Organisation for Economic Co-operation and Development

DAF/COMP/WP3/WD(2026)22

Unclassified English - Or. English

16 November 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 3 on Co-operation and Enforcement

Private Enforcement of Competition Law – Note by the European Union

7 December 2026

This document reproduces a written contribution from the European Union submitted for Item 3 of the 144th meeting of Working Party 3 on 7 December 2026.

More documentation related to this discussion can be found at: oe.cd/peocl.

Ms Despina PACHNOU
Despina.Pachnou@oecd.org

JT03598222

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1. Introduction

1. In the European Union ('EU'), private antitrust damages actions (i.e., private actions claiming damages for harm resulting from anticompetitive agreements and concerted practices in breach of Article 101 TFEU or unilateral conduct in violation of Article 102 TFEU) are governed by Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (the 'Damages Directive' or the 'Directive').[1] Before the adoption of the Directive, private enforcement of competition law was largely under-developed in the EU.[2] While the Court of Justice of the European Union (the 'CJEU') had recognised the right to compensation for victims of infringements of Articles 101 and 102 TFEU already in 2001,[3] claimants continued to face practical obstacles owing to the different national rules governing damages actions. The adoption of the Damages Directive led to the EU-wide harmonisation of certain specific aspects of private damages litigation, such as access to evidence, joint and several liability, or the protection of immunity recipients. The broader procedural framework continues to be determined by the national laws of the Member States, subject to the principles of equivalence and effectiveness.[4] The harmonisation brought about by the Damages Directive pursued the two-fold objective of facilitating private antitrust damages actions, while fine-tuning the interaction between private and public enforcement.

2. This written contribution addresses the questions provided by the OECD Competition Committee in the Annex to the Call for Contributions for the Roundtable on Private Enforcement of Competition Law and provides an overview of the design of the EU private enforcement regime under the Damages Directive and the development of private enforcement in the EU. It builds upon ongoing work by the Directorate-General for Competition ('DG Competition') of the European Commission (the 'Commission') on a forthcoming report on the practical application of the Damages Directive. The report will also address the specific aspects mentioned in Article 20(2) of the Damages Directive on which the Commission is required to report. For this purpose, DG Competition has commissioned a study on the development of EU Antitrust Damages Actions (the 'Study') carried out by an external consortium. This Study is structured around the following

[1] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014, p. 1.

[2] D. Waelbroeck, D. Slater and G. Even-Shoshan (Ashurst), Study on the conditions of claims for damages in case of infringement of EC competition rules – comparative report, Brussels 2004, https://competition-policy.ec.europa.eu/document/download/836e9374-09c3-4c0d-8f0d-828929b54008_en?filename=damages_actions_claims_for_damages_infringements_study_comparative_report.pdf.

[3] Judgment of 20 September 2001, *Courage and Crehan*, C-453/99, ECLI:EU:C:2001:465.

[4] Cf. Judgment of 20 April 2023, Repsol Comercial de Productos Petrolíferos, C-25/21, ECLI:EU:C:2023:298, paragraph 58; Judgment of 4 September 2025, Nissan Iberia, C-21/24, ECLI:EU:C:2025:659, paragraph 48; Judgment of 18 April 2024, Heureka, C-605/21, ECLI:EU:C:2024:324, paragraph 51; Judgment of 28 January 2025, ASG 2, C-253/23, ECLI:EU:C:2025:40, paragraphs 71, 72 and 75.

workstreams: a) collection of all publicly available court rulings from 1 January 2001 to 31 March 2024 across EU Member States and the United Kingdom and analysis of a sampled subset of ca. 3,300 of these rulings; b) desk research on literature and legal rules; and c) stakeholder interviews. DG Competition is also engaging with EU National Competition Authorities ('NCAs') and national judges in the EU to gather their insights and experience with the application of the Directive.

