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REPORT

on the Green Paper on Damages actions for breach of the EC antitrust rules (2006/2207(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Antolín Sánchez Presedo

Draftsman (*):
Bert Doorn, Committee on Legal Affairs

(*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

CONTENTS

Page

(*) Enhanced cooperation between committees - Rule 47

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Green Paper on Damages actions for breach of the EC antitrust rules (2006/2207(INI))

The European Parliament,

– having regard to the Green Paper on Damages actions for breach of EC antitrust rules (COM(2005)0672) (Green Paper on Damages),

– having regard to the report from the Commission on competition policy 2004 (SEC(2005)0805),

– having regard to its resolution of 15 November 1961[1], in reply to the EEC Council of Ministers' request for Parliament to be consulted in respect of the proposal for an initial implementing regulation concerning Articles 85 and 86 of the EEC Treaty,

– having regard to the Commission Notice on cooperation between national competition authorities (NCAs) and the Commission in handling cases falling within the scope of Articles 85 or 86 of the EC Treaty[2],

– having regard to the Presidency conclusions of the Lisbon European Council of 23 and 24 March 2000, the Gothenburg European Council of 15 and 16 June 2001, the Laeken European Council of 14 and 15 December 2001, the Barcelona European Council of 15 and 16 March 2002, and the Brussels European Councils of 20 and 21 March 2003, 25 and 26 March 2004, 22 and 23 March 2005, and 23 and 24 March 2006,

– having regard to the report published in November 2004 by the High Level Group on the Lisbon Strategy, entitled 'Facing the challenge - The Lisbon Strategy for growth and employment',

– having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[3], Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[4], and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[5],

– having regard to the international instruments that recognise the right to effective judicial protection and in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the protocols thereto,

– having regard to Article 6 of the European Convention for the Protection of Human

[1] OJ 61, 15.11.1961, p. 1409.
[2] OJ C 313, 15.10.1997, p. 3.
[3] OJ L 68, 6.3.2004, p. 1.
[4] OJ L 123, 27.4.2004, p. 18.
[5] OJ L 24, 29.1.2004, p. 1.

Rights and Fundamental Freedoms and the protocols thereto,

– having regard to Article 47 of the Charter of Fundamental Rights of the European Union,

– having regard to Article 45 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0133/2007),

A. whereas competition policy has formed part of the European integration venture from the outset and is key to the process of the construction of the European Union,

B. whereas free and undistorted competition is essential to achieving the objectives of the Lisbon-Göteborg strategy, the vitality of the internal market, entrepreneurial excellence, consumer interests and the goals of the European Union, while anti-competitive behaviour is prejudicial to those objectives,

C. whereas Articles 81 and 82 of the EC Treaty are public policy provisions that have direct effects and that should automatically be applied by the competent authorities; whereas they create rights between individuals, which the judicial authorities should safeguard effectively in line with the case law of the Court of Justice of the European Communities, including the judgment in case 26/62[1] (Van Gend & Loos), which is notable, in particular, for being the precursor to subsequent cases,

D. whereas in the Member States, competition law is chiefly enforced through public-law channels and considerable differences and obstacles exist at Member State level which may prevent potential claimants from pursuing actions for compensation,

E. whereas Article 85 of the EC Treaty requires the Commission to ensure application of the principles laid down in Articles 81 and 82 of the Treaty concerning competition law; whereas the Treaty provides for other legal bases that can contribute to the effectiveness of those principles, such as Articles 65, 83, 95, 153 and 308; and whereas as the Court of Justice considers that, in the absence of Community rules governing the right of victims to claim damages before the national courts, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules are not less favourable than those governing similar domestic actions (in accordance with the principle of equivalence), and provided that they do not render practically impossible or excessively difficult the exercise of rights conferred by Community law (in accordance with the principle of effectiveness),

F. whereas the rare and exceptional use of private actions before the jurisdictions of Member State courts, as provided for in Regulation (EC) No 1/2003 regarding the modernisation of Competition policy in the application of competition law indicates that there is a need for measures to facilitate the bringing of actions for damages;

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[1] NV Algemene Transport-en Expeditie Onderneming van Gend en Loos v Netherlands Inland Revenue Administration [1963] ECR-1.

