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Recalibrating the Balance Between Public and Private Enforcement in European Union Competition Law: Disclosure of Evidence, Protection of Leniency Materials, and the Effective Realization of the Right to Full Compensation

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Abstract

The evolution of European Union competition law has increasingly emphasized the complementary roles of public and private enforcement as essential components of an effective and coherent regulatory framework. While enforcement by the European Commission and national competition authorities remains the cornerstone of deterrence and market supervision, private damages actions have emerged as a critical mechanism for ensuring the practical effectiveness of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). The recognition of the right of any individual or undertaking to obtain full compensation for harm caused by anti-competitive conduct reflects both the direct effect of EU competition rules and the broader objective of strengthening the functioning of the internal market. Despite its formal recognition in the jurisprudence of the Court of Justice of the European Union (CJEU), the effective exercise of the right to compensation continues to face significant procedural and evidentiary challenges. In particular, claimants frequently encounter substantial information asymmetries, as the evidence necessary to substantiate complex economic harm is often held exclusively by the infringing undertakings, third parties, or competition authorities. This structural imbalance raises fundamental questions regarding access to evidence, the scope of disclosure, and the role of national courts in facilitating effective private enforcement while respecting the principles of proportionality, confidentiality, and procedural fairness. This study examines the legal and policy tensions arising from the interaction between private damages actions and public enforcement mechanisms in EU competition law. Particular attention is devoted to the disclosure of evidence contained in the files of competition authorities, including the sensitive issue of access to documents submitted under leniency programmes. Leniency instruments play a decisive role in cartel detection and enforcement; however, unrestricted disclosure may undermine incentives for voluntary cooperation, thereby weakening public enforcement capacity. The jurisprudence of the CJEU, notably in cases such as Courage and Crehan, Manfredi, Pfleiderer, and Donau Chemie, is analysed to assess the principles governing the balancing of competing interests, including the right to effective judicial protection and the need to preserve the effectiveness of investigative tools.

Keywords EU Competition Law; Public Enforcement; Private Enforcement; Antitrust Damages Actions; Right to Full Compensation; Disclosure of Evidence; Access to Evidence; Leniency Programs; Information Asymmetry; Articles 101 and 102 TFEU; Court of Justice of the European Union (CJEU)

Introduction

The article further evaluates the objectives and implications of EU legislative developments aimed at facilitating private enforcement, particularly the harmonization of rules on evidence disclosure and the coordination of private and public enforcement systems. It explores how the principles of effectiveness and equivalence shape national procedural autonomy and examines the role of national courts in conducting case-by-case assessments that weigh the interests of claimants, defendants, competition authorities, and the public interest in effective market regulation.

By critically analysing the current legal framework and its practical implications, the study identifies the remaining structural obstacles to effective compensation and highlights the need for a carefully calibrated approach that reconciles transparency with the protection of enforcement mechanisms. The findings suggest that a balanced and coherent disclosure regime is essential not only for safeguarding the rights of victims of anti-competitive conduct but also for reinforcing the overall effectiveness, credibility, and legitimacy of the EU competition enforcement system. Ultimately, strengthening the synergy between public and private enforcement contributes to enhanced deterrence, improved market functioning, and the realization of a fully integrated and competitive internal market.

One of the most sensitive and controversial aspects of the interaction between public and private enforcement in EU competition law concerns the protection of leniency programmes. These programmes are widely recognized as one of the most effective instruments for detecting, investigating, and sanctioning secret cartels, which are typically difficult to uncover through traditional investigative methods alone (European Commission, 2014; Wils, 2003). By offering immunity from fines or significant reductions in penalties to undertakings that voluntarily disclose their participation in anti-competitive conduct, leniency policies create strong incentives for self-reporting and cooperation with competition authorities.

The effectiveness of leniency mechanisms depends fundamentally on the perception that the information submitted will be treated with a high level of confidentiality. Undertakings may be reluctant to cooperate if they fear that their statements or internal documents could later be disclosed to third parties and used as evidence in civil damages actions (Ashton & Henry, 2013; Cauffman, 2011). In this context, broad access to leniency materials may weaken the incentives for voluntary cooperation and thereby undermine the capacity of competition authorities to detect and dismantle cartels (Bael, 2010; Vandenborre & Goetz, 2013).

