

# A Multi-jurisdictional Survey on the Implementation of the EU Antitrust Damages Directive (2014/104/EU)



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# INTRODUCTION

EU Member States were required to implement Directive 2014/104/EU on antitrust damages actions (the “Directive”) by 27 December 2016. To date, a number of Member States have done so. This multi-jurisdictional survey considers the approach taken in a number of key EU jurisdictions, and will be updated as more countries pass national implementing measures.

## Overview of the Directive’s provisions

Broadly, the Directive introduces certain minimum standards for the private enforcement of competition law across the EU. It covers a number of important matters, such as limitation periods, the passing-on defence and disclosure. By requiring a form of harmonisation, we anticipate that the Directive’s implementation will lead to significant changes in a number of jurisdictions and that competition damages actions will be pursued more than ever before.

### *Disclosure of evidence (Arts. 5–8)*

The Directive introduces a minimum level of access to the evidence needed by parties to prove their claim, while distinguishing between categories of evidence designed to protect the Commission’s leniency and settlement programs. The Directive also sets out the types of penalties available to national courts of Member States in the event that these rules are breached. Despite these rules, it remains likely that the cultural differences between Member States will result in some taking a more generous approach to disclosure than others.

### *Effect of national decisions (Article 9)*

Findings of an infringement in a final decision by a national competition authority, or a court on appeal from an authority, are binding on the national courts of the Member State concerned. National decisions must be treated as at least prima facie evidence of an infringement before the courts of other Member States.

### *Limitation periods (Article 10)*

Member States must provide for a limitation period of at least five years. This will not start to run until the infringement has ceased and the claimant knows, or can reasonably be expected to know, the behavior and the fact that it constitutes an infringement of competition law, the fact that the infringement caused it harm, and the identity of the infringer.

Limitation periods are suspended during an investigation, and continue to run for at least a year after the infringement decision has become final or proceedings are otherwise terminated. This provision extends limitation periods considerably in many Member States.

### *Joint and several liability (Article 11)*

Where infringing undertakings are responsible for the same harm, they are jointly and severally liable for loss suffered. Therefore, each co-infringing undertaking is bound to compensate for the harm in full, and the claimant may claim compensation from any of them until it is fully compensated.

However, if only one of the co-infringers were to pay the claimant full compensation, that undertaking could recover a contribution from the other infringing undertakings. The amount of contribution is determined by reference to their “relative responsibility” for the harm caused by the infringement.

The provisions on joint and several liability are subject to exceptions for small and medium sized enterprises (SMEs) and immunity recipients.

### *Passing-on of overcharges (Articles 12–16)*

Member States are required to lay down appropriate procedural rules to ensure that compensation at any level of the supply chain does not exceed the overcharge harm suffered at that level. This will not affect the right of an injured party to claim compensation for loss of profits due to the passing-on of the overcharge. The Directive also provides that national courts shall have the power to estimate pass-on. Importantly, the Directive confirms the availability of the “passing-on” defense, and that both direct and indirect purchasers are entitled to sue. This is contrary to the situation in some other jurisdictions, such as the US, where relief is available to direct purchasers only and there is no passing-on defense.

The burden of establishing that claimants passed on any overcharge, and therefore have suffered no loss, falls to the defendant.

Where an indirect purchaser claims that the overcharge was passed on to it, it is deemed to have proved this where it shows that the defendant has infringed competition law, that the infringement resulted in an overcharge for the direct purchaser, and that it purchased goods or services that were subject to the infringement (or derived from such goods or services). This presumption will not apply where the defendant can demonstrate credibly that the overcharge was not, or not entirely, passed on to the indirect purchaser.

### *Quantification of harm (Article 17)*

The burden and standard of proof required to quantify losses must not make it practically impossible or excessively difficult to claim damages. In addition, there is a rebuttable presumption that cartels cause harm.

### *Consensual dispute resolution (Articles 18–19)*

The Directive provides for the suspension of limitation periods for the duration of any consensual dispute resolution process and also modifies the rules on contribution where there is a voluntary settlement, so as to avoid overcompensation and limit clawback from settling defendants.





# AUSTRIA

1.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?

No.

The Directive will be implemented in Austria by amendments to the Cartel Act.

1.1 From what date does the national measure implementing the Damages Directive come into force?

1 May 2017

1.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

The implementation of the Directive is expected to affect materially the private enforcement of competition law in Austria.

The implementation measures also apply to domestic cases.

1.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a

considerable change in practice in your jurisdiction?

The draft legislation (§ 37i para 2 Cartel Act) goes beyond the Damages Directive by stipulating a binding effect of such decisions.

1.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

No.

1.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

No changes of substantive law but rather of procedural law (burden of proof).

1.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?

Under current law (general civil procedure), there are only limited

possibilities to request disclosure of information from the other party to the proceeding. Introducing a specific legal basis for disclosure is a significant change.

1.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

Yes, a three year limitation period applies until the new law enters into force. Another new element is that limitation is suspended for the duration of investigations by the competition authority.

1.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?

The specific rules governing joint and several liability for immunity applications, small and medium sized companies or in case of consensual dispute resolution are a change to current general rules.







The Damages Directive has been implemented through new legislation, i.e., the Act on the Compensation of Damages Related to Infringements of Competition Law (in Finnish: *laki kilpailuoikeudellisista vahingonkorvauksista*, 9.12.2016/1077). Some small amendments were concurrently made to the Competition Act (in Finnish: *kilpailulaki*, 12.8.2011/948) to render the provisions of the two Acts consistent.

**2.1 From what date does the national measure implementing the Damages Directive come into force?**

The aforementioned new Act entered into force on 26 December 2016.

In matters where the infringement took place before 26 December 2016, only the procedural rules (evidence, disclosure, burden of proof concerning passing-on) of the new Act will be applied. The substantive rules (e.g., interest, limitation, joint and several liability) will not be applied to these matters.

All matters in which damages proceedings have been initiated at court before 26 December 2016 will be fully handled under old (substantive and procedural) rules.

**2.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?**

The precise impact of the Damages Directive is difficult to assess, since national case law is scarce. The only existing Supreme Court precedent in a private enforcement case deals solely with the statute of limitations. Despite their low number, decisions from lower courts are not uniform. This lack of case law probably means that the new Act will clarify a number of issues about which there has been no certainty so far.

The new Act is also applicable to purely domestic cases.

**2.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?**

It is our understanding that there have been no cases in Finland where the evidentiary value of decisions by other Member States' competition authorities have been assessed. The current case law is divided as to the evidentiary value of decisions by the Finnish authority.

The new Act is likely to remove at least some uncertainty about the evidentiary value of decisions by all competition authorities. However, it remains to be seen how courts will interpret the wording of the Directive and the new Act in this regard.

**2.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?**

Not significantly. The right to full compensation is an established

principle of national damages law. The implementation of the Damages Directive does introduce rules on the accrual of interest on damages caused by a competition restriction, which has been a subject of debate previously.

**2.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?**

It is our understanding that there have been no cases in Finland where the passing-on of overcharge has been assessed. The general prohibition of unjust enrichment in Finnish damages law means that the possibility of pass-on should have been considered under previous law, but issues such as burden of proof have been subject to debate. The new Act will clarify the matter in this regard.

**2.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?**

There are established national procedural rules regarding disclosure of evidence in court proceedings. However, most Finnish access-to-file cases (including private enforcement ones) have involved disclosure demands made under general administrative law provisions concerning access to documents held by public authorities. This is another well-established regime in Finland.

The rules introduced in the implementation of the Damages Directive are generally in line with existing case law and are not likely to have a significant impact on disclosure in Finland.

**2.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?**

There have been changes, but their practical impact is likely to be minor.

Under the previous rules (which entered into force in 2011), a claim had to be made within 10 years of the date on which the infringement took place or ended. In follow-on cases, the claim never became time-barred until at least one year had passed from the date on which the relevant decision by a competition authority or court became final.

Under the new rules, a claim has to be made within 5 years from the date on which the claimant became or should have become aware of the infringement, the damage and the party responsible. However, the claim is never time-barred if made within 10 years from the date on which the infringement took place or ended or within one year from the date on which the relevant decision by a competition authority or a court became legally final.

