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Private Enforcement of EU Competition Law: Recent Developments

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Introduction

Over the last year, the European Union (“EU”) continued to witness private enforcement being established as one of the key pillars of European competition law. Recent judgments of the European Court of Justice (“ECJ” or “Court”) and national courts reveal a rapidly evolving body of law on procedural aspects of private enforcement, especially class actions.

As class actions become increasingly important in the EU, the European Commission (“Commission”) is considering revisions to the Brussels I Regulation¹ with the aim of strengthening legal certainty, improving access to justice and reducing procedural burdens for cross-border litigation. The Commission’s June 2025 report noted that the current rules may create unnecessary obstacles for collective redress actions by requiring claimants to litigate in multiple courts before proceedings can be consolidated,² and, in September 2026, the Commission initiated a consultation with stakeholders regarding possible reforms.³ The Commission has, however, seemingly set aside its earlier plans for a directive regulating third-party litigation funding,⁴ and is instead prioritising ensuring that Member States implement the Representative Actions Directive⁵ regarding consumer collective redress.⁶

Turning to recent judicial developments, private enforcement continues to expand beyond traditional cartel-related litigation, with a growing number of collective damages actions targeting large digital platforms and other technology companies.⁷ Many national courts have embraced collective redress and claim aggregation mechanisms, particularly through the acceptance of representative actions,⁸ assignment models and funded claims.⁹ At the same time, courts are applying increasingly exacting standards for proving harm, causation and quantum, with several recent judgments demonstrating a willingness to scrutinise economic evidence closely and reject claims where loss has not been adequately established.¹⁰

The ECJ does try to preserve the effectiveness of public enforcement tools such as leniency programs and settlements despite its judgments continuing to adopt a claimant-friendly stance by reducing procedural barriers. As discussed in more detail below, recent judgments have expanded claimants’ access to evidence in pre-action claims, facilitated collective and representative actions, and interpreted limitation rules in a manner intended to increase the effectiveness of follow-on claims.¹¹ It is questionable whether the ECJ is striking the right balance, in the light of mounting evidence that the growth in private enforcement is hindering public enforcement, which remains the source for most private damages claims in Europe.¹²

Protection of Leniency and Settlement Materials in Criminal Proceedings

In October 2025, in *FL und KM Baugesellschaft*,¹³ the ECJ addressed whether the special protection afforded to leniency statements and settlement submissions under EU competition law continues to apply when cartel files are transferred from a competition authority to criminal prosecutors under a Member State’s mutual assistance framework.

The case arose from two parallel investigations, one by the Austrian competition authority and the other by the public prosecutor into bid-rigging in the construction sector.¹⁴ FL und KM Baugesellschaft and another construction company applied for leniency under the Austrian competition law, which ultimately resulted in a reduction of their fines.¹⁵ During the criminal investigation, the Austrian public prosecutor successfully sought access to the competition authority’s case file, including the leniency and settlement materials, under national rules on administrative and judicial assistance.¹⁶ The leniency applicants objected and asked the prosecutor to remove and disregard these self-incriminating materials.¹⁷ The Higher Regional Court of Vienna asked the ECJ for a preliminary ruling on the scope of leniency protection.

The ECJ stated that Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) does not preclude the transfer of leniency and settlement materials to a public prosecutor under national mechanisms of administrative assistance.¹⁸ However, the Court also noted that leniency programmes are useful tools to uncover competition law infringements and thus are essential to ensure the effectiveness of Articles 101 and 102 TFEU.¹⁹ Similarly, the Court echoed AG Szpunar’s Opinion regarding the need to avoid weakening the incentives of leniency applicants to cooperate with competition authorities.²⁰ Thus, the Court reasoned, national mechanisms for administrative assistance should be structured in a manner that preserves the effective implementation of EU competition law, including protecting leniency statements and settlement submissions.²¹

The ECJ clarified that the protection under Article 31(3) of the ECN+ Directive only protects leniency statements and settlement submissions from disclosure and not other accompanying materials on the file, such as annexes, tables, reports, and presentations that are not part of the leniency statement.²² This conclusion is based on previous case law regarding the right to bring actions for damages before national courts,²³ and is also supported by the judgment in *Evonik Degussa v Commission*, which held that the disclosure of information from documents in the leniency materials is authorised subject to protecting business secrets, professional secrecy and other confidential information.²⁴

