

Tax & Legal Weekly Alert

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Legal Update

A new European Directive meant to facilitate actions for damages for infringements of the competition law provisions

On 17 April 2014 the European Parliament approved a new directive meant to govern actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. The directive aims to harmonise the domestic legal framework concerning the actions available to victims for damages concerning infringements of the competition law with the view to remove the main obstacles under the national legislation and to guarantee a minimum level of protection applicable through the European Union. The text of the directive has been sent to the Council of Ministers of the European Union for final approval. Once the directive enters into force the Member States will have 2 years to implement the new provisions – [page 2](#).



A new European Directive meant to facilitate actions for damages for infringements of the competition law provisions

On 17 April 2014 the European Parliament adopted a directive to govern actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (the "Directive").

The Directive aims to harmonise the domestic legal framework concerning the actions available to victims for damages concerning infringements of the competition law with the view to remove the main obstacles under the national legislation and to guarantee a minimum level of protection applicable through the European Union.

Currently, according to the Competition Law no. 21/1996, the conditions to be met for introducing actions for damages available to individuals or legal entities harmed by an infringement of the competition law are mentioned under art. 61. Although this article also contains provisions that conflict with the principles of the newly enacted Directive, it regulates the two types of actions that may be initiated by the injured party, respectively the "*follow on actions*", which follow a decision of the national competition authority, and the "*stand alone actions*", specific to cases when an investigation has not been initiated by the Competition Council.

We have presented below some of the most important provisions of the Directive:

a. Member States shall insure that the limitation period for bringing an action for damages is at least 5 years

Procedural recommendations provided by the Directive regarding the limitation period:

- the limitation period shall not begin to run before the infringement has ceased and the claimant knows, or can reasonably be expected to know the behaviour, the damages incurred and the identity of the infringing undertaking;
- the limitation period is suspended (or depending on the national law, interrupted) during the investigations conducted by the national competition authority and at least 1 year from the date the decision is issued by the national competition authority regarding the investigation.

Currently in Romania the limitation period differs depending on the moment when the action is submitted: 2 years for "*follow on actions*" and 5 years for "*stand alone actions*".

b. The persons entitled to claim damages

According to the Directive it is not relevant if the claimant is a direct or indirect purchaser; as long as he/she has incurred an affective harm he/she is entitled to claim damages. However, the claimant shall lose the right to claim damages if the damages are passed on the whole or part to its own clients ("*passing-on defence*") for the purpose of avoiding overcompensation.

c. Disclosure of evidence included in the file of the Competition Council/in the possession of a third party

In an action for damages the Directive sets as a general principle the possibility for national courts to order a defendant or a third party to disclose relevant evidence that is within their control upon request of the claimant who has presented a reasoned justification sufficient to support the plausibility of its claim for damages according to the principle of proportionality (the national court must take into account the interests of the parties, the scope and costs of the disclosure and to order adequate arrangements for protecting confidential information).

For evidence obtained by the national competition authority, in order to protect the immunity from fines given to undertakings under a leniency policy, the Directive clearly states the following:

- leniency statements and settlement submissions may not be disclosed;
- the information that was prepared by a natural or legal entity specifically for the proceedings of a competition authority or settlement submissions that have been withdrawn may be made public only after the closing of the procedures in front of the national competition authority.

d. Consensual dispute resolution is encouraged

According to the national legislation, certain benefits should be granted to the parties that engage in consensual dispute resolution, such as:

- the suspension of the limitation period for the duration of the consensual dispute resolution process, or
- the compensation paid as a result of a consensual settlement and prior to issuance of a decision imposing a fine to be considered a mitigating factor in case the national competition authority imposes a fine.

e. The Directive establishes a rebuttable legal presumption according to which cartel infringements cause harm

The text of the Directive has been sent to the Council of Ministers of the European Union for final approval. Once the Directive enters into force the Member States will have 2 years to implement the new provisions.

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