amended by BGBl I no. 62/2005), and the Cartel Act (BGBl I no. 61/2005). The amendments of the Competition and the Cartel Act came into force on January 1, 2006.

^{BE1} The law of 10 June 2006 (published 29 June 2006), entered into force on Oct. 1, 2006, introduced a legal exception system.

^{DE1} The positions indicated in this table for Germany take into account the new provisions of the Act against Restraints of Competition, as amended on July 7, 2005 (BGBl. I S. 1954), entered into force with retroactive effect on July 1, 2005.

^{EE1} The amendments of the Competition Act came into force on July 1, 2006.

^{ES1} The positions indicated in this table for Spain take into account the provisions of the new Competition Law of July 3, 2007 no.15 which came in force on September 1, 2007. It introduced a legal exception system.

^{NL1} The positions indicated in this table for the Netherlands take into account the recent amendments to the competition law introduced by law no. 30071 entered into force on September 1, 2007.

^{BG1} Draft of new law on protection of competition.

^{DK1} According to the Danish Consolidated Competition Act no. 1027 of August 21, 2007, the notification system for non-art. 81 agreements has been upheld. However, this notification system is non-compulsory. If a notified agreement has an impact on trade between member states the NCA can abstain from making a decision.

^{GR1} The positions indicated in this table for Greece take into account the provisions of the new law adopted on July 14, 2005 and amending law no.703/1977 "on the control of monopolies and oligopolies and the protection of competition".

<p>2) Parallel application of Community and national antitrust rules (Art. 3.2)</p>	<p>AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GR, HU, IE, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, UK</p>		<p>RO</p>	<p>IT</p>
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^{IT1} The notification system for non-art. 81 agreements still exists in the framework of a “single-barrier” legal system.

^{LV1} If a notified agreement has an impact on trade between member states the NCA can abstain from making a decision.

3) Power to impose structural remedies (Art. 7)	AT, BE ^{BE2} , CZ, DE, ES ^{ES2} , GR, IE ^{IE1} , MT, NL, SI, UK	FR ^{FR1} , RO ^{RO1} , SE	BG ^{BG2} , CY	DK, EE, FI, HU, LT, LV ^{LV2} , LU, PL, PT, SK
4) Power to order interim measures (Art. 8)	AT, BE, CZ, DE, ES, FI, FR ^{FR2} , GR, HU ^{HU1} , IE ^{IE2} , IT, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK	LU	BG ^{BG3} , CY	DK, EE
5) Power to adopt commitment decisions (Art. 9)	AT, BE ^{BE3} , CZ, DE, DK, ES ^{ES3} , FI, FR ^{FR3} , GR, HU, IE ^{IE3} , IT ^{IT2} , LT, LU, NL, PL, SE, SI, SK, UK	LV ^{LV3}	BG ^{BG4} , CY, PT, RO	EE, MT
6) Power to seal business premises, books and records (Art. 20)	BE, BG, CZ, DE, DK, EE ^{EE2} , ES ^{ES4} , FI, FR ^{FR4} , GR, HU, LV, MT, NL, PT, RO, SE, SK, UK	IT ^{IT3} , PL ^{PL1}	CY, LT	AT, IE, LU, SI

^{BE2} Article 53 § 1, WBEM.

^{ES2} The Competition Act no.15/2007 introduces the power to impose structural remedies.

^{IE1} The Irish Competition Authority is not a decision maker with reference to Arts. 81 and 82 EC or the corresponding domestic rules (Sections 4 & 5 of the Competition Act 2002). However, all National Courts were declared Competition Authorities for the purpose of Reg. 1/2003. As a result, while the actual Competition Authority does not have the power to impose structural remedies under Art. 7, the National Courts do have this power when acting in their capacity as a Competition Authority for the purpose of Reg. 1/2003.

^{FR1} NCA may propose to the Ministry of Economy structural remedies in case of abuse of dominance.

^{RO1} If the measures applied by the Competition Council to an undertaking abusing its dominant position do not remedy the situation and prevent the abuse from repeating, the Competition Council, for the reason of serious damage to a major public interest, may request the Bucharest Court of Appeals to order adequate measures to remove the dominant position.

