# Competition: damages actions for breach of the EC antitrust rules. Green paper

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The European Parliament adopted a resolution based on the own-initiative report by Antolín **SÁNCHEZ PRESEDO** (PES, ES) in response to the Green Paper on damages actions for breach of the EC antitrust rules. It pointed out that the existing redress mechanisms for breaches of competition rules at European level do not guarantee the full effectiveness of Article 81 of the Treaty, in particular with regard to those suffering damage. Many Member States were examining ways better to protect consumers by allowing collective actions, and differing courses of action may lead to the distortion of competition in the internal market.

Parliament indicated that Community competition rules would lack dissuasive effect, and their effectiveness would be compromised, if anyone acting in a proscribed manner were able to enjoy advantages on the market or immunity in respect of breaches of the rules due to obstacles to full claims for damages. Litigation by representatives of the public interest and victims should be facilitated. Citizens or businesses suffering damage as a result of a breach of competition law should have the opportunity to claim compensation for their losses. Parliament welcomed the fact that the Court of Justice has recognised the right of victims who have suffered losses as a result of anti-competitive behaviour to bring 'stand alone' or 'follow on' legal actions to obtain compensation.

With a view to promoting competition rather than litigation, Parliament called for the promotion of swift and amicable out-of-court settlements and the facilitation of plea agreements in claims for damages arising from anti-competitive behaviour. In addition, the legal systems of the Member States should provide for effective civil law procedures whereby compensation can be claimed for damage resulting from breaches of competition law. Instituting private actions should be complementary to and compatible with public enforcement, which, in turn, could become more strategic and selective in nature, focusing on the most important issues and significant cases. However, such changes in focus should not constitute a justification for the under-resourcing of competition authorities. Parliament maintained that, in order to protect competition and the rights of victims all judicial authorities implementing the Community competition rules should be able to adopt provisional measures, order measures of enquiry and make use of their powers of investigation where necessary.

With regard to payments, Parliament emphasised that payments awarded to complainants should be compensatory and should not exceed the actual damage (damnum emergens) and losses ('lucrum cessans') suffered, in order to avoid unjust enrichment. The ability of the victim to mitigate the damage and losses may be taken into account. However in the case of cartels, it suggested that applicants cooperating with the competition authorities in leniency programmes should not be held jointly and severally liable with the other infringers, and that interest should be calculated from the date of the infringement. Any measure must fully respect the public policy of the Member States, in particular with regard to punitive damages.

Parliament concurred with the case law of the Court of Justice that all victims should be able to bring legal actions. Member States that make provision for actions for indirect losses should grant the defendant the possibility of asserting a passing-on defence in order to avoid the possibility of unjust enrichment. It is therefore essential to have a mechanism for dealing with multiple small claims. Victims should be able voluntarily to bring collective actions, either directly or via organisations whose statutes have this as their object. The Commission was urged to adopt guidelines for the provision of assistance to the parties in

quantifying the damage they have suffered and establishing the causal link. Parliament called for priority to be given to drawing up a communication on bringing independent legal actions, which included recommendations for the filing of claims and examples for the most frequent cases.

It was noted that in many cases there would be an asymmetry of resources between the complainant and the defendant in legal proceedings for damages arising from anti-competitive behaviour. In such cases, complainants should not be deterred from bringing well-founded actions for damages for fear of having to pay excessive legal costs, including the costs of the defendant in the event that the claim is unsuccessful. Parliament suggested, therefore, that judicial authorities should be able to take into account the different economic situation of the parties and, where appropriate, should make an assessment at the outset of proceedings. The level of costs should be based on reasonable and objective criteria taking into account the nature of the trial, and should include the costs engendered by the legal proceedings.

Parliament went on to make recommendations on limitation periods for actions for infringements of the Community competition rules. It called on the Commission to prepare a White Paper with detailed proposals to facilitate the bringing of 'stand alone' and 'follow on' private actions claiming damages for behaviour in breach of the Community competition rules.

The Commission should work closely with the competent national authorities of the Member States in order to mitigate any cross-border obstacles that prevent EU citizens and businesses from filing cross-border damages claims in cases of breaches of Community competition rules in Member States. If necessary, the Commission should take legal action to remove such obstacles.

Lastly, Parliament emphasised that it should play a co-legislative role in the field of competition law and that it should be kept regularly informed on the bringing of private legal actions.