



PRELIMINARY DRAFT PROPOSAL
FOR A LAW TRANSPOSING
THE PRIVATE ENFORCEMENT
DIRECTIVE

- Lisbon, 22 June 2016 -

[FOR REFERENCE ONLY - UNOFFICIAL TRANSLATION]

**PRELIMINARY DRAFT PROPOSAL FOR A LAW TRANSPOSING THE
PRIVATE ENFORCEMENT DIRECTIVE**

LAW NO....

Incorporating into national law 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.

In accordance with Article 197(1)(d) of the Constitution, the Government presents to Parliament the following proposal for a law:

Chapter I

ON THE RIGHT TO COMPENSATION FOR INFRINGEMENTS OF COMPETITION LAW

Article 1

Subject-matter

1 - This Law lays down rules on actions for damages brought as a result of competition law infringements, incorporating into national law 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.

2 - This Law is applicable irrespective of whether the competition law infringement underlying the claim has already been established by a competition authority or court of any Member State of the European Union, by the European Commission or by the Court of Justice of the European Union.

Article 2

Definitions

For the purposes of this Law, the following definitions apply *[in alphabetical order in the original version]*:

- a) 'Out-of-court settlement': an agreement or decision resulting from out-of-court dispute resolution;
- b) 'Competition authority': the European Commission or a national competition authority designated by a Member State pursuant to Article 35 of Regulation (EC) No 1/2003 of 16 December 2002 as being responsible for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union, or both, as the context may

- require;
- c) 'Competition Authority': the authority created by Article 1 of Decree-Law No 10/2003 of 18 January, the statutes of which were approved by Decree-Law No 125/2014 of 18 August;
 - d) 'Cartel': an agreement or concerted practice between two or more competing undertakings aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through conduct such as, in particular, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors, as prohibited by Article 9 of Law No 19/2012 of 8 May and, where applicable, by Article 101 of the Treaty on the Functioning of the European Union;
 - e) 'Direct purchaser or supplier': a natural or legal person who, respectively, acquired or supplied, directly from an infringer, goods or services that were the object of an infringement of competition law;
 - f) 'Indirect purchaser or supplier': a natural or legal person who, respectively, acquired or supplied, not directly from an infringer, but from a direct or subsequent purchaser or supplier, goods or services that were the object of an infringement of competition law, or goods or services containing them or derived therefrom.
 - g) 'Overcharge': the difference between the price actually paid and the price that would otherwise have been paid in the absence of an infringement of competition law;
 - h) 'Final decision': a decision by a competition authority that cannot be, or that can no longer be, appealed by ordinary means;
 - i) 'Statement for the purposes of obtaining immunity or a reduction in fines': any oral or written presentation voluntarily provided by, or on behalf of, a natural person or an undertaking to a competition authority – or a record of such a presentation – describing that entity's knowledge of a secret cartel and describing its role therein, which was drawn up specifically for submission to a competition authority with a view to obtaining immunity from or a reduction in fines, in particular under the terms and for the purposes of Chapter VIII of Law No 19/2012 of 8 May, not including pre-existing evidence;
 - j) 'Undertaking': an economic unit as defined in Article 3 of Law No 19/2012 of 8 May;
 - k) 'Infringement of competition law': an infringement of the provisions laid down in Articles 9, 11 and 12 of Law No 19/2012 of 8 May, of equivalent provisions of other Member States and/or of Articles 101 and 102 of the Treaty on the Functioning of the European Union;
 - l) 'Infringer': an undertaking or association of undertakings which has committed a competition law infringement;
 - m) 'Injured party': a person that has suffered harm caused by a competition law infringement;
 - n) 'Evidence': all types of proof admissible in actions for damages, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored;
 - o) 'Pre-existing evidence': evidence that exists irrespective of an investigation by a competition authority, whether or not such information is in the file of a competition authority;
 - p) 'SME (small and medium-sized enterprise)': an undertaking as defined in Article 2 of

Commission Recommendation n.º 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

- q) 'Settlement submission': any voluntary presentation by, or on behalf of, a natural person or an undertaking to a competition authority describing the entity's acknowledgement of, or its renunciation to dispute, its participation in an infringement of competition law and its responsibility for that infringement, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure, in particular under the terms and for the purposes of Articles 22 and 27 of Law No 19/2012 of 8 May;
- r) 'Out-of-court dispute resolution': any mechanism enabling parties to reach the out-of-court resolution of a dispute concerning a claim for damages, notably mediation, conciliation, arbitration, and settlement as provided for in Article 1248 of the Civil Code;
- s) 'Review court': a national court of a Member State, within the meaning of Article 267 of the Treaty on the Functioning of the European Union, which is empowered by ordinary means of appeal to review decisions of a competition authority or to review judgments pronouncing on such decisions, irrespective of whether that court itself has the power to find an infringement of competition law.

