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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**on the legal framework for and the use of interim measures by national competition
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1. INTRODUCTION: BACKGROUND AND SCOPE OF THE REPORT

EU antitrust rules prohibit agreements and concerted practices between undertakings that restrict competition (Article 101 of the Treaty on the Functioning of the European Union ('TFEU')) and abusive conduct by undertakings that hold a dominant position on the market (Article 102 TFEU). The European Commission ('the Commission') and the competition authorities of the Member States ('national competition authorities') are co-enforcers of EU antitrust rules pursuant to Articles 4, 5 and 10 of Council Regulation (EC) No 1/2003¹. Article 3 of Council Regulation (EC) No 1/2003 requires national competition authorities to apply EU antitrust rules when an agreement or abuse may affect trade between Member States. The Commission and the national competition authorities cooperate within the European Competition Network ('ECN') to enforce these antitrust rules.

Interim measures can be a powerful tool for competition authorities to ensure that competition on the market is preserved or restored while an antitrust investigation is on-going. Such measures aim to prevent further damage to competition from occurring during ongoing proceedings. Interim measures could, for instance, order an undertaking to supply a certain product or service or to stop a certain behaviour while the antitrust investigation is ongoing.

The Commission's power to impose interim measures in antitrust proceedings is provided for in Article 8 of Council Regulation (EC) No Regulation 1/2003, which is set out below.

1. In cases of urgency due to the risk of serious and irreparable damage to competition, the Commission, acting on its own initiative may by decision, on the basis of a prima facie finding of infringement, order interim measures.

2. A Decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far as this is necessary and appropriate.

On 11 December 2018, the European Parliament and the Council adopted Directive (EU) 2019/1² ('the ECN+ Directive') to make national competition authorities more effective enforcers of EU antitrust rules, in part by ensuring that they have: (i) basic guarantees of

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 4.1.2003, L1/1.

² 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 14.1.2019, L11/3.

independence and resources; (ii) core investigative, decision-making and fining powers; (iii) leniency programmes; and (iv) mechanisms for mutual assistance.

Article 11 of the ECN+ Directive requires Member States to grant their national competition authorities the power to impose interim measures. The wording of the article is set out below.

1. Member States shall ensure that national competition authorities are empowered to act on their own initiative to order by decision the imposition of interim measures on undertakings and associations of undertakings, at least in cases where there is urgency due to the risk of serious and irreparable harm to competition, on the basis of a prima facie finding of an infringement of Article 101 or Article 102 TFEU. Such a decision shall be proportionate and shall apply either for a specified time period, which may be renewed in so far as that is necessary and appropriate, or until the final decision is taken. The national competition authorities shall inform the European Competition Network of the imposition of those interim measures.

2. Member States shall ensure that the legality, including the proportionality, of the interim measures referred to in paragraph 1 can be reviewed in expedited appeal procedures.

Recital 38 of the ECN+ Directive clarifies that interim measures are an important tool to avoid market developments that could be very difficult to reverse by a decision taken by a national competition authority at the end of the proceedings. It also underlines that Member States are free to provide national competition authorities with more extensive powers to impose interim measures and that Member States should create the conditions necessary to ensure that national competition authorities can make use of interim measures in practice. Member States were obliged to transpose the ECN+ Directive by 4 February 2021.

In a declaration attached to the ECN+ Directive, the Commission committed to ‘undertake an analysis of whether there are means to simplify the adoption of interim measures within the European Competition Network’, this ‘with a view to enabling competition authorities to deal more effectively with developments in fast-moving markets’.

It was initially envisaged to present the results of this analysis in a report to the Council and the European Parliament within 2 years from the deadline for transposition of the ECN+ Directive, meaning by 4 February 2023. However, in June 2022, the Commission launched a process to evaluate Council Regulation (EC) No 1/2003 and Commission Regulation (EC) 773/2004. The report was therefore postponed so that it could be presented together with the results of the evaluation of the Commission’s power to adopt interim measures in antitrust proceedings as provided in Article 8 of Council Regulation (EC) No 1/2003. Postponing the report also allowed for a more comprehensive analysis, as most Member States have in the meantime completed the transposition process of the ECN+ Directive³.

