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Limits to the use of evidence in EU cartel enforcement: balancing effective enforcement with fundamental rights

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TABLE OF ABBREVIATIONS

Charter of Fundamental Rights	Charter of Fundamental Rights of the European Union
Commission	European Commission
Competition Council	Competition Council of the Republic of Latvia
Corruption Prevention and Combating Bureau	Corruption Prevention and Combating Bureau of the Republic of Latvia
Directive 2019/1	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
ECHR	European Convention on Human Rights
ECJ	Court of Justice of the European Union
ECtHR	European Court of Human Rights
EU	European Union
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1
OECD	The Organisation for Economic Co-operation and Development
Regulation 1/2003	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
Regulation 773/2004	Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty

Regulation 2018/1725	Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data
Senate	Department of Administrative Cases of the Supreme Court of the Republic of Latvia
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

INTRODUCTION

The European Union (EU) is founded on the establishment of an internal market, an area without internal frontiers with the free movement of goods, persons, services and capital.[1] One of the requirements that is needed to establish and develop successfully functioning internal market is competition. It has already been established in the case law that one of the aims of the regulation is not only to safeguard the market participants and the consumers, but also protect competition as such,[2] accordingly there are many rules on competition that safeguard it, including Article 101 of the Treaty on the Functioning of the European Union (TFEU).

Among the various infringements of competition law, cartels are widely recognised as the most serious infringements.[3] A cartel is a form of national or international cooperation between independent enterprises established to create a monopoly in a given industry.[4] It usually includes agreements between businesses whose objective is not to compete with one another (it may include agreements on prices, output levels, discounts, credit terms and other commercial terms) that are secret, verbal, and often informal.[5] The gravity of this conduct is reflected in the legal literature, where cartels have been described as "the ultimate evil of antitrust",[6] and scholars have consistently emphasised their harmful effects.[7] Both market participants and consumers are affected, because effective competition is a crucial element of a functioning market. Research has shown that cartels usually have an impact on prices – past research estimates that on average cartels increase prices by 20-30%[8], for this reason, the enforcement of competition rules on cartel violations is a welfare question.

Within the EU, both the European Commission (Commission) and the national competition authorities of the Member States play an active role in cartel enforcement. The scale of this activity is considerable: within the European Competition Network, a total of 3,574

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[1] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU), art 26.

[2]Case C–286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission* [2015] EU:C:2015:184, para 125.

[3]OECD, 'Recommendation of the Council concerning Effective Action against Hard Core Cartels' (OECD/LEGAL/0294, 1998) <https://legalinstruments.oecd.org/public/doc/193/193.en.pdf> accessed 10 June 2026, 4.

[4] Jonathan Law (ed), A Dictionary of Law (10th edn, OUP 2022) 'cartel'.

[5] ibid.

[6] *Verizon Communications Inc v Law Offices of Curtis V Trinko LLP* 540 US 398, 408 (2004) (Scalia J).

[7] Andreas Scordamaglia, 'Cartel Proof, Imputation and Sanctioning in European Competition Law: Reconciling Effective Enforcement and Adequate Protection of Procedural Guarantees' (2010) 7(1) Competition Law Review 5, 7 <https://new.clasf.org/CompLRev/Issues/Vol7Issue1Art1Scordamaglia.pdf> accessed 14 February 2026.

[8] John M Connor and Yuliya Bolotova, 'Cartel Overcharges: Survey and Meta-Analysis' (2006) 24 International Journal of Industrial Organization 1109–1137.

investigations were launched between 2004 and 2021, of which 546 were initiated by the Commission and 3,028 by national competition authorities.[9] According to the Commission's own statistics, 162 cartel decisions were adopted at EU level between 1990 and 2025.[10] These figures demonstrate that cartel enforcement remains a sustained priority for competition authorities across the EU, even if the discussion is open as to whether such levels of activity should be regarded as an indication of fully effective enforcement.

What distinguishes cartels from many other competition infringements, and what makes their enforcement particularly difficult, is their secretive nature.[11] Because incriminating evidence is concealed, usually accessible only to the undertakings that possess it and sometimes there is not even any incriminating evidence left to be found, competition authorities face an asymmetry of information. In response to this difficulty, EU competition law through the legislation and case law has developed a relatively flexible approach to proof, permitting authorities to establish an infringement based on circumstantial and cumulative evidence rather than requiring direct proof of an agreement. The exercise of investigative powers, however, does not take place in a legal vacuum. The gathering and use of evidence in cartel proceedings necessarily engages the fundamental rights of the undertakings and individuals concerned, in particular the right to respect for private life, the right to the protection of personal data and the right to a fair trial. This thesis focuses on these rights because they are most directly affected by the practical mechanisms of evidence gathering and use in cartel proceedings.

The interplay between effective cartel enforcement and the protection of fundamental rights is neither settled nor static. Cartel practices, investigative techniques and enforcement tools are increasingly entering the digital era, where the regulatory framework is still developing.[12] The growing importance of these questions is illustrated by the recent case law. In its 2025 Grand Chamber judgment in *Ships Waste Oil Collector BV and Others v the Netherlands*, the

[9] European Commission, 'European Competition Network – Statistics' (European Commission, 15 December 2025) <https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/statistics_en> accessed 22 April 2026.

[10] European Commission, 'Cartel Cases Statistics' (European Commission, 15 December 2025) <https://competition-policy.ec.europa.eu/document/download/b19175c3-c693-410b-b669 27d4360d359c_en?filename=cartels_cases_statistics.pdf> accessed 22 April 2026.

[11] Andreas Scordamaglia, 'Cartel Proof, Imputation and Sanctioning in European Competition Law: Reconciling Effective Enforcement and Adequate Protection of Procedural Guarantees' (2010) 7(1) Competition Law Review 5, 7 <https://new.clasf.org/CompLRev/Issues/Vol7Issue1Art1Scordamaglia.pdf> accessed 14 February 2026.

[12] OECD, 'The Optimal Design, Organisation and Powers of Competition Authorities' (OECD Competition Policy Roundtable Background Note, OECD 2023) 6–8 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/10/the-optimal-design-organisation-and-powers-of-competition-authorities_f3414675/dea26a24-en.pdf> accessed 14 February 2026.

European Court of Human Rights (ECtHR) examined the transfer of lawfully intercepted communications from a criminal investigation to a competition authority and its use in administrative proceedings.[13] A closely related question arose before the Department of Administrative Cases of the Supreme Court of the Republic of Latvia (Senate), whose judgment in case No SKA-170/2025 concerned the use of operational surveillance material as evidence in administrative cartel proceedings.[14]

The choice of this topic is motivated, on the one hand, by the author's connection to the Latvian legal order, and, on the other, by a broader interest in how EU competition enforcement interacts with the protection of fundamental rights. The recent judgment of the Senate in case No SKA-170/2025, which attracted considerable public debate in Latvia, provided the initial impulse for this study. It offered an opportunity to examine how the broader tensions of EU cartel enforcement materialise within a specific national context. Although the broader relationship between competition enforcement and fundamental rights has attracted scholarly attention,[15] the specific question of how fundamental rights operate as limits on the gathering and use of evidence has become increasingly pressing in light of the most recent case law and the ongoing modernisation of the EU procedural framework. This thesis seeks to contribute to that discussion.

Against this background, the aim of this thesis is to analyse how the evidentiary standards developed in EU cartel enforcement interact with the protection of fundamental rights, and to examine how a balance between these two objectives may be pursued. In order to achieve this aim, the thesis addresses four research questions: first, what evidentiary standards govern the proof of cartel infringements in EU competition law, and how flexible approaches to evidence have developed in this context; secondly, how the rights to respect for private life, to the protection of personal data and to a fair trial operate as legal limits on the gathering and use of evidence in cartel enforcement; thirdly, how the Latvian Supreme Court has approached the

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[13] *Ships Waste Oil Collector BV and Others v Netherlands* [GC] App nos 2799/16, 2800/16, 3124/16 and 3205/16 (ECtHR, 1 April 2025).

[14] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223. (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026.

[15] See also Andreas Scordamaglia, 'Cartel Proof, Imputation and Sanctioning in European Competition Law: Reconciling Effective Enforcement and Adequate Protection of Procedural Guarantees' (2010) 7(1) Competition Law Review 5 <https://new.clasf.org/CompLRev/Issues/Vol7Issue1Art1Scordamaglia.pdf> accessed 14 February 2026; Wouter PJ Wils, 'EU Antitrust Enforcement Powers and Procedural Rights and Guarantees: The Interplay between EU Law, National Law, the Charter of Fundamental Rights of the EU and the European Convention on Human Rights' (2011) 34 World Competition 189; Baskaran Balasingham, 'The Balance between Effectiveness and Fundamental Rights Protection in the Law and Enforcement of Article 101 TFEU' (2019) 3 European Competition and Regulatory Law Review 363.

use of operational surveillance evidence in cartel proceedings, and what this reveals about the practical challenges arising from such limits; and fourthly, how the effectiveness of cartel enforcement may be balanced with the protection of fundamental rights.

A brief observation on terminology is necessary. The term "cartel" is used throughout the thesis in the sense described above, namely as covering secret horizontal arrangements between competitors falling within the prohibition in Article 101 of the TFEU, rather than in any wider colloquial sense. The expression "evidentiary flexibility" is used to denote the body of case law permitting infringements to be established through presumptions and circumstantial evidence and does not imply any lowering of the applicable standard of proof. Finally, references to "fundamental rights" should be understood as encompassing both the rights guaranteed by the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights) and the corresponding rights protected by the European Convention on Human Rights (ECHR).

Methodologically, the thesis adopts a doctrinal and analytical approach, complemented by a historical perspective. It relies on EU primary and secondary law, the case law of the Court of Justice of the European Union (ECJ) and the ECtHR, relevant national case law, and academic literature. The development of the evidentiary standards in the case law of the ECJ is traced chronologically, allowing the analysis to show how the approach to proof in cartel cases has evolved over time. The case study of the Senate additionally draws on Latvian legislation and judicial practice, which serve to illustrate, in a concrete national setting, the more general tensions identified at EU level.

The thesis is structured in four chapters. The first chapter examines the evidentiary framework of EU cartel enforcement. It explains why the secretive nature of cartels makes them difficult to detect and prove, sets out the relevant EU framework, and traces the development of evidentiary standards in the case law of the ECJ. The second chapter turns to fundamental rights as structural limits on the gathering and use of evidence. It analyses the right to respect for private life, the right to the protection of personal data and the right to a fair trial. The third chapter presents a case study of the judgment of the Senate in the case No SKA-170/2025, setting out its factual and legal background, analysing the reasoning, and considering its significance for cartel enforcement. The fourth and final chapter considers how a balance between effective enforcement and fundamental rights protection may be constructed within EU competition law, assessing the tension of effective enforcement and fundamental rights and the possible directions for balancing both.

1. EVIDENTIARY STANDARDS IN EU CARTEL ENFORCEMENT

1.1.Challenges in detecting cartel conduct

Cartels are among the most harmful infringements of competition law, but their harmfulness is not the only feature that distinguishes them from other violations. Cartel enforcement is particularly difficult because incriminating evidence is often inaccessible to enforcement authorities. "The clandestine character of cartels grants cartel participants a monopoly (over competition enforcers) regarding the possession of such evidence."[16] This creates a challenge for competition authorities, as identifying and uncovering cartel conduct often requires considerable time and resources. A study in 2008 estimated that a functioning cartel had roughly a 13% probability of being detected.[17] Where the probability of detection remains low, a significant number of cartel infringements may continue outside the reach of public enforcement, thereby harming the competition itself and consequently other market participants, the consumers and overall economic welfare. It is important to note that this research was conducted a long time ago when business activities left a paper trail, but now in the digital age it could be suggested that the enforcement environment has changed significantly and the probability of detection may therefore have changed.

The Organisation for Economic Co-operation and Development (OECD) has identified several key aspects shaping modern competition enforcement in general, such as technological advancement, globalisation, increased market concentration, among others. [18] Some of these factors may also directly affect the detection of cartel conduct.

Firstly, technological development could constitute one of the most significant contemporary challenges for competition authorities. Digitalisation has transformed markets across numerous sectors and enabled new technologies, services and business models.[19] From a cartel enforcement perspective, market participants have access to technological tools that may create

[16] Andreas Scordamaglia, 'Cartel Proof, Imputation and Sanctioning in European Competition Law: Reconciling Effective Enforcement and Adequate Protection of Procedural Guarantees' (2010) 7(1) Competition Law Review 5, 7 <https://new.clasf.org/CompLRev/Issues/Vol7Issue1Art1Scordamaglia.pdf> accessed 14 February 2026.

[17] Emmanuel Combe, Constance Monnier and Renaud Legal, 'Cartels: The Probability of Getting Caught in the European Union' (2008) College of Europe, Bruges European Economic Research Paper No 12, 17 <https://www.coleurope.eu/sites/default/files/research-paper/beer12.pdf> accessed 14 February 2026.

[18] OECD, 'The Optimal Design, Organisation and Powers of Competition Authorities' (OECD Competition Policy Roundtable Background Note, OECD 2023) 6–7 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/10/the-optimal-design-organisation-and-powers-of-competition-authorities_f3414675/dea26a24-en.pdf> accessed 14 February 2026.

[19] ibid.

less traceable forms of communication between undertakings. For instance, digital communication channels, encrypted messaging services or algorithmic pricing tools may enable firms to coordinate behaviour while making such conduct more difficult for authorities to detect and prove. Nevertheless, technological developments have created the possibility for competition authorities to develop and use increasingly sophisticated instruments for cartel detection (one example is the use of data-scanning tools[20]). However, it is important to highlight that while such tools may enhance the effectiveness and speed of investigation, they may also increase the intensity of interference with fundamental rights. The more comprehensive and technologically sophisticated an investigative measure becomes, the greater the risk that it will interfere with fundamental rights, particularly the rights to respect for private life, data protection and a fair trial.

Secondly, globalisation can further increase the complexity of cartel detection and enforcement. As undertakings increasingly operate across borders, anti-competitive practices, including cartels, have emerged and may continue to emerge on a cross-border scale.[21] Since illegal collusive arrangements may extend across multiple jurisdictions and markets, authorities are often required to conduct investigations with a broader geographical and evidentiary scope. This may increase the complexity of cartel enforcement, as cross-border investigations often require cooperation between different competition authorities in collection, transfer and assessment of evidence across multiple jurisdictions. While EU law provides a framework for cooperation and information exchange between competition authorities[22], the practical and procedural aspects may nevertheless slow down the enforcement process. In this respect, globalisation may increase the practical difficulties faced by competition authorities, while simultaneously creating additional opportunities for cartel participants to conceal and coordinate their conduct across jurisdictions.