Article 3

Civil liability

1 - An undertaking or association of undertakings that infringes competition law shall be required to compensate the injured parties in full for the harm resulting from that infringement.

2 - When the undertaking in question includes a number of legal entities, actions by one legal entity shall also be attributable to the legal entity or entities exercising decisive influence over it, *inter alia*, under the terms of Article 36(3)(a) to (c) of Law No 19/2012 of 8 May.

3 - Unless proven otherwise, it shall be presumed that a legal entity exercises decisive influence over another when it holds 90% or more of its share capital.

Article 4

Calculation of damages

The obligation to pay damages shall include actual loss and loss of profits calculated from the time when the harm occurred and subject to updating under the terms of article 566(2) of Civil Code, without prejudice to the payment of default interest calculated from the date of the decision updating the amount due, until the date of actual and full payment.

Article 5

Joint and several liability of co-infringers

1 - If the infringement was committed by various infringers, they shall be jointly and severally liable, save where provided in the paragraphs below.

2 - If the harm was caused by an SME, it shall only be liable:

- a) To its own direct or indirect purchasers or suppliers, where:
 - i. Its market share in one of the markets affected by the infringement of competition law was below 5 % throughout the duration of the infringement;

ii. The application of the rules of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value.

b) To other injured parties if these are unable to obtain full compensation for the harm caused from the other undertakings involved in the same infringement.

3 - The provisions of the above paragraph shall not apply if the SME:

a) Has led an infringement of competition law or has coerced other undertakings to participate therein; or

b) Has previously been found, by a final decision, to have committed another infringement of competition law.

4 - If the harm was caused by an undertaking that has been granted immunity from fines, in particular under Article 77 of Law No 19/2012 of 8 May, that undertaking shall only be jointly and severally liable:

a) To its own direct or indirect purchasers or suppliers; and

b) To other injured if these are unable to obtain full compensation for the harm caused from the other undertakings involved in the same infringement.

5 - There shall be a right of contribution between co-infringers to the extent of their relative responsibility for the harm caused, which is presumed to be equivalent to the average of their market shares in the affected markets during their participation in the infringement, unless proven otherwise.

6 - The preceding paragraph shall apply to damages paid to injured parties who are not direct or indirect purchasers or suppliers of any of the infringers.

7 - Notwithstanding the provisions of paragraph 5, the amount to be paid under the right of contribution by an undertaking that has been granted immunity from fines may not exceed the amount of harm it caused to its own direct or indirect purchasers or suppliers.

Article 6

Limitation period

1 - Without prejudice to the absolute limitation period which shall begin to run on the date when the harmful event took place, the right to compensation shall lapse five years after the date on which the injured party became aware, or can reasonably be assumed to have become aware:

c) Of the behaviour in question and the fact that it constitutes an infringement of competition law;

d) Of the identity of the infringer; and

e) Of the fact that the infringement of competition law caused harm to it, even if it was not aware of the full extent thereof.

2 - The limitation period shall not begin to run before the infringement of competition law has ceased.

3 - For the purposes of paragraphs 2(b) and 4(b) of Article 5, the limitation period for the right to compensation from a SME or from an undertaking that has been granted immunity from fines, for injured parties which are not their purchasers or suppliers, is 3 years and shall begin to run only on the date of the bankruptcy finding by the court, of the termination of an executive action for lack of attachable assets or of any other final court decision finding the

inability of the remaining co-infringers to pay.

4 - The limitation period shall be suspended if a competition authority begins an investigation of the infringement to which the action for damages relates, in particular under Articles 17(1) and 18(1) of Law No 19/2012 of 8 May.

5 - The suspension referred to in the preceding paragraph shall end at the earliest one year after the existence of the infringement has been established by a final decision of a competition authority or a court decision no longer subject to appeal or after the proceedings have been otherwise terminated.

