White Paper on damages actions for breach of the EC antitrust rules

2008/2154(INI) - 02/03/2009

The Committee on Economic and Monetary Affairs adopted the report drawn up by Klaus-Heiner LEHNE (EPP-ED, DE) on the White Paper on damages actions for breach of the EC antitrust rules.

The report recalls that competition policy enhances the European Union's economic performance and makes a decisive contribution towards the achievement of the Lisbon Strategy goals. It notes that the Court of Justice of the European Communities has ruled, that individuals and undertakings may bring proceedings for damages for a breach of the EC competition rules and that the issues addressed in the White Paper concern all categories of victim, all types of breach of Articles 81 and 82 of the EC Treaty and all sectors of the economy.

The report welcomes the White Paper and stresses that the EC competition rules and, in particular, their effective enforcement, require that victims of EC competition law infringements must be able to claim compensation for the damage suffered. It notes, however, that, the Commission has not yet specified a legal basis for its proposed measures.

The committee also notes that the Commission published a Green Paper on the Community's possible options for action in the field of consumer protection law and has announced the publication of another policy paper in 2009. It stresses, however, that measures at Community level must not lead to arbitrary and unnecessary fragmentation of procedural nationals laws. It therefore calls on the Commission to undertake an examination of the possible legal bases and how to proceed in a horizontal or integrated way, and to refrain, in the meantime, from presenting any collective redress mechanism for victims of EC competition law infringements without allowing Parliament to participate in their adoption in the codecision procedure.

The report notes that achieving a once-and-for-all settlement for defendants is desirable to reduce uncertainty and exaggerated economic effects. It therefore calls for the possible introduction of a settlement procedure for mass claims that can be initiated either by the parties before taking legal action or that can be ordered by the court before which an action is brought. It calls on the Commission to seek ways of achieving greater certainty including evaluating whether any subsequent claimants should normally be expected to avail themselves of no more than the outcome of the mass settlement.

The report recalls that the competition authorities are asked to take account of the compensation paid or to be paid when determining the fine that is to be imposed upon the defendant undertaking. However, this should not interfere with the victim's right to full compensation of the damage suffered or with the need to maintain the deterrent objective of fines. In this context, it calls on the Council and the Commission explicitly to incorporate into Regulation (EC) No 1/2003 those fining principles and further improve and specify them.

MEPs stress that claimants in collective redress actions must not be in a better or worse position than individual claimants. In this context, they call for the application of collective redress mechanisms of the principle that the party bringing the claim must provide evidence for their claim. They also call for the Commission to be required to allow victims of competition infringements access to the necessary information for exercising damages actions and stress that Regulation (EC) No 1049/2001 defines a right of access to documents of the institutions. The Commission must interpret this regulation accordingly, or propose an amendment thereof.

The report notes that the application of the leniency programme makes a major contribution towards uncovering cartels, thus enabling private prosecutions possible in the first place. It calls on the Commission, in order not to undermine but to facilitate the right of victims to bring actions for damages, as a priority, to avoid abandoning cartel and competition proceedings and to bring all those that are significant to a proper conclusion with a clear decision.

Lastly, MEPs insist that Parliament must be involved, in the framework of the codecision procedure, in any legislative initiative in the area of collective redress and that any legislative proposal should be preceded by an independent cost-benefit analysis.