**2.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?**

Joint and several liability is an established principle in Finnish damages law. While there have been some relatively small interpretive differences concerning joint and several liability in private enforcement case law, the most significant effect of the implementation of the Damages Directive relates to the exception for leniency recipients and small and medium-sized enterprises.

**2.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

The rebuttable presumption that cartels cause harm has been introduced by the implementation of the Damages Directive. This presumption was not recognised by the old rules.

As there is no presumption on the amount of damage, the burden of proof on the quantum of damage still rests with the claimant. Thus, it remains to be seen whether the presumption will have a significant impact.

There have been no other notable changes in this regard, apart from the provision that the court handling the damages claim may request a statement from the competition authority specifically concerning the determination of the quantum of damages.

**2.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

No. The only provisions relating to consensual dispute resolution in the new Act concern the impact of consensual dispute resolution on various deadlines (a negotiation between parties stops the clock on the statute of limitations, and a court may freeze proceedings in a case for two years while the parties negotiate) as well as the impact of a settlement with one or more infringing parties on the damages that can be claimed from the others.

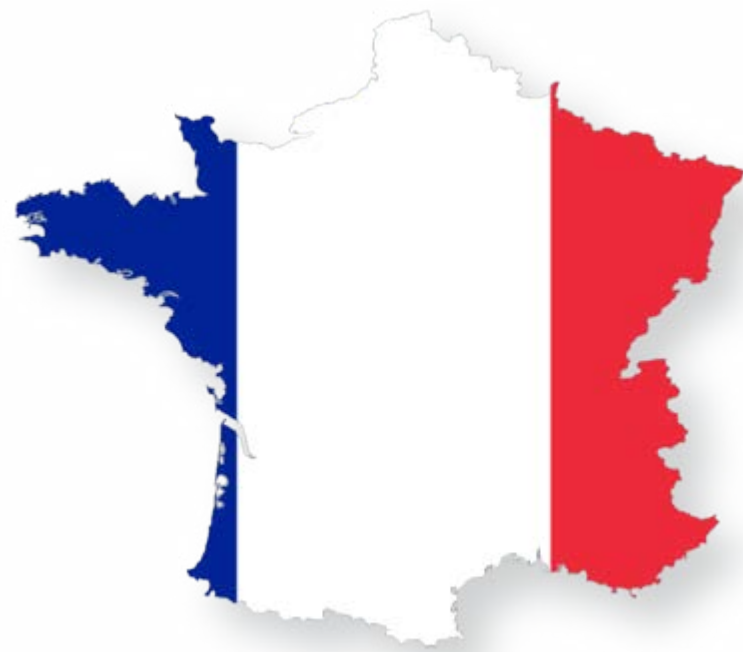
It is specifically stated in the preparatory works for the new Act that all types of consensual dispute resolution are subject to the aforementioned rules.

**2.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

No, apart from certain minor changes to the Competition Act. These changes deal with leniency documents, especially the concept of a corporate statement (leniency statement).

Previously, such a statement has not been specifically recognised in Finnish law, though conceptually it has been included in the 'information or evidence' of an infringement that the leniency applicant has been required to submit to the competition authority. Under the new rules, submitting a corporate statement as part of the leniency application is compulsory. The evidence-related rules in the new Act also specifically recognise the corporate statement.





# FRANCE

The Directive is implemented in France by:

- the Ordinance n° 2017-303 dated March 9, 2017 (the "Ordinance") ;
- the Decree n° 2017-305 dated March 9, 2017 (the "Decree").

## 3.1 From what date does the national measure implementing the Damages Directive come into force?

The Ordinance (which contains the vast majority of the new provisions) came into force on 10 March 2017, except for the provisions pertaining to evidence disclosure, which apply to ongoing proceedings which have been launched since 26 December 2014.

The Decree applies to proceedings that have been launched since 26 December 2014.

The Ordinance and Decree have created a whole new section in the French commercial Code.

## 3.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

Some of the provisions set forth by the Damages Directive already existed in the French legal framework. For instance, class actions were introduced in 2014 (Law on Consummation No. 2014-344 dated March 17, 2014 (Loi Hamon)).

The implementation of the Damages Directive in France has however brought some significant changes to certain aspects of private enforcement, particularly with regard to limitation periods, access to evidence and exceptions to joint and several liability.

The provisions are also applicable to domestic cases.

## 3.3 Will the requirement to treat decisions of other Member States' competition authorities

## as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?

Prior to the implementation of the Directive, an infringement of competition law found by a final decision of a foreign national competition authority was not deemed to be prima facie evidence for the purposes of an action for damages. However, in practice, the French Courts tended not go against the National Competition Authority decision. This provision should consequently not make a material difference in practice.

## 3.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

No. French law already provided a right to full compensation.

However, the presumption provided under Article 17(2) of the Directive, according to which there is a presumption that cartel infringements cause harm, is in

itself a significant change.

## 3.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

Yes. Under French pre-implementation case law, the burden of proving the passing-on of overcharge lay with the claimant, which needed to establish that it had not passed-on the overcharge.

The transfer of the burden of proof, together with the presumption set by the Directive, will consequently significantly ease the claimant's task .

Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?

Mechanisms provided by the Directive are quite similar to existing mechanisms under French law. For instance, French Courts could already request the National Competition Authority to disclose certain types of evidence.

The new disclosure regime is however closer to Anglo-Saxon discovery, which is unknown in France.

The new disclosure regime favours the claimant, likely making it easier to gather relevant evidence.

## 3.6 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

Although the length of the limitation period remains the same (5 years), the starting point of the limitation period will, in practice, extend the limitation period. Pre-implementation French law provided that the limitation period started to run on the date on which the claimant knew or should have known the factual circumstances

allowing him to bring an action, which is more restrictive than the limitation regime set by the Directive.

The suspension of the limitation period during an investigation by a competition authority or a consensual resolution process will also considerably extend the time period during which the claimant will be able to file a claim.

## 3.7 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?

The principle of joint and several liability is well established in France. However, the limitations on joint and several liability set out under Article 11(3) of the Directive for SMEs are a significant change.

## 3.8 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?

The presumption provided under Article 17(2) of the Directive, according to which there is a presumption that cartel infringements cause harm, is a significant change.

This shifts the burden of proof from the claimant to the defendant.

## 3.9 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?

The Directive has just been implemented in France. However, provisions have been introduced to implement the Directive's requirements that claims and contribution claims are reduced to reflect a consensual settlement between the claimant and an infringing party (which is what many settlement agreements were seeking to achieve).

## 3.10 Have the implementing measures in your jurisdiction made changes to other aspects of national law?

The implementing texts have created a whole new section in the French Commercial Code.







## GERMANY

The Directive is implemented by the Ninth Amendment to the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB). There are no significant changes to other laws.

**4.1 From what date does the national measure implementing the Damages Directive come into force?**

9 June 2017. Several provisions of the implementation law come into force retroactively, i.e. on 27 December 2016; this includes the provisions on joint and several liability, and on the rebuttable presumption that a specific cartel has caused harm (see lit. 8 and 9 below).

**4.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?**

Yes to both. While private enforcement of competition law

is well-developed and thriving in Germany, the new disclosure regime constitutes a major change (see lit. 6 *infra*). The implementation measures do not distinguish between EU law infringements and infringements of domestic competition law. Therefore, domestic cases are equally affected by the implementation.

**4.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?**

No. German law already goes beyond the requirements of the Directive, insofar as it does not treat such decisions as prima facie evidence, but rather considers them binding and non-rebuttable if the decisions of the other Member States' competition authorities refer to cartel infringements under EU or German law. The new prima facie evidence rule thus only plays a role in Germany with regard to

decisions on cartel infringements under foreign competition law, which will typically not play an important role in German court practice.

**4.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?**

No. The right to full compensation is a well-established cornerstone of German damages law.

**4.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?**

Yes, gradually. While the notions expressed in Art. 12 and 13 of the Directive are already reflected in German law, the implementation measures will express them more precisely. However, the change in law is less dramatic than it might appear on paper, as the Federal Court of Justice has, in its case law, already established similar notions like those in Art. 12 and 13.

