COMPARATIVE STUDY ON CLASS ACTIONS IN COMPETITION LAW INFRINGEMENTS

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ABSTRACT
Effective enforcement of competition law provisions represents a guarantee of well functioning markets. In order to achieve this, Europe used the US model and put a greater emphasis on what we name the private enforcement of competition law. Nowadays many of the EU Member States offers legal mechanisms to individuals that can claim damages for losses suffered as an effect of anticompetitive behaviours. General collective redress mechanisms (for all kind of damages suffered by consumers) are available in 16 EU Member States, while specialised collective redress mechanisms in competition matter are in force in 11 of the EU Member States. Taking into consideration this reality EU officials had a constant concern in recent years for developing uniform standards for this area at the level of the Union.

The paper at hand presents the general characteristics, advantages and disadvantages of class actions in general and in competition matter, in special, followed by a short presentation of the collective redress mechanisms available in competition matter in three of the EU Member States: UK (England and Wales), Italy and Spain. Finally, the paper presents some of the major efforts made by the European legislator in the last years, in order to ensure uniformity between national legislations in what regards collective redress mechanisms in the benefit of European consumers.

Key-words: class action (collective redress), damages action, competition law, EU law, national legislation;

JEL Codes: L4, K21, K13, K33, K41

1. Introductory Concepts

In legal doctrine we cannot find a universally accepted definition of the collective redress (or class action) concept. According to one of the definitions that we can find in legal writings "collective redress is any mechanism that may accomplish the termination or prevention of unlawful business practices which affect a multitude of claimants (consumers and/or small and medium enterprises) or the compensation for the
Comparative study on class actions in competition law infringements

harm caused by such illegal practices”. In a similar opinion, embraced by the European Commission collective redress is defined "as a mechanism that may accomplish the cessation or prevention of unlawful business practices which affect a multitude of claimants or the compensation for harm caused by such parties”. The definition was seen in legal doctrine as an umbrella definition, which includes group litigation, model case-litigation, actions brought by ombudsmen or consumer organizations, collective settlements based on opt-out mechanisms, skimming-off actions and injunctions against unlawful practices.

Collective redress mechanisms have its origin in the England of the 17th century, where group litigation was used to solve damages action initiated for damages resulted from action which affected more individuals simultaneously where it was difficult to handle individual cases. Group litigation in England was based on the practice of the English courts called "bills of peace", which enabled multiple plaintiffs or defendants to resolve common problems by a single legal action brought before the Courts of Chancery. In order to initiate group litigation three conditions needed to be met: the existence of many persons interested to initiate a given claim; the presence of the material interest of every single individual in initiating the claim; the existence of a group representative who could properly represent and protect the interests of all of the members of the group. The institution of group litigation survived in England until the 18th century (more exactly until 1850) when it was replaced by individual litigation. Even class actions died for a while in England it became very popular in the United States after 1850, especially for defending property and civil rights, consumer’s interest and the environment.

4 A mechanism specific to multiparty actions, where the absent parties can benefit, or be bound by the collective action even if they are absent from the proceedings, unless they take steps to affirmatively exclude themselves, or opt-out of the lawsuit. This mechanism is opposite to the opt-in mechanisms, also specific to multiparty actions, which require individual consent of the person in order to be bound by the result of the collective action. See for more details P. G. Karlsgodt, World Class Actions: A Guide to Group and Representative Actions around the Globe, Oxford University Press, Oxford, 2012, p. xl.
The reasons which recommend class actions as an effective modality of litigation are numerous and were mentioned in legal doctrine as being at least the following: implying individuals who lack the resources, knowledge or experience to sue individually, minimizing unnecessary litigation, efficiency savings, celerity, cost savings etc\(^8\).

Although, class actions have numerous advantages, this modality of litigation can also have several disadvantages. One of these disadvantages could be the limited ability of the represented persons to control the ongoing procedures and the possible conflict of interests which can arise between the agent and the represented persons (also called by some authors passive group members\(^9\)), due to the lack of the personal presence of the latter in the proceedings. In most cases, the quality of agent in class actions is detained by law firms, acting as an entrepreneur who makes an investment when bringing the action to the court hoping to obtain a generous fee in the event a judgment is rendered or the case is settled in favor of the represented group\(^10\). In this context, we should mention the fact that disproportional merits of lawyers compared to that of the represented plaintiffs was also mentioned as being a disadvantage of group litigation\(^11\).

