

THE ROMANIAN LENIENCY PROGRAMME BETWEEN CONTINUITY AND CHANGE. AN EMPIRICAL VIEW*

*Nathaniel CORNOIU-JITĂRAȘU***

Faculty of Law, University of Bucharest

Abstract:

This brief study tries to give an account on the evolution of the Romanian leniency policy from 2004 until today, under the light of the similar EU legal norms and taking into account the fact that our subject was scarcely studied until now.

Romania has adopted its first leniency policy in competition matters in 2004 and five years later this program was improved. Comparatively to the EU member states, until 2002 only four countries have adopted a leniency policy and thus surpassed Romania in this field.

From a certain perspective, the reluctance of the Romanian Competition Authority (RCA) to adapt a foreign instrument to the national legal system may seem unexplicable. That's why taking a closer look to this phenomenon could certainly help us better understand such a late start.

As the Romanian Leniency Policy (RLP) does not present original features compared to the U.S. and E.U. prototypes, we shall concentrate not on the description of its framework, but rather try to explain the reasons of its malfunctioning.

Keywords: antitrust, leniency policy, Romania, Competition Council

Introduction

This brief study tries to give an account on the evolution of the Romanian leniency policy from 2004 until today, under the light of the similar EU legal norms and taking into account the fact that our subject was scarcely studied until now¹.

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** Ph.D student in Public International Law, Faculty of Law, University of Bucharest.

¹ For more details, see: Cristina BUTACU, *Legislația concurenței. Comentarii și explicații* [(Bucharest: Editura All Beck, 2005, vii, 278pp.), pp. 243-246]; Carmen Manuela PELI, Chapter 24. Romania [in: Marjorie HOLMES, Lesley DAVEY (eds.), *A practical guide to national competition rules across Europe* (second edition, International Competition Law Series, vol. 13, The Hague: Kluwer Law International, 2007, pp. 755-757)]; Emilia MIHAI, *Dreptul concurenței. Drept comunitar și drept românesc* [(Timișoara: Editura Mirton, 2008, 377pp.), pp. 151-153]; Bogdan BUNRĂU, [Anti-cartel enforcement in] Romania [in: Maher M. DABBAH, Barry E. HAWK (eds.), *Anti-cartel enforcement worldwide* (vol. 3, Cambridge: Cambridge University Press, 2009, cxix, pp. 887-1.343), pp. 1.005-1.009]; Manuela GUIA, Cătălin SULIMAN, Romania commentary [in: *Competition Law in Western Europe and the USA* (Kluwer Law International, 2009, Supplement no. 293, pp. RO.C-19 – RO.C-20)]; Anca BUTA MUȘAT, [Enforcement of Competition Law in] Romania [in: *The international comparative legal guide to: Enforcement of Competition Law 2009* (London: Global Legal Group, 2009), Chapter 20, p. 133]; Diana RISTICLI, Livia CONSTANTINESCU, The

In order to speak about a leniency programme – Romanian or of another origin – one must first see what leniency means. Although the word "leniency" exists since 1753 and has as synonym the noun "mercy"², being used for the first time in 1879, by the German politician Eugen Richter³, the leniency policy is a recently invented antitrust tool which still is not so famous to deserve an entry in the legal dictionaries⁴, but which has allowed some international⁵ and national antitrust authorities to discover major secret cartels, apply heavy fines⁶ and restore free competition for the benefit of the consumers both in the United States and in Europe.

In 1978, the U.S. Department of Justice was the first competition authority to adopt a leniency policy⁷ – which was later developed in a Corporate Leniency Policy⁸ (1993)⁹ and afterwards followed by a Leniency Policy for Individuals¹⁰ (1994).

At the European level, the European Commission has adopted its first leniency programme¹¹

Competition Council adopts revised Leniency Notice for cartel participants (DLA Piper News and Insights, 10 September 2009, 3pp.); Ramona LIE, Cristina VOEDVOSCHI, [Cartels and leniency in] Romania [in: The international comparative legal guide to: Cartels & Leniency 2010 (London: Global Legal Group, 2010, Chapter 34, pp. 205-206)]; Remus ENE, Alina DEIAC, [Competition litigation in] Romania [in: The international comparative legal guide to: Competition Litigation 2010 (London: Global Legal Group, 2010), Chapter 26, p. 142]; Valentin MIRCEA, Legislația concurenței. Comentarii și explicații [(Bucharest: Editura C. H. Beck, 2012, xii, 274pp.), pp. 209-214].