whereas such measures should increase compliance with EC competition law, bearing in mind the different rules of procedure and evidence in the Member States; whereas this should not lead to a situation in which undertakings engaging in lawful economic behaviour are placed at undue risk of having to pay unjustified claims, or to change their behaviour, in order to avoid costly litigation,

G. whereas consumers and businesses that have suffered damage as a result of breach of antitrust rules should have a right to compensation,

H. whereas developments in EU civil justice rules, in particular as regards access to justice, have not kept pace with recent developments in Community competition law in the internal market,

I. whereas in Case C-453/99[1], the Court of Justice ruled that, in order to ensure that Article 81 of the EC Treaty is fully effective, individuals and companies may claim compensation for damage caused to them by virtue of a contract or conduct that restricts or distorts competition,

J. whereas the existing redress mechanisms for breach of antitrust rules at European level do not guarantee the full effectiveness of Article 81 of the EC Treaty, in particular with regard to victims,

K. whereas many Member States are examining ways better to protect consumers by allowing collective actions, and whereas differing courses of action may lead to the distortion of competition in the internal market,

L. whereas any proposal by the Commission in areas for which the Commission does not have exclusive competence must, pursuant to the EC Treaty, comply with the principles of subsidiarity and proportionality,

1. Points out that Community competition rules would lack dissuasive effect, and their effectiveness would be compromised, if anyone acting in a proscribed manner were able to enjoy advantages on the market or immunity in respect of their infringements owing to obstacles to full claims for damages; considers that the bringing of legal actions by the representatives of the public interest and victims should be facilitated;

2. Considers that citizens or businesses suffering damage as a result of a breach of competition law should have the opportunity to claim compensation for their losses; considers furthermore that such breaches must be formally established through the applicable procedures provided that the injured parties' own interests are directly concerned;

3. Welcomes the fact that the Court of Justice has recognised the right of victims who have suffered losses as a result of anti-competitive behaviour to bring "stand alone" or "follow on" legal actions to obtain compensation; welcomes, therefore, the Green Paper on Damages as well as the preparatory works linked thereto;

4. Calls, with a view to promoting competition rather than litigation, for the promotion of

[1] *Courage Ltd* v *Crehan* [2001] ECR I-6297.

swift and amicable out-of-court settlements and the facilitation of plea agreements in claims for damages arising from anti-competitive behaviour and points out that in the event that the party that is alleged to have infringed competition rules claims and proves that the damage has been compensated before the conclusion of the proceedings, this could be regarded as mitigating factor in setting the amount of damages to be awarded; also welcomes the fact that competition authorities in the European Union can to some extent perform an institutional arbitration role by administering arbitration procedures includingappointing arbitrators at the request of the parties;

5. Considers, therefore, that the legal systems of the Member States should provide for effective civil law procedures whereby compensation can be claimed for damage resulting from breaches of antitrust law;

6. Takes the view that instituting private actions should be complementary to and compatible with public enforcement,which, in turn, could become more strategic and selective in nature, focusing on the most important issues and significant cases; considers, however, that such actions should not constitute a justification for the under-resourcing of competition authorities;

7. Calls for Articles 81 and 82 of the Treaty to be implemented uniformly, regardless of the administrative or judicial nature of the authority adopting the decision; takes the view that decisions adopted by judicial authorities should be consistent and reflect common principles of security and effectiveness that avoid distortions and inconsistencies within the Union; considers that the objective should be to arrive at procedures and a situation in which a prior final ruling by a competition authority or judicial authority is binding on all Member States insofar as the parties to, and circumstances of, the case are the same;

8. Emphasises that it is vital for the training of judicial authorities in competition law in order to ensure the quality of their rulings, and the essential importance of having proceedings handled by specialist or highly qualified bodies;

9. Maintains that in order to protect competition and the rights of victims all judicial authorities implementing the provisions of Community competition should be able to adopt provisional measures, order measures of enquiry and make use of their powers of investigation where necessary;

10. Stresses that, for the purposes of establishing the relevant facts in the application of Articles 81 and 82 of the Treaty, the national courts should enjoy powers comparable with those granted to the Community competition authorities, and that, to ensure consistency, there is a need to strengthen cooperation between the NCAs and the national courts and among the national courts;

11. Urges Member States to accept that the finding of an infringement arrived at by an NCA, once final and, where appropriate, confirmed on appeal, automatically constitutes prima facie proof of fault in civil proceedings involving the same issues, provided that the defendant had an adequate opportunity to defend itself in the administrative proceedings;

