# Estonia

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## Private Enforcement and Collective Redress in European Competition Law

Firstly let me call your attention to the fact that so far there have been no cases in force in Estonia relating private enforcement damages claims in competition law. Therefore and without relevant court practice the specific questions concerning existing legal practice and the vision of implementation of Directive 2014/104/EU (hereinafter also Directive) are theoretical and based on the relevant law and jurisprudence.

The second point to stress out is our rather specific legislation where three different proceedings of competition infringement are possible – the administrative (state supervision) proceeding by Competition Authority, the private action standalone claim based on competition infringement in civil court and offence proceedings in criminal court.

Within such system the civil private action standalone claim could be heard independently and at the same time with the state supervision and criminal proceedings[2].

I. General Questions on Private Enforcement of Antitrust Law:

Q1: The legal basis for private enforcement claims is national law. If the infringement of competition law is contractual the legal basis is contact law and if non-contractual, the legal basis is tort law.

It´s important to stress that according to Penal Code clause 400[3] competition infringement is an offence. Therefore the private enforcement cases could be heard by civil court and also in criminal court.

The judgements of the ECJ in the cases "Courage" (C-453/99) and "Manfredi" (C-295/04) did not produce effects on the private enforcement of European antitrust law (Article 101 and 102

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[2] Estonian position at the green paper proceedings, answear to question L, available at http://ec.europa.eu/competition/antitrust/actionsdamages/files_green_paper_comments/ministry_economic_affairs_communications.pdf).

[3] Penal Code clause 400, available at https://www.riigiteataja.ee/en/eli/525092015001/consolide

TFEU) in our national legal order, but to our administrative practice concerning the opening of proceedings and right of action[4].

Q2: In case of the contractual relationship the claimant may call the claim concerning nullity of contract or an illegal provision of contract. In case of non-contractual infringement of competition law the claimant may call the claim of compensation for damages.

The private action remedy available for claimant in civil proceeding is injunctive relief. The injunctive relief is a private action remedy, a measure used for securing private action.

As mentioned in answer to Q1 the damages claim may be heard also in criminal court. The private action remedy available for civil defendant in criminal proceeding is seizure of property to secure a civil action.

The claimant could be any victim who has suffered harm. The court conducts proceedings in a civil matter if a person files a claim with the court pursuant to the procedure provided by law for the protection of the person's alleged right or interest protected by law.[5]

Q3: As mentioned before so far there have been no cases in force relating private enforcement damages claims in competition law. Therefore it´s difficult to analyze the frequency and also the problems concerning infringements of Articles 101 and 102 TFEU under the aspect of the principles of equivalence and effectiveness for different types of claims.

Q4: Stand-alone actions are possible in Estonia. To date there have been none follow-on actions based on infringement decisions of the European Commission or the National Competition Authority.

Q5: Legal costs and fees don´t deter potential claimants from bringing private enforcement claims in competition law.

If the compensation claim is heard in civil proceedings upon the filing of a statement of claim, a state fee shall be paid on the basis of the value of the action[6].

The general rules of legal costs could be alleviated in civil proceedings through procedural assistance means[7].

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[4] Ruling of the Supreme Court No. 3-3-1-29-13 of 23 Oct 2013 clause 18, available at http://www.nc.ee/?id=11&tekst=222565451

[5] Code of Civil Procedure clause 2 subsection 1 available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

[6] State Fees Act clause 59 subsection 1. For example if the value of the action is more than 500 000 euros the state fee is 3 400 euros. This is also the highest state fee possible (State Fees Act clause 59 subsection 1 and Annex 1, available at https://www.riigiteataja.ee/en/eli/510082015004/consolide )

If the compensation claim is heard in criminal proceedings the filing of a civil action for compensation for proprietary damage in a criminal proceeding is exempt from state fees[8].

Q6: To date in Estonia there is no funding for private enforcement litigation.

Q7: Information about competition infringements is available besides media through general transparency rules. National Competition Authority is required to disclose decisions relating to state supervision as of the entry into force thereof and court is required to disclose court decisions entered into force with restrictions arising from law[9].

