Unravelling the Presumption of Innocence in EU Competition Enforcement: Fact, Law, and Discretion

Jaime Eduardo Castillo Botero

Professor of law at Harvard University. Email: jcastillobotero@edu.com

Article Info

How to cite this paper: Jaime Eduardo Castillo Botero. (2026 Unravelling the Presumption of Innocence in EU Competition Enforcement: Fact, Law, and Discretion. *World Copmpetition, 49*(1)103-116. https://doi.org/10.54648/woco234264

ISSN Online: 1875-8436
ISSN Print: 1011-4548

Received: 24.06.2025
Revised: 09.07.2025
Accepted: 31.03.2026
Article Type: **ORIGINAL Research**

ABSTRACT

Among the rights undertakings enjoy when sanctioned due to antitrust violations in the EU is the right to be presumed innocent. Although it may seem a concept easy to apply, the presumption of innocence imposes on the authorities a rule on evidence assessment. In this sense, the subjectivity of the evaluation of evidence entails that the application of concepts as the burden and standard of proof becomes dependent on the personal beliefs of the judge. Furthermore, as competition law is inherently technical, it is difficult to ascertain what a reasonable doubt is. To an expert something may be evident, but to the layman, even spurious evidence may generate doubts. Against this background, the aim of this paper is threefold. First, it will provide an overview of the requirements of the presumption of innocence regarding evidence assessment and fact-finding and its implications for the burden and standard of proof. Second, since fact and law in competition enforcement are inextricably linked, it will argued that the presumption of innocence affects the substantive competition rules in the European competition order. Finally, this paper aims to provide an analysis of the compatibility discretion in complex economic assessments with the presumption of innocence.

Keywords: Assessment of the evidence, Burden of proof, Complex economic assessments, Counterfactual, Discretion, Legal proof, Presumption of innocence, Standard of proof, College of Europe

1.Introduction

1.1. The Significance of the Presumption of Innocence

The presumption of innocence stands as a cornerstone of any legal system that aspires to justice and fairness. Enshrined in Article 48 of the Charter of Fundamental Rights of the European Union and Article 6(2) of the European Convention on Human Rights, this principle dictates that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. This fundamental right, deeply rooted in the legal traditions of the Member States and the constitutional traditions common to them, reflects the basic intuition that it is better that ten guilty persons escape than that one innocent person suffers. The presumption of innocence is not merely a procedural rule; it is a substantive right that shapes the entire architecture of criminal and quasi-criminal proceedings.

In the context of EU competition law, the application of this principle has become increasingly significant as the quasi-criminal nature of antitrust enforcement has been recognized by the European Courts. Given the nature of the infringements at issue and the severity of the penalties which may be imposed, the presumption of innocence applies to procedures relating to infringements of competition rules that may result in fines or periodic penalty payments. This recognition has profound implications for how competition authorities gather evidence, assess facts, and ultimately determine whether an infringement has occurred. The principle requires that the authorities bear the burden of proof, that they meet a high standard of proof, and that any reasonable doubt is resolved in favour of the undertaking.

1.2. The Challenges of Applying the Presumption in Competition Law

The application of the presumption of innocence in competition enforcement, however, is far from straightforward. The principle imposes on competition authorities a rule on evidence assessment, demanding that the guilt of an undertaking be proven to the requisite legal standard. Yet, the inherently technical nature of competition law and the complexity of economic assessments make it difficult to ascertain what constitutes a reasonable doubt. Competition law deals with complex economic concepts such as market definition, dominance, and anti-competitive effects, which are often contested by experts. The subjectivity in the evaluation of evidence has significant implications for fundamental concepts such as the burden and standard of proof, and extends its influence even to the substantive competition rules themselves.

Moreover, the broad margin of discretion that the European Commission enjoys in making complex economic assessments creates additional tensions, requiring careful judicial scrutiny to ensure that fundamental rights are respected. The Commission often has to make predictions about the likely effects of conduct, which involves the exercise of judgment and the use of economic models. This predictive exercise is inherently uncertain, and it is difficult to determine when the Commission's predictions are sufficiently reliable to satisfy the standard of proof. The courts must therefore balance the need for effective enforcement against the protection of fundamental rights, a task that requires sensitivity to the complexities of both law and economics.