^{BG2} The draft of a new law on protection of competition envisages CPC's power to impose structural remedies.

^{LV2} On the basis of the amendments introduced in the Competition Law 2008, NCA will have the power to conclude administrative agreement accepting structural remedies regarding infringement of national antitrust law.

^{FR2} Also upon complaint.

^{HU1} Also upon complaint.

^{IE2} The Competition Authority cannot make a decision regarding interim measures but the National Courts acting in their capacity as Competition Authorities for the purpose of Reg. 1/2003 can order interim measures.

^{BG3} The draft of the new law on protection of competition envisages CPC's power to order interim measures.

^{BE3} The law of 10 June 2006, entered into force on Oct. 1, 2006 allows the adoption of commitment decisions.

^{ES3} Commitment decisions were allowed but only before the Statements of Objections. The new Competition Act no.15/2007 allows its adoption also after the Statements of Objections.

^{FR3} Order no.2004-1173 of Nov. 4, 2004; Art. L.464-2-I of Code of Commercial Law.

^{IE3} The Competition Authority is not a decision maker with reference to Arts. 81 and 82 EC (or Sections 4 & 5 of the Competition Act 2002) and cannot adopt commitment decisions. The National Courts, acting in their capacity as Competition Authorities for the purposes of Reg. 1/2003, can adopt commitment decisions.

^{IT2} Law no.248 of August 4, 2006.

^{LV3} On the basis of the amendments introduced in the Competition Law 2008, NCA will have the power to conclude administrative agreement accepting commitments regarding infringement of national antitrust law.

^{BG4} The draft of the new law on protection of competition envisages CPC's power to adopt commitment decisions.

^{EE2} Only in criminal and misdemeanor proceedings.

^{ES4} The Competition Act no.15/2007 foresees the power to seal.

^{FR4} Order no. 2004-1173 of Nov. 4, 2004; Art. L.450-4, alinea 1, of Code of Commercial Law.

7) Power to inspect non-business premises (Art. 21)	AT, BE, CZ, EE ^{EE3} , ES ^{ES5} , FI ^{FI1} , FR, GR, HU, IE, LU, LV, MT, NL, PL, RO, SE, SI, SK, UK	DE ^{DE2}	CY ^{CY1} , LT	BG, DK, IT, PT
8) Fines on associations of undertakings (Arts. 23.2 and 23.4)	BE ^{BE4} , ES ^{ES6} , FI, HU, LT, LV, NL	AT ^{AT2} , DE ^{DE3} , DK ^{DK2} , EE ^{EE4} , FR ^{FR5} , GR ^{GR2} , IE ^{IE4} , IT ^{IT4} , PL ^{PL2} , PT, RO ^{RO2} , SE ^{SE1} , SI ^{SI1} , SK, UK ^{UK1}	BG ^{BG5} , CY, CZ	LU

^{IT3} Through the assistance of Tax Police.

^{PL1} Time of sealing is limited to 7 days.

^{EE3} Only in criminal and misdemeanor proceedings.

^{ES5} Introduced by the Competition Act no.15/2007.

^{FI1} But only when assisting the EC Commission in the application art. 21, Reg 1/2003; not in investigations under the national procedure.

^{DE2} Provisions of German law wider than Art. 21, Reg. 1/2003.

^{CY1} The current legislation provides for the power to inspect private premises (homes) upon obtaining a reasoned judicial order for the application of the national legislation. With the adoption of the amended legislation the powers of the CPC will be extended to the inspections of private premises, land and transport for the application of the Community Law.

^{BE4} Introduced by the law of 10 June 2006 entered into force on Oct. 1, 2006.

^{ES6} New provision introduced by the Competition Act no.15/2007.

^{AT2} The Cartel Court can impose fines on associations of undertakings to the same extent as it can do on undertakings upon request of the Federal Competition Authority or/and the Federal Cartel Prosecutor. Fines imposed on an association of undertakings may not be enforced against its members.

^{DE3} Associations of undertakings can be fined, but responsibility does not automatically extend to the member undertakings as is the case under Community law.

^{DK2} Associations of undertakings can be imposed criminal sanctions (only by national courts) in the form of fines but there is no convergence to Arts. 23.2 and 23.4, Reg. 1/2003.

