

## The power of the European Commission to impose sanctions

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The rules on competition set out in Article 81 and subsequent articles of the Treaty establishing the European Community (EC) constitute one of the instruments involved in the establishment of the common market. These rules form the basis of a system which ensures that competition in the internal market is not distorted (Article 3(g) of the EC Treaty).

The Commission is responsible for ensuring that the principles set out in Articles 81 and 82 of the EC Treaty are duly applied, in other words, the ban on agreements between undertakings and abuse of a dominant position. If the Commission finds, on application by a Member State or on its own initiative, that these principles have been infringed, it will propose suitable measures to terminate the infringement. If the infringements are not terminated, it will record the infringement in a reasoned decision (Article 85 of the EC Treaty).

In the performance of its duties, the Commission has the power to impose sanctions on undertakings or associations of undertakings. Accordingly, pursuant to Council Regulation (EC) No 1/2003, of 16 December 2002, implementing the competition rules provided for by Articles 81 and 82 of the Treaty which abrogates Council Regulation (EEC) No 17/62, of 6 February 1962, the Commission may, by means of a decision, impose **fin**es on the undertakings or associations of undertakings which, either deliberately or negligently:

– supply incorrect or misleading information, or supply information outside the required time-limit in response to a request for information, or refuse to submit to inspections which have been ordered by the Commission; during such inspections produce the required books or other records related to the business in incomplete form; reply to a question in an inaccurate, incomplete or misleading manner; fail or refuse to provide a complete answer, or fail to rectify, within the required time-limit, an inaccurate, incomplete or misleading answer; or if seals affixed during such inspections have been broken; (fines not exceeding 1 % of the total turnover in the preceding business year);

— infringe Articles 81 or 82 of the Treaty, or contravene a decision ordering interim measures or fail to comply with a commitment made binding by a decision of the Commission (for each of the undertakings which participated in the infringement, the fine may not exceed 10 % of its total turnover in the preceding business year; where the infringement of an association relates to the activities of its members, the fine may not exceed 10 % of the sum of the total turnover of each member active on the market affected by the infringement of the association). In fixing the amount of the fine, regard shall be had both to the gravity and the duration of the infringement.

The Commission may also impose on undertakings and associations of undertakings periodic penalty payments not exceeding 5 % of their average daily turnover in the preceding business year per day, calculated from the date that it appoints in its decision, in order to compel them to put an end to an infringement under Articles 81 or 82 of the Treaty, to comply with a decision ordering interim measures or with a commitment made binding by a decision that the Commission has adopted, to supply complete and correct information which it has requested, or to submit to an investigation that it has ordered.

In application of Article 229 of the EC Treaty, the Court of Justice has the power of unlimited jurisdiction over decisions where the Commission might impose fines or penalties.

Other Regulations that provide for sanctions in the area of competition are the following:

– Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway;

- Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport;
- Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules of competition to undertakings in the air transport sector;
- Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems;
- Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (amended by Council Regulation (EC) No 1310/97 of 30 June 1997), repealed and replaced by Council Regulation (EC) No 139/2004 of 20 January 2004, on the control of concentrations between undertakings.

The Commission may also impose sanctions on persons or undertakings in the event of an infringement of the obligations imposed upon them in the area of safeguards under the Treaty establishing the European Atomic Energy Community (EAEC or Euratom) (Article 83).

In addition, under the Treaty establishing the European Coal and Steel Community (ECSC) – which expired on 23 July 2002 – several provisions conferred on the Commission the power to impose sanctions on undertakings: Article 47 (the Commission’s power of inquiry), Article 54 (investment and financial aid), Articles 58 and 59 (production), Article 64 (prices), Articles 65 and 66 (agreements and concentrations) and Article 68 (wages and movements of workers).