

Antitrust damages proceedings and cooperation with competition authorities

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Federal Cartel Prosecutor

- **§ 75.** (1) The Federal Cartel Prosecutor is appointed to represent public interests in matters of competition law before the Vienna Higher Regional Court acting as Cartel Court. In performing his duties, he shall act independently from the Cartel Court.
- (2) The Federal Cartel Prosecutor shall directly report to the Federal Minister of Justice.
- (3) One or several deputies shall be appointed to assist the Federal Cartel Prosecutor (Deputy Federal Cartel Prosecutor).

Justiz → Justizbehörden → Bundeskartellanwalt

Der Bundeskartellanwalt



Leniency applications increased in Europe in 2021, but continued declining in the other regions. According to the OECD Competition Trends 2022 report, leniency applications declined in recent years across the globe. In 2021, this trend generally continued, with Europe being the only exception. **In Europe, leniency applications increased by 32% in 2021**, from a total of 65 applications in 2020 to 86 in 2021. **This increase was noticeable in a significant number of jurisdictions, with a few that showed sharp increases. Despite this partial recovery, the number of leniency applications in Europe in 2021 (86) was still lower than in 2019 (96).** MEA showed the largest decrease in leniency applications (-75%), followed by the Americas (-50%).

DIRECTIVES

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

(Text with EEA relevance)



Role of competition authorities in damages proceedings I

Assistance from the Cartel Court, the Federal Cartel Prosecutor and the Federal Competition Authority

§ 37I. The Cartel Court, the Federal Cartel Prosecutor and the Federal Competition Authority may, upon request of a court, assist such court **in fixing the amount of compensation.**



Role of competition authorities in damages proceedings II



Disclosure and use of evidence included in the files

§ 37k. [...]

(2) Where the application requesting disclosure concerns information included in the files of a competition authority, the court, when assessing proportionality of a request of disclosure, shall, apart from § 37j para. 4, also consider the degree of details to which individual documents have been described regarding their nature, subject matter or content and whether there is any necessity to restrict disclosure in order to safeguard the effectiveness of public enforcement of competition law. Before deciding on the application, the court shall grant the competition authority the opportunity to give an opinion on the prerequisites; the competition authority may, also on its own initiative, submit its opinion on the proportionality of requests for disclosure to the court.

Access to files before a damages proceeding is pending I

Protection of business secrets and access to files

[...]

(2) Persons not being a party to the proceedings may be granted access to the files of the Cartel Court only upon agreement of the parties concerned. [...]

- C 536/11, (6.6.2013): *Donau Chemie AG and others*: principle of effectiveness is violated



Access to files before a damages proceeding is pending II

- Is § 39 para. 2 Cartel Act fully applicable after the amendments as regards
 - the transposition of the Damages Directive
 - the extension of the provision regarding the publication of decisions (§ 37 Cartel Act)?

Regierungsvorlage



Bundesgesetz, mit dem das Kartellgesetz 2005, das Wettbewerbsgesetz und das Bundesgesetz zur Verbesserung der Nahversorgung und der Wettbewerbsbedingungen geändert werden (Kartell- und Wettbewerbsrechts-Änderungsgesetz 2017 – KaWeRAG 2017)

3.11.2023

Disclosure in Antitrust Damages Actions in Europe

Access to files before a damages proceeding is pending III



- Main findings of the decision **16 Ok 1/22s**
 - The **principle of effectiveness as regards the access to evidence** has not turned to be obsolete since the transposition of the Damages Directive, but **rather concretized**
 - The general approach of the Damages Directive is to guarantee efficient public and private cartel enforcement, therefore an **overall assessment as regards the possibilities to gain information for the potentially damaged person is necessary**
 - **Isolated perspective of the Austrian transposition of the Damages Directive is not enough, but one has to include also the provision regarding the publication of decisions**
 - Principle of effectiveness does not stipulate that stand-alone-claims have to be possible

Access to files before a damages proceeding is pending IV



- **16 Ok 1/23 t**

- Decision refers in large parts to 16 Ok 1/22s
- It is not necessary that the potentially injured person has knowledge of the concrete anticompetitive behaviour
- even the unpublished decision does not contain every single anti-competitive conduct what is due to the fact that far more than 1.000 cases were involved

Relationship between mutual assistance and the protection of leniency applications/settlement submissions – the case C-2/23

- Is the **protection of leniency statements and settlement submissions** as governed in the Damages Directive and the ECN+ Directive **to be understood in an absolute sense, meaning that the protection applies also to prosecution authorities (public prosecutor and criminal courts), so that these documents may not be added to the file?** If they may be added can the access to the file be permanently restricted for accused persons and/or third parties?



List of results by case | List of documents

Search result: 1 case(s) | 1 documents analysed

1/1 C-2/23 - FL und KM Baugesellschaft and S

Main proceedings

FL und KM Baugesellschaft and S
Case C-2/23

Reports of Cases
Information not available

Thank you for your attention!