

## THE KNOWLEDGE OF THE LENIENCY POLICY AT THE LEVEL OF THE MANAGEMENT OF COMPANIES OPERATING IN ROMANIA

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### ABSTRACT

*At the level of the European Union, the defensive attitude adopted by the authorities when it comes to competition policy is very well known. The clearest proof is the existence of the leniency policy from the cartels legislation. In the EU, leniency is intensely used when we consider cartel investigations. On the other hand, in Romania, the situation is completely opposite, regarding leniency. Starting from this reality, we wanted to investigate the causes of this situation. We wish to find out why the management of companies operating on the territory of Romania doesn't consider leniency when involved in a cartel. The research methodology of this paper consists of applying a questionnaire to companies operating in Romania. The questions of the questionnaire were designed in such a way that we can identify the reasons why the companies that operate in Romania are reluctant to use the leniency policy. The results of the study were surprising, most of the interviewed companies didn't know that this leniency policy exists and after being explained how this policy works, all the companies stated that if they were in a cartel they would appeal to the leniency. The results of the present study allowed us to make a series of recommendations to the Romanian competition authorities regarding the way in which it makes known the leniency policy among the companies operating on the Romanian market.*

**KEYWORDS:** *cartels, leniency, management decisions*

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### 1. INTRODUCTION

At the EU level, leniency policy plays a vital role when it comes to identifying and sanctioning a cartel. Given our previous research on anti-competitive practices across the EU, in particular the cartel, it has been noted that most sanctioned cartel cases were based on leniency policy. More specifically, cartel cases were identified by the request for immunity from fines, by companies that were part of a cartel. Instead, analyzing the decisions issued by the Competition Council, in Romania things are completely different. Most of the cartel cases that have been sanctioned on the Romanian territory have been identified ex officio by the competition authorities.

In Table 1 we can see the situation regarding how the leniency policy is used at the EU level, respectively at Romania's level when it comes to identifying cartel cases. The data in this table refer to the period 2004-2018. We consider that a period of 15 years is sufficient to have an overview from this point of view.

We also want to make it clear that the EU data in this table refer only to cartel cases instrumented by the European Commission through DG Competition and not to all cartels that have been identified and sanctioned within the territory of EU Member States.

Analyzing the data in Table 1 it was observed that almost 82%, at the EU level, of the cartel cases that have been sanctioned, were identified with the help of leniency policy. On the Romanian

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territory the situation is totally opposite, only 2.5% of the cartel cases sanctioned by the Competition Council have been identified by the leniency policy.

**Table 1. The cartel cases identified by the leniency policy at the EU and Romania’s level, during 2004-2018**

Year	EU		Romania	
	Cartels identified and sanctioned	Cartels identified by leniency policy	Cartels identified and sanctioned	Cartels identified by leniency policy
2004	3	1	3	0
2005	5	3	4	0
2006	6	5	1	0
2007	8	4	0	0
2008	7	5	3	0
2009	5	4	4	0
2010	6	6	6	0
2011	4	4	8	0
2012	4	4	4	0
2013	3	3	2	0
2014	7	6	4	0
2015	5	5	16	1
2016	4	4	12	0
2017	6	5	10	1
2018	4	4	2	0
<b>Total</b>	<b>77</b>	<b>63</b>	<b>79</b>	<b>2</b>

*Source:* made by the authors based on the information extracted from the decisions issued by the European Commission for the violation of Art. 101 of the TFEU, and from those issued by the Competition Council of Romania for the violation of Art. 5 of the Competition Law no. 21/1996, in the period 2004-2018

Starting from this premise, we wanted to identify what the reasons are behind the reluctance of the managers of Romanian companies to use the advantages offered by the leniency policy, more precisely the possibility of benefiting from immunity to fines or obtaining reduction of the fine when the company is involved in a cartel.

