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Status of implementation (Romania)

DIRECTIVE 2014/104/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

- The directive has not been transposed into Romania's national legislation. Transposition deadline is 27 December 2016.
- The Romanian government's 2016 action plan provides for such transposition, and designated authority is the Competition Council, assigned with the task of putting forward the text of national law. This should happen by end of this June and formal public consultation would follow.
- The Competition Council is a non-judicial administrative authority, entrusted with the enforcement of Romania's Competition Law as well as designated authority under Regulation 1/2003 to enforce Articles 101 and 102 TFEU.
- Fining decisions for antitrust infringements as well as other decisions imposing non-monetary measures are public law (*administrative*) documents, and can be challenged before the Bucharest Court of Appeals (BCA), whose rulings may further be challenged before the Supreme Court of Justice (SCJ).
- Romania does not have a specific competition law tribunal. BCA and SCJ use their tax and public law divisions to assign antitrust files to those respective judges. Both BCA and SCJ enjoy full jurisdiction on merits.
- Direct damages claims and follow-on suits are permitted by the existing provisions of the Competition Law. No cases yet.

Existing provisions in the Competition Law

Right to sue over damages (in force since 2010)

- Right of civil action (available to natural and legal persons), allowing seeking full compensation for damages incurred as a result of *anticompetitive practices* (catch-all, includes abuse and public authority's distorting conduct)
- Rule of thumb: lack of damages not overruled if goods or services purchased at excessive prices were resold
- Full immunity leniency applicants escape joint liability (*in solidum*) for *anticompetitive practices* under article 101 TFEU and corresponding Romanian Competition Law article
- Full disclosure of the investigation file to courts, subject to confidentiality of business secrets and *other confidential information*; courts need to ensure observance
- Two-year time limitation for follow-on suits
- Plaintiffs can also be: consumer protection organizations on behalf of consumers; industry or employers' organizations on behalf of affected members
- Competition Council – Amicus curiae as regards aspects related to the application of articles 101 and 102 TFEU and corresponding Romanian Competition Law articles
- In cases where they apply directly articles 101 and 102 TFEU, national courts must share, immediately after ruling, copies of their decisions to the Competition Council, which will forward to the European Commission
- Given that national courts (except for BCA and SCJ) have no jurisdiction over merits as regards the authority's decisions, it appears that the authority's decisions and the BCA and SCJ rulings are binding premise in follow-on suits before national courts.