2. The evolution of private antitrust damages actions in Europe

2.1. Overall trends in the number of damages actions

3. The objective of the Damages Directive, adopted in 2014, was to facilitate damages actions in the EU and make it possible for anyone to effectively claim full compensation for the harm suffered from an infringement of competition law. Since its entry into force and its transposition into national law by the EU Member States (the 'Member States'), the Directive has given rise to an exponential growth in antitrust damages litigation across the EU. This increase in private antitrust damages actions has likely contributed to both the direct customer savings generated by rigorous public antitrust enforcement[5] and the deterrent effect of competition law fines imposed by competition authorities.[6]

4. The importance of damages litigation, however, differs across Member States. This can be explained by differences in the economic and population size of Member States as well as differences in the enforcement activities by NCAs. Other possible factors include the extent of judicial centralisation or specialisation, the availability and effective use of mechanisms that allow for the aggregation of claims, the absence or presence of a private enforcement culture as well as the level of litigation costs and evidentiary burdens.

2.2. Overall trends in the types of damages actions brought

5. The Damages Directive applies to both private antitrust damages actions that follow an infringement decision by a competition authority (follow-on actions) and actions that are brought without any prior infringement decision (standalone actions). At EU-wide level, follow-on actions account for a large proportion of damages claims. At the same time, a significant number of standalone actions have also been introduced in recent years. In certain Member States, stand-alone actions are even more prevalent than follow-on actions.

6. Decisions adopted by the Commission have been a substantial catalyst of follow-on actions and have contributed to the practical application of the Damages Directive across

[5] European Commission, Report on Competition Policy 2024, p. 35. Estimated to about EUR 12 to 21 billion (Commission) and EUR 23 to 38 billion (NCAs) per year. The estimate for NCAs is based on 13 NCAs. Note that these direct consumer savings only estimate the benefits generated by a given intervention in preventing a given anticompetitive conduct from being continued and does not account for the wider benefits of deterrence. Those deterrence benefits can be thought of as multipliers of the direct consumer savings.

[6] For the European Commission, it amounted to EUR 2.9 billion in the period 2021-2025. See European Commission, Cartel Statistics https://competition-policy.ec.europa.eu/document/download/b19175c3-c693-410b-b669-27d4360d359c_en?filename=cartels_cases_statistics.pdf

a wide number of jurisdictions. For instance, the *Trucks* cartel decision[7] has resulted in several thousand claims. Other Commission decisions, such as the *Elevators* cartel decision[8] or the *Google Shopping* decision (sanctioning a violation of Article 102 TFEU by Google)[9] are also important sources of follow-on actions. The *Google Shopping* decision has recently given rise to unprecedented damages awards. In two recent rulings, the Regional Court of Berlin (Landgericht Berlin II) ordered Google to pay damages in the amount of EUR 465 million[10] and EUR 107 million[11] respectively.[12] In another follow-on action brought by the competing price comparison operator PriceRunner, the Stockholm Patent and Market Court ordered Google to pay EUR 1.7 billion in damages (including interest).[13] While a majority of damages actions in the EU continue to be based on violations of Article 101 TFEU, these recent follow-on actions show the growing role of private damages actions based on Article 102 TFEU, notably in digital markets.

3. The interaction between public and private enforcement

3.1. The legal effect of final infringement decisions by a competition authority or court

7. The public enforcement of EU competition law by the Commission and NCAs interacts with private enforcement in various ways. One dimension of this interaction is that, under EU law, Commission decisions as well as final decisions by NCAs and rulings by national courts establishing an infringement of Article 101 or 102 TFEU have important evidentiary value in follow-on damages actions.

8. Pursuant to established case law[14] and Article 16(1) of Regulation 1/2003,[15] national courts may not take decisions that run counter to a Commission decision. The binding effect of Commission decisions applies irrespective of whether the decision is

[7] Commission decision of 27 September 2017 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT.39824 - Trucks) and Commission decision of 19 July 2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT.39824 – Trucks; settlement decision).

[8] Commission decision of 21 February 2007 relating to a proceeding under Article 81 of the EC Treaty Case COMP/E-1/38.823 - PO/Elevators and Escalators.

[9] Commission decision of 27 June 2017 relating to proceedings under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the Agreement on the European Economic Area (AT.39740 - Google Search (Shopping)).

[10] Landgericht Berlin II, judgment of 14 November 2025, 16 O 195/19 Kart (2).

[11] Landgericht Berlin II, judgment of 13 November 2025, 16 O 275/24.