## 2. LITERATURE REVIEW

Currently, in the EU, the leniency policy is regulated by the Commission Notice on Immunity from fines and reduction of fines in cartel cases, of 2006. This communication underwent some changes in 2015. This communication sets out the conditions and procedures by which an enterprise involved in a cartel can benefit from immunity from fines, or from reducing fines.

Even if, at first glance, we might be tempted to believe that the leniency policy is unfair, because a company that violates cartel law escapes unpunished. However, things should not be viewed from this perspective, because, when the Commission implemented the leniency policy, it considered the interests of the consumers, above all the punishment of the guilty ones. The effects of cartels are felt by other competitors, but especially by consumers. Thus, it is much more important for a cartel to be discovered at the earliest stage, because the damage will be lower. Also, as Wils (2016) points out, through leniency policy, competition authorities greatly reduce the administrative costs and the time it would take to gather all the information needed to prove the existence of a cartel.

According to the EU leniency policy, a company that is part of a cartel can be granted immunity to a fine, only if it complies with the following condition: to notify the competition authorities about its involvement in a cartel, before to have been suspected by the latter of the existence of anti-

competitive practice. If this condition is met and if the company is cooperative during the investigation, it may benefit from immunity to fines (Official Journal of the European Union, 2006). The procedure applied in the case of requesting immunity to fines involves the existence in the first phase, of an order number or of a request.

An enterprise may apply for an order number to obtain immunity from fines, by virtue of obtaining the status of first informant in a possible cartel case. This is done when the company wishing to benefit from immunity has the suspicion that another member of the cartel would like to apply for immunity from fines.

In the other situation, if no order number is requested, the company may file an application for immunity from fines. After submitting the application, the company must submit to the competition authorities a statement, containing information such as: detailed contact data of the applicant, presentation of how the cartel worked, contact details of the other members of the alleged cartel, as well as conclusive information regarding the violation of legislation. Based on this statement, the competition authorities may initiate a check on the alleged cartel.

After requesting immunity from fines, the enterprise must withdraw from the cartel and during the whole investigation must cooperate closely with the competition authorities.

If these conditions are met, the company obtains conditional immunity. This conditional immunity can be lost only if, during the course of the investigation, the competition authorities discover that the company has inadvertently hidden some information from it, or even destroyed some evidence.

The immunity to fines is a great advantage, because the fines are calculated according to the gravity and the period of the cartel unfolding and reach up to 10% of the turnover.

The other companies involved in the cartel can benefit from the leniency policy. This is possible when a company reveals its participation in a cartel case, but does not meet the conditions for granting immunity from fines. In order to benefit from reducing the amount of the fine, the company must submit a formal request to the competition authorities. After submitting the application, the company must submit information that adds value to the investigation. This category includes that information which shortens the period of completion of the investigation, so that the competition authorities can channel their resources on other cases (Fora, 2016).

Thus, the next company, after which it has obtained the immunity to fines, which provides information to the competition authorities, can benefit from a reduction of maximum 50% of the fine value. The third company, which provides information useful in demonstrating the cartel case, can obtain a reduction of the fine between 20% and 30%, and the other companies that subsequently cooperate with the competition authorities can benefit from a maximum reduction of the fine of 20% (Official Journal of the European Union, 2006).

Given the way the EU leniency policy works, Corchon and Marini (2018) believe that this policy plays a major role when it comes to the number of cartel cases identified and sanctioned annually by the competition authorities.

Also, Motchenkova and Spagnolo (2019) draw our attention to the fact that the leniency policy in the EU is different from that in the USA, where you can benefit from immunity to fines, but not from reducing fines for the other companies involved in the cartel.

### **3. RESEARCH METHODOLOGY**

The research methodology used in this paper consists of applying an online questionnaire to the companies that operate in the territory of Romania. The questionnaire was completed using the Google Forms application and is available at the following link:

<https://docs.google.com/forms/d/18UaWjUjsI2Xn0hRnYKjgqeyAQ3-EfT4ic4Dd9ieNTDk/edit>.

