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## RIGHT TO COMPENSATION FOR DAMAGES FROM INFRINGEMENTS OF COMPETITION LAW

[Act 23/2018](#), establishing the legal framework on the right to compensation for damages from infringements of competition law, was published on 5 June 2018. This legislative act transposes into Portuguese law the Directive 2014/104/EU of the European Parliament and of the Council, of 26 November 2014, which established common rules to all Member States on actions for damages from infringements of competition law provisions.

The new legal framework regulates the right to compensation for damages resulting from restrictive practices, in violation of Articles 9, 11 and 12 of the Portuguese Competition Act (Act 19/2012, of 8 May), of Articles 101 and 102 of the Treaty on the Functioning of the European Union and/or of equivalent provisions of other Member States. Other actions based on infringements to these articles may also benefit from this legal framework.

In this context, and in order to strengthen the effectiveness of the civil liability regime for damages resulting from such infringements and to increase the deterrent effects of competition law infringements, Act 23/2018 introduces provisions concerning claims for compensation due for infringements of competition law. These provisions, nonetheless, at times seem redundant vis-à-vis the general legal framework currently in force.

A few highlights:

- The legal regime is applicable **regardless of previous findings of an infringement** by a national competition authority, the European Commission, national courts, or the Court of Justice of the European Union (i.e., in both *follow-on* and *stand-alone actions*).
- The **right to full compensation for damages** caused by an infringement of competition law is enshrined. The infringer should thus compensate the claimant for actual loss and for the loss of profit, plus the payment of interest.
- Liability for compensation of damages may fall not only on the undertakings or associations of undertakings in breach of competition law, but also on the entity(ies) which, during the infringement, have exercised a **decisive influence** over the infringer (which is presumed when the former(s) hold(s) 90% or more of the share capital of the latter).

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- As a rule, co-infringers are **jointly liable**.
- **Cartelists are liable for damages**, unless proved otherwise.
- In cases where the **quantification of damages** caused by an infringement of competition law is rendered impossible or excessively difficult, the Court may roughly estimate their amount. The Court may also request the Portuguese Competition Authority's assistance for this quantification.
- The limitation period for bringing actions for damages is **five years** from the date when the claimant knows, or "can reasonably be expected to know", the behaviour and the fact that such behaviour constitutes an infringement of competition law, the identity of the infringer and that the infringement caused him harm. The limitation period only starts running once the infringement has ceased, and is suspended if a competition authority decides to initiate investigation proceedings and until one year after the infringement decision has become final or after the proceedings are otherwise terminated.
- It is established that the final decisions of the Portuguese Competition Authority and/or of national appeal courts finding an infringement of competition law qualify as **irrebuttable presumptions** of the existence, nature and scope of the infringement. The decisions issued by competition authorities and courts of other Member States are merely a rebuttable presumption.
- Several provisions concerning the **disclosure of evidence** in actions for damages are adopted. However, the Act does not allow the disclosure of **leniency statements and settlement submissions** (not revoked), which **cannot be used as evidence**.
- The competence of the **Portuguese Competition, Regulation and Supervision Court** is extended in order to include actions for damages resulting *exclusively* from infringements of competition law provisions.

Act 23/2018 is expected to give a significant contribution to the development and efficiency of actions for compensation for infringements of competition law – and also of other actions based on competition rules –, thus reinforcing the perspectives of an effective private enforcement of this body of law.