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Balancing public and private enforcement in EU Competition Law: Access to evidence, leniency, and the right to compensation

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Abstract. This article examines the evolving normative order of the European Union in the field of competition law, focusing on the interplay between public enforcement by competition authorities and private damages claims before national courts. Building on the jurisprudence of the Court of Justice of the European Union (CJEU), the paper highlights the recognition of a right to compensation for any natural or legal person harmed by infringements of Articles 101 and 102 TFEU, irrespective of contractual relationships or prior administrative findings. Central to this discussion is the tension between ensuring effective access to evidence for claimants and safeguarding the attractiveness of leniency programmes, which remain vital tools for uncovering cartels. The analysis explores landmark cases such as Courage and Crehan, Manfredi, Pfleiderer, and Donau Chemie, which collectively shaped the principles of effectiveness, equivalence, and transparency in private enforcement. The article further assesses Directive 2014/104/EU, which seeks to harmonize disclosure rules across Member States while preventing overcompensation and preserving incentives for voluntary cooperation. Particular attention is given to the Commission's restrictive stance on access to leniency-related documents under Regulation No 1049/2001 and the judicial pushback against blanket refusals of disclosure. By situating these developments within broader debates on collective redress, proportionality, and discretionary remedialism, the paper argues that the EU legal framework must strike a delicate balance: enabling victims to obtain full compensation without undermining public enforcement mechanisms. Ultimately, the study underscores the need for coherent, case-by-case judicial approaches that reconcile transparency, deterrence, and the integrity of competition law enforcement.
Keywords. Competition; Access to information; Damages; Effectiveness; Litigation.
JEL. K21; K41; L49.

1. Introduction

EU normative order, shaped by the case law - The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings – which sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking (association of undertakings), can effectively exercise the right to claim full compensation for that harm from that undertaking (association). It

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also sets out rules fostering undistorted competition in the internal market and removing obstacles to its proper functioning by ensuring equivalent protection throughout the Union for anyone who has suffered such harm.

According to the case-law of the Court of Justice, any person can claim compensation for harm suffered where there is a causal relationship between that harm and an infringement of the competition law. Damages claims for breaches of Articles 101 or 102 of the Treaty on the Functioning of the European Union (http://www.lisbon-treaty.org) constitute an important area of private enforcement of EU competition law and and are complementary to public law character (Case C-453/99, Courage and Crehan; Joined Cases C-295/04 to C-298/04, Manfredi; Case C-360/09, Pfleiderer AG v Bundeskartellamt; Case C-536/11 Bundeswettbewerbsbehörde v Donau Chemie AG; opinion Advocate General delivered in case C-302/13 flyLAL-Lithuanian Airlines). It follows from the direct effect of the prohibitions laid down in Articles 101 and 102 of the Treaty that any individual can claim compensation for the harm suffered, where there is a causal relationship between that harm and an infringement of the EU competition rules. The right to compensation is recognised for any natural or legal person - consumer and undertakings, irrespective of the existence of a direct contractual relationship with the infringing undertaking (The term 'undertaking' must be understood as designating an economic unit, in the context of competition law, even if in law that economic unit consists of several natural or legal persons, judgments in: Case 170/83 Hydrotherm Gerätebau; Case C-520/09 P Arkema v Commission; Case C-231/14 P InnoLux Corp. v Commission) and regardless of whether or not there has been a prior finding of an infringement by a competition authority. Actions for damages for infringements of national or Union competition law typically require a complex factual and economic analysis (Zimmer, 2012). The evidence necessary to prove a claim for damages is often held exclusively by the opposing party or by third parties, and is not sufficiently known by and accessible to the claimant. In such circumstances, strict legal requirements for claimants to assert in detail all the facts of their case at the beginning of an action and to proffer precisely specified pieces of supporting evidence can unduly impede the effective exercise of the right to compensation guaranteed by the Treaty.