The present report focuses on the legal framework for – and use of – interim measures by national competition authorities. It is based on a comparative assessment of: (i) the relevant

³ All Member States, except Estonia, have in the meantime transposed the ECN+ Directive. The analysis in this report covers Estonia, but does not yet reflect any possible legislative changes to the power to adopt interim measures following the transposition of the ECN+ Directive.

legislative texts of the Member States; (ii) the quantitative data which the national competition authorities have provided as part of the evaluation process of Council Regulation (EC) No 1/2003 and Commission Regulation (EC) 773/2004 and complemented as part of this analysis; and (iii) the qualitative feedback from national competition authorities collected by means of a request for information⁴.

This report begins by providing an overview of: (i) the introduction dates of the power to impose interim measures for infringement of EU antitrust rules in the different Member States; and (ii) the legislative changes that were brought to that power by the transposition of the ECN+ Directive. The report then presents the differences between the legislative frameworks of the Member States in terms of the substantive legal test that must be met before imposing interim measures and the procedural requirements for these measures. Finally, it analyses the actual use of this enforcement tool by national competition authorities and their experiences. The report finishes with some preliminary conclusions.

2. THE POWER TO ADOPT INTERIM MEASURES IN THE MEMBER STATES

All 27 national competition authorities of the ECN have the power to impose interim measures for infringements of EU antitrust rules and/or their equivalent provisions under national competition law. This power forms part of the national competition authorities' standard antitrust-enforcement toolbox included in their respective national competition laws.

Overview of the introduction of the power to impose interim measures

Before the Commission's power to impose interim measures was codified in Council Regulation (EC) No 1/2003⁵, 11 national competition authorities already had this power: France (1986), Cyprus (1989), Spain (1989), Belgium (1991), Finland (1992), Sweden (1993), Greece (1995), Malta (1995), Hungary (1997), Lithuania (1999) and Austria (2002).

In addition, 13 national competition authorities obtained such powers at the same time or after the adoption of Council Regulation (EC) No 1/2003: Croatia (2003), Portugal (2003), Czechia (2004), Latvia (2004), ²Luxembourg (2004), Poland (2004), Germany (2005), Romania (2005), Italy (2006), Bulgaria (2008), Slovenia (2008), Denmark (2013) and Estonia (2013).

As an underlying grounds for the introduction of the power to adopt interim measures, national competition authorities generally refer to the need to be able to intervene more swiftly and to preserve a situation or restore competition pending an antitrust investigation. For those national competition authorities that received this power after the adoption of Council Regulation (EC) No 1/2003, the desire to align their enforcement powers with those of the Commission and/or other national competition authorities was an additional motivating factor.

⁴ In mid-November 2023, the Commission sent an informal request for information to all national competition authorities regarding the introduction, legal basis and experience with interim measures in their respective Member States. All the national competition authorities submitted a response to this request.

⁵ Council Regulation (EEC) No 17 of 6 February 1962 was the first regulation implementing Articles 85 and 86 of the Treaty (OJ 21.2.1962, 204). It did not expressly provide for the power to adopt interim measures, but this power was acknowledged by the European Court of Justice (see Order of the Court of 17 January 1980, *Camera Care Ltd v Commission*, Case 792/79 R, EU:C:1980:18, at para. 18).

Two Member States introduced the power to adopt interim measures recently, as part of the transposition process of the ECN+ Directive: the Netherlands (2021) and Ireland (2022⁶). In Slovakia, the national competition authority was already able to rely on a more general power to impose interim measures based on its national administrative code, but it was only with the transposition of the ECN+ Directive (in 2021) that the power to adopt interim measures was introduced to Slovakia's national competition law.

Legislative changes introduced following the ECN+ Directive

Although most national competition authorities already had the power to impose interim measures before the ECN+ Directive, the transposition of the Directive required certain legislative changes. The transposition process was also used by some Member States to introduce changes that went beyond the requirements of the ECN+ Directive. Most of the legislative changes make it easier for national competition authorities to adopt interim measures following the transposition of the ECN+ Directive in their Member States.

As part of their transposition of the ECN+ Directive, France and Luxembourg introduced the possibility for the national competition authority to adopt interim measures on its own initiative (*ex officio*), as required by the Directive. As a result of Lithuania's transposition, the Lithuanian competition authority no longer needs a court's permission to impose interim measures. As part of its transposition, Germany introduced a less stringent legal test for interim measures, no longer requiring proof of 'irreparable harm' to competition. Similarly, Bulgaria no longer requires 'sufficient evidence' of an infringement, *prima facie* evidence being sufficient according to the Directive. The Swedish national competition authority now has the possibility to impose structural remedies as interim measures⁷. In its transposition, Italy introduced the power to renew or extend the duration of interim measures, which was not formally possible before. Portugal introduced a specific reference to the requirement of a *prima facie* finding of an infringement of EU antitrust rules as a basis for imposing interim measures, and no longer requires the national competition authority to adopt a decision in the main proceedings within 180 days following the imposition of interim measures. And Finland increased the time period during which interim measures can be imposed to up to 12 months (and the decision can be renewed)⁸.