To the *Questionnaire regarding the knowledge of leniency policy at the level of management of companies operating in Romania*, 200 companies replied. This questionnaire was applied during January-May 2019.

The questionnaire was divided into ten parts. The first field consisted of completing the name of the company, with the mention that it will remain anonymous during the study.

The second part concerned the field of activity of the company, and the following elements considered were the age of the company on the Romanian market, respectively the turnover of the company in the previous financial year.

In the fifth part of the questionnaire, the managers were asked if they knew what a cartel represents. After answering this question in the questionnaire, they received the definition of the cartel.

In the next part the managers were asked if they knew the leniency policy and how it works. After responding, the managers were explained what it was and how the leniency policy worked.

In the seventh part of the questionnaire the managers were asked if hypothetically they were part of a cartel, they would consider using the leniency policy.

The penultimate part of the questionnaire asks managers if they heard of the Competition Alert Platform provided by the Competition Council of Romania. After answering this question, they were explained what this platform was and how it worked. In the last part of the questionnaire, the managers are asked if they were willing to use the Competition Alert Platform when they were aware of a breach of competition law.

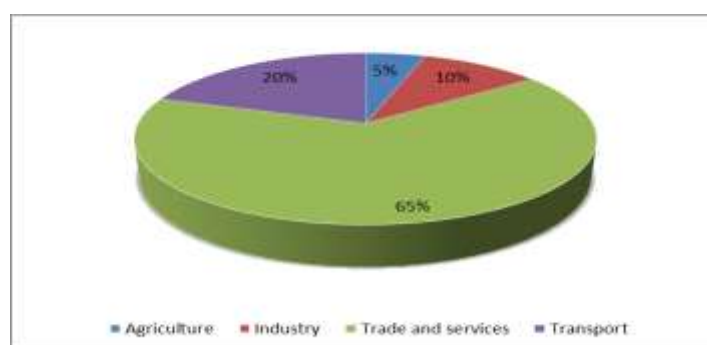
Unfortunately, during the whole period of applying the questionnaire, we faced the reluctance of managers to respond to this survey, and as a consequence we were forced to summarize the 200 responses received, although we acknowledge that we initially targeted a much larger sample.

#### 4. RESULTS

The answers offered by the managers who completed the *Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania* are analyzed and interpreted in this part of the paper.

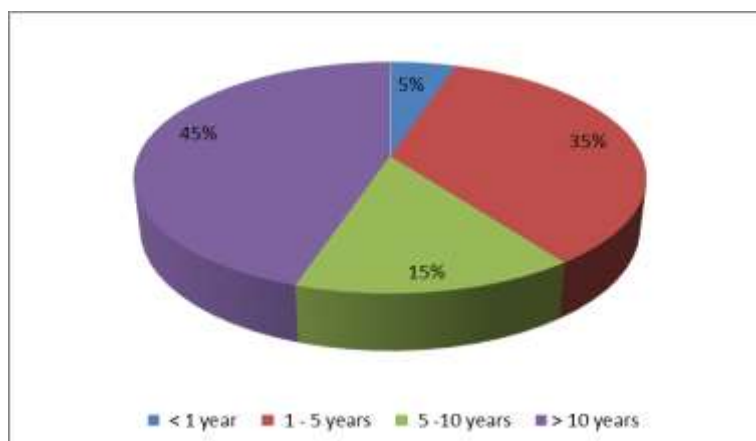
In the first phase we wanted to analyze the profile of the companies that were part of the study, and here we considered the field of activity of the company, the seniority of the company, as well as the turnover that the company registered in the previous financial year.

In Figure 1 it is observed that in proportion of 65% the activity field of the companies is trade and services. At the opposite pole are the agricultural companies, with a share of only 5%.