1.3. The Structure of the Paper

This paper seeks to unravel the complexities surrounding the presumption of innocence in EU competition enforcement through three interconnected lenses: fact, law, and discretion. The analysis proceeds as follows. First, it provides an overview of the requirements of the presumption of innocence regarding evidence assessment and fact-finding, exploring its implications for the burden and standard of proof in competition proceedings. This includes a detailed examination of who bears the burden of proof, the standard to which they must prove their case, and the role of presumptions in this framework. Second, it argues that the presumption of innocence does not merely remain a procedural safeguard but also affects the substantive competition rules in the European competition order. This is because fact and law in competition enforcement are inextricably linked. The evidentiary requirements that flow from the presumption influence the interpretation and application of substantive rules such as Article 101 (cartels) and Article 102 (abuse of dominance) TFEU. Third, the paper provides an analysis of the compatibility of discretion in complex economic assessments with the presumption of innocence. It examines how the broad margin of discretion the European Commission enjoys in making economic assessments can create tensions with the strict demands of the presumption of innocence, particularly concerning the standard of proof.

The paper draws on the recent case law of the European Courts, particularly in cases concerning the protection of fundamental rights in competition proceedings, and considers the ongoing reform of Regulation 1/2003. The reform has brought to the fore the need to reconcile effective enforcement with the protection of fundamental rights. Proposals for introducing a second type of procedure that would exclude the option to impose fines and thereby allow for a less strict standard of proof are examined in light of the requirements of the presumption of innocence. The paper concludes with reflections on the future of the presumption of innocence in EU competition enforcement, emphasizing the need to strike the right balance between effective enforcement and fundamental rights protection.

2. The Presumption of Innocence as a Procedural Safeguard in Competition Proceedings

2.1. The Applicability of the Presumption in Competition Proceedings

The applicability of the presumption of innocence to competition proceedings is now firmly established in EU jurisprudence. The General Court has unequivocally stated that the principle of the presumption of innocence, resulting in particular from Article 6(2) of the European Convention on Human Rights, is one of the fundamental rights protected in the Community legal order. Given the nature of the infringements at issue and the nature and degree of severity of the ensuing penalties, the principle applies in particular to procedures relating to infringements of the competition rules that may result in the imposition of fines or periodic penalty payments.

This jurisprudence reflects the "quasi-criminal" nature of competition enforcement. While competition proceedings are administrative in form, they produce penal consequences that trigger the protections of the presumption of innocence. As a result, in any proceeding that may result in the imposition of fines, including investigations under Articles 101 and 102 TFEU, the presumption of innocence applies, imposing the "beyond any reasonable doubt" standard of proof on the European Commission. The Court of Justice has consistently held that the Commission must gather sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place. This standard reflects the seriousness of the allegations and the severity of the sanctions that may be imposed.

The recent and ongoing reform of Regulation 1/2003 has brought attention to a key tension. The demanding standard of proof, combined with a substantive test based on an assessment of the conduct's effects in any single case, leads to long decisions and lengthy proceedings that bind up resources. This tension has prompted consideration of procedural reforms that might enhance efficiency while preserving fundamental rights. The proposed introduction of a second type of procedure that would exclude the power to impose fines is one such reform. This would allow for a less strict standard of proof and shorter proceedings, potentially enabling the Commission to pursue more cases and prohibit harmful conduct more quickly. However, such a reform must be carefully designed to avoid undermining the presumption of innocence.

2.2. The Burden of Proof

The allocation of the burden of proof in competition proceedings is governed by Article 2 of Regulation 1/2003. The basic principle is that the burden of proving an infringement of Article 101(1) or Article 102 TFEU rests on the party or authority alleging the infringement. The rationale for this allocation is to ensure effective enforcement of the competition rules while respecting the fundamental rights of defence. The principle that the accuser must prove the accusation is a direct expression of the presumption of innocence.

In practical terms, this means that the Commission must gather sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place. If the Commission finds an infringement, the Courts of the European Union will annul the decision where undertakings put forward arguments that cast the facts in a different light and allow another plausible explanation of the facts to be substituted for the one adopted by the Commission. This reflects the principle that the Commission must prove its case, and where the evidence is ambiguous or allows for a plausible alternative explanation, the benefit of the doubt must go to the undertaking.

