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Committee on Legal Affairs

2013/0185(COD)

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AMENDMENTS

23 - 141

Draft opinion
Bernhard Rapkay
(PE524.711v01-00)

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

Proposal for a directive
(COM(2013)0404 – C7-0170/2013 – 2013/0185(COD))

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PE526.199v01-00

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United in diversity

EN

Amendment 23
Sharon Bowles

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) Articles 101 and 102 of the Treaty produce direct effects in relations between individuals and create, for the individuals concerned, rights and obligations which national courts must enforce. National courts thus have an equally essential part to play in applying the competition rules (private enforcement). When ruling on disputes between private individuals, they protect subjective rights under Union law, for example by awarding damages to the victims of infringements. The full effectiveness of Articles 101 and 102 of the Treaty, and in particular the practical effect of the prohibitions laid down therein, requires that anyone - be they an individual, including consumers and undertakings, or a public authority - can claim compensation before national courts for the harm caused to them by an infringement of those provisions. This Union right to compensation applies equally to breaches of Articles 101 and 102 by public undertakings or undertakings entrusted with special or exclusive rights by Member States within the meaning of Article 106 of the Treaty.

Amendment

(3) Articles 101 and 102 of the Treaty produce direct effects in relations between individuals and create, for the individuals concerned, rights and obligations which national courts must enforce. National courts thus have an equally essential part to play in applying the competition rules (private enforcement). When ruling on disputes between private individuals, they protect subjective rights under Union law, for example by awarding damages to the victims of infringements. The full effectiveness of Articles 101 and 102 of the Treaty, and in particular the practical effect of the prohibitions laid down therein, requires that anyone - be they an individual, including consumers and undertakings, or a public authority - can claim compensation before national courts for the harm caused to them by an infringement of those provisions ***in either a direct or a follow-on case***. This Union right to compensation applies equally to breaches of Articles 101 and 102 by public undertakings or undertakings entrusted with special or exclusive rights by Member States within the meaning of Article 106 of the Treaty.

Or. en

Amendment 24
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) The Union right to compensation for antitrust harm requires each Member State to have procedural rules ensuring the effective exercise of that right. The need for effective procedural remedies also follows from the right to effective judicial protection as laid down in Article 47, first paragraph, of the Charter of Fundamental Rights of the European Union⁵³ and in Article 19(1), second subparagraph of the Treaty on European Union.

⁵³ OJ C 326, 26.10.2012, p. 391.

Amendment

(4) The Union right to compensation for antitrust harm requires each Member State to have procedural rules ensuring the effective exercise of that right. The need for effective procedural remedies also follows from the right to effective judicial protection as laid down in Article 47, first paragraph, of the Charter of Fundamental Rights of the European Union⁵³ and in Article 19(1), second subparagraph of the Treaty on European Union. ***Member States should ensure effective legal protection in the fields covered by Union law***

⁵³ OJ C 326, 26.10.2012, p. 391.

Or. en

Amendment 25
Sharon Bowles

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Actions for damages are only one element of an effective system of private enforcement of breaches of competition law and are accompanied by non-court based avenues of redress, such as consensual dispute resolution or public enforcement decisions that incentivise parties to provide compensation.

Or. en

Amendment 26
Bernhard Rapkay

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Whereas Member States should be encouraged to maintain or introduce collective redress schemes for the purpose of strengthening the claimants' possibilities to bring actions for damages for infringement of competition law, common rules are required at Union level in order to allow damaged parties in all Member States to avail themselves of such schemes in order to ensure greater equality of arms between the parties to the dispute. In order to preserve the consumers' right of choice and avoid abusive use, such schemes should comply with the framework set out by European Commission Recommendation 2013/396/EU.

Or. en

Amendment 27
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(5) To ensure effective **public and** private enforcement of the competition rules, it is necessary to regulate the way the two forms of enforcement are coordinated, for instance the arrangements for access to documents held by competition authorities. Such coordination at Union level will also avoid divergence of applicable rules, which could jeopardise the proper functioning of the internal market.

(5) To ensure effective private enforcement **actions under civil law and effective public enforcement by competition authorities, both tools are required to interact to ensure maximum effectiveness** of the competition rules. It is necessary to regulate the way the two forms of enforcement are coordinated, for instance the arrangements for access to documents held by competition authorities. Such coordination at Union level will also avoid divergence of applicable rules, which could jeopardise the proper functioning of the

internal market.

Or. en

Amendment 28
Sharon Bowles

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Mass and dispersed damages, information asymmetries and other problems encountered in prosecuting damages claims occur in EC competition law. To mitigate these, competition torts should be treated consistently with other torts insofar as possible, paying regard to particular complexities and difficulties associated with competition law enforcement, especially as regards stand-alone damages actions. Furthermore, the disclosure provisions of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights and the Second Venice Resolution of European Patent Judges adopted on 4 November 2006 fit well with the requirements of competition actions. In the interests of individuals and SMEs, procedural complexity should be avoided.

Or. en

Justification

Similar procedures are already carried out in the enforcement of intellectual property rights and so regard should be had to this similarity, as well as to the fact that the disclosure provisions given in the legislation mentioned are sufficient in that field.

Amendment 29
Eva Lichtenberger

PE526.199v01-00

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on behalf of the Greens/EFA Group

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) In accordance with Article 26(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. There exist marked differences between the rules in the Member States governing actions for damages for infringements of national or Union competition law. Those differences lead to uncertainty concerning the conditions under which injured parties can exercise the right to compensation they derive from the Treaty, and affect the substantive effectiveness of such **right**. **As** injured parties often choose the forum of their Member State of establishment to claim damages, the discrepancies between the national rules lead to an uneven playing field as regards actions for damages and may affect competition on the markets on which these injured parties, as well as the infringing undertakings, operate.

Amendment

(6) In accordance with Article 26(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. There exist marked differences between the rules in the Member States governing actions for damages for infringements of national or Union competition law. Those differences lead to uncertainty concerning the **actual effect of competition infringements on the business sector inflicted and the** conditions under which injured parties can exercise the right to compensation they derive from the Treaty, and affect the substantive effectiveness of such **rights**. **The additional information asymmetry and the difficulties associated with quantifying antitrust harm** injured parties often choose the forum of their Member State of establishment to claim damages, the discrepancies between the national rules lead to an uneven playing field, **distort competition and reducing consumer confidence** as regards actions for damages and may affect competition on the markets on which these injured parties, as well as the infringing undertakings, operate. **The lack of common unified and horizontal legal principles on redress to assure that the companies whom breaches the competition law and hold a profit on such activities at the cost of law abiding businesses, are not the ones to continue to benefit from the lack of legal consistency within the Union.**

Or. en

Amendment 30

Jürgen Klute

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) It is therefore necessary to ensure a more level playing field for undertakings operating in the internal market and to improve the conditions for consumers to exercise the rights they derive from the internal market. It is also appropriate to increase legal certainty and to reduce the differences between the Member States as to the national rules governing actions for damages for infringements of European competition law and, when applied in parallel to the latter, national competition law. An approximation of these rules will also help to prevent the emergence of wider differences between the Member States' rules governing actions for damages in competition cases.

Amendment

(8) It is therefore necessary to ensure a more level playing field for undertakings operating in the internal market and to improve the conditions for consumers to exercise the rights they derive from the internal market. It is also appropriate to increase legal certainty and to reduce the differences between the Member States as to the national rules governing actions for damages for infringements of European competition law and, when applied in parallel to the latter, national competition law. An approximation of these rules ***and an obligation for the Member States to introduce collective redress mechanisms based on defined common principles*** will also help to prevent the emergence of wider differences between the Member States' rules governing actions for damages in competition cases.

Or. en

Amendment 31

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Recital 8

Text proposed by the Commission

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differences between the Member States as to the national rules governing actions for damages for infringements of European competition law and, when applied in parallel to the latter, national competition law. An approximation of these rules will also help to prevent the emergence of wider differences between the Member States' rules governing actions for damages in competition cases ***to prevent further lack of consumer's confident in the internal market due to the current difficulties in obtaining compensation for the harm they have suffered.***

Or. en

Amendment 32
Jürgen Klute

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) This Directive reaffirms the *acquis communautaire* on the Union right to compensation for harm caused by infringements of Union competition law, particularly regarding standing and the definition of damage, as it has been stated in the case-law of the Court of Justice of the European Union, and does not pre-empt any further development thereof. Anyone who has suffered harm caused by an infringement can claim compensation for the actual loss (*damnum emergens*), for the gain of which he has been deprived (*loss of profit or *lucrum cessans**) and payment of interest accruing from the time the harm occurred until compensation is paid. This right is recognised for any natural or legal person - consumers, undertakings and public authorities alike - irrespective of the existence of a direct contractual relationship with the infringing undertaking, and regardless of whether or

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not there has been a prior finding of an infringement by a competition authority.
This Directive should not require Member States to introduce collective redress mechanisms for the enforcement of Articles 101 and 102 of the Treaty.

not there has been a prior finding of an infringement by a competition authority.

