

# The leniency dilemma revisited

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Leniency applicant Evonik recently managed to successfully block the publication of a more detailed version of an earlier cartel decision. Time will tell whether this success is a Pyrrhic victory. The European Court of Justice ruled that before a more detailed version can be published, the hearing officer should first take into account all of the leniency applicants' objections to determine whether particular information may be disclosed. However, the ECJ also found that the Commission is not prevented from supplementing the extended cartel decision with information provided by a leniency applicant. This ruling underlines that applying for leniency may have the drawback of producing greater exposure to damage claims. Potential leniency applicants should therefore carefully consider whether a possible leniency grant will outweigh the risk of further detailed disclosure in a future non-confidential cartel decision, with a potentially larger group of damages claimants as a result.

In 2007, the European Commission published an initial non-confidential [version](#) of its decision to impose fines totalling over EUR 388 million on seven companies for their participation in a bleaching chemicals cartel. In line with the Commission's [leniency notice](#), Evonik was granted full immunity from being fined in return for providing evidence of the cartel to the Commission. In 2011, the Commission wanted to publish a new and more detailed non-confidential version of its cartel decision, containing information that had been voluntarily provided by Evonik under the leniency programme. Evonik argued that this information should be protected from disclosure, to safeguard, among other things, the proper functioning of the Commission's leniency programme; however, this argument fell on deaf ears at the [General Court](#).

On appeal, the European Court of Justice [ruled](#) that the fact that immunity is granted cannot protect a leniency applicant from civil damages claims. The only protection available to leniency applicants is protection concerning:

1. immunity from, or reduction in, the fine, in return for providing the Commission with evidence of the cartel, and
2. the Commission's non-disclosure of documents and written statements which it has received in accordance with the Leniency Notice.

As a result, the Commission is allowed to publish verbatim quotations of information included in the documents provided by a leniency applicant, provided that business secrets, professional secrecy and other confidential information is protected. It is for the hearing officer to take account of all the arguments related to general EU law principles raised by a leniency applicant to protect the information's confidentiality. However, verbatim quotations from the leniency statement itself may not be published under any circumstances.