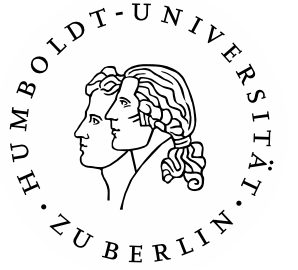


Simon de Ridder and Lennart Enwaldt

To fine, or not to fine



The presumption of innocence in competition proceedings



The presumption of innocence

“Everyone who has been **charged** shall be presumed innocent until proved guilty according to law.”

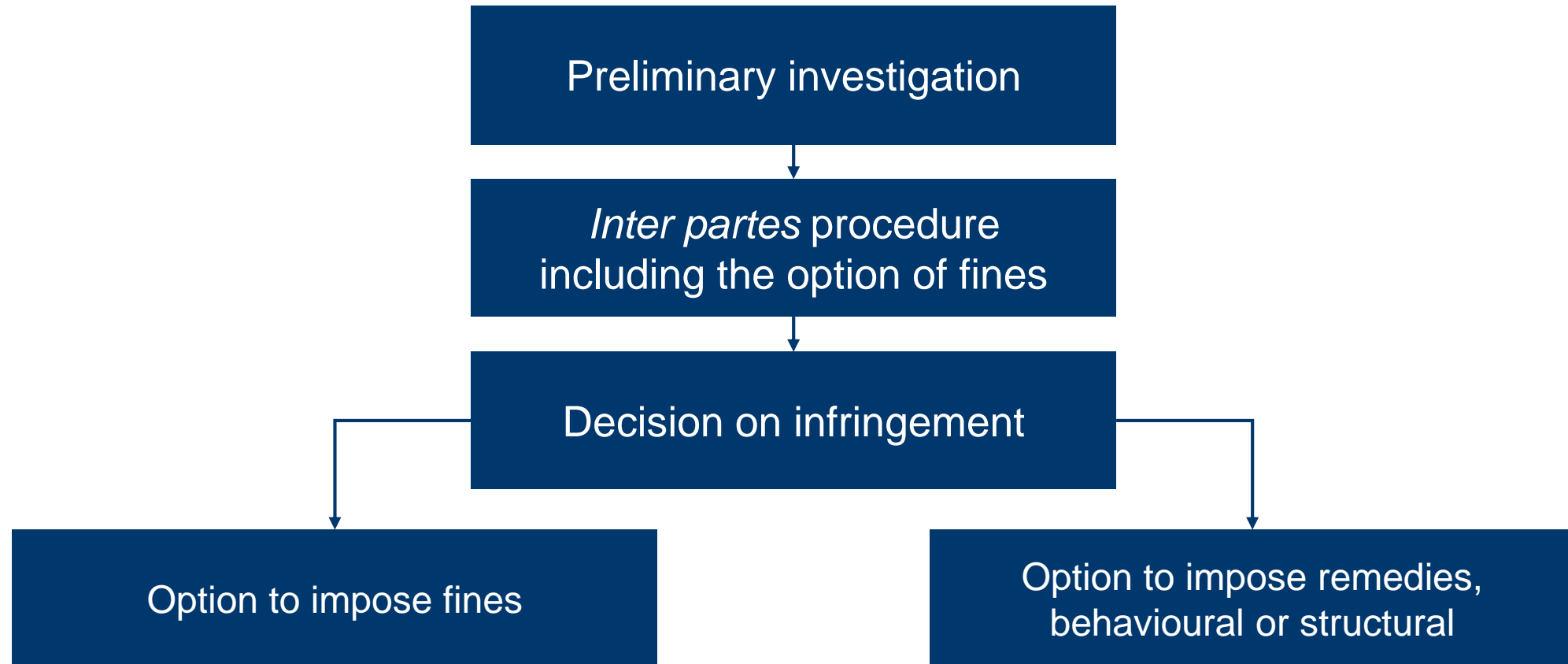
- Article 48(1) of the Charter of Fundamental Rights of the European Union

Applicability of the presumption

“It must also be accepted that, given the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, the **principle of the presumption of innocence applies to the procedures** relating to infringements of the competition rules applicable to undertakings **that may result in the imposition of fines or periodic penalty payments**”.