The national Competition Authority discloses information about their decisions at their homepage[10]. Court discloses the decisions in force at general webpage Riigi Teataja together with our legislative acts.[11]

To date there is no special information channels for consumers and SMEs to obtain practical information about the possibilities of taking legal actions including damages claims.

Rules applicable to limitation periods for bringing actions for damages take into consideration the date of knowledge of the victim concerning the infringement, the harm caused and the identity of the infringer[12]. General limitation period rule states that a claim arising from unlawfully caused damage expires not later than ten years after performance of the act or occurrence of the event which caused the damage[13].

Directive rules do affect the current practice as in Estonia the limitation period is 3 year instead of the Directive´s 5 years.

Q8: General courts are competent to hear private enforcement cases of antitrust law.

To the best of knowledge the courts are not equipped case-management powers.

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[7] Code of Civil Procedure clause 180, available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

[8] Code of Criminal Procedure clause 38 subsection 3, available at https://www.riigiteataja.ee/en/eli/501042015002/consolide

[9] Public Information Act clause 28 subsection 1 (14 and 29), available at https://www.riigiteataja.ee/en/eli/522122014002/consolide

[10] Available at http://www.konkurentsiamet.ee/index.php?id=10478

[11] Available at https://www.riigiteataja.ee/

[12] According to the General Part of the Civil Code Act clause 150 subsection 1 limitation period for bringing actions for damages is 3 years as of the moment when the entitled person became or should have become aware of the damage and of the person obligated to compensate for the damage. Available at https://www.riigiteataja.ee/en/eli/517062015011/consolide

[13] General Part of the Civil Code Act clause 150 subsection 3, available at https://www.riigiteataja.ee/en/eli/528082015004/consolide

Q9: Judges are sufficiently equipped and trained to deal with private enforcement litigation.

Q10: According to the European Commission for the Efficiency of Justice report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice the duration of court proceedings in Estonia are reasonable[14].

In Estonia generally collective redress and class actions are not applicable as it conflicts with the civil process principle that the parties determine the object of the dispute and the process of the proceedings, and decide on the submission of petitions and filing of appeals[15]

Nevertheless the claimant may request court a petition for securing an action with injunctive relief which is similar to the principle 19 of Recommendation 2013/396/EU on collective redress.[16]

II. Questions on Liability for Damages: Parties, Quantification, Passing-On Defence, Causality, Culpability, Joint and Several Liability

Q11: In Estonia anyone who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm, therefore no basic changes needed concerning the Directive. Please see also the answer to Q2.

Q12: Infringer of competition law is a person who is unlawfully causing the damage by violating a duty arising from competition law.[17]

Parent company is liable for the infringement of competition law committed by a subsidiary[18].

Q13: Damage is unvoluntary decrease of patrimonial or non-patrimonial benefit. Patrimonial damage includes, primarily, direct patrimonial damage and loss of profit. [19]

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[14] http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf

[15] Code of Civil Procedure clause 4 subsection 2, available at https://www.riigiteataja.ee/akt/119032015027

[16] Code of Civil Procedure chapter 40, available at https://www.riigiteataja.ee/akt/119032015027

[17] According to Law of Obligations clause 1043 person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law.

[18] Commercial Code clause 384, available at https://www.riigiteataja.ee/en/eli/516062015010/consolide

[19] Law of Obligations Act clause 128 subsection 3 Direct patrimonial damage includes, primarily, the value of the lost or destroyed property or the decrease in the value of property due to deterioration even if such decrease occurs in the future, and reasonable expenses which have been incurred or will be incurred in the future due to the damage, including reasonable expenses relating to prevention or reduction of damage and receipt of compensation, including expenses relating to establishment of the damage and submission of claims relating to compensation for the damage. Loss of profit is loss of the gain which a person would have been likely to receive in the circumstances, in particular as a result of the preparations made by the person, if the circumstances on

In damage claims in general and in antitrust law the definition is the same. *Damnum emergens* damages can be awarded following a successful claim. Generally *lucrum cessans* damages in tort cases are not awarded although it´s not excluded[20]
No punitive damages can be imposed in Estonia as punitive damages might conflict with our Constitution[21].

Q14: Injured party must prove the infringement, damages together with the quantity of damages, causation between infringer´s behaviour and damage (*conditio sine qua non* rule). There are no differences to damage claims in antitrust law.