² Merriam-Webster Online Dictionary [available at: <http://www.merriam-webster.com/dictionary/leniency> (accessed 28 November 2012)].

³ Gordon SCHNELL, Aymeric DUMAS-EMARD, How to catch a thief – corporate leniency and the irrepressible challenge of cartel detection; finding a better way {[CPI Antitrust Chronicle, no. 2/27.9.2011, 7pp.], p. 2 and footnote 3}.

⁴ The most recent and well-known works of this kind offer no clue about leniency policy: David HAY (ed.), Words and phrases legally defined (I-II, fourth edition, London: LexisNexis, 2007, 1.317pp., 1.378pp.); Peter CANE, Joanne CONAGHAN (eds.), The new Oxford companion to law (Oxford: Oxford University Press, 2008, lxxxiii, 1.306pp.); Bryan A. GARNER (ed.), Black's Law Dictionary (ninth edition, St. Paul: West, 2009, xxxi, 1.920pp.).

⁵ Between February 2002 and December 2005, 167 cartels were turned in to the European Commission by leniency applicants {Tobias KLOSE, Commission Notice on immunity from fines and reduction of fines in cartel cases (Leniency Notice) [in: Günter HIRSCH, Frank MONTAG, Franz Jürgen SÄCKER (eds.), Competition Law: European Community practice and procedure. Article by article commentary [(London: Sweet & Maxwell, 2008, xxx, 2.845pp.), pp. 1.858-1.891], p. 1.860}.

⁶ For instance, between 1997 and 2009, in the United States more than 5 billion U.S. dollars were paid by cartelists turned in by leniency applicants [Scott D. HAMMOND, Cornerstones for an effective leniency programme (Paper presented before the 7th Meeting of the Latin American Competition Forum, Santiago, Chile, 9 September 2009), p. 3].

⁷ Donald C. KLAWITER, US Corporate Leniency after the blockbuster cartels: are we entering a new era? [in: Claus-Dieter EHLERMANN, Isabela ATANASIU (eds.), European Competition Law Annual 2006. Enforcement of prohibition of cartels [(Oxford: Hart Publishing, 2007, xlix, 624pp.), p. 489-509], p. 489]; Mihai BERINDE, Cartels – between theory, leniency policy and fines [(Analele Universității din Oradea, Seria Științe economice, vol. 17, no. 1/2008, 4pp.), p. 2]; G. SCHNELL, A. DUMAS-EMARD, art. cit., p. 3.

⁸ Its text is available at: <http://www.justice.gov/atr/public/guidelines/0091.pdf> (accessed 28 November 2012).

⁹ Wouter P. J. WILS, Leniency in antitrust enforcement: theory and practice [(World Competition, vol. 30, no. 1/2007, pp. 25-64), p. 26]; M. BERINDE, art. cit., p. 2.

¹⁰ Its text is available at: <http://www.justice.gov/atr/public/guidelines/0092.pdf> (accessed 28 November 2012).

¹¹ The Commission Notice on the non-imposition or reduction of fines in cartel cases was published in the Official Journal no. C 207 of 18 July 1996, pp. 4-6 and its text is available at:

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996Y0718\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996Y0718(01):EN:HTML) (accessed 28 November 2012).

in 1996¹², which was improved in 2002¹³ and 2006¹⁴.

Regarding the Romanian case, leniency was adopted the first time in 2004 and later improved in 2009. Comparatively to the EU member states, until 2002 only four countries have adopted a leniency policy¹⁵ and thus surpassed Romania in this field.

But from another perspective, the reluctance of the Romanian Competition Authority (RCA) to adapt a foreign instrument to the national legal system may seem unexplicable. That's why taking a closer look to this phenomenon could certainly help us better understand such a late start.

First, we should keep in mind that the first antitrust rules were adopted by Romania soon after the regime change of 1989. Thus, under the pressure of the process of co-operation with the European Communities, by the Law no. 15 of 7 August 1990¹⁶, Art. 85-90 of the E.E.C. Treaty became one of the first – if not the very first – pieces of *acquis communautaire* implemented in the Romanian legislation¹⁷.