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[20] Jesper Fredborg Huric-Larsen, 'Cartel Formation and the Business Cycle' (2024) 20(1) European Competition Journal 25, 25–29 <https://www.tandfonline.com/doi/pdf/10.1080/17441056.2023.2234233> accessed 14 February 2026.

[21] OECD and International Competition Network, 'Report on International Co-operation in Competition Enforcement ' (OECD/ICN Report, OECD 2021) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/01/oecd-icn-report-on-international-co-operation-in-competition-enforcement_f4b1638e/86f9eb12-en.pdf> accessed 14 February 2026.

[22] Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [2003] OJ L1/1 (Regulation 1/2003); 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 [2019] OJ L11/3 (Directive 2019/1).

There is no doubt that the challenge for cartel detection and potential enforcement have long been and will remain, major challenge for competition authorities. Although the forms in which those challenges arise continue to evolve, the core problem remains the same: a profound asymmetry of information between cartel participants and enforcement authorities.

1.2. The EU legal framework governing evidence gathering in cartel proceedings

The main substantive legal basis for cartel enforcement is Article 101 TFEU. Although this article does not *expressis verbis* define the concept of a cartel, it prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.[23] As Advocate General Reischl noted in *Heintz van Landewyck SARL and Others v Commission of the European Communities*, the distinction between an agreement and a concerted practice is not always decisive, as any form of coordination or contact reflecting a "meeting of minds" between undertakings may fall within the scope of Article 101 TFEU.[24] Accordingly, Article 101 TFEU is drafted broadly enough to prevent undertakings from avoiding liability simply by choosing informal or indirect forms of coordination.

While Article 101 TFEU establishes the substantive prohibition of cartel conduct, the rules governing the detection and investigation are primarily contained in secondary EU legislation. In this regard, the central instrument is 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 (Regulation 1/2003), the purpose of which is to implement and enforce the EU competition rules laid down in Articles 101 and 102 TFEU.[25] It establishes the institutional and procedural framework for the enforcement of Articles 101 and 102 TFEU. Furthermore, it regulates such aspects as the allocation of powers between the Commission, national competition authorities and national courts, and provides the Commission with the main procedural tools necessary for enforcement, including requests for information, the power to take statements, inspections, interim measures and the imposition of fines.[26]

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[23] TFEU, art 101.

[24] Joined Cases 209–215/78 and 218/78 *Heintz van Landewyck SARL and Others v Commission of the European Communities* [1980] ECR 3125, Opinion of AG Reischl, section II.B.1.

[25] Regulation 1/2003; EUR-Lex, 'Implementing EU Competition Rules: Application of Articles 101 and 102 of the TFEU' <https://eur-lex.europa.eu/summary/EN/legissum:l26092> accessed 10 March 2026.

[26] Regulation 1/2003, arts 17–24.

Regulation 1/2003 operationalises the evidentiary flexibility discussed below by giving the Commission tools to obtain information that undertakings would not otherwise disclose voluntarily.[27] This rationale is reflected in Recital 25, which states that the detection of infringements is becoming increasingly difficult and that, in order to protect competition effectively, the Commission's powers of investigation must be supplemented.[28] At the same time, the Regulation also reflects the need to balance effective enforcement with procedural safeguards. Recital 5 emphasises that effective enforcement of EU competition rules must be ensured while respecting the fundamental rights of defence.[29]

The procedural dimension of cartel enforcement is further elaborated in Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Regulation 773/2004), which complements Regulation 1/2003 by setting out more detailed rules on the conduct of proceedings before the Commission.[30] It regulates, among other matters, the initiation of proceedings, the handling of complaints, the right to be heard, oral hearings, access to the file and the treatment of confidential information. [31]

While Regulation 1/2003 and Regulation 773/2004 primarily govern proceedings conducted by the Commission, the powers of national competition authorities have been further strengthened and harmonised through 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 (Directive 2019/1).[32] Directive 2019/1 seeks to ensure that national competition authorities possess the necessary guarantees of independence, resources and enforcement powers to apply Articles 101 and 102 TFEU effectively. [33] It establishes minimum rules regarding investigative powers, inspections, requests for information, interviews, fines and cooperation within the European Competition Network.[34] Directive 2019/1 seeks to reduce disparities between

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[27] Regulation 1/2003, arts 18–21.
[28] Regulation 1/2003, recital 25.
[29] Regulation 1/2003, recital 5.
[30] Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty [2004] OJ L123/18 (Regulation 773/2004), arts 2, 5–8, 10–17; EUR-Lex, 'Summary of Regulation (EC) No 773/2004 on the Conduct of Proceedings to Investigate Cartels by the European Commission' <https://eur-lex.europa.eu/EN/legal-content/summary/eu-competition-conduct-of-proceedings-by-the-european-commission.html> accessed 26 March 2026.
[31] Regulation 773/2004, arts 2, 5–8, 10–17.
[32]Directive 2019/1.
[33]Directive 2019/1, arts 4–5.
[34]Directive 2019/1, arts 6–13, 14–16, 24.

national enforcement systems and to promote a more effective and consistent application of EU competition law across the EU.

Beyond binding legislation, EU cartel enforcement is also shaped by soft law instruments adopted by the Commission, including the Leniency Notice, the Settlement Notice and the Fining Guidelines.[35] Although these instruments are not legally binding in the same way as regulations or directives, they play an important role in structuring the Commission's enforcement practice. In particular, they clarify how the Commission detects, investigates and sanctions cartel conduct, thereby contributing to transparency, legal certainty and compliance.

Overall, the EU legal framework relevant to evidence gathering in cartel proceedings is not contained in a single instrument but is formed by several complementary sources. Article 101 TFEU establishes the substantive prohibition, while Regulation 1/2003, Regulation 773/2004 and Directive 2019/1 define the institutional powers and procedural conditions under which competition authorities may investigate suspected infringements. This framework reflects the central tension of cartel enforcement: authorities require sufficiently effective tools to uncover secret collusion, but the exercise of those tools must remain subject to procedural safeguards and fundamental rights.

1.3. The development of evidentiary flexibility in the case law

Judicial control is a significant component of cartel enforcement, since broad investigative powers must remain compatible with fundamental rights and are subject to review by the courts. Where the Commission acts, its decisions are subject to review by the General Court and, on appeal, the ECJ; where national competition authorities act, national courts may seek interpretative guidance from the ECJ through the preliminary ruling procedure under Article 267 TFEU.[36] Taken together, these mechanisms play a central role in the continuous development and refinement of EU cartel enforcement.

Through its case law, the ECJ has developed a set of principles governing the circumstances in which cartel conduct may be established under Article 101 TFEU. These principles support effective enforcement by recognising the difficulties of proving anti-competitive coordination. The following discussion proceeds chronologically, tracing how the ECJ's approach to

[35] Commission Notice on Immunity from fines and reduction of fines in cartel cases [2006] OJ C298/17; Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) 1/2003 in cartel cases [2008] OJ C167/1; Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 [2006] OJ C210/2.
[36] TFEU, arts 256, 263 and 267.

gathering and the use of proof developed from an initially restrictive stance towards greater evidentiary flexibility within limits.

The starting point of this development can be seen in *Ahlström Osakeyhtiö and Others v Commission (Wood Pulp II) (1993)*. The case arose from a Commission's decision finding that a group of wood pulp producers, together with several of their trade associations, had engaged in price-fixing contrary to Article 101 TFEU. The Commission's case rested largely on the producers' practice of announcing their intended prices for the coming period in advance. On appeal, however, the ECJ took a restrictive view. It held that a concerted practice requires that undertakings have replaced the risks of competing lawfully with practical cooperation between them, and that the mere transparency of the market is not enough to establish an infringement. Furthermore, the ECJ found that parallel pricing behaviour cannot be treated as proof of concertation where it can be explained by the normal practice of the market. [37] The judgment confirms that, where parallel conduct has a plausible competitive explanation, it cannot by itself sustain a basis for infringement.

In *Commission v Anic Partecipazioni (1999)*, the ECJ introduced a presumption that later became known as the *Anic* presumption. Although Article 101 TFEU lists "agreements" and "concerted practices" as distinct terms in the formulation, the ECJ held that, "from the subjective point of view, they are intended to catch forms of collusion having the same nature and are only distinguishable from each other by their intensity and the forms in which they manifest themselves".[38] For the purposes of enforcement, this means that the authorities are not required to detect a formal agreement. Instead, a 'meeting of minds' between undertakings is sufficient to include the conduct within the scope of Article 101 TFEU.

This presumption was reinforced shortly afterwards in *Hüls AG v Commission (1999)*, where the ECJ held that an undertaking's participation in anti-competitive meetings gives rise to a presumption for the anti-competitive purpose of that participation. The ECJ stated that, "since the Commission was able to establish that Hüls had participated in meetings between undertakings of a manifestly anti-competitive nature, it was for Hüls to put forward evidence to establish that its participation … was without any anti-competitive intention".[39] Therefore, once the authority has established an undertaking's participation in meetings of an anti-

[37]Joined Cases C–89/85, C–104/85, C–114/85, C–116/85, C–117/85 and C–125/85 to C–129/85 *Ahlström Osakeyhtiö and Others v Commission* [1993] ECR I–1307, paras 71–72.
[38]Case C–49/92 P *Commission v Anic Partecipazioni* [1999] ECR I–4125, para 131.
[39]Case C–199/92 P *Hüls AG v Commission* [1999] ECR I–4287, para 155.

competitive nature, the burden in practice shifts to the undertaking, which must then provide evidence to rebut the that presumption.

A further dimension of evidentiary flexibility emerged in *Aalborg Portland and Others v Commission (2004)*, which concerned the way in which the existence of a cartel may be established in general. The ECJ accepted that, because anti-competitive conduct is generally pursued in secret and leaves only fragmentary documentary traces, the existence of a cartel will rarely be demonstrated by a single piece of evidence. It held that an infringement may instead be concluded from a range of coincidences and indicia which, considered together and in the absence of any other plausible explanation, are capable of establishing a breach of the competition rules.[40] Given the character of a cartel, a single "smoking gun" of evidence is rare, and an infringement will more often be proved through a bundle of circumstantial evidence that, taken together, points to an infringement.

The flexibility of this standard is further illustrated in *T-Mobile Netherlands and Others (2009)*, where the ECJ addressed how little contact may be required to establish a concerted practice. The ECJ held that, depending on the circumstances, "a single meeting between competitors may constitute a sufficient basis on which to implement the anti-competitive object which the participating undertakings aim to achieve".[41] What matters, in other words, is not the number of meetings but whether the contact gave the undertakings an opportunity to take account of the information exchanged in determining their future conduct on the market, thereby choosing coordination over genuine competition.[42] The ECJ added that, where the object of a concerted practice is anti-competitive, there is no need to establish its actual effects on the market.[43] Both findings lighten the evidentiary burden on enforcement authorities since they do not need to prove either repeated meetings or concrete effects on the market. Without such flexibility, enforcement would in many cases be impossible because the required evidence often simply does not exist.

Although the case law permits a flexible approach to the evidence, the ECJ has nonetheless maintained limits on this flexibility. The standard remains that an infringement must be

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[40]Joined Cases C–204/00 P, C–205/00 P, C–211/00 P, C–213/00 P, C–217/00 P and C–219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I–123, paras 55–57.
[41]Case C–8/08 *T-Mobile Netherlands and Others* [2009] ECR I–4529, para 60.
[42]ibid para 61.
[43]ibid para 29, see also Joined Cases 56/64 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299, 342; Case C–105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission* [2006] ECR I–8725, para 125; Case C–209/07 *Beef Industry Development Society and Barry Brothers* [2008] ECR I–8637, para 16.

established by firm, precise and consistent evidence.[44] In *Knauf Gips v Commission (2010)*, however, the ECJ clarified how this standard applies to a bundle of circumstantial evidence, meaning that it is not necessary to satisfy those criteria for each individual item in respect of every aspect of the infringement. Rather, it is enough that the evidence relied on, assessed as a whole, meets the required standard.[45] This confirms that evidentiary flexibility does not lower the threshold of proof. It only allows that threshold to be met through circumstantial evidence as well.

A further limit concerns the individual participation of each undertaking. In *Commission v Aalberts Industries and Others (2013)*, the ECJ confirmed that an undertaking cannot be held liable merely because a cartel existed. Liability requires evidence that the undertaking intended to contribute, through its own conduct, to the common objectives pursued by the participants and that it was aware of, or could reasonably have foreseen, the conduct of the others.[46] Accordingly, mere presence is not sufficient. The flexibility that applies to proving the existence of a cartel does not remove the need to prove each undertaking's individual involvement.

Two years later, in *Dole Food and Dole Fresh Fruit Europe v Commission (2015)*, the ECJ returned to the question of what conduct amounts to an infringement of Article 101 TFEU. The case concerned a concerted practice between banana importers who exchanged pre-pricing information across eight member states between 2000 and 2002. The ECJ held that an exchange of information capable of removing uncertainty as to the timing, extent and details of intended changes in the parties' market conduct must be regarded as having an anti-competitive object.[47] Significantly, it confirmed that information exchange could be considered a violation even where the exchange has no direct link to the prices ultimately paid by consumers, it is enough that the conduct affects the structure of competition itself.[48] The exchange of commercially sensitive information may amount to an infringement by object, independently from any effect on the market. Although *Wood Pulp II* and *Dole Food and Dole Fresh Fruit Europe v Commission* may seem difficult to align, the difference lies in the nature of the communication. *Wood Pulp II* dealt with public and unilateral price announcements, which could be explained

[44]Joined Cases C–89/85, C–104/85, C–114/85, C–116/85, C–117/85 and C–125/85 to C–129/85 *Ahlström Osakeyhtiö and Others v Commission* [1993] ECR I–1307, para 127.
[45]Case C–407/08 P *Knauf Gips v Commission* [2010] ECR I–6375, para 47.
[46]Case C–287/11 P *Commission v Aalberts Industries and Others* [2013] EU:C:2013:445, para 63.
[47]Case C–286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission* [2015] EU:C:2015:184, para 122.
[48]ibid paras 123–125.

by normal market transparency. *Dole Food and Dole Fresh Fruit Europe v Commission*, however, involved private exchanges of information between competitors before prices were set, reducing the uncertainty that should exist in competition. These cases therefore show that EU competition law distinguishes between ordinary market transparency and communication that enables coordination.