Problems related to proper representation could be directly proportional to the number of represented persons and could be related to the type/regime of the class action analyzed (opt-in or opt-out type). In an opt-in type regime class litigation, every represented plaintiff needs to manifest its agreement for being a represented party in proceedings. Instead, in opt-out regimes, all the injured persons are considered as being a party to the proceedings unless they expressly manifest their disagreement in this respect. So, the problem of misrepresentation could arise more frequently in this latter type of class actions, taking into consideration the fact that the group of represented plaintiffs is large and more heterogeneous and many victims may not even be aware of the proceedings\(^12\).

Frivolous claims have represented another problem related to class actions, some of the authors\(^13\) having the opinion that this kind of litigation can conduct often to a baseless lawsuit.

Another aspect, often mentioned as a disadvantage of the class action type litigation (especially of the opt-out regimes) was mentioned the free-rider problem. Some of the authors from legal doctrine have the opinion that class actions could

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\(^10\) Ibidem.

\(^11\) Ibidem.

\(^12\) Ibidem, *op.cit.*, p. 65-66.

enhance excessive litigation due to the facilities offered to represented parties. The problem of unmeritorious claimants was also treated, because class action “enables parties who would otherwise not bring an action to have a piece of the legal pie when a judgment of award is handed down”\textsuperscript{14}.

Despite drawbacks shown before, many EU Member States had regulated (e.g. Austria, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Spain, Sweden and UK – England and Wales) or are considering regulating group litigation mechanisms\textsuperscript{15}. Nevertheless, special collective redress mechanism in competition cases was made available in many of the above mentioned EU States. In this context, in the recent years the European Commission has been in favor of group litigation in competition cases, its efforts to realize uniform standards in this matter between EU Member States being part of the reform process regarding the decentralization and strengthening the private enforcement of EU Competition Law.

2. Collective Redress Mechanisms in Competition Matters in some EU Member States

As we have mentioned above, collective redress mechanisms are available in the majority of the EU Member States, but not in all of the mentioned countries had been regulated special mechanisms for group litigation in competition matters\textsuperscript{16}. According to the dates published by the British Institute of International and Comparative Law\textsuperscript{17} at this moment, 11 from the 28 Member States of the European Union has developed special legislation for group litigation in competition matters. In the following we will briefly analyze the legal regime of group litigation in competition cases in some of the EU countries detaining special legislation in the domain.

2.1. UK (England and Wales)

UK is among countries with tradition in multi-party litigation, collective actions being used in claims involving product liability, environment protection, pensions, financial services and breaches of competition law\textsuperscript{18}.

\textsuperscript{17} For more details regarding the situation in countries which have special legislation regarding group litigation in competition law cases see the official website of the British Institute of International Law and Comparative Law: http://www.collectiveredress.org/collective-redress/competition-law.
Collective actions in England and Wales in competition matter are regulated by: Civil Procedure Rules\textsuperscript{19}, Competition Appeal Tribunal Rules\textsuperscript{20}, Competition Act from 1998\textsuperscript{21}, and the recently adopted Consumer Rights Act from 2015\textsuperscript{22}.

According to the regulations in force, in the UK, collective claims may be brought by multiple claimants or representative bodies (not only consumer’s organizations\textsuperscript{23}) for losses or damages which have resulted from breaches of the UK or EU Competition rules, namely for anticompetitive behaviors which prevent, restrict or distort competition within the UK or EU\textsuperscript{24}.

It is worth to mention, that any number of claimants or defendants can be joined as parties to a single claim, if the claimants has the same interest in all of the stages of the proceedings. The major condition for a collective claim is the requirement that the claim can conveniently be disposed of in the same proceedings (i.e. in a single damages action), for the reason that rises the same, similar or related issues of law and as such, is suitable to be brought in collective proceedings\textsuperscript{25}. Another condition is related to the agent, or representative who formulates the collective claim, who needs to be a person who will fairly and adequately act in the interests of class members\textsuperscript{26}.