Unfortunately enough, a set of political and economical factors have blocked the application of these norms until February 1997, when Law no. 21/1996 fully entered into

¹² For details, see: Joan D. HUNTER, Stephen HORNSBY, New incentives for "whistle-blowing": will the E.C. Commission's Notice bear fruit? (*European Competition Law Review*, vol. 18, no. 1/1997, pp. 38-41); Wouter P. J. WILS, The Commission Notice on the non-imposition or reduction of fines in cartel cases: a legal and economic analysis (*European Law Review*, vol. 22, no. 2/1997, pp. 125-140); Lidwyn BROKX, A patchwork of leniency programmes (*European Competition Law Review*, vol. 22, no. 2/2001, pp. 35-46); Mona BANU, Instrumente de combatere a cartelurilor. Politica de clemență în Uniunea Europeană (Profil: Concurența, no. 3/2005, pp. 46-50); François LÉVÊQUE, L'efficacité multiforme des programmes de clémence [(*Concurrences*, nr. 4/2006, p. 31-36), p. 31]; M. BERINDE, art. cit., p. 2; E. MIHAI, op. cit., p. 144 and footnote 128.

¹³ The Commission Notice on immunity from fines and reduction of fines in cartel cases was published in the Official Journal no. C 45 of 19 February 2002, pp. 3-5 and its text is available at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002XC0219\(02\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002XC0219(02):EN:NOT) (accessed 28 November 2012). For more details, see: Johan CARLE, The new Leniency Notice (*European Competition Law Review*, vol. 23, no. 6/2002, pp. 265-272); Mark JEPHCOTT, The European Commission's new Leniency Notice – whistling the right tune (*European Competition Law Review*, vol. 23, no. 8/2002, pp. 378-385); Christof R. A. SWAAK, D. Jarrett ARP, A tempting offer: immunity from fines for cartel conduct under the European Commission's new Leniency Notice (*European Competition Law Review*, vol. 24, no. 1/2003, pp. 9-18); F. LÉVÊQUE, art. cit., p. 31; M. BANU, art. cit., p. 46; E. MIHAI, op. cit., p. 144 and footnote 129.

¹⁴ The Commission Notice on immunity from fines and reduction of fines in cartel cases was published in the Official Journal no. C 298 of 8 December 2006, pp. 17-22 and its text is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:298:0017:0022:EN:PDF> (accessed 28 November 2012). For some details, see: Jatinder S. SANDHU, The European Commission's leniency policy: a success? (*European Competition Law Review*, vol. 28, no. 3/2007, pp. 148-157); George PERETZ, Tim WARD, Ronit KREISBERGER, The Leniency Notice: cartel cases [in: Peter ROTH, Vivien ROSE (eds.), *Bellamy & Child European Community Law of Competition* (sixth edition, Oxford: Oxford University Press, 2008, ccxxvi, 1.679pp.), pp. 1.312-1.323]; Roberto GRASSO, The E.U. Leniency Program and U.S. Civil Discovery Rules: a fraternal fight? (*Michigan Journal of International Law*, vol. 29, no. 3/2008, pp. 572-584).

¹⁵ Kris DEKEYSER, Maria JASPERS, A new era of ECN cooperation. Achievements and challenges with special focus on work in the leniency field [(*World Competition*, vol. 30, no. 1/2007, pp. 3-24), p. 14].

¹⁶ This legislative act was published in the Official Journal of Romania, no. 98 of 8 August 1990.

¹⁷ Paul-Mircea COSMOVICI, La concurrence en droit national et en droit communautaire [(*Revue internationale de droit comparé*, vol. 45, no. 2/1993, pp. 395-409), p. 403]. For more details, see: Anca Daniela CHIRIȚĂ, The German and Romanian abuse of market dominance in the light of 102 TFEU [(*Baden-Baden: Nomos*, 2011, 395pp.), p. 19 and footnotes 12-13].

force, although on the 1st of February, 1995 came into force the European Agreement establishing an association between the European Communities and their member states, and Romania, of the one part, and the Republic of Romania, of the other part¹⁸, signed in Bruxelles, on the 1st of February, 1993, and therefore art. 64 on the prohibition of illegal agreements between undertakings, abuses of dominant position and illegal state aids became part of the national law two years before the Romanian Law on Competition.

As the Romanian Leniency Policy (RLP) does not present original features compared to the U.S. and E.U. prototypes¹⁹, we shall concentrate not on the description of its framework, but rather try to explain the reasons of its malfunctioning.