**4.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?**

As a general rule, disclosure is handled very restrictively in German litigation. Rather than having to disclose whole classes of documents, a party may be ordered to disclose individual documents to which the other party has made reference. Instead of granting disclosure, German law uses rules on the burden of proof and the concepts of prima facie evidence and secondary burden of substantiation to assure that no party is unduly disadvantaged.

The new disclosure regime, therefore, is quite a foreign concept within the framework of German law, and arguably the most significant change required by the Directive.

**4.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?**

Yes to both. The current limitation period is only three years. In addition, the implementation measures include selective changes to, e.g., the specific conditions for the commencement of the limitation period, and the re-commencement after suspension.

**4.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?**

Not in principle, as cartel infringers are already jointly and severally liable under German law. However, the implementation measures will limit the liability of small and medium-sized enterprises and immunity recipients, as required under Art. 11 of the Directive; such limitation does currently not exist in German law.

**4.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

Only one: As required by Art. 17 para 2 of the Directive, the reformed law will stipulate a rebuttable presumption that a specific cartel infringement has caused harm. Currently, German case law grants the aggrieved party a prima facie evidence to this effect, which is slightly less than a rebuttable presumption, as a court may decide not to apply a prima facie evidence due to the specific circumstances of a case. Therefore, the members of a cartel will, under the implementation measures, always bear the burden of proof if they argue that a certain cartel infringement had no effect on the market.

**4.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

No, as no notable changes are necessary to have German law reflect the respective provisions of the Directive. The implementation measures will, however, clarify the effects that a settlement with just one member of a cartel has on (i) the claims of the damaged party against the other members of the cartel, and (ii) the contribution claims of the members of the cartel against each other.

**4.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

No, except editorial changes to various statutes.





# HUNGARY

The implementing measure is Act CLXI of 2016 on the amendment of Act LVII of 1996 on the prohibition of unfair market practices and restriction of competition and Act XLVII of 2008 on the prohibition of unfair commercial practices towards consumers ("Amendment"). The Amendment introduced a new XIV/A. chapter into the Competition Act, which contains all rules implementing the Damages Directive.

## 5.1 From what date does the national measure implementing the Damages Directive come into force?

The rules of the Amendment implementing the Damages Directive came into force on 15 January 2017.

Substantive rules are applicable to damages caused by a competition law infringement committed after the entry into force of the Amendment. Substantive rules regulate full compensation, presumption of harm in case of cartels, alternative dispute resolution (ADR), passing-on, presumption

of the extent of overcharge, limitations of joint and several liability and limitation period.

Procedural rules are applicable to all judicial proceedings initiated by a lawsuit claiming antitrust damages after 26 December 2014. Procedural rules regulate amicus curiae of the Hungarian Competition Authority ("HCA") and suspension of proceedings due to a competition authority investigation, burden of proof, evidence disclosure, effect of competition authority decisions and assistance of the HCA in damages litigation.

## 5.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

Until now there has been very limited antitrust damages litigation in Hungary. The Amendment introduced several significant deviations from Act V of 2013 on the civil

code ("Civil Code") and Act III of 1952 on civil procedure ("Civil Procedure") applicable specifically to damages caused by a competition law infringement. Thus, the implementation is expected to materially affect the private enforcement of competition law in Hungary.

The implementation measures are equally applicable to domestic cases as the definition of competition law infringements covers the Hungarian and EU law rules prohibiting restrictive agreements and abuse of dominance.

## 5.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?

The requirement to treat decisions of other Member States' competition authorities as prima facie evidence was implemented as a rebuttable presumption. This is not a

significant deviation from general rules of Civil Procedure, as foreign administrative or judicial decisions were accepted as strong documentary evidence (public deed). Also, there has been no antitrust damages litigation in Hungary to date, which relied on a foreign decision. Thus, it is unlikely that it will lead to a considerable change in practice in Hungary.

## 5.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

No. The Hungarian Civil Code already provides that the injuring party shall fully compensate the injured party for all losses.

Due to the Damages Directive the application of two provisions of the Civil Code was also adjusted with respect to damages caused by a competition law infringement:

(i) the court is allowed to award compensation lower than the total loss in exceptional circumstances, however, it may not do so in case of damages caused by a competition law infringement;

(ii) contractual limitation or exclusion of liability for damages is null and void in cases of intentional conduct, loss of life, harm to physical integrity or health, now such a limitation or exclusion is also null and void in case of damages caused by a competition law infringement.

## 5.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

Hungarian judicial practice accepts indirect damages and therefore the passing-on of overcharge. However, the implementation of the Damages Directive changes this position with respect to damages caused by a competition law infringement by shifting the burden of proof: there is a rebuttable presumption of passing-on if the indirect purchaser can prove the

infringement, the overcharge and the purchase of the relevant product / service.

## 5.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?

Civil Procedure provides for very limited disclosure: at the request of a party, the court can order the other party to present a document in its possession, which the other party is otherwise obligated to hold. Due to its constraints, this had limited application in practice.

The Amendment introduced a new disclosure regime in accordance with the Damages Directive. Most importantly, this includes the possibility to request the court to order the other party to disclose entire categories of documents. The new disclosure regime sets out exempt categories of documents (such as leniency material), confidentiality protections and temporal limitations in line with the Directive.

Thus, the implementation of the Damages Directive is expected to lead to a significant change in how litigation regarding damages caused by a competition law infringement will be dealt with in Hungary.

In addition, a new civil procedure (Act CXXX of 2016 on civil procedure) will enter into force on 1 January 2018 which provides for further (general) rules of evidence that could facilitate antitrust damages claims.

## 5.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

No. The limitation period for damages claims was already 5 years under the Hungarian Civil Code.

Other changes due to the implementation of the Damages Directive relate to when the limitation period starts and when the limitation period is suspended. Connecting the start of the limitation period to when the injured party is aware of the infringement, the damages and the identity of the injuring party is only a slight change as Hungarian judicial practice recognised this situation as a ground for suspension of the limitation period. The Amendment added to the suspension of the limitation period foreseen by the Damages Directive: ongoing competition authority proceedings suspend the limitation period not just until the final and binding end of the proceedings, but 1 year afterwards.

## 5.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?

Although the Competition Act already diverges from the Civil Code with respect to joint and several liability in competition damages claims, this will change further due to the implementation of the Damages Directive.

With respect to successful immunity applicants, the previous rule only provided for a fallback: the successful immunity applicant can refuse to pay damages until full damages can be recovered from other injuring parties. The Amendment changed this to a rule according to which the liability of a successful immunity applicant (and the contribution claims of other injuring parties) is limited to damages suffered by direct and indirect purchasers of the successful immunity applicant, unless full damages cannot be recovered from other injuring parties.

The Amendment also introduced the limitation of joint and several liability in case of small and medium size enterprises.





**5.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

Although, the rebuttable presumption on cartels causing damages is a new rule, no notable changes are expected in Hungary in relation to the quantification of harm. The Competition Act already provided for a rebuttable presumption of a 10% overcharge. The Civil Code and Civil Procedure explicitly allow the courts to estimate an equitable amount of damages if the exact amount cannot be established. Also, it is expected that the use of expert opinion will be predominant in practice.

The Amendment introduced the rule on the basis of which the court can request the assistance of the HCA with respect to the existence, extent and causality of the damages. However, the HCA is not obligated to comply with such a request and its statement would not be binding in the judicial proceedings. With respect to the limited resources of the HCA, this is not expected to lead to a significant change in the quantification of harm.

**5.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

Yes. The Amendment introduced a limitation on the liability of an injuring party if it has paid damages on the basis of a settlement reached as a result of ADR. The injuring party can be required to pay damages in excess of the settled amount only if full damages cannot be recovered from other injuring parties (not party to the settlement).

The Amendment added to the consensual dispute resolution rules foreseen by the Damages Directive: payment of damages on the basis of a settlement reached as a result of ADR is considered as a mitigating factor in the course of the calculation of the fine imposed by the HCA.

The above rules are expected to facilitate settlements in antitrust damages litigation, however, the exact practical effects are yet unclear as the Amendment did not clarify what can be considered as ADR (e.g. recital 48 of the Damages Directive mentions arbitration, mediation and conciliation).

**5.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

n/a





# ITALY

The Directive has been implemented in Italy by Legislative Decree no. 3 of January 19, 2017 (the "Decree").