The effectiveness and consistency of the application of Articles 101 and 102 TFEU by the Commission and the national competition authorities require a common approach across the Union on disclosure of evidence that is included in the file of a competition authority. Disclosure of evidence to third parties should not significantly detract enforcement of competition law by the competition authority. Guarantees the effectiveness of competition authorities in the public interest includes the Council Regulation (EC) No 1/2003 by introducing an enforcement system that is based on the direct application of the EU competition rules in their entirety and creating authorization Member States' competition authorities and national courts to apply all aspects of EU competition rules. There is a problem, whether legislative work at EU level aimed in the right direction to improve the conditions for private claims. In the explanatory memorandum of Proposal for a Directive refers to the judgment in Pfleiderer, in which the CJEU has ruled that the provisions of European Union law on cartels, and in particular Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 TFEU and 102 TFEU (see also

Communication from the Commission), must be interpreted as not precluding a person who has been adversely affected by an infringement of European Union competition law and is seeking to obtain damages from being granted access to documents relating to a leniency procedure involving the perpetrator of that infringement (In another way W.P.J. Wils, 2003. In the doctrine are also opinions on the need to legalize leniency and to make amendments to the legal basis Waelbroeck, (2006)). The proposal has the following two objectives (complementary golas): „to make that EU right to compensation a reality in all Member States by removing key practical difficulties which consumers and companies frequently face when they seek redress" and another one focused on „optimising the interplay of such private damages claims with the public enforcement by the Commission and national competition authorities, to safeguard strong public enforcement and to achieve a more effective enforcement overall" (Report from the Commission). It is, however, for the courts and tribunals of the Member States, on the basis of their national law, to determine the conditions under which such access must be permitted or refused by weighing the interests protected by European Union law (According to prejudicial jurisdiction of EU Court of Justice, the court of a Member State should take action ex officio when it is necessary to guarantee the substantive standards of protection, and also when national law does not give grounds for it, Frąckowiak & Stefanicki (2011). In Pfleiderer also CJEU stated that, in keeping with the principle of effectiveness, it is necessary to ensure that the applicable national rules do not operate in such a way as to make it practically impossible or excessively difficult (Some reviews provided by Member States indicate that real difficulties in obtaining evidence is a major obstacle to the investigation of injury include in Belgium, France, Italy. More Waelbroeck et al (2004). That weighing-up exercise can be conducted by the national courts and tribunals only on a case-by-case basis, according to national law, and taking into account all the relevant factors in the case. The interpretation applied by the CJEU allows for flexible application of the law and identifies areas in which further progress can be made.

2. Optimising the interaction between the public and private enforcement

Otherwise adopted in the explanatory memorandum of the Proposal for a Directive indicated that, such an approach, as the juridical balancing „could lead to discrepancies between and even within Member States regarding the disclosure of evidence from the files of competition authorities. Moreover, the resulting uncertainty as to the disclosability of leniency-related information is likely to influence an undertaking's choice whether or not to cooperate with the competition authorities under their leniency programme". This position should be closely linked to the objectives of the Directive 2014/104/EU for both tools are required to interact to ensure maximum effectiveness of the competition rules and ensuring that victims of infringements of the EU competition rules can obtain full compensation for the harm they suffered. The European Parliament has clarified in Legislative Resolution of 17 April 2014 that full compensation under directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages. With the approach of EU authorities due to give preference implementation of the public interest in competition law, some Member States have rules similar to