Q15: According to the Constitution of the Republic of Estonia clause 25 everyone is entitled to compensation for intangible as well as tangible harm that he or she has suffered because of the unlawful actions of any person[22]. This constitutes the general clause for all the damages (patrimonial and non-patrimonial damages, please also see answer to Q13).

The basic method to *quantify patrimonial damages* in general is the hypothesis of the differences. According to Law of Obligation clause 127 subsection 1 the purpose of compensation for damage is to place the aggrieved person in a situation as near as possible to that in which the person would have been if the circumstances which are the basis for the compensation obligation had not occurred. Also the future damage can be awarded if the occurance of the damage in future is certain.[23]

The methods claiming for damages in tort cases are direct patrimonial damage and together with the hypothetical unearned income also claiming the income earned through the breach and for example in case of trademark infringement damages claims also the hypothetical licence fee.[24]

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which compensation for damage is based would not have occurred. Loss of profit may also include the loss of an opportunity to receive gain., available at https://www.riigiteataja.ee/en/eli/516062015006/consolide

[20] Iverson,T. Nõudeõigus ja hüvitatav kahju konkurentsieeskirjade rikkumise tagajärjel tekkivates kahjuhüvitamisnõuetes. Magistritöö TÜ Õigusteaduskond, 2010, lk 60

[21] K. Sein. Kas Eesti õiguses tuleks lubada karistuslikke kahjuhüvitisi? Juridica 2008/2, lk 100-101

[22] The Constitution of the Republic of Estonia https://www.riigiteataja.ee/en/eli/521052015001/consolide

[23] Constitution of the Republic of Estonia. Commented edition, Tallinn 2012, http://www.pohiseadus.ee/ptk-2/pg-25/

[24] K. Tiik, I. Eelmets, C. Ginter. Kaubamärgiõiguse rikkumisega tekitatud kahju hüvitamine“ Juridica 2012/7, lk 550-556

Q16: Estonian courts can estimate the harm suffered in tort cases if injured party has difficulties to prove the precise quantity of harm, especially claims of non-patrimonial damage and future damage.[25]

To quantify patrimonial damage which is not clear, court can estimate the hypothetical amount of direct harm. Within limits of probability court estimates the quantity of harm using the right of discretion.[26]

Q17: The rule of the rebuttable presumption of cartel harm will change the existing practice largely as the burden of proof in Estonia is today vice versa.

If compensation claim is heard in criminal proceedings, the presumption of innocence applies (please see also answer to Q64).

Q18: Passing-on defence is not excluded in competition law disputes Law of Obligations clause 127 subsection 2 "Damage shall not be compensated for to the extent that prevention of damage was not the purpose of the obligation or provision due to the non-performance of which the compensation obligation arose".

In the case of admissibility of the passing-on defence the burden of proving relies on the infringer which resembles with the Directive.

Q19: For assessment the passing-on of overcharges and its rate court uses legislation. Law of Obligations Act clause 127 subsection 5 provides the general rule: Any gain received by the injured party as a result of the damage caused, particularly the costs avoided by the injured party, shall be deducted from the compensation for the damage unless deduction is contrary to the purpose of the compensation.

Experts are appointed by courts on request of the party and court evaluates witness statements and expert opinions like all evidences from all perspectives, thoroughly and objectively.[27]

According to Competition Act clause 56 subsection 3 in hearing a matter related to the application of Article 101 or Article 102 of the Treaty on the Functioning of the European Union, the national court shall involve the Competition Authority in the proceedings to provide an opinion.

[25] Law of Obligations Act clause 127 subsection 6, available at https://www.riigiteataja.ee/en/eli/526082015004/consolide

[26] Decision of the Supreme Court No. 3-2-1-81-02 of 11.06.2002 clause 16, available at http://www.nc.ee/?id=11&tekst=RK/3-2-1-81-02

[27] Code of Civil Procedure clause 232 subsection 1, available at available at https://www.riigiteataja.ee/akt/119032015027

Q20: Estonian legislation allows rather wide scope of claimants to claim damages in competition law including damage claims by indirect purchasers/consumers[28]
Art 14 of Directive doesn´t require changes of the current situation. Estonian position at the green paper proceedings was that the European Commission´s notice for the interpretation could be useful[29]. Therefore welcoming is the Art 16 of Directive, which obliges the Commission to issue neccesary guidelines for national courts.