The collective party, represented by the above mentioned agent, comprises only persons who have actually suffered a loss from the same anticompetitive practice\textsuperscript{27}. In this context, we need to mention the fact that rule 19.2 of the Civil Procedure Rules permits to add to the proceedings, with the court permission, the persons who have suffered a loss from the investigated anticompetitive behavior if they are discovered at a later stage of the proceedings.

As we have said before, actual claims can be brought by any person who has suffered loss or damage and can be “stand-alone” or “follow-on” cases. Stand alone type cases arise when collective action of damages is brought for alleged infringement of competition law, uninvestigated up to the date when the damages action is brought before the court. Unlike that, follow-on type damages actions are based on a competition law infringement decision of the Competition Commission.

\textsuperscript{22} http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted.
\textsuperscript{23} The actual objective of the recent legislative modification made by Consumer Rights Act 2015 was to ease privation actions for breach of competition law, in particular for small and medium enterprises and for consumers. Previous legislation gave the right to formulate collective actions only for consumer organizations.
\textsuperscript{25} Competition Appeal Tribunal Rules, Rule 79 (1).
\textsuperscript{26} See for more details on this topic information available at: http://uk.practicallaw.com/6-618-0351.
\textsuperscript{27} It is worth to mention, that according to the provisions of Competition Appeal Tribunal Rules (rule 78(1) (a), there is no minimum number of claimants fixed in class actions.
Comparative study on class actions in competition law infringements

or Markets Authority, that of the Competition Appeal Tribunal or the European Commission, after the case. In the latter situation, the mentioned decisions give rise to reputable presumption of the existence of a competitive harm\textsuperscript{28}.

In what regards the type of class actions (opt-in or opt-out) regulated in the UK since the 1\textsuperscript{st} of October 2015\textsuperscript{29} both types of class actions are possible. So, collectivities of individuals or businesses who have suffered losses from breaches of competition law can bring an action on behalf of named consumers who have taken the necessary steps in order to prove their interest in being part in the proceeding, by notifying the class representative that their claim should be included in the proceedings too (\textit{opt in basis class action})\textsuperscript{30}. As well, after the recent reform of the collective action process, actions can be brought also on behalf of a defined class of consumers or on behalf of consumers in general, where members of the class are included automatically\textsuperscript{31} to be parties in the proceedings, unless they actively choose to “opt out” of the action, by notifying the class representative that they have no interest in being party to the proceedings. More, pursuant to provisions in force, it is possible to bring a claim on the basis of an estimation of the total number of potential claimants, with individual claimants only needing to come forward after the quantification of damages stage, in order to collect their share of the total amount of damages awarded.

Before recent legislative modifications, only opt-in type procedures could be brought before the courts. This type of proceedings represents a major difficulty because all of the affected persons need to “opt-in” separately into the proceedings. Opt-out type collective procedures give more power to consumers against businesses who have engaged themselves in anticompetitive practices, because of the cost savings and reduced procedural formalities for the individual claimants\textsuperscript{32}.

The judgment given in both type of collective claim will be binding on all parties represented. Reformed legislation also allows collective settlements to be made by the competent court, in order to favor quick and easy settlement of the cases. More, guilty companies can opt for voluntary redress schemes by paying voluntary to the persons who have suffered damages as effect of their anticompetitive practices.


\textsuperscript{29} The date of entry in force of the Consumer Rights Act 2015 (Part.3, Chapter 2 on Competition).

\textsuperscript{30} For more details on the characteristics of opt-in or opt-out type class actions please see: S. Dodson, \textit{An Opt-In Option for Class Actions}, Michigan Law Review, vol. 115, Issue 2/2016, p. 175.

\textsuperscript{31} We have to mention that only UK domiciled persons are included automatically in the class, those who are not UK domiciled needs to opt-in in the proceedings.

The actual amount of losses incurred by class members does not need to be known by the court in order to admit damages actions, competent courts having the power to estimate loss where it is very difficult to prove the exact amount.