the rules set out in the proposal for a European document. Although it sets clear and uniform standards for member states access to the documents to third parties, but this does not mean that the application of the Directive removes the barrier of information and there is a positive step in terms of effective access to court. It does not meet the requirement of a consistent approach to the implementation of these rules, both in the interests of individual victims, as well as in the public interest. Not taken into account in the balancing of sanctions on both grounds, consequently, this may lead to an excessive financial burden on the company infringing competition rules. Noteworthy is CJEU judgment of 6 June 2013 on the Donau Chemie AG. This request that in proceedings under Article 267 TFEU concerns the interpretation of the principles of effectiveness and equivalence in the light of the rules applicable in the Austrian legal system to actions for damages in respect of a breach of European Union competition law. Paragraph 39(2) of the Kartellgesetz 2005 states: Persons, who are not parties to the procedure, may gain access to the files of the Cartel Court only with the consent of the parties (http://www.jusline.at/Kartellgesetz (KartG).html). The parties to the judicial proceedings, based on the cited provision, in essence refused to consent to the applicant being granted access to the file (See http://www.jusline.at/Zivilprozessordnung_(ZPO).html). Morever when national courts order the public authority to disclose evidence, the principles of legal and administrative cooperation under national or Union law are applicable (so the proposal for a directive on 17 April 2014).

The referring Austrian Court states that paragraph 39(2) of the Kartellgesetz makes no allowance for the court to authorise access to the judicial case file in competition cases without the consent of the parties, even where the party seeking access can demonstrate a legitimate legal interest in having documents. The Court accordingly is in some doubt as the compatibility of paragraph 39(2) of the Kartellgesetz with that interpretation of the applicable European Union law, given that that provision precludes the court from the main proceeding with any weighing-up of the colliding interests. In those circumstances decided to stay the proceedings and to refer the questions to the Court for a preliminary ruling. The court asks, in essence, whether European Union law, in particular the principle of effectiveness (More in the exchange of experience and information aimed at the effective exercise of the right of competition ICN Cartels Working Group, 2010 – 2011), precludes a provision of national law under which access to documents forming part of the file relating to national proceedings concerning the application of Article 101 TFEU, including access to documents made available under a leniency programme, by third parties who are not party to those proceedings with a view to bringing an action for damages against participants in an agreement or concerted practice is made solely subject to the consent of all the parties to those proceedings (on the sidelines with this approach, there is a problem cooperation (and confidentiality) with other jurisdictions, for example, generally, the Competition and Consumer Act 2010) must not disclose to third parties any information given to it in confidence or obtained under its investigative powers, unless it has obtained consent to do so. However, there are a number of important exceptions to this rule, including with regard to international cooperation, Guirguis & McCowan (2014), without leaving any possibility for the common courts of the Member States of weighing up the interests involved. Where victims violation of competition

have no alternative path of obtaining that evidence, a refusal to grant them access to the file renders nugatory the right to compensation which they derive directly from European Union law.

3. Attractiveness of leniency

In general, a key obstacle to the access of individuals to documents is to maintain the attractiveness of leniency. The European Commission and Court of Justice states that programs of voluntary cooperation are useful tools if efforts to uncover and bring an end to infringements of competition rules are to be effective and thus serve the objective of effective application of competition rules (Commission has an interest in maintaining the attractiveness of these procedures for business, Commission Staff Working Document, 2013, (Chassaing, 2013). The effectiveness of those programmes could be compromised if documents relating to leniency proceedings were disclosed to persons wishing to bring an action for damages (Otherwise Ashton, & Henry, 2013). The Court of Justice essentially states that there is a risk that access to evidence contained in a file in competition proceedings which is necessary as a basis for those actions may undermine the effectiveness of a leniency programme in which those documents were disclosed to the competent competition authority (See also Lenaerts, et al 2014). There are rightly argues in the literature that a formalized system of access to information leads to a significant prolongation of the proceedings, compare Bar & Zimmermann, (2002). Protection of leniency cannot justify a refusal to grant access to that evidence. On those grounds, CJEU in judgment of 6 June 2013 on the Donau Chemie AG held that European Union law, in particular the principle of effectiveness, precludes a provision of national law under which access to documents forming part of the file relating to national proceedings concerning the application of Article 101 TFEU, including access to documents made available under a leniency programme, by third parties who are not party to those proceedings with a view to bringing an action for damages against participants in an agreement or concerted practice is made subject solely to the consent of all the parties to those proceedings, without leaving any possibility for the national courts of weighing up the interests involved. This argument is in line with the position of the European Parliament (Report on 27 February 2014). that transparency remains the rule (Vandenborre & Goetz, 2013), including in relation to a cartel leniency programme; whereas an automatic ban on disclosure is a violation of the rule of transparency, as laid down in the Treaties; whereas secrecy is the exception, and must be justified on a case-by-case basis by national judges with regard to actions for damages (Cauffman, 2011). However, the German and British examples illustrate a certain prudence national judges face to requests for access to documents relating to leniency (Chassaing, 2013).