Q21 and Q22: To avoid overcompensation court can reduce the amount of compensation if damage is caused in part by circumstances dependent on the injured party or due to a risk borne by the injured party[30], reduce the amount of compensation for damage if compensation in full would be grossly unfair with regard to the obligated person or not reasonably acceptable for any other reason[31]. Also any gain received by the injured party as a result of the damage caused, particularly the costs avoided by the injured party, shall be deducted from the compensation for the damage unless deduction is contrary to the purpose of the compensation.[32]

Court applies those provisions without party´s petition, only the circumstances for reduction of compensation are needed[33].

The devices to take due account of the facts and information listed in Article 15 (1) lie in our adversarial civil procedure where parties have equal right to substantiate their claims[34].

Q23: Causality exists if the circumstances on which the liability of the person is based and the damage caused are related in such a manner that the damage is a consequence of the

[28] Iverson,T. Nõudeõigus ja hüvitatav kahju konkurentsieeskirjade rikkumise tagajärjel tekkivates kahjuhüvitamisnõuetes. Magistritöö, TÜ Õigusteaduskond, 2010. lk 47

[29] Estonian position at the green paper proceedings, answear to question E, available at http://ec.europa.eu/competition/antitrust/actionsdamages/files_green_paper_comments/ministry_economic_affairs_communications.pdf).

[30] Code of Civil Procedure clause 139 subsection 1, available at available at https://www.riigiteataja.ee/akt/119032015027

[31] Code of Civil Procedure clause 140 subsection 1, available at available at https://www.riigiteataja.ee/akt/119032015027

[32] Code of Civil Procedure clause 127 subsection , available at available at https://www.riigiteataja.ee/akt/119032015027

[33] Decision of the Supreme Court No. 3-2-1-15 of 17.06.2015 clause 13, available at http://www.nc.ee/?id=11&tekst=RK/3-2-1-65-15

[34] Directive Code of Civil Procedure clause 5 subsection 1 and 2, Proceedings are conducted in an action on the basis of the facts and petitions submitted by the parties, based on the claim. The parties have equal rights and opportunities in substantiating their claims, and to refute or contest the submissions of the opposing party. A party may choose the facts submitted in order to substantiate the claim thereof as well as the evidence intended for proof of such facts.

circumstances[35]. The general rule applicable for testing causation is *conditio sine qua non* test. Also the undirect causality is possible when series of events which constitute continued causality leads to the harm[36]. Relevant normative categories in general are objective predictability of damages triggered by an infringement and scope of the protective provision. The differences in damage claims in antitrust law is that only the latter is relevant and used in tort law.

Q24: In view of ECJ´s judgement in the case "*Kone*" (C-557/12), the rules on causality don´t have to be changed or applied differently by courts to ensure that *"umbrella" customers* can in practice claim and obtain compensation. This is also the case concerning damage claims by indirect customers. Please also see answer to Q20.

Q25: National law requires "*culpability*" for a successful damages action in competition law. The fault must be proved in civil proceedings by the claimant and a rebuttable presumption of fault is applicable. If compensation claim is heard in criminal proceedings, the prosecutor - representer of the public prosecution - must prove the quilt of the infringer. In both of the cases (civil and criminal) also the preclusions of unlawfulness must be analyzed.

Q26: Co-infringers of an infringement of EU competition law are jointly and severally liable for the compensation of harm resulting from such infringement under the national legislation. Exceptions from the application of general private law might arise from circumstances mentioned in answer to Q21 and 22.

Q27: Co-infringers have civil redress against each-other.

According to the Law of Obligations Act clause 69 subsection 1 In relations between themselves, solidary obligors are liable for the performance of the obligation in equal shares unless unless otherwise provided by law, the contract or the nature of the obligation[37]. If a solidary obligor has performed the solidary obligation, the claim of the obligee against the other obligors transfers to the solidary obligor (right of recourse of solidary obligor) except to the extent of the solidary obligor's own share of the obligation[38].