For Finland, Luxembourg and Slovakia, the alignment with the substantive legal test of the ECN+ Directive resulted in a higher threshold for the national competition authorities to adopt interim measures than the substantive legal test applied before. In Poland, the requirement of the ECN+ Directive to adopt a statement of objections ('SO') before taking an infringement decision

⁶ The act that introduced this new power for the Irish competition authority was adopted in 2022 and entered into force in 2023.

⁷ This is an indirect consequence of the transposition of the ECN+ Directive. In Sweden, the power to adopt interim measures is linked to the power to impose remedies. In accordance with Article 10(1) of the ECN+ Directive, national competition authorities should be able to impose 'any behavioural or structural remedies'. The Swedish competition authority's power to impose remedies has been extended to also cover structural remedies, which has thus also extended its power to impose interim measures.

⁸ Before the transposition of the ECN+ Directive in Finland, interim measures imposed by the Finnish NCA would only remain valid for a period of 90 days.

has introduced an additional procedural step for the adoption of interim measures⁹. In its transposition, Greece abolished the possibility for the Minister of Development to request interim measures and introduced a 12-month deadline to adopt the decision in the main proceedings following the imposition of interim measures (extendable once by a further 12 months).

Finally, other legislative changes in the Member States: (i) brought clarifications on both the requirement to observe the proportionality principle and the need for expedited appeals under the Directive; and (ii) introduced the obligation to notify the ECN of the adoption of interim measures.

3. LEGAL TEST AND PROCEDURE: MORE HARMONISATION BUT DIFFERENCES REMAIN

The ECN+ Directive has to some extent harmonised the national competition authorities' power to impose interim measures. Article 11 of the ECN+ Directive requires Member States to grant their national competition authorities the power to adopt interim measures at their own initiative (*ex officio*). As a minimum, Article 11 states that this power should apply in cases where a national competition authority has made 'a *prima facie* finding of an infringement of EU antitrust rules' and where there is 'a risk of serious and irreparable harm to competition'. This being a minimum harmonisation requirement, Member States can opt for a less stringent substantive legal test. The Directive also prescribes that any interim measures must: (i) uphold the proportionality principle; (ii) be of a temporary character; and (iii) be capable of being reviewed in expedited appeal proceedings. It also requires all national competition authorities to notify the adoption of interim measures to the ECN.

The power to initiate the adoption of interim measures

All national competition authorities now have the power to impose or initiate the adoption of interim measures at their own initiative (*ex officio*). Before the transposition of the ECN+ Directive, the national competition authorities of France and Luxembourg only had the power to adopt interim measures upon the request of a party. While no national competition authority is any longer dependent on the request of a party to adopt interim measures, 11 national competition authorities also provide for an explicit power to adopt interim measures at the request of parties (Austria, Belgium, Bulgaria, Cyprus, Czechia, France, Italy, Luxembourg, Portugal, Romania, and Spain). However, other national competition authorities have also indicated that, in practice, they often act following a request from a third party. The only

⁹ Article 3(3) of the ECN+ Directive states that 'Member States shall ensure that, prior to taking [an infringement decision], national competition authorities adopt a statement of objections'. In Poland, there are two kinds of formal proceedings: preliminary proceedings (without parties to the proceedings, and thus without access to the file) and infringement proceedings (with parties to the proceedings, having access to the file). The adoption of the SO has been introduced at the time of opening formal infringement proceedings. Because interim measures can only be adopted following the opening of such proceedings, the transposition of Article 3(3) has resulted in an additional procedural step for the adoption of interim measures, as more information needs to be communicated to undertakings at the time the infringement proceedings are opened.

difference appears to be that these national competition authorities are not required to follow up on such requests.

The substantive legal test

15 national competition authorities have opted for the substantive legal test of the ECN+ Directive, which is the same as the test that applies to the Commission when it imposes interim measures under Article 8 of Council Regulation (EC) No 1/2003. They need to show ‘urgency due to the risk of serious and irreparable harm to competition’ (Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Romania, Slovakia, and Sweden).

12 national competition authorities have a less stringent substantive legal test. In Poland, Portugal and Slovenia, the harm should be merely ‘difficult to repair’. In Denmark, the harm should be ‘serious’ without even the condition of irreparability.

