

## Executive summary and overview of the national report for Estonia

<b>Section I – Summary of findings</b>	
<p>The statutory basis for the action for damages for breach of competition law, may be derived from non-contractual law provisions set out in Law of Obligations Act (LOA) Art. 1043 and either Art. 1045(1)(7) (behaviour which violates a duty arising from law) or Art. 1045(1)(8) (intentional behaviour contrary to good morals). However it must be noted, that there is no practice in Estonia yet on which legal basis such a claim could be submitted, thus the court may take a different view on the statutory basis of such claim.</p> <p>The statement of action may be brought at the location of the defendant or at the place, where the damage was caused. An action must be brought within three years as of the conclusion of restrictive agreement or any other circumstance, when the plaintiff became aware of the damage and the person obligated to compensate the damage, but not later than within ten years after the violation, whereby damage was caused.</p> <p>The plaintiff must prove that the defendant has breached competition rules and that such action caused damage to the plaintiff. Causation between the act of the defendant breach of competition rules must be proved as the first step, whereafter causation between the defendant's act and the damage to the plaintiff must be proved. It is unclear from the wording of the laws, whether direct or indirect causation must be proven.</p> <p>The plaintiff has to prove the existence and amount of injury. If it occurs necessary, the plaintiff must convince the court that there are no grounds for precluding the unlawfulness of the action of the defendant. The fault of the defendant is presumed, thus the plaintiff must not prove the fault of the defendant, it is up to the defendant to prove that he had no fault in the breach of competition rules. It is not clear, whether the defendant must prove the lack of intent or negligence.</p> <p>The following evidence is acceptable: testimony of a witness, statements of parties, documentary evidence, physical evidence, on-the-spot visit of inspection and expert opinion. None of these forms of evidence has a predetermined weight, all the evidence are assessed subjectively by the court, however, in complex damages cases expert opinion may appear to be the most suitable form of evidence in proving the amount of damage.</p> <p>Only damages, which have actually occurred to the plaintiff, may be awarded. Such damages may include direct damages and loss of profit. Any benefit, which has been received by the plaintiff as a result of the unlawful causing of damage by the defendant must be deducted from the compensation amount. Furthermore, if the plaintiff is also responsible for the breach of competition rules, then the compensation amount may be reduced by the extent that the plaintiff contributed to the damage.</p> <p>If the plaintiff wins the case, then the legal costs in the amount of up to 5 % of the awarded amount may be recovered from the defendant.</p>	
<b>Section II – status quo and forthcoming reforms – action for damages</b>	
<b>A. Legal Basis</b>	
(i) Is there an explicit statutory basis?	Claim may be based on Art. 1043 and 1045(1)(7) or 1045(1)(8) of LOA.
(ii) Is this statutory basis different from other actions for damages?	Similar with all actions for damages for unlawful causing of damages in cases of breach of law or behaviour contrary to good morals.
(iii) Is there a distinction between EC and national law in this regard?	No
<b>B. Competent court</b>	
(i) Which courts are competent?	All civil courts, whereas an action must be brought with the court of first instance, which has jurisdiction.
(ii) Are there specialised courts for private enforcement of competition rules?	No
<b>C. Standing</b>	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	All interested natural or legal persons having active legal capacity may bring an action. Further limitations: there must be (i) no prior effective court judgement in the case (ii) no arbitration clause, some further limitations.

(ii)	What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	Possible connecting factors: domicile of defendant, place where the damage has been caused, place where the property of the defendant is located.
(iii)	Is there a possibility of collective claims, class actions, actions by?	No.
D. Procedural and substantive conditions		
(i)	What forms of compensation are available?	Direct damages, loss of profit. Generally compensation by monetary payment. Termination of infringement.
(ii)	What are the other forms of civil law liability (if any)?	None.
(iii)	Does the infringement have to imply fault?	Yes.
(iv)	If so, is fault based on objective criteria?	No.
(v)	Is bad faith (intent) required?	Disputable whether intent or negligence is required.
(vi)	Can negligence be taken into account?	Disputable whether intent or negligence is required.
E. Rules of evidence		
a. General		
(i)	Burden of proof and identity of the party on which it rests?	Plaintiff has to prove: (i) defendant committed an act, which caused damage; (ii) the unlawfulness of the above act; (iii) causal link between the act of the defendant and the damage. Defendant has to prove absence of fault.
(ii)	Standard of proof	Has not been established, subjective.
(iii)	Limitations concerning form of evidence	Specific rules in respect of each particular form of evidence, there are no general limitations.
(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	Not recognised as known in common law. "Production of documents" possible.
(v)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	Not recognised as known in common law. "Production of documents" possible.
(vi)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	Not recognised as known in common law. "Production of documents" possible.
b. Proving the infringement		
(i)	Is expert evidence admissible?	Yes.
(ii)	To what extent, if any, is cross examination permissible?	Permissible. The court may exclude leading and irrelevant questions.