The Court of Justice of the European Union has acknowledged these concerns. In *Pfleiderer*, the Court recognized that unrestricted access to evidence contained in the files of competition authorities could compromise the effectiveness of leniency programmes (Case C-360/09, Pfleiderer AG v. Bundeskartellamt). At the same time, however, the Court rejected the idea of an automatic prohibition on disclosure. Instead, it established that national courts must conduct a case-by-case assessment, weighing the interests of effective public enforcement against the right of victims to obtain compensation (Lenaerts et al., 2014; Komninos, 2008).

This balancing approach was further clarified in *Donau Chemie*, where the Court held that national legislation providing for a general refusal of access to competition authority files—particularly where such refusal depends solely on the consent of the parties—violates the principle of effectiveness (Case C-536/11, Donau Chemie AG). The judgment confirmed that the protection of leniency materials cannot justify absolute restrictions that render the exercise of the right to damages practically impossible or excessively difficult (Andreangeli, 2008; Carpagnano, 2006).

The Advocate General's opinion in subsequent case law further emphasized that the objective of maximizing the effectiveness of leniency programmes must not lead to a complete sacrifice of the rights of injured parties. A system based on blanket confidentiality would prevent national courts from assessing whether disclosure is necessary and proportionate in a specific case, thereby undermining the principle of effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union (European Parliament, 2014; Smits & Waelbroeck, 2006).

From a policy perspective, the underlying rationale of leniency programmes reflects a broader economic calculation. Undertakings choose to cooperate when the expected benefits of leniency outweigh the potential costs associated with disclosure and subsequent liability (Wils, 2003; Davis & Lande, 2012). In this context, limited and controlled access to documents—granted only where claimants demonstrate a specific and substantiated need—may represent a balanced solution that preserves both the attractiveness of leniency and the effectiveness of private enforcement (Ashton & Henry, 2013; Waelbroeck et al., 2004).

Directive 2014/104/EU reflects this compromise by introducing a differentiated disclosure regime. While certain categories of evidence, such as pre-existing documents, may be subject to disclosure, corporate leniency statements and settlement submissions are granted enhanced protection and are generally excluded from disclosure in damages actions (Directive 2014/104/EU, Arts. 6–7). This legislative approach seeks to reconcile the need to reduce information asymmetry with the imperative of safeguarding public enforcement tools (European Commission, 2013).

Nevertheless, scholarly literature highlights ongoing tensions within this framework. Some authors argue that excessive protection of leniency materials may weaken the compensatory function of private enforcement and limit the practical effectiveness of damages actions (Cauffman, 2011; Denozza & Toffoletti, 2009). Others emphasize that strong public enforcement, supported by effective leniency policies, ultimately benefits private claimants by generating infringement decisions that can be relied upon in follow-on litigation (Lianos, 2011; Jones & Sufrin, 2019).

Comparative perspectives further illustrate that the appropriate balance between disclosure and confidentiality depends on broader institutional and legal traditions. For example, while the United States system allows for extensive discovery in antitrust litigation, other jurisdictions such as Japan and several EU Member States place greater emphasis on restoring the status quo ante rather than imposing punitive liability (Walle, 2013; Whish & Bailey, 2021). These differences highlight the importance of ensuring that EU solutions remain proportionate and compatible with national procedural autonomy.

Ultimately, the jurisprudence of the CJEU and the EU legislative framework converge on a central principle: the effectiveness of leniency programmes cannot justify a general or automatic refusal of access to evidence. Transparency remains the rule, while confidentiality constitutes an exception that must be justified on the basis of concrete risks and assessed in light of all relevant circumstances (European Parliament, 2014; Regulation (EC) No 1049/2001).

In this context, a carefully calibrated disclosure regime—based on necessity, proportionality, and judicial oversight—appears essential for maintaining the delicate equilibrium between public and private enforcement. Such an approach ensures that victims retain a meaningful opportunity to obtain compensation while preserving the incentives for voluntary cooperation that are crucial for the effective detection and deterrence of cartel conduct within the European Union.