The ECJ therefore held that, in national criminal proceedings, access to leniency statements and settlement submissions should be subject to: (1) the necessity to enable the defendant's rights of defence under Articles 47 and 48(2) of the Charter of Fundamental Rights of the EU; and (2) ensuring protection of the public interest (e.g., confidentiality or the effectiveness of EU competition law), which should be analysed on a case-by-case basis.²⁵

Pre-action disclosure in competition damages litigation

In January 2026, the ECJ delivered its preliminary ruling in *Meliá Hotels*, where it clarified how Article 5 of the Damages Directive²⁶ on the disclosure of evidence applies to pre-collective action requests to access internal documents.²⁷

The case arose from the Commission's decision finding that Meliá Hotels International had infringed Article 101 TFEU by restricting hotel bookings based on customers' nationality or residence.²⁸ Associação Ius Omnibus, a Portuguese consumer association, brought a standalone action seeking disclosure of documents from Meliá before deciding whether to bring a collective damages claim on behalf of Portuguese consumers.²⁹ The Portuguese Supreme Court asked the ECJ if Article 5(1) of the Damages Directive applies to a separate disclosure action brought before a damages claim. It also asked whether the Commission's decision alone established the plausibility of a damages claim and what level of proof is required under the plausibility test.³⁰

The ECJ held that Article 5(1) of the Damages Directive applies to pre-action disclosure proceedings where national law allows such proceedings.³¹ Disclosure is intended to help potential claimants overcome information asymmetries and prepare damages actions effectively.³² However, the ECJ emphasised that the right to such disclosure is not absolute and is subject to the relevance and proportionality tests under Articles 5(2) and (3) of the Directive. The Court reasoned that these tests are essential to balance the need to ensure the effective exercise of the right to damages against preventing potential "fishing expeditions".³³

The ECJ further clarified that a Commission infringement decision binds the national court as to the existence and scope of the infringement identified in that decision.³⁴ It therefore establishes the plausibility of the infringement but does not, however, establish the plausibility of harm or the necessary causal link.³⁵

The Court confirmed that the statutory presumption, under Article 17(2) of the Directive, that an infringement caused harm applies only to horizontal cartels but not to vertical restrictions between undertakings operating at different levels of the supply chain.³⁶ A Commission finding of a vertical restriction by object therefore does not, by itself, "imply that harm has been caused to a particular person or that there is a causal link between that restriction and that possible harm".³⁷ The claimant must therefore provide a plausible basis for harm and causation.³⁸ The Court considered that the fact that the Commission decision followed a settlement procedure made no difference in this respect.³⁹

Finally, the Court clarified that, to succeed on the disclosure application, the claimant need not demonstrate that the basis for their damages claim meets a "more likely than not" standard.⁴⁰ The claimant need only show that it is reasonably acceptable to assume that the three conditions for liability are met: an infringement; harm; and the causal link.⁴¹ The Court considered that a higher standard would defeat the purpose of

disclosure because the claimant seeks the evidence precisely to prepare and prove its action.⁴²

Anchoring claims in international follow-on proceedings

In April 2026, in joined cases *Electricity & Water Authority of the Government of Bahrain and Others v Prysmian Netherlands BV and Others* and *Smurfit Kappa Europe BV and Others v Unilever Europe BV and Others*,⁴³ the ECJ answered a number of questions relating to jurisdiction under the Brussels I Regulation.⁴⁴ The preliminary references were from the Amsterdam Court of Appeal and concerned cases relating to the Commission's *Power Cables* decision⁴⁵ and the Italian *Autorità Garante della Concorrenza e del Mercato* decision in a cartel investigation concerning packaging materials.⁴⁶

The judgment confirms a claimant-friendly interpretation of Article 8(1) of the Brussels I Regulation with the main takeaway being that companies may face damages claims in jurisdictions where they have intermediate holding companies, including for alleged harm occurring outside the EU/EEA.

