



## **Damages Directive**

Welcome to the  
Brussels Session

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## **Setting the Scene**

### Speakers

- Diana Ungureanu - Romania
- Liam McKechnie - Ireland
- Adam Scott - UK

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## **Setting the Scene**

### *Principal Documents*

- TEU & TFEU especially Articles 101 & 102
- Regulation 1/2003
- Brussels Regulation (recast) 1215/2012
- Communication on quantifying damages
- Damages Directive 2014/104

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## **Setting the Scene**

### *Principal Themes*

- Right to full compensation – Article 3
- Effectiveness and equivalence - Article 4
- Sincere co-operation – Article 4(3) TEU
- Proportionality

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## Setting the Scene

### *Not covering*

- EU jurisprudence on infringement
- EU jurisprudence on investigations
- EU jurisprudence on scope of decisions
- Detailed consideration of jurisdiction
- Matters to be addressed in Bucharest
- Collective actions and settlements

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## Whose right to full compensation

- For “anyone” - Recital (3)
  - Individuals including consumers
  - Undertakings and
  - Public authorities
- Any natural or legal person - Article 3
- Irrespective of contractual relationship - Recital (13)
- We shall return to the practicalities

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## Full compensation for what ?

- Recitals (11), (12), (13) and Article 3
  - Damage causally linked to infringement
    - Actual loss
    - Loss of profit
    - Interest
  - Further developments envisaged
- But not overcompensation
  - (For example English law allows for punitive damages – disallowed for claims under this Directive)

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## Effectiveness & Equivalence

### Recital (11)

- National rules must observe the principles
- Not make it excessively difficult or practically impossible to exercise the right to compensation

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## Effectiveness, Proof and Asymmetry

- Burden of proving infringement rests with the claimant (Reg. 1/2003 Article 2)
- But the vital evidence is likely to be in the hands of others – Recitals (14) (15)
- Courts should be able to order disclosure by defendants & third parties including authorities
  - Chapter II and Reg.1/2003 Art.15(1)
- Principles of co-operation apply – Article 4(3) TEU
- As do some constraints

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## Effectiveness, Presumption & Estimation

- Courts are unlikely to get a full picture and must be proportionate – Recital (23)
- Courts must be empowered to estimate harm – Recital (46) & Article 17(1)
- Rebuttable presumption of harm from cartels – Recital (47) & Article 17(2)
- The Commission provides guidance and an NCA may provide particular advice – 17(3)

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## Sincere co-operation

- Between public and private enforcement
- Between courts and competition authorities
  - EU and national levels
    - Information on each other's proceedings
    - Jurisdiction and parallel proceedings
    - Disclosure and its limits
    - Deciding whether to stay proceedings
  - Getting or being given help from competition authorities

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## How we can help each other

- Identifying questions of practical importance
- Beginning to develop best practices in case management under the new Directive
- Highlighting hazards in implementing the Directive in particular national contexts
- Informing the Commission of areas where guidance could be improved

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