The boundaries of some of the presumptions established were tested in *Eturas and Others (2016)*, which concerned a number of Lithuanian travel agencies using a shared online booking system, whose administrator sent a message through the system announcing a cap on the discounts that could be offered. The ECJ held that mere awareness of a technical restriction in the system was not, by itself, enough to establish participation. Where it could not be shown that an agency had seen the message, its involvement in a concerted practice could only be inferred if other objective and consistent indicia showed that it had tacitly accepted the anti-competitive conduct.[49] *Eturas and Others* is a particularly novel case because it concerned possible collusion in a digital setting.

Taken together, this case law shows that the ECJ has developed a flexible evidentiary approach in cartel cases, but that this flexibility is not unlimited. The cases discussed above make enforcement easier by allowing the Commission to rely on presumptions, indirect evidence and the overall assessment of coincidences and indicia, if this is done lawfully. This is reinforced by the recent dawn raid judgments, including *Les Mousquetaires* and *ITM Entreprises v Commission (2023)* and *Intermarché Casino Achats v Commission (2023)*. The ECJ confirmed that, where interviews are not recorded in accordance with Article 19 of Regulation 1/2003 and Article 3 of Regulation 773/2004, the resulting material is inadmissible and cannot be relied on.[50] This means that, while evidentiary flexibility is justified by the secret nature of cartels, it cannot be used as a justification for authorities to disregard procedural safeguards.

[49]Case C–74/14 *Eturas and Others* [2016] EU:C:2016:42, para 45.
[50] Case C–682/20 P *Les Mousquetaires and ITM Entreprises v Commission* [2023] EU:C:2023:170, paras 125, 136. See also Case C–690/20 P *Casino, Guichard-Perrachon and AMC v Commission* [2023] EU:C:2023:171; Case C–693/20 P *Intermarché Casino Achats v Commission* [2023] EU:C:2023:172.

2. FUNDAMENTAL RIGHTS AS STRUCTURAL LIMITS ON EVIDENCE GATHERING AND USE IN EU COMPETITION LAW ENFORCEMENT

The enforcement of competition law does not operate in isolation from fundamental rights. It is explicitly recognised in Recital 37 of Regulation 1/2003 that the framework respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights and must therefore be interpreted and applied with respect to those rights and principles.[51]

In addition, Article 52(3) of the Charter of Fundamental Rights states that the rights guaranteed by the Charter of Fundamental Rights correspond to rights guaranteed by the ECHR and have the same meaning and scope as the corresponding ECHR rights. [52] As a result, the safeguards established by the ECHR are also applicable to competition enforcement. The scope of application of fundamental rights varies because of the nature of the particular right in question. Since the main actors in cartel enforcement are the undertakings, the question arises whether the fundamental rights ordinarily associated with natural persons also apply in these cases.

As regards the right to respect for private life, case law has established that the right to inviolability of the home under Article 8 ECHR extends to business premises of legal persons, meaning that companies may equally invoke the right to respect for private life under Article 7 of the Charter of Fundamental Rights and Article 8 ECHR, particularly in the context of dawn raids and inspections carried out by competition authorities. [53] Similarly, although the right to a fair trial is usually associated with natural persons in criminal proceedings, it extends to companies in cartel enforcement as well. Since the fines imposed in cartel cases are criminal in nature, undertakings may invoke the guarantees of Article 6 ECHR even though competition proceedings may be formally administrative.[54] By contrast, the right to data protection is exclusively designed for the protection of natural persons, because Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

[51] Regulation 1/2003, recital 37.
[52] Charter of Fundamental Rights of the European Union [2012] OJ C326/391 (Charter of Fundamental Rights), art 52(3).
[53] *Société Colas Est and Others v France* App no 37971/97 (ECtHR, 16 April 2002) para 41; see also Case C–94/00 *Roquette Frères v Directeur général de la concurrence* [2002] ECR I–9011, para 29.
[54] *A Menarini Diagnostics SRL v Italy* App no 43509/08 (ECtHR, 27 September 2011) paras 38–44.

(GDPR) defines a data subject as an identified or identifiable natural person.[55] Nevertheless, the right to data protection of natural persons, such as board members or employees, may also be affected in cartel proceedings.

The rights to respect for private life, to a fair trial and to data protection can be directly affected by the actions of authorities in cartel enforcement, thus the safeguards attached to these rights play an important role. Each of these rights in the context of cartel enforcement applies differently, depending on the nature of the right and on who is entitled to invoke it.

2.1.The right to respect for private life

In antitrust cases, the right to respect for private life may be affected right from the start. If the Commission or a national competition authority suspects a possible infringement, the authority must gather evidence. This process can be severely intrusive as the authorities have broad investigative powers and the investigation may include inspections of both the business premises and private spaces. At this stage the tension between effective enforcement and the protection of the right to respect for private life first arises.

In the EU, the right to respect for private life is safeguarded by Article 7 of the Charter of Fundamental Rights while more broadly, across the Member States of the Council of Europe, it is protected by Article 8 of the ECHR. In addition, many Member States also protect this right at the constitutional level. [56]

Article 8 ECHR provides that everyone has the right to respect for private and family life, home and correspondence.[57] In essence, this provision protects individuals against unjustified interference by public authorities in their private sphere. [58] The ECtHR has interpreted the concept of “private life” broadly, recognising that it is not capable of exhaustive definition. [59] In cartel proceedings, the aspects of Article 8 ECHR that are most frequently engaged are the protection of “home” and “correspondence”. Competition investigations regularly involve

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[55] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1 (GDPR), art 4(1).

[56] See, for example, Latvijas Republikas Satversme [Constitution of the Republic of Latvia], art 96: 'Everyone has the right to inviolability of his or her private life, home and correspondence.'

[57] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 8.

[58] Equality and Human Rights Commission, ‘Article 8: Respect for Your Private and Family Life’ <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-8-respect-your-private-and-family-life> accessed 23 May 2026.

[59] *Niemietz v Germany* App no 13710/88 (ECtHR, 16 December 1992) para 29.

inspections of business premises, seizure of documents and collection of communications, all of which may amount to interferences with the rights guaranteed under Article 8 ECHR.

The scope of Article 8 ECHR is not limited to purely private or residential spaces. Already in 1992, the ECtHR recognised in *Niemietz v Germany* that professional and business premises may also fall within the protection of Article 8 ECHR since professional life may form part of an individual's private life, particularly where it involves the development of social and professional relationships. [60] This approach was later extended in *Société Colas Est and Others v France*, where the ECtHR accepted that the concept of "home" may include a company's registered office, branches and other business premises.[61] Under Article 8 ECHR, the term "home" has been interpreted as an autonomous concept, meaning that whether a particular place qualifies as a "home" depends on the specific circumstances of the case rather than solely on its classification under national law.[62] The ECtHR further confirmed that searches, seizures and inspections can be an interference with the right to respect for the home under Article 8 ECHR, and that an undertaking's cooperation with the authorities does not negate the existence of such interference.[63]

At the same time, Article 8 ECHR also protects the confidentiality of correspondence and communications. The ECtHR has interpreted the notion of "correspondence" broadly, covering telephone calls, letters and electronic communications, including workplace emails and internet use.[64] Already in *Klass and Others v Germany*, the ECtHR confirmed that surveillance and interception of telephone and mail communications fell within the scope of Article 8 ECHR, as it constituted an interference with private life and correspondence.[65] Notably, whether an interference has occurred is not based on the content of the communication, meaning that the protection applies to the act of communicating itself, not to what is said or written. [66] Although it has been argued that telephone conversations concerning unlawful activities should not benefit from the protection of Article 8 ECHR, the ECtHR has rejected such an approach. The

[60] ibid para 29.
[61] *Société Colas Est and Others v France* App no 37971/97 (ECtHR, 16 April 2002) para 41.
[62] Ivana Roagna, 'Protecting the Right to Respect for Private and Family Life under the European Convention on Human Rights' (Council of Europe 2012) 30 <https://www.echr.coe.int/documents/d/echr/roagna2012_en> accessed 23 May 2026.
[63] Council of Europe, 'Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence' (Council of Europe 2024) para 261 <https://ks.echr.coe.int/documents/37821/7237693/Guide_Art_8_ENG.pdf/07081e5b-6e66-c439-884d-d55c793da2f6?version=12.0&t=1779457466554&download=true> accessed 21 May 2026.
[64] *Copland v United Kingdom* App no 62617/00 (ECtHR, 3 April 2007) paras 41–44.
[65] *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) para 41.
[66] *Frérot v France* App no 70204/01 (ECtHR, 12 June 2007) para 54.

ECtHR has recognised that such communications remain within the scope of Article 8, while emphasising that their unlawful character may be relevant when determining whether an interference is justified under Article 8(2).[67]

Once such an interference is established and a complaint is brought, the ECtHR examines whether it can be justified under Article 8(2) ECHR. An interference will be permissible only where the authority can demonstrate that it is in accordance with the law and both necessary and proportionate to one of the legitimate aims listed in that provision: the interests of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, or the protection of health, morals, or the rights and freedoms of others.[68]

Regulation 1/2003 reflects some safeguards to right to respect for private life in the context of cartel investigations. Under Article 20, where the assistance needed to carry out an inspection of business premises requires authorisation from a judicial authority under national rules, such authorisation must be sought. [69] The judicial authority then verifies that the Commission's decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive, having regard, in particular, to the seriousness of the suspected infringement and the nature of the undertaking's involvement.[70] A stricter regime applies under Article 21, which governs inspections of other premises, including the private homes of directors and managers, and which the Commission may order only where a reasonable suspicion exists that relevant records are kept there.[71] In such cases, prior authorisation from a national judicial authority is always mandatory, and that authority must additionally assess, among other factors, whether there is a reasonable likelihood that the relevant records are in fact kept on the premises concerned.[72]

Recent case law concerning the connection between Article 8 ECHR and competition law enforcement has increasingly focused on the compatibility of secret surveillance measures and the subsequent transmission of intercepted data to competition authorities. This has been discussed in the judgment in *Ships Waste Oil Collector B.V. and Others v the Netherlands*,

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[67] Council of Europe, 'Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence' (Council of Europe 2024) para 32 <https://ks.echr.coe.int/documents/37821/7237693/Guide_Art_8_ENG.pdf/07081e5b-6e66-c439-884d-d55c793da2f6?version=12.0&t=1779457466554&download=true> accessed 21 May 2026.
[68] ECHR, art 8(2).
[69] Regulation 1/2003, art 20(7).
[70] ibid art 20(8).
[71] ibid art 21(1).
[72] ibid art 21(3).

which concerned the information transfer to the Dutch competition authority of data lawfully obtained through telephone interception in criminal investigations and its later use in administrative proceedings relating to anti-competitive conduct.[73]

In that judgment, the ECtHR clarified that the transmission of intercept material from one authority to another constitutes a separate interference with Article 8 ECHR rights, distinct from the original interception itself. [74] Therefore, even where the initial surveillance was lawful and compliant, the transfer and use of the material must independently satisfy the requirements of Article 8(2) ECHR. The ECtHR identified several minimum safeguards that must be provided by domestic law. In particular, the transfer must be limited to material originally lawfully obtained, the circumstances in which such transfer is permitted must be defined clearly, the law must regulate how the transmitted data are examined, stored, used, passed on and destroyed and the transfer must be subject to effective review by a judicial or otherwise independent body.[75] At the same time, the ECtHR recognised the strong public interest in the effective enforcement of competition law, noting that serious anti-competitive conduct may significantly affect the economic well-being of the country. [76] Applying these principles, the ECtHR found no violation of Article 8 ECHR in this case. Although the transfers had been authorised by a prosecutor rather than by an independent body, and although the authorisations themselves did not contain detailed reasoning, the ECtHR attached weight to the fact that the intercepted material had originally been obtained on the basis of judicial authorisation. It also emphasised that the applicant companies were able to challenge both the lawfulness and proportionality of the transfers through effective *ex post facto* judicial review.[77]

Another important case related to the right to respect for private life is the case of *Vinci Construction and GTM Génie Civil et Services v France,* which concerned dawn raids carried out by the French competition authority. The ECtHR held that the indiscriminate seizure of documents, including material that was unrelated to the investigation or covered by legal professional privilege, violated Article 8 ECHR. Whether such a seizure is compatible with Article 8 depends not only on its lawfulness but also on its proportionality.[78]

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[73] *Ships Waste Oil Collector BV and Others v Netherlands* [GC] App nos 2799/16, 2800/16, 3124/16 and 3205/16 (ECtHR, 1 April 2025).
[74] ibid para 149.
[75] ibid paras 159–160.
[76] ibid para 197.
[77] ibid paras 183–191.
[78] *Vinci Construction and GTM Génie Civil et Services v France* App nos 63629/10 and 60567/10 (ECtHR, 2 April 2015), paras 68, 78–80.

Overall, the case law discussed above demonstrates that cartel enforcement and the protection of the rights to respect for private life are closely interconnected. Although competition authorities possess broad investigative powers and there is a strong public interest in the effective detection of anti-competitive conduct, those powers remain subject to the guarantees of Article 8 ECHR.

2.2. The protection of personal data

Data are central to cartel enforcement. During inspections and seizures competition authorities exercise broad investigative powers that generate a large flow of documents, electronic records and other forms of communication.[79] These materials inevitably contain not only commercially sensitive business information, but also a significant amount of personal data relating to natural persons, such as employees, directors and other individuals connected to the undertaking under investigation.[80] This creates an inherent tension between effective enforcement and data protection.

The rights to respect for private life and to the protection of personal data are closely connected, yet data protection has evolved into an independent value that is not absorbed by the right to private life.[81] Within the EU legal order, it is now recognised as a fundamental right in its own right, distinct from the right to respect for private life.[82] Importantly, data protection extends beyond the protection of private life. It applies whenever personal data are subject to processing, regardless of whether such processing affects an individual's privacy. There is therefore no need to establish an interference with private life before the data protection rules apply.[83]

In the EU, the GDPR establishes a general framework governing the processing of personal data.[84] The regulation's purpose is not to prohibit the use of personal data, but to ensure that such use takes place under legally defined conditions and with appropriate safeguards. In this respect, the GDPR is based on the principle that personal data protection is not absolute but

[79] Regulation 1/2003, arts 18–21.
[80] GDPR, recital 14 and art 4(1).
[81] European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Data Protection Law* (Publications Office of the European Union 2018) 19.
[82] Charter of Fundamental Rights, art 8.
[83] European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Data Protection Law* (Publications Office of the European Union 2018) 20.
[84] GDPR.

must be balanced against other fundamental rights and public interests in accordance with the principle of proportionality.[85]

The GDPR applies to information relating to identified or identifiable natural persons and therefore does not protect legal persons as such.[86] The central obligations are set out in Article 5 GDPR, which requires personal data to be processed lawfully, fairly and transparently, collected for specified and legitimate purposes, limited to what is necessary, retained only for as long as required, and protected by appropriate security measures.[87] These principles are particularly relevant in enforcement contexts, where authorities may obtain large volumes of material, sometimes also including information that is only partly relevant to the suspected infringement.