Other national competition authorities, besides not necessarily being required to show ‘irreparable’ harm, can also show harm to other undertakings or more general interests. For example, the Belgian competition authority must show ‘serious, imminent and difficult to repair damage to the undertakings whose interests are affected by such infringements’ or ‘harm to the general economic interest’. The French competition authority must show ‘serious and immediate harm to the general economy, to the sector concerned, to the interests of consumers or, where applicable, to the complainant undertaking’. The German competition authority can rely more broadly on the need to ‘protect competition’ or can take action if there is ‘an imminent threat of serious harm to another undertaking’. The Hungarian competition authority can adopt interim measures if it is ‘urgently needed to protect the legal or economic interests of the concerned parties and the development, maintenance or improvement of competition is threatened’. The Lithuanian competition authority must show ‘material damage or irreparable consequences for the interests of undertakings or the public’.

For other national competition authorities, the test is instead linked to preserving the outcome of the proceedings. The Czech competition authority can adopt interim measures if it considers it ‘necessary to provisionally regulate the situation of the parties or if there are concerns that the execution of a decision could be jeopardised’. The Spanish competition authority must show that the interim measures are necessary to ensure ‘the effectiveness of the decision that will be issued in due course’.

In Austria, *prima facie* evidence of an infringement is sufficient grounds for adopting interim measures, irrespective of the harm.

When it comes to the finding of an infringement, most national competition authorities must demonstrate *prima facie* evidence of an infringement to be able to adopt interim measures. The national laws of France and Slovenia seem to provide for a lighter requirement: in both Member States interim measures can be adopted if it can be shown that there is ‘a likelihood’ of an infringement of EU antitrust rules.

Procedural requirements

There are differences between the procedural requirements of national competition authorities when it comes to the adoption of interim measures. This is mainly due to differences in their national enforcement systems, the structure of the national competition authority, and procedural requirements which are not harmonised at EU level. By way of example, Austria and Malta have a judicial enforcement system, meaning that the national administrative competition authority must apply for interim measures to the court that acts as the national judicial competition authority¹⁰. Member States also differ in terms of whether the same proceedings as those for a decision on the merits are to be followed for the adoption of interim measures, or whether there are certain procedural particularities that allow the national competition authority to act more swiftly.

16 national competition authorities have procedural particularities when adopting interim measures compared with their proceedings for a decision on the merits. Most of these particularities relate to a certain limitation to the rights of defence of the undertaking concerned. In Italy, the national competition authority can, exceptionally and in cases of extreme urgency, impose provisional interim measures without hearing the undertaking concerned (*inaudita altera parte*)¹¹. Similarly, the Bulgarian competition authority does not need to allow for written observations from the undertaking or organise a hearing, and there is no access to the file. The Swedish competition authority also indicated that there is no need to hear the undertaking concerned, although in practice there is always some dialogue, and that access to the file can be refused.

In Finland and Germany, the right to be heard of the undertaking concerned can be limited due to the urgency of the proceedings. In Germany, this means that the right to be heard would be limited to an oral hearing as an exception to the normal written procedure. The Portuguese competition authority can postpone both the access to the file and the hearing of the parties until after the adoption of the interim measures. In Lithuania and Poland, there is no hearing.

Other procedural particularities relate to procedural deadlines. In Czechia, an application for interim measures by a third party must be decided within 10 days. In Romania, the undertaking has 15 days to respond to the notification of the intention of the competition authority to adopt interim measures, and the national competition authority must adopt the decision within another 15 days. In Belgium, the hearing is organised within 1 month, and the decision on the interim measures must be taken within 1 month from the hearing¹². In Spain, the investigative body has 2 months to submit a report to the board, while the undertaking has 5 days to submit written

¹⁰ In accordance with Article 2(3) of the ECN+ Directive, ‘national judicial competition authority’ means a judicial authority designated by a Member State to carry out some of the functions of a national competition authority.

¹¹ The measures are of a provisional nature and are subject to confirmation after the parties have been granted the opportunity to respond to the allegations.

¹² The time limit for the hearing can be extended by 2 additional weeks; and the decision period may be suspended for 8 working days in total to allow the parties to submit their observations if the envisaged interim measures depart from the request for interim measures.

observations, and the board subsequently has 3 months to adopt a decision. In Malta, the undertaking has 8 days to file a reply to the national competition authority's application to impose interim measures, and the court must decide 'with urgency' and can organise only one hearing.