The competent court in first instance for judging collective claims in the UK is the Competition Appeal Tribunal, constituted by the provisions of Enterprise Act 2002. This special tribunal has extensive competencies in determining if a given case is suitable or not for class action type litigation, taking into consideration the costs and benefits of collective proceedings, the size and nature of the class, the suitability of case for aggregate award of damages, the availability of alternative dispute resolution or any other means for resolving the dispute and other factor which could be considered as being relevant by the court on a case by case basis. If the court considers that the given case can be resolved adequately by class action, it has large discretion in verifying if the representative of the class can be considered as being a person “who will fairly and adequately act in the interest of the class members”.

If proceedings are based on a former decision of the national competition authorities, or that of the European Commission finding the existence of an anticompetitive behavior, the Competition Appeal Tribunal will be able to quantify the exact amount of harm.

According to reformed class action legislation, the court can also apply fast track proceedings for smaller claims, when litigation needs to be ended in maximum 6 months from its commencement, in order to ensure a quicker, cheaper and easier solution for cases which does not involve special problems. Another important aspect refers to the possibility granted by Consumer Rights Act 2015 for Competition Appeal Tribunal to make collective settlements if the case can be solved without a trial in court.

Appeals to the decision of Competition Appeal Tribunal can be made on points of law at the Court of Appeal in three weeks after the adoption of the decision in first instance. The length of proceedings will depend on the volume of evidence and the complexity of the issues involved.

In order to discourage frivolous or unmeritorious litigation, the losing party will support the costs of proceedings also for the winner party (the loser pays principle).

Damages actions via class action can be brought before the court in a maximum term of 6 years after the date when the prejudice had been produced.

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33 Ibidem, p. 6.
34 According to rule 78, par. 1 of the Competition Appeal Tribunal Rules of procedures provides that this court may authorize a person to act as a class representative only where it considers that it is “just and reasonable” to do so, the latter aspect depending on a multitude of factors, such as any potential conflict of interest, the proposed representative’s ability to pay the defendant’s recoverable costs if ordered to do so etc.
36 N. Heaton, loc.cit., p. 7.
2.2. Italy

In Italy, regulation on class actions was introduced only recently. First provisions regarding the so called "collective actions" were introduced by Italian Budget Law in 2007, who added article 140bis in the Italian Consumer Code\(^\text{37}\). The objective of the newly introduced litigation type was to protect collective interests by consumer association by offering the possibility to latter to initiate group litigation for contractual or tort claims, or for damages resulted from unfair or anticompetitive practices\(^\text{38}\).

The above mentioned provision was modified afterwards by art. 49 of Law no. 99/2009\(^\text{39}\), which have modified the name of the litigation type introduced in 2007 into "class action" and the declared objective of the mentioned type of litigation. So, article 140bis as it was modified by Law no. 99/2009, regulated class actions which had the objective to protect the interests of each plaintiff, instead of the collective interest declared by its former version.

Important novelty elements were introduced also in 2012, by Law no. 27/2012\(^\text{40}\), which had widened the scope of rights which could be protected by class actions. If the former version of article 140bis of Italian Consumer Code declared that only consumers who have identical rights can bring a class action into the court, the last version of the mentioned regulation permits to use class action for the protection of homogeneous, but not absolute identical rights\(^\text{41}\).

In what regards the capacity to bring an action, Italian regulation in force regarding class action accords this right only to consumers and users, defined in Article 3 of the Italian Consumer Code as "individuals acting outside trade, business or profession purposes". Accordingly, Italian legislation, unlike UK legislation, does not permit to businesses to initiate class actions for the protection of their interests. Also, damages resulted on the basis of an employment contract, are exempted from the scope of class action regulation. Similarly to UK legislation, Italian class action regulation does not require a minimal number of consumers, or after the case, users, who need to bring the class action before court.

In Italy class action can be initiated only against "businesses, acting within the scope of their businesses".


\(^{39}\) Law no. 99 from the 23\text{rd} of July 2009, published in the Official Gazette no. 176 from the 31\text{st} of July 2009, Ordinary Supplement no. 136.

\(^{40}\) Law no. 27/2012 from the 25\text{th} of March 2012, published in the Official Gazette no. 71 from 24\text{th} of March 2012.