Of these principles, three are particularly significant for the conduct of competition authorities in cartel enforcement. First, the principle of purpose limitation requires that personal data be collected only for specified purposes, so that an authority cannot gather such data without a defined objective. Second, the principle of data minimisation limits the authority to collecting and processing only the data necessary to achieve that objective, namely the enforcement of the prohibition laid down in Article 101 TFEU. Third, the authority may not subsequently use the data for purposes incompatible with the one for which they were originally obtained.[88]

In addition, Article 6 GDPR requires every processing operation to have a valid legal basis. For public authorities, the relevant legal basis will usually be compliance with a legal obligation or the performance of a task carried out in the public interest or in the exercise of official authority.[89] Where processing is based on such public-law grounds, the legal basis must be laid down in EU or Member State law and must define the purpose of the processing, or at least make it sufficiently clear and foreseeable.[90] While the GDPR applies directly to undertakings and to national competition authorities, it does not itself govern the EU institutions.[91] As regards the Commission's exercise of its competition enforcement functions, the applicable instrument is therefore Regulation 2018/1725, which mirrors the GDPR principles, [92] so that

[85] GDPR, recital 4.
[86] ibid recital 14, art 4(1).
[87] ibid art 5(1)(a)–(f), art 5(2).
[88] ibid art 5(1)(b)–(c).
[89] ibid art 6(1)(c), art 6(1)(e).
[90] ibid art 6(3), recital 41.
[91] ibid art 2(3).
[92] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and

the same data protection standard applies regardless of whether the enforcing authority is the national competition authority or the Commission.

The procedural framework for cartel enforcement also includes certain safeguards relating to the protection of personal data and confidential information. Although Regulation 1/2003 and Regulation 773/2004 were adopted before the GDPR entered into force, a number of their provisions reflect principles that are closely aligned with the GDPR requirements of lawfulness, purpose limitation, accuracy, confidentiality and controlled disclosure.

Under Article 18 of Regulation 1/2003, the Commission's requests for information must state the legal basis and purpose of the request, specify the information required and provide the time-limit within which the information must be given.[93] This limits the scope of gathering the information and requires the undertaking to be informed of the legal and factual framework within which the request is made. In addition, where information is required by a decision, the Commission must also indicate the undertaking's right to have the decision reviewed by the ECJ.[94] Regulation 1/2003 also contains safeguards at the publication stage, meaning, under Article 30, Commission decisions must be published, but publication must have regard to the legitimate interest of undertakings in the protection of their business secrets.[95]

Regulation 773/2004 further develops these procedural safeguards. Before taking oral statements from natural or legal persons, the Commission must inform the person interviewed of the legal basis and purpose of the interview, its voluntary nature, and the intention to make a record.[96] This requirement mirrors the GDPR principle of transparency, under which a person must be informed of the legal basis and purpose of any processing of their data.[97] A copy of any recording must be made available to the person interviewed for approval, and the person must be given an opportunity to correct the statement where necessary.[98] This too has a parallel in the GDPR, namely the right to rectification of inaccurate data.[99] These requirements reflect concerns of transparency and accuracy in the recording of information. Regulation 773/2004 also protects confidentiality during oral hearings, which are not public and may be organised

agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC [2018] OJ L295/39, recital 5.

93 Regulation 1/2003, art 18(2)–(3).

94 ibid art 18(3)

95 ibid art 30(1)–(2).

96 Regulation 773/2004, recital 3, art 3(1).

97 GDPR, art 5(1)(a) and art 13(1)(c).

98 Regulation 773/2004, art 3(3).

99 GDPR, art 16.

separately where necessary to protect business secrets and other confidential information. [100] Similarly, statements made at oral hearings must be recorded, but access to such recordings must take account of the legitimate interest of the parties in protecting business secrets and confidential information.[101] Furthermore, the rules on access to the file and treatment of confidential information seek to balance the Commission's need to use information necessary to prove an infringement with the protection of business secrets and other confidential information.[102] This reflects another structural parallel with the GDPR. While business secrets are not personal data, both regimes subject particularly protected categories of information to heightened safeguards. In this respect, the enforcement framework does not fully reproduce the GDPR regime, but it does show that EU competition procedure already contains mechanisms designed to limit, structure and control the collection, use and disclosure of information.

The importance of these safeguards has increased with technological development. In such investigations, the Commission may request large volumes of electronic data, including documents identified through digital search terms, which increases the risk that irrelevant information, including private communications and sensitive personal data, will be captured together with potentially relevant evidence. This makes the requirements of a clearly defined legal basis, purpose and scope of the request particularly important.

In *Meta Platforms Ireland v Commission*, the General Court examined whether the Commission could require an undertaking to identify and produce documents through broad keyword searches, even though such searches might capture irrelevant documents and sensitive personal data.[103] These requests required Meta to run a large number of search terms, which allegedly resulted in the identification of a very large number of documents, including potentially private or sensitive material.[104]

The General Court accepted that such methods are permissible where, at the time of the request, the Commission could reasonably take the view that the information sought might assist its investigation.[105] However, it also established that broad digital requests may require additional

[100] Regulation 773/2004, art 14(6).
[101] ibid art 14(8).
[102] ibid recitals 13–14 and arts 15–16.
[103] Case T–451/20 *Meta Platforms Ireland v Commission* [2023] EU:T:2023:276.
[104] Nathalie Jalabert-Doury and Sarah Wilks, 'EU General Court Rules on Protection of Private Data in Competition Investigations' (Mayer Brown, 30 June 2023) <https://www.mayerbrown.com/en/insights/publications/2023/06/eu-general-court-rules-on-protection-of-private-data-in-competition-investigations?> accessed 16 May 2026.
[105] Case T–451/20 *Meta Platforms Ireland v Commission* [2023] EU:T:2023:276, para 114.

safeguards where sensitive personal data are involved, such as the use of a separate virtual data room procedure for documents containing such data, or other procedural mechanisms designed to filter and control access to that material.[106] Therefore, the legality of digital information requests depends not only on the Commission's investigative powers, but also on whether the request is sufficiently targeted, necessary and proportionate, and whether the processing of personal data is subject to safeguards appropriate to the sensitivity of the data.

Taken together, these rules show that data protection is not external to cartel enforcement, but forms part of the legal conditions under which evidence may be gathered and used. Competition authorities may process large volumes of data where this is necessary for the effective enforcement of Article 101 TFEU, but such processing must remain legally grounded, purpose-limited, proportionate and subject to adequate safeguards.

2.3. The right to a fair trial and defence rights

After the gathering and processing of evidence in the investigative stage, the focus shifts to the cartel enforcement proceedings themselves. At that stage, one of the most important safeguards for market participants is the right to a fair trial. This right is protected by Article 47 of the Charter of Fundamental Rights and Article 6 of the ECHR.

Although these guarantees are generally associated with criminal proceedings, the ECtHR recognised that a sanction may be criminal in nature even where national law classifies the proceedings as administrative. As a result, the safeguards of Article 6 ECHR become applicable in such proceedings. The criteria for determining whether an offence is criminal in nature, and thus whether Article 6 is engaged, were outlined in *Engel and Others v Netherlands*. The assessment is based on three criteria: how the offence is classified in domestic law, the nature of the offence, and the severity of the penalty at stake.[107] On that basis, Article 6 ECHR has been applied beyond ordinary criminal proceedings, including to customs penalties, [108] sanctions imposed by courts with jurisdiction in budgetary and financial matters,[109] and proceedings before administrative authorities exercising powers in the economic and financial fields, including competition law.[110] Cartels, although sometimes treated as administrative

[106] ibid paras 216 –219.
[107] *Engel and Others v Netherlands* App no 5100/71 (ECtHR, 8 June 1976) paras 82–83.
[108] *Salabiaku v France* App no 10519/83 (ECtHR, 7 October 1988) para 28.
[109] *Guisset v France* App no 33933/96 (ECtHR, 26 September 2000).
[110] *Lilly France SA v France (de*c) App no 53892/00 (ECtHR, 3 December 2002); *Dubus SA v France* App no 5242/04 (ECtHR, 11 June 2009); *A Menarini Diagnostics SRL v Italy* App no 43509/08 (ECtHR, 27 September 2011).

offences under national law, fall within this category. They rank among the most serious infringements of competition law and cause significant harm to public welfare, which is why they attract substantial penalties for the undertakings concerned. The *Engel* criteria have since been applied by the ECtHR across a range of cases, including *Menarini Diagnostics v Italy*.[111]

In such proceedings the parties are protected not only by the ECHR and the Charter of Fundamental Rights, but also by safeguards included in Regulation 1/2003 and Commission Regulation 773/2004. Article 27(1) of Regulation 1/2003 provides that the parties have the right to be heard,[112] while Article 27(2) further requires that the rights of defence of the parties concerned shall be fully respected in the proceedings, including the right to access the file.[113] The right to be heard is enforced also by Regulation No 773/2004. Recital 10 states that, in order to respect the rights of defence of undertakings, the Commission must afford the parties the opportunity to be heard before adopting a decision.[114] It is therefore apparent that fair trial guarantees are incorporated into the procedural framework of EU competition law. However, these guarantees are not limited to the right to be heard or access to the file but also extend to other procedural protections that are particularly relevant in cartel proceedings.

Particularly significant in the context of cartel investigations are the right to remain silent and the privilege against self-incrimination, both of which, although not expressly mentioned in Article 6 ECHR, form an essential component of the rights of defence.[115] As an aspect of the right to a fair trial, anyone facing a criminal charge is entitled "to remain silent and not to contribute to incriminating himself".[116] This protection is reflected in Regulation 1/2003, namely, undertakings cannot be compelled to admit that they have committed an infringement, yet they remain obliged to answer factual questions and to produce documents, even where such material may serve to establish an infringement against them or another undertaking.[117] This may appear contradictory. On the one hand, undertakings are shielded from confessing

[111] *A Menarini Diagnostics SRL v Italy* App no 43509/08 (ECtHR, 27 September 2011).
[112] Regulation 1/2003, art 27(1).
[113] ibid art 27(2).
[114] Regulation 773/2004, recital 10.
[115] Council of Europe and European Court of Human Rights, 'Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (Criminal Limb)' (Council of Europe 2026) para 216 <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_eng> accessed 15 May 2026.
[116] *Funke v France* App no 10828/84 (ECtHR, 25 February 1993) para 44. See also *O'Halloran and Francis v UK* App nos 15809/02 and 25624/02 (ECtHR, 29 June 2007) para 45; *Saunders v UK* App no 19187/91 (ECtHR, 17 December 1996) para 60.
[117] Regulation 1/2003, recital 23.

liability, on the other hand, they remain bound by a duty of cooperation that may compel them to disclose information ultimately used against them.

Regarding documentary evidence, the privilege against self-incrimination does not cover material that exists independently of the will of the suspect. Accordingly, documents obtained through compulsory measures, such as those seized pursuant to a warrant, fall outside the scope of this protection.[118] Therefore, where documents already exist and are obtained through a lawful procedure, requiring their production does not infringe the privilege. A more difficult question may arise in relation to factual questions addressed to undertakings under Regulation 1/2003. Such questions may, in certain circumstances, require the undertaking to provide explanations that assist the authority in building its case against the undertaking. However, this does not mean that the undertaking may be compelled to admit liability. Rather, the distinction lies between requiring factual cooperation and requiring a self-incriminating confession.[119]

Although Article 6 ECHR safeguards the right to a fair trial, it does not regulate the admissibility of evidence as such. The determination of evidentiary rules remains primarily within the competence of national law.[120] A similar approach is reflected in Regulation 1/2003. According to Recital 5, the regulation does not affect national rules on the standard of proof or the obligations of national competition authorities and courts to ascertain the relevant facts, provided that those rules and obligations remain compatible with the general principles of EU law.[121] Accordingly, the key question is not whether a particular item of evidence was admissible, but whether the proceedings as a whole, including the methods used to obtain the evidence, were fair under Article 6 ECHR.[122] Even the use of special investigative methods in certain categories of cases does not automatically breach Article 6 ECHR, provided that it is subject to clear limits and complies with the applicable safeguards. [123]

The fairness of proceedings may also be influenced by the extent of the Commission's investigative powers. Under Article 18 of Regulation 1/2003, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.[124] The Commission specifies what information the undertaking must

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[118] *Saunders v UK* App no 19187/91 (ECtHR, 17 December 1996) para 69
[119] Case 374/87 *Orkem v Commission* [1989] ECR–3283, paras 34–35.
[120] *Schenk v Switzerland* App no 10862/84 (ECtHR, 12 July 1988) paras 45–46.
[121] Regulation 1/2003, recital 5.
[122] *Khan v UK* App no 35394/97 (ECtHR, 12 May 2000) para 34.
[123] *Ramanauskas v Lithuania* [GC] App no 74420/01 (ECtHR, 5 February 2008) para 51.
[124] Regulation 1/2003, art 18(1).

provide and fixes a time-limit within which it has to be supplied; where the request is made by decision, the Commission may also impose penalties if the undertaking fails to comply.[125] As illustrated by *Meta Platforms Ireland v Commission*, the Commission's requests for information can be very broad and far reaching, therefore it can create a significant burden on the undertakings to provide such information in the stated format in certain time limit.[126] Similar concerns were raised by respondents to the 2025 consultation on the revision of Regulation 1/2003. They noted that the deadlines set by the Commission for responding to requests for information are often too short and called for longer time limits, as well as greater flexibility in granting extensions.[127]

A further issue concerns one of the core elements of the right to a fair trial, namely the presumption of innocence. A breach of that principle arises where the burden of proof is shifted from the prosecution to the defence.[128] In Article 2 of Regulation 1/2003, the burden of proving an infringement of Article 101 TFEU rests on the party or authority alleging it, therefore it is formally respected. However, a question arises where several presumptions developed in EU competition law come in place. In practice, the evidentiary burden may shift to the undertaking where it is presumed that an undertaking participating in a concerted practice and remaining active on the market took account of the information exchanged.[129] Nevertheless, the existence of evidentiary presumptions is not in itself incompatible with the right to a fair trial. In *Salabiaku v France,* the ECtHR accepted that presumptions of fact or of law may operate within a legal system, if they remain within reasonable limits, are rebuttable, and preserve the rights of the defence.[130]

