



EUROPEAN PARLIAMENT

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Committee on Economic and Monetary Affairs

2011/2089(INI)

20.10.2011

OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Legal Affairs

on Towards a Coherent European Approach to Collective Redress
(2011/2089(INI))

Rapporteur: Andreas Schwab

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SUGGESTIONS

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

1. Welcomes the Commission's work towards a coherent European approach to collective redress; recalls its resolution of 26 March 2009 on the White Paper on damages actions for breach of the antitrust rules and considers that any new initiative in the field of collective redress in competition policy should be coherent with the contents of both this resolution and the 2009 resolution;
2. Believes, as regards the competition sector, that public enforcement is essential to implement the provisions of the Treaties, to fully achieve the goals of the EU and to ensure the enforcement of EU competition law by the Commission and national competition authorities;
3. Recognises, however, that in an increasingly integrated single market in which online trade is growing rapidly, there is a need for an EU-wide approach in the area of collective redress;
4. Notes that private enforcement through collective redress could facilitate EU-level compensation for harm caused to consumers and undertakings and help to ensure that EU competition law is effective;
5. Notes that forms of private enforcement already exist in many Member States, but that the national systems are widely divergent and that many Member States do not have clear and explicitly established specific rules on collective redress, including judicial redress;
6. Emphasises that, with a view to completing the internal market, there should be greater consistency in consumer rights across the Union; points out that a well-designed system for collective redress can contribute to consumer confidence and thus to the smooth functioning of the internal market and online trade, boosting the competitiveness of the European economy;
7. Notes also that relatively few private actions for damages are brought before national courts;
8. Underlines, therefore, the need to increase the effectiveness of both the right of access to justice and EU competition law, since individual actions may not always be sufficient and efficient;
9. Recalls that, currently, only Member States legislate on national rules applicable for quantifying the amount of compensation that can be awarded; notes, furthermore, that the enforcement of national law must not prevent the uniform application of European law;
10. Adds that any EU collective redress system may take into account national best practices in the area of collective redress;

11. Stresses, furthermore, that any horizontal EU instrument on collective redress should outline common minimum standards on obtaining damages collectively, in line with the principles of subsidiarity, speciality and proportionality, possibly including general procedural and private international law issues;
12. Believes that the specific issues arising in the competition field should be taken into account appropriately and that any instrument applicable to collective redress must take full and proper account of the specificities of the antitrust sector;
13. Recalls that these specific issues include the leniency policy, which is an essential tool for uncovering cartels; emphasises that collective redress should not compromise the effectiveness of the competition law leniency system and the settlement procedure;
14. Points out, moreover, that damages actions for breach of EU competition law have special characteristics that set them apart from other damages actions in that they might affect powers conferred directly by the Treaties on public authorities, allowing them to investigate and punish infringements, and, on the other hand, they relate to behaviour that disrupts the smooth functioning of the internal market and might also affect relations at different levels among companies and consumers;
15. Stresses that there is comparative experience on the basis of which to evaluate, and abundant literature on the basis of which to address, the many specific and important issues that do not exist in other fields;
16. Points out that the experience gained to date in those EU Member States where such redress mechanisms are already in place shows that there have been no abuses or liquidations of businesses;
17. Reiterates that, as regards collective redress in competition policy, safeguards need to be put in place in order to avoid a class-action system with frivolous claims and excessive litigation and to guarantee equality of arms in court proceedings, and stresses that such safeguards must cover, inter alia, the following points:
 - the group of claimants must be clearly identified before the claim is brought (opt-in procedure);
 - public authorities such as ombudsmen or prosecutors, as well as representative bodies, may bring an action on behalf of a clearly identified group of claimants;
 - the criteria used to define the representative bodies qualified to bring representative actions need to be established at EU level;
 - a class-action system must be rejected on the grounds that it would promote excessive litigation, may be contrary to some Member States' constitutions and may affect the rights of any victim who might participate in the procedure unknowingly but would still be bound by the court's decision;

(a) individual actions allowed:

- claimants must under all circumstances be free to make use of the alternative of individual compensatory redress before a competent court;
- collective claimants must not be in a better position than individual claimants;

(b) compensation for minor and diffuse damages:

- claimants of minor and diffuse damages should have appropriate means of access to justice through collective redress and should secure fair compensation;

(c) compensation for actual damage only:

- compensation may be awarded only for the actual damage sustained: punitive damages and unfair enrichment must be prohibited;
- each claimant must provide evidence for his claim;
- the damages awarded must be distributed to individual claimants in proportion to the harm they sustained individually;
- by and large, contingency fees are unknown in Europe and must be rejected;

(d) loser pays principle:

- there may be no action if the claimant is defenceless as a result of a lack of financial means; moreover the procedural costs, and hence the risk, involved in legal action are to be borne by the party which loses the case; it is a matter for the Member States to lay down rules on the allocation of costs in this context;

(e) no third-party funding:

- proceedings should not be pre-financed by third parties, with, for example, claimants agreeing to surrender to third parties possible subsequent entitlements to compensation;

18. Calls on the Commission to thoroughly and objectively analyse whether these safeguards can genuinely be ensured in a collective redress system;

19. Calls on the Commission to clearly lay down the conditions under which an action may be allowed and to provide for the Member States having to ensure that any potential collective action undergoes a preliminary admissibility check to confirm that the qualifying criteria have been met and that the action is fit to proceed;

20. Stresses that any horizontal framework must ensure two basic premises:

- Member States will not apply more restrictive conditions to the collective redress cases arising from the infringement of EU law than those applied to cases arising from the infringement of national law;
- none of the principles laid out in the horizontal framework will prevent the adoption of

further measures to ensure that EU law is fully effective;

21. Suggests, should the Commission submit a proposal for a legislative instrument governing collective redress in competition policy, that a principle of follow-on action be adopted, whereby private enforcement under collective redress may be implemented if there has been a prior infringement decision by the Commission or a national competition authority, so as to protect the leniency system and ensure that the Commission and national competition authorities are able to take effective action to enforce EU competition law;
22. Notes that establishing the principle of follow-on action does not preclude the possibility of providing for both stand-alone and follow-on actions for the field of competition and for other fields in any legal instrument; points out that, in the case of stand-alone actions, it is necessary to ensure that any private action can be frozen until a public-enforcement decision regarding the infringement has been taken by the competent competition authority under EU law;
23. Supports the development of strong EU-wide alternative dispute resolution mechanisms as voluntary, quick and low-cost extra-judicial dispute settlement procedures, as well as of self-regulatory instruments such as codes of conduct; stresses, however, that these mechanisms should remain, as the name indicates, merely an alternative to judicial redress, not a precondition;
24. Believes that an effective system of collective redress could in fact stimulate the development of alternative dispute resolution mechanisms by creating an incentive for the parties to solve their disputes quickly out of court;
25. Believes that each individual damage or loss suffered plays a pivotal role in decisions to file an action, and takes the view that national procedural rules in Member States could use Regulation (EC) No 861/2007 establishing a European Small Claims Procedure¹ as a reference for the purposes of collective redress in cases where the value of the claim does not exceed that regulation's scope;
26. Emphasises that any legislative instrument proposed by the Commission pertaining to collective redress in the field of competition should be adopted without further delay and only under the ordinary legislative procedure;

¹ OJ L 199, 31.7.2007, p. 1.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.10.2011
Result of final vote	+: 33 -: 1 0: 0
Members present for the final vote	Burkhard Balz, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Wolf Klinz, Jürgen Klute, Philippe Lamberts, Werner Langen, Astrid Lulling, Arlene McCarthy, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Peter Simon, Peter Skinner, Ivo Strejček, Kay Swinburne, Marianne Thyssen
Substitute(s) present for the final vote	Sophie Auconie, Philippe De Backer, Saïd El Khadraoui, Olle Ludvigsson, Thomas Mann, Andreas Schwab, Theodoros Skylakakis
Substitute(s) under Rule 187(2) present for the final vote	Diana Wallis