- Case C-199/92 P *Hüls v Commission* ECLI:EU:C:1999:358, para 150

Enforcement procedure of the Commission



Effects of the presumption

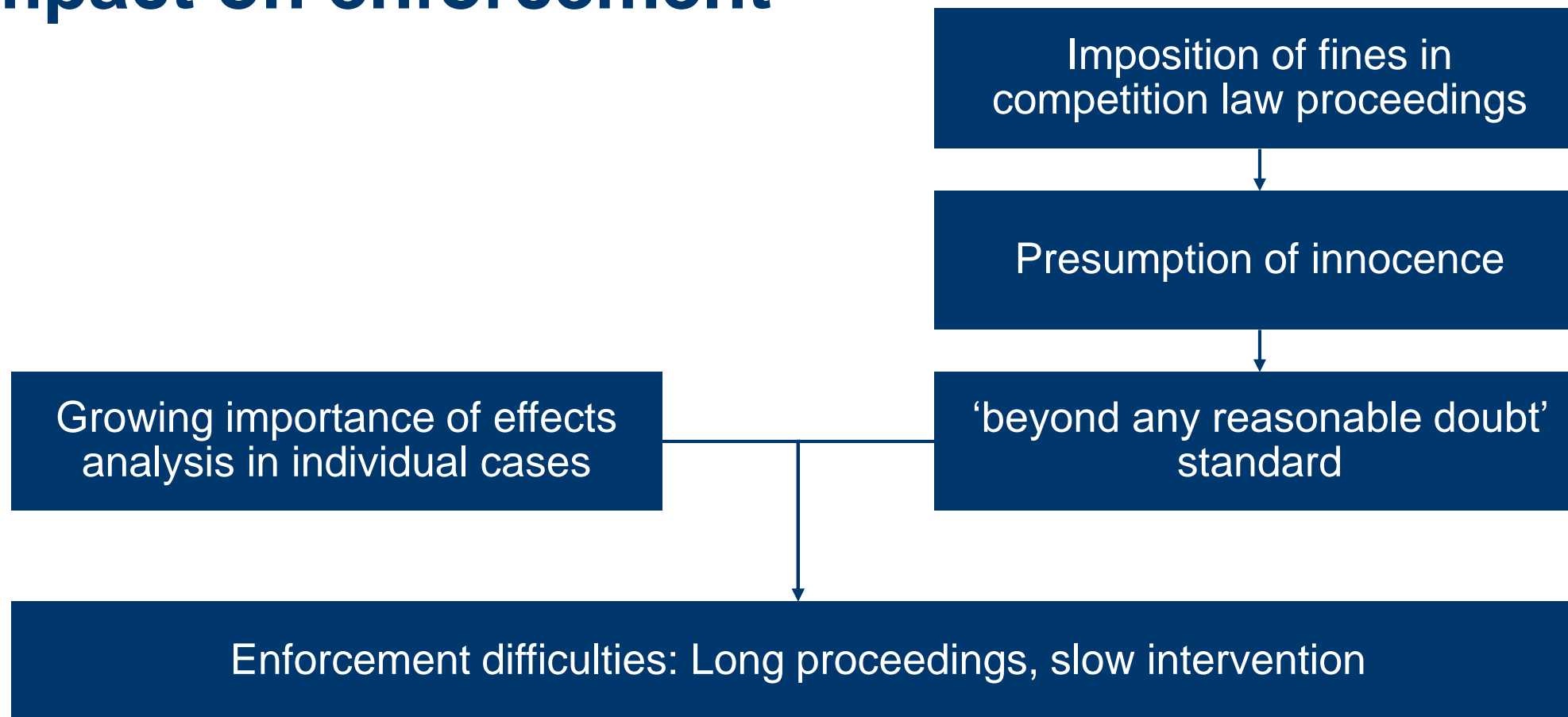
“Everyone who has been **charged** shall be presumed innocent until proved guilty according to law.”

- Burden of proof: The authority must prove the guilt to the requisite standard.
- Standard of proof: **Any reasonable doubt** must be for the benefit of the undertaking addressed by the infringement decision.