In other Member States, certain parts of the proceedings can be shortened. The Portuguese competition authority can grant shorter time periods to the parties to present their views (e.g. 5 days instead of 30 days). This is also the case in Lithuania (i.e. a minimum of 7 days instead of a minimum of 14 days). In Denmark, there is a shorter deadline for the hearing.

The French competition authority follows an indicative timetable of 90 days from the beginning of the investigation until the hearing. The proceedings are also predominantly oral. The parties can submit written observations, but the investigative body only presents its views orally at the hearing. For certain more straightforward cases, the process can be limited to a hearing, or a direct request to the board to reject the application.

In Greece, the national competition authority can adopt an interlocutory injunction (i.e. a temporary order), after summoning the undertaking concerned to a hearing, which is valid until the adoption of the final interim-measures decision. The interim measures must be brought before the decision-making body within 30 days, otherwise the interlocutory injunction automatically expires.

The below overview of the national competition authorities' powers to adopt interim measures is based on legislative texts and the explanations of national competition authorities. It indicates which Member States (i) have a less stringent substantive legal test for imposing interim measures, as compared to the test included in Article 11 of the ECN+ Directive and Article 8 of Council Regulation (EC) No Regulation 1/2003 and/or (ii) have less stringent procedural requirements for the adoption of interim measures, as compared to the proceedings on the merits.

Table 1: Overview of the substantive legal test and procedural requirements for the adoption of interim measures

Member State	Less stringent substantive legal test	Less stringent procedural requirements
Austria	☑	
Belgium	☑	☑
Bulgaria		☑
Croatia		
Cyprus		
Czechia	☑	☑
Denmark	☑	☑
Estonia		
Finland		☑
France	☑	☑
Germany	☑	☑

Greece		<input checked="" type="checkbox"/>
Hungary	<input checked="" type="checkbox"/>	
Ireland		
Italy		<input checked="" type="checkbox"/>
Latvia		
Lithuania	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Luxembourg		
Malta		<input checked="" type="checkbox"/>
Netherlands		
Poland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Portugal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Romania		<input checked="" type="checkbox"/>
Slovakia		
Slovenia	<input checked="" type="checkbox"/>	
Spain	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sweden		<input checked="" type="checkbox"/>

4. THE USE OF INTERIM MEASURES IN THE ECN

As part of the evaluation of Council Regulation (EC) No 1/2003 and Commission Regulation (EC) 773/2004, data was collected on the decisions adopted by the national competition authorities between the time these Regulations entered into force in May 2004 and up until December 2022. These data have been complemented by the national competition authorities and considered together with the notifications of interim-measures decisions the Commission received for the period between January 2023 and June 2024. This shows that, between 1 May 2004 and 1 June 2024, a total of 95 decisions imposing interim measures were adopted by 16 national competition authorities (Austria, Belgium, Croatia, Cyprus, Czechia, France, Greece, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain and Sweden)¹³. These include decisions imposing interim measures for infringements of EU antitrust rules, as well as interim measures for infringements of equivalent provisions under national competition law.

Of these 95 decisions imposing interim measures, more than half were adopted by three national competition authorities: the French competition authority adopted 20 decisions during this period; the Belgian competition authority adopted 18; and the Italian competition authority adopted 14. Of the remaining 13 national competition authorities that adopted interim measures

¹³ The total number of decisions imposing interim measures, as well as the individual number for certain Member States included in Table 2, differ from the data included in the evaluation of Council Regulations (EC) No 1/2003 and Commission Regulation (EC) 773/2004, both because the data have been complemented by some national competition authorities as part of this analysis, and because an additional time period has been taken into account (i.e. the period between 1 January 2023 and 1 June 2024).

in the relevant period, 8 national competition authorities adopted interim measures on more than one occasion: Croatia, Cyprus, Greece, Malta, Poland, Portugal, Spain and Sweden.

