

LEAR COMPETITION FESTIVAL

ROME 21-23 SEPTEMBER 2022

Managed by



**Osborne
Clarke**

Parallel Session

Leniency and Damages Litigation: Trends in cartel enforcement and follow-on actions

THURSDAY, September 22nd - 17:15 - 18:00(CET)



Valeria Veneziano

Osborne Clarke



Thomas Funke

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Tilman Makatsch

Deutsche Bahn



Xandra Reintjes

DG Competition, European
Commission



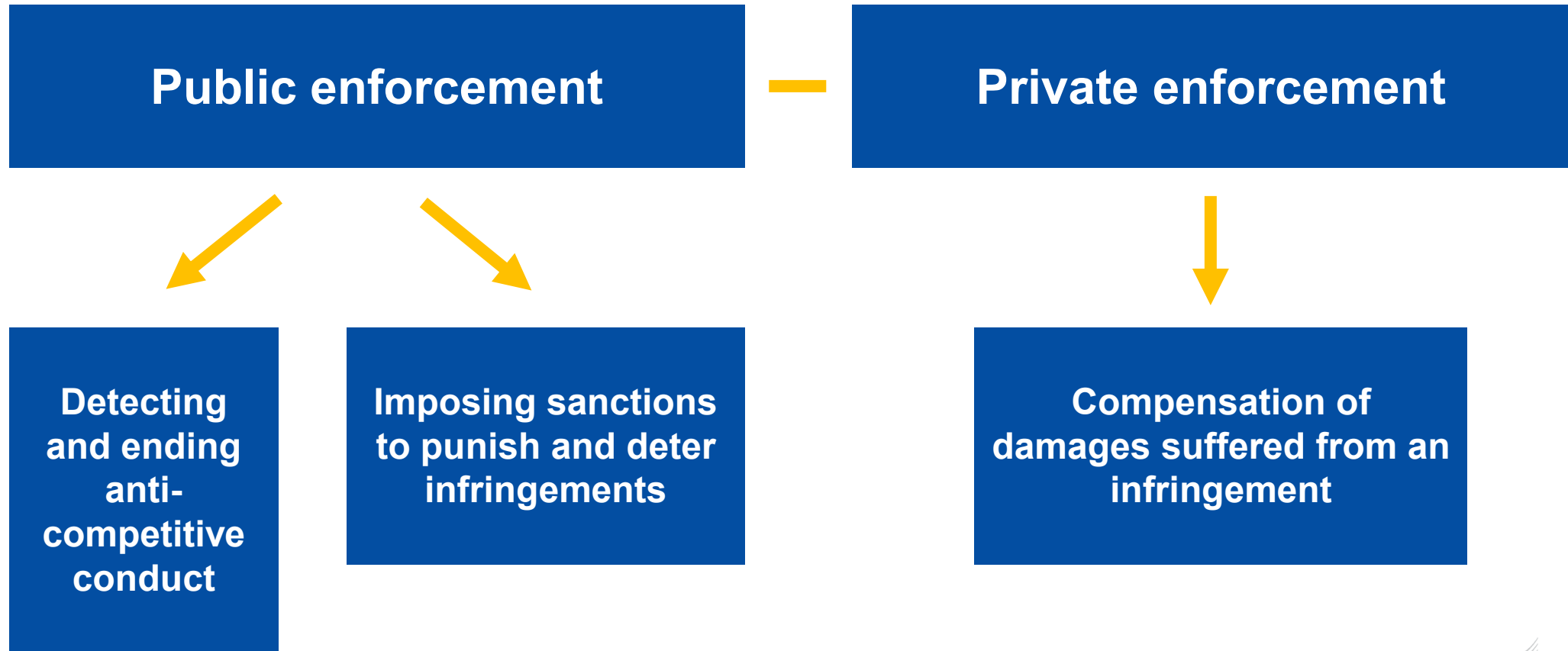
The interplay between public and private enforcement

LEAR Competition Festival – 22 September '22

Xandra Reintjes

DG Competition, European Commission

Different goals in public and private enforcement



The interplay between public and private enforcement: complementarity

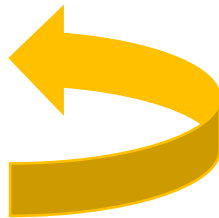
Public enforcement

- Facilitation of private enforcement through stimulation of follow-on actions
- Clarifying the law



Private enforcement

- Contribution to deterrence through increasing overall infringement costs
- Filling the gap for cases only partially addressed by public enforcement
- Clarifying the law
- Compensation as mitigating factor in public enforcement (not at Commission level)

