



Transformed competition regimes in post-Damages Directive Europe

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COMPETITION

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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.

Implementation of the Directive

Member States need to implement the Directive in their legal systems by 27 December 2016. As the Directive is EEA-relevant, it is to be implemented in the EEA EFTA States as well.

The implementation process is ongoing. The following information is publicly available at national level:

Adopted legislation

- Latvia - Partial implementation (concerning Article 17(2) of the Directive)

Legislative proposals

- Finland - Bill submitted to national parliament on 19 May 2016.

Public consultations

Portugal	26 April 2016 - 27 May 2016
Finland	15 June 2015- 11 September 2015
Denmark	06 October 2015 - 13 November 2015
The Netherlands	08 October 2015 - 22 November 2015

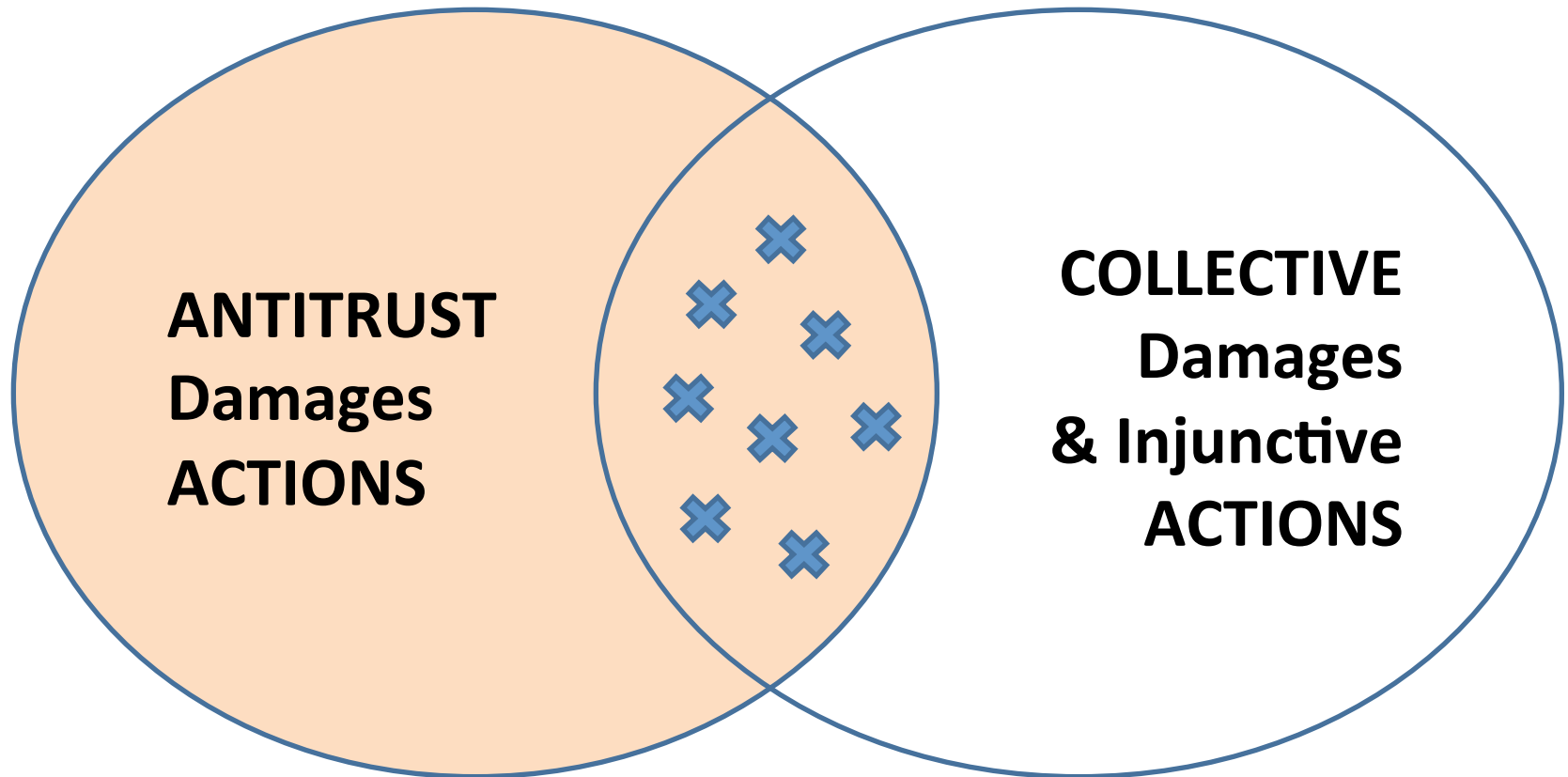
The new playbook highlights

- **Disclosure of evidence** available beyond the UK
- Longer/suspended **limitation periods**: claimants have more time
- Claimants' **burden of proof** made lighter:
 - NCAs' final infringement decisions are binding
 - cartel harm is presumed
 - a passing-on is presumed (to the benefit of an indirect claimant)
- Harmonised **passing-on rules**
- Full compensation: **interest** since occurrence of harm
- **Immunity recipient's** limited **liability**
- Harmonised effects of **partial out-of-court settlements**

Going the extra mile

- Member States can do more - by **going beyond the Directive's**
 - **minimum harmonisation rules**
 - **scope**
- **Factors outside** of the Directive:
 - Availability of **judges** willing and able to manage complex cases
 - General features of the **judicial system**
 - Availability of **funding**

2014 Directive ↔ 2013 Recommendation



Économie

Tricherie antipollution: Test-Achats introduit une action collective contre Volkswagen



Tricherie antipollution: Test-Achats introduit une action collective contre Volkswagen - © PATRIK STOLLARZ - AFP

Belga

