# Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the EU

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The Council agreed on a **general approach** on a draft directive concerning actions for damages for breaches of antitrust law which aims to facilitate claims by victims of infringements of EU competition rules. It invited the Presidency to start negotiations with the European Parliament on the basis of the general approach with a view to reaching an agreement at first reading.

The main points of the compromise were as follows:

**Legal basis**: the compromise text maintains the dual legal basis as proposed by the Commission.

**Limits on the use of evidence obtained solely through access to the file of a competition authority (Article 7)**: the wording has been amended in order to allow Member States to protect the documents that have been obtained by a natural or legal person solely through access to the file of a competition authority by either classifying them as inadmissible or by other means, using the tools available under national law.

Such a provision, while securing the protection of the identified documents, does not predetermine the ways in which Member States shall secure such protection.

**Effect of national decisions (Article 9)**: the Presidency compromise removes the cross-border binding effect of national decisions and only obliges Member States to accept them as means of evidence, in line with applicable national procedural rules.

**Joint and several liability (Article 11)**: the objective of the Commission proposal was to strike the right balance between private and public enforcement of competition law.

The proposal states that it should be avoided that by paying contribution to non-settling co-infringers for damages they paid to non-settling injured parties, the total amount of compensation paid by the settling co-infringers exceeds their relative responsibility for the harm caused by the infringement. It is therefore appropriate that the immunity recipient is liable in principle only to his own direct and indirect purchasers or providers. The immunity recipient should remain fully liable to the injured parties other than his direct or indirect purchasers or providers only where they cannot obtain full compensation from the other infringers.

The Presidency compromise deletes the sentence, thereby limiting the protection of leniency applicants against civil liability to what is necessary to neutralise the negative effect of actions for damages on leniency programmes and public enforcement.