Article 11 (5) and (6) and 19 (2) to (4) of Directive 2014/104/EU will affect the current law.

III. Questions on Collective Redress

[35] Law of Obligations Act clause 127 subsection 4, available at https://www.riigiteataja.ee/en/eli/526082015004/consolide

[36] Decision of the Supreme Court No. 3-2-1-125-03 of 10.12.2003 clause 27, available at http://www.nc.ee/?id=11&tekst=RK/3-2-1-125-03

[37] Law of Obligations Act clause 69 subsection 1, available at https://www.riigiteataja.ee/en/eli/526082015004/consolide

[38] Law of Obligations Act clause 69 subsection 2, available at https://www.riigiteataja.ee/en/eli/526082015004/consolide

Generally collective redress and class actions are not applicable in Estonia as in our civil proceeding system each plaintiff (claimant) is processually independent and must prove the infringement, causation and the harm caused like mentioned in answer to Q14. Collective redress actions can´t follow the main principle in Estonian civil process - the parties determine the object of the dispute and the process of the proceedings, and decide on the submission of petitions and filing of appeals[39]

IV. General Questions on the Relationship and Cooperation between Courts and Competition Authorities and Binding Effect:

Q39: As indicated earlier so far there have been no cases in force in Estonia relating private enforcement damages claims in competition law. According to Competition Act clause 56 subsection 3 court shall involve the Competition Authority in the proceedings if the a matter is related to the application of Article 101 or Article 102 of the Treaty on the Functioning of the European Union.

Court may order an expert opinion[40] from a person with specific expertise like an official of the national competition authority (for example to make a economic analysis to prove the infringement).

*Amicus curiae* intervention of Competition Authority before a national court could happen during state supervision (please see answer to Q7). According to Competition Act chapter 8 the Competition Authority may apply the specific state supervision measures and make recommendations to improve the competitive situation. If, to the knowledge of Competition Authority, there is a risk of significant and irreparable damage to competition due to violation of the provisions of Article 101 or 102 of the Treaty on the Functioning of the European Union, the Competition Authority may at its own initiative impose, by a percept, an obligation on a natural or legal person to perform the act required by the precept or refrain from a prohibited act[41].

Q40: Estonian courts haven´t so far made a preliminary reference to the Court of Justice in the context of private enforcement litigation.

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[39] Code of Civil Procedure clause 4 subsection 2, available at available at available at https://www.riigiteataja.ee/akt/119032015027

and Estonian position at the green paper proceedings, answer to question H, available at http://ec.europa.eu/competition/antitrust/actionsdamages/files_green_paper_comments/ministry_economic_affairs_communications.pdf).

[40] Code of Civil Procedure clause 294, https://www.riigiteataja.ee/en/eli/516062015009/consolide

[41] Competition Act clause § $63^6$ subsection 1, available at https://www.riigiteataja.ee/en/eli/519012015013/consolide

Q41: The cooperation between courts and national competition authority includes possibility to order the expert opinion and involving the Competition Authority in the proceedings (mentioned in Q39) and cooperation competition authorities of another Member States[42].

Q42: None of the infringement decisions of cartel authorities or courts are binding in our national system in a private follow-on litigation. Nevertheless they could be an important documentary evidence which, in case the court considers relevant and admissible, court evaluates together with other evidence.

Article 9 of Directive 2014/104/EU requires changes in our national legal order as it will raise the questions of right to hear the opinion of the party and also the question of independence of the court to evaluate the evidences and weighing the circumstances of the case[43].

The position of national competition authority is that to follow the principle of legal certainity only decisions which establish infringements of national competition law should have binding effect[44].

Q43: Infringement decisions are not final for the purposes of the binding effect in the context of the follow-on litigation nor for the limitation periods.

Q44: National courts are not obliged but they have a right to stay proceedings once the National Competition Authority has initiated proceedings on the same matter until a decision has been reached[45].

## V. Questions on Disclosure and Confidentiality

[42] Competition Act clause 56 subsection 4 The Competition Authority shall, on the basis of a reasoned written request and in the interests of the competition authority of another Member State, perform procedural acts prescribed in this Act and the Administrative Procedure Act in order to establish a possible violation of the provisions of Articles 101 and 102 of the Treaty on the Functioning of the European Union, and apply the state supervision measures provided for in the Law Enforcement Act. An official of the competition authority of another Member State may participate in procedural acts performed by the Competition Authority if necessary.