One of the key elements of the right to a fair trial is also an effective judicial review of the decision. At EU level, the Commission conducts the investigation and adopts the final decision imposing a penalty. Effective, consistent and accessible judicial control is therefore essential, particularly where national enforcement systems follow a similar administrative model. While Article 101 TFEU establishes the substantive prohibition of cartel conduct, the primary law framework also provides the procedural mechanisms through which the legality and

[125] ibid art 18(2)–(3).
[126] Case T–451/20 *Meta Platforms Ireland v Commission* [2023] EU:T:2023:276.
[127] Commission, 'Factual Summary of the Feedback to the Call for Evidence and the Contributions Received in the Context of the Public Consultation on the Revision of Regulation 1/2003' (DG Competition, 19 February 2026) 3 < https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/regulation-12003_en> accessed 8 June 2026.
[128] *Telfner v Austria* App no 33501/96 (ECtHR, 20 March 2001) para 15.
[129] Case C–8/08 *T-Mobile Netherlands and Others* [2009] ECR I–4529, para 51.
[130] *Salabiaku v France* App no 10519/83 (ECtHR, 7 October 1988) para 28.

interpretation of EU competition enforcement are reviewed. In this respect, Articles 263 and 267 TFEU are particularly relevant. Article 263 TFEU enables judicial review of acts adopted by EU institutions, including Commission decisions in competition proceedings, while decisions of national competition authorities are reviewed before national courts, which may refer questions concerning the interpretation of EU law to the ECJ under Article 267 TFEU.[131]

Beyond the right to seek review of individual investigative decisions, which has been addressed above, Regulation 1/2003 also subjects the Commission's sanctioning power to judicial control. Under Article 31, the ECJ has unlimited jurisdiction to review decisions imposing fines or periodic penalty payments, including the power to cancel, reduce or increase the amount imposed.[132] The importance of full and effective judicial review in this context has also been confirmed by the case law, notably in *A Menarini Diagnostics SRL v Italy*.[133]

Overall, the right to a fair trial does not prevent competition authorities from relying on evidentiary flexibility and broad investigative powers. However, such powers must remain compatible with the rights to fair trial, including the privilege against self-incrimination, the presumption of innocence and the right to effective judicial review, among others. The effectiveness of cartel enforcement cannot be assessed separately from the procedural guarantees that protect undertakings against excessive evidentiary pressure or the use of evidence in a manner that would undermine the fairness of the proceedings as a whole.

[131]TFEU, arts 263 and 267.
[132]Regulation 1/2003, art 31.
[133]*A Menarini Diagnostics SRL v Italy* App no 43509/08 (ECtHR, 27 September 2011), paras 42–44.

3. EVIDENCE BEYOND LEGAL REACH: THE LATVIAN SUPREME COURT ON OPERATIONAL SURVEILLANCE EVIDENCE IN CARTEL PROCEEDINGS

3.1. Competition enforcement in Latvia and the factual background of the case

Apart from developments at the EU level, enforcement practice of the Member States provides significant insight into how enforcement operates in practice. To analyse the relevance of the case, it is necessary to outline the factual background of competition enforcement in Latvia.

According to statistics covering the period between 2002 and 2018, the most common violations identified by the Latvian competition authority, the Competition Council of the Republic of Latvia (Competition Council), were prohibited agreements and abuse of a dominant position.[134] Although both prohibited agreements and abuse of a dominant position have been named as the core of competition violations in Latvia over the years, these statistics suggest that prohibited agreements outnumbered cases of abuse of dominance, as a total of 326 violations were detected during that period, of which 286 concerned prohibited agreements and only 40 concerned abuse of a dominant position.[135] Prohibited agreements, and cartels in particular, therefore represent the principal enforcement concern in Latvia. As regards the most affected sectors, the construction industry stands out as the most heavily sanctioned, having been fined 104 times, followed by the transport and logistics and trade-related sectors.[136] Although these data do not extend to the period after 2018, cartel cases in Latvia remain frequent and widely discussed.

One of the most prominent examples is the case known as "construction companies' cartel", which has attracted sustained media attention since 2019.[137] This case has attracted public attention because it is directly related to the use of public funds. In 2021, the Competition Council issued fines concerning a long-term prohibited agreement between ten major construction companies, which had coordinated their participation in at least 70 public and private procurement procedures in Latvia.[138] For these reasons, the case is significant not only

[134] PwC Legal Latvia, 'PwC Competition Watch 2019: Latvia' (PwC Legal 2019) 6 <https://www.pwc.com/lv/lv/about/Projects/Competition-watch 2019/PwC_Competition_watch_2019_ENG.pdf> accessed 26 April 2026.
[135] ibid 4.
[136] ibid 7.
[137] 'Būvnieku karteļa lieta' (*LSM*) <https://www.lsm.lv/temas/buvnieku-kartela-lieta/> accessed 26 April 2026.
[138] Competition Council of the Republic of Latvia, 'The Competition Council Fines 10 Construction Companies for Participating in the Cartel' (Competition Council, 10 August 2021) <https://www.kp.gov.lv/en/article/competition-council-fines-10-construction-companies-participating-cartel> accessed 26 April 2026.

as a competition law matter, but also for the integrity of public procurement procedures and, consequently, taxpayers' interests.

While significant as a cartel case, its novelty also stems from its evidentiary background. In the period from 2015 to 2018, the Corruption Prevention and Combating Bureau of the Republic of Latvia (Corruption Prevention and Combating Bureau) carried out certain operational activities involving the recording of conversations of three natural persons in connection with a separate criminal investigation. Subsequently, the Corruption Prevention and Combating Bureau sent copies of the criminal case materials to the Competition Council, including transcripts of audio recordings of intercepted conversations, which indicated that representatives of several Latvian construction companies had met at least 12 times to discuss the allocation of construction contracts and the conditions for participation in tenders. Based on this the Competition Council opened an investigation into a possible cartel.[139]

3.2. The legal context of the case

To assess the legal questions arising in the present case, it is first necessary to examine the legal framework governing cartel enforcement in Latvia. Prohibited agreements, including cartels, are defined in Section 11 of the Competition Law, and Section 12 regulates the imposition of fines for such infringements.[140] This indicates that cartel infringements are treated as administrative violations under Latvian competition law. In most EU Member States, cartel enforcement against undertakings is administrative rather than criminal in nature, since at EU level Regulation 1/2003 empowers authorities to impose sanctions only on undertakings.[141] Individual liability, by contrast, varies considerably across Member States. In Latvia, the legislator declined in 2024 to introduce criminal liability for cartel conduct,[142] although the question has since been reopened.

On 30 July 2021, the Competition Council issued a decision finding that the conduct of ten companies infringed Section 11(1) of the Competition Law and Article 101(1) TFEU, imposing

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[139] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, paras 1–2.

[140] Konkurences likums [Competition Law]: a law of the Republic of Latvia. Passed 4 October 2001 (version in force from 26 December 2024) Sec 11 and 12.

[141] Regulation 1/2003, art 23.

[142] Prosecutor's Office of the Republic of Latvia, 'Saeima noraida priekšlikumu noteikt kriminālatbildību par aizliegtu vienošanos īstenošanu publiskajos iepirkumos' (Prosecutor's Office, 5 September 2024) <https://www.prokuratura.lv/lv/aktualitates/2024/aktualitates/saeima-noraida-priekslikumu-noteikt-kriminalatbildibu-par-aizliegtu-vienosanos-istenosanu-publiskajos-iepirkumos-3253> accessed 8 June 2026.

total fines of EUR 16 652 027.[143] The Competition Council held that the undertakings had met, exchanged commercially sensitive information, and allocated participation in various public tenders with the object of preventing and restricting competition in Latvia.[144] Under Section 8(2) of the Competition Law, a decision imposing a fine may be appealed by a market participant directly before the Administrative Regional Court, which hears the case as the court of first instance.[145] After this decision several companies filed appeals before the court seeking to overturn the Competition Council's decision.

In their appeals, the claimants argued that the transcripts of the intercepted conversations constituted inadmissible evidence. They claimed that evidence obtained through operational activities cannot lawfully be used to establish a competition violation, and that the interception itself amounted to a serious interference with their right to respect for private life. Such interference, they argued, must rest on a sufficiently clear and foreseeable statutory basis, enabling individuals to foresee the circumstances in which the authorities are empowered to intercept and use their communications.[146] The claimants based their arguments on Sections 2 and 24 of the Operational Activities Law, which define the permitted tasks of operational activities and restrict the use and transfer of the information obtained in this way.[147]

The Administrative Regional Court substantially upheld the Competition Council's assessment and dismissed the applicants' claims on several grounds.

First, the court accepted that the transcripts formed part of the criminal case materials but held that neither the Criminal Procedure Law nor Section 24 of the Operational Activities Law prohibits the transfer of criminal case materials to, and their use in, administrative

143 Competition Council of the Republic of Latvia, 'The Competition Council Fines 10 Construction Companies for Participating in the Cartel' (Competition Council, 10 August 2021) <https://www.kp.gov.lv/en/article/competition-council-fines-10-construction-companies-participating-cartel>accessed 26 April 2026.

144 Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, para 4.

145 Konkurences likums [Competition Law]: a law of the Republic of Latvia. Passed 4 October 2001 (version in force from 26 December 2024) Sec 8(2).

146 Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, para 4.

147 Operatīvās darbības likums [Operational Activities Law]: a law of the Republic of Latvia. Passed 16 December 1993 (version in force from 4 January 2022) Sec 2 and 24.

proceedings.[148] The court's reasoning rested mainly on a textual interpretation of the legislation and on the absence of any express statutory prohibition on such an exchange of evidence. Secondly, in assessing whether evidence gathered for a purpose unrelated to the competition proceedings and obtained through an interference with fundamental rights could be used in those proceedings, the court held that the principles of criminal procedure are not automatically transferable to administrative proceedings, even where the evidence originates in a criminal process.[149]

The court then examined the lawfulness of the interference with fundamental rights. It held that the interception of communications is provided for in the Operational Activities Law, while the Competition Council's powers to gather information derive from the Competition Law and other legislation. The interference was therefore based on law and pursued the legitimate aim of preventing and investigating criminal offences in the economy and the public sector. The court considered the use of the intercepted conversations necessary because private conversations of this kind could not realistically be captured by any less intrusive method. Therefore, the court stated that transfer of the evidence to the Competition Council was accordingly justified by important public interests, having regard to the potentially significant impact of cartel agreements on economic welfare.[150]

The court further emphasised that during the administrative proceedings, the applicants had been able to inspect the transcripts and to make submissions on their content and admissibility and had thus participated in the examination of the evidence. In the light of these and other considerations, the court concluded that the Competition Council's decision was lawful and that the fines imposed were proportionate. [151]

3.3.The reasoning of the Latvian Supreme Court

On 23 December 2025, the Senate annulled the Administrative Regional Court’s judgment of 25 January 2024 and remitted the case for fresh examination[152] and the case therefore took a different course. The Senate's reasoning focused mainly on the following aspects.

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[148]Administratīvās apgabaltiesas spriedums lietā Nr A43004021, AA43-0005-24/5, ECLI:LV:ADAT:2024:0125.A43004021.27.S (Administrative Regional Court of the Republic of Latvia, 25 January 2024) <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/523554.pdf> accessed 24 February 2026, para 4.
[149] ibid para 24.
[150] ibid para 26.
[151] ibid paras 26 and 124.
[152] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the

The Senate began by observing that operational activities are among the most intrusive means by which the state may interfere in the private lives of individuals. In a democratic state governed by the rule of law, it held, the use of any new instrument available to the state but not directly derived from the legislation must be clear and lawful, particularly where it entails an expansion of the powers of the institutions.[153]

It was emphasised that the central issue was not the initial obtaining of the material, but rather its subsequent transfer from the Corruption Prevention and Combating Bureau to the Competition Council and its later use in administrative cartel proceedings. Furthermore, this step itself engaged the right to respect for private life under Article 8 ECHR.[154] The Senate further observed that, as a democratic state governed by the rule of law, Latvia has assumed obligations under the Constitution of the Republic of Latvia, ECHR, the Charter of Fundamental Rights and other international fundamental rights instruments, all of which together shape the applicable standard of fundamental rights protection.[155]

Subsequently, the Senate assessed this question through the framework of Article 8 ECHR, recalling that an interference with the right to respect for private life may be justified only where it is in accordance with the law, pursues a legitimate aim, and is necessary in a democratic society.[156] The Senate placed its focus on the first requirement, namely, whether the interference was "in accordance with the law" and stated that the mere existence of a legal provision is not sufficient to satisfy this requirement. Rather, the legal basis must meet certain qualitative standards, including accessibility, clarity and foreseeability. Against that background, the Senate examined whether Latvian law provided a sufficiently clear and foreseeable legal basis for the use of information obtained through operational activities that had originally been collected for different purposes, in administrative cartel proceedings.[157]

In this respect, the Senate held that the Operational Activities Law sets out an exhaustive list of tasks for which operational activities may be carried out and for which the information so obtained may be used.[158] The detection of a violation of competition law, such as a cartel

Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026.

[153] ibid 32.

[154] ibid paras 21 and 23.

[155] ibid para 22.

[156] ECHR, art 8(2).

[157] ibid paras 23–25 and 29.

