

MATERIALS FOR THE PANEL DISCUSSION OF ARTICLE 7 OF DIRECTIVE 2012/13/EU ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

Article 7: Right of access to the materials of the case

1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.
2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.
3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.
4. By way of derogation from paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.
5. Access, as referred to in this Article, shall be provided free of charge.

The access standard in EU competition law

Case T-36/91, ICI v Commission [1995] ECR II 1847, § 91

Not all documents on the Commission (as prosecuting authority) had been disclosed. The CFI (now the General Court) ruled as follows:

“ (...) “the Commission (...) observes that although its officials themselves examined and re-examined all the documents in its possession, they found no evidence which might exculpate the applicant, so that there was no point in disclosing them (...). In that regard, it should be stated that in the defended proceedings (...) it cannot be for the Commission alone to decide which documents are useful for the defence.”

Regulation 1/2003, Article 27(2)

The parties “shall be entitled to have access to the Commission’s file (...).”

Notice on the rules for access to the Commission’s file

§ 8 The “Commission file” consists of all documents obtained, produced and/or assembled by the Commission (...) during the investigation.

§ 10 The parties “will be granted access to all documents making up the Commission file (...).”

Question

Does EU competition law, which is regarded by the ECtHR as criminal law, set a higher standard for access to the file than Directive 2012/2013?