

# **Leniency programme as a fair tool of EU competition law**

## **Abstract**

This diploma thesis addresses the question whether the Commission's leniency programme respects the fundamental rights and principles protecting undertakings from abuse of power by the Commission, in other words whether the Commission's leniency programme is fair and proportionate.

After a general introduction to the conditions of the Commission's leniency programme, the diploma thesis analyses the relationship of the leniency programme to the various fundamental rights and principles - namely the principle of legal certainty and legitimate expectations, the principle of equal treatment and the right to a fair trial. These particular rights and principles have been selected because they appear to be the most relevant with respect to the specifics of the leniency program.

In relation to the principle of legal certainty and legitimate expectation, the focus is on the hypothetical application and marker application, the evidence required to obtain immunity, evidence with significant added value, the conditions of cooperation with the Commission, the timing of notification of the fulfilment of the conditions of the leniency programme, the level of reduction of the fine and the issue of multijurisdictional leniency applications.

In relation to the principle of equal treatment, the substantive and personal scope of the leniency programme (limitation to hardcore horizontal agreements and to undertakings) is assessed.

Compliance with the right to a fair trial is assessed in relation to several sub-rights, which include the right to defence and the presumption of innocence, the prohibition of self-incrimination and the right to judicial protection.

Finally, the thesis concludes that the Commission's leniency programme can be assessed as proportionate in relation to the interference with fundamental rights and principles, however, limitations can be identified, in particular in relation to the principle of legal certainty and legitimate expectations, which could be substantially eliminated without having a significant negative impact on the practicality of the leniency programme from the Commission's perspective. The Commission's leniency programme also faces a number of other challenges that were not the subject of this diploma thesis.