12. Further considers it unnecessary to discuss and prescribe at Community level the need

for the appointment of experts;

13. Considers that the proposed regulation on the law applicable to non-contractual obligations (Rome II) should provide a satisfactory solution save where the anti-competitive behaviour affects competition in more than one Member State,and that consideration should therefore be given to a introducing a specific rule relating to such cases;

14. Urges the national courts to cooperate in protecting confidential information and rendering leniency programmes effective; considers that in the event of a conflict arising over access to and the processing of such information available to the members of the European competition network (ECN), this should be settled in the light of the interpretation of Community law by the Court of Justice;

15. Emphasises that payments awarded to complainants should be compensatory and should not exceed the actual damage (damnum emergens) and losses ('lucrum cessans') suffered, in order to avoid unjust enrichment, and that the ability of the victim to mitigate the damage and losses may be taken into account; however in the case of cartels, suggests that it should be possible to award compensation of double the amount of damages on a discretionary basis, that first applicants cooperating with the competition authorities in leniency programmes should not be held jointly and severally liable with the other infringers, and that interest should be calculated from the date of the infringement;

16. Considers that any proposed measure must fully respect the public policy of the Member States, in particular with regard to punitive damages;

17. Underlines that Member States should take into account that the possibility of asserting a passing-on defence would be detrimental to establishing the extent of the damage and the causal link;

18. Concurs with case law of the Court of Justice that all victims should be able to bring legal actions; takes the view that Member States that make provision for actions for indirect losses should grant the defendant the possibility of arguing that all or part of the gains it made as a result of infringement have been transferred to third parties (the passing-on defence), in order to avoid the possibility of unjust enrichment; notes that it is therefore essential to have a mechanism for dealing with multiple small claims;

19. Takes the view that for reasons of economy, speed and consistency, victims should be able voluntarily to bring joint actions, either directly or via organisations whose statutes have this as their object;

20. Notes that in many cases there will be an asymmetry of resources between the complainant and the defendant in legal proceedings for damages arising from anti-competitive behaviour and in such cases complainants should not be deterred from bringing well-founded actions for damages by the fear of having to pay excessive legal costs, including the costs of the defendant if the claim is unsuccessful; suggests, therefore, that judicial authorities should be able to take into account the different economic situation of the parties and where appropriate should control this point at the outset of proceedings; considers that the level of the costs should be based on

reasonable and objective criteria taking into account the nature of the trial, and should include the costs engendered by the legal proceedings;

21. Recommends that in the public aid programmes that can legitimately be adopted to enable private actions to be brought more easily for damages arising from anti-competitive behaviour, clear-cut conditions be laid down as regards the oversight of the proceedings and the reimbursement of such aid, in particular in cases where the case is settled and the infringer is ordered to pay costs;

22. Considers that national limitation periods for actions for infringements of the Community competition rules should allow actions to be brought within one year of a decision of the Commission or an NCA finding that those rules have been infringed (or, in the event of an appeal, one year from the conclusion of such appeal); considers that, where there is no such decision, it should be possible to bring actions for damages for infringements of Article 81 or 82 of the EC Treaty, the Community competition rules, at any time during the period within which the Commission is entitled to take a decision imposing a fine for those infringements; considers that time should stop running for the period of any formal discussions or mediation between the parties;

23. Suggests that the limitation period applying to the right to claim compensation in the event of a breach of antitrust law should be suspended from the time when the Commission or NCA in one or more Member States opens an investigation into such breach;

24. Points out that instituting private actions for damages does not affect the powers or responsibilities that the Treaty confers on the Commission in the area of competition law;

25. Urges the Commission to adopt, as swiftly as possible, guidelines for the provision of assistance to the parties in quantifying the damage they have suffered and establishing the causal link; calls also for priority to be given to drawing up a communication on the bringing of independent legal actions that includes recommendations for the filing of claims and examples for the most frequent cases;

26. Calls on the Commission to prepare a White Paper with detailed proposals to facilitate the bringing of "stand alone" and "follow on" private actions claiming damages for behaviour in breach of the Community competition rules, which addresses, in a comprehensive manner, the issues raised in this Resolution and gives consideration, where appropriate, to an adequate legal framework; also calls on the Commission to include therein proposals for strengthening the cooperation between all the authorities responsible for applying Community antitrust rules;