Or. en

Amendment 33

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) This Directive reaffirms the *acquis communautaire* on the Union right to compensation for harm caused by infringements of Union competition law, particularly regarding standing and the definition of damage, as it has been stated in the case-law of the Court of Justice of the European Union, and does not pre-empt any further development thereof. Anyone who has suffered harm caused by an infringement can claim compensation for the actual loss (*damnum emergens*), for the gain of which he has been deprived (loss of profit or *lucrum cessans*) and payment of interest accruing from the time the harm occurred until compensation is paid. This right is recognised for any natural or legal person - consumers, undertakings and public authorities alike - irrespective of the existence of a direct contractual relationship with the infringing undertaking, and regardless of whether or not there has been a prior finding of an infringement by a competition authority.
This Directive should not require Member States to introduce collective redress mechanisms for the enforcement of Articles 101 and 102 of the Treaty.

Amendment

(11) This Directive reaffirms the *acquis communautaire* on the Union right to compensation for harm caused by infringements of Union competition law, particularly regarding standing and the definition of damage, as it has been stated in the case-law of the Court of Justice of the European Union, and does not pre-empt any further development thereof. Anyone who has suffered harm caused by an infringement can claim compensation for the actual loss (*damnum emergens*), for the gain of which he has been deprived (loss of profit or *lucrum cessans*) and payment of interest accruing from the time the harm occurred until compensation is paid. This right is recognised for any natural or legal person - consumers, undertakings and public authorities alike - irrespective of the existence of a direct contractual relationship with the infringing undertaking, and regardless of whether or not there has been a prior finding of an infringement by a competition authority.

Amendment 34
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) SMEs and consumers suffer damage because of legal ineffectiveness due to lack of cost effective enforcement of Article 101 and 102 of the Treaty. This imbalance gives opportunity for large companies to exploit their size and financial positions in the internal market towards SMEs. The collective redress procedures for access to justice, especially for SMEs and consumers, are vital factors in order to preserve consumers' right of choice and avoid abusive acts, to enforce legal rights. The aims of the proposed directive may not be fully reached if collective redress is not available to SMEs and consumers to initiate legal procedures for damages for competition law infringements; the Commission shall launch a study assessing how Member States apply collective redress procedures to private damage claims for the enforcement of infringements to Articles 101 and 102 of the Treaty. Member States should ensure that all injured parties proficiently and cost effective can exercise their claims for damages. This includes assessing the possibilities of making collective redress procedures available for private damages claims.

Or. en

Amendment 35
Sharon Bowles

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Achieving a 'once-and-for-all' settlement for defendants is desirable with a view to reducing uncertainty and an exaggerated economic effect that might impact on employees, suppliers, subcontractors and other innocent parties.

Or. en

Amendment 36
Klaus-Heiner Lehne

Proposal for a directive
Recital 13

Text proposed by the Commission

Amendment

(13) Evidence is an important element for bringing actions for damages for infringement of national or Union competition law. However, as antitrust litigation is characterised by an information asymmetry, it is appropriate to ensure that injured parties are afforded the right to obtain the disclosure of evidence relevant to their claim, ***without it being necessary for them to specify individual items of evidence***. In order to ensure equality of arms, those means should also be available to defendants in actions for damages, so that they can request the disclosure of evidence by those injured parties. National courts can also order evidence to be disclosed by third parties. Where the national court wishes to order disclosure of evidence by the Commission, the principle of sincere cooperation between the European Union and the Member States (Article 4(3) TEU) and Article 15(1) of Regulation No 1/2003 as regards requests for information are applicable.

(13) Evidence is an important element for bringing actions for damages for infringement of national or Union competition law. However, as antitrust litigation is characterised by an information asymmetry, it is appropriate to ensure that injured parties are afforded the right to obtain the disclosure of evidence relevant to their claim. In order to ensure equality of arms, those means should also be available to defendants in actions for damages, so that they can request the disclosure of evidence by those injured parties. National courts can also order evidence to be disclosed by third parties. Where the national court wishes to order disclosure of evidence by the Commission, the principle of sincere cooperation between the European Union and the Member States (Article 4(3) TEU) and Article 15(1) of Regulation No 1/2003 as regards requests for information are applicable.

Amendment 37
Sharon Bowles

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Relevant evidence should be disclosed upon decision of the court and under its strict control, especially as regards the necessity and proportionality of the disclosure measure. It follows from the requirement of proportionality that disclosure requests can only be triggered once an injured party has *made it plausible*, on the basis of facts which are reasonably available to him, that the party has suffered harm that was caused by the defendant. The request for disclosure should refer to *categories of* evidence which *are as precise and narrow* as possible on the basis of reasonably available facts.

Amendment

(14) Relevant evidence should be disclosed upon decision of the court and under its strict control, especially as regards the necessity and proportionality of the disclosure measure. It follows from the requirement of proportionality that disclosure requests can only be triggered once an injured party has *provided a reasoned justification*, on the basis of facts which are reasonably available to him, that the party has suffered harm that was caused by the defendant. The request for disclosure should refer to evidence which *is defined as precisely and narrowly* as possible on the basis of reasonably available facts.

Or. en

Amendment 38
Klaus-Heiner Lehne

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Relevant evidence should be disclosed upon decision of the court and under its strict control, especially as regards the necessity and proportionality of the disclosure measure. It follows from the requirement of proportionality that disclosure requests can only be triggered once an injured party has made it plausible,

Amendment

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on the basis of facts which are reasonably available to him, that the party has suffered harm that was caused by the defendant.

The request for disclosure should refer to categories of evidence which are as precise and narrow as possible on the basis of reasonably available facts.

on the basis of facts which are reasonably available to him, that the party has suffered harm that was caused by the defendant.

Or. en

Amendment 39
Klaus-Heiner Lehne

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) The requirement of proportionality should also be carefully assessed when disclosure risks unravelling the investigation strategy of a competition authority by revealing which documents are part of the file or causing a negative bearing on the way in which companies cooperate with the competition authority.

The disclosure request should therefore not be deemed proportionate when it refers to the generic disclosure of documents in the file of a competition authority relating to a certain case, or of documents submitted by a party in the context of a certain case. Such wide disclosure requests would also not be compatible with the requesting party's duty to specify categories of evidence as precisely and narrowly as possible.

Amendment

(15) The requirement of proportionality should also be carefully assessed when disclosure risks unravelling the investigation strategy of a competition authority by revealing which documents are part of the file or causing a negative bearing on the way in which companies cooperate with the competition authority.

Or. en

Amendment 40
Sharon Bowles

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) While relevant evidence containing business secrets or otherwise confidential information should in principle be available in actions for damages, such confidential information needs to be appropriately protected. National courts should therefore have at their disposal a range of measures to protect such confidential information from being disclosed during the proceedings. These may include the possibility of hearings in private, restricting the circle of persons entitled to see the evidence, and instruction of experts to produce summaries of the information in an aggregated or otherwise non-confidential form. Measures protecting business secrets and other confidential information should not practically impede the exercise of the right to compensation.

Amendment

(17) While relevant evidence containing business secrets or otherwise confidential information should in principle be available in actions for damages, such confidential information needs to be appropriately protected. National courts should therefore have at their disposal a range of measures to protect such confidential information from being disclosed during the proceedings. These may include the possibility of hearings in private, ***redacting that confidential information***, restricting the circle of persons entitled to see the evidence, and instruction of experts to produce summaries of the information in an aggregated or otherwise non-confidential form. Measures protecting business secrets and other confidential information should not practically impede the exercise of the right to compensation.

Or. en

Justification

Redaction is a tool currently used.

Amendment 41

Rebecca Taylor, Sharon Bowles, Sajjad Karim

Proposal for a directive

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) When applying for leniency or settlement procedure, an undertaking needs to have an unequivocal upfront legal certainty that its self-incriminating corporate statements are not revealed to third parties. Victims should be given access to any other information useful to

prove their claims. The protection of self-incriminating corporate statements ensures undertakings continue cooperating with public authorities, thus enabling them to pursue more cartels and therefore empowering victims to gain redress.