**6.1 From what date does the national measure implementing the Damages Directive come into force?**

The Decree came into force on 5 February 2017. However, some procedural provisions, namely referring to the evidential stage, apply to all proceedings started after 26 December 2014.

**6.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?**

The implementation of the Directive is expected to affect materially the private enforcement of competition law in Italy. The implementation measures also apply to domestic cases.

**6.3 Will the requirement to treat**

**decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?**

Even if we are not aware of specific precedents in the past, we expect that this will materially affect the practice in our jurisdiction.

**6.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?**

No

**6.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?**

No changes to substantive law but rather of procedural law (burden of proof).

**6.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how**

**evidence in litigation is dealt with in your jurisdiction?**

Under current law (general civil procedure), there are only limited possibilities to request disclosure of information from the other party to the proceedings. As a general rule, the party applying for disclosure will need to: (i) describe the documents requested in as much detail as possible so as to show that the claimant is not "fishing"; and (ii) confirm that the documents requested are not in its possession or otherwise available to it.

For this reason, introducing a specific legal basis for disclosure is a significant change.

**6.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?**

Five years was the limitation period always applied by Italian Courts, as for any tort liability.

The Decree however benefits claimants by providing additional certainty as to the moment from which the limitation period runs.

**6.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?**

The specific rules governing joint and several liability for immunity applications, small and medium sized enterprises or in case of consensual dispute resolution are a change to current general rules.

**6.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

In principle, there is no substantial change. It has to be noted however that the Decree provides a presumption that cartels cause damage. Other important provisions concern the evidential tools available to claimants to prove damage. Among these, the presumptions concerning indirect harm will dramatically improve the position of certain claimants.

**6.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

Not to consensual dispute resolution as such.

**6.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

The most important changes have been addressed above.

As a general comment, we note that the Decree substantially improves the position of claimants in Italy.





# LITHUANIA

The Directive in Lithuania is implemented by transposing it to the Law on Competition, which entered into force from 1 February 2017. Since the Directive was transposed into Lithuanian law only very recently, there is no judicial practice regarding the application of rules provided in the Directive. To best of our knowledge there have been very few private enforcement cases related to competition law infringements in Lithuania. In these cases claimants relied on general rules provided in the Civil Code. Furthermore, a number of these cases settled, meaning that there are no court decisions. A number of cases are currently pending until the final court decision on competition law infringement is reached (decisions of the Competition Council are appealed to courts).

**7.1 From what date does the national measure implementing the Damages Directive come into force?**

The national measures implementing the Directive came into force on 1 February 2017.

**7.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?**

Since the private enforcement of competition law is not widely developed in Lithuania, we believe that it may be materially affected by the implementation of the Directive. Before transposition of the Directive, private enforcement of competition law was regulated by the general rules provided in the Civil Code and the Civil Procedure Code, whereas currently there are specific and thorough rules provided in the Law on Competition.

The implementing measures apply equally to infringements of Lithuanian competition law.

**7.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a**

**considerable change in practice in your jurisdiction?**

Before transposition of the Directive, this aspect was not specifically regulated, therefore it is possible that due to such requirement the burden of proof will be passed on to the respondent, which may result in an increase of private claims.

**7.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?**

According to general rules, the principle of full compensation was already applied in Lithuanian law before transposition of the Directive, thus it is possible that the transposition will not have a material impact in this respect.

**7.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?**

Before transposition of the Directive, this aspect was not specifically regulated, therefore

it is possible that due to such novelty the burden of proof will be passed on to the respondent, which may result in increase in private claims.

**7.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?**

The disclosure of evidence in competition claims is not widely developed. However if the question of disclosure was raised in those cases, it should have been assessed in the light of the general rules. After transposition of the Directive, the Law on Competition provides very detailed rules related to various aspects of disclosure of evidence in competition cases, which, in our understanding, might encourage the growth of private claims in the field.

**7.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?**

Before the amendments to the Competition Law were adopted, the limitation period for competition claims was regulated by general rules of the Civil Procedure Code, which foresaw a limitation period of 3 years. After the amendments were adopted the limitation period was extended to 5 years.

After transposition of the Directive, the law also specifically provides rules on suspension of calculation of limitation period, which was not regulated previously.

**7.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?**

The principle of joint and several liability is well established in Lithuania as part of the general rules set out in the Civil Code. However the transposition of the Directive introduced more clarity

in this respect including, for example, rules on the liability of immunity recipients and SMEs.

**7.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

Before implementation of the Directive, following the general rules provided in the Civil Code, a claimant who sought compensation had to prove the existence of four conditions: malpractice, fault, damages and a causal link between the malpractice and damages. After the amendments to the Law on Competition, a rebuttable presumption that agreements between competitors caused damage is applicable. Such change could increase the number of private claims, since the burden of proof is shifted from the claimant to the defendant.

Moreover, there were no unanimous national guidelines regarding quantification of harm. Claimants previously sought input from the Competition Council as regards calculation of damages, although that practice was undeveloped. After implementation, the courts will be entitled to calculate approximate damages if there is no possibility to calculate the exact amount. These changes should bring more clarity as regards the quantification of harm in competition private enforcement cases.

**7.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

The law on consensual dispute resolution is currently in its infancy in Lithuania. There were only a few private enforcement cases related to competition infringements and a number of these cases ended by a settlement agreement. However, to the best of our knowledge, mediation has not been used in these cases before.

**7.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

No, the Directive was implemented only by adding a separate section on civil liability to the Law on Competition.







# LUXEMBOURG

The law of 5 December 2016 (Competition Damages Act) implemented the Damages Directive in Luxembourg.

8.1 From what date does the national measure implementing the Damages Directive come into force?

The law of 5 December 2016 came into force on 11 December 2016.

8.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

No, the implementing law should not materially affect the private enforcement of competition law in Luxembourg.

The implementation measures also apply to domestic cases.

8.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of

an infringement lead to a considerable change in practice in your jurisdiction?

No.

8.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

The right of full compensation was already in place in Luxembourg before the implementation law.

However the implementing law will render access to evidence considerably easier and, thus, will make full compensation easier to achieve.

8.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

There is no relevant case-law yet in Luxembourg involving the pass-on defence.

8.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?

Disclosure will be made considerably easier further to the implementing law.

8.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

No. However, Luxembourg has introduced a self-contained limitation regime for competition claims, which sets out new provisions: (i) determining when time starts to run; and (ii) suspending the limitation period during an investigation by a competition authority or a consensual dispute resolution process. The effect of these provisions will be that limitation is no longer a simple linear calculation and claimants

are likely to have longer to file their claims.

8.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?

There is no relevant case-law yet to our knowledge, but joint and several liability was already a known concept in Luxembourg.

8.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?

There is no relevant case-law yet, but there should not be any change based on the implementation law.

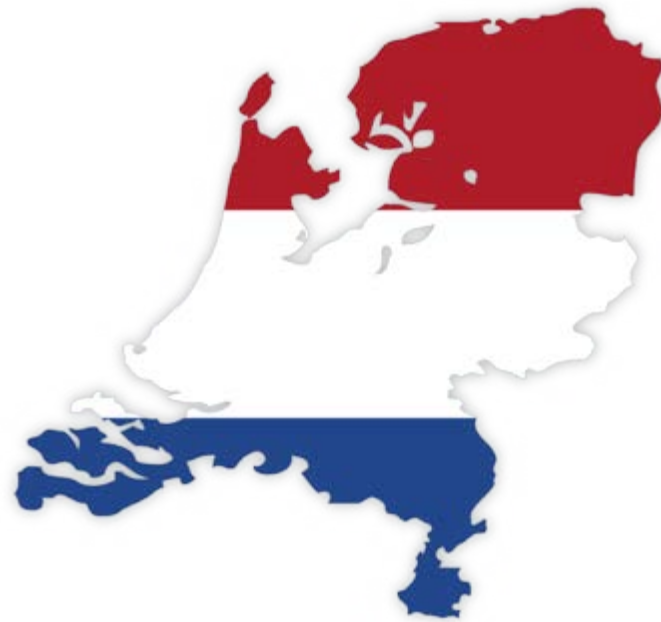
8.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?

No.