27. Considers that any Commission initiative governing the right of victims to claim damages before the national courts must be accompanied by an impact assessment that evaluates the legal basis of the initiative and its compliance with the principles of subsidiarity and proportionality, and must reflect the delicate balances of centuries of development in the different legal systems across the European Union;

28. Calls on the Commission to work closely with the competent national authorities of the Member States in order to mitigate any cross-border obstacles that prevent EU citizens

and businesses from filing cross-border damages claims in cases of breaches of Community antitrust rules in Member States; considers that, if necessary, the Commission should take legal action to remove such obstacles;

29. Urges those Member States in which citizens and businesses do not yet have such an effective right to claim compensation, to adapt their civil procedural law;

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

31. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the social partners.

EXPLANATORY STATEMENT

1. Competition in the Community: 50 years of experience

Competition policy is an inherent part of the EU. Ever since the Treaty of Rome, it has played a crucial part in enabling the existence of an open and dynamic market that generates entrepreneurial excellence and benefits for the end consumer.

Competition has increased in importance and specific value. It is as an integral part of European economic logic, and competition measures are an essential means of carrying out the tasks entrusted to the Community. Competition policy is essential to the smooth operation of the internal market, ensuring that economic activity produces optimum results and delivering on the Lisbon Strategy for growth and lasting employment. It is vital to tackling the challenges of globalisation and meeting the European Union's objectives.

2. The costs of infringement

Infringements generate micro-economic and macro-economic costs. Infringers seek to unbalance relations with other market players (competitors, providers, customers and consumers) and secure an advantage at their expense. By acting in a proscribed manner they occasion exorbitant economic costs to them.

In a wider perspective, they prevent the results of competition from being achieved: better allocation of resources, greater economic efficiency, increased innovation and lower prices.

An effective competition policy must avoid the economic costs and loss of confidence generated by infringements. Passivity is complicity. It is crucial to efficient competition that the infringer does not secure advantages on the market and that he suffers serious consequences for his conduct and, in the final analysis, is made fully liable.

3. The private pillar of Community competition

Competition rules generate specific administrative relations as regards market discipline, and regulate private relations. The private dimension of Articles 81 and 82 of the Treaty can be seen in Article 81(2), which states that any prohibited action shall automatically be void. The judgments in Geus v Bosch (case 13/61) and Van Gend & Loos (case 26/62) recognised that the provisions of the Treaty impose obligations on the public and also create rights in their favour on which they can rely in law.

The leading role in the tackling of anti-competitive behaviour has come to be filled by public proceedings. Initial centralisation of the application of Article 81(3) by the Commission through a system of notification and authorisation, which proved decisive for the introduction of Community competition policy, placed the emphasis on public initiative. The extension of the Commission's role, with the adoption, from the 1980s onwards, of block exemption rules for some classes of agreement, may have speeded up the system but did not change its administrative leanings. Its weakness stemmed from success: the demand for more and better

competition was incompatible with the economic inefficiency and judicial inadequacy of the system. It was therefore done away with under Regulation 1/2003, which broke the Commission's monopoly and established a more complex and open system, applicable in a decentralised manner by the competition authorities and by the national judicial authorities.

A milestone in the modernisation process came with the judgment of the Court of Justice of the European Communities in the case Courage v Crehan of 20 September 2001 which, in tying in with basic jurisprudence, expressly recognised that Article 81 could be relied on in law and, moreover, indicated that its full effectiveness would be restricted if the victim of anti-competitive behaviour were not able to claim damages for losses. The judgment in the Manfredi case of 13 July 2006 also pointed out that *'actions for damages before the national courts can make a significant contribution to the maintenance of effective competition in the Community'*.

4. Complementary nature of public and private legal actions

Public actions and private actions form two pillars in the application of Community competition rules. Competition policy must safeguard market discipline, as a social principle, and the interests of the players on that market, be they undertakings or consumers.

In an advanced system, public action against the impunity of infringer undertakings should be backed with private action against their immunity and indemnity vis-à-vis private individuals. The imposition of fines by the public authorities is a limited response and it would be unacceptable for them also to address private claims as this would overburden them, resulting in inefficiency, and would be alien to European legal culture.