Or. en

Amendment 42

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) Leniency programmes and settlement procedures **are important** tools for the public enforcement of Union competition law **as** they contribute to the detection, efficient prosecution and sanctioning of the most serious competition law infringements. **Undertakings may be deterred from co-operating in this context if disclosure of documents they solely produce to this end were to expose them to civil liability under worse conditions than the co-infringers that do not co-operate with competition authorities. To ensure that undertakings are willing to produce voluntary statements acknowledging their participation in an infringement of Union or national competition law to a competition authority under a leniency programme or a settlement procedure, such statements should be excepted from disclosure of evidence.**

Amendment

(19) Leniency programmes and settlement procedures **can be some of the** tools for the public enforcement of Union competition law **if** they contribute to the detection, efficient prosecution and sanctioning of the most serious competition law infringements **and if they contribute in having companies preliminary to report suspicions of possible own breach to prevent infringements of the Unions** competition law .

Or. en

Amendment 43

Klaus-Heiner Lehne

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) Leniency programmes and settlement procedures are important tools for the public enforcement of Union competition law as they contribute to the detection, efficient prosecution and sanctioning of the most serious competition law infringements. Undertakings may be deterred from co-operating in this context if disclosure of documents they solely produce to this end were to expose them to civil liability under worse conditions than the co-infringers that do not co-operate with competition authorities. To ensure that undertakings are willing to produce voluntary statements acknowledging their participation in an infringement of Union or national competition law to a competition authority under a leniency programme or a settlement procedure, such statements should be excepted from disclosure of evidence.

Amendment

(19) Leniency programmes and settlement procedures are important tools for the public enforcement of Union competition law as they contribute to the detection, efficient prosecution and sanctioning of the most serious competition law infringements. Undertakings may be deterred from co-operating in this context if disclosure of documents they solely produce to this end were to expose them to civil liability under worse conditions than the co-infringers that do not co-operate with competition authorities. To ensure that undertakings are willing to produce voluntary statements acknowledging their participation in an infringement of Union or national competition law to a competition authority under a leniency programme or a settlement procedure, ***courts should assess whether*** such statements should be excepted from disclosure of evidence.

Or. en

Amendment 44
Klaus-Heiner Lehne

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) Making a claim for damages, or the start of an investigation by a competition authority, entails a risk that the undertakings concerned may destroy or hide evidence that would be useful in substantiating an injured party's claim for damages. To prevent the destruction of relevant evidence and to ensure that court

Amendment

deleted

orders requesting disclosure are complied with, courts should be able to impose sufficiently deterrent sanctions. Insofar as parties to the proceedings are concerned, the risk of adverse inferences being drawn in the proceedings for damages can be a particularly effective sanction and can avoid delays. Sanctions should also be available for non-compliance with obligations to protect confidential information and for abusive use of information obtained through disclosure. Similarly, sanctions should be available if information obtained through access to the file of a competition authority in the exercise of one's rights of defence in relation to investigations of that competition authority is used abusively in actions for damages.

Or. en

Amendment 45
Klaus-Heiner Lehne

Proposal for a directive
Recital 26

Text proposed by the Commission

(26) National rules on the beginning, duration, suspension or interruption of limitation periods should not unduly hamper the bringing of actions for damages. This is particularly important in respect of actions that build upon the competition authority's or a review court's finding of an infringement. To that end, injured parties should still be able to bring an action for damages after proceedings by a competition authority, with a view to enforcing national and Union competition law.

Amendment

(26) National rules on the beginning, duration, suspension or interruption of limitation periods should not unduly hamper the bringing of actions for damages. This is particularly important in respect of actions that build upon the competition authority's or a review court's finding of an infringement. To that end, injured parties should still be able to bring an action for damages after proceedings by a competition authority, with a view to enforcing national and Union competition law. ***Member States should be allowed to maintain or introduce absolute limitation periods that are generally applicable.***

Or. en

Amendment 46
Klaus-Heiner Lehne

Proposal for a directive
Recital 28

Text proposed by the Commission

(28) Undertakings which cooperate with competition authorities under a leniency programme play a key role in detecting secret cartel infringements and in bringing these infringements to an end, thereby often mitigating the harm which could have been caused had the infringement continued. ***It is therefore appropriate to make provision for undertakings which have received immunity from fines from a competition authority under a leniency programme to be protected from undue exposure to damages claims, bearing in mind that the decision of the competition authority finding the infringement may become final for the immunity recipient before it becomes final for other undertakings which have not received immunity. It is therefore appropriate that the immunity recipient is relieved in principle from joint and several liability for the entire harm and that its contribution does not exceed the amount of harm caused to his own direct or indirect purchasers or, in case of a buying cartel, his direct or indirect providers.*** To the extent a cartel has caused harm to others than the customers/providers of the infringing undertakings, the contribution of the immunity recipient should not exceed his relative responsibility for the harm caused by the cartel. This share should be determined in accordance with the same rules used to determine the contributions among infringing undertakings (recital (27) above). The immunity recipient should remain fully liable to the injured parties other than his direct or indirect purchasers or providers only where they are unable to

Amendment

(28) Undertakings which cooperate with competition authorities under a leniency programme play a key role in detecting secret cartel infringements and in bringing these infringements to an end, thereby often mitigating the harm which could have been caused had the infringement continued. To the extent a cartel has caused harm to others than the customers/providers of the infringing undertakings, the contribution of the immunity recipient should not exceed his relative responsibility for the harm caused by the cartel. This share should be determined in accordance with the same rules used to determine the contributions among infringing undertakings (recital (27) above). The immunity recipient should remain fully liable to the injured parties other than his direct or indirect purchasers or providers only where they are unable to obtain full compensation from the other infringing undertakings.

obtain full compensation from the other infringing undertakings.

Or. en

Amendment 47

Sharon Bowles, Rebecca Taylor

Proposal for a directive

Recital 31

Text proposed by the Commission

(31) Consumers or undertakings to whom actual loss has been passed on have suffered harm that has been caused by an infringement of national or Union competition law. While such harm should be compensated by the infringing undertaking, it may be particularly difficult for consumers or undertakings that did not themselves make any purchase from the infringing undertaking to prove the scope of that harm. It is therefore appropriate to provide that, where the existence of a claim for damages or the amount to be awarded depends on whether or to what degree an overcharge paid by the direct purchaser of the infringing undertaking has been passed on to the indirect purchaser, the latter is regarded as having brought the proof that an overcharge paid by that direct purchaser has been passed on to his level, where he is able to show prima facie that such passing-on has occurred. It is furthermore appropriate to define under what conditions the indirect purchaser is to be regarded as having established such prima facie proof. As regards the quantification of passing-on, the national court should have the power to estimate which share of the overcharge has been passed on to the level of indirect purchasers in the dispute pending before it. The infringing undertaking should be allowed to bring proof showing that the actual loss has not been passed on or has not been passed on

Amendment

(31) Consumers or undertakings to whom actual loss has been passed on have suffered harm that has been caused by an infringement of national or Union competition law. While such harm should be compensated by the infringing undertaking, it may be particularly difficult for consumers or undertakings that did not themselves make any purchase from the infringing undertaking to prove the scope of that harm. It is therefore appropriate to provide that, where the existence of a claim for damages or the amount to be awarded depends on whether or to what degree an overcharge paid by the direct purchaser of the infringing undertaking has been passed on to the indirect purchaser, the latter is regarded as having brought the proof that an overcharge paid by that direct purchaser has been passed on to his level, where he is able to show prima facie that such passing-on has occurred. It is furthermore appropriate to define under what conditions the indirect purchaser is to be regarded as having established such prima facie proof, ***while also respecting that it is normal business practice to pass on overcharges down the supply chain.*** As regards the quantification of passing-on, the national court should have the power to estimate which share of the overcharge has been passed on to the level of indirect purchasers in the dispute pending before it. The infringing undertaking should be

entirely.

allowed to bring proof showing that the actual loss has not been passed on or has not been passed on entirely.

Or. en

Justification

Placing the burden of showing the pass-on with the indirect purchaser may require unobtainable knowledge on pricing strategies of direct purchasers. Passing on costs down the supply chain is normal business practice and this must be taken into account.