8.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?

n/a





# NETHERLANDS

The Directive is implemented in The Netherlands by the:

- Implementatiewet richtlijn privaatrechtelijke handhaving mededingingsrecht (Stbl. 2017, no. 28)

The new legislation amends the Dutch Civil Code (Burgerlijk Wetboek, boek 6); and the Dutch Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering).

## 9.1 From what date does the national measure implementing the Damages Directive come into force?

The new legislation came into force on 10 February 2017. The procedural provisions – inter alia on discovery – apply to proceedings which have commenced after 26 December 2014. In accordance with the Directive, the substantive provisions do not apply retroactively. The substantive provisions include the presumption of harm and the statute of limitation. These provisions do not apply to

damages claims with respect to harm caused or infringements that occurred prior to 10 February 2017.

## 9.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

The Netherlands is already an established jurisdiction for the private enforcement of competition law. The implementation of the Directive will in that regard presumably not lead to material changes to the private enforcement landscape. In the past years some of the principles that are introduced by the Directive – e.g. the rules on passing-on and contribution – have already played a role in ongoing proceedings, prior to the implementation deadline of the Directive. Several provisions of the Directive are in that regard not implemented as similar provisions were already in place.

The new legislation does not cov-

er wholly internal infringements of national competition law. A legislative proposal will be prepared on damages actions in relation to those infringements. The legislation does introduce a provision by which an infringement decision of the Dutch Competition Authority (the ACM) – no longer open to appeal – is irrefutable evidence of an infringement of competition law, similar to an infringement established by the European Commission.

## 9.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?

The principle of freedom of evidence is the starting point of Dutch rules of evidence. The evaluation of evidence is, therefore, left to the Courts, and they enjoy a wide margin of discretion in this respect. According to the Explanatory Memorandum the Dutch Courts could therefore already treat decisions of other Member States' competition authorities as

prima facie evidence on the basis of the current law. No additional provisions on this subject were, therefore, introduced in the implementation legislation. It is not expected that considerable changes will occur.

## 9.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

As the Explanatory Memorandum emphasizes, full compensation – “but not more” – is already part of the principles of damages under Dutch law. This has therefore not led to any changes.

## 9.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

The passing-on defense as such was – prior to the implementation – not laid down in the Dutch Civil Code. The defense was however acknowledged by the Supreme Court in a judgment of 8 July 2016. The circumstances under which a rebuttable presumption exists that passing-on occurred, in case of a claim from indirect purchasers, is, however, new and has now been included into Dutch legislation.

## 9.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?

The new legislation relies on the existing general ‘disclosure’ provision – which is according to the Explanatory Memorandum in general more lenient than the provisions in the Directive – and adds limitations of availability with respect to certain categories of documents as prescribed by the Directive. The new legislation introduces one more lenient aspect specifically for private enforcement proceedings. A disclosure request can – in private enforcement proceedings – no longer be refused based on the ground that fair administration of justice is also guaranteed without disclosure of the requested doc-

uments, as was previously the case (and continues to be the case in respect of all other matters). Disclosure of documents can therefore only be refused on compelling grounds and based on the limitations prescribed by the Directive (depending on the requested categories of documents).

## 9.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

The limitation period in The Netherlands has always been 5 years for damages claims from the moment the claimant has become aware of the damages and the responsible party (i.e. the tort-feasor). The new legislation does introduce some changes to the Dutch statute of limitation with respect to claims following an infringement of competition law: (i) the limitation period may only commence once the infringement itself is finished and (ii) the limitation period is extended by an act of a Competition Authority with respect to an investigation or any other proceedings regarding an infringement of competition law (as defined in the Directive) or by a extrajudicial dispute resolution process. The Directive proposes a suspension of the limitation period, but that is a concept alien to Dutch law. Therefore, the Dutch legislator opted to align the new provisions with the already existing legal concept of extension of the limitation period. The limitation period is, as a consequence, extended by operation of law for the duration of the investigative process before the Competition Authority or an extrajudicial dispute resolution process.

## 9.8 Has the position on joint and several liability and contribution in your jurisdiction changed in light of the Damages Directive?

The legal concepts of joint and several liability and contribution are laid down in the articles

6:10 – 6:14 of the Dutch Civil Code. These provisions already existed before the Directive and lead to very similar results, with some exceptions. The implementation legislation does not provide amendments to those articles. The Directive has brought changes to the joint and several liability and contribution with respect to settlements, however this will not lead to considerable changes in the Netherlands as this was already common practice. New is that after a settlement the original claim is reduced – by the settling party's share – by operation of law (ipso jure). The new legislation further includes limitations on the extent of the joint and several liability of small and medium sized enterprises and immunity recipients. These limitations were not part of Dutch legislation before.

## 9.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?

The new legislation introduced a rebuttable presumption that cartel infringements cause harm. The burden of proof is thereby shifted from the claimant to the defendant. As the Dutch Courts may already estimate harm under existing laws a provision to that effect is not added.

A provision is introduced that allows the Courts to seek assistance of the Dutch Competition Authority (the ACM) when the quantum is estimated.

## 9.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?

In line with the Directive the new legislation allows the Court to stay the proceedings for a maximum of two years when parties are involved in extrajudicial dispute resolution. Parties can agree to this both prior to the start of proceedings as after the proceedings have started. Extrajudicial dispute resolution may also be taken into account for an extension of the limitation period. This extension is equal to the time of the extrajudicial dispute



resolution process. With respect to mediation the new legislation specifically stipulates that the period of extrajudicial dispute resolution ends when one of the parties declares in writing to the other the mediation has ended or when none of the parties have acted for six months.

**9.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

The new legislation amends the Dutch Civil Code (Burgerlijk Wetboek, boek 6); and the Dutch Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering), however all amendments specifically apply to infringements of competition law (as defined in the Directive) only.







# NORWAY

The Damages Directive is considered to be of EEA relevance, but has not yet been annexed to the EEA Agreement, and is thus not implemented by the EFTA Member States. However, Norwegian competition law is already in line with the Directive in many respects, and the necessary amendments to the legislation are not considered problematic. The responses below are based on draft amendments proposed by the Norwegian Government in a consultation paper published 11 December 2015.

Implementing measures will be set out in the Norwegian Competition Act as a separate chapter.

## 10.1 From what date does the national measure implementing the Damages Directive come into force?

At the time of writing, the final date for implementation had not been set.

## 10.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition

## law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

The implementing measures will be equally applicable to domestic cases, except the rules on the binding effect of decisions of national competition authorities.

It is our opinion that the implementation of the Damages Directive will noticeably affect the private enforcement of competition law in Norway. As of today, private enforcement is governed by general Norwegian tort law and the Norwegian Disputes Act, while the implementation of the Directive will create a separate procedure on damages claims in competition law cases.

The new procedure differs from the current national procedures in any other damages action in important aspects, most noticeably in relation to disclosure, interest, limitation periods, presumptions and the importance of the decisions by competition authorities.

It is undisputed that the implementing measures will considerably strengthen the injured party's position in relation to damages claims compared to current Norwegian tort law. Thus, Norway may see an increase in damages actions.

## 10.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?

Today, the Norwegian courts may attach importance to such decisions and the decisions are generally considered to be relevant and important evidence in private enforcement. The main difference is the prima facie rule, as Norwegian competition law currently does not treat such decisions as prima facie evidence. However, since the evidence which the decisions represent may be refuted by the defendant, it is our view that the requirement will not lead to a material change in practice.

## 10.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

The right to full compensation is already a fundamental principle in Norway. However, the provision on the right to interest from the time of occurrence will be implemented by a provision the Norwegian Competition Act. Current Norwegian legislation only provides a right to interest 30 days after notice requiring payment has been sent by the claimant to the debtor, and the right to interest from the time of occurrence has only occasionally been accepted by the courts in accordance with non-statutory law.

## 10.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

The position will not change dramatically, as the result according to current Norwegian law is in line with the result the Directive aims at. There will, however, be implementing measures in the Norwegian Competition Act in order to ensure a more precise and clearly expressed set of rules in this regard. Also, a provision in the Norwegian Competition Act relating to the rebuttable presumption of pass-on for indirect claimants is necessary as such a rule currently does not exist in Norway.