In the European model, private legal actions are a complement to public actions, rather than a substitute for them. The opening-up of the European system to private actions, rather than a change in that model, is an evolution from its original form.

The consistency of the system must be ensured in accordance with the right to conduct a business and the subjective rights of private individuals. Articulation of the two pillars calls for the coordination of activities under them, facilitation of the following-up with private actions of infringement decisions adopted by the competition authorities, and recognition of the binding nature of prior final rulings adopted by the competent authorities.

The decentralisation of public legal action and the development of private actions will enable a more strategic and selective focus to be adopted for public actions, centring these on major questions and priority issues.

5. Promoting competition rather than litigation

Private legal actions are an instrument of competition policy and not an end in themselves. Recognising their role does not necessarily entail implementation can act as a powerful incentive to avoiding them. In any event, the bringing of private actions is in reality a means of remedying the economic imbalances arising from infringement.

Appropriate regulation of private actions will also reduce the number of lawsuits by removing the uncertainties which help to encourage them. In the final analysis, it will enable

the judicial authorities to implement Community rules more effectively when litigation is inevitable.

Litigation should not be encouraged artificially or with rules detrimental to fair and equitable process, with equality of arms for both parties. The aim is not activism but the rational use of legal action.

Self-settlement, out-of-court settlements and plea agreements should be promoted in actions for damages. It should be possible for their remedying to be justified and taken into account when it comes to deciding on what fine to set.

6. Differences with the North American model

While competition legislation in the United States is implemented in 90% of cases via private damages actions, these are very rarely brought in the European Union. Practices differ, but a comparison of the qualitative aspects is still more relevant.

Private actions can reflect very different approaches and models, and it would be a gross mistake to identify private actions with the North American model. In the United States, the judicial authorities that rule on private claims impose punitive damage payments of three times the damage occasioned. In the European Union, the competition authorities have the monopoly on imposing fines, and the European model of private actions is a complement rather than an alternative to public legal action.

The North American model is based on a set of elements (judicial bodies consisting of non-professionals, 'class actions', strict requirements on the disclosure of documents, punitive damage payments of three times the damage occasioned, risk-free litigation owing to the lawyer's fees being pegged to the outcome and payment by each party of the costs of litigation, etc.). No formula of this type exists in European legal practice.

The European model cannot be compared to the North American one simply on the basis of some of these elements. This report proposes a clearly differential approach, in line with the experience acquired by the Community and the Member States.

7. Need for a common focus in the European Union

Articles 81 and 82 of the Treaty should be implemented uniformly regardless of the administrative or judicial nature of the authority giving the ruling. Decisions should be consistent and reflect common principles of security and effectiveness that avoid distortions and a lack of cohesion within the Union. The Commission's Green Paper raises several interesting points on the way these should be addressed in the future.

Private actions can be follow-up actions (after adoption of a decision by the competition authorities establishing that a breach has been committed) or autonomous ones (where no breach has been established and the judicial authority must deliver a ruling as a precondition for liability for damages). In the interests of the consistency of the system, undifferentiated decisions on whether a breach has been committed must be reached through common rules and equivalent powers to enable:

- adoption of provisional measures, measures of enquiry and anticipatory measures;
- establishment of the facts and establishment and assessment of the burden of proof;
- protection of confidential information and the effectiveness of leniency programmes;
- reinforced cooperation between authorities, making for a more reliable and effective system.

There is also a need for more specific bases, in order for the judicial authorities to rule on claims for compensation in a uniform manner.

8. 'Regulation versus litigation'

The Court of Justice of the Communities has pointed to the supplementary nature of its case law ('*in the absence of Community rules governing the matter*'), in establishing that actions for damages before the national authorities should be settled in accordance with the principles of effectiveness and equivalence. The internal principle of equivalence is valid in the resolution of domestic and problematic actions, and also in hearings between parties, with that of effectiveness, when it takes precedence, but would it not be reasonable to avoid 25 or more different scenarios?

An increase in litigiousness and judicial complexity is detrimental to claimants and to the effectiveness of the system. The area requires a Community regulatory framework which affords greater security and efficacy.

The task of the judicial authorities in the field of Community competition law is not to write the law but to render it effective by settling concrete cases through '*inter partes*' debates. It is up to the regulator to select alternatives in fundamental issues and to lay down provisions, via public and open debate in the European Union, thereby bestowing greater legitimacy and taking to account the general interest.

