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

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The European Parliament adopted by 498 votes to 11, with 17 abstentions, a resolution on the White Paper on damages actions for breach of the EC antitrust rules.

The resolution stresses that competition policy enhances the European Union’s economic performance and recalls that the Court of Justice of the European Communities has ruled, with a view to guaranteeing the full effectiveness of Article 81 of the Treaty, that individuals and undertakings may bring proceedings for damages for a breach of the EC competition rules.

The Parliament 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 and that further consideration must be given to **identifying a legal basis** for the proposed interventions into national proceedings for non-contractual damages and national procedural law.

Improving collective redress: MEPs recall that individual consumers but also small businesses, especially those who have suffered dispersed and relatively low-value damage, are often deterred from bringing individual actions for damages by the costs, delays, uncertainties, risks and burdens involved. They stress, in this context, that collective redress, which allows the aggregation of individual actions for damages for breaches of the EC competition rules, is an important deterrent. They welcome, in this respect, the Commission's proposals that mechanisms be set up to improve collective redress while avoiding excessive litigation.

Legal bases and integrated approach: the Parliament 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

Settlement procedure for mass claims: the resolution notes that achieving a once-and-for-all settlement for defendants is desirable to reduce uncertainty and exaggerated economic effects that are capable of impacting on employees, suppliers, subcontractors and other innocent parties. MEPs therefore call 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. They call 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.

Avoiding abusive litigation: MEPs take the view that the power to prosecute in representative actions should be made available in the Member States to state bodies such as the Ombudsman or to qualified

entities such as consumer associations. An ad-hoc authorisation to pursue such representative actions should primarily be considered for trade associations which arrange proceedings for actions for damages for companies.

Fines: the resolution reiterates that, in order to encourage undertakings to compensate the victims of illicit behaviour as quickly and effectively as possible, 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. MEPs note, however, that this should not interfere either with the victim's right to full compensation of the damage suffered or with the need to maintain the deterrent objective of fines, and that it should not result in lengthy and uncertain settlement finality for companies. They call on the Council and the Commission explicitly to incorporate into Regulation (EC) No 1/2003 those fining principles and further improve and specify them in order to comply with the requirements of the general legal principles.

Providing evidence: 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.

Leniency programmes: the resolution notes that the application of the leniency programme makes a major contribution towards uncovering cartels, thus enabling private prosecutions possible in the first place and calls for ways of maintaining the attractiveness of the application for leniency programme to be examined. 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.

Involving the Parliament: 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.