[158] Operatīvās darbības likums [Operational Activities Law]: a law of the Republic of Latvia. Passed 16 December 1993 (version in force from 4 January 2022) Sec 2 and 24.

agreement, does not fall within that list. The Senate also considered it relevant that the Latvian legislator had consciously chosen not to criminalise cartel infringements.[159] Although the Senate accepted that criminal case materials may, in certain circumstances, be transferred between public authorities,[160] the Senate rejected the view that information obtained through operational activities loses its special legal status merely because it has been added to a criminal case file. Therefore, the legality of the use of such material had to be assessed under the Operational Activities Law itself. Otherwise, the restrictions in that law could be circumvented simply by routing operational material through criminal proceedings, opening the way to the use of covertly obtained information in virtually any other type of proceedings. In the Senate's view, such an interpretation would undermine the very purpose of the statutory limitation.[161]

In conclusion, the Senate concluded that the applicable legal framework did not satisfy the "quality of law" requirement developed in the case law of the ECtHR under Article 8 ECHR. Latvian law did not provide a clear legal basis allowing information obtained through operational activities to be transferred to the Competition Council and used in administrative proceedings. On the contrary, Section 2(2) of the Operational Activities Law expressly prohibits the use of operational activities for purposes and objectives not provided for in that law. Consequently, persons could not reasonably foresee that information obtained through such measures could later be transferred and used in administrative proceedings to prove a cartel agreement. For that reason, the Senate held that the transfer of the information to the Competition Council was incompatible with Article 8 ECHR, Article 7 of the Charter of Fundamental Rights and Article 96 of the Constitution of the Republic of Latvia. Having reached that conclusion, the Senate considered it unnecessary to further assess whether the interference was compliant with the remaining requirements of Article 8 ECHR.[162]

3.4. The significance of the judgment for cartel enforcement

Cartel enforcement depends heavily on evidence capable of revealing secret coordination. However, this case demonstrates that evidentiary value alone is not sufficient: even highly relevant material may remain beyond legal reach where its use is not supported by a clear and foreseeable legal basis. The case has sparked significant debate because, although there is broad

[159] See, for example, 'Kartelistu sodīšana: Saeimas lēmums noraidīt kriminālatbildību izraisa plašu pretestību un kritiku' (Apollo.lv, 15 September 2024) <https://www.apollo.lv/8096445/video-kartelistu-sodisana-saeimas-lemums-noraidit-kriminalatbildibu-izraisa-plasu-pretestibu-un-kritiku> accessed 5 June 2026.
[160] Kriminālprocesa likums [Criminal Procedure Law]: a law of the Republic of Latvia. Passed 11 May 2008 (version in force from 21 April 2026) Sec 375.
[161] ibid paras 31–33 and 36–38.
[162] ibid para 42.

agreement that cartels are highly harmful and must be effectively fought, the views differ on whether such important evidence should be excluded from the proceedings.

It could be argued that the strongest argument in favour of the Competition Council's position relates to the evidentiary difficulties inherent in cartel cases. Due to cartel secrecy and their lack of documentary traces it has been established that competition authorities can rely on a body of indirect evidence, and the Competition Council has emphasised the strong public interest in fighting cartels.[163] A further argument supporting the Council's position is that, once the materials that were obtained through operational activities were added to the criminal case file, they could be treated as criminal case materials and transferred under the general rules governing access to such materials. This position was supported by Article 375 of the Criminal Procedure Law and by case law, including the Senate's own case law and the judgment of the ECtHR in *Ships Waste Oil Collector*.[164]

While transferring criminal case materials to other authorities may be permissible under certain circumstances, it could be argued that in this case such an approach would be too formalistic. One of the methods of legal interpretation is the teleological method, which requires that a provision be interpreted in accordance with its aim and purpose.[165] The purpose, meaning and social justification of a norm constitute its specific legal designation, that is, the *ratio legis* (the spirit of the law).[166] The materials in question were obtained through operational activities governed by a special legal framework, precisely because covert surveillance measures constitute an exceptional interference with fundamental rights and cannot be regarded as ordinary investigative methods.[167] The Operational Activities Law specifically regulates the

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[163] Competition Council of the Republic of Latvia, 'CC: The Supreme Court Ruling in the Builders' Cartel Case Restricts Cooperation Between Law Enforcement Agencies and Their Ability to Uncover Serious Competition Violations' (Competition Council, 8 January 2026) <https://www.kp.gov.lv/en/article/cc-supreme-court-ruling-builders-cartel-case-restricts-cooperation-between-law-enforcement-agencies-and-their-ability-uncover-serious-competition-violations> accessed 5 June 2026.
[164] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, paras 38-39.
[165] Rolf Wank, Die Auslegung von Gesetzen: eine Einführung (Heymanns 1997) 79; Karl Engisch, Einführung in das juristische Denken (9th edn, Kohlhammer 1997) 96; Karl Larenz and Claus-Wilhelm Canaris, Methodenlehre der Rechtswissenschaft (3rd edn, Springer 1995) 153; Reinhold Zippelius, Juristische Methodenlehre (8th edn, Beck 2003) 51.
[166] T Mayer-Maly, Einführung in die Rechtswissenschaft (Springer 1993) 22.
[167] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, para 32.

legal basis, objectives, scope and permissible use of such measures, and expressly provides that information obtained through operational activities may be used only for the tasks established by law. [168] This suggests that otherwise, such use is prohibited. Accordingly, it is possible to agree with the Senate that the later attachment of such materials to a criminal case file does not, by itself, affect their original legal status or remove them from the scope of the Operational Activities Law.[169] Treating the materials as ordinary criminal case materials merely because they have been added to a criminal case file would risk depriving the statutory limitation of its practical effect.[170]

The approach adopted by the Senate is more closely connected with legality and purpose limitation. Operational surveillance constitutes a particularly serious interference with private life and correspondence. Therefore, if the legislature has authorised such measures for the prevention and detection of specific categories of offences, their later use in administrative cartel enforcement must be based on a clear and foreseeable legal basis.[171] This is especially relevant in Latvia, where the legislator had previously consciously chosen not to criminalise cartel conduct[172] and has established a clear hierarchy of unlawful conduct according to its seriousness. Latvian law draws a fundamental distinction between administrative liability and criminal liability, and within the criminal sphere the Criminal Law further grades offences into criminal violations and crimes, the latter being subdivided into less serious, serious and particularly serious crimes. [173] Cartel infringements, although harmful and subject to significant fines, remain administrative violations under Latvian law. It could therefore be questioned whether such a serious interference with private life is proportionate to the level of severity that the legislator has attributed to those infringements. The problem is therefore not only proportionality, but first and foremost legality and foreseeability.

The potential interpretation of legislation allowing the use of these materials in administrative proceedings would suggest a wider institutional concern. This concern relates to the principle

[168] Operatīvās darbības likums [Operational Activities Law]: a law of the Republic of Latvia. Passed 16 December 1993 (version in force from 4 January 2022) preambule.
[169] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, para 38.
[170] ibid.
[171] ibid, 32.
[172] 'Kartelistu sodīšana: Saeimas lēmums noraidīt kriminālatbildību izraisa plašu pretestību un kritiku' (Apollo.lv, 15 September 2024) <https://www.apollo.lv/8096445/video-kartelistu-sodisana-saeimas-lemums-noraidit-kriminalatbildibu-izraisa-plasu-pretestibu-un-kritiku> accessed 5 June 2026.
[173] Krimināllikums [Criminal Law]: a law of the Republic of Latvia. Passed 17 June 1998 (version in force from 1 January 2022) Sec 7.

of the separation of powers.[174] Arguably, the decision as to which aims may legitimately be pursued through such an intrusive state instrument is, by its nature, a political choice reserved to the legislator, with the role of the courts being to apply and review that choice rather than to make it. If a court were, through a broad interpretation, to create a new legal basis for the use of material obtained through operational measures where the legislator has not provided one, it would risk assuming a function that properly belongs to the legislator. As the Senate itself stressed in its own reasoning, any new instrument available to the state that does not directly derive from legislation must rest on a clear statutory foundation, particularly where it expands the powers of public institutions.[175]

Taking the dispute further, the question may also be raised whether the use of such materials, if they were treated as admissible evidence, could create concerns under Article 6 ECHR. Article 6 does not itself determine the admissibility of evidence, as this is primarily a matter for national law.[176] However, the use of evidence obtained or transferred under an insufficiently clear legal framework may affect the fairness of the proceedings as a whole.[177] This is particularly relevant where the parties could not reasonably foresee that material obtained through operational activities for criminal law purposes could later be used against them in administrative cartel proceedings, and where such material forms a central part of the evidentiary basis of liability.

It may nevertheless be questioned whether the evidentiary problem could have been approached differently at the investigative stage. Under the Competition Law and the Administrative Procedure Law, the Competition Council is entitled to obtain the information necessary for the examination of a case, including by requesting information and explanations from other public institutions.[178] Since indirect and circumstantial evidence is, in principle, admissible in cartel cases, [179] it could be argued that a different course may have been available. Rather than transferring the verbatim transcripts of the intercepted conversations, the

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[174] Charles de Secondat, Baron de Montesquieu, The Spirit of the Laws (Anne M Cohler, Basia C Miller and Harold S Stone trs, CUP 1989) bk XI, ch 6.
[175] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, para 32.
[176] *Schenk v Switzerland* App no 10862/84 (ECtHR, 12 July 1988) paras 45–46.
[177] *Bykov v Russia* App no 4378/02 (ECtHR, 10 March 2009) paras 88–90.
[178] Konkurences likums [Competition Law]: a law of the Republic of Latvia. Passed 4 October 2001 (version in force from 26 December 2024) Sec 9(5)(2); Administratīvā procesa likums [Administrative Procedure Law]: a law of the Republic of Latvia. Passed 25 October 2001 (version in force from 1 January 2025) Sec 59(2).
[179] See the Chapter 1.3.

Corruption Prevention and Combating Bureau might have informed the Competition Council that representatives of certain construction undertakings had met, allowing the Competition Council to treat that information as one indirect indication and to build its case using that as indirect evidence and also other forms of evidence. Such an approach would, however, not entirely avoid the underlying legal problem. Even if only the fact of a meeting were communicated, that information would still derive from operational surveillance measures, and the question would remain whether information obtained in that manner may lawfully be transferred and relied upon in cartel proceedings.

The Latvian legislator has responded to the difficulty raised by this case by adopting amendments to the Operational Activities Law,[180] which expressly permit the authorities to transfer information of this kind obtained through operational activities to other institutions for initially unforeseen purposes, in so far as the information is necessary to protect other essential interests of the state or society and its content and scope do not give rise to a disproportionate interference with the person's fundamental rights. The amendments also provide that authorisation is required, depending on the nature of the information.[181] These amendments may be regarded as supplying, for the future, the clear and foreseeable legal basis whose absence the Senate identified, thereby satisfying the "in accordance with the law" requirement of Article 8 ECHR. Even so, the existence of such a legal basis would not dispense the authorities from carrying out, in every individual case, an independent assessment of the remaining criteria under Article 8(2) ECHR, in particular the legitimate aim pursued and the necessity and proportionality of the transfer.[182] The amendments therefore resolve the formal question of legality, but it is best understood as the most straightforward of several possible responses, addressing the deficiency identified by the Senate rather than the broader question of how intrusive evidence should be treated across different types of proceedings. As mentioned before, the Senate remitted the case to the appellate court for fresh examination without the contested evidence. It is notable that, since the amendments do not contain any

[180] Grozījumi Operatīvās darbības likumā [Amendments to the Operational Activities Law]: a law of the Republic of Latvia. Passed 14 May 2026 (entering into force 9 June 2026). Published in Latvijas Vēstnesis No 99, 26 May 2026.
[181] ibid Sec 24(5).
[182] Likumprojekta "Grozījums Operatīvās darbības likumā" anotācija [annotation to the draft law 'Amendment to the Law on Operational Activities'] (Saeimas Juridiskā komisija, Nr 111.9/3-19-14/26, 10 March 2026) <http://titania.saeima.lv/LIVS14/SaeimaLIVS14.nsf/WEBRespDocumByNum?OpenView&restricttocategory=1252/Lp14|4464> accessed 20 April 2026.

transitional provisions regulating its application to past cases,[183] the appellate court may not be able to apply the amended provisions, given that the obtaining and transfer of the information took place before the amendment's entry into force.

Perhaps the most paradoxical aspect of the case is that the existence of the conversations is already publicly known, yet their content and surrounding circumstances cannot be used as evidence in the cartel proceedings. More broadly, the case reflects a tension extending well beyond cartel enforcement: reconciling the effective protection of important public interests with the constraints that guard against arbitrary state intrusion. It confirms that the evidentiary value of material, however high, cannot by itself justify its use. What matters is whether that use rests on a clear and foreseeable legal basis, faithful to the purpose for which the powers were granted, and that the choice of ends such intrusive measures may serve belongs to the legislature rather than the courts.

[183] Grozījumi Operatīvās darbības likumā [Amendments to the Operational Activities Law]: a law of the Republic of Latvia. Passed 14 May 2026 (entering into force 9 June 2026). Published in Latvijas Vēstnesis No 99, 26 May 2026.

4. BALANCING THE EFFECTIVENESS OF CARTEL ENFORCEMENT WITH FUNDAMENTAL RIGHTS PROTECTION

4.1. The tension between effective enforcement and fundamental rights

The EU is founded on multiple values, reflected in the Treaty on European Union (TEU) and the TFEU (together "Treaties") as different but interconnected pillars of the EU legal order. [184] One of the pillars established by the Treaties is the internal market.[185] The objective pursued through the establishment of the internal market is the economic and social progress of the Member States.[186] The importance of competition for the functioning of the internal market is also reflected in the preamble of the TFEU, which emphasises that "the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition." [187] Consequently, the existence of effective competition rules is essential for ensuring the proper functioning of the internal market.

Another central pillar of the EU legal order is the protection of human rights and fundamental freedoms. This is reflected both in the preamble of the TEU, which confirms the Member States' attachment to liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, [188] and in Article 2 TEU, which states that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.[189] Additionally, Article 6 TEU recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union and confirms the EU's commitment to the ECHR.[190]

Both pillars are essential elements of the EU legal order. In the context of cartel enforcement, however, these interests may come into conflict. The effective enforcement of competition law serves the functioning of the internal market, while the methods used to detect and sanction cartels must remain compatible with fundamental rights. Moreover, EU law does not establish a hierarchy between these two objectives. The protection of fundamental rights is rooted in the TEU, while cartel enforcement derives from the competition rules contained in the TFEU.

[184] Consolidated Version of the Treaty on European Union [2012] OJ C326/13 (TEU), arts 1 and 2.
[185] TFEU, art 26(1).
[186] TFEU, preamble.
[187] ibid.
[188] TEU, preamble.
[189] TEU, art 2.
[190] TEU, art 6.

Article 1 TEU expressly provides that the TEU and the TFEU have the same legal value.[191] Consequently, neither effective cartel enforcement nor the protection of fundamental rights can be treated as automatically prevailing over the other.

This absence of hierarchy makes the balancing exercise particularly important. If the protection of fundamental rights were interpreted too broadly, cartel enforcement could become ineffective, especially given the secretive nature of cartel conduct and the need for competition authorities to rely on investigative tools capable of uncovering it.[192] Such an outcome would not only weaken public enforcement, but could also harm the internal market, other market participants, consumers and economic welfare more generally.[193] Conversely, if enforcement effectiveness were given excessive weight, broad and intrusive investigative measures could undermine the core values on which the EU legal order is based. Such an approach could create risks of procedural unfairness, legal uncertainty and a chilling effect on legitimate business conduct. The central issue is therefore not whether cartel enforcement or fundamental rights protection should prevail, but how EU law can ensure an effective enforcement system that remains legally constrained, proportionate and compatible with fundamental rights.

