

The Impact of the Damages Directive on the Enforcement of EU Competition Law

Philipp Kirst

*Reviewed by Catarina Vieira Peres de Fraipont**

The question of how to combine public and private enforcement to achieve optimal results in terms of effective enforcement and deterrence of anti-competitive behaviour is a trending one in national and EU enforcers' minds. Recently, the head of the *Bundeskartellamt*, Andreas Mundt, admitted to being worried about the decline in leniency applications as undertakings fear follow-on damage claims. The worry is comprehensible given that about half of Germany's cartel cases are triggered by leniency applications. Tackling the decline in leniency applications due to fears of follow-on damage claims has become a key priority of the *Bundeskartellamt*.¹

The same worry plagues the European Commission, which is also investigating how the increase in private compensation claims is decreasing the attractiveness of applying for leniency, and whether it should adapt to the new reality. Margareth Vestager has publicly recognized that "risks are increasing" for companies applying for immunity as a result of the growing popularity of damage claims, which could "shift the balance of risks" for companies and decrease the attractiveness of the leniency programme.²

In this scenario, Philipp Kirst's *The Impact of the Damages Directive on the Enforcement of EU Competition Law* is a timely and necessary book for competition authorities and legislators in search of guidance. Through a thorough legal and economic analysis, the author addresses the question

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¹ Francesca Micheletti, "BKartA head says immunity from follow-on actions for leniency applicants remains on the agenda – Georgetown 2021" PaRR (parr-global.com), 14 September 2021.

² Speech by Margareth Vestager at the Italian Antitrust Association Annual Conference – "A new era of cartel enforcement", 22 October 2021.