Impact on enforcement

- Generally: Compatible with effective enforcement of rules providing a clear set of facts that are relatively easy to show and prove
- However: Trend in EU competition law towards effects-analysis in any single case
- Effort required to comply with strict standard is very high
- Result: Resorting to accepting commitments and overall long proceedings

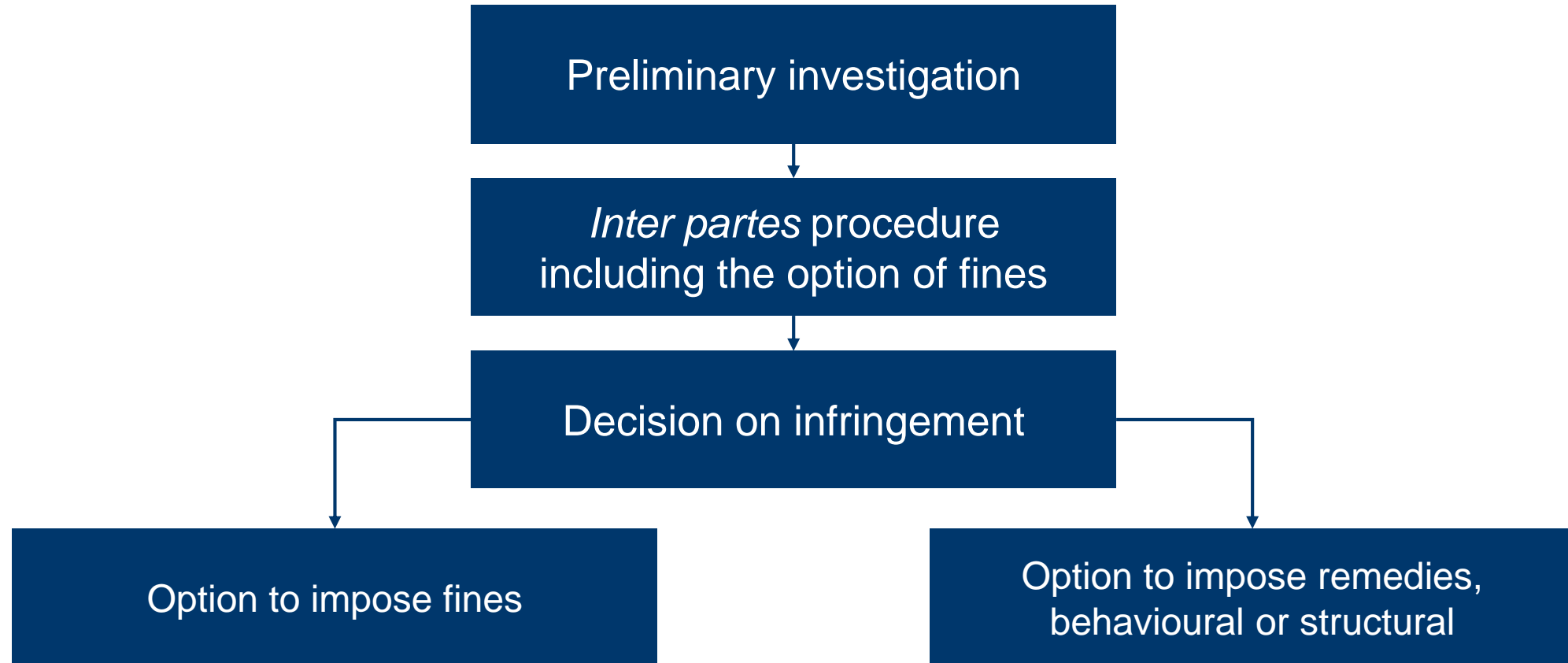
Impact on enforcement



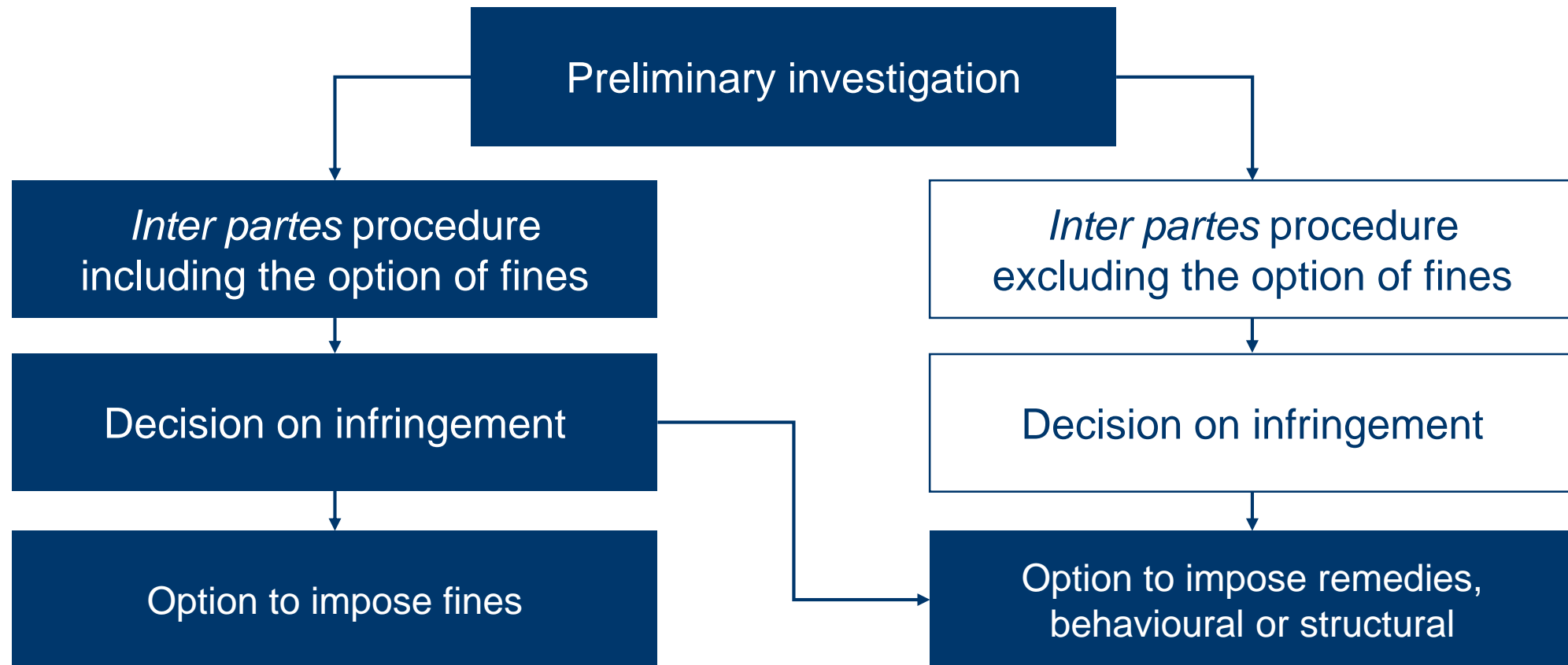
Giving the Commission the power to choose