I. The beginnings

When the antitrust enforcement system was designed in 1996, the Romanian lawmakers have chosen to delegate the power to enact a leniency programme to the Romanian Competition Authority²⁰, which decided to make use of its right not before applying the law "the hard way" during several years.

Thus, the first Romanian Leniency Programme (RLP1) was enacted only in 2004, by Order²¹ of the President of the Competition Council no. 93 of 22nd of April, 2004²².

Adopted soon after the beginning of the Romania's official negotiations for the EU accession, RLP1 was naturally consistent with the European legislation, but its regular form was not sufficient for producing any results, which means that during the period between its adoption in 2004 and its replacement in 2009, no application was made for leniency to the RCA under the RLP1²³.

One may see this result as a pure failure of the leniency system in Romania, which probably explains that until now no reason was given for such a misfortune²⁴; but examining closer this matter, we shall try to find an explanation for the fact that such an effective antitrust enforcement tool proved to be useless in the hands of the RCA.

Basically, which factors – economical, political, legal, cultural etc. – were so influential that a whole policy simply remained on paper, instead of producing tangible results? The main circumstances of the RLP1's failure could be described as follows:

i) It could not be said, nor proved that the RLP1 didn't work because of the absence of cartels in Romania, knowing that, according to certain sources, every important economic activity on the Romanian market is dominated by a strong anticompetitive agreement.

¹⁸ First, it was published incompletely (i.e. without its 7 Protocols and 19 Annexes) in the Official Journal of Romania no. 73 of 12 April 1993, pp. 2-23, and then in the Official Journal of the European Communities no. L 357 of 31 December 1994, pp. 2-189.

¹⁹ As some authors have said that RLP1 is very similar to the European Commission's Notice on the immunity from fines and reduction of fines in cartel cases issued in 2002 [C. BUTACU, op. cit., p. 243 and footnote 2; E. MIHAI, op. cit., p. 151; B. BUNRĂU, art. cit., p. 1.005], the same finding applies to RLP2 compared to the European Commission's Leniency Policy published in 2006.

²⁰ See Art. 56 (2) of the Law no. 21/1996 (the first version, before the amendments of 2010-2011).

²¹ The full title of this act is: Ordin privind punerea în aplicare a Instrucțiunilor privind condițiile și criteriile de aplicare a unei politici de clemență potrivit prevederilor art. 51 alin. (2) din Legea concurenței nr. 21/1996, cu modificările și completările ulterioare.

²² This administrative act was published in the Official Journal of Romania no. 430 of 13 May 2004.

²³ C. M. PELI, art. cit., p. 757; M. GUIA, C. SULIMAN, art. cit., p. RO.C-20.

²⁴ M. GUIA, C. SULIMAN, art. cit., p. RO.C-20.

ii) The RLP1 did not failed because of a poor legal design or any other serious flaw, as such a problem was not detected in 5 years, of which half has passed for Romania as member of the European Union and a half as associate to the E.U. On the contrary, the efforts of RCA to adapt to the European Commission's standards regarding the leniency policy were fully recognized even by some authors²⁵.

iii) Is it possible that a better application of RLP1 was lost by its late adoption? In other words, if the RCA would have enacted in 1996-1997, using the E.C. model of 1996, and not eight years later, would the results have looked different?

On one hand, although a positive answer is very easy to give, such a theoretical projection seems to be merely an intellectual speculation than a solid argument.

On the other hand, from the perspective of the cartelists discovered between 1997 and 2004 and sanctioned by the RCA, it must be underlined that the absence of a leniency programme was not covered by the law, nor invoqued by those concerned before the courts.

iv) The RLP1 was not incompatible with Romania's legal system²⁶, as no case was brought before the national courts for its annulment.

v) The simple adoption of a leniency policy does not automatically produce a significant positive change in the firms' illegal behaviour, nor it causes overnight a transformation of the former cartelists into national competition authorities' informants²⁷. When evaluating the possibilities of a leniency programme, we should not ignore that the best two ways to enforce competition law are: conformity – as a general rule – and the application of sanctions (i.e. administrative fines) – for the exceptional cases in which an infringement of the law takes place. Therefore, leniency is not a major means to restore competition, but only a secondary tool, which is designed to be used when violations of the legal rules occur.

vi) The gap between the very low limit of the maximum level of fines applicable to the members of a cartel (10% of the total turnover of the year before the indictment) and the probable level of effective deterrence (150% of the same turnover) – according to

²⁵ C. M. PELI, art. cit., p. 757.