The interplay between competition law enforcement and fundamental rights protection has long been a relevant issue in EU competition law, but it may become even more significant in the coming years. As suggested above, technological developments have created a new environment both for authorities seeking to detect anti-competitive conduct and for undertakings seeking to conceal it, while also increasing the potential for interference with fundamental rights.[194] This development is further reinforced by recent enforcement trends demonstrating that cartel investigations are increasingly initiated *ex officio* by competition authorities rather than primarily relying on leniency applications or whistleblowers.[195] As

[191] TEU, art 1.
[192] Regulation 1/2003, recitals 23 and 25.
[193] See Chapter 1.1.
[194] OECD, 'The Optimal Design, Organisation and Powers of Competition Authorities' (OECD Roundtables on Competition Policy Papers, OECD Publishing 2023) 6–7 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/10/the-optimal-design-organisation-and-powers-of-competition-authorities_f3414675/dea26a24-en.pdf> accessed 14 February 2026.
[195] A Commission official has stated that approximately 50% of the Commission's cartel investigations are now initiated ex officio, without a leniency application or whistleblower. See Charles Whiddington, 'Dawn Raids by the European Commission: Some Lessons from Recent EU Court Decisions' (Steptoe, 11 February 2026) < https://www.steptoe.com/en/news-publications/stepahead-antitrust-and-competition-insights/dawn-raids-by-the-european-commission-some-lessons-from-recent-eu-court-decisions.html> accessed 8 June 2026. On the broader decline in leniency applications and the shift towards proactive detection, see also OECD, 'Detecting Cartels for Ex Officio Investigations' (OECD Roundtables on Competition Policy Papers No 311, OECD Publishing 2024)< https://doi.org/10.1787/1ea7cdba-en> accessed 8 June 2026.

authorities move towards more proactive detection strategies, including the use of data analytics, digital screening tools and market monitoring, the risk of intrusive evidence-gathering practices increases. Consequently, the balance between enforcement effectiveness and fundamental rights protection is increasingly tested by the growing use of technologically sophisticated investigative methods.

4.2. The construction of the balance in EU law and possible directions for reconciliation

The existing EU competition enforcement framework already reflects attempts to balance effective cartel enforcement with the protection of fundamental rights. This can be seen in several provisions of Regulation 1/2003, which grant broad investigative powers to the Commission while simultaneously imposing procedural safeguards and limitations on the exercise of those powers. For example, Recital 25 of Regulation 1/2003 recognises the Commission's power to affix seals during inspections, while also stating that seals should normally not remain affixed for more than 72 hours.[196] Similar balancing mechanisms are reflected in the rules on limitation periods, judicial review and other procedural safeguards throughout the enforcement process, including the unlimited jurisdiction of the ECJ under Article 31.[197]

More broadly, the balance between enforcement objectives and fundamental rights is governed by Article 52(1) of the Charter of Fundamental Rights.[198] The Charter of Fundamental Rights applies to EU institutions, including the Commission in all cartel investigations and enforcement proceedings. It also applies to national competition authorities and national courts when they implement EU law, for instance when applying Articles 101 and 102 TFEU or Regulation 1/2003.[199] Therefore, whenever cartel enforcement involves a limitation of rights established by the Charter of Fundamental Rights, such as the right to a fair trial, the right to respect for private life or the right to data protection, that limitation must comply with Article 52(1) of the Charter.

This need for a proportionate balance is particularly relevant in the context of the ongoing discussion on the modernisation of Regulation 1/2003 and Regulation 773/2004. Regulation 1/2003 has been in force for more than two decades and was adopted in an enforcement environment that was significantly less digitalised. At that time, business management and

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196 Regulation 1/2003, recital 25, art 20(2)(d).
197 Regulation 1/2003, arts 25–26, 31.
198 Charter of Fundamental Rights, art 52(1).
199 ibid art 51(1); Case C–617/10 *Åkerberg Fransson* [2013] EU:C:2013:105, para 21.

internal communication were still largely based on physical records and paper trails, which competition authorities could identify and rely on during investigations. Today, however, both business organisation and potentially anti-competitive schemes are increasingly structured through digital means. Relevant documents and communications are no longer necessarily kept in one physical location but may be stored digitally across various platforms. This also creates additional difficulties because such material is not always linked to a specific geographical location and may be accessed from different computers, servers and devices, including devices located in private homes. Therefore, the modernisation of Regulation 1/2003 and Regulation 773/2004 must be assessed against the background of this shift from physical evidence to dispersed and remotely accessible digital evidence.[200]

Between 2022 and 2024, the Commission carried out a public evaluation of Regulation 1/2003 and Regulation 773/2004, comprising a public consultation and an internal survey of 25 national competition authorities within the European Competition Network.[201] The overall opinion regarding procedural regulation was largely positive. National competition authorities generally agreed that Regulation 1/2003 has significantly improved the effectiveness and uniformity of EU competition law enforcement compared to the previous system, where enforcement was more fragmented and less coordinated between Member States.[202] At the same time, there appears to be a common understanding that the framework needs to be adapted to the digital age, particularly in relation to electronic evidence, remote working environments, digital data preservation and the practical limits of existing investigative tools.[203]

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[200] Commission, 'Factual Summary of the Feedback to the Call for Evidence and the Contributions Received in the Context of the Public Consultation on the Revision of Regulation 1/2003' (DG Competition, 19 February 2026) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14729-EU-antitrust-procedural-rules-revision-/public-consultation_en> accessed 8 June 2026; See also Ross Ferguson, Annie Herdman, Nicole Kar, Henrik Morch and Rich Pepper, 'The European Commission Focuses on Speed and Efficiency in the Revision of EU Antitrust Procedural Rules' (Paul, Weiss, 15 July 2025) <https://www.paulweiss.com/insights/client-memos/the-european-commission-focuses-on-speed-and-efficiency-in-the-revision-of-eu-antitrust-procedural-rules> accessed 8 June 2026.

[201] Commission, 'Factual summary of the contributions received during the public consultation on the evaluation of Regulations 1/2003 and 773/2004' (European Commission) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation/public-consultation_en> accessed 8 June 2026; Commission, 'Summary report of NCA feedback on the evaluation of Regulations 1/2003 and 773/2004' (European Commission) <https://competition-policy.ec.europa.eu/system/files/2024-09/Evaluation%20of%20Regulations%201-2003%20and%20773-2004%20Summary%20report%20of%20NCA%20feedback_final_030924_0.pdf >accessed 8 June 2026.

[202] Commission, 'Summary report of NCA feedback on the evaluation of Regulations 1/2003 and 773/2004' (European Commission) 1 <https://competition-policy.ec.europa.eu/system/files/2024-09/Evaluation%20of%20Regulations%201-2003%20and%20773-2004%20Summary%20report%20of%20NCA%20feedback_final_030924_0.pdf > accessed 8 June 2026.

[203] ibid 3–4.

Not surprisingly, the national competition authorities assessed the existing framework for procedural rights and fundamental rights protection of undertakings relatively positively. They generally considered the legal framework for the protection of procedural rights to be effective, efficient and coherent with other EU law and policies.[204] However, this assessment must also be viewed in light of the institutional position of the authorities, whose primary task is effective competition enforcement and for whom broad investigative powers are essential. In that context, it is understandable that national competition authorities did not present the existing balance as problematic, but rather focused on areas where the framework could be made more effective.[205] For instance, some authorities criticised the power to take statements under Article 19 of Regulation 1/2003 as limited because it requires the consent of the interviewed person, while others pointed to the absence of clearer tools for obtaining and preserving electronic evidence.[206]

Regarding compulsory interviews, stakeholders in the public evaluation of Regulation 1/2003 and Regulation 773/2004 in 2025, including companies, business associations, law firms and lawyers' associations, acknowledged that such a power could make investigations more effective and potentially reduce reliance on inspections and broad requests for information. However, they also stressed that it should be accompanied by safeguards, including the privilege against self-incrimination, legal professional privilege, the possibility to review and correct interview records, and judicial review of interview decisions.[207] These responses suggest that stronger investigative powers are not necessarily viewed as inherently problematic, provided that they are balanced by adequate procedural guarantees.

The public consultation in 2022 showed a more divided view on procedural safeguards. While 64% of respondents considered that Regulation 1/2003 had achieved its objective of effective and uniform application of Article 101 TFEU, and 61% considered Regulation 773/2004 effective in regulating procedural aspects of antitrust proceedings,[208] only 40% considered that

[204] ibid 4.
[205] ibid 5–6; See also Commission, 'Summary of the contributions of the National Competition Authorities to the revision of Regulation 1/2003' (European Commission) < https://competition-policy.ec.europa.eu/document/download/1ac99571-c42b-4206-bf7c-3210611efc61_en?filename=Summary_NCA_contributions_revision_Reg1.pdf >accessed 13 June 2026.
[206] ibid 3–4.
[207] Commission, 'Factual Summary of the Feedback to the Call for Evidence and the Contributions Received in the Context of the Public Consultation on the Revision of Regulation 1/2003' (DG Competition, 19 February 2026) 3 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14729-EU-antitrust-procedural-rules-revision-/public-consultation_en > accessed 8 June 2026.
[208] Commission, 'Factual summary of the contributions received during the public consultation on the evaluation of Regulations 1/2003 and 773/2004' (European Commission) 3-4 <https://ec.europa.eu/info/law/better-

the Regulations adequately protect the procedural rights of all participants in Commission proceedings. By contrast, 37% disagreed and 23% did not know.[209] This does not indicate a clearly negative assessment but rather suggests that procedural rights protection is the area where evaluation remains most cautious.

The current review of Regulation 1/2003 and Regulation 773/2004 may provide an opportunity to address a number of procedural questions that have not yet been fully resolved. In their feedback, several national competition authorities observed that the absence of harmonised procedural rules at EU level on matters closely tied to proving an infringement has produced divergent outcomes across Member States, for example concerning the standard of proof, time limits, and the conditions under which evidence may be used.[210]

Directive 2019/1 addresses admissible evidence in general terms. Article 32 provides that the types of proof admissible before a national competition authority include "documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored".[211] However, this provision mainly concerns the format of evidence rather than the conditions under which it was obtained or later used. Similarly, in *Commission v Tetra Laval* the ECJ articulated a general evidentiary standard, holding that evidence must be "factually accurate, reliable and consistent", contain all the information necessary to assess a complex situation, and be capable of substantiating the conclusions drawn from it.[212] This is an important standard, but it does not provide detailed guidance on questions of admissibility and the concrete conditions under which evidence is collected. A gap may therefore remain in EU law regarding precisely those questions.

The recent case law sheds light on another area of uncertainty: evidence that is not obtained directly by a competition authority through the ordinary investigative tools of competition law but emerges in another enforcement context. This may become increasingly common in the future. Cartels are by their nature secretive, and as undertakings increasingly avoid traditional

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regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation/public-consultation_en> accessed 8 June 2026.

[209] ibid 5–6.

[210] Commission, 'Summary Report of NCA Feedback on the Evaluation of Regulations 1/2003 and 773/2004' (European Commission) 2 < https://competition-policy.ec.europa.eu/system/files/2024-09/Evaluation%20of%20Regulations%201-2003%20and%20773-2004%20Summary%20report%20of%20NCA%20feedback_final_030924_0.pdf > accessed 8 June 2026.

[211] Directive 2019/1, art 32.

[212] Case C–12/03 P *Commission v Tetra Laval* [2005] ECR I–987, para 39.

paper trails, relevant evidence may be discovered accidentally through different investigative measures carried out in other proceedings. The issue is not merely theoretical. Both *Ships Waste Oil Collector BV and Others v the Netherlands* and the Latvian Senate's judgment in case *No SKA-170/2025* illustrate that competition authorities may become aware of potentially valuable evidence through procedures originally directed at different enforcement objectives.[213]

However, the limited regulation at EU level can be explained by the fact that evidentiary rules remain closely connected to national procedural autonomy and to the legal classification of competition infringements in each Member State. Cartel infringements are not classified uniformly across national legal systems. In some Member States they are enforced through administrative proceedings, while in others they may have criminal or quasi-criminal characteristics.[214] This may affect not only the admissibility of evidence, but also the applicable standard of proof. For example, criminal proceedings usually require a higher standard of proof, such as proof beyond reasonable doubt, whereas administrative competition proceedings may operate with different evidentiary thresholds.[215] Comprehensive harmonisation of evidentiary rules at EU level would therefore be legally and practically complex.

Regarding the use of material obtained outside ordinary competition proceedings, prior judicial authorisation sought by the competition authority itself would often not be possible, since the evidence would already have been collected in another procedure. In such cases, the relevant safeguard would more likely be effective *ex post* judicial review of the transfer and use of the material. In general, this raises the question whether EU competition enforcement should place greater emphasis on *ex post* judicial control, and whether such an approach is capable of ensuring both effective protection of fundamental rights and sufficient legal certainty for enforcement authorities.

However, relying more heavily on *ex post* judicial control may not be the most satisfactory solution. If procedural defects are identified only after crucial evidence has already been

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[213]Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, para 32; Ships Waste Oil Collector BV and Others v Netherlands [GC] App nos 2799/16, 2800/16, 3124/16 and 3205/16 (ECtHR, 1 April 2025).

[214] Andreas Stephan, 'An Empirical Evaluation of the Normative Justifications for Cartel Criminalisation' (2017) 37(4) Legal Studies 621, 622.

[215] OECD, The Standard and Burden of Proof in Competition Law Cases (OECD Roundtables on Competition Policy Papers No 318, OECD Publishing 2024) 8-13 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/11/the-standard-and-burden-of-proof-in-competition-law-cases_bf304240/0199f63f-en.pdf> accessed 8 June 2026.

obtained, the result may be that such evidence can no longer be used. This is problematic from both perspectives: it weakens fundamental rights protection because the interference has already occurred, and it weakens enforcement because evidence of a cartel is often rare, difficult to obtain and impossible to replace. This risk is illustrated by the case law discussed above. Where the procedural basis for obtaining evidence is insufficient, later judicial review may lead to the exclusion of evidence that could otherwise be central to proving the infringement.[216]

For that reason, greater emphasis on *ex ante* judicial control may be a more coherent direction, at least for particularly intrusive investigative measures. This approach is already reflected in the existing framework. Under Article 21 of Regulation 1/2003, inspections of private homes and other non-business premises require prior authorisation by a national judicial authority.[217] Similarly, Article 7 of Directive 2019/1 provides that inspections of premises other than business premises, including homes of directors, managers and staff, cannot be carried out without prior authorisation by a national judicial authority.[218] Requiring authorisation before such measures are carried out means that their legal basis is examined before, rather than only after the evidence has been obtained. Stronger *ex ante* review should therefore not be seen merely as a restriction on enforcement, but as a means to ensure that evidence is collected properly from the start and remains usable later in the proceedings, reducing the risk that crucial evidence is later excluded on procedural grounds.