9. The special role of the European Commission

The bringing of private actions does not alter the powers or responsibilities conferred on the Commission under the Treaty. Its functions as regards ensuring the application of the principles set out in Articles 81 and 82 of the Treaty are of major importance.

Moving from stunted private actions to a balanced system, with two complementary pillars, calls for political will and intellectual leadership. The Commission must address this challenge in the form of a reference work on the application of competition law, and adopt measures to ensure its success. As basic tasks it must update the regulations, set out guidelines that enable their development, publish general policy documents to increase understanding of them and spur cooperation between the competent authorities.

10. Strengthening of the European Parliament's role in competition policy

As a representative institution, Parliament must lend competition policy the democratic legitimacy it needs. Parliament must play a more leading and more active role if a culture of competition is to be extended throughout society.

Competition in the Community is no longer a budding administrative discipline but a

consolidated policy of enormous significance for undertakings and the public, and one fundamental to European integration. If it is to be made fully democratic, Parliament's role must be strengthened, its powers of recommendation and monitoring increased and its co-legislative status recognised.

27.2.2007

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the Green Paper: Damages actions for breach of the EC antitrust rules
(2006/2207(INI))

Draftsman (*): Bert Doorn

(*) Enhanced cooperation between committees – Rule 47
of the Rules of Procedure

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

A. whereas consumers and businesses who have suffered damage as a result of breach of antitrust rules have a right to compensation,

B. whereas in the Member States, competition law is chiefly enforced through public-law channels and considerable differences and obstacles exist at Member State level which may prevent potential claimants from pursuing actions for compensation,

C. whereas Article 85 of the EC Treaty requires the Commission to ensure application of the principles laid down in Articles 81 and 82 of the Treaty concerning competition law; whereas the Treaty provides for other legal bases that can contribute to the effectiveness of those principles, such as Article 65, which enables the European Union to eliminate obstacles to the good functioning of proceedings in civil matters having cross-border implications; and whereas as the Court of Justice considers that, in the absence of Community rules governing the right of victims to claim damages before the national courts, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence), and provided that they do not render practically impossible or excessively difficult the exercise of rights conferred by Community law

(principle of effectiveness),

D. whereas developments in EU civil justice, in particular access to justice, have not kept pace with recent developments in EU competition law in the internal market,

E. whereas any proposal by the Commission in areas for which the Commission does not have exclusive competence must – pursuant to the EC Treaty – comply with the subsidiarity principle and meet proportionality criteria,

F. whereas in Case C-453/99 *Courage* v *Crehan*[1] the Court of Justice ruled that, in order to ensure that Article 81 of the EC Treaty is fully effective, individuals and companies may claim compensation for damage caused to them by a contract or by conduct which restricts or distorts the play of competition,

G. whereas the existing redress mechanisms for breach of antitrust rules at European level do not guarantee the full effectiveness of Article 81 of the EC Treaty, in particular with regard to victims,

H. whereas many Member States are looking at ways to better protect consumers by allowing collective actions, and whereas differing courses of action may lead to distortion of competition in the internal market,

1. Considers that citizens or businesses suffering damage as a result of a breach of competition law should have the opportunity to claim compensation for their losses; considers furthermore that such breaches must be formally established through the applicable procedures and provided that injured parties' own interests are directly concerned;

2. Considers, therefore, that the legal systems of the Member States should provide for effective civil law procedures whereby compensation may be claimed for damage resulting from breaches of antitrust law;

3. Considers that any Commission initiative governing the right of victims to claim damages before the national courts must be accompanied by an impact assessment that evaluates the legal basis of the initiative and its compliance with the principles of subsidiarity and proportionality, and must reflect the delicate balances of centuries of development in the different legal systems across the EU;

4. Urges those Member States in which citizens and businesses do not yet have such an effective right to claim compensation to adapt their civil procedural law;

5. Urges Member States to accept that a prior finding of infringement arrived at by the competition authority, once final and confirmed on a possible appeal, automatically constitutes prima facie proof of fault in civil proceedings involving the same issues, provided that the defendant had an adequate opportunity to defend itself in the administrative proceedings;

[1] [2002] ECR I-6297.

