Basic information

2013/0185(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the EU **Subject** 2.60 Competition 2.80 Cooperation between administrations 3.45.05 Business policy, e-commerce, after-sales service, commercial distribution 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	SCHWAB Andreas (PPE)	18/06/2013
	Shadow rapporteur SÁNCHEZ PRESEDO Antolín (S&D) IN 'T VELD Sophia (ALDE) EICKHOUT Bas (Verts/ALE) EPPINK Derk Jan (ECR) KLUTE Jürgen (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	SCHMIDT Olle (ALDE)	09/07/2013
JURI Legal Affairs (Associated committee)	RAPKAY Bernhard (S&D)	19/06/2013

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	3276	2013-12-03

	Agriculture and Fisheries	3344	2014-11-10

European Commission	Commission DG	Commissioner
	Competition	ALMUNIA Joaquín

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
11/06/2013	Legislative proposal published	COM(2013)0404	Summary
01/07/2013	Committee referral announced in Parliament, 1st reading		
03/12/2013	Debate in Council		Summary
12/12/2013	Referral to associated committees announced in Parliament		
27/01/2014	Vote in committee, 1st reading		
04/02/2014	Committee report tabled for plenary, 1st reading	A7-0089/2014	Summary
16/04/2014	Debate in Parliament		
17/04/2014	Decision by Parliament, 1st reading	T7-0451/2014	Summary
17/04/2014	Results of vote in Parliament		
10/11/2014	Act adopted by Council after Parliament's 1st reading		
26/11/2014	Final act signed		
26/11/2014	End of procedure in Parliament		
05/12/2014	Final act published in Official Journal		

Technical information

Procedure reference	2013/0185(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 103-p1 Treaty on the Functioning of the European Union TFEU 114
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/13019

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE516.968	03/10/2013	
Amendments tabled in committee		PE521.623	08/11/2013	
Committee opinion	IMCO	PE519.553	09/01/2014	
Committee opinion	JURI	PE524.711	27/01/2014	
Committee report tabled for plenary, 1st reading/single reading		A7-0089/2014	04/02/2014	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0451/2014	17/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00080/2014/LEX	26/11/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2013)0404	11/06/2013	Summary
Document attached to the procedure	SWD(2013)0203	11/06/2013	
Document attached to the procedure	SWD(2013)0204	11/06/2013	
Document attached to the procedure	SWD(2013)0270	11/06/2013	
Commission response to text adopted in plenary	SP(2014)471	09/07/2014	
Follow-up document	SWD(2020)0338	14/12/2020	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2013)0404	11/09/2013	
Contribution	ES_PARLIAMENT	COM(2013)0404	15/09/2013	
Contribution	LU_CHAMBER	COM(2013)0404	07/10/2013	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
	Economic and Social Committee:			

EESC	opinion, report	CES4975/2013	16/10/2013	

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Directive 2014/0104 OJ L 349 05.12.2014, p. 0001	Summary

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) - 11/06/2013 - Legislative proposal

PURPOSE: to facilitate the introduction of damage and interest claims by victims of antitrust violations.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: damages claims for breaches of Articles 101 or 102 of the Treaty on the Functioning of the European Union (TFEU) constitute an important area of private enforcement of EU competition law. It follows from the direct effect of the prohibitions laid down in Articles 101 and 102 of the Treaty that **any individual can claim compensation for the harm suffered, where there is a causal relationship between that harm and an infringement of the EU competition rules**. Injured parties must be able to seek compensation not only for the actual loss suffered but also for the gain of which they have been deprived plus interest.

The Court of Justice of the European Union has clarified that the full effectiveness of the EU competition rules and, in particular, the practical effect of the prohibitions they contain would be put at risk if it were not open to any person to claim damages for loss caused to him/her by a contract or conduct liable to restrict or distort competition. It considered that damages actions strengthen the working of the EU competition rules and can thus make a significant contribution to maintaining effective competition in the EU.

While the right to full compensation is guaranteed by the Treaty itself, the practical exercise of this right is often rendered difficult or almost impossible because of the applicable rules and procedures. Despite some recent signs of improvement in a few Member States, to date **most victims of infringements of the EU competition rules in practice do not obtain compensation for the harm suffered**. Besides these specific substantive obstacles to effective compensation (already identified in the Commission's 2005 Green Paper), there is **a wide diversity as regards the national legal rules** governing antitrust damages actions.

To remedy this situation, the Commission put forward concrete policy proposals in its 2008 White Paper. In the ensuing public consultation, civil society and institutional stakeholders, such as the European Parliament, largely welcomed these policy measures and called for specific EU legislation on antitrust damages actions.

IMPACT ASSESSMENT: the impact assessment report focused on four options which ranged from no action at the EU level, through a soft-law approach, to two options for legally binding EU action. The preferred option is considered to be the most cost-efficient way of achieving the set objectives.

