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INSTITUTIONAL MECHANISMS OF LEGAL PROTECTION AGAINST ANTI-COMPETITIVE PRACTICES IN ROMANIA IN THE CONTEXT OF EUROPEAN COMPETITION LAW

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Abstract*: This study examines the institutional mechanisms of legal protection against anti-competitive practices existing under Romanian law, analysed in relation to the requirements of European Union competition law. The paper starts from the normative framework established by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and by Regulation (EC) No 1/2003, in order to examine how these provisions have been transposed and adapted into domestic law through Competition Law No 21/1996 and the subsequent normative acts. Particular attention is given to the legal status, independence, and powers of the Romanian Competition Council, the national authority responsible for enforcing antitrust legislation, as well as to the impact of Directive (EU) 2019/1 (the „ECN+ Directive") on the institutional consolidation of that authority. The study further examines the typology of anti-competitive practices – anti-competitive agreements and abuse of dominance – the mechanisms for their detection and sanctioning, and recent case-law developments of the Court of Justice of the European Union, including the judgments delivered on 18 December 2025 in the joined cases concerning abuse of a dominant position. The conclusions of the study highlight both the progress achieved in the institutional alignment of Romania with European standards and the vulnerabilities that persist, in particular regarding the guarantees of independence of the national competition authority and the effectiveness of damages actions for harm caused by anti-competitive practices.*

Keywords*: European competition law, Competition Council, anti-competitive practices, abuse of dominant position, ECN+ Directive, institutional independence, private enforcement.*

1. Introduction

Undistorted competition constitutes one of the fundamental pillars of the European Union's internal market, enshrined in Protocol No 27 annexed to the Treaties, according to which a system ensuring that competition is not distorted forms an integral part of the internal market (European Parliament, 2024). This policy choice is not merely theoretical; it translates into an extensively developed body of substantive and institutional rules designed to prevent and sanction conduct by undertakings that restricts, prevents, or distorts the competitive process – anti-competitive agreements, abuse of a dominant position, and non-compliant economic concentrations.

Romania, as a Member State of the European Union since 2007, has committed to ensuring the effective application of these rules at national level, both through the direct reception of primary and secondary EU law and through the adaptation of domestic legislation – primarily Competition Law No 21/1996 – to European requirements. A central role in this process belongs to the Competition Council, the autonomous administrative authority vested with powers to investigate, control, and sanction anti-competitive practices, and also entrusted with monitoring State aid and controlling economic concentrations.

This study aims to provide a systematic analysis of the institutional mechanisms through which legal protection against anti-competitive practices is achieved in Romania, examining the interaction between domestic law and European Union law, the recent evolution of the legislative framework – in particular the transposition of Directive (EU) 2019/1 through Government Emergency Ordinance No 108/2023 – as well as the recent case law of the Court of Justice of the European Union (CJEU), relevant for the interpretation of Articles 101 and 102 TFEU. Legal scholarship has extensively examined the main anti-competitive practices affecting the formation of an undistorted competitive environment (Vidican, 2022), the economic effects of cartel agreements on consumers and on the economy as a whole (Vidican & Hepeș, 2022), as well as the evolution of the European Union's competition policy as an instrument for regulating the internal market (Vidican, 2019), aspects that provide a useful conceptual framework for the institutional analysis proposed below. The central question addressed here is whether the formal transposition of European institutional independence standards – achieved in Romania through Government Emergency Ordinance No 108/2023 – has translated into genuine functional independence of the Competition Council, or whether, on the contrary, a gap persists between the letter of the law and institutional practice, a gap identified by comparative scholarship in other Central and Eastern European states (Piszcz & Grynfogel, 2022; Cseres, 2019). This study combines doctrinal analysis of domestic and EU legal norms with a critical, comparative perspective intended to situate the Romanian experience within a broader European context.

2. The normative framework of competition law: from European Union law to domestic law

2.1. Articles 101 and 102 TFEU and Regulation (EC) No 1/2003

European Union competition law, as regards the conduct of undertakings, is structured around two central provisions of the TFEU. Article 101 TFEU prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices which have as their object or effect the prevention, restriction, or distortion of competition within the internal market, in particular by fixing prices, limiting production, sharing markets, or applying dissimilar conditions to equivalent transactions. Article 102 TFEU, in turn, prohibits any abuse by one or more undertakings of a dominant position held within the internal market or in a substantial part of it, in so far as it may affect trade between Member States (European Parliament, 2024).