[12] These awards include interests. The claimants had asked for 448 million (plus interest) and 289 million (plus interest) respectively.

[13] PriceRunner had claimed 7 billion EUR plus another 425 million EUR in interest; see press release: https://www.domstol.se/nyheter/2026/07/google-is-to-pay-damages-to-pricerunner/.

[14] Judgment of 14 December 2000, *Masterfoods and HB*, C-344/98, ECLI:EU:C:2000:689, paragraphs 51-52.

[15] 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, OJ L 1, 4.1.2003, pp. 1–25.

final.[16] The Damages Directive further clarifies the legal effect and evidentiary value of decisions by NCAs and courts. Under Article 9(1) of the Directive, an infringement established in a final decision by an NCA, or in a final review court judgment, is deemed irrefutably established in damages actions before the courts of the same Member State. The binding effect covers the nature of the infringement and its material, personal, temporal and territorial scope.[17] Claimants are still required to show the existence and quantum of harm, as well as the causal link between the infringement and the harm suffered.[18]

9. Under Article 9(2) of the Directive, courts hearing a damages action must treat a final decision of an NCA or a review court of another Member State at least as prima facie evidence of an infringement of competition law.[19] The final decision can be assessed together with other evidence and the finding of an infringement can be rebutted.

10. Despite the recognition of their evidentiary value in Article 9(2) of the Directive, very few follow-on damages actions have so far been brought based on final decisions by NCAs and review courts of another Member State. This holds true even in those jurisdictions that went beyond the requirements of the Directive and gave full binding effect also to final decisions of NCAs from other jurisdictions in their transposition laws (such as Germany[20] and Austria[21]). This suggests that cross-border follow-on damages actions may be rare for reasons other than the evidentiary value that the Damages Directive or national law grants to final decisions emanating from other Member States, such as language barriers or limited experience with national procedures in foreign jurisdictions.

3.2. The role of competition authorities in private enforcement

11. A second dimension of the interaction between public and private enforcement of EU competition law is that both the Commission and NCAs may cooperate with national courts in private enforcement proceedings. For instance, the Commission and national courts may liaise within the general framework for cooperation between the Commission and national courts, laid down in Article 15 of Regulation 1/2003 and the Commission Notice on cooperation with national courts.[22] Under Article 15(1) of Regulation 1/2003, national courts may ask the Commission to transmit information in its possession, for example documents or procedural information, or to give an opinion on questions concerning the application of EU competition rules. Such opinions do not bind the court. Article 15(3) of Regulation 1/2003 provides that the Commission, acting on its own initiative, may submit written observations to the courts of the Member States in cases where the coherent application of Articles 101 and 102 TFEU requires such an *amicus curiae* intervention. Similarly, NCAs may also submit written *amicus curiae* observations in relation to Articles 101 and 102 TFEU to the courts of their Member State.

[16] Judgment of 4 September 2025, *Nissan Iberia*, C-21/24, ECLI:EU:C:2025:659, paragraph 64.

[17] See Recital 34 of the Damages Directive.

[18] *Ibid.*

[19] Cf. Judgment of 19 September 2024, *Booking*, C-264/23, ECLI:EU:C:2024:764, paragraph 38.

[20] § 33b Gesetz gegen Wettbewerbsbeschränkungen.

[21] § 37i(2), § 37b No. 3 Kartellgesetz.

[22] Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC, OJ C 127, 9.4.2016, pp. 13–21.

12. Additionally, the Damages Directive provides for more specific modes of cooperation between competition authorities and courts in the context of private antitrust damages actions. Under Article 6(11) of the Directive a competition authority may, on its own initiative, submit observations on the proportionality of a disclosure request. Pursuant to Article 17(3) of the Directive, at the court's request, an NCA may also assist in determining the quantum of damages where the NCA considers this appropriate.

13. The Commission's role is focused on the public enforcement of competition rules. It does not assist claimants in individual private enforcement actions. In particular, the Commission does not have the case-specific data that would be needed to assist courts in calculating individual harm. Its role is therefore confined to general guidance and, upon request, opinions on economic or legal questions. Further, the Commission is typically not well placed to assist with the calculation of harm in individual instances as the calculation of such individual harm is not part of its public enforcement activities.