In contrast to UK legislation, Italian regulations on class actions guarantees only the possibility of formulating opt-in type class actions, where consumers/users who have suffered damages as an effect of unfair or anticompetitive commercial practices can make a written declaration regarding accession (via certified mail, e-mail or fax to the class representative), without needing the services of a lawyer. Particulars who do not "opt-in" can initiate individual proceedings for the protection of their interests. The term for opting-in is maximum 120 days, until the first hearing in the case.

Italy does not have special courts for solving class actions in competition matter. So, civil court from the regional capital of the territory where the defendant business has its registered offices will have the competence to judge the case.

Likewise UK in Italy the competent court also will verify the admissibility of the case (in a procedure called, certification procedure). Class action will be rejected in cases where is clearly unfounded, when a conflict of interests exists between class members, or between them and class representative, where the rights of plaintiffs forming the class are not homogenous, or when the class representative is not an adequate one (i.e. does not have the necessary administrative, or financial means to represent the plaintiffs). Orders of the court on the admissibility of the case can be appealed before competent Court of Appeals and subsequently, before the Italian Supreme Court of Cassation in 30 days.

As in UK, also in Italy damages action can be brought only for actually suffered prejudice. The final judgment of the court will order the granting of a fixed amount of damages to the plaintiffs or, after the case, will mention the criterion which needs to be taken into consideration by the guilty business in order to establish the individual amount of damages owed to every plaintiff. Parties can make a settlement regarding the payment of damages in 90 days after the pronouncement of the decision. Decisions on damages are enforceable in 180 days after publication.

Like the UK, also Italy enforced the "looser pays principle", according to which the loosing party will be obliged to pay the procedural costs of the winner.

2.3. Spain

Spanish legislation does not offer a separate regulation of class actions. Instead, art. 11 of the Spanish Procedural Law, which refers to the protection of

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44 See also P. G. Karlsgodt, op.cit., p. 335.
the interest of consumers, allows for a group of consumers or end-users whose members are identified or easily identifiable, and/or consumer and user associations and/or other legally constituted entities to bring claims for the protection of the collective interest of the group before a court, and to claim damages. Collective or class actions in Spain are used therefore for damages actions in relation to product liability, unfair contractual terms, contractual liability, abusive clauses in banking services, unfair competition and anticompetitive business behavior.\textsuperscript{48}

In Spain the capacity to sue via class action is attributed to: consumer and users association; legally incorporated entities and to groups of affected individuals. So, class action type damages actions cannot be brought before the court by businesses. The only possibility of collective action for the latter is to formulate individual actions, which can be joined by the court if case a connection exists between the cases. Consumer and user associations in order to have the capacity to sue in a class action type damages action needs to be: legally constituted, officially registered and to have as objective the defense of consumer\textsuperscript{49} interests. Legally incorporated entities are considered associations who are not consumer association, but their statutory purpose targets also the defense of consumer rights. Groups of individuals can bring into the court class actions only if the members of the group are determined, or can be easily determined and represents the majority of the affected/prejudiced persons in a given case.

It is worth to mention that class actions can be brought also when the identity of the affected consumers or users is not known (is undetermined), or it is difficult to determine, when the action will protect the so called “diffuse interests”, but the capacity to sue will be accorded only to consumer or users associations.\textsuperscript{50}

Likewise UK and Italian legislation, Spanish provisions regarding class actions does not determine a condition related to the minimum number of claimants in class action cases.

The typology of class actions in Spain is atypical, being a mixture between opt-in and opt-out type class actions. If the members of the class are identified or can be easily identified the consumer association will announce the members about the proceedings 51. Also the

\textsuperscript{48} See for more details P. A. Karlsgodt, \textit{op.cit.}, p. 597.

\textsuperscript{49} According to Spanish legislation (art. 3 of Royal Legislative Decree no. 1/2007 from the 16th of November 2007 on Consumers and users – Real Decreto Legislativo 1/2007, de 16 de Noviembre, Ley des Consumidores y Usuarios – published in Official Gazette no. 287 from the 30th of November 2007). Consumers or end-users are “individuals acting for a purpose unrela ted to heir commercial or business activity, trade or profession”.