The enforcement of these two provisions was fundamentally transformed by Regulation (EC) No 1/2003, which introduced a system of decentralised enforcement of competition rules, allowing national competition authorities and national courts to apply Articles 101 and 102 TFEU directly, in parallel with domestic competition law. This decentralisation was accompanied by the creation of the European Competition Network (ECN), a cooperation structure between the European Commission and the national competition authorities, designed to ensure the coherent application of European competition law across the entire territory of the Union (European Commission, cited in European Parliament, 2024).

Romanian legal scholarship highlighted, even prior to accession, the need to harmonise domestic law with the Community acquis in the field of competition, emphasising that free competition constitutes an essential condition of the transition to a market economy (Băcanu, cited in Vidican, 2022). At the same time, classical doctrine defined commercial competition law as the body of legal rules governing the relations between competitors on a given market, aimed at ensuring fair economic rivalry (Căpățână, 1998), a definition that remains relevant for understanding the rationale underlying State – and, subsequently, Union – intervention in this field.

2.2. Competition Law No 21/1996 and its legislative evolution

At domestic level, the protection of competition is primarily ensured by Competition Law No 21/1996, as republished, whose declared purpose is the protection, maintenance, and stimulation of competition and of a normal competitive environment, with a view to promoting consumer interests (Competition Law No 21/1996, Article 1). The law broadly reproduces the architecture of Articles 101 and 102 TFEU: Article 5 prohibits anti-competitive agreements, while Article 6 prohibits the abuse by one or more undertakings of a dominant position held on the Romanian market or in a substantial part of it.

Competition Law has undergone numerous amendments over time, the most recent major transformation being driven by the need to transpose Directive (EU) 2019/1, carried out through Government Emergency Ordinance No 108/2023, published in the Official Gazette No 1100 of 6 December 2023. According to official statements of the competition authority, the normative act aimed to strengthen the institution's independence in the decision-making process, to enhance the effectiveness of investigative tools and of the leniency programme, and to facilitate cooperation with the other competition authorities within the European Union (CECCAR Business Magazine, n.d.). Moreover, Emergency Ordinance No 108/2023 extended the powers of the Competition Council, entrusting it with additional responsibilities deriving from the application of the Regulation on foreign subsidies distorting the internal market and the Digital Markets Act.

Romanian commercial law scholarship has consistently emphasised the public-policy character of competition rules, Article 5 of the law setting out, by way of example, the categories of agreements considered unlawful by their very object (Coman, 2011; Didea, 2009). It has also been noted that the sanction of absolute nullity applicable to anti-competitive agreements applies irrespective of the form – express or tacit, public or secret – in which the agreement is expressed, and irrespective of the name or legal nature of the instrument through which it is embodied (Vidican, 2022).

3. The Competition Council – the national competition authority

3.1. Legal status and institutional organisation

The Competition Council is the autonomous administrative authority with legal personality responsible for enforcing and monitoring compliance with Competition Law No 21/1996, as well as for the national application of Articles 101 and 102 TFEU. The independence of this institution from the Government and from other central public administration authorities constitutes a structural condition for the objective and impartial exercise of its powers, an aspect consistently emphasised both in legal scholarship and in institutional practice (JURIDICE.ro, 2026a).

The powers of the Competition Council can broadly be grouped into four categories: investigating anti-competitive practices (agreements and abuses of dominance), controlling economic concentrations that exceed the value thresholds set by law, monitoring State aid granted at central, regional, and local level, and institutional cooperation, both within the European Competition Network and with international organisations such as the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (JURIDICE.ro, 2026a).