Amendment 48 Klaus-Heiner Lehne

Proposal for a directive Recital 31

Text proposed by the Commission

(31) Consumers or undertakings to whom actual loss has been passed on have suffered harm that has been caused by an infringement of national or Union competition law. While such harm should be compensated by the infringing undertaking, it may be particularly difficult for consumers or undertakings that did not themselves make any purchase from the infringing undertaking to prove the scope of that harm. ***It is therefore appropriate to provide that, where the existence of a claim for damages or the amount to be awarded depends on whether or to what degree an overcharge paid by the direct purchaser of the infringing undertaking has been passed on to the indirect purchaser, the latter is regarded as having brought the proof that an overcharge paid by that direct purchaser has been passed on to his level, where he is able to show prima facie that such passing-on has occurred. It is furthermore appropriate to define under what conditions the indirect purchaser is to be regarded as having established such prima facie proof.*** As

Amendment

(31) Consumers or undertakings to whom actual loss has been passed on have suffered harm that has been caused by an infringement of national or Union competition law. While such harm should be compensated by the infringing undertaking, it may be particularly difficult for consumers or undertakings that did not themselves make any purchase from the infringing undertaking to prove the scope of that harm. As regards the quantification of passing-on, the national court should have the power to estimate which share of the overcharge has been passed on to the level of indirect purchasers in the dispute pending before it. The infringing undertaking should be allowed to bring proof showing that the actual loss has not been passed on or has not been passed on entirely.

regards the quantification of passing-on, the national court should have the power to estimate which share of the overcharge has been passed on to the level of indirect purchasers in the dispute pending before it. The infringing undertaking should be allowed to bring proof showing that the actual loss has not been passed on or has not been passed on entirely.

Or. en

Amendment 49
Klaus-Heiner Lehne

Proposal for a directive
Recital 41

Text proposed by the Commission

Amendment

(41) When settling co-infringers are asked to contribute to damages subsequently paid by non-settling co-infringers, the national court should take account of the damages already paid under the consensual settlement, bearing in mind that not all co-infringers are necessarily equally involved in the full substantive, temporal and geographical scope of the infringement.

deleted

Or. en

Amendment 50
Sharon Bowles

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. This Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of Article 101 or 102 of the Treaty or of

1. This Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of Article 101 or 102 of the Treaty or of

national competition law, can effectively exercise the right to full compensation for that harm. It also sets out rules fostering undistorted competition in the internal market and removing obstacles to its proper functioning by ensuring equivalent protection throughout the Union for anyone who has suffered such harm.

national competition law *by an undertaking or group of undertakings*, can effectively exercise the right to *claim* full compensation for that harm *from those infringing parties*. It also sets out rules fostering undistorted competition in the internal market and removing obstacles to its proper functioning by ensuring equivalent protection throughout the Union for anyone who has suffered such harm.

Or. en

Amendment 51
Sharon Bowles

Proposal for a directive
Article 2 – paragraph 1

Text proposed by the Commission

1. Anyone who has suffered harm caused by an infringement of Union or national competition law shall be able to claim full compensation for that harm.

Amendment

1. Anyone who has suffered harm caused by an infringement of Union or national competition law shall be able to claim full compensation for that harm *from the infringing parties in either a direct or a follow-on private case*.

Or. en

Amendment 52
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 2 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that injured parties can effectively exercise their claims for damages.

Amendment

3. Member States shall ensure that *all* injured parties can *proficiently and costs* effectively exercise their claims for damages. *Member States shall introduce collective redress mechanisms based on defined common principles for the*

enforcement of Articles 101 and 102 of the Treaty as stipulated in the Commission Recommendation 2013/396/EU.

Member States shall ensure that all injured parties proficiently and cost effective can exercise their claims for damages. This includes assessing the possibilities of making collective redress procedures available for private damages claims.

Or. en

Amendment 53
Sharon Bowles

Proposal for a directive
Article 2 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The total level of fines and damages paid should not be affected by whether the competition authority action follows on from or precedes private action. Competition authorities shall link the total level of fines and damages paid in both of these instances, such as through the deferral of a proportion of the fine when a follow-on action is expected. However, this should neither result in lengthy uncertainty as regards settlement finality for companies, nor affect the right of individuals and undertakings to be compensated for damage suffered.

Or. en

Justification

Consumers shouldn't be placed in a worse position from taking follow-on action instead of direct action. Large public fines should not leave consumers unable to claim the appropriate compensation via a follow-on action as opposed to having taken a direct action.

Amendment 54
Rebecca Taylor, Sharon Bowles, Sajjad Karim

Proposal for a directive
Article 4 – paragraph 1 – point 2

Text proposed by the Commission

2. ‘national competition law’ means provisions of national law that predominantly pursue the same objective as Articles 101 and 102 of the Treaty and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of Regulation (EC) No 1/2003;

Amendment

2. ‘national competition law’ means provisions of national law that predominantly pursue the same objective as Articles 101 and 102 of the Treaty and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of Regulation (EC) No 1/2003 ***This definition does not apply to national laws which impose criminal sanctions on natural persons except to the extent that such sanctions are the means whereby competition rules applying to undertakings are enforced.***

Or. en

Justification

It is important to consider criminal law provisions in place in some Member States. The wording from Recital 8 of Regulation 1/2003 should therefore also apply here.

Amendment 55
Jürgen Klute

Proposal for a directive
Article 4 – paragraph 1 – point 3

Text proposed by the Commission

3. ‘action for damages’ means an action under national law by which an injured party brings a claim for damages before a national court; it may also cover actions by which someone acting on behalf of one or more injured parties brings a claim for damages before a national court, ***where national law provides for this possibility;***

Amendment

3. ‘action for damages’ means an action under national law by which an injured party brings a claim for damages before a national court; it may also cover actions by which someone acting on behalf of one or more injured parties brings a claim for damages before a national court;

Amendment 56

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Article 4 – paragraph 1 – point 3

Text proposed by the Commission

3. 'action for damages' means an action ***under national law*** by which ***an injured party brings*** a claim for damages before a national court; ***it may also cover actions by which*** someone acting on behalf of one or more injured parties brings a claim for damages before a national court, where national law provides for this possibility;

Amendment

3. 'action for damages' means an action by which a claim for damages ***is brought*** before a national court ***or*** someone acting on behalf of one or more injured parties brings a claim for damages before a national court, where national law provides for this possibility;

Or. en

Amendment 57

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Article 4 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

3a. 'collective redress' means: (i) a legal mechanism that ensures a possibility to claim cessation of illegal behaviour collectively by two or more natural or legal persons or by an entity entitled to bring a representative action (injunctive collective redress); (ii) a legal mechanism that ensures a possibility to claim compensation collectively by two or more natural or legal persons claiming to have been harmed in a mass harm situation or by an entity entitled to bring a representative action (compensatory collective redress)

Amendment

Amendment 58
Sharon Bowles

Proposal for a directive
Article 4 – paragraph 1 – point 5

Text proposed by the Commission

5. ‘injured party’ means anyone who has *a claim for damages*;

Amendment

5. ‘injured party’ means anyone who has *suffered harm as a result of anti-competitive behaviour*;

Or. en

Amendment 59
Sharon Bowles

Proposal for a directive
Article 4 – paragraph 1 – point 12

Text proposed by the Commission

12. ‘cartel’ means *an agreement and/or concerted practice between two or more competitors aimed at* coordinating their *competitive* behaviour *on the* market *and/or influencing the relevant parameters of competition*, through practices such as the fixing or coordination of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other competitors;

Amendment

12. ‘cartel’ means *two or more horizontal competitors co-ordinating their behaviour within a market to earn rents above those possible under normal competition, or* co-ordinating their behaviour *within a* market *to exclude undertakings operating under normal market conditions from gaining market share*, through practices such as, *inter alia*, the fixing or coordination of purchase or selling prices or other trading conditions, *abusive licensing practices*, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other competitors;

Or. en

Amendment 60
Sharon Bowles

Proposal for a directive
Article 4 – paragraph 1 – point 14

Text proposed by the Commission

14. ‘leniency corporate statement’ means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking to a competition authority, describing the undertaking's knowledge of a secret cartel and its role therein, which was drawn up specifically for submission to the authority with a view to obtaining immunity or a reduction of fines under a leniency programme concerning the application of Article 101 of the Treaty or the corresponding provision under national law; this does not include documents or information that exist irrespective of the proceedings of a competition authority (‘pre-existing information’);

Amendment

14. ‘leniency corporate statement’ means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking to a competition authority, describing the undertaking's knowledge of a secret cartel and its role therein, which was drawn up specifically for submission to the authority with a view to obtaining immunity or a reduction of fines under a leniency programme concerning the application of Article 101 of the Treaty or the corresponding provision under national law; this does not include documents or information that exist irrespective of the proceedings of a competition authority (‘pre-existing information’) **or any information given at the request of a competition authority;**

Or. en

Justification

Amendment for legal clarity. Leniency corporate statements are those given voluntarily. Information requested by the competition authority, such as in RFIs, should not be included.