The merit of the Court of Justice is not only shaping the concept of a private road the implementation of the competition rules under the provisions of the Treaty as complementary instruments to public competition, but also to develop rules that would make the real effectiveness of compensation claims of breaches of competition (Inter alia class actions backed by litigation funders are now an established part of the Australian cartel private enforcement landscape, Guirguis & McCowan, (2014). From this point of view, could cause an axiological problem judgment of the Court of 27 February 2014 (Case

C-365/12 P, European Commission v EnBW Energie), the appeal brought by the European Commission from a judgment of 22 May 2012 (Compare Report on 27 February 2014. The EU legislation on access to documents is still not being properly applied by the Union's administration; whereas the exceptions of Regulation (EC) No 1049/2001 are being applied routinely rather than exceptionally by the administration). By its appeal, the Commission seeks to have set aside the judgment of the Court of the European Union, by which that court annulled Commission decision refusing the request made by EnBW Energie BadenWürttemberg AG for access to the case-file, which considers it self to have been affected by a cartel. The injured abuses sought from the Commission, on the basis of Regulation No 1049/2001, access to all documents in the file relating to the administrative proceeding. The Commission, an authority has territorial jurisdiction to proceed against in situation which has the object and effect of restricting competition within the internal market within the meaning of Article 101 TFEU, rejected that request. At that decision, the Commission stated that it could see nothing that indicated that there was an overriding public interest in disclosure of the documents requested, for the purposes of Article 4(2) of Regulation No 1049/2001 (The requirement of proportionality should protect against the negative effects of overly broad and burden some entity holding the information disclosure obligations, including secure communication system (information flow) against the danger of abuse, Bael (2010). EnBW Energie BadenWürttemberg AG brought an action to Court for the annulment of the contested decision. CJEU considered in that connection whether the conditions which must be fulfilled to enable the Commission to dispense with a specific, individual examination of the documents in the contested decision were met in the present case. Consequently, as the The Court was fully entitled to find, that the Commission was not entitled to general presumption, without undertaking a specific analysis of each document, that all the documents requested were clearly covered by exceptions of Article 4(2) of Regulation No 1049/2001. In accordance with settled European Union case-law, since they derogate from the principle of the widest possible public access to documents, the exceptions to the right of access, laid down in Article 4 of Regulation No 1049/2001, must be interpreted and applied strictly (Paragraph 41 of the judgment of 22 May 2012 in Case T-344/08 and cases cited there). It is open to the institution concerned to base its decisions in that regard on general presumptions which apply to certain categories of document, since similar general considerations are likely to apply to requests for disclosure documents of the same nature.

The Commission gives the primacy of the protection of documents obtained under the leniency program. In refusing to grant access to documents provided in the context of an application for immunity or leniency, the Commission relied on abstract considerations relating to the harm that might be caused to leniency programmes if the persons and undertakings concerned could not be confident that those documents would not be made widely accessible. EnBW asserts, to the contrary, that without those documents it could not even attempt to bring an action for damages that would have the slightest chance of succeeding widely Emmerich (2012) in respect of the losses that it claims to have suffered as a result of the cartel censured by the issuing authority. The Court, the judgment under appeal, stated that „acceptance of the interpretation proposed by the Commission