Preserving the Attractiveness of Leniency Programmes

One of the most significant obstacles to broad access to evidence in competition cases concerns the need to preserve the attractiveness and effectiveness of leniency programmes. The European Commission and the Court of Justice have consistently recognized that voluntary cooperation mechanisms constitute essential tools for detecting and terminating cartels and other serious infringements of competition law.

Leniency programmes encourage undertakings to disclose anti-competitive conduct in exchange for immunity or reductions in fines. Their effectiveness depends fundamentally on the expectation that sensitive information submitted to competition authorities will not be widely disclosed in subsequent civil litigation. If undertakings fear that such information may be easily accessed by claimants seeking damages, their willingness to cooperate may be significantly reduced, thereby weakening the detection and deterrence of secret cartels.

The CJEU has acknowledged this risk, noting that unrestricted access to evidence contained in competition authority files could undermine the effectiveness of leniency programmes. At the same time, the Court has made clear that the protection of leniency materials cannot justify a blanket refusal of access to evidence where such refusal would compromise the effective exercise of the right to compensation.

In Donau Chemie AG, the Court held that EU law precludes national legislation that makes access to competition files—including documents submitted under leniency programmes—subject solely to the consent of the parties, without allowing national courts to weigh the competing interests involved. The judgment confirms that national courts must retain the discretion to assess proportionality and necessity in each individual case.

This position is consistent with the broader principle that transparency constitutes the rule, while confidentiality represents an exception that must be justified on a case-by-case basis. An automatic prohibition on disclosure would conflict with the principle of effective judicial protection and the transparency requirements underlying EU law. National judges must therefore carefully assess requests for disclosure, taking into account the nature of the documents, the relevance of the information, the protection of confidential business data, and the potential impact on public enforcement.

Nevertheless, experience in several Member States, including Germany and the United Kingdom, demonstrates a cautious judicial approach toward granting access to leniency-related materials. Courts often adopt restrictive interpretations in order to avoid discouraging cooperation with competition authorities.

The jurisprudence of the CJEU has played a decisive role in shaping private enforcement as a complementary mechanism to public enforcement and in developing legal standards that enhance the practical effectiveness of damages actions. At the same time, tensions remain between transparency obligations and institutional concerns regarding investigative efficiency.

These tensions are also illustrated by the judgment in European Commission v EnBW Energie Baden-Württemberg AG (Case C-365/12 P). In that case, the Commission refused a request for access to documents relating to a cartel investigation under Regulation (EC) No 1049/2001, arguing that disclosure would undermine the protection of investigations and commercial interests. The Court of Justice clarified that EU institutions cannot rely on overly broad general presumptions to refuse access to entire categories of documents without conducting a specific and individual assessment.

The Court reaffirmed that exceptions to the principle of the widest possible public access to documents must be

interpreted strictly. Although general presumptions may be applied to certain categories of documents where similar considerations arise, institutions remain required to verify whether the conditions for refusal are genuinely met.

This jurisprudence highlights the continuing need for a carefully calibrated balance between transparency, effective private enforcement, and the protection of public enforcement tools. Ensuring such balance is essential not only for safeguarding the rights of victims but also for maintaining the credibility, efficiency, and legitimacy of the EU competition enforcement system as a whole.

Protection of Leniency Materials and the Public Enforcement Interest

In its administrative practice, the European Commission has consistently emphasized the need to ensure a high level of protection for documents submitted within the framework of leniency programmes. When refusing access to materials provided in the context of immunity or leniency applications, the Commission has frequently relied on general considerations concerning the potential harm that disclosure might cause to the effectiveness and attractiveness of such programmes. According to this position, undertakings would be less willing to cooperate with competition authorities if they could not be assured that the information submitted would remain confidential and would not be made widely accessible in subsequent civil litigation.