3.2. Directive (EU) 2019/1 (the „ECN+ Directive") and its transposition into Romanian law

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 (the „ECN+ Directive") constitutes, alongside Regulation No 1/2003, the second major normative pillar of the decentralised enforcement of Union competition law. According to recital (1) of the directive, Member States must ensure that national competition authorities have the guarantees of independence, the resources, and the law enforcement and fine-imposing powers necessary to effectively apply Articles 101 and 102 TFEU (Directive (EU) 2019/1, 2019).

A key element of the directive is set out in Article 4(3), which guarantees that the decision-makers within national competition authorities cannot be removed from office, during their term of mandate, unless they no longer fulfil the conditions required for the performance of their duties, as laid down in advance by domestic law, or if they have been found guilty of serious misconduct under national procedures. The rationale of this provision is to protect the members of the competition authority's leadership against politically motivated dismissals that could compromise the independent exercise of law-enforcement functions (Directive (EU) 2019/1, 2019, Article 4(3)).

The transposition of this directive into Romanian law was carried out late and in stages. Romania initially communicated only a partial transposition, prompting the European Commission to initiate, in 2023, an infringement procedure (Capital.ro, 2023). The actual transposition was carried out through Government Emergency Ordinance No 108/2023, a normative act which strengthened the inspection powers of the authority – including the right of competition inspectors to access any information held by the investigated undertakings, regardless of the medium on which it is stored – and established a revised method of organising and operating the plenum of the Competition Council, composed of 11 members appointed by decision of Parliament (GEO No 108/2023, 2023).

Romania's delay was not an isolated phenomenon. The European Commission's report on the transposition of the ECN+ Directive, adopted on 29 November 2024, confirmed that a significant number of Member States encountered similar difficulties, some completing transposition only years after the February 2021 deadline (European Commission, 2024). Comparative studies devoted to this phenomenon have shown that the mere formal transposition of the independence guarantees set out in Article 4 of the directive does not, in every case, amount to genuine functional independence of the national authority, the latter depending on a multitude of structural factors – the administrative and political culture of the state, the actual stability of mandates, and the degree of transparency of appointment and dismissal procedures (Piszcz & Grynfogel, 2022). A comparative analysis of the French and Polish models of transposition, for instance, reveals a significant contrast: whereas the French competition authority (Autorité de la concurrence) enjoys solid organic independence, confirmed by the case law of the French Council of State, the Polish authority remains, in many respects, dependent on the prime minister, who appoints and may dismiss it without significant limitations (Piszcz & Grynfogel, 2022). A similar conclusion was reached with regard to Hungary, where the leading study on the transposition of the directive showed that it risks remaining a dead letter in the absence of genuine institutional capacity and of a constitutional context that genuinely supports the independence of the competition authority (Cseres, 2019).

It is worth noting that the legislative process of institutional reform of the Competition Council was not without controversy. The European Commission drew attention, through an official communication, to the risk that the initially proposed method of wholesale renewal of the mandates of the plenum members could contravene the independence guarantee provided for in Article 4(3) of the ECN+ Directive, insofar as it would have allowed for the collective removal of the authority's leadership without the conditions established by the directive being met (Financial Intelligence, 2022). This episode clearly illustrates the structural tension between European requirements of institutional independence and the dynamics of the domestic legislative process, an aspect to which we return in Section 7 of this paper.

3.3. Extended powers: foreign subsidies, digital markets, and State aid

The 2023 legislative reform significantly extended the range of powers of the Competition Council, entrusting it with tasks deriving from the application of Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market, as well as from Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (the Digital Markets Act – DMA) (GEO No 108/2023, 2023). The mechanism for screening foreign direct investment was also strengthened, by extending the powers of the Committee for the Screening of Foreign Direct Investment and ensuring equal treatment between investments originating from within and outside the European Union.

With regard to the digital market, the Competition Council adopted, as early as 2021, a strategy dedicated to digital markets, as an institutional response to the specific challenges of online competition – network effects, ,,first-mover" advantages, and the tendency towards quasi-monopolistic positions generated by ,,winner-takes-all" dynamics (Competition Council, 2021). These economic phenomena have been extensively analysed in legal scholarship, which has highlighted how network effects can rapidly lead to the consolidation of dominant positions and to the erection of substantial barriers to entry for potential competitors (Vidican & Hepeș, 2023; Ezrachi & Stucke, 2017). The Romanian authority has also acted in this direction on the enforcement side, imposing, for instance, a fine of EUR 6.7 million on the operator of a major e-commerce platform for practices incompatible with competition legislation (Competition Council, 2020).