3.3. Private enforcement as a factor for case prioritisation

14. Another dimension of the interaction between public and private enforcement is the role that private enforcement plays for case prioritisation. The Commission sets its priorities by pursuing only those cases that show a sufficient '(European) Union interest'. The possibility for complainants to bring a private enforcement action (e.g., an action for damages or for a cease-and-desist order) before national courts is one of the factors that the Commission considers to determine whether a given case shows a sufficient '(European) Union interest' and should be granted priority status.[23] Accordingly, the fact that a complainant can bring a private enforcement action before national courts constitutes one possible ground on which the Commission can reject complaints.[24] When receiving a complaint, the Commission therefore assesses the extent to which a case has already been subject to private enforcement or is of a type that can appropriately be dealt with in this way.[25]

3.4. The interplay between private damages actions and leniency

15. The interaction between private and public enforcement is also relevant when assessing the impact that private enforcement can have on leniency programmes. This has been a prominent issue in the policy debate on private enforcement in Europe for the last two decades. Economic research indicates that the financial risk of potentially being exposed to private antitrust damages claims may, under certain circumstances, adversely affect the incentives of infringers of competition law to cooperate with competition authorities through leniency programmes. Against this backdrop, the Damages Directive sought to fine-tune the interplay between private and public enforcement. It provided certain safeguards aimed at preserving the incentives of leniency applicants and settling parties to participate in leniency programmes and settlement procedures. First, Article 6(6)

[23] Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty, OJ C 101, 27.4.2004, pp. 65–77, paragraph 17. See also Case Prioritisation and Prosecutorial Discretion – Note by the European Union, DAF/COMP/WD(2026)24, p. 5.

[24] *Ibid.* paragraph 44. This has also been confirmed by the Union Courts. See for instance, Judgment of 18 September 1992, *Automec v Commission*, T-24/90, ECLI:EU:T:1992:97, paragraphs 88 to 96; Judgment of 26 September 2018, *EAEPC v Commission*, T-574/14, ECLI:EU:T:2018:605, paragraph 124.

[25] Case Prioritisation and Prosecutorial Discretion – Note by the European Union, DAF/COMP/WD(2026)24, p. 5.

of the Directive shields leniency statements and settlement submissions from court-ordered disclosure (see further discussion in Section 4 below). Second, Article 11(4) and (5) of the Directive limit the joint and several liability of immunity recipients, in principle, to their own direct or indirect purchasers or providers, and limit their contribution to other infringers to the harm caused to those purchasers or providers.

16. The evolution of private damages actions and leniency applications in the EU since the adoption of the Damages Directive indicates that dynamic private enforcement can go hand in hand with effective public enforcement. While the introduction of the Damages Directive and the increase in damages actions initially coincided with a marked decrease in leniency applications before the Commission and the NCAs during the period 2015-2020, more recently, the number of leniency applications rebounded from that drop and appears to follow an upward trend since 2020. These trends indicate that the number of damages actions and the number of leniency applications are not consistently correlated. This finding is also consistent with previous findings by the OECD, which indicate that in the period 2015-2020, leniency applications experienced a significant decrease in OECD and non-OECD jurisdictions, even in jurisdictions in which there was no change in the private enforcement regime.[26]

4. Disclosure of Evidence

17. Access to sufficient relevant evidence can be a prerequisite for bringing antitrust damages claims. The Damages Directive points out that claimants are typically confronted with an information asymmetry because relevant evidence is often held by the infringing parties.[27] To address this information asymmetry, the Damages Directive introduced a harmonised regime for court-ordered disclosure of evidence.

18. Under this regime, claimants can request courts to order the disclosure of relevant evidence from defendants and third parties. Courts shall grant such requests only if the claimant shows, based on reasonably available facts and evidence, that its claim is plausible.[28] To avoid excessive disclosure costs and overly broad attempts to gather information (so-called 'fishing expeditions'), the disclosure request must be as precise and narrow as possible and proportionate.[29] To ensure equality of arms, defendants can also request court-ordered disclosure from the claimant or third parties.[30]

19. Disclosure is possible both regarding specified items and categories of evidence and, in principle, also with regard to confidential information.[31] Member States are required to ensure that their courts can take necessary measures to protect confidential information.[32]

[26] OECD (2025) Competition Trends. OECD Publishing. https://doi.org/10.1787/8c4bd00b-en.(Fig. 2.6 on p. 22).