6 - The limitation period for bringing an action for damages shall be suspended with regard to the parties which take part, have taken part, are or were represented in an out-of-court dispute resolution process for the duration of such a process, without prejudice to the interruption of the limitation period by virtue of an arbitration settlement under the terms of Article 324 of the Civil Code.

7 - The limitation period shall be interrupted by the citation or notice to the alleged infringer of any documents expressing the intention to exercise a right, in particular documents arising from Articles 13 and 17 of this Law.

Article 7

Probative value of decisions by competition authorities and review courts

1 - Where a competition law infringement is established by a final decision of the Competition Authority or by a review court decision, which is no longer subject to appeal, that decision shall constitute an irrefutable presumption of the existence, nature and material, personal, temporal and territorial scope of the infringement, for the purposes of bringing an action for damages resulting from it.

2 - Where a competition law infringement is established by a final decision of a competition authority of any other Member State, that decision shall constitute a rebuttable presumption of the existence, nature, and material, personal, temporal and territorial scope of the infringement for the purposes of bringing an action for damages resulting from it.

3 - Where a competition law infringement is established by a review court decision no longer subject to appeal, of any other Member State, that decision shall constitute a rebuttable presumption of the existence, nature, and material, personal, temporal and territorial scope of the infringement for the purposes of an action for damages resulting from it.

4 - If knowledge of the subject-matter of the action depends on the finding of an infringement that is the subject of an investigation by a competition authority or of a decision by a competition authority that is not yet final or of a decision by a review court that does not yet have the force of *res judicata*, the competent court may stay proceedings until the decision in question becomes final or is no longer subject to appeal, or until some other fact comes to light that alters the assumptions underlying the stay.

Article 8

Passing-on of the overcharge

1 - The defendant in an action for damages may allege in its defence the fact that the claimant passed on all or part of the overcharge resulting from the competition law infringement in the price it charged downstream in the production or distribution chain; the burden of proof

thereof shall lie on the defendant.

2 - In actions for damages in which the claim rests on the passing-on of an overcharge to an indirect purchaser, it is up to the indirect purchaser to prove the existence and scope of such a passing-on.

3 - Unless proven otherwise, it shall be presumed that the overcharge was passed on to the indirect purchaser where the latter shows that:

- a) The defendant infringed competition law;
- b) This infringement resulted in an overcharge for the direct purchaser of the defendant; and
- c) It purchased goods or services affected by the infringement, or goods or services derived from or containing goods or services affected by the infringement.

4 - The provisions of this Article shall apply *mutatis mutandis* where the injured party is a supplier of the defendant.

Article 9

Quantification of harm and of the pass-on rate

1 - Unless proven otherwise and without prejudice to the burden on the injured party to prove the causal relationship between the infringement and the harm, it shall be presumed that cartels cause harm.

2 - If it is practically impossible or excessively difficult, on the basis of the evidence available, to precisely quantify the total harm suffered by the injured party or the overcharge passed on, as referred to in Article 8, the court shall decide on the grounds of approximate best estimate assessments and may, to this effect, take into account the Communication from the Commission of 12 June 2014 on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union (2013/C 167/07).

3 - The Competition Authority, if it deems necessary and possible, shall assist the court, at its request, in quantifying the harm resulting from the infringement of competition law.

Article 10

Actions by claimants at different levels in the production or distribution chain

1 - To avoid actions for damages brought by claimants from different levels in the production or distribution chain leading to injured parties being overcompensated or receiving no compensation, the court shall take into account:

- a) Actions for damages that are related to the same infringement, but brought by claimants from other levels in the production and distribution chain; or
- b) Judgments resulting from actions for damages as referred to in point (a); or
- c) Relevant information in the public domain relating to the public enforcement of competition law.

2 - For the purposes of the preceding paragraph, the court may decide to attach other proceedings or to suspend proceedings, or to resort to any other procedural mechanism available.

3 - The provisions of the preceding paragraphs do not affect the rights and obligations arising from Article 30 of Regulation (EU) No 1215/2012 of the European Parliament and of

the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Article 11

Effects of out-of-court dispute resolution

1 - Where two or more parties take part in an out-of-court dispute resolution process relating to the claim brought in an action for damages, proceedings are suspended with regard to those parties for up to two years, without prejudice to the termination of the proceedings by virtue of an arbitration settlement under the terms of Article 277(b) of the Code of Civil Procedure.