4. Typology of anti-competitive practices and institutional mechanisms of detection

4.1. Anti-competitive agreements

Anti-competitive agreements, regulated by Article 5 of the Competition Law and Article 101 TFEU, cover any agreement, decision by an association of undertakings, or concerted practice which has as its object or effect the restriction, prevention, or distortion of competition. Romanian legal scholarship has emphasised that, for an agreement to be classified as anti-competitive, its legal form is irrelevant – the agreement may be express or tacit, formalised through a written contract, or resulting from consistent parallel conduct among competing undertakings (Cărpenaru, 2007; Vidican, 2022).

The most serious form of anti-competitive agreement is the cartel, defined in legal scholarship as a form of cooperation between competitors aimed at eliminating the uncertainty inherent to any competitive market, through price fixing, market allocation, or output limitation, with the goal of obtaining profits higher than those which would result from the normal interplay of supply and demand (Vidican, 2022, citing the International Competition Network). Given the severity of their economic effects, cartel-type conduct is sanctioned regardless of the size of the undertakings involved or of the nature or purpose pursued, such conduct being characterised as illegal, unjustified, and unfair by its very nature (International Competition Network, cited in Vidican, 2022). The economic effects of such agreements on consumers are substantial: cartels lead to higher prices, a reduced quantity and quality of supply, and diminished innovation, without generating any economic or social benefit capable of justifying the resulting loss of welfare (Vidican & Hepeș, 2022).

The Competition Law nonetheless establishes a de minimis rule: under Article 8 of the law, an anti-competitive agreement is considered to be of minor importance – and therefore falls outside the scope of the prohibition – where the combined market share held by the parties does not exceed 10% on any of the relevant markets concerned, when the agreement is concluded between competitors, or 15% where the agreement is concluded between undertakings that are not competitors (Competition Law No 21/1996, Article 8). This rule reflects the domestic transposition of the European Commission's de minimis notice and is intended to concentrate the investigative resources of the authority on agreements with a significant economic impact.

4.2. Abuse of a dominant position

Abuse of a dominant position, regulated by Article 6 of the Competition Law and Article 102 TFEU, presupposes the prior existence of a dominant position on the relevant market – defined, according to the settled case law of the CJEU, as a position of economic strength enjoyed by an undertaking which enables it to behave to an appreciable extent independently of its competitors, customers, and, ultimately, consumers (European Parliament, 2024). Holding a dominant position is not, in itself, unlawful; on the contrary, undertakings in such a position are permitted to compete on the merits. What the law sanctions is the abusive exploitation of that position, through conduct such as predatory pricing, excessive pricing, tying, or unjustified refusal to deal (European Parliament, 2024).

Recent CJEU case law has brought significant clarifications regarding the evidentiary standard applicable to establishing an abuse of a dominant position. Thus, in its judgment of 18 December 2025 in Case C-161/24 (OSA), the Court held that a competition authority discharges its burden of proof when it demonstrates that the conduct of a dominant undertaking is capable of harming an effective competitive structure, without being required additionally to demonstrate the existence of direct harm to consumers (JURIDICE.ro, 2025a). The case concerned the method used by a copyright collecting society to calculate royalties charged to hotel establishments, the Court finding that failure to take into account the occupancy rate of rooms when setting royalties may contribute to a finding of abuse in the form of unfair pricing, insofar as objective, verifiable, and cost-reasonable methods exist for integrating that economic indicator (Taxe pentru Muzică, 2025).

On the same day, the Court ruled on two joined cases – C-245/24 and C-260/24, both concerning the Lukoil group in Bulgaria – relating to margin-squeeze practices and to refusal of access to an essential infrastructure. In Case C-260/24, the Court clarified the criteria applicable to defining the relevant product market where the impugned conduct consists of pricing practices generating a margin squeeze, holding that only products presenting a sufficient degree of substitutability from the demand side may be included in the same relevant market (JURIDICE.ro, 2025b). In Case C-245/24, the Court specified the conditions for applying the Bronner case law on refusal of access to an essential infrastructure, holding that these conditions remain applicable even where the infrastructure in question was initially developed by public authorities and subsequently transferred to a dominant undertaking, provided that the transfer took place under competitive conditions and that the undertaking enjoys full decision-making autonomy over access to the infrastructure (JURIDICE.ro, 2025c).