**Figure 1. Percentage of companies according to the field of activity in which they operate**  
*Source: made by the authors based on the answers received in the Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania*

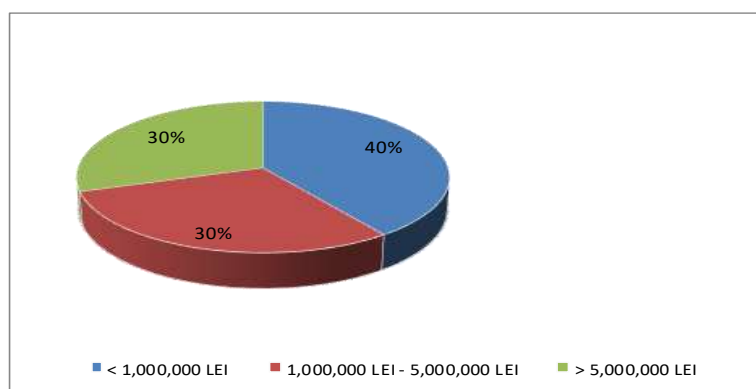
Analyzing the age of companies on the Romanian market, according to Figure 2, we observe that 45% of the companies that were part of the study are experienced entities, having more than 10 years on the market. In contrast, the smallest percentage is occupied by companies that are less than 1 year old.



**Figure 2. Percentage of companies according to seniority**

*Source: made by the authors based on the answers received in the Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania*

From the point of view of the turnover registered by the companies in the previous year, the situation is somewhat homogeneous, in the sense that in the questionnaire we set three intervals, and as it appears from Figure 3, 40% of the companies had a turnover of less than 1,000,000 LEI. When compared with a weight of 30%, there are the other two intervals, respectively the turnover between 1,000,000 lei and 5,000,000 LEI, and the turnover over 5,000,000 LEI.



**Figure 3. Percentage of companies according to the turnover of the previous financial year**

*Source: made by the authors based on the answers received in the Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania*

After analyzing the profile of the companies that were part of the study, we want to highlight how the managers answered the five questions of the questionnaire. To facilitate the analysis of the data we will note the questions as follows: Q1 - The competition law at the EU and Romania's level prohibits companies from practicing a cartel. Do you know what a cartel is? Q2: If a company is part of a cartel, it may use the leniency policy. Have you heard about this policy and how it works? Q3: If you were part of a cartel, would you apply for leniency policy? Q4: Have you heard about the Competition Warning Alert? and Q5: If you were aware of a breach of competition law would you use the Competition Alert Platform?

We would like to recall that after Q1, Q2 and Q4 in the questionnaire, the managers were given the definition of the terms used in the question, so that they can answer the following questions knowingly.

To all five questions, the managers were able to answer YES or NO.

The general structure of the answers offered by the managers of the companies operating in Romania, to the five questions was shown in Table 2. Thus, 95% of the managers know what a cartel is, but regarding the question what is and how the leniency policy works, they answered in a percentage of 65% that they do not know this policy. After being explained in the questionnaire how the leniency policy works, the managers answered in a proportion of 85%, that if hypothetically they were part of a cartel, they would resort to the leniency policy. When asked if they knew about of the existence of the Competition Alert Platform, 75% of the managers acknowledged that they do not know this platform.

**Table 2. The general structure of the answers provided by the managers**

Question	Answer YES	Answer NO
Q1	95%	5%
Q2	35%	65%
Q3	85%	15%
Q4	25%	75%
Q5	85%	15%

*Source:* made by the authors based on the answers received in the *Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania*

After being told how the Competition Alert Platform works, 85% of the managers answered that if they were aware of a breach of competition law, they would use this platform.

In the following we wanted to analyze the managers' answers to the five questions and according to the profile of the companies they run.

Table 3 provides the structure of the responses according to the field of activity of the companies. An interesting aspect that emerges from the analysis is the fact that the companies activating in agriculture and transport know the way in which the leniency policy works, in a proportion of 100% and 75% respectively, but nevertheless, only 25% of the transport managers would benefit from this policy, if hypothetically they were part of a cartel.