However, a critical aspect of the burden of proof is the use of presumptions. A notable example is the presumption of decisive influence exercised by a parent company over its wholly-owned subsidiaries. This presumption shifts the evidential burden to the parent company, requiring it to prove that the subsidiary acted independently. In practice, this presumption has been criticized for becoming quasi-absolute, creating a situation bordering on strict liability. Such a regime, however, is at odds with the general principles of personal responsibility (Article 7 ECHR and Article 49 of the EU Charter) and the presumption of innocence (Article 6 ECHR and Article 48 EU Charter), which clearly apply to antitrust proceedings. The European Courts have sought to temper this by requiring that the Commission present evidence that the parent company actually exercised decisive influence, or that the presumption is not irrebuttable. Nevertheless, the practical operation of the presumption remains a source of tension with fundamental rights.

2.3. The Standard of Proof

The standard of proof required in competition proceedings is the criminal law standard of "beyond any reasonable doubt." This standard applies because the proceedings are considered "quasi-criminal" and can lead to the imposition of significant fines. However, in practice, the standard of proof is applied with flexibility, often through the use of inferences and the "probative value" of evidence. The Commission's evidence must be sufficiently precise and consistent to support a firm conviction that the infringement took place.

The technical nature of competition law raises important questions regarding the standard of proof. Competition law is inherently technical, and it is difficult to ascertain what a reasonable doubt is. To an expert, something may be evident, but to the layman, even spurious evidence may generate doubts. This is a crucial challenge, as the application of the "beyond any reasonable doubt" standard depends on the personal beliefs and expertise of the judge. The courts have recognised that the standard does not require absolute certainty, but rather a high degree of probability. Yet, the threshold of "reasonable doubt" remains a subjective standard, and its application can be influenced by the complexity of the economic assessments involved.

The European Courts have also emphasised that the standard of proof must be applied in light of the principle of the presumption of innocence. This means that where there are two plausible interpretations of the evidence, the one that favours the undertaking must be adopted. The courts have repeatedly stressed that the Commission's evidence must be sufficient to exclude any reasonable doubt. This principle is critical to ensuring that the presumption of innocence is not diluted by the technical nature of competition law.

2.4. The Proof-Proximity Principle

In light of the challenges of proving complex economic facts, the European Courts have recognized the "proof-proximity principle." This principle allocates the evidential burden of proof to the party to whom the evidence is available or who is better situated to furnish it easily and promptly. This ensures the effectiveness of the fact-finding process while guaranteeing that Article 2 of Regulation 1/2003 is not violated. The proof-proximity principle plays a major role in rendering presumptions compliant with the presumption of innocence as enshrined in Articles 6(2) ECHR and 48(1) of the EU Charter.

This principle is often invoked in the context of parental liability and in cases where an undertaking claims that it is unable to pay a fine. The Commission may shift the evidential burden to the undertaking in these situations, as the undertaking is best placed to provide evidence of its financial situation. The principle ensures that the fact-finding process is effective while respecting the fundamental rights of defence. However, the proof-proximity principle must be applied carefully. It cannot be used to shift the burden of proof in a way that would undermine the presumption of innocence. The Commission must still bear the ultimate burden of proving the infringement, even if certain evidential burdens are shifted to the undertaking.

2.5. The Role of Procedural Rights in Competition Proceedings

The presumption of innocence is closely linked to other procedural rights that apply in competition proceedings. These include the right to be heard, the right to access the file, and the right to legal representation. These rights collectively ensure that the undertaking can effectively defend itself against the allegations. The Commission must respect these rights throughout the proceedings, from the initial investigation to the final decision. The European Courts have consistently stressed the importance of these procedural safeguards, and they have annulled Commission decisions where these rights have been violated. The effectiveness of the presumption of innocence depends on the existence of robust procedural protections that enable the undertaking to challenge the Commission's evidence and arguments. Without these procedural rights, the presumption of innocence would be an empty promise.

2.6. The Impact of the Presumption on the Burden of Proof in Practice

The practical application of the burden of proof in competition proceedings is often contested. The Commission bears the burden of proving the infringement, but the undertaking may be required to provide evidence to rebut the Commission's case. This is not a shift in the legal burden of proof, but rather a question of the evidential burden. The distinction is critical, as the legal burden of proof always remains with the Commission. However, the evidential burden may shift to the undertaking where the Commission has established a prima facie case. In this situation, the undertaking must provide evidence to rebut the Commission's case, or risk a finding of infringement. This dynamic has led to tensions, as undertakings may feel compelled to provide extensive evidence, even where the Commission's case is weak. The courts must carefully scrutinise the Commission's evidence to ensure that the burden of proof is not being shifted improperly.