2 - In the context of an action for damages subsequent to an out-of-court settlement related to the same infringement, a claim for damages brought by an injured party that took part in that out-of-court settlement, against co-infringers that did not take part in that settlement, may not exceed the amount of harm it suffered, minus the amount corresponding to the relative responsibility of the infringer which took part in the out-of-court settlement, calculated in accordance with Article 5(5).

3 - An injured party that took part in an out-of-court settlement cannot claim the remaining amount of damages from co-infringers which did not take part in the out-of-court settlement, save where they are unable to pay that compensate the injured party, in which case damages may be claimed from the date of the bankruptcy finding by the court, of the termination of an executive action for lack of attachable assets or of any other final court decision establishing the inability of the remaining co-infringers to pay.

4 - The exception provided for in the previous paragraph may be specifically ruled out in the out-of-court settlement.

5 - Co-infringers that did not take part in an out-of-court settlement shall have no right of contribution from an infringer which took part in that settlement where the former pay damages to the injured party with whom the infringer reached an out-of-court settlement.

6 - When determining the amount of the contribution that a co-infringer may recover from any other co-infringer in accordance with their relative responsibility for the harm caused by the infringement of competition law, the court shall take due account of any damages paid pursuant to a prior out-of-court settlement involving the co-infringer from whom the contribution is to be recovered.

Chapter II

ACCESS TO EVIDENCE

Article 12

Submission of evidence in an action for damages

1 - At the request of any party in an action for damages, the court may order another party or a third party, including public undertakings, to submit any evidence which lies within their control, subject to the limits set out in this Chapter.

2 - The request referred to in paragraph 1 must be supported by reasonably available facts and evidence sufficient to support the plausibility of the claim for damages or the defence and must indicate the facts in relation to which the evidence is sought.

3 - The request must specify as precisely and as narrowly as possible the evidence or categories of evidence requested on the basis of the facts adduced in support of the request.

4 - The court shall order the submission of evidence where it considers such submission to be proportionate and relevant to the decision in the case, and shall refuse requests implying indiscriminate searches for information.

5 - In determining whether the request for submission of evidence is proportionate, the court shall consider the legitimate interests of all the parties and third parties concerned, taking account in particular of:

a) The extent to which the claim for damages or the defence is supported by available facts and evidence justifying the request to submit documents;

b) The scope and cost of submission of evidence, especially for any third parties concerned, paying particular attention to the need to prevent non-specific searches for information which is unlikely to be of relevance for the parties;

c) Whether the evidence the submission of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.

6 - For the purposes of paragraph 5, the interest of avoiding actions for damages following an infringement of competition law shall not constitute an interest that warrants protection.

7 - The court shall order the submission of evidence containing confidential information where it considers it relevant to the action for damages, and in doing so shall adopt effective measures to protect the information concerned. To this end, the court may adopt the following measures in particular:

a) Redacting sensitive passages in documents;

b) Conducting hearings in camera;

c) Restricting the number of persons authorised to have access to the evidence, in particular by limiting access to the legal representatives of the parties or to experts subject to a duty of confidentiality;

d) Instructing experts to produce summaries of the information in an aggregated or otherwise non confidential form.

8 - The court shall not order the submission of evidence covered by legal professional privilege, pursuant to national or Union law.

9 - The court shall not order the submission of evidence without providing the person from whom submission is sought with an opportunity to be heard.

Article 13

Access to evidence prior to bringing an action for damages

1 - Anyone who, on the terms and for the purposes laid down in Articles 573 to 576 of the Civil Code, wishes to obtain information or secure the submission of evidence or documents to which the owner or holder does not want to grant him access, may, providing he can justify such a request and subject to the other limits set out in this Chapter, request the competent court to summon the person refusing access to submit the evidence or documents concerned on the date and at the time and place specified by the court, on the terms laid down in Articles 1045 to 1047 of the Code of Civil Procedure.

2 - The provisions of paragraphs 2 to 9 of Article 12 shall apply mutatis mutandis to the requests for access referred to in paragraph 1.

Article 14

Access to evidence included in the file of a competition authority

1 - In addition to Article 12, the following provisions apply to requests for the submission of evidence included in the file of a competition authority.

2 - The court may order the submission of evidence included in the file of a competition authority only if it cannot reasonably be provided by one of the parties or a third party.