**Table 3. Structure of the answers offered by managers according to the field of activity of the company**

Field of activity of company	Q1 answer YES	Q2 answer YES	Q3 answer YES	Q4 answer YES	Q5 answer YES
Agriculture	100%	100%	100%	0%	100%
Industry	100%	0%	100%	0%	0%
Trade and services	92%	23%	100%	31%	92%
Transport	100%	75%	25%	25%	100%

*Source:* made by the authors based on the answers received in the *Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania*

Table 4 presents the structure of the answers offered by the managers of the companies operating in Romania, according to the age of the firm. What is common in this analysis is that all the managers

of companies aged between 5 and 10 years know what leniency policy is and how it works, but no manager of young companies, under one year old, knew what the policy of leniency is.

**Table 4. Structure of the answers offered by managers according to the seniority of the company**

Seniority of company	Q1 answer YES	Q2 answer YES	Q3 answer YES	Q4 answer YES	Q5 answer YES
< 1 year	100%	0%	100%	0%	100%
1 - 5 years	86%	14%	100%	29%	71%
5 -10 years	100%	100%	67%	33%	100%
> 10 years	100%	33%	78%	22%	89%

*Source:* made by the authors based on the answers received in the *Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania*

The structure of the answers offered by managers, according to the turnover of the company registered in the previous year is shown in Table 5. In this analysis we can see that half of the managers whose companies had a turnover between 1,000,000 lei and 5,000,000 lei, in the previous financial year, know how the leniency policy works.

**Table 5. Structure of the answers offered by managers, according to the turnover of the company registered in the previous financial year**

Turnover of company	Q1 answer YES	Q2 answer YES	Q3 answer YES	Q4 answer YES	Q5 answer YES
< 1,000,000 LEI	87%	25%	75%	0%	62%
1,000,000 LEI - 5,000,000 LEI	100%	50%	100%	50%	100%
> 5,000,000 LEI	100%	33%	83%	33%	100%

*Source:* made by the authors based on the answers received in the *Questionnaire regarding the knowledge of the leniency policy at the level of the management of the companies operating in Romania*

The results of this study allowed us to get an overall idea of how the managers of companies operating in Romania perceive the leniency policy used in cartels.

## 5. CONCLUSIONS AND RECOMMENDATIONS

Given the premise from which we started and which we detailed in the introduction of the paper, we were able to build on what the underlying causes of the non-use of leniency policy in Romania are. The main reason is that most of the managers of the companies operating in Romania, even if they know what a cartel is, have not heard and do not know how this leniency policy works. Under these circumstances, it is clear that they will never be tempted to benefit from the benefits of this policy even if they are part of a cartel.

Another interesting aspect revealed by the results of the study was that, after the managers have been explained what it is and how the leniency policy works in a very high percentage, of 85%, they admitted that if hypothetically they were part of a cartel, they would like to benefit from the leniency policy.

The conclusion is a very clear one, the statistics showing the poor use, if at all, of the leniency policy on the territory of Romania, are perfectly justified under the conditions in which the

managers in Romania do not know about the existence of this policy. In this regard, we allow ourselves to recommend the competition authority in Romania, in this case the Competition Council, to make known the leniency policy and the way it works through various means, but we consider that the most effective would be the promotion in the online environment and the media. Regarding the Competition Alert Platform the results of the study are again conclusive, the majority of the managers of the companies operating on the Romanian territory were not aware of the existence of this instrument, but after being explained how it works, 85%, the managers replied that they would use this platform. The Competition Alert Platform is a tool that has been operating on the website of the Competition Council since 2015, and which allows both natural and legal persons, under the protection of anonymity, to report infringements of legislation in the field of competition of any kind. Given the vital role of the competition policy, in the light of maintaining a fair competition market, we recommend the Competition Council of Romania to make the Competition Alert Platform known, by promoting it especially in the online environment and the media. We consider that the advantages deriving from the promotion of the Competition Alert Platform on the Romanian territory are much greater than the possible false notifications that can be made under anonymity.

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