2

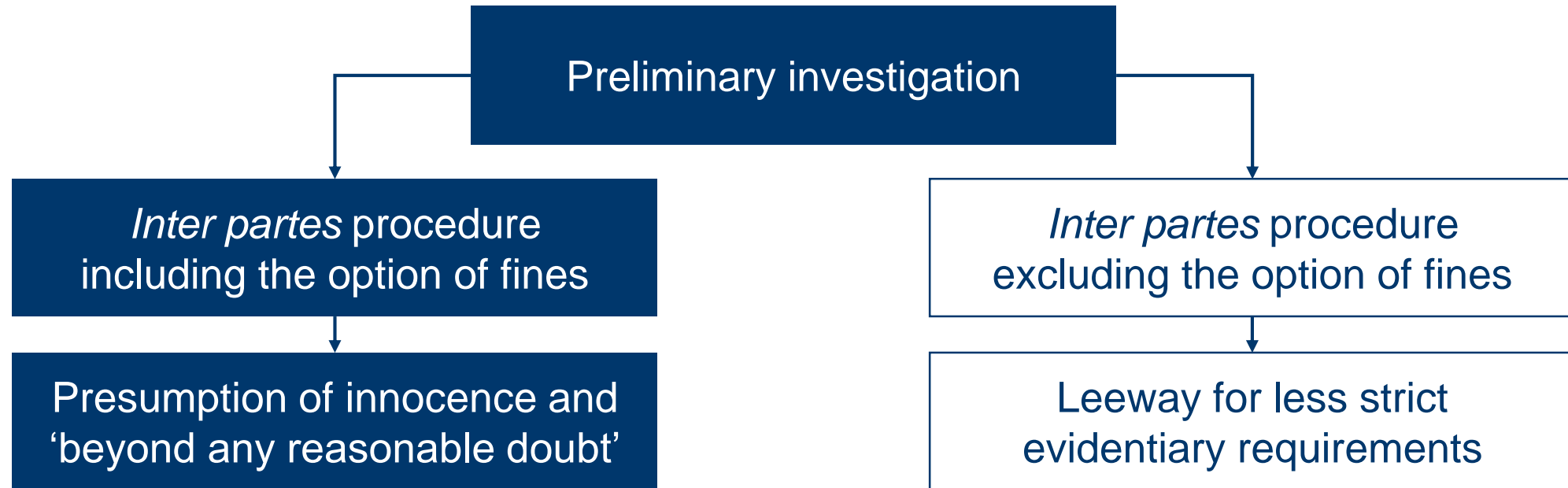
Changing the procedural framework



Changing the procedural framework

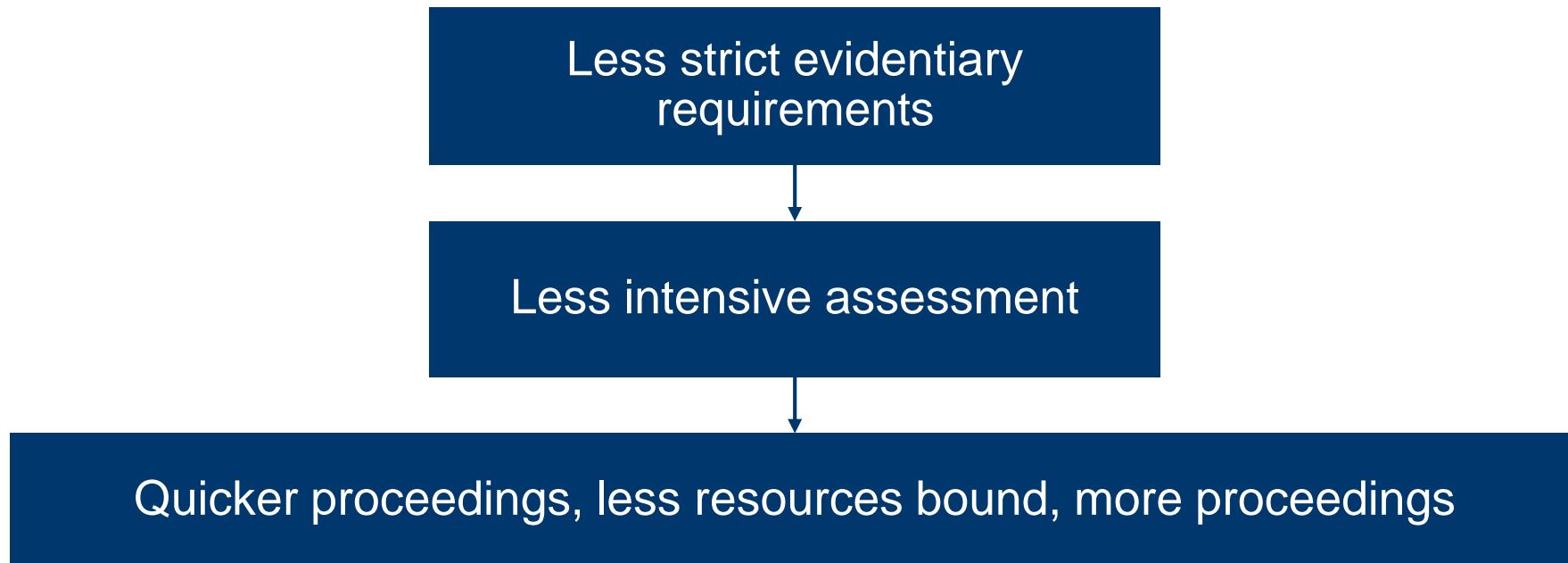


Changing the procedural framework



Estimating the effects on enforcement

Remedying infringements



Estimating the effects on enforcement

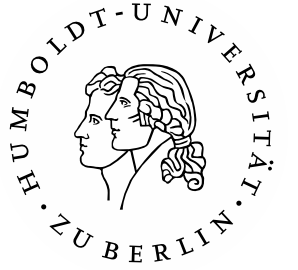
Detering infringements

- Less fines lead to less deterrence *prima facie*
- Assessment depends on conduct at issue:

Current framework \ New framework	With fine	Without fine
	With fine	Without fine
With fine	No meaningful change	Significant decrease unlikely
Without fine	Increase expected	No meaningful change

When still to impose fines?

- Cases of collusion: Restrictions 'by object', especially hardcore cartels
- Cases of unilateral conduct: 'Naked' restrictions, conduct for which specific legal tests have developed
- Non-compliance with Commission decisions: Failure to comply with commitments accepted or remedies ordered
- German experience suggests: Fines to be imposed in most cases of collusion, and only in few cases of unilateral conduct



Conclusion

3

Conclusion

- Enabling the Commission to forego its power to impose fines may lead to shorter proceedings, fewer resources occupied and quicker intervention
- The proposed change constitutes but ,one piece of the puzzle‘.