6. Also underlines that Member States should consider that the possibility to assert a passing-on defence is detrimental to the finding of the extent of the damage and the causal link;

7. Calls on the Commission to work closely with the competent national authorities of the Member States in order to mitigate any cross-border obstacles that prevent EU citizens and businesses from filing cross-border damages claims in cases of breaches of EC antitrust rules in Member States; considers that, if necessary, the Commission should take legal action to remove such obstacles;

8. Suggests that the limitation period applying to the right to claim compensation in the event of a breach of antitrust law should be suspended from the time when the Commission or competition authority in one or more Member States opens an investigation into such breach;

9. Further considers that claims for damages resulting from a breach of antitrust laws do not require any specialised courts, unless provided for in the legal procedures of the Member States;

10. Considers that any proposed instrument must fully respect the public policy of the Member States, in particular with regard to punitive damages;

11. Considers it inappropriate to adapt at Community level the national rules concerning the disclosure of documentary evidence and the burden of proof in civil proceedings for damages under Articles 81 and 82 of the EC Treaty;

12. Further considers it unnecessary to discuss and prescribe at Community level the need for the appointment of experts, clarification of the legal requirement of causation and the possibility of bringing collective actions, since those elements may be regarded as rooted in the tradition of national legal systems;

13. Considers that, whilst the proposed Regulation on the law applicable to non-contractual obligations ('Rome II') should provide a satisfactory solution save where the anticompetitive behaviour affects competition in more than one State, consideration should be given to a special rule to be inserted into that Regulation;

14. Considers that the Commission is not entitled to decide unilaterally and in advance upon which markets to focus its antitrust public-enforcement activities, and that initiatives should be launched only if they have received political backing from the European Parliament and the Council.

PROCEDURE

Title	Green Paper: Damages actions for breach of the EC antitrust rules
Procedure number	2006/2207(INI)
Committee responsible	ECON
Opinion by Date announced in plenary	JURI 7.9.2006
Enhanced cooperation – date announced in plenary	JURI 7.9.2006
Drafts(wo)man Date appointed	Bert Doorn 30.5.2006
Previous drafts(wo)man	
Discussed in committee	12.9.2006 3.10.2006 21.11.2006 27.2.2007
Date adopted	27.2.2007
Result of final vote	+: 21 –: 0 0: 0
Members present for the final vote	Wolfgang Bulfon, Bert Doorn, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina
Substitute(s) present for the final vote	Mladen Petrov Chervenyakov, Adeline Hazan, Barbara Kudrycka, Eva Lichtenberger, Michel Rocard, József Szájer, Jacques Toubon
Substitute(s) under Rule 178(2) present for the final vote	Toine Manders
Comments (available in one language only)	...

PROCEDURE

Title	Green Paper on Damages actions for breach of the EC antitrust rules
Procedure number	2006/2207(INI)
Committee responsible Date authorisation announced in plenary	ECON 7.9.2006
Committee(s) asked for opinion(s) Date announced in plenary	ITRE JURI IMCO 7.9.2006 7.9.2006 7.9.2006
Not delivering opinion(s) Date of decision	ITRE IMCO 20.2.2006 13.9.2006
Enhanced cooperation Date announced in plenary	JURI 7.9.2006
Rapporteur(s) Date appointed	Antolín Sánchez Presedo 17.1.2006
Previous rapporteur(s)	
Discussed in committee	19.4.2006 21.11.2006 19.12.2006 23.1.2007
Date adopted	27.3.2007
Result of final vote	+ 22 - 18 0 1
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Ieke van den Burg, David Casa, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Robert Goebbels, Donata Gottardi, Karsten Friedrich Hoppenstedt, Gunnar Hökmark, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Guntars Krasts, Astrid Lulling, Hans-Peter Martin, Gay Mitchell, Cristobal Montoro Romero, Joseph Muscat, Joop Post, John Purvis, Alexander Radwan, Bernhard Rapkay, Heide Rühle, Manuel Antolín Sánchez Presedo, António dos Santos, Olle Schmidt, Peter Skinner, Cristian Stănescu, Margarita Starkevičiūtė, Ivo Strejček.
Substitute(s) present for the final vote	Harald Ettl, Werner Langen, Klaus-Heiner Lehne, Thomas Mann, Gianni Pittella, Adina-Ioana Vălean.
Substitute(s) under Rule 178(2) present for the final vote	
Date tabled	10.4.2007
Comments **(available in one language only)**	