[27] See Recital 15 of the Damages Directive.

[28] See Article 5(1) of the Damages Directive.

[29] See Articles 5(2) and (3) of the Damage Directive.

[30] See Recital 15 of the Damages Directive.

[31] See Article 5(2) and (4) of the Damages Directive

[32] *Ibid*.

In 2020, the Commission issued a Communication[33] to provide national courts with further guidance on methods to protect confidential information, for instance through redaction, in camera hearings or confidentiality rings.

20. To fine-tune the interaction between public and private enforcement and to preserve the incentives of leniency applicants and settling parties to cooperate with competition authorities, the Damages Directive introduced a specific three-tier regime for the disclosure of evidence contained in a competition authority's file. Under this regime, leniency statements and settlement submissions are treated as so-called 'black-listed' evidence. This category of evidence is subject to an absolute ban on court-ordered disclosure.[34] Documents that have been drawn up by the parties, third parties, or a competition authority for specific proceedings, including withdrawn settlement submissions, are treated as 'grey-listed' evidence. To ensure the integrity of ongoing investigations, grey-listed evidence can only be subject to court-ordered disclosure once the competition authority has completed its proceedings.[35] All other evidence contained in a competition authority's file is treated as 'white-listed' evidence that can be disclosed at any time.[36] Non-compliance with this disclosure regime may be subject to penalties, including fines.[37]

21. Court-ordered disclosure from competition authorities is only available as an option of last resort where the evidence cannot reasonably be obtained from the parties or third parties.[38] As regards Commission investigations, typically the parties themselves would be in possession of the relevant evidence. Therefore, it is usually not warranted or useful that disclosure is sought from the Commission.

22. Recent EU case law has provided further guidance on some aspects of the disclosure regime of the Damages Directive. In *Melia*, the CJEU clarified that in order to prove the plausibility of its claim, the claimant has to establish the plausibility of all three constitutive elements of a successful damages claim: namely, the existence of an infringement, an ensuing harm and a causal link between the two.[39] The CJEU also held that the rules of court-ordered disclosure in the Damages Directive govern pre-trial disclosure provided that such a pre-trial disclosure regime exists in the relevant national law of the Member State.[40] The case law of the CJEU also specified that the absolute protection granted to leniency statements and settlement submissions does not cover documents and information provided in order to explain, specify and prove the content of those statements or submissions.[41]

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[33] Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law, 22.7.2019, OJ C 242, 22.7.2020, p. 1.

[34] See Articles 6(6) and 7(1) Damages Directive.

[35] See Articles 6(5) and 7(2) of the Damages Directive.

[36] See Article 6(9) of the Damages Directive.

[37] See Article 8 of the Damages Directive.

[38] See Article 6(10) and recital 29 of the Damages Directive.

[39] Judgment of 29 January 2026, *Meliá Hotels International*, C-286/24, ECLI:EU:C:2026:49, paragraph 54 and operative part.

[40] *Ibid.* paragraph 58 and operative part.

[41] Judgment of 30 October 2025, *FL und KM Baugesellschaft and S*, C-2/23, ECLI:EU:C:2025:848, paragraph 77.

23. The Damages Directive's disclosure regime has brought about a harmonised approach towards court-ordered disclosure of evidence in private damages actions and has enhanced legal certainty. However, court-ordered disclosure has so far been rarely sought and granted in practice. One reason for the limited use of disclosure might be the related costs, in particular for individual claimants with small damages claims. Additionally, disclosure may not be necessary in all cases as courts have shown themselves able to adjudicate damages claims and quantify harm in cases in which no prior disclosure was sought.

24. The safeguards for black-listed leniency statements and settlement submissions appear to work well. To date, no instance of disclosure of black-listed material has been reported to DG Competition. National courts also appear to make increasing use of various methods to protect confidential information and refer, to that end, to the Commission's Communication on the protection of confidential information.