[43] Estonian position at the green paper proceedings, answer to question C, available at http://ec.europa.eu/competition/antitrust/actionsdamages/files_green_paper_comments/ministry_economic_affairs_communications.pdf).

[44] Jürgenson, S. Konkurentsiõiguse rikkumistest tulenevad eraõiguslikud kahjunõuded. Magistritöö, TÜ Õigusteaduskond, 2014. lk 64, available at http://dspace.utlib.ee/dspace/handle/10062/42952

[45] Code of Civil Procedure clause 356 subsection If the judgment fully or partially depends on the : existence or absence of a legal relationship which is the object of a court proceeding conducted in another matter or which existence must be established by an administrative proceeding or another court proceeding, the court may suspend the proceeding until the end of the other proceeding.

Q45: For victims of the competition infringement there is right to get access to the documents in the file of a competition authority through the request for information[46]. If the competition authority refuses to comply with the request for information or the file has a restriction on access to information, the victim can submit a challenge to the Data Protection Authority or petition to the court to require the submission of the documents or files[47].

Q46: According to the Code of Civil Procedure clause 5 subsection 2 a party may choose the facts submitted in order to substantiate the claim thereof as well as the evidence intended for proof of such facts.

In civil proceedings a party chooses and obtains such evidence from public authorities on the basis of transparency rules (please see the answer to Q7), through the court petition[48].

If it can be presumed that evidence could be lost or using the evidence afterwards could involve difficulties it´s possible to request pre-trial taking of evidence before proceedings are initiated[49].

In criminal proceedings the competition authority and the prosecutor have much larger possibilities. According to the Competition Act clause § 57 subsection 1 the Competition Authority has the right to request information from all the natural and legal persons and the representatives thereof and all state agencies and local governments and the officials. Competition Authority has the right to issue a precept upon failure to provide information or if provision of incomplete, incorrect or misleading.

Q47 and Q 48: The court is able to order *inter partes* disclosure in a case pending before it and also the disclosure from third parties and from competition authority when the claimant knows the content of the document and is able to describe such document and its content in the request and set out the reason why he or she believes the document to be in the possession of such person[50]. If the person from whom submission of a document is required refuses to submit the document the claimant may file an action against the person in possession of the document[51] .

[46] Public Information Act clause 6, available at https://www.riigiteataja.ee/en/eli/522122014002/consolide

[47] Public Information Act clause 46 , available at https://www.riigiteataja.ee/en/eli/522122014002/consolide

[48] Code of Civil Procedure clause 263 subsection 2: If a participant in a proceeding wishing to provide evidence is unable to do so, the participant in the proceeding may request the taking of the evidence by the court

[49] Code of Civil Procedure clause 224 subsection 1, available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

[50] Code of Civil Procedure clause 278, available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

[51] Code of Civil Procedure clause 282, available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

Court can request the disclosure of evidence directly from the Competition Authority. According to Competition Act clause 63 subsection 2[52] an official of the Competition Authority may disclose and use a business secret of an undertaking if this is necessary for establishing an offence related to competition, or a violation of this Act or Article 101 or Article 102 of the Treaty on the Functioning of the European Union and submit documents containing a business secret only to a court for preparation of the hearing of a criminal, civil, administrative or misdemeanour matter, or for the hearing of or making a court decision in such matter.

Q49: Court can´t order the disclosure of categories of evidence, only the certain documents.

Q50: The *implementation* of the rules of Directive 2014/104/EU, in particular of Articles 5 and 6, on disclosure of evidence, including crucially the possibility to order disclosure of relevant categories of evidence will affect the approach how the claimants take to substantiate their claims. Expectations are that as today in Estonia there are no restrictions to request documents in Art 6 (6), there will be fewer requests for access to documents in the file directed by claimants towards competition authorities and the denial of such documents might lessen the possibilities to claim damages[53].

Q51: National rules governing access to documents in the file of competition authorities and their use in court proceedings is a subject to general regulation governing cases when an evidence is located in government authority.

