

## **UK implementation of the EU Damages Directive (2014/104/EU)**

**Department for Business, Innovation and Skills**

**RPC rating: Fit for purpose**

### **Description of proposal**

The proposal implements the EU Damages Directive in the UK. The Directive makes it easier to bring private actions for damages against businesses that have infringed EU competition law. A case is in scope of EU competition law if it affects trade between Member States. The Directive very closely matches current legislation but requires some minor changes to UK law. It is difficult to predict the impact of the proposal, as there is little legal precedent relating to these changes, but the Department expects that it will lead to a small number of additional cases being brought.

The Department sets out four policy options in the consultation IA. The preferred option would introduce a single regime that applies across both EU and domestic competition law, and implement the regime three months early. This will widen the scope, so that changes will affect all private actions cases, not just those in scope of EU competition law. It will also implement the Directive early, with implementation on 1 October 2016, rather than the deadline of 27 December 2016.

### **Impacts of proposal**

The Department explains that the proposal will make it slightly easier to bring private actions against businesses. The Department expects that there will be a small increase in the number of cases brought before the courts (central estimate of 2.5% – 3.75% dependent on the option taken). This will impose additional expected legal costs and costs of damages on businesses totalling between £3.1 million and £4.6 million each year, depending on the option chosen. However, under the ‘loser pays’ principle of UK competition law, these costs would only fall on businesses that are non-compliant with existing competition law.

The proposal will deter future illegal competition activity. This benefit is valued at £10.6 million each year under the preferred option, based on the analysis in the previous Private Actions IA. This benefit is included in the overall NPV of the policy. There will also be additional damages awarded to those parties that have suffered as a result of competition law infringement, as a consequence of more cases being brought. Any such damages – net of legal costs – would represent a transfer from non-compliant business to consumers or other businesses. The Department values this transfer at between £1 million and £1.5 million each year. As this is a transfer, it is not included in the NPV of the policy.

## Quality of submission

### Costs

The Department assumes that all costs to business will not count towards the business impact target, as they are incurred by non-compliant businesses. This appears reasonable.

At final stage, the IA would benefit from a discussion on whether the proposal might potentially encourage precautionary behaviour to reduce the threat of a private damages action. If there were such a potential, some businesses might face higher legal and other (indirect) costs.

### Benefits

The Department has assumed that any additional damages awarded are merely a transfer, so the net effect is zero. However, as the transfer is from non-compliant to individuals and compliant businesses, there could be a net benefit to business for OITO purposes. The Department should clarify the extent to which compliant businesses benefit and provide an EANCB figure at final stage that estimates the benefits to those businesses. As the preferred option includes early implementation and widens the scope to include domestic competition law, the Department should also establish what proportion of this benefit is in scope of the business impact target.

In addition, at final stage, the Department should test its assumptions concerning the increase in the number – and outcome - of legal cases. The final stage IA should also set out the evidence supporting the assumptions rather than cross-referencing a previous impact assessment.

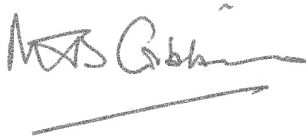
### Initial departmental assessment

Classification	In scope – early implementation and applicability to domestic competition law.
EANCB	£0
Business net present value	£0 million
Societal net present value	£90.08 million

### RPC assessment

Classification	In scope - partially
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Small and micro business assessment	Not required (European origin)
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**Michael Gibbons CBE**, Chairman