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L'organisation de défense des consommateurs Test-Achats a annoncé mercredi l'introduction d'une action collective contre le groupe Volkswagen, s'appliquant aux véhicules trafiqués achetés à dater du 1er septembre 2014. "Test-Achats proposera également aux consommateurs avant acheté un véhicule trafiqué avant cette date une assistance individuelle afin de les aider à

Compétition



Les plus populaires

- 1 Menace terroriste sur la Belgique? L'OCAM parle "d'informations non contextualisées"
- 2 Un enfant happé sur la plage par un alligator à Disney World en Floride
- 3 La banque Optima demande la faillite, le personnel est "furieux"
- 4 Etats-Unis: prise d'otage dans un grand magasin au Texas, le suspect a été abattu
- 5 Forest: coups de feu lors d'une intervention de police, un blessé



Car

Glass Cartel

Car producers

Car repair shops

C o n s u m e r s

I n s u r a n c e c o m p a n i e s

Passing-on rules



- **Direct and indirect purchasers** can claim.
- Infringer can use **passing-on defence**.
- Indirect purchasers profit from a **rebuttable presumption of a pass-on to their level**.
- Distinction: **overcharge harm / loss of profit**
- **Courts** shall have:
 - **power to estimate the share of pass-on**
 - means to avoid over-compensation / under-compensation
- Commission Practical Guide on Quantification (+ Passing-on Guide in preparation)

Disclosure of evidence

- **General rule** (Article 5 DD): **Court can order a party** or a third party **to disclose relevant (categories of) evidence** which lies in their control.
- Key conditions:
 - the claim must be **plausible**
 - the evidence must be **relevant** for substantiating the claim
 - scope of the disclosure must be **proportionate**
- **Confidential information** to be disclosed too. Courts need to have at their disposal **effective protection measures**.
- **Special rules** (Article 6 DD) apply to disclosure of **evidence included in the file** of a competition authority.

Public/private interplay

- **Limits to disclosure of evidence in a competition authority's file:**
 - Avoiding interference with ongoing investigations
 - Protecting leniency programmes and settlement procedures
- **Limited joint and several liability of the immunity recipient:**
 - Protecting & strengthening leniency programmes
- **Binding effect & suspension of limitation periods:**
 - Avoiding conflicting outcomes
 - Promoting follow-on damages claims

**Life is a
journey,

not a
destination.**