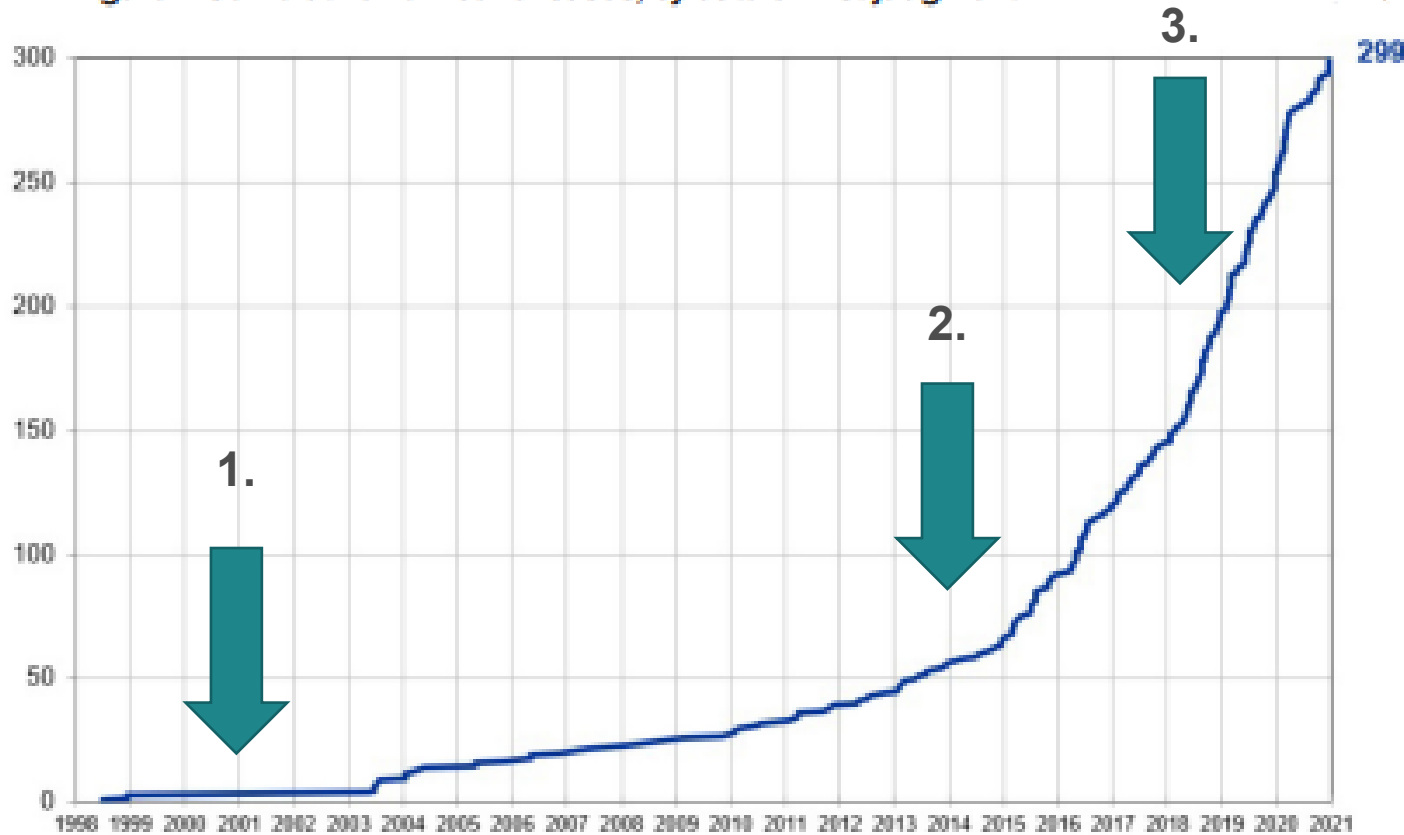


Two goals of the Damages Directive

- Directive 2014/104/EU has **two goals**:
 - I. Facilitate damages actions in the EU (Article 1(1))
(see also Article 3 on the right to full compensation)
 - II. Strike the right balance between public and private enforcement (Article 1(2))
(see also recital 6: both tools are required to interact to ensure maximum effectiveness of the competition rules)