In both national cases, only one of the defendants was domiciled in Amsterdam and in neither of the cases was this proposed anchor defendant an addressee of the relevant decision. The other defendants, which were domiciled in other countries, including outside the EEA,⁴⁷ belonged to corporate groups that were sanctioned in the relevant decisions. In both cases, the referring courts questioned whether there was a sufficiently close connection under Article 8(1) of the Brussels I Regulation between the actions (a) being brought against the Dutch companies, and (b) those being brought against companies domiciled outside the Netherlands to enable the actions to be heard together.⁴⁸

The ECJ confirmed that the proposed anchor defendant need not have been an addressee of the relevant decision. Rather, it was sufficient that there was a close connection between the action being brought against the anchor defendant and the actions brought against co-defendants in respect of which there were serious indications that they belonged to undertakings to which the competition authority's decision attributed an infringement.⁴⁹

This means that an intermediate holding company, even one without operational activities, may form part of the undertaking if it exercises decisive influence over an infringing subsidiary and, in practice, that Dutch intermediary holding companies established for tax purposes may serve as anchor defendants. While this is striking, it is not revolutionary; the conclusion follows from the cumulative application of the presumptions in *Sumal*⁵⁰ and those regarding decisive influence over a subsidiary's conduct.⁵¹

The ECJ held that while foreseeability or predictability of being sued in a particular national court or Member State contributes to legal certainty, it is not a separate requirement under Article 8(1).⁵² Referring to AG Kokott's Opinion in the case, the Court reasoned that a defendant involved in a single and continuous infringement must be regarded as having created a close connection with the other participants in that infringement and such a defendant should therefore reasonably foresee being sued before a court in a country in which another undertaking that participated in the infringement is domiciled.⁵³

Citing the *Athenian Brewery and Heineken* case,⁵⁴ the ECJ then stated that jurisdictional issues must be assessed independently from admissibility and the action's substantive merits (i.e., the prospects of the claim being successful against the anchor defendant).⁵⁵ This means that only claims that are

artificial or abusive cannot ground jurisdiction and the ECJ made it clear that convincing evidence would be needed to consider a claim to be artificial.⁵⁶

The ECJ noted that the fact that alleged damage is suffered outside the EEA does not preclude jurisdiction under Brussels I, provided a causal link with the infringement exists.⁵⁷ In this respect, the ECJ confirmed that Article 8(1) confers both international and territorial jurisdiction on the court of the place where the anchor defendant is domiciled.⁵⁸ The Court also held that, where this is permitted under national law, a Member State court can decline jurisdiction and transfer a case to another court in that Member State, provided this does not undermine the effectiveness of Brussels I.⁵⁹

Lastly, the ECJ reformulated the national court's questions substantially.⁶⁰ This was also notably the case in both *FL und KM Baugesellschaft*⁶¹ and *Meliá Hotels*.⁶²

Tort claims in digital markets and jurisdiction

In December 2025, the ECJ's Grand Chamber delivered its preliminary ruling in *Apple App Store*, largely following the March 2025 opinion of AG Campos.⁶³

Two Dutch consumer protection foundations – Stitching Right to Consumer Justice and Stitching App Stores Claims – brought collective actions seeking compensation from Apple for Dutch consumers before the District Court of Amsterdam. The claims alleged that Apple had abused its dominant position by charging excessive commissions on app sales and in-app purchases.⁶⁴ Apple maintained that, under Article 7(2) of the Brussels I Regulation,⁶⁵ the District Court of Amsterdam only had jurisdiction to hear claims brought by customers residing in its district and lacked international and territorial jurisdiction over customers from elsewhere in the Netherlands.⁶⁶

Article 7(2) allows tort claims to be brought before the courts of the place where the harmful event occurred or the damage was suffered. The Amsterdam court asked the ECJ for a preliminary ruling on whether, in the context of an online platform accessible globally, the users' domicile could serve as a relevant connecting factor, especially for collective actions initiated by representative entities.⁶⁷

The Grand Chamber ruled that a collective claim relating to alleged overcharges on a digital platform may be brought before the courts of the Member State whose market was targeted by the platform and where the users suffered the alleged harm.⁶⁸

First, the Court observed that, in its earlier case law, the appropriate jurisdiction for competition law damages claims was identified as the place where the injured party purchased the affected goods or where its registered office was located.⁶⁹ However, the Court considered that, in the present case, such an approach would undermine the effectiveness of Article 7(2), as the defendant was a digital platform and the purchases took place in a virtual environment rather than in a clearly identifiable physical location.⁷⁰

