



# EU Damages Directive Implementation – Half Time Bulgaria

Talking Points

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# I. Status of Implementation of Directive 2014/104/EC

- In 2015 a working group for implementation of Directive 2014/104EC was formed
- Work was spearheaded by the NCA. The group also included representatives from the Ministry of Economy and Ministry of Justice
- No external experts were invited to participate in the working group
- The working group has prepared a draft law, which has not been made public yet
- The draft law is expected to be published for national consultations by the end of June 2016



## II. Approach to the Implementation of Directive 2014/104/EC

- The implementing legislation represents a draft for amendment to the Law on Protection of Competition
- The approach is to follow as closely as possible the text of Directive 2014/104/EC
- No amendments to other existing legislation is provided
- The draft does not provide for the adoption of implementing soft legislation with regard to certain aspects of Directive 2014/104/EC

## **III. Existing Partial Pre-Harmonization**

### **1. Right to full compensation for damages suffered as a result of violations of the Law on Protection of Competition**

- The scope is broader than the scope of Directive 2014/104.
- Provides for compensation for all violations of the Law on Protection of Competition (including for breaches of the rules on unfair competition, abuse of superior bargaining power and merger control rules).
- Compensation covers actual loss/ loss of profit/ interest. No overcompensation is allowed.

### **2. Both direct and indirect customers are entitled to compensation**

- The existing legislative provision is sufficiently broad to cover “umbrella customers”.

### **5. Effect of Decisions of NCA and EC**

- Binding effect of decisions of NCA is specifically set out in national law.



## III. Existing Partial Pre-Harmonization

### 4. Disclosure of evidence by the defendant or third party

- Disclosure rules are set out in the civil procedure code.
- They are not specifically tailored for proceedings in relation to compensation for breaches of the rules of competition law.
- There are no rules for disclosure of evidence by the NCA.
- Protection of legal & professional privilege for both EU & national lawyers. Professional privilege covers any communication with lawyers – not only communication in relation to the specific proceedings.

### 6. Limitation Periods

- Existing harmonization regarding the duration and the moment when the limitation period starts to run
- Interruption and suspension need to be harmonized.

## **IV. Issues Regarding the Implementation of Directive 2014/104/EC**

- 1. Follow-on vs. Stand Alone Claims. Will Implementing Legislation Clear the Way for Stand Alone Claims?**
  - So far national courts are not receptive to stand-alone claims.
  - Implementing legislation should contain guarantees that national rules effectively allow stand alone claims.
- 2. Interplay between Implementing Legislation and Existing Domestic Rules that are Pre-Harmonized.**
  - Risk that existing rules that go beyond the scope of the directive may be undermined by the implementing legislation.



## **IV. Issues Regarding the Implementation of Directive 2014/104/EC**

- 3. Would national courts develop their own tests (e.g. on disclosure and quantification of damages) or there will be some soft legislation?**
- 4. Quantification of damages – what would be the role of the NCA in the process?**

# Thank You For Your Attention!

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