Another relevant judgment, although delivered somewhat earlier, remains Case C-333/21 (European Superleague Company), in which the Court held, on 21 December 2023, that the rules adopted by FIFA and UEFA, which make the creation of a new inter-club football competition within the Union subject to their prior authorisation, constitute an abuse of a dominant position, insofar as those associations fail to demonstrate, through convincing arguments and evidence, that the conditions for a possible exemption are satisfied (JURIDICE.ro, 2023). This judgment is relevant to Romanian competition law insofar as it confirms the Court's functional approach to the notion of undertaking and to the limits of sectoral self-regulation, aspects with direct applicability in other regulated fields as well, including, as noted in legal scholarship, that of the liberal professions (Vidican, 2019).

4.3. The leniency programme and ex officio investigation

The detection of cartels – the most serious and, at the same time, the most difficult to detect form of anti-competitive practice, given their secret nature – relies essentially on the leniency programme, a mechanism offering immunity from, or a reduction of, fines to undertakings that denounce their participation in an anti-competitive agreement and cooperate with the investigating authority. The ECN+ Directive sought precisely to harmonise the conditions for granting leniency across Member States, so that an undertaking applying for leniency could have confidence in comparable treatment regardless of the national authority seized (Directive (EU) 2019/1, 2019). GEO No 108/2023 sought, in this regard, to enhance the effectiveness of investigative tools and of the national leniency programme (CECCAR Business Magazine, n.d.).

Beyond the leniency programme, the Competition Council has ex officio investigative powers, including unannounced inspections at the premises of suspected undertakings, and the power to order interim measures where there are sound indications of an infringement and a risk of serious and irreparable harm to competition. The exercise of these powers must, however, be reconciled with the procedural guarantees of investigated undertakings, including the right not to contribute to one's own incrimination (nemo tenetur se ipsum accusare), a principle recognised both by the European Court of Human Rights (Saunders v. the United Kingdom, 1996) and by the CJEU (Limburgse Vinyl Maatschappij and Others v. Commission, Joined Cases C-238/99 P and Others, 2002), as emphasised by recent reform projects concerning Romania's competition legislative framework (State of Competition, n.d.).

5. Damages actions for anti-competitive practices (private enforcement)

Alongside the public enforcement of competition law, carried out by the Competition Council and the European Commission, European Union law has strengthened, through Directive 2014/104/EU, the private dimension of competition law enforcement, namely the right of persons harmed by anti-competitive agreements or abuses of dominance to obtain full compensation for the damage suffered. The directive settled at normative level essential aspects concerning the burden of proof of the unlawful conduct and the components of recoverable harm, but left Member States a significant margin of discretion regarding the methodology for quantifying damages, the only useful instrument developed at Union level in this respect being the European Commission's Practical Guide on quantifying harm resulting from infringements of Articles 101 and 102 TFEU, which accompanied Communication 2013/C 167/07 (JURIDICE.ro, 2026b).

Romanian legal scholarship has highlighted the practical difficulties associated with proving harm in antitrust actions, emphasising the need to construct a counterfactual scenario – the hypothetical situation in which the infringement had not occurred – in order to properly estimate the damage. In the case of practices such as price fixing or resale price maintenance systems, part of the harm naturally results from the very existence of the overcharge paid by the victim of the practice; the issue becomes more complex, however, where the victim is not the final consumer but an intermediary who was, in turn, able to pass the overcharge further down the distribution chain (the ,,passing-on defence”), a scenario in which failing to admit this defence would result in unjust enrichment of the claimant (JURIDICE.ro, 2026b).