The ECJ instead ruled that, since the App Store NL was designed specifically for the Netherlands market and is accessible to users with Apple IDs associated with the Netherlands, the place where the damage occurred corresponded to the entire territory of the Netherlands.⁷¹ The Court further clarified that this is irrespective of the place where the users were physically located at the time of the relevant purchase.⁷²

Second, the ECJ took account of the specific nature of the proceedings. Here, the foundations were not assignees of individual claims. Instead, under Dutch law, they act in their own right to protect the collective interests of a defined group

of users.⁷³ That group consists of persons who are not individually identified but who are identifiable and who allegedly suffered the same type of harm through purchases on App Store NL.⁷⁴ Because the action concerns the collective interests of a broad group, the ECJ stated that it would be artificial to require the national court to identify the location of every individual victim separately.⁷⁵

The ECJ reasoned that its approach is consistent with the objectives of proximity and predictability of jurisdictional rules and the sound administration of justice under the Brussels I Regulation.⁷⁶ First, it noted that any Dutch court with jurisdiction over collective actions had a sufficient relationship of proximity to the dispute.⁷⁷ Second, Apple could also reasonably foresee being sued in the Netherlands because App Store NL specifically targeted Dutch users.⁷⁸ Finally, the Court considered that requiring separate claims based on each user's location would fragment the proceedings and undermine the effectiveness of collective redress.⁷⁹ The Court therefore concluded that any Dutch court with substantive jurisdiction over representative actions could hear the claim on behalf of all affected users. It will have to be seen whether the same reasoning would be applied as readily in cases involving online platforms for the sale of physical goods, where transactions are typically linked to a known and easily identifiable delivery location.

Temporal application of the Damages Directive and the principle of full compensation

The ECJ's April 2026 preliminary ruling in *Wenzel* is further evidence of the Court's continued claimant-friendly approach to the private enforcement of competition law.⁸⁰ By relying on the principle of effectiveness of EU law and its objectives, this judgment provided an avenue to bypass the temporal scope of national measures implementing the Damages Directive.

The case stemmed from the Commission's 2016 *Trucks* decision.⁸¹ In 2021, Wenzel Logistics brought an action for damages in Austria against the Mercedes-Benz group claiming over €800,000 in damages as a result of Mercedes' participation in the cartel.⁸² Compensation was awarded at first instance, but the Austrian courts calculated interest only from the date on which proceedings were commenced rather than from the date the harm was suffered.⁸³ Wenzel Logistics appealed the judgment to the Austrian Supreme Court. The Austrian Supreme Court asked the ECJ whether the right for full compensation under Article 3 of the Damages Directive could apply to this case given that the harm was caused before the transposition of the Damages Directive into Austrian law, and even though it related to purchases made before the national transposing provision came into force; and if yes, at what point interest should start to accrue.⁸⁴

The ECJ noted that the provisions of the Damages Directive that codify the pre-existing case law are immediately applicable irrespective of the date of their formal transposition. Article 3, which states that the full compensation entails the actual loss, loss of profit and interest, codified the established case law and thus is applicable from the date of the Directive's entry into force (26 December 2014).⁸⁵ The Court emphasised that any contrary interpretation would undermine the practical effectiveness of Article 101 TFEU.⁸⁶ The Court added that substantial periods often elapse between the occurrence of harm and the commencement of proceedings in competition law cases, given the need for thorough factual and economic analysis.⁸⁷ Postponing the accrual of interest until litigation has been initiated would therefore reduce the compensation

available to victims of cartels. Where such a national rule prevents full compensation, the Court therefore ruled that national courts must interpret domestic law consistently with Article 101 TFEU or, where that is impossible, disapply the conflicting provision altogether.⁸⁸

Having found that the right to interest runs from the beginning of the harm, the ECJ then analysed when exactly the harm began. While acknowledging that the Directive does not harmonise the precise criteria to be applied by national courts, the Court held that the Member States were constrained by the principle of effectiveness and the objective of ensuring full compensation.⁸⁹ The Court made two observations on this.