5. Collective redress

25. Final consumers and small and medium-sized enterprises ('SMEs') harmed by an infringement of competition law may often lack an incentive to bring private damages actions. This is because the typically small amounts of their claims are often outweighed by the costs and financial risks of damages litigation. Collective redress mechanisms are typically regarded as a solution to overcome the hurdles for final consumers and SMEs to bring damages actions and to guarantee their effective access to justice.

26. Collective redress within the EU is not harmonised by the Directive. The Directive states that Member States are not required to introduce collective redress mechanisms.[42] In the absence of a harmonised EU framework, there exist across Member States various mechanisms to aggregate claims, including opt-out and opt-in representative actions, purchase and bundling of claims, assignment of claims as well as more traditional civil procedure mechanisms, such as joinders.

27. While there are no legal provisions governing collective damages actions in the specific field of competition law, EU law does provide a general framework for collective redress mechanisms. In 2013, the Commission issued a Recommendation providing some soft-law guidance on how, by whom and under which conditions representative actions can be brought.[43] The Recommendation also introduced some safeguards as to third-party funding, overcompensation and punitive damages and encouraged alternative dispute resolution, judicial oversight of settlements and procedural safeguards to prevent abusive litigation.

28. In 2020, the European Parliament and the Council adopted the Representative Actions Directive (EU) 2020/1828,[44] which established a harmonised framework enabling qualified entities, such as consumer organisations and designated public bodies, to bring representative actions on behalf of consumers whose collective interests have been harmed

[42] Recital 13 of the Damages Directive.

[43] Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201, 26.7.2013, pp. 60–65.

[44] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, pp. 1–27.

or may be harmed by infringements of EU consumer protection legislation. Although not directly applicable to damages claims in competition law, some Member States have relied upon that framework to develop national legal mechanisms of collective redress that are also applicable to competition law.

29. More recently, the CJEU has noted in its judgment in ASG 2[45] that the existence, under national law, of mechanisms enabling individual claims to be grouped may be required, in principle, in certain situations where there is no other alternative to ensure the effectiveness of victims' right to compensation through individual actions. This important judgment indicates that, under certain circumstances, some form of claims aggregation mechanisms may be required to ensure the effectiveness of the rights injured persons derive from Articles 101 and 102 TFEU.

30. While there is no uniform mechanism for collective redress at EU level, in recent years, the number of private antitrust damages actions that rely on some form of collective redress has increased. This increase is notably concentrated in Member States with opt-out collective redress mechanisms or effective tools to bundle claims.

6. Quantification of harm

31. The quantification of harm and the determination of the amount of damages to be paid to claimants constitute one of the most complex aspects of private antitrust damages litigation. The Damages Directive provides for a harmonised framework governing the core aspects of the quantification of harm.

6.1. Forms of harm

32. Private antitrust damages actions under the Damages Directive can be brought for various types of harm. Codifying existing case law, the Directive provides that the right to full compensation for victims of an infringement of competition law encompasses compensation for actual loss and for loss of profit, plus the payment of interest.[46] In most cases, actual loss takes the form of an overcharge, i.e., the price differential between the excess price paid as a direct consequence of the restriction of competition and the counterfactual market price that would have prevailed absent that restriction. However, the actual loss can also take other forms, such as a degradation in quality, post-cartel overcharges and lingering effects (i.e., higher prices that persist after the infringement of competition law has ceased), or umbrella prices (i.e., higher prices charged by non-infringing market participants that match the overcharge imposed by competition law infringers).[47] Loss of profits can result from the fact that direct purchasers pass on (parts of) the overcharge to their customers (indirect purchasers) and, as a consequence, sell fewer units than they would have in the absence of the overcharge and pass-on ('volume effect'). Loss of profits may also result from an exclusionary agreement or exclusionary unilateral conduct that reduces the sales of rivals. Interest can encompass both simple and compound interest.

[45] Judgment of 28 January 2025, *ASG 2*, C-253/23, ECLI:EU:C:2025:40.

[46] See Article 3(2) of the Damages Directive.

[47] Judgment of 5 June 2014, *Kone and Others*, C-557/12, ECLI:EU:C:2014:1317.

