



Implementing the Damages Directive:

More Compensation for Victims and Stronger Antitrust Enforcement

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Competition



Implementing the Damages Directive

- OBJECTIVES OF THE DIRECTIVE
- KEY PROVISIONS
- OVERVIEW OF IMPLEMENTATION PROGRESS IN MEMBER STATES

Disclaimer: The views expressed are purely those of the presenter and may not in any circumstances be regarded as stating an official position of the European Commission.



Objectives of the Directive

Two complementary goals:

- to remove the key practical difficulties **helping the victims** of antitrust infringements to **get compensation**; and
- to **optimise the interplay between public and private** enforcement.



Who can claim what from whom? (1)

- **Principle of full compensation:**
 - **actual loss; loss of profit;** and payment of **interest** from the time the harm occurred until compensation is paid
- **Anyone who suffered harm:**
 - direct/indirect purchasers and/or suppliers
 - umbrella customers
 - end consumers
- **Undertaking:**
 - EU competition law concept



Who can claim what from whom? (2)

JOINT AND SEVERAL LIABILITY

- **General rule**
 - Each undertaking is liable for the harm in full
 - Injured party may sue any of the infringing undertakings
- **Limitations to the rule**
 - Immunity recipient
 - SMEs
- **Contributions between the infringers**
 - Relative responsibility
 - Cap for immunity recipient



Disclosure of evidence: General rules

- Court can order **a party** or **a third party** to disclose:
 - **Evidence**
 - **Categories of evidence**
- Test of **plausibility, relevance** and **proportionality**
- Disclosure of **confidential information**:
 - Possible if the test of **relevance and proportionality** is met
 - **Effective measures** to protect such information need to be provided

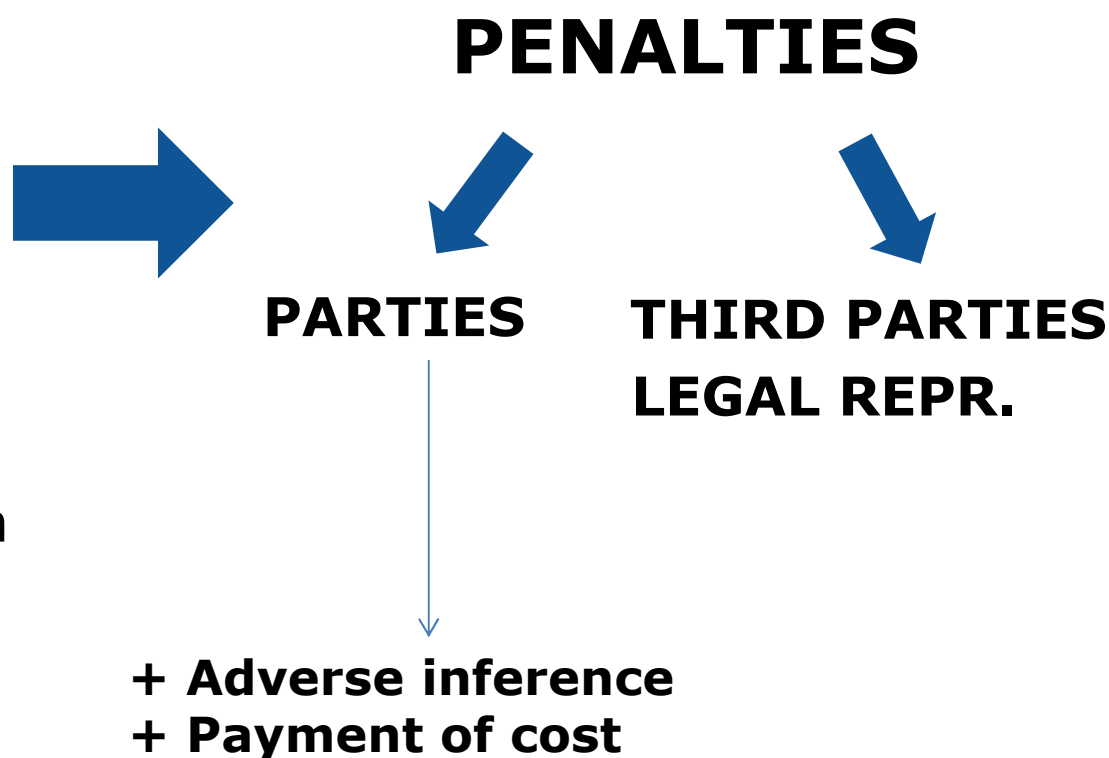


Disclosure of evidence: Special rules

- Disclosure of **evidence included in the file** of a competition authority.
- Balancing two important interests:
 - Right to full compensation
 - Effective public enforcement:
 - » protecting **leniency** and **settlement programmes**
 - » protecting **ongoing investigations**
- Full harmonization

Disclosure of evidence: Sanctions

- **Failure to comply** with Court's order
- **Destruction** of relevant evidence
- **Failure to protect confidential information**
- **Breach of limits on the use** of evidence



