

European Commission

Competition Police Areas

Directive on Antitrust Damages Actions

[Directive 2014/104/EU on antitrust damages actions](#) was [signed into law](#) on 26 November 2014 and published in the Official Journal of the European Union on 5 December 2014.

Transposition of the Directive in Member States

The deadline for transposing the Directive on Antitrust Damages Actions into Member States' legal systems expired on 27 December 2016.

So far, 23 Member States have communicated to the Commission that they have fully transposed the Directive: Austria, Belgium, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (last updated on 27 September 2017).

Many Member States are in the final stages of their national legislative process to adopt and/or officially publish measures transposing the Directive. The Commission therefore expects that most Member States will communicate full transposition soon.

The Commission continues to monitor the transposition state-of-play closely and takes all necessary steps to ensure that the new rules are in place across the EU as soon as possible. Letters of formal notice were sent on 24 January 2017 to all Member States which failed to communicate full transposition by 18 January 2017.

With regard to communicated transposition measures, the Commission starts examining whether they transpose the Directive completely and correctly.

The following information (adopted legislation, draft legislation, consultation documents, etc.) is publicly available at national level:

Country	Stakeholder consultation	Government	Parliament	Adopted legislation	Full transposition communicated
Austria			Ministry Proposal of 26 August 2016 Government Proposal of 1 March 2017	Kartell- und Wettbewerbsrechts-Änderungsgesetz 2017	✓

Belgium	November 2015 - May 2016	Proposal of 17 June 2016	Proposal of 12 April 2017	Law of 6 June 2017 amending the Code of Economic Law	✓
Bulgaria	02 - 16 September 2016		Proposal of 15 November 2016		✗
Croatia	09 November – 08 December 2016		Proposal of 8 March 2017	Law on damages for the breach of competition law	✓
Czech Republic		Proposal of 18 August 2016	Proposal of 5 December 2016 Parliament file		✗
Cyprus			Ministry Proposal of 14 December 2016	Legislation N.113(I)/2017	✓
Denmark	29 June – 03 August 2016 (2nd consultation) 06 October – 13 November 2015 (1st consultation)		Proposal of 5 October 2016	Competition Damages Act Explanatory notes Parliament amendments	✓
Estonia	11 August - 1 September 2016			Act amending the Competition Act and the associated Acts	✓
Finland	15 June – 11 September 2015		Proposal of 19 May 2016	Act on Competition Damages (1077/2016) Amendment to Competition Act 1078/2016 Entry into force: 26.12.2016 More info	✓
France				Decree of 9 March 2017 (n°2017-305) Ordonnance of 9 March 2017 (n°2017-303)	✓

Germany	01 - 15 July 2016		Proposal of 28 September 2016	Parliament file Neuntes Gesetz zur Änderung des GWB – Published text	✓
Greece	14 September 2017 – 29 September 2017				✗
Hungary	13 - 22 September 2016		Proposal of 28 October 2016	Amendment to the Competition Act (see pages 183 and seq.)	✓
Ireland				EU (Actions for Damages) Regulations 2017	✓
Italy			Proposal of 27 October 2016	Legislative Decree of 19 January 2017, n. 3	✓
Latvia	07 - 21 January 2016		Proposal of 9 May 2017 for Amendments in Competition Law Proposal of 9 May 2017 for Amendments in Civil procedure Law	Partial implementation (concerning Article 17 (2) of the Directive)	✗
Lithuania	10 February - 02 March 2016	Proposal of 21 October 2016	Proposal of 22 November Proposal of 15 December	Amended Competition Act	✓
Luxembourg			Proposal of 5 July 2016	Competition Damages Act	✓
Malta	20 September - 18 October 2016			Competition Law Infringements (Actions for Damages) Regulations 2017 (Partial implementation)	✗

Netherlands	08 October - 22 November 2015		Proposal of 7 June 2016 Proposal of 24 November 2016	Law amending the Book 6 of the Civil Code and the Code of Civil Procedure in relation to the implementation of the Directive 2014/104/EU Entry into force: 10.02.2017	✓
Poland	17 March - 07 April 2016	Proposal of 1 February 2017 Proposal Progress File	Proposal for Damages Actions Act	Act adopted by the Parliament	✓
Portugal	26 April - 27 May 2016	Proposal by the NCA: PT ; EN			✗
Romania	04 - 15 September 2016			Government emergency ordinance of 31 May 2017	✓
Slovakia	08 - 26 August 2016	Discussion of revised draft	Proposal of 23 September 2016	Competition Damages Act	✓
Slovenia	15 June - 15 July 2016	Proposal of 13 February 2017 (adopted on 2 March 2017)	Proposal of 3 March 2017 More info	Law amending the Law on Prevention of the Restriction of Competition Act (ZPOmK-1G)	✓
Spain	First draft			Royal Decree 9/2017 of 26 May 2017	✓
Sweden	06 November 2015 - 05 February 2016		Proposal of 15 September 2016	Competition Damages act Amendment to the Competition Act Amendment to the Group Actions Act Amendment to the Patent and Market Court Act	✓