Table 2: The number of interim measures adopted in the ECN between 1 May 2004 and 1 June 2024

Member State	Number of interim measures decisions
France	20
Belgium	18
Italy	14
Spain	8
Greece	7
Cyprus	6
Sweden	6
Poland	5
Croatia	2
Malta	2
Portugal	2
Austria	1
Czechia	1
Latvia	1
Luxembourg	1
Slovakia	1

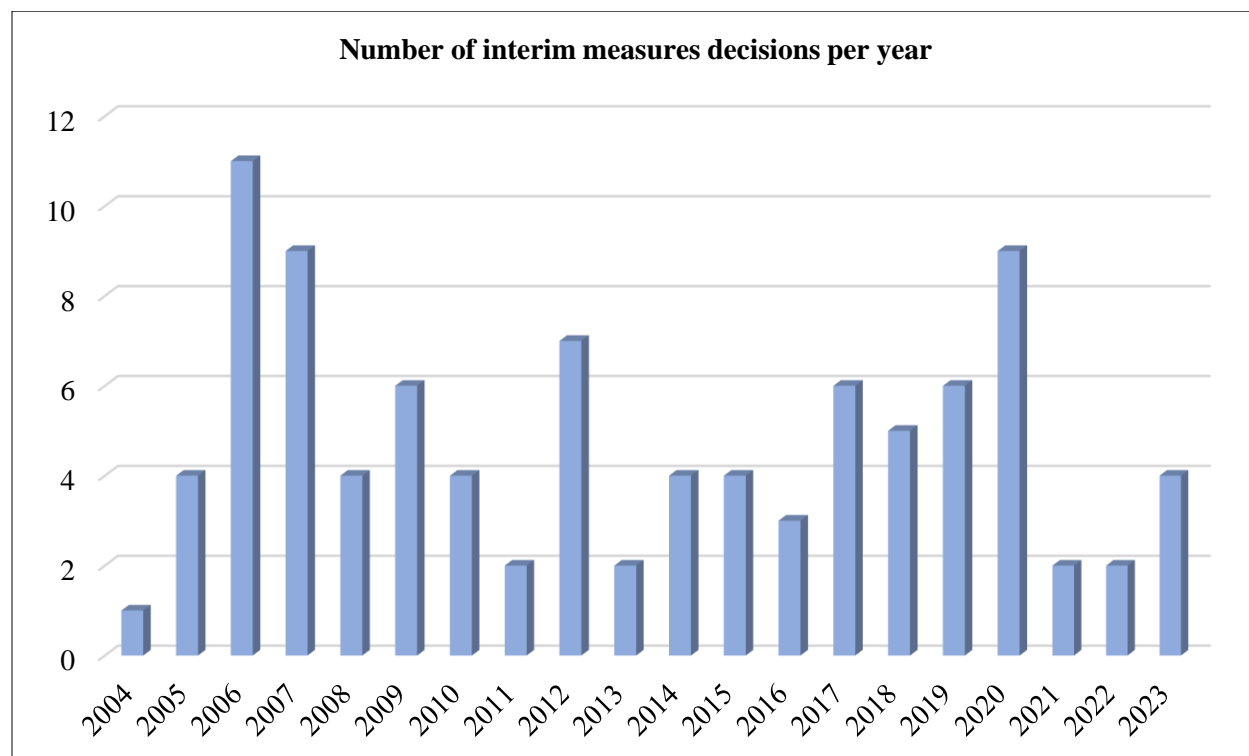
These numbers do not reflect in full the experience national competition authorities have developed over the years with interim measures. Some national competition authorities issued interim measures before May 2004¹⁴. The numbers also do not reflect cases where national competition authorities considered – but ultimately rejected – requests for interim measures; cases where they considered interim measures but they ultimately have not imposed them, because the parties offered commitments; and cases where they imposed interim measures, but those interim measures were not upheld under appeal.

When comparing these data, it can be observed that 9 of the 11 national competition authorities that have already adopted more than one decision imposing interim measures have less stringent procedural requirements than for their proceedings on the merits (Belgium, France, Greece, Italy, Malta, Poland, Portugal, Spain, Sweden). For France and Belgium, which are the two national competition authorities that adopted most interim-measures decisions, and Poland, Portugal and Spain, this is coupled with a less stringent legal test.

¹⁴ For example, the Finnish competition authority issued a decision imposing interim measures in 1993.

When looking at the number of decisions adopted per year during the period from May 2004 to June 2024, it can be observed that the national competition authorities adopted, on average, 5 decisions imposing interim measures per year. The chart below shows that the number has varied per year, but there is no overall increasing or decreasing trend.

Chart 1: The number of interim measure decisions by national competition authorities of the ECN per year



5. EXPERIENCE WITH THE TOOL: USEFULNESS AND SUITABLE CASES

National competition authorities also provided qualitative feedback on their experience with interim measures. The great majority of the responding national competition authorities had an overall positive experience with interim measures and said that they consider them a useful enforcement tool¹⁵. These national competition authorities underlined the importance of: (i) their ability, via interim measures, to either preserve the structure of a market until a decision in the main proceedings is adopted, or to restore competition on the market in the short term; (ii) the deterrent effect of interim measures; and (iii) the suitability of interim measures to address issues arising in fast-moving markets. As one of them explained ‘they can be used to prevent serious and irreparable damage to competition which could otherwise not be prevented through other available tools’.

