

# EU Damages Directive Implementation – *Half Time*

Austria – Implementation status  
and key issues

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- Working group discussing amendment to Cartel Act and Competition Act
- Discussions go further than what is required by the Damages Directive, but implementation of the Directive is the core
- No public consultation yet
- Preliminary draft amendment prepared by ministries responsible (not publicly available)

- 2013 amendment to the Cartel Act already covered some aspects of the Directive (e.g., binding effect of decisions by competition authorities)
- First “legislative reaction“ to experience from damage claims following up to cartel proceedings, in particular in the elevators and escalators case
  - More than 20 damages proceedings were initiated before Austrian courts in 2010 as a follow-up to the Elevators cartel decision
  - In the meantime, 10 decisions by the Supreme Court on various aspects, such as limitation periods, “umbrella pricing“ etc.

- **Definitions**
  - “Infringement of competition law”
    - Reference to existing fining provisions in the Cartel Act (would also cover breaches of the suspension obligation under merger control and non-compliance with of commitments given by an undertaking)
  - “Cartel”
    - Under Austrian law, the term “cartel” is not limited to agreements between competitors (and covers, in particular, vertical agreements)
    - By using the term “cartel”, e.g., in the context of the presumption of harm, such a presumption would apply to vertical infringements as well

- **Disclosure of evidence / access to file**
  - Legal professional privilege?
  - Non-disclosure of leniency statements
    - Leniency applications also possible for vertical infringements under Austrian law (see definition of the term “cartel” above)
  - “Liberalisation” of rules on access to file before the Cartel Court?
    - To address situation after the ECJ’s *Donau Chemie* decision and in addition to implementation of Art. 5 and 6 of the Directive?
    - Duplication of means to get access to evidence?
    - Effect on effectiveness of civil courts’ power to order disclosure of evidence (access to file before the Cartel Court not subject to the same balancing of interests and without any cost risk)?

- **Limitation periods**
  - Suspension for the duration of the proceedings before a competition authority / an “investigative measure” by a competition authority
    - Proceedings / “investigative measure” sufficiently public (e.g., in case of proceedings before another national competition authority)?
    - When does an “investigative measure” end?
- **Binding effect of decision of competition authorities**
  - Binding effect also applies to decisions of other national (EU) competition authorities
    - i.e., decisions of other national authorities are not only prima facie evidence that an infringement of competition law has occurred
- **Other issues**
  - Passing-on
    - Divergences with case law of Austrian courts?
  - One (specialised) court?

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