\textsuperscript{51} So, the judgment will only affect the claimants involved in bringing proceedings. It will not bind other parties that might also have suffered loss or damage as a result of the same infringement but who did not participate in the action.
competent court is obliged to announce the initiation of class action proceedings in the media. After opting-in, consumers can opt-out from the proceedings, whenever they want in the course of proceeding and before the adoption of the final judgment. Instead, if members of the class are unidentified, or are difficult to identify, the court will make a notification regarding the initiation of the proceedings in the media and affected consumers or users can opt-in in a maximum period of 2 months (period during which proceedings will be suspended), the sanction being the impossibility to be part of the class and the necessity to initiate an individual action in the court. Also in this case, consumers can opt-out until the final judgment will be obtained.

Class action type damages actions will be introduced a different court, depending on the reason that gave rise to the damage. For damages resulted from contracts and other than commercial private relations ordinary Civil Courts (Juzgados de Primera Instancia) will have the competence. Instead, in damages cases resulted from unfair commercial practices, commercial contracts or anticompetitive business behavior, Mercantile Courts (Juzgados de lo Mercantil) will be competent.

The decisions of Civil Courts or Mercantile Courts can be appealed on points of law before Courts of Appeal (Audencia Provincial) and subsequently, for procedural reasons, before the Spanish Supreme Court (Tribunal Supremo) in 20 days.

Class action type damages action can be successful if: a) there is an act/omission which has effectively caused damages to consumers or end-users; b) a causal relationship exists between the act/omission and the damages resulted and c) the class of consumers is properly represented. According to article 1809 of the Spanish Civil Code and article 19 of Law no. 19/2000 in cases when public interest is not involved, parties have the possibility to sign a settlement in order to finish the proceedings in an amicable way. It is worth to mention the fact that in the quantification of damages resulted from anticompetitive behaviors national competition authorities will collaborate with competent national courts, and the non-binding opinion of the first related to the gravity and duration of the given behavior will decisively influence the quantum of damages which will be determined by the court.

52 See for more details art. 11 of Law no. 1/2000.
54 Royal Decree from the 24th of July 1889 (Real Decreto de 24 julio de 1889 de la edición del Código Civil), published in Official Gazette from 25th of July 1889.
In order to deter frivolous or unmeritorious actions Spanish legislation also adopted the loser pays principle, mentioned above also in case of the UK and Italy. The difference reported to the latter countries resides in the fact that in Spain, the loser can be obliged to pay procedural costs of the winner only if it does not exceed 1/3 of the total amount of claim. We also have to mention the fact that consumer or users association does not pay court fees, according to Spanish legislation\textsuperscript{58}.

Time-limits for bringing class action into the court are different than in UK, or Italy. So, in competition or civil matters the limitation for bringing the action is one year\textsuperscript{59} since the moment the wrongful act was known or should have known by the claimant.

3. Class Actions in EU Competition Law

From the beginning of the 2000’s, the reform process of EU Competition Law initiated by the European Commission puts a great emphasis on the decentralization and a better private enforcement of EU Competition Law. The reform process had generated an open debate regarding effective collective redress mechanisms, namely on their proper design, parameters and effectiveness, under the conditions of significant differences existent between national legislations\textsuperscript{60}. In this context, the development of common principles at EU level for national damages actions was a must have item for the well functioning of the reformed EU Competition Law. In order to enhance damages action for consumers who have suffered a reduced quantum of damages there was also need to establish a common legal framework for collective redress mechanisms. In this sense, the EU Commission had more legislative steps, such as the Commission Recommendation no. 2013/396/EU from the 11\textsuperscript{th} of June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law\textsuperscript{61}. This legislative act formed the base for the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Toward a European Horizontal Framework for Collective Redress”\textsuperscript{62}. According to these non-binding legislative acts, collective redress mechanism in EU Member States should be based on common principles such as follows:


\textsuperscript{61} Published in OJ L 201, 26.07.2013, p. 60-65.

- claimants should be able to seek court orders from national courts to cease violations of the rights granted by EU Law and to claim damages for harm caused by the mentioned violations via collective actions, when a large number of persons are harmed by the same illegal practice;

- collective redress procedures in EU Member States for EU law infringements should be fair, equitable, timely and not prohibitively expensive;

- collective redress mechanism should be based on an opt-in principle where the affected persons should give their direct consent for being part in collective proceedings;

- the establishment of ban on punitive damages, in order that collective damages actions to have the objective to compensate only effective harm produced because of EU law violations;

- the establishment of ban on contingency fees to lawyers, in order to prevent profit making representation in collective actions;

- the application of the “looser pays principle” as a means to prevent frivolous and unmeritorious damages actions.