LEGAL BASIS: Articles 103 and 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal seeks to ensure the effective enforcement of the EU competition rules in particular by ensuring that **victims of infringements of the EU competition rules can obtain full compensation for the harm they suffered**.

Scope: the proposed Directive would set out rules ensuring **equivalent protection throughout the Union** for all natural or legal persons for harm they they have suffered as a result of infringements of the EU competition rules and ensure that their right under EU law to full compensation can be effectively exercised in the national courts.

Disclosure of evidence: provision is made to ensure that, under certain conditions, **the national courts can order the defendant or a third party to disclose the evidence** a claimant will need to prove his his antitrust damages claim and/or a related defence.

National courts should have at their disposal effective measures to protect any **business secrets** or otherwise confidential information disclosed during the proceedings. Furthermore, disclosure should not be allowed where it would be contrary to certain rights and obligations such as the obligation of professional secrecy.

Probative effect of national decisions: pursuant to Council Regulation No 1/2003, a Commission decision relating to proceedings under Article 101 or 102 of the Treaty has a probative effect in subsequent actions for damages. It is proposed to give **final infringement decisions by national competition authorities (or by a national review court) similar effect**.

Limitation periods: the Commission proposes that the national rules on limitation periods for a damages action: (i) allow victims **sufficient time (at least five years)** to bring an action after they became aware of the infringement, the harm it caused and the identity of the infringer; (ii) prevent a limitation period from starting to run before the day on which a continuous or repeated infringement ceases.

Joint and several liability: where several undertakings infringe the competition rules jointly (typically in the case of a cartel), it is appropriate that they be jointly and severally liable for the entire harm caused by the infringement. The new proposal, however, introduces certain modifications with regard to the liability regime of immunity recipients.

Passing-on of overcharges: injured parties are entitled to compensation for actual loss (overcharge harm) and for loss of profit. To ensure that only the direct and indirect purchasers that actually suffered overcharge harm can effectively claim compensation, the proposed Directive explicitly recognises **the possibility for the infringing undertaking to invoke the passing-on defence**.

However, in situations where the overcharge was passed on to natural or legal persons at the next level of the supply chain for whom it is legally impossible to claim compensation, the passing-on defence cannot be invoked.

Quantification of harm: to assist victims of a cartel in quantifying the harm caused by the competition law infringement, the proposed Directive provides for a rebuttable presumption with regard to the existence of harm resulting from a cartel. The infringing undertaking could rebut this presumption and use the evidence at its disposal to prove that the cartel did not cause harm.

Consensual Dispute Resolution: to provide an incentive to parties to settle their dispute consensually, the proposed Directive aims at optimising the balance between out-of-court settlements and actions for damages.

BUDGETARY IMPLICATION: the proposed Directive would have no budgetary implications.

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) - 03/12/2013

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.

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.

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) - 17/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 541 to 25 votes with 12 abstentions, a legislative resolution 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.

Parliament adopted its position at first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement negotiated between the European Parliament and the Council. They modify the proposal as follows:

Scope of the directive: thanks to the new rules, any natural or legal person who has suffered harm caused by an infringement of 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: the full compensation for the damage should be obtained. It should cover the right to compensation for actual loss and for loss of profit, plus payment of interest. It should not lead to overcompensation, whether by means of punitive, multiple or other types of damages.

Principles of effectiveness and equivalence: all national rules and procedures relating to the exercise of claims for damages should be designed and applied in such a way that they do not render practically impossible or excessively difficult the exercise of the right to full compensation.

Furthermore, the national rules and procedures relating to actions for damages resulting from infringements of Article 101 or 102 TFEU should not be less favourable to the alleged injured parties than those governing similar actions for damages resulting from infringements of national law.

Disclosure of evidence: national courts should be able to order the defendant or a third party to disclose relevant evidence which lies in their control in proceedings relating to an action for damages in the Union upon request of a claimant who has presented **a reasoned justification** containing reasonably available facts and evidence sufficient to support the plausibility of its claim for damages.

The court should be able under its strict control, especially as regards the necessity and proportionality of the disclosure measure, to order **disclosure of specified pieces of evidence or categories of evidence** upon request of a party.

The demand for disclosure should be proportionate. Provisions have been introduced **to prevent fishing expeditions**, that is, non-specific searches of information which are unlikely to be of relevance for the parties in the procedure.

National courts would have the power to order disclosure of evidence containing confidential information where they consider it relevant to the action for damages. In this case, they should have at their disposal **effective measures to protect** such information.

Those from whom disclosure is sought should have an **opportunity to be heard** before a national court orders disclosure.

It is stated that the interest of undertakings to avoid actions for damages following an infringement of competition law shall not constitute an interest that warrants protection.