Who suffered what harm: Passing-on



- **Direct and indirect purchasers** can claim.
- Infringer can use **passing-on defense**
- Indirect purchasers profit from a **rebuttable presumption of a pass-on to their level**
- **Overcharge harm \neq loss of profit**
- **Avoid over-compensation / under-compensation**



Quantification of harm: A question of fact and available evidence

- **Relevant considerations**
 - **CARTEL causes HARM**
(Rebuttable presumption)
 - **POWER TO ESTIMATE HARM**
 - **DISCLOSURE from PARTIES and THIRD PARTIES**



COMMISSION PRACTICAL GUIDE on QUANTIFICATION



Follow-on actions: facilitating measures

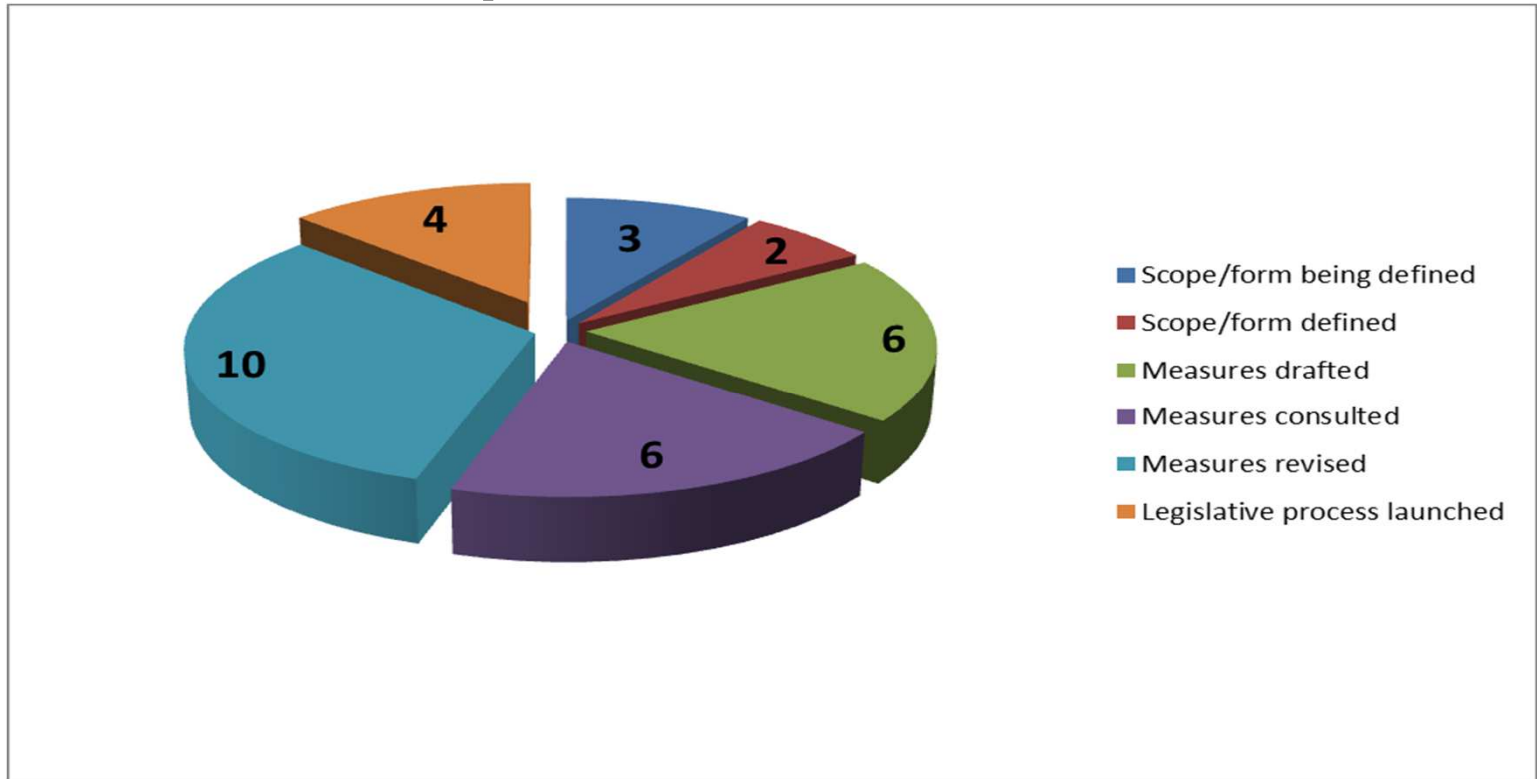
- **SUSPENSIVE EFFECT**
 - **Limitation period is suspended (or interrupted)** for the period up until the final decision of the NCA
- **PROBATORY VALUE of a final decision of an NCA**



DUE DATE AND THE PROGRESS MADE

Implementation is due by 27 December 2016

**Overview
for 31
countries
(EEA)**



Follow: http://ec.europa.eu/competition/antitrust/actionsdamages/directive_en.html



HVALA

Questions?