^{EE4} Associations of undertakings can be fined but there is no convergence with Art. 23.4, Reg. 1/2003.

^{FR5} Convergence to Art. 23.2, not to Art. 23.4, Reg. 1/2003.

^{GR2} Convergence to Art. 23.2, not to Art. 23.4, Reg. 1/2003

^{IE4} The National Courts acting as a competition authorities can impose fines for breach of Arts. 81 and 82 EC, but not for contravening an order on interim measures, or failure to comply with commitments.

^{IT4} Associations of undertakings can be fined but there is no convergence with Art. 23.4, Reg. 1/2003.

^{PL2} Associations of undertakings can be fined but there is no convergence with Art. 23.4, Reg. 1/2003.

^{RO2} Associations of undertakings can be fined under the Romanian competition law, but the responsibility does not extend to the member undertakings.

^{SE1} The association and individual undertakings which take active part in the infringement can be fined, but the method is not convergent to Arts. 23.2 and 23.4, Reg. 1/2003.

^{SI1} Associations of undertakings can be fined but there is no convergence to Arts. 23.2 and 23.4, Reg. 1/2003.

^{UK1} Convergence to Art. 23.2, not to Art. 23.4, Reg. 1/2003.

^{BG5} The draft of the new law on protection of competition envisages the possibility to impose fines on associations of undertakings.

9) Informal guidance (Recital 38)	AT, BG ^{BG6} , BE, DK, DE, IE, ES ^{ES7} , LV, NL, PL ^{PL3} , PT, RO, SE, SI, UK	FI ^{FI2} , IT, LT, SK	CY ^{CY1}	CZ ^{CZ1} , EE ^{EE5} , FR, GR, HU, LU, MT
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^{BG6} No rules for informal guidance in the national competition law. However, in the practice, such guidance may be given by the Competition Authority.

^{ES7} No rules for informal guidance in the national competition law. However, in the practice, such guidance (opinions on interpretation of competition rules) is issued by the Spanish Competition Authority.

^{PL3} No rules for informal guidance in the national competition law. However, in the practice, such guidance (opinions on interpretation of competition rules) is issued by Polish Competition Authority.

^{FI2} The NCA may issue guidelines.

^{CY1} The NCA has a general power to give opinions.

^{CZ1} The NCA provides undertakings with informal opinions in practice.

^{EE5} De facto, informal guidance are already given.

10) Treatment of individual exemptions granted before May 1, 2004 (Art. 43.1)	BE, CZ, DK, EE ^{EE6} , FI, FR ^{FR6} , GR, HU, IE, LT, LV, MT, , PL, PT, SE, SI, SK, UK	AT ^{AT3} , DE ^{DE5} , NL ^{NL4}	ES	BG, CY ^{CY2} , IT, RO ^{RO3}
11) Investigations into sectors of the economy and into types of agreements (Art. 17)	BE, BG, CZ ^{CZ2} , DE, DK ^{DK4} , EE, ES, FI, GR, IE, IT, LT, LV, NL, PL, PT, SE, SI, SK ^{SK1}	AT ^{AT4} , FR ^{FR7} , HU ^{HU2} , MT, RO ^{RO4} , UK ^{UK2}		LU, CY

^{EE6} Exemptions granted before May 1, 2004 are valid until the date of expiration.

^{FR6} No exemption ever granted.

^{AT3} Exemptions granted before May 1, 2004 will be valid until December 31, 2006; in any case the exemptions shall not be valid once expired the time period granted in the approval.

^{DE5} Exemptions granted before July 1, 2005 will be valid until December 31, 2007.

^{NL4} With a maximum duration of 5 years from August 1, 2004.

^{CY2} The new drafted legislation has not come into force and undertakings may still file for an application of individual exemption up until the abolition of the notification system.

^{RO3} No specific provision on the treatment of the individual exemptions granted before accession date.

^{CZ2} No explicit provision in Czech law; sector inquiries carried out within general powers of the NCA.

^{DK4} The NCA may request any information (including accounts, records, other business records and electronic data) which are considered necessary for its activities.

