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The EU law on Cartel Damages Claims – an Overview

**ICN Conference**

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Front picture: Four Towers, Financial District, Madrid

- Starting point:
    - **Public enforcement / economic public order**
    - **Direct effect** of Arts. 101 and 102 TFEU
  - Seminal case law of the European Court of Justice (Judgments of 20 Sept. 2001, ***Courage v. Creham***, case C-453/99 and 13 July 2006, ***Manfredi***, case 295/04), acknowledges:
    - Full effectiveness of EU law enables **any individual** having suffered harm to claim
    - National law governs claims provided **no less favorable** than domestic claims (equivalence)
  - In principle anyone suffering harm can claim and there should be no absolute limitations by reason of the claimant. **Umbrella damages** (5 June 2014, *Kone*, C-557/12); claims by **public entities in the context of public financing** schemes (12 December 2019, *Otis*, C-435/18); extension of the **economic continuity doctrine** to private enforcement (14 March 2019, *Skanska*, C-724/17)
  - Tension between public and private enforcement of antitrust law. Judgement of 14 June 2011, *Pfleiderer*, C-360/09: balancing test when deciding on disclosure of leniency statements
  - **EU Directive 2014/104**, of 26 November, on Damages Claims in antitrust cases ensures minimum level playing field of rules common to all EU countries
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### EU Directive 2014/104:

- Right to **full compensation**, *damnum emergens, lucrum cessans*
- General presumption that **cartels cause harm**, particularly regarding prices
- General rule of **joint and several liability** in joint behavior, e.g., cartel cases
  - Contribution claims amongst cartel members. Immunity recipients/SMEs partially shielded from this rule
- **Discovery procedure** to make claimants' rights effective regarding evidence. Leniency and settlement submissions excluded
- Passing-on defence: burden of proof that overprice passed-on is on defendant
- Final administrative or judicial decisions by national authorities and courts finding an antitrust infringement **bind the national courts** of that State in damages claims
  - Such decisions from another Member State are *prima facie* evidence of such infringement
- Limitation period **cannot start to count earlier than the moment claimant knows** or can reasonably be expected to know the conduct, fact that it caused harm to him and identity of the infringer. Limitation periods **no shorter than five years**
- Substantive provisions of Directive do not have retroactive effect

## Contact



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