For the protection of certain documents the court can declare a proceeding or a part thereof closed for the protection of classified information intended for internal use[54]

According to Public Information Act clause 35 subsection 1 (2)[55] a holder of information is required to classify information collected in the course of state supervision proceedings until the entry into force of a decision made thereon as information intended for internal use.

The rules governing access to documents in the file of the competition authority need to be adopted. As mentioned in answer to Q50 there are no restrictions to requests of leniency statements and settlement submissions.

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[52] Competition Act, available at https://www.riigiteataja.ee/en/eli/519012015013/consolide

[53] Jürgenson, S. Konkurentsiõiguse rikkumistest tulenevad eraõiguslikud kahjunõuded. Magistritöö, TÜ Õigusteaduskond, 2014. lk 60, http://dspace.utlib.ee/dspace/handle/10062/42952

[54] Code of Civil Procedure clause 38 subsection 1, available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

Code of Criminal Procedure clause 12 subsection 1, available at https://www.riigiteataja.ee/en/eli/501042015002/consolide

[55] Public Information Act, available at https://www.riigiteataja.ee/en/eli/522122014002/consolide

Q52: Compared to the Directive and as mentioned in answer to Q50 we have the wider approach to the disclosure of evidence. To the date the disclosure of evidence is applicable generally and there are no specific rules for different claims.

Q53: the definition of "*confidential information*" is the same in public enforcement cases and private enforcement cases. The definition is provided in Competition Act clause 63 subsection 1: Information concerning the business activities of an undertaking the communication of which to other persons is likely to harm the interests of such undertaking, above all, technical and financial information relating to know-how, information concerning the methodology of validation of expenditure, production secrets and processes, sources of supply, volumes of purchase and sales, market shares, clients and distributors, marketing plans, expenditure and price structures and sales strategy are deemed to be business secrets.

Q54: Courts do have mechanisms to protect confidential information in proceedings relating to the public enforcement of competition law and in proceedings relating to the private enforcement of competition law.

The legal basis in private and public enforcement proceedings was mentioned in answer to Q51. In both of the proceedings court declares proceeding closed by a ruling made on its own initiative or at the request of a party. In a closed court session, the court may decide that written notes only may be taken. Court may caution, by a ruling, a person who is present in a closed court session to maintain the confidentiality of a fact which has become known to him or her in the session or from a document relevant to the matter. There are also restrictions to the persons in participating in a court session. Only the person who has justified interest or whose presence at the session is clearly in the interests of administration of justice to be present at a closed court session. There are legal sanctions if confidentiality is not respected, court may impose a fine.

The current practice will not be affected by the Directive.

Q55: For *protecting* confidential information the best types of measures which fit with our legal system Article 5 (3) (c) and Article 7 (3) of the Directive.

## VI. Specific Question on the Impact of a Cross-Border Element

Q 56 and Q57: As previously mentioned there have been no cases in force in Estonia relating private enforcement damages claims in competition law. Therefore it´s not possible to point out any difficulties concerning the practice of the courts implementing Regulation EU/44/2000 (Brussels I) or Regulation EU/1215/2012 or EC/864/2007 (Rome II).

Collective private enforcement actions are not allowed in our system as mentioned in chapter III.

VIII. Questions on ADR/Consensual Dispute Resolution:

Q58: Consensual disputes resolution mechanisms which can be used in Estonia in civil matters are compromise approved by court[56], arbitration[57] and conciliation through the independent and impartial conciliator - a natural person whom the parties have entrusted, sworn advocate, a notary, etc[58] .

As court must direct the parties to the compromise[59] it´s reasonalbe to assume that compromise approved by court is the most commonly used mechanism although there is no specific statistics available in Estonia.

Q59: Collective redress and class actions are not applicable in Estonia as mentioned in chapter III.

Q60: To the best of knowledge to date there have been no cases of infringements of Articles 101 and 102 TFEU that have been resolved through settlements or other forms of consensual dispute resolution or through the arbitration proceedings.

Q61: In Estonia the suspension of limitation period exists upon filing an action to court[60] (, conciliation and arbitration procedure. According to General Part of the Civil Code Act clause 160 and 161 a limitation period shall be suspended upon submission of a claim or equal to filing an action to a court or court of arbitration[61].