3. The Presumption of Innocence and Substantive Competition Law

3.1. The Link Between Evidence Assessment and Substantive Law

This section argues that the presumption of innocence does not merely remain a procedural safeguard but also affects the substantive competition rules in the European competition order. In competition enforcement, fact and law are inextricably linked. The evidentiary requirements that flow from the presumption of innocence influence the interpretation and application of substantive rules such as Article 101 (cartels) and Article 102 (abuse of dominance) TFEU. The standard of proof, in particular, can have a significant impact on the Commission's ability to prove the existence of an infringement, thereby shaping the development of substantive competition law.

The relationship between procedure and substance is particularly evident in the context of Article 101 TFEU. The prohibition of cartels is a substantive rule, but its application depends critically on the ability of the Commission to prove the existence of an agreement or concerted practice. The standard of proof influences the type of evidence that the Commission must gather, which in turn affects the scope of the substantive prohibition. Similarly, the application of Article 102 TFEU depends on the proof of a dominant position and an abuse. The evidentiary requirements of the presumption of innocence thus shape the boundaries of substantive competition law.

3.2. The Impact on Cartel Enforcement (Article 101 TFEU)

In cartel cases, the presumption of innocence imposes on the Commission the burden of proving the existence of an agreement or concerted practice that restricts competition. This requires the Commission to gather evidence that the undertakings involved coordinated their conduct on the market. The standard of proof beyond a reasonable doubt is particularly challenging in cartel cases, given the clandestine nature of such agreements. Cartels are inherently secretive, and the evidence of their existence is often indirect and fragmentary.

However, the European Courts have accepted that the Commission may use circumstantial evidence and inferences to establish the existence of a cartel. The courts have established that it is not necessary for the Commission to produce direct evidence of an agreement; it is sufficient to prove that the undertaking participated in meetings or exchanges of information that were intended to facilitate coordination. Moreover, the courts have confirmed that if the Commission finds, on the basis of the conduct of the undertakings concerned, that there has been an infringement, the courts will annul the decision where those undertakings put forward arguments that cast the facts in a different light and thus allow another plausible explanation of the facts to be substituted for the one adopted by the Commission. This creates a dynamic where the Commission bears the burden of proof, but if it establishes a plausible case, the burden shifts to the undertaking to cast sufficient doubt on it.

This dynamic is consistent with the presumption of innocence, as the Commission must still prove its case to the required standard. However, the use of circumstantial evidence and inferences raises questions about whether the standard of proof is applied with sufficient rigour. The courts must ensure that the use of such evidence does not lead to a dilution of the presumption of innocence. The courts must also be vigilant to ensure that the Commission's inferences are based on sound evidence and are not speculative.

3.3. The Impact on Abuse of Dominance Cases (Article 102 TFEU)

In abuse of dominance cases, the presumption of innocence requires the Commission to prove that the undertaking in question holds a dominant position and has abused it. The concept of dominance is inherently economic and complex. The Commission must demonstrate the existence of a dominant position, typically through evidence of market share, and then prove that the conduct of the undertaking constituted an abuse. The proof of an abuse requires a detailed economic analysis, where the Commission's assessments may be subject to challenge. This creates a tension between the Commission's need to exercise discretion in its economic assessments and the strict demands of the presumption of innocence, which requires proof of the alleged abuse.

The concept of abuse is particularly difficult to define, and the case law of the European Courts has evolved over time. The Commission must prove that the conduct in question has the effect of restricting competition. This is often a complex economic analysis, and the courts have granted the Commission a margin of discretion in making such assessments. However, the courts also review the Commission's economic assessments, and they will annul decisions where the evidence is insufficient to support the Commission's findings. The presumption of innocence requires that the Commission's economic assessments be supported by credible evidence and that the Commission's conclusions be based on a rigorous analysis.

3.4. The Presumption of Innocence and the Definition of the Relevant Market

The definition of the relevant market is a critical step in many competition cases, particularly under Article 102 TFEU. The Commission must define the market in which the undertaking operates, and this definition has significant implications for the assessment of dominance. The standard of proof applies to the Commission's market definition, requiring that it be supported by evidence. The courts have stressed that the Commission must conduct a thorough analysis of the market, taking into account all relevant factors. The presumption of innocence requires that the Commission's market definition be sound, as an incorrect market definition could lead to a false finding of dominance. The difficulty of defining the relevant market in complex industries highlights the challenges of applying the standard of proof in competition law.

