

Better Later Than Never: Bulgaria Finally Implemented the Private Damages Directive in its Competition Protection Act

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Following a considerable delay and a threat by the European Commission to initiate infringement proceedings, Bulgaria finally implemented in its national law the provisions of the European Directive 2014/104/EU on Antitrust Damages Actions dated 26 November 2014 (the "Private Damages Directive"). On 3 January 2018 in the Bulgarian State Gazette was promulgated the Act for Amendment and Supplementation (the "Amendment Act") of the Competition Protection Act ("CPA"). The deadline for transposition of the Private Damages Directive in the legislations of the EU Member States was 27 December 2016, but Bulgaria delayed the transposition with more than a year mainly due to the parliamentary elections in the country. The Amendment Act will enter into force on 7 January 2018. Claims for damages initiated before the Bulgarian state courts until 26 December 2014 will be ruled by the existing regime.

The Private Damages Directive covers infringements of Art. 101 and 102 TFEU and their corresponding provision in domestic legislation, i.e. Art. 15 and Art. 21 of the CPA. Thus, the Amendment Act covers both prohibited agreements and abuse of dominant position.

Regarding the competence for resolving private damages claims, these will be the ordinary competent civil/commercial courts as per the Bulgarian Civil Procedure Code. The competent state courts will be able to order the parties, or a third party, to disclose relevant evidence upon request of the parties to the claim as well as evidence collected and produced under the proceedings before the European Commission and the Bulgarian Competition Protection Commission.

The Amendment Act provides a joint and several liabilities for undertakings that breached competition law. The Amendment Act does not provide a specific limitation period, as the default limitation period under Bulgarian law for torts is 5 years. The limitation period starts once the person incurred damages has knowledge, or it could be deemed that it had knowledge, of the damages, the infringer and the competition law breach.

Usually for the persons incurred damages by competition law breaches, the most difficult task is to prove the committed infringement. This issue was facilitated by imposing an irrebuttable presumption of fault of the infringer established with decisions by the European Commission or by the Bulgarian Competition Authority. Decisions by other Member States' competition authorities will have solely evidential value in relation to the infringement. Understandably, to the procedures initiated without an existing decision of the European Commission or the Bulgarian Competition Authority the above rules will not apply. Consequently, the victims incurred damages by competition law breaches will again be in front of an obstacle proving the subjective element of the infringement.

Speaking about the objective element of the infringement, i.e. the damages incurred, the Amendment Act adopted that a rebuttable presumption for incurred damages exists only regarding cartel infringements.

In conclusion, it is expected that the transposition of the Private Damages Directive will motivate and facilitate the victims of competition law breaches to request compensation for incurred damages before the competent Bulgarian courts. Normally, upon application of the new rules, some deficiencies may pop up. However, even at this early stage of the application of the Amendment Act, note shall be taken that lots of persons are registering companies which are assigned with claims by persons incurred damages from competition law infringements. Consequently, it is very likely the claims to be submitted by the said companies. From Bulgarian law perspective such a scenario raises unclarity and unfortunately the issue is not explicitly regulated by the Amendment Act.