First, interest should be accrued from the point that “primarily marks the time when the injured party began to suffer the harm caused by the infringement”.⁹⁰ Where more than one circumstance of equal relevance occur, the starting point for the accrual of interest begins to run from the event that occurred first.⁹¹ Second, where there are different forms of harm, different assessments are required for each form of harm.⁹²

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Endnotes

- 1 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L 351.
- 2 Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), 2 June 2025, COM(2025) 268.
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- 9 German Federal Court of Justice, *Trucks Cartel*, Case No. KZR 6/24, Judgment, 12 May 2026. See also Thomas G. Funke and Catharina Schulte-Wintrop, The German Federal Court of Justice confirms the viability of the assignment model for bundled cartel damages claims and sets organisational requirements for claims aggregators (*Trucks Cartel*), 12 May 2026, *e-Competitions May 2026*, Art. N° 135427.
- 10 In the recent ethylene cartel judgments, the Amsterdam District Court dismissed actions by Shell and Repsol against the members of the ethylene purchase cartel, finding that the claims failed to show the causal link between the illegal exchanges of information and the monthly ethylene reference price. See, Bethan John, Dutch ethylene cartel rulings threaten multibillion euro follow-on damages claims more (*Global Competition Review*, 30 July 2026), <https://globalcompetitionreview.com/article/dutch-ethylene-cartel-rulings-threaten-multibillion-euro-follow-damages-claims>. The Hungarian Supreme Court confirmed that the claimant bears the burden of showing that harm has resulted from a competition law infringement. See Hungarian Supreme Court, The Hungarian Supreme Court holds that the statutory presumption of harm in competition-damages claims covers the extent of the overcharge but does not relieve the claimant of proving that harm actually occurred (*Trucks Cartel*), 16 March 2026, *e-Competitions March 2026*, Art. N° 136054.
- 11 See also *CP v Nissan Iberia SA*, Case C-21/24, EU:C:2025:659, paras 67, 75 and 82. The Opinion of Advocate General Medina, as subsequently confirmed by the ECJ, was discussed in *ICLG – Competition Litigation 2026*.
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- 14 *Ibid.* para. 22.
- 15 *Ibid.*
- 16 *Ibid.* paras 23–25.
- 17 *Ibid.* para. 26.
- 18 *Ibid.* para. 66.
- 19 *Ibid.* para. 63.
- 20 *Ibid.* para. 64.
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- 22 *Ibid.* para. 77.
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- 24 *FL und KM Baugesellschaft*, para. 75; *Evonik Degussa v Commission*, Case C-162/15 P, EU:C:2017:205, para. 87.
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- 26 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 2014 L 349).

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- 28 European Commission, *Holiday Pricing*, 21 February 2020, C(2020) 893 final, AT.40528.
- 29 *Meliá Hotels*, para. 16.
- 30 *Ibid.* para. 20.
- 31 *Ibid.* para. 48.
- 32 *Ibid.* paras 42–44.
- 33 *Ibid.* paras 46–47.
- 34 *Ibid.* paras 56–57.
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- 36 *Ibid.* paras 60–64.
- 37 *Ibid.* para. 67.
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- 39 *Ibid.* para. 70.
- 40 *Ibid.* paras 74–77.
- 41 *Ibid.* para. 82.
- 42 *Ibid.* para. 86.
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- 45 European Commission, *Power Cables*, 2 April 2014, C(2014) 2139 final, AT.39610.
- 46 *Electricity & Water Authority*, para. 27.
- 47 In Case C-672/23, claimants were domiciled in Bahrain, Kuwait and Oman and one of them was an Interconnection Authority operating infrastructure in Bahrain, Kuwait, Oman, Saudi Arabia and the UAE (*Electricity & Water Authority*, para. 17).
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- 51 *Servizio Elettrico Nazionale and Others*, Case C-377/20, EU:C:2022:379.
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- 66 *Ibid.* para. 21.
- 67 *Ibid.* para. 37.
- 68 *Ibid.* para. 68.
- 69 *Ibid.* para. 59; see also, *Volvo and Others*, C-30/20, EU:C:2021:604, para. 43. In a French collective claim against Google, the Paris Economic Activities Court struck out claims from non-French subsidiaries of one of the claimants because it determined that they lacked sufficient ties to Google's alleged abuse of a dominant position as settled by the French Competition Authority and Google in 2021. See Rebecca Whalley, *Google convinces French court to slash follow-on claim (Global Competition Review, 6 November 2025)*, <https://globalcompetitionreview.com/article/google-convinces-french-court-slash-follow-claim>
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