

EUROPEAN PARLIAMENT

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2009

Committee on Legal Affairs

2008/2154(INI)

22.1.2009

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the White Paper on damages actions for breach of the EC anti-trust rules
(2008/2154(INI))

Rapporteur: Francesco Enrico Speroni

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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:

1. Welcomes the drawing-up of a White Paper proposing a Community-level solution to the problem of ensuring access to justice for claimants, thus pursuing general policy objectives (specifically, ensuring broader access to justice by enforcing competition policy and discouraging unlawful practices on the part of undertakings) while at the same time preventing unmeritorious and opportunistic litigation;
2. Considers that any proposal to introduce collective redress mechanisms for breaches of Community anti-trust rules should:
 - (a) allow for victims of infringements of those rules to be awarded compensation for the resulting damage suffered by them;
 - (b) accompany, and not replace, the alternative forms of protection which already exist in some Member States (such as representative actions and test cases);
 - (c) be based on a model which can also be applied to other kinds of dispute so as to provide judicial protection for consumers in similar cases; considers in this regard that the Commission should examine whether a horizontal approach should be chosen in order to make it easier to assert legal claims for compensation;
 - (d) contain rules designed to avoid the negative effects which have resulted in other legal systems, particularly the United States;
3. Considers that any collective redress mechanism must:
 - (a) exclude the possibility of awarding punitive damages or damages that are disproportionate to the harm actually suffered;
 - (b) particularly in the case of collective actions of the type suggested by the Commission, and without unduly delaying proceedings, require that the merits of actions be tested by a national authorising body (such as a national judge, ombudsman or similar) before they may be commenced;
 - (c) particularly in the case of collective actions of the type suggested by the Commission, and without unduly delaying proceedings or prejudicing the parties, require or recommend that parties attempt to reach a settlement through alternative dispute resolution before commencing an action;
 - (d) uphold the principle that the party bringing the infringement claim must provide evidence in support of its claim in order to avoid “fishing expeditions” unless Member States provide for the burden of proof to be eased;

- (e) maintain the fundamental principle that the loser should pay the costs unless a Member State has established different rules on the allocation of costs;
 - (f) oblige those who undertake the defence on a contingency fee basis to give their clients clear information about the charging of costs in the event of the action being unsuccessful, where the Member State in which the action is brought provides for the possibility of contingency fee arrangements;
 - (g) allow for “opt-in” actions and representative actions to be brought by qualified entities;
4. Considers that the court seised should have wide powers *in limine litis* to deliver a preliminary ruling on the admissibility or inadmissibility of the case and that, more generally, the court should have wide powers to conduct cases on a flexible basis so that the procedure can be adapted to the specific circumstances of the case in question;
 5. Considers that it is appropriate to allow consumer associations or representatives of consumer protection organisations to participate in anti-trust proceedings brought by the competent authority;
 6. Considers that reducing the fine imposed for committing the offence if undertakings offer a just settlement to citizens who have suffered damage would be both materially and procedurally advantageous for such citizens, while a compulsory settlement must not be a way of deterring parties from legal action;
 7. Expects any legislative proposal to be preceded by an independent cost/benefit analysis.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	20.1.2009
Result of final vote	+: 21 -: 0 0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Eva-Riitta Siitonen, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Brian Crowley, Eva Lichtenberger, József Szájer, Jacques Toubon