Amendment 61
Sharon Bowles

Proposal for a directive
Article 4 – paragraph 1 – point 16

Text proposed by the Commission

16. ‘overcharge’ means **any positive difference between the price actually paid and** the price that would have prevailed in the absence of an infringement of

Amendment

16. ‘overcharge’ means **when a higher price has been paid due to competition law infringement, calculated by subtracting** the price that would have

competition law;

prevailed in the absence of an infringement of competition law *from the actual price paid*;

Or. en

Amendment 62

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that, where a claimant has presented reasonably available facts *and* evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, regardless of whether or not this evidence is also included in the file of a competition authority, subject to the conditions set out in this Chapter. Member States shall ensure that courts are also able to order the claimant or a third party to disclose evidence on request of *the defendant*.

Amendment

Member States shall ensure that, where a claimant has presented reasonably available facts *or* evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, regardless of whether or not this evidence is also included in the file of a competition authority, subject to the conditions set out in this Chapter. Member States shall ensure that courts are also able to order the claimant, *the defendant* or a third party to disclose *reasonably available facts or* evidence on request of *such a claim*.

Or. en

Amendment 63

Giuseppe Gargani

Proposal for a directive

Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that, where a claimant has presented reasonably

Amendment

Member States shall ensure that, where a claimant has presented reasonably

available facts and evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, regardless of whether or not this evidence is also included in the file of a competition authority, subject to the conditions set out in this Chapter. Member States shall ensure that courts are also able to order the claimant or a third party to disclose evidence on request of the defendant.

available facts and evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, regardless of whether or not this evidence is also included in the file of a competition authority, subject to the conditions set out in this Chapter **and in accordance with the provisions of Article 2 of this Directive**. Member States shall ensure that **the national courts request the disclosure of evidence from the national competition authority where the defendant does not provide the evidence requested**. Courts are also able to order the claimant or a third party to disclose evidence on request of the defendant.

Or. it

Amendment 64
Sharon Bowles

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that, where a claimant has presented **reasonably** available facts and evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, regardless of whether or not this evidence is also included in the file of a competition authority, subject to the conditions set out in this Chapter. Member States shall ensure that courts are also able to order the claimant or a third party to disclose evidence on request of the defendant.

Amendment

Member States shall ensure that, where a claimant has presented **a reasoned justification containing** available facts and evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, regardless of whether or not this evidence is also included in the file of a competition authority, subject to the conditions set out in this Chapter. Member States shall ensure that courts are also able to order the claimant or a third party to disclose evidence on request of the

defendant.

Or. en

Amendment 65
Klaus-Heiner Lehne

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that, where a claimant has presented reasonably available facts and evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, ***regardless of whether or not this evidence is also included in the file of a competition authority***, subject to the conditions set out in this Chapter. Member States shall ensure that courts are also able to order the claimant or a third party to disclose evidence on request of the defendant.

Amendment

Member States shall ensure that, where a claimant has presented reasonably available facts and evidence showing plausible grounds for suspecting that he, or those he represents, has suffered harm caused by the defendant's infringement of competition law, national courts can order the defendant or a third party to disclose evidence, subject to the conditions set out in this Chapter. Member States shall ensure that courts are also able to order the claimant or a third party to disclose evidence on request of the defendant.

Or. en

Amendment 66
Klaus-Heiner Lehne

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that national courts order the disclosure of evidence referred to in paragraph 1 where the party requesting disclosure has
(a) shown that evidence in the control of the other party or a third party is relevant

Amendment

deleted

in terms of substantiating his claim or defence; and

(b) specified either pieces of this evidence or categories of this evidence defined as precisely and narrowly as he can on the basis of reasonably available facts.

Or. en

Amendment 67
Sharon Bowles

Proposal for a directive
Article 5 – paragraph 2 – point a

Text proposed by the Commission

(a) *shown* that evidence in the control of the other party or a third party is relevant in terms of substantiating his claim or defence; and

Amendment

(a) *provided a reasoned justification* that evidence in the control of the other party or a third party is relevant in terms of substantiating his claim or defence; and

Or. en

Amendment 68
Sharon Bowles

Proposal for a directive
Article 5 – paragraph 2 – point b

Text proposed by the Commission

(b) specified either pieces of this evidence or categories of this evidence defined as precisely and narrowly as he can on the basis of reasonably available facts.

Amendment

(b) specified *in the reasoned justification* either pieces of this evidence or categories of this evidence defined as precisely and narrowly as he can on the basis of reasonably available facts.

Or. en

Amendment 69
Giuseppe Gargani

Proposal for a directive
Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall ensure that national courts limit disclosure of evidence to that which is proportionate. In determining whether any disclosure requested by a party is proportionate, national courts shall consider the legitimate interests of all parties and third parties concerned. They shall, in particular, consider:

Amendment

3. Member States shall ensure that national courts limit disclosure of evidence to that which is proportionate ***and necessary for the purpose of estimating the harm caused, pursuant to Article 2 of this Directive.*** In determining whether any disclosure requested by a party is proportionate, national courts shall consider the legitimate interests of all parties and third parties concerned. They shall, in particular, consider:

Or. it

Amendment 70
Klaus-Heiner Lehne

Proposal for a directive
Article 5 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the likelihood that the evidence is included in the file of a competition authority;

Or. en

Amendment 71
Sharon Bowles

Proposal for a directive
Article 5 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) whether the evidence to be disclosed contains confidential information, especially concerning any third parties, and the arrangements for protecting such

(c) whether the evidence to be disclosed contains confidential information, especially concerning any third parties, and the arrangements for protecting such

confidential information; *and*

confidential information;

Or. en

Amendment 72
Klaus-Heiner Lehne

Proposal for a directive
Article 5 – paragraph 3 – point d

Text proposed by the Commission

Amendment

(d) in cases where the infringement is being or has been investigated by a competition authority, whether the request has been formulated specifically with regard to the nature, object or content of such documents rather than by a non-specific request concerning documents submitted to a competition authority or held in the file of such competition authority.

deleted

Or. en

Amendment 73
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 5 – paragraph 3 – point d

Text proposed by the Commission

Amendment

(d) in cases where the infringement is being or has been investigated by a competition authority, whether the request has been formulated specifically with regard to the nature, object or content of such documents ***rather than by a non-specific request concerning documents*** submitted to a competition authority or held in the file of such competition authority.

(d) in cases where the infringement is being or has been investigated by a competition authority, whether the request has been formulated specifically with regard to the nature, object or content of such documents submitted to a competition authority or held in the file of such competition authority.

Amendment 74

Sharon Bowles

Proposal for a directive

Article 5 – paragraph 3 – point d

Text proposed by the Commission

(d) in cases where the infringement is being or has been investigated by a competition authority, whether the request has been formulated specifically with regard to the nature, object or content of such documents rather than by a non-specific request concerning documents submitted to a competition authority or held in the file of such competition authority.

Amendment

(d) in cases where the infringement is being or has been investigated by a competition authority, whether the request has been formulated specifically with regard to the nature, object or content of such documents rather than by a non-specific request concerning documents submitted to a competition authority or held in the file of such competition authority; ***and***

Or. en

Amendment 75

Sharon Bowles

Proposal for a directive

Article 5 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) the existence of any leniency corporate statements.

Or. en

Amendment 76

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Article 5 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that national courts have at their disposal effective measures to protect confidential information from improper use to the ***greatest*** extent possible whilst also ensuring that relevant evidence containing such information is available in the action for damages.

Amendment

4. Member States shall ensure that national courts have at their disposal effective measures to protect confidential information from improper use to the extent possible whilst also ensuring that relevant evidence containing such information ***to the extent possible*** is available in the action for damages.

Or. en

Amendment 77
Sharon Bowles

Proposal for a directive
Article 5 – paragraph 5

Text proposed by the Commission

5. Member States shall take the necessary measures to give full effect to legal privileges and other rights not to be compelled to disclose evidence.

Amendment

5. Member States shall take the necessary measures to give full effect to legal privileges and other rights not to be compelled to disclose evidence.

However, where a claimant has presented reasonably available facts and evidence sufficient to support plausibly that he, or those he represents, has suffered harm caused by the defendant's infringement of competition rules and that documents containing self-incriminating evidence are indispensable to supporting their claim and contains evidence that cannot be otherwise provided, national courts may order the defendant or a third party to disclose evidence. Member states shall ensure that national courts are also able to order the claimant or a third party to disclose evidence on request of the defendant.

This provision shall be without prejudice to the rights and obligations of national courts under Council Regulation (EC)1206/2001.

Amendment 78

Rebecca Taylor, Sharon Bowles, Sajjad Karim

Proposal for a directive

Article 5 – paragraph 5

Text proposed by the Commission

5. Member States shall take the necessary measures to give full effect to legal privileges and other rights not to be compelled to disclose evidence.