The efforts of the EU legislator regarding the establishment of common principles regarding damages actions in competition matters had culminated in the adoption at 26th of November 2014 of the Directive no. 2014/104/EU63 of the European Parliament and the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and the European Union64. Although this directive does not refer to collective redress mechanism it establishes important principles regarding damages action in the EU65.

One of the most important common principles established by the above mentioned directive refers to the right to full compensation66 of the harmed persons, in order to ensure their replacement into the same position/in an equivalent position to that had before the production of the prejudice.

Another important principle refer to the obligation of national competition authorities to disclose evidence from competition files to national courts in order to facilitate the process related to the quantification of damages resulted from anticompetitive behavior67. It is worth to mention that the decision of national competition authorities should have the role of prima facie evidence (relative

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63 For more details regarding the application of directive's provisions on anticompetitive agreements and abuse of dominance please see I. Lazăr, Dreptul Uniunii Europene în domeniul concurenței, Universul Juridic Publishing, Bucharest, 2016, p. 232-235; 303-305.


65 See in this sense the point no. 13 from the preamble of the directive, according to which the “directive should not require member states' to introduce collective redress mechanisms for the enforcement of article 101 and 102 TFEU”.

66 Art. 1 of Directive no. 2014/104/EU.

67 Idem, art. 8-9.
presumption) of competition infringement and competitive harm. According to the EU legislator the time limit for damages action should be at minimum 5 year\textsuperscript{68}.

The directive also establishes the principle of joint liability of the undertakings who have engaged themselves in anticompetitive behavior\textsuperscript{69}.

The mentioned efforts of the EU legislator has the objective to ensure common standards at EU level regarding damages action and a consumer orientated and efficient enforcement of EU law in general and the EU Competition Law, in special. Also, well and uniformly regulated damages actions can deter competition law violations in the EU and can prevent gains obtained via illegal competition practices\textsuperscript{70}.

4. Conclusions

Although origination from Europe (i.e. England) class actions has gain popularity in US jurisdiction as a mean for the protection of collective interests of consumers and inviduals in case of damages action. On the contrary, European countries were more hesitant in using this type of litigation, which is why we assist to a great diversity among Member States regarding the use o collective redress mechanisms in general and in competition matters, in special.

The need for reform in EU Competition Law in what regards decentralisation and a greater emphasis on private enforcement of competition law provisions has brought to the fore the problem of the uniform regulation on collective damages action, especially in competition law cases.

We have shown that class action type litigation has numerous advantages and as well some disadvantages, but remain a proper mean for handling damages case which involve a great number of affected consumers.

As we have seen, in European the majority of European countries class action mechanisms in competition matters has are relatively new. We had observe common as well distinct features. UK regulates a class action mechanism which is closest as characteristics to the US class action system. So, we can find here opt-in, as well opt-out type class actions, when Italy prefers opt-in type mechanisms. Spain represents an atypical example in this sense, by using a mixture of the two well knowned class action types. Except the UK, class actions in the analysed EU countries can be brought before the court only by consumers or end-users or specialized associations of the latter, without the businesses having this right. As regarding the competence of the courts, UK has designated special courts for resolving class actions in competition matters, while in Italy and Spain common civil or commercial courts are entitled to solve the cases.

\textsuperscript{68} Idem, art. 10.
\textsuperscript{69} Idem, art. 11, par. 1.
\textsuperscript{70} See also M. Ioannidou, Consumer Involvement in Private EU Competition Law Enforcement, Oxford University Press, Oxford, 2015, p. 5.
All of the analysed EU countries are permitting damages class actions in order to cover the actually suffered prejudice, permits settlement in this type of proceedings and are applying the loser pays principle in order to deter frivolous or unmeritorious claims.

The EU efforts regarding the ensurance of a uniform regulation of damages actions in competition matters has the objective to realize a greater harmony between the member states legislation in the matter and to ensure a greater protection for the European consumers.