In addition, the Norwegian Competition Act will be amended with provisions implementing the procedural rules in Article 12(2) and 15 related to the avoidance of overcompensation. In light of the rules in the Norwegian Dispute Act, there is no need for implementing measures beyond a general provision on the powers of the courts to stay the proceedings or to continue proceedings to avoid overcompensation.

## 10.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how

## evidence in litigation is dealt with in your jurisdiction?

The Norwegian courts have extensive experience of disclosure, as the Norwegian disclosure regime is well established through the Norwegian Dispute Act.

Norwegian law is already in line with the minimum requirements set out in clause 5 of the Directive. However, it is necessary to amend the Norwegian Competition Act with provisions implementing the more specific rules on disclosure in cases concerning competition law (i.e. Articles 6 and 7 – "the black list", "the grey list" and "the white list"). Also, there are no Norwegian provisions corresponding to the Directive's provisions on the interim prohibition provided in Article 7(2) and on limitations of who may use the disclosed information as provided in Article 7(3). These will be implemented by provisions in the Norwegian Competition Act.

## 10.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

The five year minimum limitation period will lead to changes, as the limitation period on damages claims currently is three years in Norway pursuant to the general provisions in the Norwegian Limitations Act. A specific provision on limitation periods on damages claims due to competition law infringements was implemented in the Norwegian Competition Act in June 2014 (paragraph 34). The existing 3 year limitation period will now be changed to a five year limitation period.

Several other implementing measures will be necessary. Firstly, according to Norwegian law the limitation period runs from the date on which the injured party obtained, or should have obtained, the necessary knowledge of the damage and the person responsible. This

seems to be in line with the directive's clause 10 (2), but the Norwegian rule regarding the date on which the claimant *should have obtained knowledge* implies a duty on the injured party to inspect the existence of a damage claim. Thus, according to Norwegian law, the limitation period begins when there are circumstances which call for an inspection by the injured party.

An exception to this rule is provided for by paragraph 34, whereby claims may be brought after the limitation period has expired, provided legal action is sought within one year of the final administrative decision or final and enforceable judgement. This exception will be maintained after implementation.

Secondly, due to the abovementioned universal rule in the Norwegian Limitations Act regarding damages claims in general, the limitation period may run from a date previous to the date on which the infringement of competition law has ceased. Thirdly, Norwegian law on limitations does not contain any rules regarding suspension or interruption of the limitation period.

All of the abovementioned changes will be implemented by a provision in the Norwegian Competition Act.

## 10.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?

Joint and several liability is well established in Norwegian tort law, and the Norwegian Competition Act will refer to this fundamental rule in the Norwegian Compensations Act.

However, the exceptions regarding SMEs and immunity recipients must be implemented, which will be done by a specific provision in the Competition Act. In relation to the Directive's rules on liability in contribution claims, Norwegian tort law is also based on relative responsibility/contribution of the infringing undertakings. The provision



on limited responsibility of immunity recipients will be implemented by a specific rule in the Competition Act. The Directive's Article 11(6) will also be implemented in the Competition Act, as Norwegian tort law opens up to placing emphasis on factors other than relative responsibility.

**10.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

The rebuttable presumption that cartels cause harm will be implemented by a provision in the Competition Act as there is no corresponding rule in Norwegian competition or tort law. As of today, the claimant bears the burden of proof.

In relation to the discretionary quantification of harm, Norwegian law is in line with the Directive. However, there is no express rule providing such powers to the courts, and thus a provision will be implemented in the Competition Act. The same applies to Article 12(5) on the passing-on of overcharge, which will be implemented by the same provision in the Competition Act. The right for the courts to be assisted by national competition authorities will also be implemented in the same provision.

**10.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

A provision on consensual dispute resolution suspending the running of the limitation period will be implemented in the same provision as the other limitation period clauses of the Directive. The Norwegian Limitations Act does not contain any rules on suspension due to dispute resolution.

Regarding the suspension of damages actions, the Norwegian Dispute Act provides the courts with the right – and duty – to actively manage and plan the proceedings and the trial, in addition to providing several regimes for consensual dispute

resolution and the possibility of halting an on-going case. The result of this combination is in line with the aim of the Directive. However, a clear and express provision implementing the suspension rule will be included in the Competition Act, referring to the powers of the court according to the Dispute Act.

Regarding the effect on joint and several liability, Norwegian law is more or less in line with the Directive. However, the provisions in Article 19 are considered so particular that there is still a need for express provision implementing them in the Norwegian Competition Act.

**10.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

Due to the fundamental principle of the division of powers between the Norwegian parliament, courts and government, no decisions of national administrative authorities will have binding effects on the Norwegian courts in relation to the application of law and the legal assessments. Thus, Article 9 of the Directive, which provides for the final decisions of national competition authorities to have binding effect on the courts in a follow-on action, represents an important change to the fundamental principles of Norwegian administrative law and the principle of the division of powers. The rule will be implemented in the Norwegian Competition Act, but will not be applicable to domestic cases. Norwegian courts may, however, always take the national competition authority's decision into account.





# SLOVAKIA

The Directive has been implemented by the Act No. 350/2016 Coll., on certain rules for claims for damages caused by the infringement of competition law ("Private Damages Act").

## 11.1 From what date does the national measure implementing the Damages Directive come into force?

The Private Damages Act entered into force on 27 December 2016. It is applicable to legal claims for damages only where such claims arose after 26 December 2016. The Private Damages Act is applicable only to procedures regarding damages claims where such procedures were commenced after 26 December 2016.

## 11.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

The private enforcement of

competition law is not developed in Slovakia and the implementation of the Directive may change the overall enforcement landscape. It has brought some significant changes to procedure and material aspects of such claims, particularly in relation to the presumption of damage in cartel cases, pass-on and indirect claims, extension of limitation periods, the burden of proof in indirect claims and disclosure. The implementing measures apply equally to infringements of Slovak competition law.

## 11.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?

This is unlikely to make a material difference in practice. It will remain open to defendants to refute the allegations based on, for example, their conduct or the evidential inadequacy of the relevant authority's decision. We

assume that follow-on claims brought in Slovakia will be based on the decisions of the Slovak Antimonopoly Office.

## 11.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

There is already a right to full compensation under Slovak law.

## 11.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

Yes. Pass-on had not been specifically dealt with under Slovak law prior to the implementation of the Damages Directive. Therefore, the rules on pass-on implemented into the Private Damages Act are new.

## 11.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?

Prior to the implementation of the Damages Directive, the courts had the right to request any third party who was in possession of evidence to provide such evidence to the court.

Given the general character of the above obligation and its rather limited importance for civil proceedings in Slovakia, the disclosure regime brings a significant change into Slovak civil procedure law.

## 11.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

Yes, the limitation period for damages claims was a two year subjective period and a three year objective period (and ten year objective period in case of intent). Therefore, the five year subjective period for competition claims, as well as the rules regarding when time starts to run, are a major change under Slovak law.

## 11.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?

The principle of joint and several liability was established in the Slovakia. Contribution was allocated based on the participation of the infringer in the damage. However, the Private Damages Act states that the participation depends on the turnover, role of the infringer in the cartel and its market share.

The application of joint and several liability has also been adjusted by provisions limiting how it applies to small and medium sized enterprises and immunity recipients.

## 11.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?

A provision has been introduced to implement the rebuttable presumption that cartels cause damage. This will shift

the burden of proof from the claimant to the defendant.

## 11.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?

The changes made by the Private Damages Act do not exceed the requirements of the Damages Directive.

## 11.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?

The Slovak Competition Act has been amended in order to reflect the obligation of the Slovak Antimonopoly Office to provide statements at the request of a claimant for disclosure of documents before the court and the right to provide further support in court proceedings. Further, the fact that damages were paid based on a settlement may be a mitigating circumstance in the administrative procedure before the Antimonopoly Office in the determination of a fine.







# SLOVENIA

The Directive has been implemented into Slovenian legal order by amending the existing Prevention of Restriction of Competition Act (*Zakon o preprečevanju omejevanja konkurence*, Official Gazette of the Republic Slovenia, no. 36/08 as amended; "ZPOmK-1") with amendment ZPOmK-1G (Official Gazette of the Republic Slovenia, no. 23/2017).

**12.1 From what date does the national measure implementing the Damages Directive come into force?**

ZPOmK-1G and hence amended ZPOmK-1 has entered into force on 20 May 2017 and is thus applicable to all damages claims initiated after this date.