6.2. Pass-on

33. The Damages Directive foresees that damages claims can be brought by all parties having suffered harm resulting from an infringement of competition law, irrespective of whether they are direct or indirect purchasers. Claimants can thus also claim compensation for harm that is passed on along the supply chain. Unlike other private enforcement regimes, such as US federal antitrust law, the Damages Directive recognises the standing of indirect purchasers and final customers, who can claim damages for harm if they show that an overcharge has been passed on by the direct purchaser of the product affected by the restriction of competition.[48]

6.3. Quantification and estimation

34. The Damages Directive lays down harmonised rules governing certain aspects of the quantification of damages by national courts. Article 17(1) of the Damages Directive provides that, as a default, national courts must quantify the harm precisely. Only when it proves practically impossible or excessively difficult, national courts may estimate harm based on approximative best estimates and equitable considerations. In its judgment *Tráficos Manuel Ferrer*, the CJEU further specified that national courts can only proceed with an estimation if the impossibility of precisely quantifying the harm is not the result of inaction on the part of the claimant. The extent to which the claimant has made use of disclosure is a relevant, albeit not determinative, factor to establish whether the claimant has taken sufficient steps to quantify harm.[49]

35. While the Damages Directive provides for the possibility to quantify or to estimate harm, the precise rules governing quantification have not been harmonised and are laid down at Member States' level, subject to the principles of equivalence and effectiveness. In 2013, the Commission issued a Practical Guide on quantifying antitrust harm in damages actions (the 'Practical Guide')[50] in order to provide national courts and parties with further methodological soft-law guidance on various approaches to quantify harm. Alongside various comparator-based quantification approaches, the Practical Guide contains guidance on finance-, cost- and simulation-based quantification methodologies. It was complemented by the Commission's Passing-on Guidelines, providing national courts and parties with guidance on how to quantify pass-on of harm along the supply chain[51].

6.4. Presumptions of harm and pass-on

36. The Damages Directive recognises that the quantification of damages is an important hurdle for claimants who are often confronted with information asymmetries. To alleviate the evidentiary burden for claimants when demonstrating harm, the Damages

[48] See Articles 12 and 14(1) of the Damages Directive.

[49] Judgment of 16 February 2023, *Tráficos Manuel Ferrer*, C-312/21, ECLI:EU:C:2023:99, paragraph 57 and operative part.

[50] Communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union, OJ C 167, 13.6.2013, p. 19; Commission Staff Working Document – Practical Guide on quantifying harm in actions for damages based on breaches of Article 101 or 102 TFEU, SWD(2013) 205, 11.6.2013.

[51] Communication from the Commission – Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser, OJ C 267, 9.8.2019, p. 4.

Directive introduced a presumption that cartels cause harm.[52] This presumption however only relates to the existence of harm and not its quantum.[53]

37. Moreover, to facilitate claims by indirect purchasers, the Damages Directive contains a presumption of pass-on of harm that becomes operative when the indirect purchaser has shown that the defendant has committed an infringement of competition law, that the infringement has resulted in an overcharge for the direct purchaser and that the indirect purchaser has purchased goods or services that where the object of the infringement.

6.5. Trends in the quantification of harm

38. Since the entry into force of the Damages Directive, national courts have shown themselves well positioned to quantify harm and damages have been awarded in a significant number of cases. National courts typically have recourse to estimation rather than precise quantification to determine the harm and the amount of damages.

39. Most damages claimed and awarded relate to overcharges and interest, which are the types of harm that lend themselves more easily to quantification than more complex types of harm, such as umbrella effects. That said, the adoption of the Damages Directive and the issuing of the Practical Guide led to an increase in the variety of methods that parties and courts use to quantify or estimate harm. Cases in which damages are awarded to indirect purchasers or where defendants plead a successful pass-on defence have so far remained rare, due to the complexity of establishing pass-on.