would amount to permitting the latter to exclude its entire activity in the area of competition from the application of Regulation No 1049/2001, without any limit in time, merely by reference to a possible future adverse impact on its leniency programme". According to the Court (Why the leniency procedure does not make much interest, it seems that the American point of view can be helpful, broadly Piszcz (2013), consequences which the Commission fears for its leniency programme depend on a number of uncertain factors, including, in particular, the use that the parties prejudiced by a cartel will make of the documents obtained, the success of any actions which they may bring for damages, the amounts which will be awarded them by the national courts and the way in which undertakings participating in cartels will react in future". Thus the protection of leniency must be tied with all component parts of the effective application of competition law (In light of the case law, the right to damages for breach of the competition rules is a subjective law which national courts have a duty to protect, Carpagnano (2006) Szpunar (2008).

4. Arguments protected public law proceedings

Refused access to documents Commission argues protected public law proceedings. Meanwhile article 4(3) of Regulation No 1049/2001 draws a clear distinction by reference to whether a procedure has been closed or not. Thus, according to the first subparagraph of that provision, any document drawn up by an institution for internal use or received by it, which relates to a matter where the decision has not been taken by the institution, falls within the scope of the exception for protecting the decision-making process (It should be emphasized at this point that there are demands a special procedure for the conduct of antitrust Stankiewicz (2012). The second subparagraph of that provision provides that, after the decision has been taken, the exception at issue covers only documents containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned. According to the Court only for part of the documents for internal use, namely those containing opinions as part of deliberations and preliminary consultations within the institution concerned, that the second subparagraph of Article 4(3) allows access to be refused even after the decision has been taken, where disclosure of the documents would seriously undermine the decision-making process of that institution. The condition that the violation was serious significantly limits the scope of discretionary power of authority (Will the effect discretionary remedialism be even more devastating for the coherence and legitimacy of competition law, in view of the increasing role of private enforcement...? On the concept „discretionary remedialism" Lianos, (2011); Birks, (2000). By its appeal, the Commission claims that the Court should set aside the judgment of 22 May 2012 under appeal in so far as, by that judgment, the Court annulled the contested decision and dismiss the application for annulment brought before the Court by EnBW Energie Baden-Württemberg AG and give a final ruling. The Commission's complaints relate to failure to have regard to the need for a harmonious interpretation of Regulation No 1049/2001 in order to ensure that legislative provisions relating to other areas remain fully effective; an error of law in the examination of the existence of a general presumption applicable to all documents in the file relating to concerted practices proceedings; infringement of Article 4(2) of Regulation No 1049/2001, concerning relating to the protection of the purpose

of investigations (From the point of view worthy of legal protection for the plaintiff's interest in the relevant outpatient claims, it is important to provide him or directly to the court, the relevant information with regard to the infringement of competition law, its nature and scope, as well as the investigation of compensation and the likelihood of success imparted action, Waelbroeck et al (2004). In particular, it may be dependent on the introduction of the institution of collective redress and effective functioning of this model: (Stadler, 2007) likewise the exception relating to the protection of commercial interests. The Commission also alleges infringement of Article 4(3) of the regulation, concerning the exception relating to the protection of the Commission's decision-making process (it is worth noting at this point in the continental law system, basically, there is an obligation to provide (in the first) written statement of claim or defence (relevant documents) on pain of losing rights of their use in court proceedings, more Stefanicki (2014).

The Commission submits that the judgment under appeal disregarded the need to interpret harmoniously Regulation No 1049/2001, 1/2003 and 773/2004, concerning concerted practices. According to the Commission the Court was mindful only of the principle that exceptions to the right of access to documents must be interpreted strictly, thus giving Regulation No 1049/2001 precedence over those other regulations. That approach, according to the applicant authority, is incorrect, since the provisions of that regulation should be interpreted in such a way as to ensure the full application of the various relevant special legislative provisions. Contrary to the Commission's assertions, Advocate General in opinion delivered on 3 October 2013 states, that the Court's interpretation of Regulation No 1049/2001, did not fail to take into consideration the specific rules governing access to the proceedings in which the documents in question were generated. Whether that attempt to interpret the regulation in a harmonious way achieved the desired effect is another matter (That is something that must be decided once we have examined the other grounds of appeal, which relate to alleged errors of law arising out of a misinterpretation of Regulation No 1049/2001). Has the political dialogue with national Parliaments has proved its worth since it was launched?