Additionally, substantive implementation provisions on disclosure apply also to damages claims which were initiated after 26 December 2014 and which were not yet closed by first instance court ruling at the date of entry into force of ZPOmK-1G. The same applies to damages claims in which lawsuit was filed

after 26 December 2014 and first instance court ruling was repealed.

If lawsuit for damages claim due to competition law infringements was filed before 26 December 2014 and first instance court ruling closing the case was repealed after 26 December 2014, substantive implementation provisions on disclosure do not apply. The same applies for damages claims closed by first instance court rulings before 26 December 2014.

**12.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?**

Yes, it is expected that the implementation of the Damages Directive will materially facilitate the private enforcement of competition law in Slovenia. This is in particular because of provisions on disclosure of data and evidence, which was an

obstacle so far.

The implementation measure equally applies to domestic cases (damages claims due to infringements of Slovenian competition law).

**12.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?**

This is hard to predict. So far, to our knowledge, there have been no damages claims filed before Slovenian courts based on an infringement decision of other Member States' competition authorities, so presumption of unlawful act in such cases could facilitate damages claims. Defendants will still have the right/possibility to rebut the presumption of unlawful act.

**12.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?**

No, such principle has already been recognised prior to the implementation measure. However, ZPOmK-1 now expressly provides that an infringer shall be liable to pay default interest from the date when damage was suffered regardless of the date of the lawsuit by claimant. This was not necessarily a rule prior to ZPOmK-1G.

**12.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?**

It has been already established in case law that the pass-on defence applied, however, the rules on passing-on are more specific under ZPOmK-1G. ZPOmK-1 now expressly sets out that passing-on is a defence (so it must be argued by defendant) but it is the defendant's burden of proof that the claimant passed-on charges. Rules on indirect claimants have not existed before ZPOmK-1G.

**12.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?**

No, disclosure in civil procedure act has existed to a very limited extent and under stringent conditions. Thus, ZPOmK-1 disclosure regime is expected to lead to significant changes in how evidence in litigation is dealt with.

**12.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?**

No, 5-year limitation period has been set out also before ZPOmK-1G, however, ZPOmK-1 now provides that a 5-year limitation period starts to run when an infringement ceases to exist

and when a claimant knows/ can reasonably know about the infringement but expires in any case within 10 years from the date when damage was incurred. ZPOmK-1 also provides for suspension of limitation periods during an investigation by competition authorities until one year after final infringement decision or other closing decision by competition authority. In accordance with these provisions, claimants are likely to have longer time to file their claims.

**12.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?**

There were no provisions on joint and several liability under ZPOmK-1 prior to ZPOmK-1G but general civil law rules on joint and several liability applied. ZPOmK-1G now provides for special rules on joint and several liability applied to small and medium sized enterprises and immunity recipients.

**12.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

A provision has been introduced to implement a rebuttable presumption that cartels cause damage. This will shift the burden of proof from the claimant to the defendant but practical impact may be limited as defendants have already claimed that there was no overcharge or that any over charge has been passed on. ZPOmK-1 now also grants courts a possibility to require opinion on quantification of damage from competition authorities.

**12.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

Yes. ZPOmK-1 now provides for suspensive effects of consensual dispute resolution and for their effects on subsequent damages claims, which have not existed before.

**12.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

Formally, the only change was an amendment to ZPOmK-1 with ZPOmK-1G. However, substantively, provisions of ZPOmK-1G are special to general civil procedure act and code of obligations, and hence, ZPOmK-1G affects general provisions of civil liability and civil procedure.





# SPAIN

The Directive has been implemented in Spain by Royal Decree-Law 9/2017, which transposes several EU Directives (including the Directive). The implementation in Spain of the Directive has involved the amendment of the Competition Act (where new articles about the liability regime of Competition Rules' infringers have been included) and also the Civil Procedural Act (where new articles about disclosure and evidence to be gathered in such proceedings have been included).

## 13.1 From what date does the national measure implementing the Damages Directive come into force?

Royal Decree-Law 9/2017 came into force on 27 May 2017. The new substantive regime included in the Competition Act is not retroactive. The new procedural legal regime included in the Civil Procedural Act is only applicable to actions filed after 27 May 2017.

## 13.2 Will the implementation of the Damages Directive materially affect the private

enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

Yes, for example, the implementation measures substantially modify the limitation periods and access to evidence. It is likely that the number of damages actions will increase.

The implementation measures are equally applicable to domestic cases (i.e. infringements of Articles 1 and 2 of the Spanish Competition Act).

## 13.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?

Not really. Decisions issued by other Member States' Competition Authorities were classed under the "principle of qualified evidence" (not binding) by Spanish Courts. With this implementation, defendants retain the

right to challenge the decision bringing forward evidence that contradicts what was stated in the decision.

## 13.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

No. Under Spanish Civil Law, the victim of a non-contractual liability had an explicit right to full compensation (including damages and loss of profits).

What is new under Spanish law is the possibility for the Court - in this type of litigation - to make an estimation of the damages, when its amount is difficult or even impossible to determine with the evidence available and provided by the parties. Under normal circumstances, Spanish Courts lack this right, and damages are denied if the party claiming damages does not provide sufficient evidence.

## 13.5 Has the position on the passing-on of overcharges in your jurisdiction changed in light of

the Damages Directive?

Not really. According to Spanish case law, "passing-on" was already a valid defence argument. Defendants could be released from compensating the victims of the cartel if they were able to prove that the victims passed on all economic damage to their clients, including any overcharge and loss of sales. This is line with the Directive and the implementation measures.

## 13.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant changes in how evidence in litigation is dealt with in your jurisdiction?

Under Spanish Law, there is no general disclosure regime. Spanish law only provides a regime for the disclosure of limited and specific documents/information necessary to file the lawsuit, and also allows the request of documentation from the adverse or third parties once proceedings are instituted. In particular, IP infringement lawsuits have a specific disclosure regime.

Therefore, this new regime is relatively unknown under Spanish Law and time is needed to evaluate its application by the litigating parties and the Courts.

## 13.7 Has the five-year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

Yes, the limitation period was previously one year and now it is five years.

Pre-implementation, the limitation period started to run from the day that the claimant became aware of the damage or from the day that the claim could have been brought. This was more restrictive than the limitation regime set by the Directive. The suspension of the limitation period following an investigation of the competition authority can also extend the time period to file a claim.

## 13.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?

This principle was already recognized under Spanish Law. However the specific regime for SMEs and leniency applicants is new.

## 13.9 Have any notable changes been made in your jurisdiction in relation to quantification of harm?

Pre-implementation, the claimant (i) bore the burden of proof in establishing whether there had been an infringement; and (ii) had to show a direct causal link between the infringement and any loss suffered. The presumption that cartel infringements cause harm is a relevant change.

## 13.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?

No, Royal Decree-Law 9/2017 reflects the the Directive. In particular, the payment of compensation as a result of a consensual settlement prior to the Competition Authority's decision imposing a fine is considered to be a significant mitigating factor.

## 13.11 Have the implementing measures in your jurisdiction made any changes to other aspects of national law?

The draft implementing measures also applied to very serious unfair competition acts and extended the to other tort claims. However, Royal Decree-Law 9/2017 did not go so far making this new regime more favourable for the claimant than other areas of litigation in Spain.







# SWEDEN

The Directive is implemented in Sweden by the new Competition Damages Act (2016:964) as well as by amendments to the Competition Act, the Group Actions Act and the Patent and Market Court Act.

**14.1 From what date does the national measure implementing the Damages Directive come into force?**

From 27 December 2016.

**14.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?**

Prior to the implementation of the Damages Directive, there was already Swedish legislation on matters such as compensation for damages due to breach of competition law, limitation periods, competent court, production of documents and legal costs. The implementation, however, entails more detailed provisions in some respects. The

implementing measures apply for infringements of EU competition law as well as for infringements of Swedish competition law.

**14.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?**

No. It is expected that decisions of other Member States' competition authorities will (continue to) have a strong evidentiary value before the Swedish courts.

**14.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?**

No, not really. Even before the implementation of the Damages Directive, full compensation was available under Swedish law.