Overall, the challenge is not to choose between effective cartel enforcement and the protection of fundamental rights, but to ensure that both objectives are pursued simultaneously. This analysis suggests that this balance is best achieved not through weakening procedural safeguards, nor through excessive restrictions on investigative powers, but through clear procedural rules, targeted guidance on the use of evidence and effective judicial control. Since the amended version of Regulation 1/2003 is likely to take time to adopt, the balance is likely to continue developing in the coming years through case law, existing procedural instruments

[216] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, para 32; *Ships Waste Oil Collector BV and Others v Netherlands* [GC] App nos 2799/16, 2800/16, 3124/16 and 3205/16 (ECtHR, 1 April 2025); Case C–682/20 P *Les Mousquetaires and ITM Entreprises v Commission* [2023] EU:C:2023:170, para 125
[217] Regulation 1/2003, art 21(3).
[218] Directive 2019/1, art 7.

and the practical conduct of the Commission, national competition authorities and undertakings during investigations.

CONCLUSION

Cartel enforcement presents a particular challenge. Cartels are deliberately concealed, which means that direct evidence is often difficult to obtain or may not exist at all. At the same time, the investigative powers used to uncover such conduct may interfere with the rights of the undertakings and individuals concerned. Against this background, this thesis examined how the evidentiary standards developed in EU cartel enforcement interact with the protection of fundamental rights and how an appropriate balance between these interests may be achieved. The analysis was structured around four research questions.

The first question concerned the evidentiary standards governing proof of a cartel and how this evidentiary flexibility has developed. Tracing the case law chronologically revealed a movement from the restrictive position in *Wood Pulp II*, where parallel conduct open to a plausible competitive explanation could not by itself prove concertation, towards a settled body of doctrine that allows infringements to be established through presumptions and a bundle of circumstantial and cumulative evidence.[219] This flexibility is best understood as a response to the information asymmetry inherent in cartel cases rather than as a lowering of the standard of proof. The threshold of proof remains "firm, precise and consistent evidence",[220] although *Knauf Gips* confirmed that the standard applies to the evidence assessed as a whole rather than to each item taken in isolation.[221] The case law also confirms that it has been established that material gathered in disregard of procedural requirements, such as unrecorded interviews, remains inadmissible.[222] Evidentiary flexibility, in short, lightens the evidentiary burden without dispensing with it.

The existence of such broad investigative powers inevitably raises the question of the limits within which they may be exercised. The second research question therefore examined how the rights to respect for private life, to the protection of personal data and to a fair trial operate in the context of cartel proceedings. The right to respect for private life extends to business premises and correspondence, so inspections, seizures and the interception of communications

[219] Joined Cases C–89/85, C–104/85, C–114/85, C–116/85, C–117/85 and C–125/85 to C–129/85 *Ahlström Osakeyhtiö and Others v Commission* [1993] ECR I-1307, paras 71–72; Joined Cases C–204/00 P, C–205/00 P, C–211/00 P, C–213/00 P, C–217/00 P and C–219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I–123, paras 55–57.
[220] Joined Cases C–89/85, C–104/85, C–114/85, C–116/85, C–117/85 and C–125/85 to C–129/85 *Ahlström Osakeyhtiö and Others v Commission* [1993] ECR I-1307, para 127.
[221] Case C–407/08 P *Knauf Gips v Commission* [2010] ECR I–6375, para 47.
[222] Case C–682/20 P *Les Mousquetaires and ITM Entreprises v Commission* [2023] EU:C:2023:170, para 125.

all engage Article 8 ECHR, and the transfer of lawfully intercepted material from one authority to another is itself a distinct interference that must independently satisfy Article 8(2) ECHR.[223] Data protection operates as an independent guarantee governed by the principles of purpose limitation and data minimisation, which constrain how much authorities may collect and reuse the personal data collected during investigations.[224] The right to a fair trial applies because cartel fines are criminal in nature,[225] and it brings with it the privilege against self-incrimination, the presumption of innocence and the right to effective judicial review. Although the right to a fair trial does not lay down specific rules on the admissibility of evidence, it requires that the proceedings, including the way evidence was obtained and used, remain fair.[226]

The practical significance of these rights becomes most apparent when courts are required to assess whether particular evidence may be relied upon in cartel proceedings. For that reason, the third research question was focused on judgment of the Senate in case No SKA-170/2025. The central issue was not the original interception of communications, which had been lawfully authorised, but the transfer of that material to the Competition Council and its use in administrative cartel proceedings. Since there was no adequate regulation in the Operational Activities Law, the Senate held that this step failed the requirement that any interference with Article 8 ECHR be "in accordance with the law", because the Operational Activities Law lists exhaustively the purposes for which such material may be used and their use in administrative proceedings is not among them.[227] Furthermore, information does not lose its special statutory status merely by being placed in a criminal case file. The judgment confirms that the value of evidence, however high and crucial in proving the infringement, cannot by itself justify its use. What matters is whether that use rests on a clear and foreseeable legal basis and satisfies the requirements of necessity and proportionality.[228] The judgment also has an institutional dimension. Regarding particularly intrusive measures, courts should not compensate for the absence of a clear legislative framework through broad interpretation. Determining whether

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[223] *Klass and Others v Germany App* no 5029/71 (ECtHR, 6 September 1978) para 41; *Niemietz v Germany App* no 13710/88 (ECtHR, 16 December 1992) para 29; *Ships Waste Oil Collector BV and Others v Netherlands* [GC] App nos 2799/16, 2800/16, 3124/16 and 3205/16 (ECtHR, 1 April 2025) para 149.
[224] Charter of Fundamental Rights, art 8; GDPR, art 5(1)(b)–(c).
[225] *Engel and Others v Netherlands App* no 5100/71 (ECtHR, 8 June 1976) paras 82–83; *A Menarini Diagnostics SRL v Italy App* no 43509/08 (ECtHR, 27 September 2011).
[226] *Khan v UK* App no 35394/97 (ECtHR, 12 May 2000) para 34.
[227] Latvijas Republikas Senāta Administratīvo lietu departamenta spriedums lietā Nr A43004021, SKA-170/2025, ECLI:LV:AT:2025:1223.A43004021.41.S (Department of Administrative Cases of the Supreme Court of the Republic of Latvia, 23 December 2025) <https://www.at.gov.lv/downloadlawfile/11111> accessed 12 February 2026, paras 31–33, 36–38, 42.
[228] ibid.

such material may be used for purposes beyond those originally established might ultimately be a matter for the legislator rather than the courts. The subsequent amendments to the Operational Activities Law demonstrate that the problem does not lie in the objective of cartel enforcement, but in the absence of a sufficiently clear legal basis for achieving it.

This reflects a broader challenge that may increasingly confront both the Commission and national competition authorities and forms the basis of the fourth research question, namely how the effectiveness of enforcement may be balanced with fundamental rights. EU law establishes no hierarchy between the two. The internal market and the protection of fundamental rights are pillars of equal legal value.[229] The existing framework already embodies that balance through several instruments, but the recent case law exposes a gap concerning evidence that surfaces not through the ordinary tools of competition law but in another enforcement context and is later transferred and relied upon. Reliance on *ex post* judicial review is an imperfect solution, because identifying a defect only after the event tends to weaken both objectives at once, namely that the interference has already taken place, and evidence that is often impossible to replace may have to be excluded. Greater emphasis on *ex ante* judicial authorisation, which is already required for the most intrusive measures under Article 21 of Regulation 1/2003 and Article 7 of Directive 2019/1, may therefore be the more coherent direction. It should be seen less as a brake on enforcement than as a means of ensuring that evidence collected at the outset remains usable later.

The ongoing modernisation of Regulation 1/2003 and Regulation 773/2004 might offer an opportunity to provide clearer procedural rules in areas still underdeveloped in the regulatory framework such as investigative powers in a digital environment, guidance on the admissibility of evidence and on material originating in other proceedings. However, full harmonisation on rules related to the evidence as such would be impractical because of the diversity of national procedural rules and the different classification of cartel infringements in different countries.

It is also important to set out certain limitations of the present research. The thesis adopts a doctrinal and analytical method and does not attempt to measure the effectiveness of cartel enforcement in empirical or economic terms. Furthermore, it concentrates on the three rights directly engaged by the gathering and use of evidence and does not examine every guarantee that cartel proceedings may affect, such as *ne bis in idem* or legal professional privilege, among others. A comparative study of how Member States classify cartel infringements, and of the

[229] TEU, arts 1, 2 and 6; TFEU, art 26(1).

effect of that classification on the standard of proof and on admissibility, would help to establish how far common rules are even feasible. How the eventual revision of Regulation 1/2003 addresses dispersed and remotely stored digital evidence will, in time, provide a natural continuation of the present inquiry. The limitations identified above also point to several questions worthy of further examination.

Taken together, the findings of this thesis support one broader conclusion. Effective cartel enforcement and fundamental rights protection are not competing objectives that require the sacrifice of one in favour of the other. Rather, they are mutually dependent elements of a legitimate enforcement system. Enforcement that disregards fundamental rights risks losing its legitimacy, while an interpretation of fundamental rights that renders cartel enforcement ineffective would undermine the objectives of EU competition law. The challenge for legislators, courts, competition authorities and the Commission is therefore not to choose between enforcement and rights, but to ensure that both continue to develop together within a coherent and foreseeable legal approach.

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ABSTRACT

Cartels are widely recognised as among the most serious infringements of competition law because they harm competition, market participants and consumers. Their secretive nature makes them particularly difficult to detect and prove, creating a significant information asymmetry between competition authorities and cartel participants. In response, EU competition law has developed flexible evidentiary standards and extensive investigative powers designed to ensure the effective enforcement of Article 101 TFEU. At the same time, the gathering and use of evidence in cartel proceedings may interfere with fundamental rights such as the right to respect for private life, the right to the protection of personal data and the right to a fair trial.

This thesis examines the interaction between evidentiary standards in EU cartel enforcement and the protection of fundamental rights. It analyses the development of evidentiary flexibility in the case law of the Court of Justice of the European Union and considers how fundamental rights operate as legal limits on the gathering, transfer and use of evidence in cartel proceedings. The research adopts a doctrinal and analytical method, drawing on EU primary and secondary law, the case law of the Court of Justice of the European Union and the European Court of Human Rights, relevant national case law and academic literature.

A focus also is placed on evidence obtained outside ordinary competition law investigations and later relied upon in cartel proceedings. This issue is examined through a case study of the Latvian Supreme Court's judgment in case No SKA-170/2025, concerning the use of operational surveillance material in administrative cartel proceedings. The case illustrates the practical difficulties that arise where evidence may be relevant for proving a cartel infringement but is subject to other safeguards.

Evidentiary flexibility is necessary for effective cartel enforcement, but it cannot justify the circumvention of procedural safeguards. This balance is particularly important in light of digitalisation, which creates new opportunities for cartel participants to conceal coordination and increases pressure on competition authorities to rely on more intrusive investigative techniques. The ongoing modernisation of Regulation 1/2003 and Regulation 773/2004 may therefore provide an opportunity to clarify the procedural framework governing evidence gathering and use, and to strengthen legal certainty in this area.

ZUSAMMENFASSUNG

Kartelle gelten als eine der schwerwiegendsten Zuwiderhandlungen gegen das Wettbewerbsrecht, da sie Wettbewerb, Marktteilnehmer und Verbraucher schädigen. Ihr geheimer Charakter erschwert Aufdeckung und Nachweis erheblich und führt zu einer ausgeprägten Informationsasymmetrie zwischen Wettbewerbsbehörden und Kartellbeteiligten. Darauf hat das EU-Wettbewerbsrecht mit flexiblen beweisrechtlichen Maßstäben und weitreichenden Ermittlungsbefugnissen reagiert, um eine wirksame Durchsetzung von Art. 101 AEUV zu gewährleisten. Zugleich können die Erhebung und Verwendung von Beweismitteln in Kartellverfahren Grundrechte berühren, insbesondere das Recht auf Achtung des Privatlebens, den Schutz personenbezogener Daten und das Recht auf ein faires Verfahren.

Die vorliegende Arbeit untersucht das Zusammenspiel zwischen den Beweismaßstäben bei der Durchsetzung des EU-Kartellrechts und dem Grundrechtsschutz. Sie analysiert die Entwicklung der beweisrechtlichen Flexibilität in der Rechtsprechung des Gerichtshofs der Europäischen Union und fragt, inwieweit Grundrechte als rechtliche Grenzen der Erhebung, Übermittlung und Verwendung von Beweismitteln in Kartellverfahren wirken. Methodisch verfolgt die Untersuchung einen dogmatisch-analytischen Ansatz und stützt sich auf EU-Primär- und Sekundärrecht, die Rechtsprechung des Gerichtshofs der Europäischen Union und des Europäischen Gerichtshofs für Menschenrechte, einschlägige nationale Rechtsprechung sowie wissenschaftliche Literatur.

Ein besonderer Schwerpunkt liegt auf Beweismitteln, die außerhalb gewöhnlicher wettbewerbsrechtlicher Ermittlungen gewonnen und später in Kartellverfahren herangezogen werden. Dies wird anhand des Urteils des Obersten Gerichtshofs der Republik Lettland in der Rechtssache Nr. SKA-170/2025 untersucht, das die Verwendung von Material aus operativen Überwachungsmaßnahmen in verwaltungsrechtlichen Kartellverfahren betrifft. Der Fall zeigt die Schwierigkeiten, die entstehen, wenn relevante Beweismittel zugleich besonderen verfahrensrechtlichen und grundrechtlichen Schutzvorkehrungen unterliegen.

Beweisrechtliche Flexibilität ist für eine wirksame Kartellrechtsdurchsetzung erforderlich, rechtfertigt jedoch keine Umgehung verfahrensrechtlicher Garantien. Dies gewinnt im Zuge der Digitalisierung an Bedeutung, da sie neue Verschleierungsmöglichkeiten schafft und den Druck auf Wettbewerbsbehörden erhöht, invasivere Ermittlungsmethoden einzusetzen. Die Modernisierung der Verordnungen Nr. 1/2003 und Nr. 773/2004 könnte den Rahmen für Beweiserhebung und -verwendung präzisieren und die Rechtssicherheit stärken.