Tribunal stated that Regulation No 1049/2001 is designed to confer on the public as wide a right of access as possible to documents of the institutions, especially the European Commission, the European Parliament and the European Council.. It is also apparent from that regulation, in particular from Article 4 thereof, which lays down exceptions in that regard, that the right of access is nevertheless subject to certain limits based on reasons of important public or private interest. With well-established case-law flow results, that in order to justify refusal of access to a document the disclosure of which has been requested, the institution concerned must also provide explanations as to how access to that document could specifically and actually undermine the interest protected by an exception laid down in that article. The Court has already acknowledged the existence in that type of situation (It is important to note that, according to settled case-law, that principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified, see judgment in case: C-550/07 P Akzo Nobel Chemicals and Akcros Chemicals v Commission; T-456/10 Timab Industries, Cie

financière et de participations Roullier v European Commission), the recognition that there is a general presumption that the disclosure of documents of a certain nature will, in principle, undermine the protection of one of the interests listed in Article 4 of Regulation No 1049/2001. The presumption enables the institution concerned to deal with a global application and to reply thereto accordingly (Moreover, referring to thesettled case-law, a simple presumption of legality attaches to any statement of the institutions relating to the non-existence of documents requested, see judgments in case T-110/03, T-150/03 and T-405/03 Sison v Council, case T-214/13 Rainer Typke v European Commission). The Court of Justice held that a court in the judgment under appeal committed an error of law by concluding, that the Commission was not entitled to presume that all the documents concerned were covered by the exceptions provided for in the first and third indents of Article 4(2) of Regulation No 1049/2001. The Court of Justice agreed with part of the Court's argument, that any person is entitled to claim compensation for the loss caused to him by a breach of Article 81 EC (101 TFEU). Such a right strengthens the working of the EU competition rules, thereby making a significant contribution to the maintenance of effective competition in the European Union (Providing the Commission's factual support for the institution of compensation payments should be linked to optimal official coordination in the public interest and private enforcement, Denozza & Toffoletti, (2009). Nevertheless, such general considerations are not, as such, capable of prevailing over the reasons justifying the refusal to disclose the documents in question. It follows that any person seeking compensation for the loss caused by a breach of competition rules must establish that it is necessary for that person to be granted access to documents in the Commission's file, in order to enable the latter to weigh up, on a case-by-case basis, the respective interests in favour of disclosure of such documents and in favour of the protection of those documents, taking into account all the relevant factors in the case.

Advocate General in opinion delivered on 3 October 2013 states that we have a situation involving a refusal *on principle* that makes it impossible for a specific request for access, presented as the only possible basis for a claim for dama ges, to be assessed on a case-by-case basis, taking into account all the relevant factors in the case. Against the foregoing it could be argued that the effectiveness of leniency programmes can be safeguarded only if it is guaranteed that, as a general rule, the documentation provided will be used by the Commission alone. However, other safeguards should also be considered that are less extensive but still attractive for those wanting to take advantage of those programmes. Advocate General observes that in the final analysis, the rationale underlying programs of voluntary cooperation is a calculation as to the extent of the harm that might arise from an infringement of competition law (The trust form of organization, more flexible than a corporation, may also provide tax advantages, Gillen (2011). Also in this aspect of the problem is trans national. Considered in those terms, to guarantee that the information provided to the Commission can be passed on to third parties only if they can adequately prove that they need it in order to bring an action for damages could constitute a sufficient safeguard, particularly considering that the alternative might be a penalty higher than that which might ensue were the action for damages to be successful (When determining the function performed by each of the instruments of competition there can not be

