

Competition Authority submits final proposal for implementation of EU Private Enforcement Directive

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Following a public consultation, the Competition Authority has finalised its initial legislative proposal for the implementation of the EU Private Enforcement Directive (2014/104/EU).

The consultation on the preparatory draft proposal finished at the end of May 2016. On March 16 2016 a workshop organised by the Competition Authority took place, bringing together several stakeholders in the legal community – including government representatives, magistrates, public prosecutors and competition lawyers – to comment on a previous implementation draft. Following the submission of written observations by interested parties, the authority published a report on the consultation on its website on July 13 2016.

The proposal that was submitted for consultation by the Competition Authority includes some rather innovative changes, with the legislative solutions for the implementation of the directive in Portugal going further than strictly required by the directive. Notably, the proposal states that the decisions of national competition authorities and review courts of other member states will be considered an irrebuttable presumption (*juris et de jure*) for the benefit of claimants in actions for damages, regarding the relevant infringements of competition law. This presumption encompasses the existence, nature and duration of the infringement, as well as its material, personal and territorial scope.

The proposal also establishes the automatic extension of liability to parent undertakings for infringements committed by their subsidiaries, a matter which is not directly dealt with by the directive. The relevant provision, contained in Article 3 of the proposal, extends liability to undertakings that form a single economic unit with the infringing undertaking provided that they have exercised decisive influence over the latter's behaviour. Decisive influence is presumed in situations where the parent company holds 100% of the infringing undertaking's share capital.

Finally, the proposal seeks to give jurisdiction to the Portuguese Competition, Regulation and Supervision Court in respect of any actions for damages resulting from competition law infringements, thereby ensuring that these suits will be dealt with by a court which is assumed to have relevant substantive expertise in the field of competition law.

The Competition Authority has sent the proposal to the minister for the economy, who will oversee the next stages of the legislative procedure. Although no definite indications have been given, the government is not expected to request legislative authorisation from Parliament to enact the proposal by way of a decree-law, which means that the adoption of the proposal will probably be subject to the more burdensome procedure which governs the approval of legislation by Parliament. Accordingly, the final legal text may amend the wording or dilute the content of certain provisions of the proposal following discussions and voting by the relevant parliamentary committee and in a final plenary session. Parliament's review and discussion of the proposal is unlikely to begin before September 2016.

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