3 - When assessing, in accordance with Article 12(5), the proportionality of a request for the submission of evidence, the court shall, in addition, consider the following:

- a) Whether the request has been formulated specifically with regard to the nature, subject-matter and contents of the evidence included in the file of a competition authority, or whether it is an indiscriminate request for any evidence included in the file;
- b) Whether the party requesting disclosure is doing so for the purposes of a pending action for damages;
- c) In the situations referred to in paragraphs 2 to 4, or at the request of a competition authority pursuant to paragraph 10, whether there is a need to safeguard the effectiveness of the public enforcement of competition law, in particular where it is a question of safeguarding the interests of the investigation within the meaning of Article 32 of Law No 19/2012 of 8 May.

4 – The court may order the submission of the following types of evidence only after the competition authority has closed its proceedings:

- a) Documents prepared by a natural or legal person specifically for the proceedings of a competition authority;
- b) Documents that the competition authority has drawn up and sent to the parties in the course of proceedings;
- c) Settlement submissions that have been withdrawn.

5 - At no time may the court may order submission of evidence in the form of:

- a) Statements made with a view to obtaining immunity from or reduction of a fine;
- b) Settlement submissions.

6 - If only part of the evidence is covered by paragraph 5, the relevant provisions of this Article shall apply to the remaining part, depending on the category under which it falls.

7 - The party who has requested the submission of evidence may present a reasoned request that the court access the documents referred to in paragraph 5 for the sole purpose of ensuring that they correspond to the exceptions laid down in that paragraph.

8 - In assessing a request pursuant to paragraph 7, the court may request assistance from the competition authority or hear the authors of the documents in question, but it may not allow other parties or third parties to have access to those documents.

9 - Without prejudice to paragraphs 1 to 3, the court may order at any time the submission of documents included in the file of a competition authority that do not fall into any of the categories listed in paragraphs 4 and 5.

10 - The provisions of this Article are without prejudice to:

- a) The provisions of national law governing access to the files of the Competition Authority;

b) The provisions governing public access to documents laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;

c) The provisions of national or Union law on the protection of internal documents of competition authorities and of correspondence between competition authorities.

Article 15

Written observations

1 - Any competition authority may, acting on its own initiative, submit to the court written observations on the proportionality of requests for the submission of evidence included in its files.

2 - For the purposes of paragraph 1, the competent court before which an action for damages is brought or to which a request for access to evidence is made pursuant to article 14 shall immediately notify the competition authority accordingly, by sending it a copy of the request, in order to allow it to, if it so desires, submit written observations.

3 - The observations referred to in the preceding paragraphs may be submitted within a reasonable period of time set by the court, which may not be shorter than 10 days.

Article 16

Limits on the use of evidence obtained solely through access to the file of a competition authority

1 - Evidence referred to in Article 14(5) which has been obtained solely through access to the file of a competition authority is inadmissible in actions for damages for infringements of competition law.

2 - Evidence referred to in Article 14(4) which has been obtained solely through access to the file of a competition authority is inadmissible in actions for damages for infringements of competition law until the competition authority has closed the relevant proceedings.

3 - Evidence which has been obtained by a natural or legal person solely through access to the file of a competition authority and which does not fall into any of the categories referred to in Article 14(4) and (5) can be used in an action for damages for an infringement of competition law only by that person or by a natural or legal person that succeeded to that person's rights, or by a person that acquired that person's claim.

Article 17

Measures for preserving evidence

Where there are strong indications that an infringement of competition law likely to cause harm has taken place, the alleged injured party may request the court to order prompt and effective provisional measures to preserve evidence of the alleged infringement, subject to the limits set

out in this Chapter.

Article 18

Penalties in matters of access to evidence

1 - Penalties in the form of fines to be set by the court shall be imposed for the following types of conduct:

- a) Failure or refusal to comply with an order to submit evidence issued pursuant to Article 12(1);
- b) Destruction, concealment or any other form of preventing effective access to evidence, the submission of which has been ordered pursuant to Article 12(1);
- c) Failure or refusal to comply with measures to protect confidential information ordered by the court pursuant to Article 12(7) of this Decree Law;
- d) Breach of the limits on the use of evidence provided for in Article 14.

2 - The amount of the fine referred to in paragraph 1 shall be set by the court at between 50 and 5000 “UC” [*in 2016: between €5.100,00 and €510.000,00*], depending on the seriousness of the conduct and the extent to which it hinders the claimant or defendant from proving his case in the action for damages, and may be imposed on the parties, third parties or their legal representatives.

