



# IADC - ICCC

## Follow Up on “Follow-on” Actions



***21st Century Government: Friend or Foe?***

***How to work with it and around it***

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# Plan

- Status of implementation of the Damages Directive
- Status of the Guidelines to be issued by the Commission



# Implementation

- Deadline expired on 27 December 2016
  - Only 7 Member States met deadline
- 23 Member States have currently **communicated full transposition**
  - Malta has notified partial transposition
- 7 Reasoned Opinions were sent out in July
  - 5 Member States have yet to comply with the requirement to inform the Commission of implementation



# Commission's current activities

- Completeness and conformity check
  - Every implementing measure is checked and, if not complete and conform, Commission may decide to bring infringement proceedings for incorrect implementation
- Complete
  - every rule in each provision must be transposed into national law (see exhaustive table provision by provision)
- Conform
  - national provisions must have the same effect in practice as the Directive



# Issues

- 28 different legal systems and traditions
- Problematic provisions include:
  - Disclosure
    - Confidential information and effective protection measures (Article 5(4))
      - Divergence between Member States on how this is transposed and what measures are provided for
    - Black list (Article 6(6))
  - Limitation periods
    - “at least five years” (Article 10(3))
    - many Member States have shorter periods
  - Passing-on of overcharges (Chapter IV)
    - Technical, complex, economic aspects that call for experts



# Guidelines and Guidance

- Passing-on Guidelines
- Guidance on Confidentiality



# Passing-on Guidelines

- Article 16
  - the Commission will *“issue guidelines for national courts on how to estimate the share of the overcharge which was passed on to the indirect purchaser”*
- The Commission will be assisted by the *Study on the Passing-on of overcharges*
- Economic theory and quantitative methods



# Guidance on Confidentiality

- Article 5(4)
  - Member States to have effective measures for protecting the confidential information in disclosed evidence
- Recital 18
  - Non-exhaustive list of measures which the guidance will further elaborate on
  - Practical framework for using such measures in practice
    - Definition of measures
    - Explanation and examples of use in practice
  - Based on existing practice in Member States
    - Example of confidentiality rings in the UK
    - Issues – Ref to *Alstom v Commission* case (T-164/12 R)
- Framework for national judges to use in practice



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