Author: Igor B. Nestoruk
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Abstract:

The private (civil) law elements are deeply rooted in the nature of the competition rules as adopted in the Rome Treaty and currently regulated by Articles 101 and 102 Treaty on the Functioning of the European Union. Surprisingly, even if the direct applicability of these norms has been confirmed already in the first decades of the European integration by the European Court of Justice (ECJ), their enforcement remains concentrated through the tools of the public and not private law. Significant changes in this former policy have been introduced quite recently with the regulation No. 1/2003. One of its main goals was to involve the national authorities and national courts in the process of implementation of rules of competition within the internal market. Despite that, decentralization of the initial enforcement model has not resulted with a notable progress in the private enforcement on the national level. The real source of the 'privatization' process was not the secondary legislation. Once again it was stimulated by the ECJ. With the milestones cases the ECJ has consistently paved the way for EU wide effective competition rules in the area of damage actions.

Even if limited only to damages claims to be brought by private parties to national courts this form of private enforcement seems to be one of the strongest tendencies in the evolution of European competition law in the last decade. The main legal developments, which could be observed in the EU law, are exemplified in this paper. Starting point is the case law of the ECJ with its most important judgments from Courage v. Crehan of 2001 to the most recent ones represented by Donau Chemie case of 2013. By identifying the legal barriers to the injured parties and at the same time balancing out other legitimate interests it is focused on guaranteeing the effet utile of the competition rules. On the legislative level the development of case law is accompanied by many legal provisions, particularly in the field of judicial cooperation, which may serve as practical tools for cross-border actions for damages. Simultaneously the Commission supports the debate on the perspective of 'optimising the interaction between the public and private enforcement of competition law'. After closing public consultation illustrated e.g. by green paper of 2005 and white paper of 2009, the debate moved on to the next level.

In July 2013 Commission has released a proposal for a 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. With this realistic proposal the right to damages for breaches of the EU competition rules becomes (again) a vivid topic for both academic and practical debate. Considering the advances of some national regimes (e.g. results of consultations recently published by the British government) the provisions of the proposed directive are examined in search of its main characteristics and due to potential

consequences of its future implementation within the national (Polish) competition law regime.