(iii)	Under which conditions does a statement and/or decision by a national competition authority, a national court, an authority from another EU Member State have evidential value?	Documentary evidence, provided that has relevance. Circumstances in civil court (national and foreign) decision between the same parties are considered as proven. Criminal court decision is binding with regard to whether the act occurred and whether the person in question committed such act.
c.	Proving damage	
(i)	Are there any specific rules for evidence of damage?	No.
d.	Proving causation	
(i)	Which level of causation must be proven: direct or indirect?	Unclear.
F. Grounds of justification		
(i)	Are there grounds of justification?	Yes, must be established in the court practice, whether these grounds can justify the violation of ECA: (i) objective of ECA provision is other than to protect the victim; (ii) victim consents to the damage; (iii) acting in necessity. Not excluded that <i>force majeure</i> could be considered as justification.
(ii)	Is the 'passing on' defence taken into account?	Yes.
(iii)	Are 'indirect purchaser' issues taken into account?	Unclear
(iv)	Is it relevant that plaintiff is (partly) responsible for the infringement (contributory negligence leading to apportionment of damages) or has benefited from the infringement?	Yes, amount of damage is reduced.
G. Damages		
a.	Calculation of damages	
(i)	What economic or other models are used by courts to calculate damage?	No uniform practice.
(ii)	Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	For breach of ECA damages can be awarded for injury outside Estonia only if the breach of ECA has occurred in Estonia.
(iii)	Are ex ante (time of injury) or ex post (time of trial) estimates used?	Both can be used.
(iv)	Are there maximum limits to damages?	No.
(v)	Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	Injury suffered.
(vi)	Are punitive or exemplary damages available?	No.

(vii)	Are fines imposed by competition authorities taken into account when settling damages?	May be.
b. Interest		
(i)	Is interest awarded from the date the infringement occurred the date of the judgment or the date of a decision by a competition authority?	From the date the infringement occurred.
(ii)	What are the criteria to determine the levels of interest?	Provided in the law.
(iii)	Is compound interest included?	No.
H. Timing		
(i)	What is the time limit in which to institute proceedings?	3 years as of the time, when plaintiff became or should have become known of damage and torfeasor but not later than within 10 years as of the violation.
(ii)	On average, how long do proceedings take?	140 days in first instance; 3-4 months in second instance; 3-4 months in Supreme Court.
(iii)	It is possible to accelerate proceedings?	Not without the consent of both parties.
(iv)	How many judges sit in actions for damages cases?	1 in first instance (+ exceptionally 2 lay judges); 3 in second instance and Supreme Court.
(v)	How transparent is the procedure?	Court hearing are open to public unless declared closed for the protection of business secret. Court file may not be inspected by third parties during the proceedings, can be inspected after the court decision is in force unless the hearing was held <i>in camera</i> .
I. Legal costs		
(i)	Are Court fees paid up front?	State fee and certain costs for procedural operations are paid up front.
(ii)	Who bears the legal costs?	Each party, unless party has been relieved from paying the legal costs.
(iii)	Are contingency fees permissible?	Yes.
(iv)	Are contingency fees generally available for private enforcement of EC competition law?	Possible, not common.
(v)	Can the plaintiff/defendant recover costs?	Costs up to 5 % of the awarded or dismissed claim amount may be recovered from the losing party.
(vi)	What are the different types of litigation costs?	(i) state fee; (ii) costs essential to proceedings (e.g. fees for experts, interpreters and translators and compensation for witnesses; costs of obtaining documentary evidence; costs for legal assistance; wages which a party does not receive due to absence from work and travel and accommodation expenses, etc); (iii) security on cassation.
(vii)	Are there any national rules for taxation of costs?	No specific rules.
(viii)	Is any form of legal aid insurance available?	No.
(ix)	What are the likely average costs in an action	Impossible to estimate.

brought by a third party in respect of a hard-core violation of competition law?	
<b>J. General</b>	
(i) Are some of the answers to the previous questions specific to the private enforcement of competition rules?	No.
(ii) If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	Not applicable.
(iii) EC competition rules are regarded as being of public policy. Does that influence any answers given?	Not clear, whether Estonian competition rules will be regarded as being public policy. If public policy, certain specific procedures: (i) default judgement can not be made in the preliminary proceedings; (ii) discontinuance of an action can not be accepted nor settlement of the parties may not be approved if this is detrimental to the public interest; (iii) a mediator may not be appointed; (iv) court may actively gather evidence; (v) court may involve Estonian Competition Board in the proceedings.
(iv) Are there any differences according to whether defendant is public authority or natural or legal person?	No.
(v) What are the key differences, if any, from region to region <u>within</u> the Member State as regards damages actions for breach of national or EC competition rules?	None.
(vi) Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	No.
(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	The legal framework is very novel, there is no court practice, thus the courts may interpret the provisions of the law differently than has been provided in this report. Claims for damages for breach of EC competition rules may face difficulties due to lack of knowledge of EC <i>acquis communautaire</i> .
(viii) Please provide statistics about the number of cases based upon the violation of EC competition rules in which the issue of damages was decided upon	None.
<b>Section III: Means to facilitate private enforcement of Articles 81 and 82 EC</b>	
(i) Which of the above elements of claims for damages as applied in each Member State and accession country provide scope for facilitating the private enforcement of Articles 81 and 82 EC?	General legal framework is in place, there are no provisions specific for claims for breach of competition rules.
(ii) How could that be achieved?	<ul style="list-style-type: none"> <li>- Supplement to Art. 1045 LOA or ECA to include restriction of ECA as ground for unlawfulness;</li> <li>- Supplement to LOA or ECA on the necessary degree of fault;</li> <li>- Supplement to LOA or ECA to provide specifically what are the justifications;</li> <li>- Explanation to LOA or ECA on the necessary causation;</li> <li>- Abolishment of state fee upon bringing an action;</li> <li>- Specialisation of judges.</li> </ul>
Unclear whether arbitration is available between parties	

(iii)	Are alternative means of dispute resolution available?
	to a restrictive agreement. In other cases arbitration not available. Mediation, conciliation, not available.
(iv)	If so, to what extent are they successful?
	We have no knowledge on this.