[56] Code of Civil Procedure clause 712, available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

[57] Code of Civil Procedure clause 4 available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

[58] Conciliation Act clause 2, available at https://www.riigiteataja.ee/en/eli/530102013028/consolide

[59] Code of Civil Procedure clause 4 subsection 4 provides: During proceedings, the court shall take all possible measures to settle a matter or a part thereof by a compromise or in another manner by agreement of the parties if this is reasonable in the opinion of the court. For such purpose, the court may, among other, present a draft of a compromise contract to the parties or request that the parties appear before the court in person, or propose that the parties settle the dispute out of court or call upon the assistance of a conciliator. If, in the opinion of the court, it is necessary in the interests of adjudication of the matter, considering the circumstances of the case and the process of the proceedings, it may order the parties to participate in the conciliation proceeding provided for in the Conciliation Act.

[60] also equal to filing an action are submission of a petition in pre-trial taking of evidence, submission of a first petition in a matter in order to receive procedural assistance for proceedings before the commencement of the judicial proceedings etc, General Part of the Civil Code Act clause 160 subsection 2, available at https://www.riigiteataja.ee/en/eli/528082015004/consolide

[61] General Part of the Civil Code Act, available at https://www.riigiteataja.ee/en/eli/528082015004/consolide

Articles 18 and 19 of Directive 2014/104/EU will affect current law. Directive is contradictory with principle that two persons can´t decide about the rights and duties of the third person without firstly discussing the matter with her or him[62].

Q62: In view of the judgement of the ECJ in the case "*Eco Swiss*" (C-126/97) there are no obstacles in the legal order in Estonia for a court to review an *arbitration award* which it considers to be contrary to Article 101 TFEU. According to the Civil Code Act clause 751 subsection 2 court annuls a decision if the decision of the arbitral tribunal is contrary to Estonian public order or good morals.

IX. Questions on Legislative Perspectives:

Q64: The *main challenges* for the implementation of Directive 2014/104/EU are coming from the Articles 9 (1) and 17 (2) of Directive.

According to article 9 (1) member state shall insure irrefutability of the infringement found by national competition authority or final decision of court. One of the most challenging tasks are changing the rules of civil and criminal procedure. Besides the answer to Q 42 it´s important to stress that according to the law the court judgment which has entered into force is binding on the participants in the proceeding in the part, where a claim filed by an action or counterclaim is adjudicated on the basis of circumstances which constitute the cause of the action unless otherwise provided by law[63], which means there are no binding effects for third persons.

Secondly the European Court practice shows that the final decision of courts are not absolutely final as the situations might occure when the supremacy of EU law and uniform and sufficient implementation outweigh the principle of legal certainty[64].

Directive article 17 (2) provides a presumption of cartel infringements causing harm. Additional to the reply to Q17 it´s important to point out that a cartel infringement in Estonian legislation system is not an administrative offence but a criminal offence.[65] The offence proceedings are dealt by Competition Authority and heard by Criminal Court. In criminal procedure, the central principle is the presumption of innocence - No one is required to prove his or her innocence in a criminal proceeding[66]. The procecutor - representer of the public prosecution - must prove the quilt of the infringer and also preclusions of unlawfulness.

[62] Jürgenson, S. Konkurentsiõiguse rikkumistest tulenevad eraõiguslikud kahjunõuded. Magistritöö, TÜ Õigusteaduskond, 2014, lk 70 http://dspace.utlib.ee/dspace/handle/10062/42952

[63] Code of Civil Procedure clause 457, available at https://www.riigiteataja.ee/en/eli/516062015009/consolide

[64] P. Schasmin, C. Ginter. Euroopa Liidu õigusest tulenevad võimalused jõustunud kohtuotsuste ja haldusaktide uueks läbivaatamiseks " Juridica 2015/7, lk 184-195

[65] Penal Code clause 400, available at https://www.riigiteataja.ee/en/eli/525092015001/consolide

[66] Penal Code clause 7 subsection 2, available at https://www.riigiteataja.ee/en/eli/525092015001/consolide

Those principles are challenging when implementing the article 17 (2) of Directive. The legislator must find a reasonable balance between administrative and criminal proceedings.