

Competition - Estonia

Draft Leniency Programme Prepared

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The Ministry of Justice has drafted amendments to the Penal Code, the Code of Criminal Procedure and the Competition Act regarding the introduction of a leniency programme designed to assist in the battle against cartels. The amendments were presented to the public at the beginning of 2009.

Currently there is a clause in the Criminal Procedure Act that allows prosecutors to release a person from criminal liability as a reward for cooperation with the Prosecutors' Office. However, it does not give cartel participants sufficient security to be certain they will receive immunity if they inform the authorities of a cartel. The introduction of the leniency programme, which is similar to programmes in the European Union and its member states, is intended to facilitate the fight against cartels. The new programme should give cartel participants greater security in regards of receiving immunity, as it should become possible to forecast the consequences of informing the authorities of a possible cartel.

The Competition Board, together with the Prosecutors' Office, commenced investigations into six cartel cases in 2008. It is believed that the proposed amendments will increase the number of revealed cartels.

The proposed programme is drafted to act similarly to the EU programme in respect of criminal law. A leniency application must be submitted to the Competition Board in a form that can be reproduced in writing and that allows the date and time of its submission to be ascertained.

In order to receive leniency, an applicant must:

- submit the application in his or her name;
- terminate participation in the cartel in coordination with the prosecutor;
- reveal to the authorities all necessary documents and evidence;
- cooperate with the authorities until the end of the criminal procedure;
- not have initiated the cartel; and
- not destroy or hide evidentiary documents, or reveal information of the application or the criminal procedure, without the consent of the prosecutor.

The criminal procedure will be terminated for the applicant who is first to submit an application and fulfils all of the abovementioned conditions. If the criminal procedure has been started before an application is submitted, it shall be terminated if the applicant is the first to submit an application together with documents that enable the prosecutor to bring charges. If the applicant does not fulfil all the leniency conditions, it is possible to receive a reduction of penalties in proportion to his or her help in the procedure.

As no timeline for the adoption of the proposed amendments has been set, it is uncertain when the new leniency programme will be applied.

For further information on this topic please contact [Kaja Leiger](#) at [Luiga Mody Hääl Borenius](#) by telephone (+372 665 1888) or by fax (+372 665 1899) or by email (kaja.leiger@lmh.ee).

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