Despite the transposition of Directive 2014/104/EU into domestic law, the practice of Romanian courts regarding damages actions for anti-competitive practices remains, compared with other European jurisdictions, relatively limited in volume, which indicates the persistence of practical barriers – the high cost of economic expert opinions, the difficulty of proving causation, and the lengthy duration of the preliminary administrative proceedings before the Competition Council, the completion of which through a final decision typically constitutes the prerequisite for a subsequent ,,follow-on” action.

6. Institutional vulnerabilities: the independence of the Competition Council and pressures on the decision-making process

Although the formal normative framework places the Competition Council in the category of autonomous administrative authorities, the effective exercise of institutional independence remains a recurring challenge, exposed both to internal political pressures and, at times, to the legislature's temptation to intervene in the authority's leadership structure outside the procedural guarantees imposed by European law. The 2022 episode, in which the European Commission warned Romania about the risk that the proposed amendment to the Competition Law might allow for the collective dismissal of the members of the Competition Council's plenum without meeting the strict conditions set out in Article 4(3) of the ECN+ Directive, illustrates precisely this structural vulnerability (Financial Intelligence, 2022).

More recent institutional reform projects relating to the activity of the Competition Council identify two main directions of action: on the one hand, genuine institutional consolidation, in line with the requirements of the ECN+ Directive concerning the material, logistical, and human resources necessary for functioning at European standards; on the other hand, the modernisation and rebalancing of Competition Law No 21/1996, with an emphasis on strengthening the procedural rights of investigated undertakings, in line with the case law of the European Court of Human Rights and of the CJEU (State of Competition, n.d.). An emerging institutional consensus can thus be observed, according to which a truly effective competition authority is not only one that firmly sanctions anti-competitive practices, but also one that exercises its prerogatives within fair, transparent, and predictable procedures (State of Competition, n.d.). These developments confirm, at a structural level, a broader observation made in legal scholarship regarding independent regulatory authorities in Central and Eastern European states: formal independence, enshrined by law, does not in itself guarantee functional independence, the latter depending decisively on the stability of leadership mandates, the predictability of institutional funding, and the absence of ad hoc political interference in individual decision-making (Vidican, 2019).

Comparison with other states in the region confirms and nuances this observation. The Romanian model – a collegial plenum of 11 members appointed by decision of Parliament – is, in institutional form, closer to the French model than to the monocratic Polish or Hungarian model, in which the leadership of the authority is entrusted to a single person, appointed and removable by the prime minister (Piszcz & Grynfogel, 2022; Cseres, 2019). This structural difference is not without relevance: scholarship has shown that the shift from single-headed management to a collegial body strengthens, as a general rule, the independent functioning of the authority, since its policy orientation no longer depends on the views of a single individual (Piszcz & Grynfogel, 2022). Nevertheless, the structural advantage of collegiality can be undermined in practice if the appointment mechanism, and in particular the dismissal mechanism, of plenum members remains insufficiently protected against ad hoc interference – precisely the risk flagged by the European Commission with regard to the 2022 Romanian legislative proposals. In other words, the collegial institutional form is a necessary but not a sufficient condition for functional independence, an observation confirmed by the French experience itself, where the non-renewal, in 2021, of the mandate of the President of the Autorité de la concurrence, although consistent with the letter of the law, raised legitimate questions in scholarship about the real limits of independence, even within an institutional system regarded as exemplary at the European level (Piszcz & Grynfogel, 2022).

7. Institutional cooperation within the European Competition Network

The coherent application of competition law across the internal market presupposes a robust mechanism of cooperation between the European Commission and the national competition authorities of the Member States. The European Competition Network (ECN) constitutes the principal institutional forum through which the exchange of information – including confidential information obtained during investigations – is carried out, together with the coordination of parallel investigations and the allocation of cases among the competent authorities, based on criteria such as the effect of the practice on the market and the capacity of the best-placed authority to act (European Parliament, 2024).