7. The arbitration of private antitrust damages actions

40. Arbitration and other forms of out-of-court resolutions can help achieving a 'once-and-for-all' settlement for claimants and defendants alike.[54] EU law does not, in principle, preclude the arbitration of private disputes involving Articles 101 and 102 TFEU. The Damages Directive only provides limited rules on arbitration. Under Article 18(1) and (2) of the Directive, limitation periods are suspended for the duration of any consensual dispute resolution and that national courts may stay damages proceedings for up to two years in such cases. Article 18(3) provides that a competition authority may consider compensation paid as a result of a consensual settlement and prior to its decision imposing a fine to be a mitigating factor. Beyond the Damages Directive, recital 10 of Directive (EU) 2025/2647 of the European Parliament and of the Council of 16 December 2025 amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Directives (EU) 2015/2302[55] clarifies that Member States may (but are not obliged to) apply consumer alternative dispute resolution procedures to disputes relating to rights arising from Articles 101 and 102 TFEU.

[52] See Article 17(2) of the Damages Directive.

[53] See Recital 47 of the Damages Directive.

[54] Recital 48 of the Damages Directive.

[55] Directive (EU) 2025/2647 of the European Parliament and of the Council of 16 December 2025 amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828 following the discontinuation of the European Online Dispute Resolution Platform, OJ L, 2025/2647, 30.12.2025.

41. However, the CJEU's case law sets some limits to arbitration of disputes involving Articles 101 and 102 TFEU. Most importantly, arbitral tribunals cannot make references for a preliminary ruling under Article 267 TFEU.[56] The CJEU in the case *Eco Swiss* therefore held that national courts reviewing the validity of an arbitral award must be able to examine questions concerning the interpretation of Article 101 TFEU and, if necessary, refer them to the CJEU for a preliminary ruling. Where national law requires a national court to annul an award for breach of national public policy rules, it must also do so for a breach of the EU competition rules. In the same ruling, the CJEU has stated that Article 101 TFEU constitutes 'a fundamental provision which is essential for the accomplishment of the tasks entrusted to the [EU] and, in particular, for the functioning of the internal market'.[57] In *Royal Football Club Seraing*, the CJEU held that arbitral awards in the context of compulsory sports arbitration must be open to effective review for consistency with EU public policy, which includes Articles 101 and 102 TFEU.[58] That review must be carried out by a Member State's court that can make a preliminary reference under Article 267 TFEU. The pending case *Cabify España*[59] may bring further clarification on the scope and intensity of national courts' review of commercial arbitral awards for compliance with EU competition law.

8. Conclusion

42. Since its adoption in 2014, the Damages Directive has had a transformative impact on private antitrust damages actions in Europe by facilitating such actions and contributing to an exponential increase in their number. This trend is likely to persist, and private enforcement is expected to continue to promote the effective enforcement of EU competition law and to contribute to the detection and deterrence of unlawful anticompetitive conduct, hand in hand with public enforcement.

43. Looking ahead, one may also anticipate a further increase in the variety of damages actions with a growing number of cases brought on the basis of Article 102 TFEU, in particular in the digital sector. Likewise, the number of collective actions is likely to continue to grow as an increasing number of Member States have introduced or are currently considering the introduction of some form of collective redress or claim aggregation mechanism under national law. Third-party litigation funding is also starting to play an increasing role and might, together with the uptake of collective redress mechanisms, importantly shape the future dynamics of private antitrust damages actions in Europe, notably by facilitating actions by final consumers and small businesses.

44. The effective public enforcement of competition law will continue to be an important catalyst for private enforcement cases. The Commission will continue to monitor the interplay between public and private enforcement to ensure that it contributes to an effective enforcement of EU competition law as well as to the detection and deterrence of unlawful conduct.

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[56] Judgment of 23 March 1982, *Nordsee*, 102/81, ECLI:EU:C:1982:107, paragraphs 10 to 13.

[57] Judgment of 1 June 1999, *Eco Swiss*, C-126/97, ECLI:EU:C:1999:269, paragraph 36.

[58] Judgment of 1 August 2025, *Royal Football Club Seraing*, C-600/23, ECLI:EU:C:2025:617, paragraphs 85, 86, 88, 91, 92 and 100 and operative part.

[59] Pending case C-244/25, *Cabify España* (request for a preliminary ruling lodged by the Tribunal Superior de Justicia de Madrid on 1 April 2025).