²⁶ Such a critique could be technically made as far as the origin of the leniency programme is not purely European, but North-American, and if the United States of America is a Common Law country, Romania belongs to the Civil Law family of nations. In the same time, one should remember that the first antitrust laws in history came into being in some U.S. states: Maryland (1867), Tennessee (1870), Arkansas (1874), Texas (1876), Georgia (1877), Indiana (1889), Iowa (1889), Kansas (1889), Maine (1889), Michigan (1889), Missouri (1889), Montana (1889), Nebraska (1889), North Carolina (1889), North Dakota (1889), South Dakota (1889) and Washington (1889), well before the world famous Sherman Act (1890), as the 1982 Nobel laureate in Economics taught us: George Joseph STIGLER, The origin of the Sherman Act [(Journal of Legal Studies, vol. 14, no. 1/1985, pp. 1-12), p. 6]} and even the E.C. and the E.U. competition rules, through the Art. 65-66 of the Treaty of Paris establishing the European Coal and Steel Community (1951) have been inspired by the U.S. experience {Andreas WEITBRECHT, From Freiburg to Chicago and beyond – the first 50 years of European Competition Law [(European Competition Law Review, vol. 29, no. 2/2008, pp. 81-88), p. 82]}.

²⁷ If one looks at the results of the first U.S. leniency programme, the numbers are really poor: during more than 15 years (1978-1993), just 17 firms have applied for leniency and only 10 requests were approved by the Antitrust Division of the U.S. Department of Justice [E. MIHAI, op. cit., p. 142 and footnote 121].

some specialists²⁸ – couldn't be filled by the comparatively small advantages offered by RLP1, i.e. zero administrative fines.

vii) Another possible cause for the lack of leniency applications in Romania could be the so-called the "cultural factor", by which we understand the repulsion to turn in to the authorities a law violation due to the culture of fear which dominated the country before 1990, when the Romanian Home Department was perceived by many as a very powerful and efficient mechanism of oppression mainly due to the use of personal data disclosed by informants recruited from various social spheres.

viii) Last, but not least, it is highly probable that the RLP1 was fruitless because of the lack of RCA's means to ensure the whistleblowers's economic security, i.e. their protection against retaliatory measures taken by their former partners in cartels.

II. The improvements

Almost three years after the Romania's accession to the E.U. membership and five years after the enactment of RLP1, the Romanian Competition Authority had decided to adopt RLP2, which was needed both to increase the legal certainty of the future applicants and to secure a full compatibility with the E.U. corresponding rules.

Thus, the second Romanian Leniency Programme came into force in September 2009, after being adopted by the Order no. 300 of 21st of August, 2009²⁹ issued by the RCA's President and published in the Official Journal of Romania no. 610 of 7th of September, 2009.

RLP2 is quite similar to the first Romanian Leniency Programme, in the sense that immunity could be granted only to the first firm which submits information about a cartel, all the other applicants from the same agreement being able to get a reduction of the fine (up to 50% of the administrative sanction which would otherwise be imposed), depending on the degree of involvement of those concerned in the cartel's destruction.

Without eliminating all the limitations of RLP1, the second RLP certainly marks a progress comparatively to the first leniency policy, by the introduction of a marker system, which will allow applicants to secure a place on the RCA' immunity list by offering some limited information in the first place, regarding: identification details, the parties to the cartel, the product and territory affected by the cartel and the approximate duration of the illegal agreement.

III. Where do we go from here?

For the moment it would be premature to predict the fate of the Romanian Leniency Programme no. 2, but the experiences of the past allow us to foresee some of the possibilities of the new policy:

a) In the extreme negative alternative, although the obligation to establish the conditions under which immunity from fines could be offered by the RCA is

²⁸ Wouter P. J. WILS, *The optimal enforcement of EC Antitrust Law. Essays in Law and Economics* [(European Monographs, no. 33, The Hague: Kluwer Law International, 2002, xvi, 322pp.), p. 66].