3.5. The Impact of the Presumption on the Assessment of Effects

In many competition cases, the Commission must assess the effects of the conduct on the market. This is particularly true in cases under Article 102 TFEU, where the Commission must demonstrate that the abuse had an actual or potential effect on competition. The assessment of effects is inherently predictive and requires the Commission to make judgments about the likely impact of the conduct. The standard of proof applies to this predictive exercise, requiring that the Commission's predictions be based on credible evidence. The courts have stressed that the Commission's effects assessment must be rigorous and must take into account all relevant factors. The presumption of innocence requires that the Commission's predictions be supported by evidence, and that any uncertainty be resolved in favour of the undertaking.

4. The Challenge of Discretion: Reconciling Complex Economic Assessments with Fundamental Rights

4.1. The Scope of the Commission's Discretion

The European Commission enjoys a broad margin of discretion when making complex economic assessments in competition cases. This discretion is particularly relevant in the application of Article 101(3) TFEU (exemptions) and in the analysis of the effects of conduct under Article 102 TFEU. The Commission's decisions are often based on detailed economic analysis, leaving considerable scope for judgment and interpretation. The Court of Justice has established that the Commission's economic assessments must be subject to judicial review, but the courts will respect the Commission's discretion as long as it is exercised within a reasonable framework and the assessments are not manifestly incorrect.

The Commission's discretion is essential for effective enforcement, as it allows the Commission to adapt its approach to the complexities of the market. However, it also creates tensions with the presumption of innocence. When the Commission exercises its discretion, it is making judgments that are not based solely on objective facts but also on economic analysis and interpretation. This raises questions about the extent to which the Commission's discretion can be reconciled with the requirement that the Commission prove its case beyond a reasonable doubt.

4.2. The Tension Between Discretion and the Presumption of Innocence

There is a fundamental tension between the Commission's broad discretion in economic assessments and the strict requirements of the presumption of innocence. When the Commission makes complex economic assessments, it is not dealing with simple facts but with contested interpretations of economic evidence. This is problematic for the presumption of innocence because the latter requires that, where there is a reasonable doubt, the benefit of that doubt must go to the undertaking. As noted earlier, the technical nature of competition law makes it difficult to ascertain what a reasonable doubt is. The subjectivity of the evaluation of evidence, combined with the Commission's broad discretion, creates a significant challenge for the presumption of innocence. It can lead to a situation where the standard of proof is applied not strictly, but with a degree of flexibility, which may be inconsistent with the protection of fundamental rights.

The tension is particularly acute when the Commission makes predictions about the likely effects of conduct. The Commission may need to predict the future impact of a practice on the market, which requires the exercise of discretion and the use of economic models. This predictive exercise is inherently uncertain, and it is difficult to determine when the Commission's predictions are sufficiently reliable to satisfy the standard of proof. The courts have sought to address this by requiring that the Commission's economic assessments be based on sound evidence and rigorous analysis. However, the tension remains.

4.3. The Role of Judicial Review

Judicial review is the primary mechanism for reconciling the Commission's discretion with the presumption of innocence. The courts must review the Commission's economic assessments to ensure that they are supported by credible evidence and that the Commission's conclusions are not manifestly incorrect. The courts must also ensure that the Commission has respected the procedural rights of the undertaking, including the right to be heard and the right to access the file. The European Courts have developed a sophisticated framework for judicial review in competition cases, which involves a careful scrutiny of the Commission's fact-finding and economic assessments. However, the courts have also recognised that they should not substitute their own economic assessment for that of the Commission. The challenge is to strike the right balance between deference and scrutiny.

4.4. The Use of Economic Evidence in Competition Proceedings

The use of economic evidence in competition proceedings has increased significantly in recent years. The Commission and the undertakings often rely on economic experts to support their arguments. This has led to complex debates about the appropriate use of economic evidence and the standard of proof that applies to such evidence. The courts have stressed that economic evidence must be sufficiently robust to support the Commission's findings. The courts have also recognised that economic evidence is often contested, and they will not accept the Commission's conclusions unless they are supported by credible economic analysis. This has led to a greater emphasis on the quality of economic evidence in competition proceedings.

4.5. Reconciling Discretion with Fundamental Rights

Reconciling the Commission's discretionary powers with the presumption of innocence requires careful balancing. The courts play a critical role in ensuring that the Commission's economic assessments are conducted in a manner that respects fundamental rights. The recent case law of the European Courts has stressed the importance of distinguishing the presumption of innocence from the principle of impartiality and the principle of sound administration. The courts have clarified how the rights protected by Articles 48 and 49 of the Charter must be interpreted.