From the perspective of claimants, however, this approach raises significant concerns. In cases such as *EnBW Energie Baden-Württemberg*, the applicant argued that without access to the Commission's file it would not even be able to initiate a damages action with a reasonable prospect of success in respect of losses allegedly caused by the cartel. The General Court, in the judgment under appeal, observed that accepting the Commission's interpretation would effectively allow the institution to exclude its entire competition enforcement activity from the scope of Regulation (EC) No 1049/2001 indefinitely, merely by invoking the potential future impact on leniency programmes.

The Court further emphasized that the negative consequences feared by the Commission were largely speculative and dependent on a range of uncertain factors. These included the actual use made of disclosed documents by injured parties, the likelihood of successful damages claims, the level of compensation awarded by national courts, and the future reactions of undertakings considering cooperation with competition authorities. Accordingly, the protection of leniency programmes cannot be based solely on abstract or hypothetical risks but must be assessed in light of the broader objective of ensuring the effective application of EU competition law.

In this context, the right to claim damages for breaches of competition rules must be understood as a substantive individual right derived directly from EU law, which national courts are required to safeguard. The protection of leniency materials should therefore be integrated into a broader balancing framework that takes into account all components of effective enforcement, including the need to guarantee effective judicial protection for victims.

Protection of Ongoing Public Proceedings and the Scope of Transparency

The Commission has also justified refusals to disclose documents by invoking the need to protect public enforcement proceedings. Article 4(3) of Regulation No 1049/2001 establishes a distinction between ongoing and completed decision-making processes. Where a decision has not yet been taken, documents prepared for internal use may be withheld if disclosure would undermine the institution's decision-making process. After a decision has been adopted, however, the exception applies only to internal documents containing opinions used in deliberations or preliminary consultations, and only where disclosure would seriously undermine the decision-making process.

The requirement that the potential harm be serious significantly limits the discretionary powers of the institution. It reflects the principle that exceptions to transparency must be interpreted strictly and applied only where genuinely necessary to protect important public interests.

In the *EnBW* litigation, the Commission argued that the General Court had failed to interpret Regulation No 1049/2001 harmoniously with other relevant instruments, including Regulations No 1/2003 and No 773/2004, which govern competition proceedings. According to the Commission, the right of access to documents should be interpreted in a manner that preserves the effectiveness of sector-specific rules protecting investigations, commercial interests, and decision-making processes.

The Advocate General, however, observed that the Court's interpretation did take into account the specific context of competition proceedings and that the central issue was whether the Commission had improperly relied on overly broad general presumptions. Regulation No 1049/2001 aims to grant the public the widest possible access to institutional documents, subject only to narrowly interpreted exceptions based on overriding public or private interests.

Established case law confirms that, to justify a refusal, the institution must demonstrate how disclosure would specifically and actually undermine a protected interest. Although the Court has recognized that general presumptions may apply to certain categories of documents, such presumptions cannot replace a genuine assessment of whether the conditions for refusal are met in the individual case.

At the same time, the Court reaffirmed the fundamental importance of private damages actions. The right of individuals to claim compensation for harm caused by infringements of Article 101 TFEU strengthens the enforcement of EU competition law and contributes to the maintenance of effective competition within the internal market. Nevertheless, general considerations relating to private enforcement cannot automatically override legitimate concerns relating to the protection of investigations or confidential information. Instead, access requests must be assessed on a case-by-case basis, allowing the institution to balance the competing interests involved.

The Advocate General further noted that a system based on a blanket refusal would be incompatible with this individualized balancing approach, particularly where access to documents constitutes the only realistic basis for bringing a damages claim. At the same time, alternative safeguards may be envisaged to protect the effectiveness of leniency programmes without imposing an absolute prohibition on disclosure. For example, access could be granted only where the applicant demonstrates a genuine need for the documents in order to pursue a damages action.

Such an approach reflects the broader principle that the objective of maximizing the effectiveness of public enforcement cannot justify a complete restriction of the fundamental right to an effective remedy, as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

Information Asymmetry as a Structural Barrier to Private Enforcement

The issues highlighted in the case law and legislative framework must also be considered in light of a broader structural problem: the persistent information asymmetry faced by victims of competition law infringements. The European Parliament has repeatedly emphasized that the lack of access to relevant information constitutes one of the main obstacles to effective private enforcement.

