

# Compensation and the Damages Directive

**KEYWORDS:** Private Antitrust Enforcement, Damages Directive 2014/104/EU, Damages Actions, Compensation, Competition Law

## BACKGROUND

- Every year European citizens and firms suffer harm amounting to several billion Euros from cartels and other anticompetitive conduct. Few victims seek compensation for these losses in the courts of EU Member States.
- The EU Damages Directive 2014/104/EU that came into force in December 2014 attempts to encourage victims of anticompetitive conduct to seek compensation in the courts by facilitating private damages claims.
- EU Member States have to implement the Damages Directive in national law by the end of 2016.

## METHODOLOGY

- The paper uses a simple law and economics framework to analyse the Damages Directive. According to economic theory, individuals will sue for compensation if the benefits of legal action outweigh the costs of legal action.
- In the paper, the incentives to sue that are potentially created by the Damages Directive are compared with the predictions of economic theory.

## KEY FINDINGS

- The study finds that the Damages Directive fails in its compensation objective. The rules in the Damages Directive are unlikely to encourage victims to claim for compensation in the courts.
- The rules of the Damages Directive create additional costs and this will have a chilling effect on the incentives to sue, especially for consumers and corporate claimants with limited financial resources.
- The Directive fails to address the real issues that could potentially motivate claimants to sue, i.e. changes to rules allocating costs in litigation and allowing opt-out group actions to aggregate small individual losses.

## POLICY ISSUES

- Member States should consider introducing legal rules that go beyond the narrow scope of the Damages Directive if more compensation actions are desired, for example, introducing opt-out class actions to help victims with limited financial resources to obtain compensation.

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## THE CCP

The Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

## FOR MORE INFORMATION

The full working paper 15-10 and more information about CCP and its research is available from our website: [www.competitionpolicy.ac.uk](http://www.competitionpolicy.ac.uk)

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