<p>United Kingdom</p>	<p>28 January - 09 March 2016</p>	<p>Government response of 20 December 2016 to public consultation</p>	<p>Draft Statutory Instruments</p>	<p>Gibraltar: Fair Trading (damages for infringement of competition) Rules 2016</p> <p>UK: The Claims in respect of Loss or Damage arising from Competition Infringements Regulations 2017</p>	<p>✓</p>
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Transposition of the Directive in the EEA EFTA States

As the Directive on Antitrust Damages Actions is EEA-relevant, it needs to be transposed in the EEA EFTA States (Iceland, Liechtenstein and Norway) as well. The Directive needs to be implemented into the EEA Agreement before the EEA EFTA States can adopt the relevant national measures (e.g. Norway carried out a [public consultation](#) on draft transposition measures in early 2016).

Main changes brought by the Directive

The Directive removes practical obstacles to compensation for all victims of infringements of EU antitrust law. The Directive applies to all damages actions, whether individual or collective, which are available in the Member States.

Further, the Directive fine-tunes the interplay between private damages actions and public enforcement of the EU antitrust rules by the Commission and national competition authorities.

Main changes:

- Parties will have **easier access to evidence** they need in actions for damages in the antitrust field. In particular, if a party needs documents that are in the hands of other parties or third parties to prove a claim or a defence, it may obtain a court order for the disclosure of those documents. Disclosure of **categories of evidence**, described as precisely and narrowly as possible, will also be possible. The judge will have to ensure that disclosure orders are proportionate and that confidential information is duly protected.
- Similarly as a Commission infringement decision, **a final infringement decision of a national competition authority** will constitute **full proof before civil courts in the same Member State** that the infringement occurred. Before courts of other Member States, it will constitute **at least prima facie evidence of the infringement**.
- **Clear limitation period rules are established** so that victims have sufficient time to bring an action. In particular, victims will have at least 5 years to bring damages claims, starting from the moment when they had the possibility to discover that they suffered harm from an infringement. This period will be suspended or interrupted if a competition authority starts infringement proceedings, so that victims can decide to wait until the public

proceedings are over. Once a competition authority's infringement decision becomes final, victims will have at least 1 year to bring damages actions.

- The Directive clarifies the **legal consequences of 'passing on'**. Direct customers of an infringer sometimes offset the increased price they paid by raising the prices they charge to their own customers (indirect customers). When this occurs, the infringer can reduce compensation to direct customers by the amount they passed on to indirect customers. Compensation for that amount is in fact owed to indirect customers, who in the end suffered from the price increase. However, since it is difficult for indirect customers to prove that they suffered this pass-on, the Directive facilitates their claims by establishing a rebuttable presumption that they suffered some level of overcharge harm, to be estimated by the judge. The Directive contains provisions to avoid that claims by both direct and indirect purchasers lead to overcompensation. Claims concerning harm resulting from loss of profit are not affected by the Directive's passing-on rules.
- The Directive clarifies that victims are entitled to **full compensation** for the harm suffered, which covers compensation for **actual loss** and for **loss of profit**, plus payment of **interest** from the time the harm occurred until compensation is paid.
- The Directive establishes a **rebuttable presumption that cartels cause harm**. This will facilitate compensation, given that victims often have difficulty in proving the harm they have suffered. The presumption is based on the finding that more than 90% of cartels cause a price increase (as found by a [study](#)). In the very rare cases where a cartel does not cause price increases, infringers can still prove that their cartel did not cause harm.
- **Any participant in an infringement will be responsible towards the victims for the whole harm caused by the infringement (joint and several liability)**, with the possibility of obtaining a contribution from other infringers for their share of responsibility. However, to safeguard the effectiveness of leniency programmes, this will not apply to infringers which obtained immunity from fines in return for their voluntary cooperation with a competition authority during an investigation; these immunity recipients will normally be obliged to compensate only their (direct and indirect) customers. Furthermore, a narrow exception from joint and several liability is foreseen under restrictive conditions for SMEs that would go bankrupt as a consequence of the normal rules on joint and several liability.