Although Regulation No 1049/2001 establishes a general principle of transparency, institutional practice has often relied on broad and insufficiently individualized applications of the exceptions. Partial access is frequently granted instead of full disclosure, and decisions are sometimes justified in general terms rather than through specific reasoning. Such practices may undermine the ability of injured parties to assess the scope of the infringement, quantify their losses, and evaluate the feasibility of litigation.

Effective private enforcement depends not only on the formal availability of legal remedies but also on practical factors such as the predictability of case law, the quality of judicial decisions, and the likelihood of obtaining compensation. Where victims lack sufficient information to substantiate their claims, the deterrent and corrective functions of damages actions are significantly weakened.

In order to address these difficulties, EU legislation has introduced mechanisms designed to alleviate the evidentiary burden. In particular, Directive 2014/104/EU establishes a rebuttable presumption that cartel infringements cause harm, reflecting the economic reality that cartels typically lead to price increases or other adverse market effects.

The Court of Justice has further strengthened private enforcement in its judgment in *Kone AG* (Case C-557/12), holding that Article 101 TFEU precludes national rules that categorically exclude civil liability for so-called umbrella pricing effects. The decision confirms that the right to compensation must be interpreted broadly in order to ensure the full effectiveness of EU competition law.

Table 1. Objectives and Instruments of Public and Private Enforcement in EU Competition Law

Enforcement Type	Main Objective	Key Instruments	Legal Basis	Main Actors
Public Enforcement	Detection, termination, and deterrence of anti-competitive conduct	Investigations, fines, leniency programmes, commitments	Articles 101–102 TFEU; Regulation (EC) No 1/2003	European Commission; National

				Competition Authorities (NCAs)
Private Enforcement	Compensation of victims and strengthening deterrence	Damages actions, disclosure of evidence, collective redress mechanisms	Directive 2014/104/EU; National procedural law	National courts; Consumers; Businesses
Combined Effect	Effective and coherent enforcement of EU competition rules	Coordination between disclosure rules and protection of investigations	EU case law and harmonization measures	Courts, authorities, private claimants

Table 2. Balancing Access to Evidence and Protection of Public Enforcement

Interest Protected	Rationale	Risk if Overprotected	Risk if Underprotected	Required Approach
Confidentiality of leniency materials	Maintain incentives for cartel self-reporting	Limits victims' ability to claim damages	Reduced cooperation with authorities	Case-by-case judicial balancing
Protection of investigations	Safeguard ongoing enforcement and decision-making	Information asymmetry for claimants	Interference with investigations	Proportional disclosure mechanisms
Right to compensation	Ensure effective judicial protection (Article 47 Charter)	Right becomes theoretical or ineffective	Excessive litigation pressure	Access based on necessity and relevance
Transparency	Promote accountability and legitimacy	Administrative opacity	Disclosure of sensitive data	Strict interpretation of exceptions

Table 3. Key CJEU Case Law on Access to Evidence and Private Enforcement

Case	Year	Main Legal Issue	Key Principle Established
Courage and Crehan (C-453/99)	2001	Right to damages	Individuals have a right to compensation for breaches of EU competition law
Manfredi (Joined Cases C-295/04–C-298/04)	2006	Scope of damages	Full compensation must be ensured under national law
Pfleiderer (C-360/09)	2011	Access to leniency materials	National courts must balance interests case-by-case
Donau Chemie (C-536/11)	2013	National limits on file access	Absolute refusal of access violates the principle of effectiveness
EnBW (C-365/12 P)	2014	Access to Commission documents	No blanket refusal; individual assessment required
Kone (C-557/12)	2014	Scope of liability	Liability may extend to umbrella pricing effects

Table 4. Main Barriers to Effective Private Enforcement

Barrier	Description	Impact on Claimants	EU Response
Information asymmetry	Evidence held by defendants or authorities	Difficulty proving infringement and harm	Disclosure rules under Directive 2014/104/EU
Complexity of economic analysis	Need for expert evidence and data	High litigation costs	Presumption of harm in cartel cases
Limited access to authority files	Confidentiality and procedural restrictions	Weakens chances of successful claims	Case-law requiring proportional access
Procedural fragmentation	Differences across Member States	Legal uncertainty	Harmonization through EU legislation