overlooked that the new emerging trends should reflect national traditions and current and foreseeable with a high probability of their occurrence needs. An example would be to compare the European experience not only with the U.S. but also Japanese. The last points to compensate and recover the status quo ante than punishment –Walle (2013). To sum up Advocate General position in the opinion states that the objective of maximum effectiveness for that mechanism should not be regarded as justification for a complete sacrifice of the rights of those concerned to be compensated and, more generally, for an impairment of their rights to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union (Also European Parliament, Resolution of 27 February 2014, emphasis on interpretations of Regulation 1049/2001 in accordance with the fundamental rights and emphasises that the right to good administration also entails a duty on the authorities to inform citizens of their fundamental rights. (see Andreangeli, 2008). The concept of good administration consists of a good law and way to enforce it). The Court set aside the judgment of the General Court of the European Union of 22 May 2012.

5. The lack of information as one of the main obstacles

Having regard to the above judgment and the Directive 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 can not be ignored the position of the European Parliament in explanatory statement of Report on 27 February 2014 on public access to documents. Secrecy and discretion belong to an era when Europe was built by diplomats and civil servants. Admittedly, as transparent administration benefits the interests of citizens, the fight against corruption and the legitimacy of the Union's political system and legislation but current legislation, notably the Regulation (EC) No 1049/2001 (on public access to documents), is not properly applied by the Union's institutions. As case law reveals, the institutions often still apply the exceptions to transparency in a general, rather than in a specifically motivated, manner. Partial access to documents is too often considered. In this material, the emphasis was laid on, existing at the victims, a lack of information necessary for the purposes of compensation proceedings, as one of the main obstacles to the effective implementation of competition rules (The actual guarantees effective redress private enforcement, designated predictability jurisprudence, the quality of judicial decisions and the frequency of paid claims may cause a deterrent effect. Thus, to fulfill the specified function is dependent on the actual making use of private institutions of compensation, Davis & Lande (2012). To remedy the information asymmetry and some of the difficulties associated with quantifying antitrust harm, and to ensure the effectiveness of claims for damages, it is appropriate to presume that in the case of a cartel infringement, such infringement resulted in harm, in particular via a price effect (the proposal for a directive on 17 April 2014). It is worth noting judgement of the Court on 5 June 2014, that article 101 TFEU must be interpreted as meaning that it precludes the interpretation and application of domestic legislation enacted by a Member State which categorically excludes, for legal reasons, any civil liability of undertakings belonging to a cartel for loss resulting from the fact that an undertaking not party to the cartel, having regard to the practices

of the cartel, set its prices higher than would otherwise have been expected under competitive conditions (Case C-557/12, Kone AG).

6. Conclusion

It should be noted the divergence between the line of case-law of the Court of Justice, adopted on Pfleiderer AG and Donau Chemie AG and rules in this regard contained in the Directive and judgement on 27 February 2014 in EnBW Energie Baden-Württemberg AG case (Member States now have until 27 December 2016 to implement it. Thanks to the Directive, it will be easier for European citizens and companies to receive effective compensation for the harm caused by antitrust violations - we find such the opinion expressed in the Report on Competition Policy 2014 and so the Directive is the first legislative initiative adopted via the ordinary legislative procedure in the area of competition policy, and, in European Commission point of view, it sets a milestone for the competition dialogue between the Commission and the other EU institutions). In the latter proposed solutions are clearly aimed at strengthening public enforcement of the competition and favoring leniency program. EU authorities often use the exceptions to the rule of transparency as a principle, not as a particular solution, without sufficient reasons for this state of affairs. The European Parliament shows directly a quick and light procedure must be foreseen for challenging a refusal for access to documents, so as to reduce lengthy and costly litigation. Finally may arise doubts as to whether the chosen direction is a reflection of the will of the Member States, in connection with the far-reaching interference in private law.

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