Disclosure of evidence included in the file of a competition authority: to ensure the undertakings' continued willingness to voluntarily approach competition authorities with **leniency statements or settlement submissions**, disclosure of evidence should **in no case** apply to these documents.

The applicant may submit a reasoned request that a national court accesses the above-mentioned documents only to verify that their contents meet the Directive's definitions relating to the concepts of the 'statement made by a company with a view to getting leniency' and 'settlement submissions'.

During this evaluation, the national authorities could only request the assistance of a competent competition authority. The authors of the documents concerned could also be heard. In any event, the court would not allow access to these documents to the other parties or to third parties.

Penalties: national courts should be able to effectively impose penalties on parties, third parties and their legal representatives in the event of failure or refusal to comply with any national court's disclosure order.

Limitation periods: the limitation period shall not begin to run before the infringement has ceased and the claimant knows, or can reasonably be expected to know the behaviour and the fact that it constitutes an infringement of competition law, the fact that the infringement of competition law caused harm to him and the identity of the infringing undertaking.

Joint and several liability: where the undertaking is a **small or medium-sized enterprise**, it would be liable only to its own direct and indirect purchasers if : a) its market share in the relevant market was below 5% at any time during the infringement; and if b) the application of the normal rules of joint and several liability would irretrievably jeopardize the economic viability of the company concerned.

Suspensive effect of consensual dispute resolution: according to the amended text, the suspension should not be longer than two years.

As a result of consensual dispute resolution, a competition authority could consider that compensation paid as a result of a consensual settlement and prior to its decision imposing a fine to be a mitigating factor in the setting thereof.

Review of the Directive: the Commission should submit a report by four years after the date of entry into force. Where appropriate, that review would be accompanied by a legislative proposal.

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) - 26/11/2014 - Final act

PURPOSE: to facilitate the introduction of damage and interest claims by victims of antitrust violations.

LEGISLATIVE ACT : Directive 2014/104/EU 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.

CONTENT: the Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association.

Disclosure of evidence: national courts will be able to order the defendant or a third party to disclose relevant evidence which lies in their control in proceedings relating to an action for damages in the Union, upon request of a claimant who has presented a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim.

Member States must ensure, however, that national courts limit the disclosure of evidence to that which is proportionate. Provisions have been made to prevent fishing for information, meaning non-specific searches for information which is unlikely to be of relevance for the parties in the procedure.

Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. When ordering the disclosure of such information, national courts must have at their disposal effective measures to protect such information. Those from whom disclosure is sought must be provided with an opportunity to be heard before a national court orders disclosure.

Disclosure of evidence included in the file of a competition authority (leniency programme): a claimant may present a reasoned request that a national court access leniency statements or settlement submissions for the sole purpose of ensuring that their contents correspond to the definitions in the Directive.

The authors of the evidence in question may also have the possibility to be heard. In no case shall the national court permit other parties or third parties access to that evidence.

Penalties: national courts must be able effectively to impose penalties on parties, third parties and their legal representatives in the event of circumstances set out in the directive.

Effect of national decisions: Member States shall ensure that where a final decision is taken in another Member State, that final decision may be presented before their national courts as at least prima facie evidence that an infringement of competition law has occurred.

Limitation periods: limitation periods shall not begin to run before the infringement of competition law has ceased and the claimant knows, or can reasonably be expected to know of the behaviour and the fact that it constitutes an infringement of competition law. Limitation periods for bringing actions for damages are at least five years.

Joint and several liability: undertakings which have infringed competition law through joint behaviour must be jointly and severally liable for the harm caused by the infringement of competition law. Where the infringer is a small or medium-sized enterprise (SME) it will be liable only to its own direct and indirect purchasers where: (a) its market share in the relevant market was below 5 % at any time during the infringement of competition law; and (b) the application of the normal rules of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value. This derogation shall not apply where the SME has led the infringement of competition law.

Passing-on of overcharges and the right to full compensation: compensation of harm can be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers from an infringer, and compensation of harm exceeding that caused by the infringement of competition law to the claimant, as well as the absence of liability of the infringer, must be avoided.

The defendant in an action for damages can invoke as a defence against a claim for damages the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law. The burden of proving that the overcharge was passed on shall be on the defendant.

Member States shall ensure that neither the burden nor the standard of proof required for the quantification of harm renders the exercise of the right to damages practically impossible or excessively difficult.

Suspensive and other effects of consensual dispute resolution: the limitation period for bringing an action for damages must be suspended for the duration of any consensual dispute resolution process. Proceedings may be suspended for up to two years.

A competition authority may consider compensation paid as a result of a consensual settlement and prior to its decision imposing a fine to be a mitigating factor.

Review of the Directive: the Commission must submit a report by 27 December 2020. If appropriate, the report shall be accompanied by a legislative proposal.

ENTRY INTO FORCE: 25.12.2014.

TRANSPOSITION: by 27.12.2016.