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

2013/0185(COD) - 04/02/2014 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Andreas SCHWAB (EPP, DE) on the proposal for a directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

The Committee on Economic and Monetary Affairs, exercising its prerogatives as an associated committee under Parliament's Rule 50 of the Rules of Procedure, also gave an opinion on the report.

The committee recommended that Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Scope of the Directive: anyone who has suffered harm caused by an infringement of Article 101 or 102 TFEU or of national competition law by an **undertaking or by a group of undertakings** could effectively exercise the right to claim full compensation for that harm from that undertaking or group.

Right to full compensation: a person who has suffered harm caused by an infringement of Union or national competition law should be able to claim and obtain full compensation for that harm. Full compensation shall not include other damages such as punitive damages or multiple damages, and penalties leading to overcompensation. The total level of fines and damages paid shall not be affected by proceedings on the part of the competition authority that follow on from or precede a private action.

Disclosure of evidence: Member States should ensure that in a proceeding relating to an action for damages before a national court in the Union upon request of a claimant who has presented a **reasoned justification** containing available facts and evidence sufficient to support the plausibility of its claim for damages. National courts can order the defendant or a third party to disclose relevant evidence. Member States shall ensure that national courts request the disclosure of evidence from the national competition authority where the defendant does not provide the evidence requested.

Member States should ensure that: (i) national courts **limit disclosure of evidence to that which is proportionate** and which relates to an action for damages in the Union; (ii) national courts have the power to order disclosure of evidence containing confidential information where they consider it relevant to the action for damages; (iii) national courts give full effect to applicable legal professional privilege under Union or national law when ordering the disclosure of evidence.

Interested parties in possession of a document requested for disclosure should be **heard** before a national court orders disclosure regarding information derived from the specified documents.

Disclosure of evidence included in the file of a competition authority: it is stipulated that as a general rule, national courts shall not order a party or a third party to disclose either of the following categories of evidence in any form: (a) leniency statements; or (b) settlement submissions.

Where a claimant has presented reasonably available facts and evidence showing plausibly that certain data or information pertaining to a document included in the file of a competition authority which cannot be otherwise provided is necessary for determining the damage and supporting its claim, national courts, may: (a) access and analyse such a document; (b) hear the interested parties in the possession of it; and (c) order the limited disclosure of the relevant data.

Limitation periods: the limitation period should begin on the latest date after an injured party knows.

Joint and several liability: where the undertaking is a small or medium-sized enterprise, has not led or induced the infringement of competition law by other undertakings and has shown that its relative responsibility for the damage caused by the infringement is less than 5 % of the total, that it shall only be liable to its **direct and indirect purchasers**.

Suspensive effect of consensual dispute resolution: according to the proposal, Member States shall ensure that national courts seized of an action for damages may suspend proceedings where the parties to those proceedings are involved in consensual dispute resolution concerning the claim covered by that action for damages. Members considered that this suspension should not be longer than one year.

Following a consensual settlement, a competition authority may consider the compensation paid prior to the decision as a mitigating factor when setting fines.

Review: the Commission should review this Directive and shall submit a report to the European Parliament and the Council by four years after the date of entry into force of this Directive. Where appropriate, that review should be accompanied by a legislative proposal.