3 - In cases falling under paragraph 1(a), the court may, in addition, impose a penalty payment of between 5 and 500 “UC” [*in 2016: between €510,00 and €51.000,00*] for each day of delay until the order for submission of evidence is complied with.

4 - Where the conduct referred to in paragraph 1 is imputable to a party, the court shall freely assess the consequences in the appraisal of the evidence, without prejudice to the inversion of the burden of proof pursuant to Article 344(2) of the Civil Code.

5 - The conduct referred to in paragraph 1 shall also give rise to an order to pay the costs relating to the request for submission of evidence, irrespective of the outcome of the action for damages.

Chapter III

CONSUMER PROTECTION

Article 19

Collective redress

1 - Actions for damages as a result of infringements of competition law may be brought under Law No 83/95 of 31 August, as amended by Decree-Law No 214-G/2015 of 2 October, and the following paragraphs also apply to them.

2 - The following entities have standing to bring actions for damages as a result of infringements of competition law under Law No 83/95 of 31 August, as amended by Decree-Law No 214-G/2015 of 2 October, besides those already mentioned therein:

- a) Associations and foundations whose aim is consumer protection;

b) Associations of undertakings whose associates are injured by the infringement of competition law in question, even if their statutory object does not include the protection of the competitive process.

3 - The judgment shall determine the criteria for identifying the parties injured by the infringement of competition law and for calculating the harm suffered by each injured party identified individually.

4 - If the injured parties are not totally identified individually, the court shall set an overall amount of damages in accordance with Article 9(2).

5 - If the overall amount of damages set in accordance with paragraph 2 is not sufficient to compensate the harm suffered by the injured parties identified individually, it shall be shared by them in proportion to the harm they have each suffered.

6 - The judgment shall identify the entity responsible for receiving, managing and paying the damages due to the injured parties not identified individually, which may be, in particular, the plaintiff or one or more of the injured parties identified in the action.

7 - Damages not claimed by the injured parties within a specified period are to be paid to the plaintiff in respect of all or part of the costs, court fees, legal fees or any expenses incurred by the plaintiff in connection with the proceedings.

8 - Damages not paid on account of limitation periods or of the impossibility of identifying the persons entitled shall revert to the Ministry of Justice pursuant to Article 22(5) of Law No 83/95 of 31 August, as amended by Decree-Law No 214-G/2015 of 2 October.

Chapter IV LEGISLATIVE AMENDMENTS

Article 20

Amendments to Law No 19/2012 of 8 May

Articles 22, 27, 33, 69 and 81 of Law No 19/2012 of 8 May, approving the new competition regime, are amended as follows:

'Article 22

Settlement proceedings in the investigative phase

- 1 - (...).
- 2 - (...).
- 3 - (...).
- 4 - (...).
- 5 - (...).
- 6 - (...).
- 7 - (...).
- 8 - (...).

9 - (...).

10 - (...).

11 - The settlement submission referred to in paragraph 7 shall be deemed to be void and deprived of any effects once the time limit stipulated in paragraph 9 has elapsed without the defendant having agreed to its content and it cannot be used as evidence against any defendant under investigation in the settlement proceedings.

11 - (...).

12 - (...).

13 - (...).

14 - (...).

15 - (...).

Article 27

Settlement proceedings in the prosecution phase

1 - (...).

2 - (...).

3 - (...).

4 - (...).

5 - (...).

6 - The settlement submission referred to in paragraph 1 shall be deemed to be void and deprived of any effects once the time limit stipulated in paragraph 4 has elapsed without the defendant having agreed to its content and it cannot be used as evidence against any defendant under investigation in the settlement proceedings.

7 - (...).

8 - (...).

9 - (...).

10 - (...).

11 - (...).

Article 33

Access to the file

1 - (...).

2 - (...).

3 - (...).

4 - Access to documents containing information classified as confidential shall be given only to the lawyer or external economic advisor of the party concerned and strictly for the purposes of exercising the rights of defense pursuant to Article 25(1) and of filing an appeal, and the information thereof may not be reproduced in full or in part by any means or used by anyone for any other purpose, without prejudice to Articles 12(7), 14 and 16 of Law No [*transposition law*].