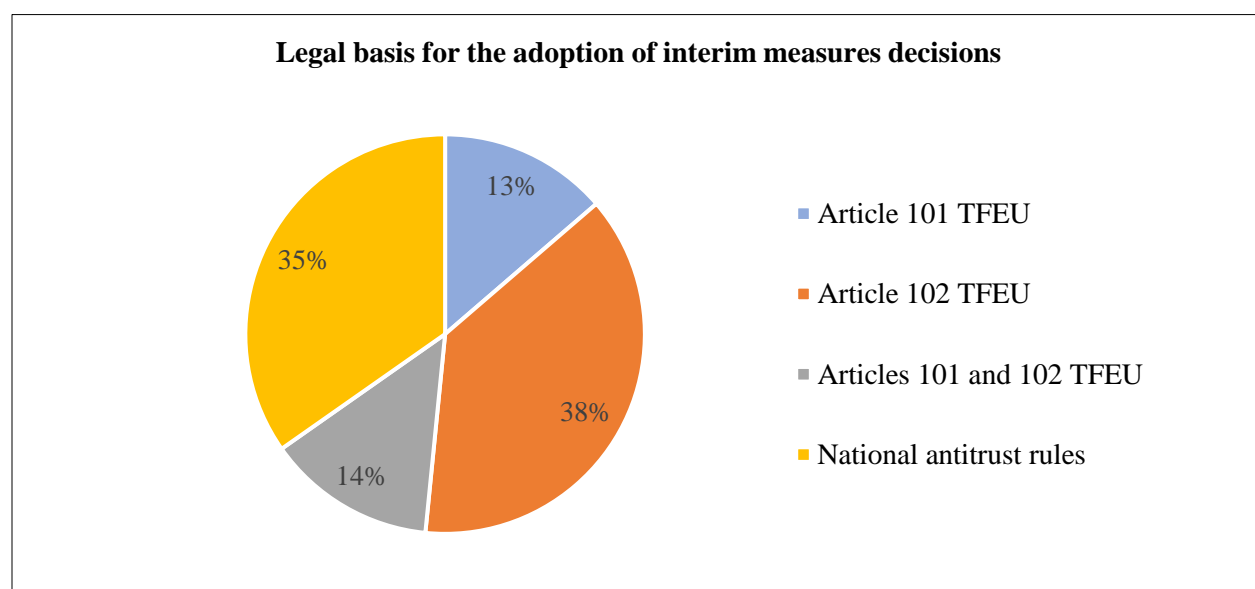
¹⁵ 14 national competition authorities responded to a question asking for their overall views on interim measures and 13 responded saying that they considered them useful.

One national competition authority did not speak favourably of this enforcement tool, and instead mentioned the challenges related to proving both a *prima facie* infringement and urgency for the imposition of interim measures. This national competition authority prefers instead to swiftly proceed with the proceedings that lead to the adoption of a decision on the merits of the case.

When asked about the impact of interim measures on the proceedings on the merits (i.e. whether interim measures increase or decrease the total duration of proceedings, or whether they increase the chance of reaching a settlement with the parties involved or the parties offering commitments), national competition authorities had diverging views¹⁶. Most national competition authorities, all of which have adopted at least one decision imposing interim measures, consider that the use of this enforcement tool may decrease the total length of proceedings, some of which may end with commitments offered by the parties to the proceedings to solve the antitrust concerns identified. Some national competition authorities argued that the impact of interim measures on the length on the main proceedings can vary, from shortening proceedings to prolonging them, depending on both: (i) the specific circumstances of the case; and, most importantly (ii) whether the decision imposing interim measures is ultimately upheld by the review court.

Many examples of cases show that interim measures are a versatile tool, although far from being suitable for all antitrust investigations. They can be useful in investigations into both potentially anti-competitive agreements and potential abuses of a dominant position. The chart below shows that, of the 95 decisions adopted by national competition authorities, most of the decisions based on EU antitrust rules were related to potential abuses of a dominant position (Article 102 TFEU).

Chart 2: The legal basis of the interim measure decisions by national competition authorities in the ECN



¹⁶ 9 national competition authorities responded to the question.

