Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the EU

2013/0185(COD) - 26/11/2014 - Final act

PURPOSE: to facilitate the introduction of damage and interest claims by victims of antitrust violations.

LEGISLATIVE ACT : Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

CONTENT: 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.

Disclosure of evidence: national courts will be able to order the defendant or a third party to disclose relevant evidence which lies in their control in proceedings relating to an action for damages in the Union, upon request of a claimant who has presented a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim.

Member States must ensure, however, that national courts limit the disclosure of evidence to that which is proportionate. Provisions have been made to prevent fishing for information, meaning non-specific searches for information which is unlikely to be of relevance for the parties in the procedure.

Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. When ordering the disclosure of such information, national courts must have at their disposal effective measures to protect such information. Those from whom disclosure is sought must be provided with an opportunity to be heard before a national court orders disclosure.

Disclosure of evidence included in the file of a competition authority (leniency programme): a claimant may present a reasoned request that a national court access leniency statements or settlement submissions for the sole purpose of ensuring that their contents correspond to the definitions in the Directive.

The authors of the evidence in question may also have the possibility to be heard. In no case shall the national court permit other parties or third parties access to that evidence.

Penalties: national courts must be able effectively to impose penalties on parties, third parties and their legal representatives in the event of circumstances set out in the directive.

Effect of national decisions: Member States shall ensure that where a final decision is taken in another Member State, that final decision may be presented before their national courts as at least prima facie evidence that an infringement of competition law has occurred.

Limitation periods: limitation periods shall not begin to run before the infringement of competition law has ceased and the claimant knows, or can reasonably be expected to know of the behaviour and the fact that it constitutes an infringement of competition law. Limitation periods for bringing actions for damages are at least five years.

Joint and several liability: undertakings which have infringed competition law through joint behaviour must be jointly and severally liable for the harm caused by the infringement of competition law. Where the infringer is a small or medium-sized enterprise (SME) it will be liable only to its own direct and indirect purchasers where: (a) its market share in the relevant market was below 5 % at any time during the infringement of competition law; and (b) the application of the normal rules of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value. This derogation shall not apply where the SME has led the infringement of competition law.

Passing-on of overcharges and the right to full compensation: compensation of harm can be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers from an infringer, and compensation of harm exceeding that caused by the infringement of competition law to the claimant, as well as the absence of liability of the infringer, must be avoided.

The defendant in an action for damages can invoke as a defence against a claim for damages the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law. The burden of proving that the overcharge was passed on shall be on the defendant.

Member States shall ensure that neither the burden nor the standard of proof required for the quantification of harm renders the exercise of the right to damages practically impossible or excessively difficult.

Suspensive and other effects of consensual dispute resolution: the limitation period for bringing an action for damages must be suspended for the duration of any consensual dispute resolution process. Proceedings may be suspended for up to two years.

A competition authority may consider compensation paid as a result of a consensual settlement and prior to its decision imposing a fine to be a mitigating factor.

Review of the Directive: the Commission must submit a report by 27 December 2020. If appropriate, the report shall be accompanied by a legislative proposal.

ENTRY INTO FORCE: 25.12.2014.

TRANSPOSITION: by 27.12.2016.