^{AT4} No explicit rule in Austrian law to carry out inquiries into a particular type of agreements across various sectors.

^{FR7} No specific provision in the French law, however DGCCRF regularly carries out sectors inquiries on the basis of its general powers of investigation. The Competition Council, although non specifically provided, could do the same.

^{HU2} The NCA cannot use all the investigative powers available in normal investigations.

^{RO4} The Competition Council has no investigative powers as in normal investigation proceedings.

^{UK2} The Enterprise Act 2002 provides powers to carry out market studies and to refer markets to the Competition Commission for investigation, which may result in competition problems being identified.

<p>12) Do you have (or intend to have) specialised national courts for dealing with competition issues in the context of civil proceedings? If so, which court(s)? Does that court also deal with cases where competition issues are only ancillary?</p>	<p>AT (No), BE^{BE5}(Yes), BG (No), CY (No), CZ (No), DE (Yes)^{DE4}, DK^{DK5} (Yes), EE (No), ES (Yes), FI (No), FR^{FR8} (Yes), GR (No), HU (No), IE (No)^{IE4}, IT^{IT5} (No), LT (No), LU (No), LV (No), MT (No), NL (No), PL (No), PT (No), RO (No)^{RO5}, SE (No), SI (No), SK^{SK1}, UK (Yes)^{UK3}.</p>
<p>13) Does (or will) your national law include provisions to facilitate the use of Art. 15.3, Reg. (amicus curiae)?</p>	<p>AT^{AT5}, BE (No), BG (No), CY^{CY2}, CZ^{CZ3}, DE (Yes), DK^{DK6} (Yes), EE^{EE7}, ES (Yes), FI^{FI3}, GR (Yes), FR (Yes), IE (Yes), HU (Yes), IT(No), LT (Yes), LV^{LV2}, MT (No), NL (Yes), PL (Yes), PT (No, amendments under consideration), RO^{RO6} (Yes), SE (Yes), SI (No, amendments under consideration), SK (Yes), UK (Yes).</p>

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^{BE5} Commercial Courts; preliminary ruling system.

^{DE4} Regional Courts, Courts of Appeal; Federal Supreme Court.

^{DK5} A specialized court - the Copenhagen Maritime and Commercial Court - is dealing with civil proceedings when competition issues are essential for a case.

^{FR8} Ordinance no.2004-1173 of Nov. 4, 2004, art. 1. The specialized courts have been designated by decree no. 2005-1756 of Dec. 30, 2005. According to that decree, there are 8 courts of first instance competent to apply competition law (8 civil and commercial courts), and one Court of Appeal (Paris' Court of Appeal).

^{IE4} However, special judges are appointed in each court, District, Circuit, High, to take the decisions in competition matters.

^{IT5} Ongoing debate on this issue.

^{RO5} All competition cases are dealt with in first instance by the Bucharest Court of Appeal-Administrative Section; however, the Court does not exclusively deal with competition cases.

^{SK1} Since Jan. 1st, 2005, Regional court in Bratislava is dealing in first instance as the general court for competition issues for the whole territory of the Slovak Republic, Highest court in Bratislava is the second instance body.

^{UK3} A specialised court - the Competition Appeal Tribunal (CAT) - is provided for only to hear private actions in cases where there has been a prior decision of the European Commission or the OFT.

^{AT5} Present rules deemed sufficient.

^{CY2} No specific rules adopted; the Supreme Court will issue a Procedural Order.

^{CZ3} No specific provisions, but it is made possible by the Czech code of civil procedure.

^{DK6} No specific rule concerning the application of Art. 15.3 Reg. 1/2003, but no specific legal problem for its application.

^{EE7} The NCA must be consulted by national civil courts in antitrust cases.

^{FI3} No special provisions on amicus curiae. Most 81/82 cases are dealt with by administrative courts where NCA is usually party to the case or otherwise is always heard. In civil proceedings, courts usually ask statement of the NCA if art 81/82 is to be applied, although not obliged to do it. De facto no legal problems exist.

^{LV2} The NCA may be consulted by national civil courts in antitrust cases.

^{RO6} The Competition Council shall communicate its point of view on any competition issue, at the request of national courts.