Amendment

5. Member States shall take the necessary measures to give full effect to legal privileges and other rights not to be compelled to disclose evidence *in accordance to national law*.

Or. en

Justification

It is essential that Member States are entitled to keep the standards of protection already in place for legal professional privilege.

Amendment 79

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Article 5 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that, *to the extent that* their courts have powers to order disclosure without hearing the person from whom disclosure is sought, no penalty for non-compliance with such an order may be imposed until the addressee of such an order has been heard by the court.

Amendment

6. Member States shall ensure that their courts have powers to order disclosure without hearing the person from whom disclosure is sought, no penalty for non-compliance with such an order may be imposed until the addressee of such an order has been *provided with the possibility to be* heard by the court.

Or. en

Amendment 80
Giuseppe Gargani

Proposal for a directive
Article 5 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that, ***to the extent that their courts have powers to order disclosure without hearing the person from whom disclosure is sought, no penalty for non-compliance with such an order may be imposed until the addressee of such an order has been heard by the court.***

Amendment

6. Member States shall ensure that, ***before ordering disclosure, the national courts hear the person from whom disclosure is sought.***

Or. it

Amendment 81
Rebecca Taylor, Sharon Bowles, Sajjad Karim

Proposal for a directive
Article 5 – paragraph 7

Text proposed by the Commission

7. Evidence shall include all types of evidence admissible before the national court ***seized, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored.***

Amendment

7. Evidence shall include all types of evidence admissible before the national court ***seized, with the exception of leniency corporate statements.***

Or. en

Justification

Need to ensure the protection of the Leniency programme and provide a clear and unequivocal legal certainty.

Amendment 82
Klaus-Heiner Lehne

Proposal for a directive
Article 5 – paragraph 8

Text proposed by the Commission

Amendment

8. Without prejudice to the obligation laid down in paragraph 4 and the limits laid down in Article 6, this Article shall not prevent the Member States from maintaining or introducing rules which would lead to wider disclosure of evidence.

deleted

Or. en

Amendment 83
Sharon Bowles

Proposal for a directive
Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that, for the purpose of actions for damages, national courts cannot **at any time** order a party or a third party to disclose **any of the following categories of evidence**:

1. Member States shall ensure that, for the purpose of actions for damages, national courts cannot **as a general requirement** order a party or a third party to disclose **leniency corporate statements**.

Or. en

Amendment 84
Klaus-Heiner Lehne

Proposal for a directive
Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that, for the purpose of actions for damages, national courts **cannot at any time** order a **party or a third party** to disclose any of the following categories of evidence:

1. Member States shall ensure that, for the purpose of actions for damages, national courts **shall in general not** order a **competition authority** to disclose any of the following categories of evidence:

Amendment 85
Sharon Bowles

Proposal for a directive
Article 6 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) leniency corporate statements; and

deleted

Or. en

Amendment 86
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 6 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) leniency corporate statements; and

(a) leniency corporate statements ***of the first leniency applicant***; and

Or. en

Justification

The information imbalance between claimants for damages and defendant company's access to evidence, can be the one factor in choosing whether to take the case to court. To achieve this, only the leniency corporate statement of the first whistle blower should be protected against disclosure. In addition, the annexes should remain available, as they often contain information regarding the quantum of loss/damage indispensable in damages action. This is based on a proposal from BEUC

Amendment 87
Jürgen Klute

Proposal for a directive
Article 6 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) leniency corporate statements; and

(a) leniency corporate statements ***at least of the first leniency applicant, excluding annexes***; and

Or. en

Amendment 88
Sharon Bowles

Proposal for a directive
Article 6 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) settlement submissions.

deleted

Or. en

Amendment 89
Giuseppe Gargani

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

internal documents of the national competition authority, correspondence between the Commission and the national competition authorities or between the latter within the European Competition Network;

Or. it

Amendment 90
Sharon Bowles

Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that, for the purpose of actions for damages, national courts can order the disclosure of the following ***categories of evidence*** only after a competition authority has closed its proceedings or taken a decision referred to in Article 5 of Regulation No 1/2003 or in Chapter III of Regulation No 1/2003:

Amendment

2. Member States shall ensure that, for the purpose of actions for damages, national courts can order the disclosure of the following only after a competition authority has closed its proceedings or taken a decision referred to in Article 5 of Regulation No 1/2003 or in Chapter III of Regulation No 1/2003:

Or. en

Amendment 91
Sharon Bowles

Proposal for a directive
Article 6 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) settlement submissions and withdrawn offers.

Or. en

Amendment 92
Jürgen Klute

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Disclosure of evidence in the file of a competition authority that ***does not fall into any of the categories listed in*** paragraphs 1 or 2 of this Article may be ordered in actions for damages at any time.

3. Disclosure of evidence in the file of a competition authority that ***is not covered under*** paragraphs 1 or 2 of this Article may be ordered in actions for damages at any time, ***including evidence that exists irrespective of the proceedings of a competition authority.***

Or. en

Amendment 93
Giuseppe Gargani

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. Disclosure of evidence in the file of a competition authority that does not fall into any of the categories listed in paragraphs 1 or 2 of this Article may be ordered in actions for damages *at any time*.

Amendment

3. Disclosure of evidence in the file of a competition authority that does not fall into any of the categories listed in paragraphs 1 or 2 of this Article may be ordered in actions for damages *only after the statement of objections (or other equivalent national competition authority document); disclosure shall be without prejudice to the power of the national competition authority to defer access, for reasons relating to the investigations, until the end of the antitrust proceedings.*

Or. it

Amendment 94
Sharon Bowles

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. Disclosure of evidence in the file of a competition authority that *does not fall into any of the categories listed in* paragraphs 1 *or* 2 of this Article may be ordered in actions for damages at any time.

Amendment

3. Disclosure of evidence in the file of a competition authority that *is not covered under* paragraphs 1 *and* 2 of this Article may be ordered in actions for damages at any time, *including evidence that exists irrespective of the proceedings of a competition authority.*

Or. en

Justification

Amendment for legal clarity, to ensure that pre-existing information is not protected.

Amendment 95
Klaus-Heiner Lehne

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. Disclosure of evidence in the file of a competition authority that does not fall into any of the categories listed in paragraphs 1 or 2 of this Article may be ordered in actions for damages at any time.

Amendment

3. Disclosure of evidence in the file of a competition authority that does not fall into any of the categories listed in paragraphs 1 or 2 of this Article may be ordered in actions for damages at any time. **Article 5 (3) to (7) shall apply mutatis mutandis.**

Or. en

Amendment 96
Klaus-Heiner Lehne

Proposal for a directive
Article 7

Text proposed by the Commission

Article 7

Limits on the use of evidence obtained solely through access to the file of a competition authority

1. Member States shall ensure that evidence falling into one of the categories listed in Article 6(1) which is obtained by a natural or legal person solely through access to the file of a competition authority in exercise of his rights of defence under Article 27 of Regulation No 1/2003 or corresponding provisions of national law is not admissible in actions for damages.

2. Member States shall ensure that evidence falling within one of the categories listed in Article 6, paragraph 2 which is obtained by a natural or legal person solely through access to the file of

Amendment

deleted

a competition authority in exercise of his rights of defence under Article 27 of Regulation No 1/2003 or corresponding provisions of national law is not admissible in actions for damages until that competition authority has closed its proceedings or taken a decision referred to in Article 5 of Regulation No 1/2003 or in Chapter III of Regulation No 1/2003.

3. Member States shall ensure that evidence which is obtained by a natural or legal person solely through access to the file of a competition authority in exercise of his rights of defence under Article 27 of Regulation No 1/2003 or corresponding provisions of national law, and which is not inadmissible pursuant to paragraphs 1 or 2 of this Article, can only be used in an action for damages by that person or by the natural or legal person that succeeded in his rights, including the person that acquired his claim.

Or. en

Amendment 97
Sharon Bowles

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that evidence *falling into one of the categories* listed in Article 6(1) which is obtained by a natural or legal person solely through access to the file of a competition authority in exercise of his rights of defence under Article 27 of Regulation No 1/2003 or corresponding provisions of national law is not admissible in actions for damages.

Amendment

1. Member States shall ensure that evidence listed in Article 6(1) which is obtained by a natural or legal person solely through access to the file of a competition authority in exercise of his rights of defence under Article 27 of Regulation No 1/2003 or corresponding provisions of national law is not admissible in actions for damages.

Or. en

Amendment 98
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that for the purposes of facilitating amicable negotiations, potential claimants can obtain the evidence regarding quantum of loss from the competition authority or the defendant without the need of starting a judicial action in court.