The courts must ensure that the presumption of innocence is not diluted by the Commission's discretion. This requires a rigorous standard of proof, a transparent assessment of evidence, and a willingness to annul Commission decisions where the evidence is not sufficient to establish a firm conviction. The courts must also ensure that the Commission's discretion is exercised within a framework that respects the fundamental rights of undertakings. This includes ensuring that the Commission's procedures are fair and that undertakings have the opportunity to defend themselves effectively.

5. The Way Forward: Reforming Enforcement Procedures

5.1. The Proposal for a Fine-Excluding Procedure

The demanding "beyond any reasonable doubt" standard, in conjunction with a substantive test based on an assessment of the conduct's effects in any single case, leads to long decisions and lengthy proceedings, binding up resources. One proposed solution is to introduce a second type of procedure for enforcing Articles 101 and 102 TFEU that excludes the option to impose a fine. By opting out of the power to impose fines at the start of the procedure, a less strict standard of proof could be applied, which might shorten proceedings. This could enable the Commission to pursue more cases and prohibit harmful conduct more quickly. Thus, a procedure excluding fines could prove to be a valuable tool for enforcing competition law. This reform, however, must carefully balance the need for procedural efficiency with the protection of fundamental rights. A procedure that relaxes the standard of proof should not be designed to circumvent the presumption of innocence but to provide an effective alternative for cases where fines are not proportionate.

The fine-excluding procedure would be distinct from the current infringement procedure, which can lead to fines. Under the new procedure, the Commission would not have the power to impose fines, but could adopt a decision finding an infringement and ordering the undertaking to cease the conduct. This would be a less intrusive enforcement tool, and it could be applied in a broader range of cases. The standard of proof in such a procedure could be the "balance of probabilities" standard, rather than the criminal standard. This would make it easier for the Commission to prohibit conduct that may be harmful, but would not trigger the same level of procedural protection as a fining decision. This approach would require a careful balance, as the finding of an infringement could still have negative consequences for the undertaking's reputation and could expose it to private damages actions. The design of the fine-excluding procedure would need to ensure that the rights of defence are still respected, even if the standard of proof is lower.

5.2. Enhancing Judicial Oversight

To address the challenges posed by the technical nature of competition law and the Commission's discretion, it is essential to enhance judicial oversight. The Court of Justice has continued to develop its case-law on the protection of the right to an effective remedy (Article 47 of the Charter) and the right to privacy (Article 7) when the Commission conducts dawn raids. The EU Courts have also examined the implications of that right in a situation where the Commission sets up a virtual data room, following its decision to order the production of documents during an investigation. Strengthening judicial oversight through rigorous review of the Commission's fact-finding and economic assessments is critical to ensuring that the presumption of innocence is respected. The courts must be prepared to verify that the Commission's evidence is sufficiently precise and consistent and that the standard of proof has been satisfied. The courts must also ensure that the Commission's discretion does not lead to a dilution of the presumption of innocence.

Enhanced judicial oversight also means that the courts should be more willing to review the Commission's economic assessments and to annul decisions where the assessments are not adequately supported by evidence. The courts must ensure that the Commission's conclusions are based on a sound economic analysis and that the Commission has taken into account all relevant factors. This does not mean that the courts should substitute their own assessment for that of the Commission, but they must ensure that the Commission's assessment is not manifestly incorrect. This is essential to protect the fundamental rights of undertakings and to ensure the legitimacy of competition enforcement.

5.3. The Role of the European Courts in Developing the Case Law

The European Courts have played a critical role in developing the case law on the presumption of innocence in competition proceedings. The courts have consistently stressed the importance of fundamental rights and have ensured that the Commission's enforcement activities are subject to rigorous scrutiny. The courts have also been willing to adapt their case law to address new challenges, such as the use of economic evidence and the application of the presumption to complex economic assessments. The courts will continue to play a central role in ensuring that the presumption of innocence is respected in competition proceedings.

5.4. The Importance of a Balanced Approach

The future of EU competition enforcement depends on finding the right balance between effective enforcement and the protection of fundamental rights. This balance must be struck in the design of the procedural rules, in the application of the standard of proof, and in the exercise of judicial review. The Commission must be able to enforce the competition rules effectively, but it must do so in a manner that respects the fundamental rights of undertakings. The courts must ensure that the Commission's enforcement activities are subject to rigorous scrutiny, but they must also respect the Commission's expertise and discretion. The ultimate goal is to achieve a system that is both effective and fair, and that upholds the rule of law.