Article 69

Setting the amount of the fine

1 - (...):

a) (...);

b) (...);

c) (...);

d) (...);

e) (...);

f) The behavior of the defendant in eliminating the restrictive practices and repairing the damage caused to competition, in particular by paying damages to the injured parties following an out-of-court settlement;

(g) (...);

(h) (...);

(i) (...).

2 - (...).

3 - (...).

4 - (...).

5 - (...).

6 - (...).

7 - (...).

9 - (...).

Article 81

Confidential information

1 - The Competition Authority shall classify as confidential an application for immunity from a fine or reduction of a fine, together with all documents and information presented for the purpose of obtaining immunity or reduction, without prejudice to paragraph 5.

2 - (...).

3 - (...).

4 - (...).

5 - Article 14(5)(a) of Law No [*transposition law*] applies to requests for the submission of evidence included in the file of the Competition Authority addressed to a court for the purposes of bringing an action for damages for infringement of competition law.

Article 21

Addition to Law No 19/2012 of 8 May

A new Article 94A is added to Law No 19/2012 of 8 May, as follows:

'Article 94A

Duty of the courts to inform the Competition Authority

1 - The competent court to judge an action in which an infringement of Articles 9, 11 or 12 of Law No 19/2012 of 8 May, and/or Articles 101 or 102 of the Treaty on the Functioning of the European Union is invoked, shall inform the Competition Authority of that fact by sending a copy of the application, defense or counterclaim.

2 - The competent court that takes a sentence, judgment or decision in a court case in which an infringement of Articles 9, 11 and 12 of Law No. 19/2012 of 8 May, and/or articles 101 and 102 of the Treaty on the Functioning of the European Union is invoked, shall inform the Competition Authority of the that fact by sending a copy of the respective sentence, judgment or decision.

3 - The Competition Authority shall ensure compliance with the requirement laid down in Article 15(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, and shall disclosure in its website the sentences, judgments or decisions referred to in the preceding paragraph.'

Article 22

Amendments to the Law on the Organisation of the Judicial System

Articles 54, 67 and 112 of the Law on the Organisation of the Judicial System, approved by Law No 62/2013 of 26 August, are amended as follows:

‘Article 54

Specialisation of sections

1 - (...).

2 - The cases referred to in Articles 111, 113 and 128 shall always be assigned to the same civil section.

4 - The cases referred to in Article 112 shall always be assigned to the same criminal section, except for the cases referred to in Article 112(2) to (4), which shall always be assigned to the same civil section.

Article 67

Definition, organisation and functioning

1 - (...).

2 - (...).

3 - (...).

4 - (...).

5 - Until the establishment of the competition, regulation and supervision section, the cases referred to in Article 112 shall always be assigned to the same section.

5– [*previously paragraph 5*].

Article 112

Jurisdiction [of the specialised Competition, Regulation and Supervision Court]

1 - (...).

2 - (...).

3 - The court shall have jurisdiction to hear actions for damages in which the claim is based solely on infringements of competition law, actions for the exercise of the right of contribution between co-infringers, and requests for access to evidence relating to such actions, under the terms of Law No [*transposition measure*].

4 - The court shall also have jurisdiction to hear any other action in which the claim is based solely on an infringement of Articles 9, 11 or 12 of Law No 19/2012 of 8 May 2012 and/or

Articles 101 or 102 of the Treaty on the Functioning of the European Union.

5 - [*previously paragraph 3*].'

Chapter V

FINAL PROVISIONS

Article 23

Applicable law

1 - In all that is not contrary to this Law, the substantive and procedural provisions laid down, respectively, in the Civil Code and the Civil Procedure Code apply.

2 - The application of substantive and procedural provisions relating to actions for damages resulting from infringements of competition law may not render it practically impossible or excessively difficult to exercise the right to compensation.

3 - The application of substantive and procedural provisions relating to actions for damages resulting from infringements of Articles 101 or 102 of the Treaty on the Functioning of the European Union may not be less favourable to the alleged injured parties than the rules relating to similar actions for damages resulting from infringements of national law.

Article 23

Temporal application

1 - The substantive provisions of this Law, including those relating to the burden of proof, shall not apply retroactively.

2 - The procedural provisions of this Law do not apply to actions for damages brought before 26 December 2014.

3 - Article 22 of this Law applies to actions for damages brought after its entry into force.

Article 24

Entry into force

This law shall enter into force on 27 December 2016.