Or. en

Justification

The aim to encourage consensual settlement of disputes, but settlement is not easy where there is an information imbalance. Whilst it may be possible to start proceedings, the act of having to go through a court procedure may stand in the way of settlement. Therefore pre-litigation disclosures by the National Competition Authorities, the Commission or the alleged infringer are needed to approximately quantify the damage to enter into amicable negotiations. This is based on proposal from BEUC.

Amendment 99
Sharon Bowles

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that evidence ***falling within one of the categories*** listed in Article 6, paragraph 2 which is obtained by a natural or legal person solely through access to the file of a competition authority in exercise of his rights of defence under Article 27 of Regulation No 1/2003 or corresponding provisions of national law is not admissible in actions for damages until that

2. Member States shall ensure that evidence listed in Article 6, paragraph 2 which is obtained by a natural or legal person solely through access to the file of a competition authority in exercise of his rights of defence under Article 27 of Regulation No 1/2003 or corresponding provisions of national law is not admissible in actions for damages until that competition authority has closed its

competition authority has closed its proceedings or taken a decision referred to in Article 5 of Regulation No 1/2003 or in Chapter III of Regulation No 1/2003.

proceedings or taken a decision referred to in Article 5 of Regulation No 1/2003 or in Chapter III of Regulation No 1/2003.

Or. en

Amendment 100
Klaus-Heiner Lehne

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that national courts can impose sanctions on parties, third parties and their legal representatives in the event of:

deleted

(a) failure or refusal to comply with any court's disclosure order;

(b) the destruction of relevant evidence, provided that, at the time of destruction:

(i) the destroying party was or had been a party to the proceedings of a competition authority in relation to the conduct underlying the action for damages; or

(ii) the destroying party knew or should reasonably have known that an action for damages had been brought before the national court and that the evidence was of relevance in substantiating either the claim for damages or a defence against it; or

(iii) the destroying party knew that the evidence was of relevance to pending or prospective actions for damages brought by it or against it;

(c) failure or refusal to comply with the obligations imposed by a court order protecting confidential information; or

(d) abuse of the rights relating to disclosure of evidence provided for in this Chapter, and of the evidence and

information obtained thereunder.

Or. en

Amendment 101
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 8 – paragraph 1 – point b – introductory part

Text proposed by the Commission

Amendment

(b) the destruction of relevant evidence,
provided that, at the time of destruction:

(b) the destruction of relevant evidence;

Or. en

Amendment 102
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 8 – paragraph 1 – point b – point i

Text proposed by the Commission

Amendment

(i) the destroying party was or had been a party to the proceedings of a competition authority in relation to the conduct underlying the action for damages; or

deleted

Or. en

Amendment 103
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 8 – paragraph 1 – point b – point ii

Text proposed by the Commission

Amendment

(ii) the destroying party knew or should reasonably have known that an action for damages had been brought before the

deleted

national court and that the evidence was of relevance in substantiating either the claim for damages or a defence against it; or

Or. en

Amendment 104
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 8 – paragraph 1 – point b – point iii

Text proposed by the Commission

Amendment

(iii) the destroying party knew that the evidence was of relevance to pending or prospective actions for damages brought by it or against it;

deleted

Or. en

Amendment 105
Klaus-Heiner Lehne

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that the sanctions that can be imposed by national courts are effective, proportionate and dissuasive. *The sanctions available to national courts shall include, insofar as the behaviour of a party to damages action proceedings is concerned, the possibility to draw adverse inferences, such as presuming the relevant issue to be proven or dismissing claims and defences in whole or in part, and the possibility to order the payment of costs.*

2. Member States shall ensure that the sanctions that can be imposed by national courts are effective, proportionate and dissuasive *in the event of failure or refusal to comply with any court's disclosure order or order protecting confidential information.*

Or. en

Amendment 106
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 10 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that the limitation period shall **not begin to run before** an injured party knows, or can reasonably be expected to have knowledge of:

Amendment

2. Member States shall ensure that the limitation period shall begin **on the latest date after** an injured party knows, or can reasonably be expected to have knowledge of:

Or. en

Amendment 107
Klaus-Heiner Lehne

Proposal for a directive
Article 10 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that the limitation period shall not begin to run before an injured party knows, or can reasonably be expected to have knowledge of:

Amendment

2. Member States shall ensure that the limitation period shall not begin to run before **the infringement has ceased** an injured party knows, or can reasonably be expected to have knowledge of:

Or. en

Amendment 108
Klaus-Heiner Lehne

Proposal for a directive
Article 10 – paragraph 2 – point ii

Text proposed by the Commission

(ii) the qualification of such behaviour as an infringement of Union or national competition law;

Amendment

deleted

Amendment 109
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 10 – paragraph 2 – point ii

Text proposed by the Commission

(ii) the qualification of such behaviour as an infringement of Union or national competition law;

Amendment

(ii) the qualification of such behaviour as an infringement of Union or national competition law, ***such as the result of a public action***;

Or. en

Amendment 110
Klaus-Heiner Lehne

Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the limitation period does not begin to run before the day on which a continuous or repeated infringement ceases.

Amendment

deleted

Or. en

Amendment 111
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the limitation period for bringing an action for

Amendment

4. Member States shall ensure that the limitation period for bringing an action for

damages is at least *five* years.

damages is at least *ten* years.

Or. en

Amendment 112
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the limitation period for bringing an action for damages is at least *five* years.

Amendment

4. Member States shall ensure that the limitation period for bringing an action for damages is at least *six* years.

Or. en

Amendment 113
Klaus-Heiner Lehne

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the limitation period for bringing an action for damages is at least *five* years.

Amendment

4. Member States shall ensure that the limitation period for bringing an action for damages is at least *three years but not longer than 10* years.

Or. en

Amendment 114
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 10 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that the limitation period is suspended if a

Amendment

5. Member States shall ensure that the limitation period is suspended if a

competition authority takes action for the purpose of the investigation or proceedings in respect of an infringement to which the action for damages relates. The suspension shall end at the earliest one year after the infringement decision has become final or the proceedings are otherwise terminated.

competition authority takes action for the purpose of the investigation or proceedings in respect of an infringement to which the action for damages relates. The suspension shall end at the earliest one year after the infringement decision has become final, ***when a case can no longer be appealed or reviewed***, or the proceedings are otherwise terminated.

Or. en

Amendment 115
Klaus-Heiner Lehne

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that an undertaking which has been granted immunity from fines by a competition authority under a leniency programme shall be liable to injured parties other than its direct or indirect purchasers or providers only when such injured parties show that they are unable to obtain full compensation from the other undertakings that were involved in the same infringement of competition law.

deleted

Or. en

Amendment 116
Jürgen Klute

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that an undertaking which has been granted immunity from fines by a competition

2. Member States shall ensure that an undertaking which has been granted immunity from fines by a competition

authority under a leniency programme shall be liable to injured parties *other than its direct or indirect purchasers or providers only when* such injured parties *show that they* are unable to obtain full compensation from the other undertakings that were involved in the same infringement of competition law.

authority under a leniency programme shall be liable to injured parties *where* such injured parties are unable to obtain full compensation from the other undertakings that were involved in the same infringement of competition law.

Or. en

Amendment 117

Eva Lichtenberger

on behalf of the Greens/EFA Group

Proposal for a directive

Article 11 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that an undertaking which has been granted immunity from fines by a competition authority under a leniency programme shall be liable to injured parties *other than its direct or indirect purchasers or providers only* when such injured parties *show that they* are unable to obtain full compensation from *the other* undertakings *that were* involved in the same infringement of competition law.

Amendment

2. Member States shall ensure that an undertaking which has been granted immunity from fines by a competition authority under a leniency programme shall be liable to injured parties when such injured parties are unable to obtain full compensation from undertakings involved in the same infringement of competition law.

Or. en

Amendment 118

Sharon Bowles, Rebecca Taylor

Proposal for a directive

Article 11 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that an undertaking which has been granted immunity from fines by a competition

Amendment

2. Member States shall ensure that an undertaking which has been granted immunity from fines by a competition

authority under a leniency programme shall be liable to injured parties other than its direct or indirect purchasers or providers only when such injured parties show that **they are unable** to obtain **full** compensation from the other undertakings that were involved in the same infringement of competition law.

authority under a leniency programme shall be liable to injured parties other than its direct or indirect purchasers or providers only when such injured parties show that **it is not reasonably possible** to obtain **appropriate** compensation from the other undertakings that were involved in the same infringement of competition law.

Or. en

Amendment 119
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that 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. The burden of proving that the overcharge was passed on shall rest with the defendant.