Private enforcement – a clear rise in damages actions in Europe

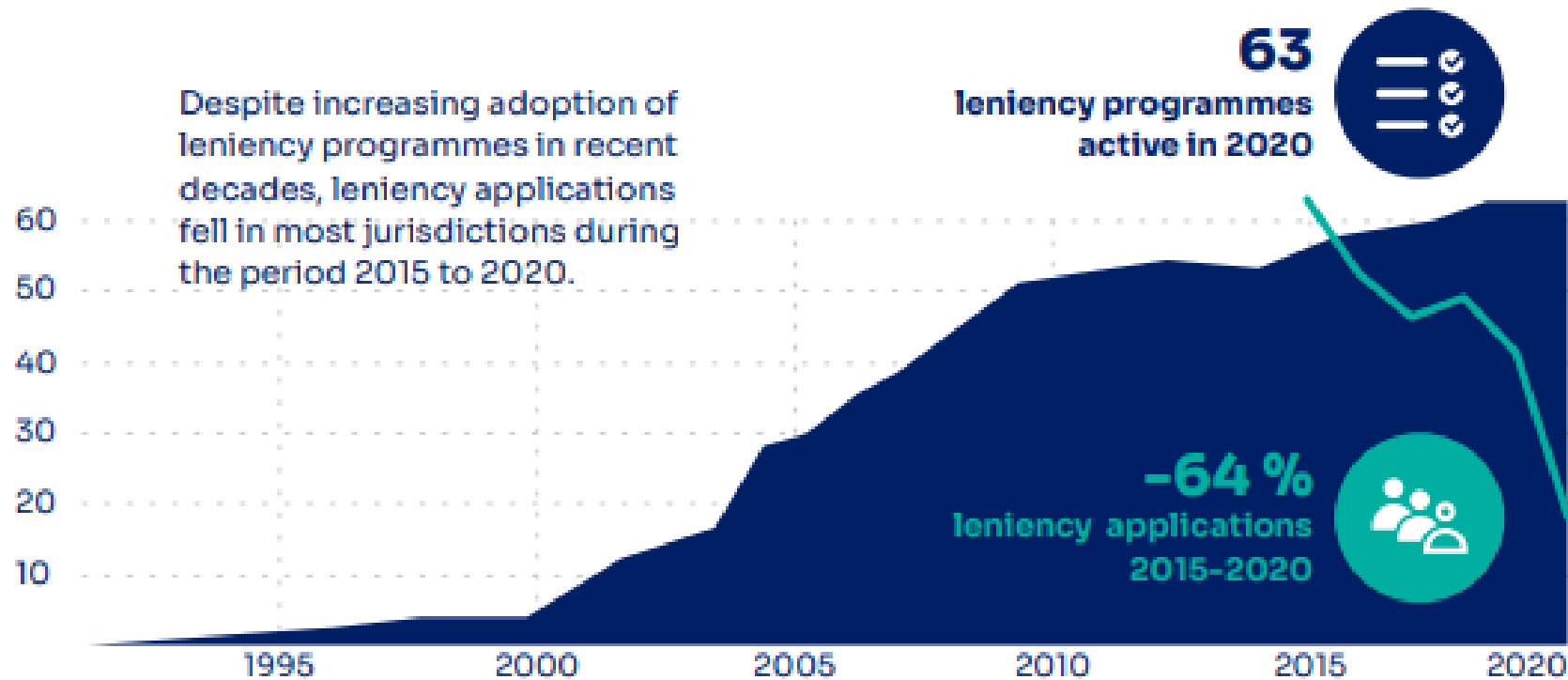
Figure 1. Cumulative number of cases, by date of first judgment



1. CJEU *Courage and Crehan*: right to compensation
2. Adoption Damages Directive
3. Implementation by all MS

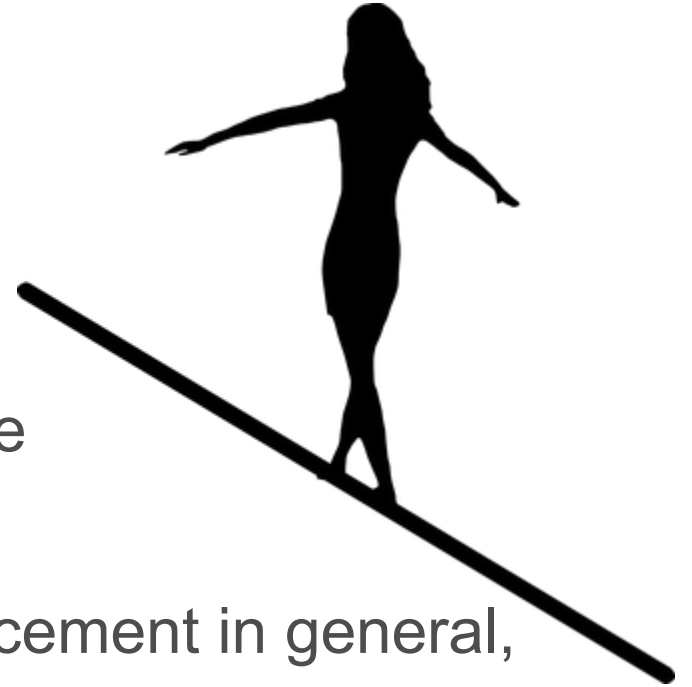
Source: Concurrences N°3-2021 | Legal practices | Jean-François Laborde | Cartel damages actions in Europe

Public enforcement – a multiplication of leniency programmes; downward trend in applications



NOTE: Data based on the 63 jurisdictions in the OECD CompStats database that have a leniency programme.
SOURCE: OECD CompStats database.

Striking the right balance?



- The Commission is aware of the decrease in leniency applications and actively engaging in understanding the reasons behind it, also reaching out externally
- The Commission will continue to focus on strong enforcement in general, *ex officio* and otherwise
- The Commission will look into short term and longer term possibilities to enhance public enforcement, e.g. through market surveillance/data analytics, increasing transparency/providing public guidance and international co-ordination via ICN to streamline systems and reduce burdens



**THANK YOU FOR YOUR
ATTENTION!**

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