Romanian legal scholarship has extensively analysed the legal status of the Competition Council and its powers from the perspective of cooperation with the Union's authorities, emphasising that the organisational structure of the authority enables it to investigate, control, and sanction anti-competitive practices, to monitor State aid, and to cooperate actively with its European counterparts, thereby ensuring a fair competitive environment in the internal market (JURIDICE.ro, 2026a). The mutual assistance mechanism, introduced by the ECN+ Directive, also allows for the cross-border enforcement of sanctioning decisions and information requests, thereby strengthening the capacity for effective enforcement of competition law, including against undertakings that have no physical presence in the Member State whose rules have been infringed (Directive (EU) 2019/1, 2019). The active participation of the Competition Council in the working groups of the ECN, of the OECD, and of the International Competition Network is identified, in recent institutional reform projects, as a strategic priority for the coming period, alongside the development of consolidated bilateral relations with the competition authorities of other Member States (State of Competition, n.d.). This orientation is all the more relevant given that contemporary economic phenomena – the digitalisation of markets, multi-sided platforms, and pricing algorithms – have, by their very nature, a cross-border dimension that exceeds the capacity for unilateral action of any single national authority (Geradin & Lianos, 2020; Vidican & Hepeș, 2023).

8. Conclusions

The analysis carried out in this paper confirms that legal protection against anti-competitive practices in Romania has been significantly strengthened over the past two decades, through a continuous process of aligning the domestic normative and institutional framework with the standards of European Union law. The transposition of the ECN+ Directive through Government Emergency Ordinance No 108/2023 represented an important step towards strengthening the independence, resources, and investigative powers of the Competition Council, while the extension of its powers to fields such as the control of foreign subsidies and the enforcement of the Digital Markets Act demonstrates the institution's capacity to adapt to the challenges of the contemporary economy.

At the same time, the study has identified significant structural vulnerabilities, in particular regarding the effective guarantees of independence of the Competition Council's leadership from potential political interference, as revealed by the European Commission's reaction to the 2022 legislative proposals. Moreover, the mechanism of damages actions for anti-competitive practices remains underdeveloped relative to its theoretical potential, which limits, in practice, the private dimension of competition law enforcement and, consequently, the effective access to justice of undertakings and consumers harmed.

Based on these findings, the following recommendations can be formulated: (a) explicitly establishing, at the level of organic law, objective and transparent criteria for the appointment and removal of the members of the Competition Council's plenum, going beyond the mere formal transposition of Article 4(3) of the ECN+ Directive, so that the independence guarantee operates effectively rather than merely declaratively; (b) simplifying and accelerating the preliminary administrative proceedings before the Competition Council, particularly in less complex cases, in order to reduce the time required to obtain a final decision capable of supporting a subsequent „follow-on” action; (c) developing a national methodological guide for quantifying antitrust harm, adapted to the particularities of the Romanian market, complementing the European Commission's Practical Guide; and (c) developing specialised institutional capacity for the economic analysis of digital markets, given the increasing complexity of anti-competitive practices generated by algorithms and by the network effects specific to these markets.

Comparison with the French, Polish, and Hungarian experiences confirms that Romania currently occupies an intermediate position: the collegial institutional form of the Competition Council is, structurally, capable of supporting solid functional independence, but the absence of additional guarantees beyond the minimal transposition of Article 4 of the ECN+ Directive maintains a structural risk similar to that identified in other states in the region (Piszcz & Grynfogel, 2022; Cseres, 2019). This finding suggests that assessing the degree of independence of a national competition authority cannot be limited to a formal analysis of normative compatibility with EU law, but must incorporate an empirical and comparative dimension, sensitive to actual institutional practice.

In conclusion, the institutional architecture of legal protection against anti-competitive practices in Romania broadly reflects the European model of decentralised enforcement of competition law; however, its practical effectiveness remains conditional upon the genuine strengthening of institutional independence, the acceleration of procedures, and the development of a mature case-law culture in the field of damages actions. The analysis presented here naturally has limitations inherent to any study of this kind: the absence of systematic empirical data on the internal decision-making practice of the Competition Council and the relatively recent nature of the 2023 legislative reform make a definitive assessment of its impact on the authority's functional independence difficult. Future research could examine, on an empirical basis, the extent to which the normative guarantees introduced by GEO No 108/2023 are reflected in the actual practice of appointing, operating, and, where applicable, dismissing plenum members, as well as the evolution of domestic case law in the field of damages actions – aspects which will undoubtedly continue to form the subject of future research in this dynamic area of law.

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