**14.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?**

Before the implementation of the Damages Directive, there were no corresponding explicit Swedish provisions regarding the passing-on of overcharge, but according to the government the legal situation was nevertheless basically the same. However, in order to clarify the legal situation, explicit provisions have now been implemented in Sweden.

**14.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?**

The disclosure regime of the Damages Directive will not lead to any significant change. Swedish courts have a long tradition of applying procedural rules in the Code of Judicial Procedure on the production

of documents that the court considers may be relevant as evidence. This procedure basically implies that the party who wants to get a copy of the relevant documents requests that the court orders the other party, or a third party that is in possession of the documents, to produce the documents. If the court deems that the requested documents may be relevant as evidence in the case, and no exceptional rule is applicable, it will order the possessor to produce the documents.

**14.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?**

Prior to the implementation of the Damages Directive, the applicable limitation period was ten years under Swedish law. The limitation period is henceforth five years. Moreover, it is a novelty under Swedish law that the limitation period will be suspended during a consensual dispute resolution process.

**14.8 Has the position on joint and several liability in your jurisdiction changed in light of the Damages Directive?**

Principles on joint and several liability were already recognised and applied under Swedish law. However, the implementation of the Damages Directive has introduced some more detailed provisions regarding limitations for small and medium sized enterprises and the liability for enterprises that have concluded an amicable settlement.

**14.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?**

The implementation of the Damages Directive has introduced a provision stating that, in cartel infringements, it is presumed that harm has been caused unless the opposite is substantiated.

**14.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?**

The implementation of the Damages Directive has introduced a provision stating that when the court decides the amount of damages, it has to take an amicable settlement concluded with another infringer into consideration and reduce the damages. Moreover, joint and several liability is limited for an enterprise that has concluded an amicable settlement. In addition, the limitation period will be suspended during a consensual dispute resolution process.

**14.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?**

The implementation of the Damages Directive has introduced a new Competition Damages Act (2016:964) and amendments to the existing Competition Act, the Group Actions Act and the Patent and Market Court Act.







# UNITED KINGDOM

The Directive is implemented in the UK by:

- the Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017; and
- amendments to court rules, namely Civil Procedure Rule ("CPR") Practice Direction 31C - Disclosure and Inspection in relation to Competition Claims and the Competition Appeal Tribunal ("CAT") Practice Direction Relating to Disclosure and Inspection of Evidence in Claims Made Pursuant to Parts 4 and 5 of the Competition Appeal Tribunal Rules 2015.

We refer to UK law for convenience, which comprises the legal systems of England & Wales, Scotland and Northern Ireland.

## 15.1 From what date does the national measure implementing the Damages Directive come into force?

The substantive implementation

provisions apply to claims where the infringement and harm occurred after 9 March 2017. Broadly, these include the provisions on pass-on, limitation, joint and several liability and available damages. The procedural implementation provisions apply to proceedings which commence after 9 March 2017, irrespective of when the harm or infringement took place. These include the provisions on evidence and disclosure.

Brexit note: UK Government proposals at the time of writing suggest that the implementing measures will remain in force post-Brexit unless specifically repealed.

## 15.2 Will the implementation of the Damages Directive materially affect the private enforcement of competition law in your jurisdiction? Are the implementation measures equally applicable to domestic cases?

As the private enforcement of competition law is already well developed in the UK, the implementation of the Directive is unlikely to make a material difference to the overall

enforcement landscape. However, it has brought some significant changes to procedural aspects of such claims, particularly in relation to the suspension of limitation periods, the burden of proof in indirect claims and the exceptions to joint and several liability. The implementing measures apply equally to infringements of UK competition law (subject to certain narrow exceptions).

## 15.3 Will the requirement to treat decisions of other Member States' competition authorities as prima facie evidence of an infringement lead to a considerable change in practice in your jurisdiction?

This is unlikely to make a material difference in practice. It will remain open to defendants to refute the allegations based on, for example, their conduct or the evidential inadequacy of the relevant authority's decision.

## 15.4 Has the right to full compensation introduced by the Damages Directive led to changes in your jurisdiction?

There is already a right to

full compensation in UK law. However, the provision on over compensation has been implemented by a prohibition on exemplary damages in competition proceedings.

## 15.5 Has the position on the passing-on of overcharge in your jurisdiction changed in light of the Damages Directive?

It is already established in case law that the pass-on defence applied so there are no specific measures to introduce the concept. However, there are implementing measures relating to the burden of proof. The new provisions require defendants relying on the pass-on defence to prove the existence and extent of pass-on and introduce, in effect, a rebuttable presumption of pass-on for indirect claimants. These reforms will likely encourage claims.

## 15.6 Do the courts in your jurisdiction have experience with some form of disclosure? Will the new disclosure regime lead to significant change in how evidence in litigation is dealt with in your jurisdiction?

There is already a well established and extensive disclosure regime which applies in the UK. Indeed, the disclosure provisions in the Directive appear to be based on a more limited version of English disclosure (subject to the specific categories of protected documents). Nonetheless, the UK has introduced specific measures to implement the Directive's provisions on disclosure requests.

Broadly, disclosure requests in competition law claims must be as precise and narrow as possible on the basis of reasoned justification and will not be granted unless they are proportionate. Further, the UK has implemented the Directive's "black list", "grey list" and "white list" categorisation of documents on the competition authority's file. These changes will clarify the scope of disclosure available, particularly in relation to competition authority documents, but there is unlikely to be a material change in the application of ordinary disclosure principles in the UK.

## 15.7 Has the five year minimum limitation period set out in the Damages Directive led to changes in your jurisdiction? Have any other changes in relation to limitation periods been made?

The existing limitation period in England, Wales and Northern Ireland is six years and five years in Scotland. Therefore, no changes were required to the length of the limitation period. However, the UK has introduced a self-contained limitation regime for competition claims, which sets out new provisions: (i) determining when time starts to run; and (ii) suspending the limitation period during an investigation by a competition authority or a consensual dispute resolution process. The effect of these provisions will be that limitation is no longer a simple linear calculation and claimants are likely to have considerably longer to file their claims.

## 15.8 Has the position on joint and several liability and contribution in your jurisdiction changed in light of the Damages Directive?

The principle of joint and several liability is well established in the UK, with claims for contribution commonly seen in competition law claims. However, there was some uncertainty as to how contributions were to be determined between infringing undertakings. The implementing provisions state that this will be based on the "relative responsibility" for the whole of the loss or damage. No doubt we will see disputes over how such responsibility is to be allocated.

The application of joint and several liability has also been adjusted by provisions limiting how it applies to small and medium sized enterprises and immunity recipients.

## 15.9 Have any notable changes been made in your jurisdiction in relation to the quantification of harm?

A provision has been introduced to implement the rebuttable presumption that cartels cause loss or damage. This will shift the burden of proof from the claimant to the defendant. However, the

practical impact may be limited as defendants already argue as a matter of course that (i) there was no overcharge and (ii) any overcharge was passed on, which is effectively the same as arguing that there was no harm.

No changes have been made specifically to permit the courts to estimate harm or for the national competition authorities to assist the court on quantum, as this is already permitted.

## 15.10 Have any notable changes been made in your jurisdiction in relation to consensual dispute resolution?

Save for the effect of consensual dispute resolution on the running of the limitation period (see above) and on the amount of a claim, many of the Directive's provisions have not been implemented as existing law and practice already largely reflects the position. A series of provisions have been introduced to implement the Directive's requirements that claims and contribution claims are reduced to reflect a consensual settlement between, broadly, the claimant and infringing party. This puts on a statutory footing what many settlement agreements have sought to achieve in the past, although we anticipate disputes as to the meaning of the provisions (particularly the reference to the settling infringer's "share of loss or damage").

## 15.11 Have the implementing measures in your jurisdiction made changes to other aspects of national law?

Rather than a stand-alone Act of Parliament, the UK implementing measures amend existing legislation and court rules. The key amendments are to the Competition Act 1998, although there is also an effect on the application of the Limitation Act 1980, the Prescription and Limitation (Scotland) Act 1973, the Civil Liability (Contribution) Act 1978, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 and the Administration of Justice (Scotland) Act 1972. As noted, a new Practice Direction 31C has been inserted into the CPR and a Practice Direction has been added to the CAT Rules.



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