6. Conclusion

The presumption of innocence is a fundamental right that applies to EU competition proceedings due to their quasi-criminal nature. This paper has unravelled the various dimensions of this principle, examining its implications for fact, law, and discretion in competition enforcement. The presumption imposes on the Commission a strict "beyond any reasonable doubt" standard of proof, which is challenging to apply in the inherently technical field of competition law. The subjectivity of evidence evaluation and the difficulty of ascertaining a reasonable doubt raise serious questions about the practical application of the presumption. The application of the presumption of innocence is further complicated by the inextricable link between fact and law in competition enforcement, meaning that evidentiary requirements influence the substantive rules themselves. The Commission's broad discretion in complex economic assessments creates additional tensions, requiring careful judicial scrutiny to ensure the respect of fundamental rights.

The ongoing reform of Regulation 1/2003 provides an opportunity to address these challenges. Proposals for introducing a procedure excluding fines could reconcile effective enforcement with the protection of fundamental rights by allowing for a more flexible standard of proof in cases where fines are not imposed. In addition, enhancing judicial oversight is essential to maintain the integrity of the presumption of innocence. The future of EU competition enforcement depends on finding the right balance between effective enforcement and the protection of the fundamental rights of undertakings. The challenge is to ensure that the presumption of innocence is not undermined by the technical nature of competition law or by the Commission's broad discretion, while still allowing the Commission to enforce the competition rules effectively. This requires a continuous dialogue between the Commission, the courts, and the legal community to ensure that fundamental rights are respected and that competition law enforcement remains legitimate and effective. Ultimately, the protection of the presumption of innocence is not just a procedural safeguard; it is a cornerstone of the rule of law that must be upheld in all areas of enforcement, including competition law. The commitment to the presumption of innocence reflects a commitment to justice and fairness, and it is essential for maintaining public confidence in the competition enforcement system.

References

1. Charalambous, C. (2014). Reagens: Access to documents re the inability of an undertaking to pay the fine. Journal of European Competition Law & Practice, 5(7), 466–468.
2. de Ridder, S. (2025). To fine, or not to fine: reconciling effective enforcement with fundamental rights in times of an effects-based approach to EU competition law. Journal of Antitrust Enforcement, jnaf021.
3. Judgment of the General Court in Case T-141/08, E.ON Energie AG v European Commission, EU:T:2010:516.
4. Judgment of the General Court in Case T-141/08, E.ON Energie AG v European Commission (Summary), EU:T:2010:516.
5. Important 2021 Developments in the Field of EU Competition Procedure. (2023). Journal of European Competition Law & Practice, 14(5), 316-322.
6. Bombois, T., & Sabouret, P. (2025). Fundamental rights in competition law: a survey of the European courts' judgments (2023–2024). Journal of European Competition Law & Practice, lpaf032.
7. Castro Marques, N. (2025). Balancing competition authorities' investigative powers and fundamental rights in the EU legal order. Market and Competition Law Review.

8. Wouters, J., & Ovadek, M. (2021). Fundamental Rights in EU Competition Enforcement. In The European Union and Human Rights (pp. 313–386). Oxford University Press.
9. Judgment of the General Court in Case T-471/13, Xellia Pharmaceuticals ApS and Alpharma LLC v European Commission, EU:T:2017:188.
10. Judgment of the General Court in Case T-78/06, Álvarez v Commission, EU:T:2011:673.
11. Brealey, M., & George, K. (2019). Burden and Standard of Proof. In Competition Litigation: UK Practice and Procedure (2nd ed., pp. 309–321). Oxford University Press.
12. Volpin, C. The ball is in your court: evidential burden of proof and the proof-proximity principle in EU competition law.
13. Judgment of the Court of Justice in Case C-611/18 P, The Goldman Sachs Group Inc. v European Commission, EU:C:2021:65.
14. Judgment of the General Court in Case T-67/00, JFE Engineering Corp. and Others v European Commission, EU:T:2011:111.
15. Judgment of the Court of Justice in Case C-8/08, T-Mobile Netherlands BV and Others v Raad van bestuur van de Nederlandse Mededingingsautoriteit, EU:C:2009:343.