The most common practices for which interim measures were imposed include refusal to supply (where a dominant undertaking refuses to supply a product or service to a downstream competitor), and collective boycott (where a group of competitors agrees to exclude or hinder an actual or potential competitor). National competition authorities point out that it is often cases involving a more straightforward theory of harm that are particularly suitable for the use of interim measures. Although some national competition authorities indicate that cases in the digital sector may be particularly suitable for the use of interim measures, the examples show that interim measures have been imposed across different sectors, from telecoms to basic industries and from broadcasting to the agricultural sector.

The interim measures that have been adopted by national competition authorities vary depending on the specific circumstances of the case. They typically take the form of an obligation to suspend an agreement, or certain of its clauses, to (re)start the supply of a certain product or service or to change the conditions under which access is granted to a certain facility or resource.

The below examples provided by the three national competition authorities that have used this tool most extensively illustrate the versatility of interim measures.

Obliging Google to negotiate remuneration with news publishers

In 2019, the French competition authority issued interim measures obliging Google to negotiate with news publishers the remuneration for showing their copyright-protected content, such as photos or short extracts of their articles¹⁷. At that time, a new legislative rule was about to come into force that gave news publishers the right to allow or forbid the showing of their content by digital platforms. Google's intention was to simply stop showing any such content on its websites, including Google Search, unless news publishers gave Google the authorisation to use such content free of charge. The French competition authority acted on a complaint from news publishers who believed that this approach could amount to an abuse of Google's dominant position, because Google refused to engage in negotiations about the fair remuneration to be paid for the use of such copyright-protected content. The French competition authority therefore ordered interim measures to ensure that Google negotiate in good faith with news publishers until a decision was taken on the merits of the case, subsequently imposing a fine on Google for not complying with the said measures. The proceedings on the merits concluded with commitments being proposed by Google and accepted by the French competition authority.

Allowing third party broadcasters to show football events

In 2023, the Italian competition authority imposed interim measures on two broadcasters banning certain contractual clauses between them that aimed to ensure that only them, but no other broadcaster, would have the right to show certain football competitions¹⁸. With the interim measures, the Italian competition authority intervened to ensure that other broadcasters of

¹⁷ Décision 19-MC-01 du 31 janvier 2019.

¹⁸ I857 - ACCORDO TIM-DAZN SERIE A 2021/2024.

sporting events could negotiate for the right to also show the football competitions in question. The interim measures made it possible to see football matches on channels other than those of the two broadcasters. After having investigated the merits of the case, the Italian competition authority imposed fines on the two broadcasters who concluded the agreement. The decision of the authority was upheld on appeal.

Preserving competition in the market for internet broadband

In 2023, the Belgian competition authority imposed interim measures on Proximus as part of an investigation into a potential abuse of a dominant position¹⁹. Proximus acquired EDPnet, one of its direct competitors in the wholesale and retail markets for fixed broadband internet. The Belgian competition authority believed that this acquisition could have an adverse effect on competition. It therefore imposed interim measures on Proximus to ensure both the continuity of the operations of EDPnet and EDPnet's operational and commercial independence from Proximus for the duration of the investigation into the proceedings on the merits. Proximus ultimately decided to resell EDPnet to the new entrant in the Belgian telecom sector, allowing the Belgian competition authority to conclude its investigation.

6. CONCLUSIONS

By now all national competition authorities of the ECN have the power to adopt interim measures for infringements of EU antitrust rules.

While most national competition authorities already had this power before the transposition of the ECN+ Directive, the Directive has led to more harmonisation, by allowing national competition authorities to: (i) issue interim measures *ex officio*, meaning on the initiative of the national competition authority without the prior request of a third party; (ii) base such interim measures on the finding of a *prima facie* infringement; and (iii) renew the interim measures until the adoption of the decision on the merits of the case. Some differences remain, both in terms of the substantive legal test to be applied and procedural requirements across Member States.

The actual use of interim measures varies greatly among national competition authorities. Most national competition authorities that adopted more than one decision have certain procedural particularities that allow them to act more swiftly than in proceedings on the merits, sometimes in combination with a less stringent substantive legal test. Thus, it appears that more streamlined proceedings, possibly in combination with a less stringent substantive legal test for imposing interim measures leads to greater use of this enforcement tool.

At the same time, there are also national competition authorities that despite less stringent proceedings and substantive legal test have not adopted decisions imposing interim measures. Thus, it also appears to be a strategic choice of national competition authorities to use interim measures.

¹⁹ Décision n° ABC-2023-RPR-17 du 21 juin 2023 dans l'affaire n° CONC-RPR-23/0002.