²⁹ The full title of this administrative act is: Ordin privind punerea în aplicare a Instrucțiunilor privind condițiile și criteriile de aplicare a unei politici de clemență potrivit prevederilor art. 51 alin. (2) din Legea concurenței nr. 21/1996.

imperative³⁰ and therefore the RLP2 could not be abolished without being replaced with a similar programme, the non-application of this policy may transform RLP2 into a dead body of rules and also cause a lack of interest for improvement from the RCA's part³¹.

b) In the pessimistic view, if no serious and positive change of circumstances in which the RCA applies the antitrust rules, chances are great that in the near future that RLP2 will have a similar fate to RLP1's one.

c) In the optimistic alternative, due to the fact that often the context in which the leniency policy is implemented does not objectively depend on the RCA's capabilities³², it is probable that on the long term, RLP2 will bear some fruits, justify its adoption and improve the overall results of the Romanian competition enforcement system.

d) In the ponderate view, following the U.S. and E.U. patterns related to the leniency policy, the RCA may improve its enforcement system, diversify its means and adopt a more pragmatic approach: for instance, certain applications for leniency shall be made easier in the future if some rewards would be offered to the informants³³, like in the U.S. and Hungary³⁴.

It is hard to believe that RLP2 will someday become as efficient as its Western models, but taking into account the experiences of the most developed antitrust authorities, it seems that the best way to produce a great number of leniency applications is the classic one, that is the proper enforcement of antitrust rules in the current cases, including but not being limited to: solid legal analysis of the facts discovered, sound economic analysis of the markets and firms involved³⁵, careful protection of the confidential information of the parties involved³⁶, proper individualization of the

³⁰ See Art. 51 (3) of the Law no. 21/1996 (as amended by Government Emergency Ordinance no. 75 of 30 June 2010, published in the Official Journal of Romania no. 459 of 6 July 2010, pp. 3-14).

³¹ This alternative has now to be abandoned, as two years ago Dr. Bogdan Marius CHIRIȚOIU, President of the Competition Council, has publicly announced that he has approved the first request for the application of the Romanian Leniency Policy no. 2; for details, see: X, Consiliul Concurenței a aprobat prima cerere de clemență a unei firme care a încălcat legislația (Mediafax, 27 September 2010), available at: <http://www.mediafax.ro/economic/consiliul-concurentei-a-aprobat-prima-cerere-de-clementa-a-unei-firme-ca-re-a-incalcat-legislatia-7425094/> (accessed 29 October 2010).

³² Mutatis mutandis, one must not forget that in the European Commission's case, the first good results of its leniency programme came indirectly, being derived from some applications for U.S. immunity in certain global cartels [Julian M. JOSHUA, That uncertain feeling: the Commission's 2002 Leniency Notice (in: C.-D. EHLERMANN, I. ATANASIU, op. cit., p. 511-541), p. 511].

³³ For a description of the U.S. model of this antitrust tool enforcement, see: William E. KOVACIC, Bounties as inducements to identify cartels (in: C.-D. EHLERMANN, I. ATANASIU, op. cit., pp. 571-595).

³⁴ Gábor FEJES, Zoltan MAROSI, The Hungarian Parliament adopts new procedural rules rewarding individuals for reporting hard-core cartels (Act CLXIII of 2009 on the protection of fair procedures) [e-Competitions, no. 30.443/December 2009]; Márton HORÁNYI, The Hungarian Parliament amends the Competition Act and introduces rewards for information about cartels (Act CLXIII of 2009) [e-Concurrences, no. 30.634/December 2009].

³⁵ For some details, see: Tissa MANDAL, The role of economics in cartel detection through leniency programmes (Indian Journal of Law and Economics, vol. 1/2010, pp. 153-159).

³⁶ On this topic, see: Antonio CARUSO, Leniency programmes and protection of confidentiality: the experience of the European Commission (Journal of European Competition Law and Practice, vol. 1, no. 6/2010, pp. 453-477).

infringements, high respect of the parties' human rights during the investigations³⁷ and imposition of optimal fines³⁸.

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³⁷ For developments, see: Marius EMBERLAND, The human rights of companies. Exploring the structure of ECHR protection (Oxford: Oxford University Press, 2006, xxviii, 239pp.); Arianna ANDREANGELI, EU Competition enforcement and human rights (Cheltenham: Elgar, 2008, xxv, 272pp.); Thomas BOMBOIS, La protection des droits fondamentaux des entreprises en Droit européen de la concurrence (Brussels: Larcier, 2012, 293pp.).

³⁸ For details, see: Wouter P. J. WILS, Optimal antitrust fines: theory and practice (World Competition, vol. 29, no. 2/2006, pp. 183-208).

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