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Damages arising from violation of competition law and public procurement rules in selected Central and Eastern European EU countries: Solutions and challenges

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01

Harmonization and harmonization-by-judgments

Still different level of harmonization

- Antitrust
  - Incomplete harmonization
  - Some question still opened
- State aid
  - No harmonization – harmonization by judgments
  - No minimal standards for remedies
- Public procurement – damages
  - Framework *minimal* minimal harmonization
  - Case law unclear and sometimes contradictory (*Fosen-Linjen* saga)

Motives and limits for harmonization

- Harmonization
  - Clear and predictable rules
  - Benefits for victims
  - Minimal standards
- Lack of harmonization
  - No clear and predictable rules – possibility of stalemate or sink the case
  - Benefits for infringers
  - No minimal standards (close-to-zero standard)

WHO IS LIABLE?

Motives and limits for harmonization

- The legal basis for the competence to harmonize
  - Antitrust
    - Art. 103 and 114 TFEU
  - State Aid
    - Art. 114 TFEU
    - Does it impair free circulation on internal market?
    - Subsidiarity – does the Commission do its job? *RegioJet* case
  - Public procurement
    - Harmonization of the ules on liability of MS for breach of EU law

02

Impact of the Damages Directive

Motives for the Damages Directive

- Improve position of injured parties
- Evidence collection
- Protection of public enforcement
- Gain momentum for private enforcement

Motives for the Damages Directive and its impact in the CEE EU countries

- Improve position of injured parties
  - Still divergence
  - Few success stories
  - There are cases !!!
- Evidence collection
  - Novelty in procedural law
- Protection of public enforcement
  - Not so relevant (almost nothing to protect)
- Gain the momentum for private enforcement
  - Old cases

Not harmonized after harmonization

- Effects of the decision of the NCA (case of Slovakia)
- Causality
- Culpability (strict/fault)
- Quantification of harm
- Limitation periods
- Presumptions
  - Overcharges
    - HU, LV 10 %
    - RO 20 %
- Competent court – really an issue?

Not harmonized after harmonization Limitation periods

- Competition law
  - *a tempore scientia / a tempore facti*
  - Still divergent
- Public procurement

	CZ	HR	PL	RO	SI	SK		
						SkCC	SkComC	SkASLD
a tempore scientia	3y	3y	3y	1y	3y	2y	4y	3y
a tempore facti	10/15y	5y	10y		5y	3y	10y	10y

03

And statistics for the end …

Judgments referenced – relevant for private enforcement and damages

- Competition law
  - 158 cases (judgments/orders…)
- Public procurement
  - 88 cases (judgments/orders…)

Thank you for your attention

"Power of truth is invincible if it is armed with the light of knowledge"

Johannes Amos Comenius

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