



EU AND COMPETITION LAW

DECEMBER 2014

PRIVATE COMPETITION DAMAGES ACTIONS

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Generally the Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association. It sets out rules fostering undistorted competition in the internal market and removing obstacles to its proper functioning, by ensuring equivalent protection throughout the European Union for anyone who has suffered such harm.

The Directive establishes that an infringement of competition law found by a final decision of a national competition authority or by a review court is deemed to be definitively established for the purposes of an action for damages brought before national courts. Should a final decision have been taken in another Member State, that final decision may, in accordance with national law, be presented before their national courts as at least prima facie evidence that an infringement of competition law has occurred.

In order to guarantee the effectiveness of a competition damages action, the Directive establishes new rules for access to documents. According to such rules, upon request of a claimant who has presented a reasoned justification containing facts and evidence sufficient to support the plausibility of its claim for damages, national courts are able to order the defendant or a third party to disclose relevant evidence which is in their possession. Relevant evidence includes specified items of evidence or relevant categories of evidence circumscribed as precisely and as narrowly as possible on the basis of reasonably available facts in the reasoned justification.

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However reference should be made to the confidential treatment still granted to certain documents. Indeed the Directive reinforces that, for the purpose of actions for damages, national courts cannot at any time order a party or a third party to disclose leniency statements and settlement submissions.

Furthermore the limitation period upon knowledge of the infringement will amount to at least five years, commencing no earlier than as of the end of the antitrust law infringement.

Finally, according to the Directive, Member States shall ensure that national courts are able to impose effective, proportionate and dissuasive penalties on parties, third parties and their legal representatives in case they (i) fail or refuse to comply with the disclosure order of any national court; (ii) destroy relevant evidence; (iii) fail or refuse to comply with the obligations imposed by a national court order protecting confidential information; (iv) breach the limits on the use of evidence.

The Directive will have a profound impact on private competition damages actions in the EU. In particular, its provisions on evidence shall greatly facilitate the success of damages actions under both EU and national competition law.

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