Amendment

1. Member States shall ensure that 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. **Without prejudice to the commercial presumption that price increases are passed on down the supply chain**, the burden of proving that the overcharge was passed on shall rest with the defendant **who may reasonably require disclosures from the claimant**.

Or. en

Amendment 120
Klaus-Heiner Lehne

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the defendant in an action for damages can invoke as a defence against a claim for

Amendment

1. Member States shall ensure that 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. The burden of proving that the overcharge was passed on shall rest with the defendant.

damages the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement. The burden of proving that the overcharge was passed on shall ***in general*** rest with the defendant.

Or. en

Amendment 121
Rebecca Taylor, Sharon Bowles

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that, ***where in an action for damages the existence of a claim for damages or the amount of compensation to be awarded depends on whether - or to what degree - an overcharge was passed on to the claimant, the burden of proving the existence and scope of such pass-on shall rest with the claimant.***

Amendment

1. Member States shall ensure that, ***in line with the commercial presumption that price increases are passed on down the supply chain, the claimant can benefit from a legal presumption of pass-on under the conditions of paragraph 2. In order to prove these the claimant may reasonably require disclosures from the defendant.***

Or. en

Justification

Placing the burden of showing the pass-on with the indirect purchaser may require unobtainable knowledge on pricing strategies of direct purchasers. Passing on costs down the supply chain is normal business practice and this must be taken into account.

Amendment 122
Klaus-Heiner Lehne

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

In the situation referred to in paragraph 1

Amendment

In the situation referred to in paragraph 1

of this Article, the indirect purchaser shall ***be deemed to have proven*** that a passing-on to him occurred where he has shown that:

of this Article, the indirect purchaser shall ***prove*** that a passing-on to him occurred where he has shown that ***at least***:

Or. en

Amendment 123
Rebecca Taylor, Sharon Bowles

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

In the situation referred to in paragraph 1 of this Article, the indirect purchaser shall be deemed to have proven that a passing-on to him occurred where he has shown that:

The indirect purchaser shall be deemed to have proven that a passing-on to him occurred where he has shown that:

Or. en

Amendment 124
Jürgen Klute

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the defendant has committed an infringement of competition law;

(a) the defendant has ***inflicted, planned or*** committed an infringement of competition law;

Or. en

Amendment 125
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) the defendant has committed an infringement of competition law;

Amendment

(a) the defendant has ***inflicted or*** committed an infringement of competition law;

Or. en

Amendment 126
Jürgen Klute

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) the infringement resulted in an overcharge for ***the direct*** purchaser of the defendant; and

Amendment

(b) the infringement resulted in an overcharge for ***any*** purchaser of the defendant ***or in a distortion to any competitor***; and

Or. en

Amendment 127
Jürgen Klute

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) the infringement resulted in an overcharge for the direct purchaser of the defendant; and

Amendment

(b) the infringement resulted in an overcharge for the direct purchaser ***or in a distortion to any competitor*** of the defendant; and

Or. en

Amendment 128
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) the infringement resulted in an overcharge for the *direct* purchaser of the defendant; and

Amendment

(b) the infringement resulted in an ***distortion in the market that resulted in*** an overcharge ***or a loss as so*** for the purchaser ***or competitor*** of the defendant; and

Or. en

Amendment 129
Klaus-Heiner Lehne

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) the infringement resulted in an overcharge for the direct purchaser of the defendant; and

Amendment

(b) the infringement resulted in an overcharge for the direct purchaser of the defendant ***and*** an overcharge ***was passed on to him in part or whole***; and

Or. en

Amendment 130
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

1. The rules laid down in this Chapter shall be without prejudice to the right of ***an*** injured party to claim compensation for loss of profits.

Amendment

1. The rules laid down in this Chapter shall be without prejudice to the right of ***any*** injured party ***that have suffered harm*** to claim compensation for loss of profits.

Or. en

Amendment 131
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

1. The rules laid down in this Chapter shall be without prejudice to the right of an injured party to claim compensation for loss of profits.

Amendment

1. The rules laid down in this Chapter shall be without prejudice to the right of an injured party to claim compensation for loss of profits, ***actual loss, and interest from the time the harm occurred until the compensation in respect of that harm has been paid.***

Or. en

Amendment 132
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 15 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) any relevant results from public competition cases which help to fulfil the criteria in paragraph 2 of Article 13.

Or. en

Amendment 133
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that, in the case of a cartel infringement, it shall be presumed that the infringement caused harm. The infringing undertaking shall have the right to rebut this presumption.

1. Member States shall ensure that, in the case of a cartel infringement, it shall be presumed that the infringement caused harm ***within the market.*** The infringing undertaking shall have the right to rebut

this presumption.

Or. en

Amendment 134
Sharon Bowles, Rebecca Taylor

Proposal for a directive
Article 16 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the burden and the level of proof and of fact-pleading required for the quantification of harm does not render the exercise of the injured party's right to damages practically impossible or excessively difficult. Member States shall provide that the court be granted the power to estimate the amount of harm.

Amendment

2. Member States shall ensure that the burden and the level of proof and of fact-pleading required for the quantification of harm does not render the exercise of the injured party's right to damages practically impossible or excessively difficult. Member States shall provide that the court be granted the power to estimate the amount of harm ***if the claimant is unable to directly prove*** the amount of harm ***suffered***.

Or. en

Amendment 135
Giuseppe Gargani

Proposal for a directive
Article 17 – paragraph 2 – point 1 (new)

Text proposed by the Commission

Amendment

(1) The suspension referred to in paragraph 2 of this Article may not, in any case, have a duration exceeding one year.

Or. it

Amendment 136
Eva Lichtenberger
on behalf of the Greens/EFA Group

Proposal for a directive
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that when competition authorities approve the settlement for compensation or take the results of consensual dispute resolution into account, the quantification of damage and the identification of victims are included into their investigation.

Or. en

Justification

Where competition authorities are expected to ‘stamp’ the results of the amicable settlement for compensation, they hold enough information in order to do so. In most cases authorities do not investigate the harm caused by the anticompetitive infringement nor the groups of victims, with risk that unfair settlements could be taken into account as a mitigating circumstance when defining the level of fines or achieving the settlement with the infringing company. Based on a proposal from BEUC.

Amendment 137
Klaus-Heiner Lehne

Proposal for a directive
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that competition authorities can suspend proceedings for the duration of the consensual dispute resolution process. Following a consensual settlement, a competition authority shall consider the compensation paid or committed to be paid as a mitigating factor when setting fines.

Or. en

Amendment 138
Sharon Bowles

Proposal for a directive
Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17a

Consensual dispute resolution

Member States shall ensure that attempts are made to facilitate the parties reaching a fair and early settlement through consensual dispute resolution, with such an attempt being mandatory in the case of follow-on actions.

Any such obligation, however, should not entail an undue prolongation of proceedings, nor promote the unfair settlement of claims.

Or. en

Amendment 139
Klaus-Heiner Lehne

Proposal for a directive
Article 18 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that, following a consensual settlement, the claim of the settling injured party is reduced by the settling co-infringer's share of the harm that the infringement inflicted upon the injured party. Non-settling co-infringers cannot recover contribution from the settling co-infringer for the remaining claim. ***Only when the non-settling co-infringers are not able to pay the damages that correspond to the remaining claim can the settling co-infringer be held to pay damages to the settling injured party.***

1. Member States shall ensure that, following a consensual settlement, the claim of the settling injured party is reduced by the settling co-infringer's share of the harm that the infringement inflicted upon the injured party. Non-settling co-infringers cannot recover contribution from the settling co-infringer for the remaining claim.

Amendment 140

Jürgen Klute

Proposal for a directive

Article 19 – paragraph 1

Text proposed by the Commission

The Commission shall review this Directive and report to the European Parliament and the Council by [...] at the latest [to be calculated as 5 years after the date set as the deadline for transposition of this Directive.]

Amendment

The Commission shall review this Directive and report to the European Parliament and the Council by [...] at the latest [to be calculated as 5 years after the date set as the deadline for transposition of this Directive.]

The Report shall be accompanied by a coherent post-implementation assessment of the functioning of collective redress and collective ADR mechanisms within the competition sector, with particular evaluation of the essence of widening the application of such mechanisms in other sectors as well or establishing such a mechanism at EU level, to secure effective consumer protection and a balanced operation of the internal market.

Amendment 141

Jürgen Klute

Proposal for a directive

Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [to be calculated as **2 years** after the date of adoption of this Directive] at the latest. They shall forthwith communicate to the Commission the text

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [to be calculated as **one year** after the date of adoption of this Directive] at the latest. They shall forthwith communicate to the Commission the text

of those provisions.

of those provisions.

Or. en