



Council of the European Union

049404/EU XXV. GP
Eingelangt am 05/12/14

PRESS

EN

PRESS RELEASE

ST 15143/14

PRESSE 574

Brussels, 10 November 2014

Cartels: new rules on damage claims for victims

The Council laid down new rules to facilitate damage claims by victims of antitrust violations.

The new directive will harmonise and ensure the effective enforcement of antitrust damages rules within the EU, thereby allowing the victims of a cartel to receive full compensation for both the actual loss suffered and for lost profits.

Sandro Gozi, Undersecretary of State responsible for European Affairs, said: *"This is an important result that enhances EU competition law and updates it to the latest needs. Italy would like to thank in particular the presidencies of Lithuania and Greece. Thanks to their valuable work, we were able to finalize in short time"*.

The right to full compensation is guaranteed by the EU treaty, but the practical exercise of this right is often difficult because of the applicable rules and procedures. To date most victims of cartels and collusions in practice do not obtain compensation for the harm suffered.

The new measures also seek to improve the efficiency of leniency programmes, whereby a company confesses its participation in a cartel in return for immunity or a reduced fine.

Disclosure of information

Member states will have to ensure that national courts can order, under certain conditions, the disclosure of relevant evidence from parties involved in a competition case.

National courts will also be able to protect confidential business information from being disclosed during the proceedings.

Leniency programmes

To encourage undertakings to produce voluntary statements acknowledging their participation in illegal practices to a competition authority under a leniency programme or a settlement procedure, such self-incriminating statements will be exempted from disclosure of evidence. All the documents accompanying those statements will, however, be disclosable. Other types of documents will be subject to full or partial disclosure in accordance with their relevance, proportionality and the legitimate interest of enterprises to protect confidential information. Parties to whom a disclosure order is directed will have the right to be heard.

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This is because undertakings may be deterred from cooperating with the authorities if disclosure of their documents were to expose them to civil liability under worse conditions than other infringers that do not cooperate with competition authorities.

Joint liability

Where several undertakings infringe the competition rules jointly, as in the case of a cartel, they will be held jointly and severally liable for the entire harm caused. A co-infringer will have the right to obtain a contribution from other co-infringers if it has paid more compensation than its share. The determination of that share and the relevant criteria (such as turnover, market share or role in the cartel) will be decided by the court according to national law.

When the infringer is a small or medium-sized enterprise with a reduced share in the relevant market, and subject to strict conditions, it will only be liable to its own purchasers. A similarly reduced burden will be granted to the leniency recipient in order to reduce his vulnerability, as he is, for a considerable time, the only cartel member who has admitted his wrongdoing and thus would be the automatic target for all claims for damages.

Overcharges

The directive also establishes the principle that full compensation of harm can be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers.

The burden of proof for passing-on overcharge rests with the claimant.

Effect of national decisions

Final national decisions on competition law infringements can be presented in another member state before national courts as evidence, in accordance with the respective national legislation. This considerably strengthens the position of cartel victims when pressing their claims.

Time limits and quantification of harm

Cartel victims will have at least five years to file a claim for damages. This period will be put on hold if a consensual dispute resolution process is engaged.

National courts will be empowered to estimate the amount of harm suffered by the victims so that the quantification of harm does not make the exercise of the right to damages excessively difficult.

Member states will have two years to incorporate the new rules into national legislation following their entry into force. The directive will be published in the EU's Official Journal in the coming weeks.

Today's decision was taken without discussion at a meeting of Agriculture and Fisheries Council. It follows a first reading vote in the European Parliament on 17 April 2014.

The German, Polish and Slovenian delegations abstained from voting ([statement](#)).

[Text of the directive on action for damages for competition law infringements](#)