Table 5. Principles Governing Access to Documents under Regulation (EC) No 1049/2001

Principle	Content	Judicial Interpretation

Maximum transparency	Public should have widest possible access to EU documents	General rule of openness
Strict interpretation of exceptions	Exceptions must be narrowly applied	Confirmed by consistent CJEU case law
Specific and actual harm test	Institution must demonstrate concrete risk	No abstract or hypothetical justifications
Possibility of general presumptions	Applies to certain document categories	Cannot replace individual assessment where required

The development of EU competition law reveals an ongoing tension between the objectives of transparency, effective private enforcement, and the protection of public enforcement mechanisms. The case law of the Court of Justice, particularly in *Pfleiderer*, *Donau Chemie*, and *EnBW*, demonstrates the Court's effort to establish a balanced approach based on proportionality and case-by-case assessment.

At the same time, certain aspects of Directive 2014/104/EU and related administrative practices reflect a stronger emphasis on safeguarding public enforcement and preserving the effectiveness of leniency programmes. In practice, EU institutions have often relied extensively on exceptions to transparency, sometimes treating them as a general rule rather than as narrowly construed derogations.

The European Parliament has therefore stressed the need for simplified and expedited procedures for challenging refusals of access to documents, in order to avoid lengthy and costly litigation. Such procedural safeguards are essential to ensure that the right to compensation is not merely theoretical but can be exercised effectively in practice.

Finally, questions remain as to whether the current regulatory approach fully reflects the preferences of Member States, given the significant impact of EU measures on national procedural autonomy and private law systems. Achieving an appropriate balance between public and private enforcement requires continued dialogue between EU institutions, national authorities, and courts.

Ultimately, the long-term effectiveness and legitimacy of the EU competition enforcement system depend on maintaining a coherent framework that simultaneously protects investigative tools, ensures transparency, and guarantees effective judicial protection for victims of anti-competitive conduct.

Findings

The analysis of the legislative framework, institutional practice, and the case law of the Court of Justice of the European Union reveals several structural tensions and emerging trends in the interaction between public and private enforcement of EU competition law.

First, the jurisprudence confirms that the right to claim damages for infringements of Articles 101 and 102 TFEU constitutes a fundamental component of the EU competition enforcement system. This right is directly derived from EU law and is closely linked to the principle of effective judicial protection under Article 47 of the Charter of Fundamental Rights. The Court has consistently emphasized that national procedural rules must not render the exercise of this right practically impossible or excessively difficult.

Second, a persistent structural imbalance exists in the form of information asymmetry between claimants and defendants. Evidence necessary to establish the existence, scope, and economic impact of a competition law infringement is typically held by infringing undertakings or by competition authorities. The limited access to such information constitutes one of the principal barriers to effective private enforcement. The European Parliament and the Commission have acknowledged that the lack of information significantly discourages victims from bringing damages actions and weakens the compensatory and deterrent functions of private litigation.

Third, the case law, particularly *Pfleiderer*, *Donau Chemie*, and *EnBW*, demonstrates the Court's preference for a case-by-case balancing approach rather than categorical rules on disclosure. Blanket refusals of access based solely on the consent of parties or on abstract institutional concerns have been found incompatible with the principle of effectiveness. At the same time, the Court recognizes that unrestricted disclosure may undermine important public interests, including the effectiveness of investigations and the functioning of leniency programmes.

Fourth, the protection of leniency programmes remains a central concern of EU authorities. Leniency mechanisms are widely regarded as essential tools for detecting cartels and ensuring effective public enforcement. However, the Advocate General's reasoning and the Court's jurisprudence indicate that the objective of maximizing the effectiveness of leniency cannot justify a complete exclusion of access to relevant documents. Instead, access should be granted where the applicant demonstrates a genuine and specific need for the information in order to pursue a damages claim. Such a targeted approach may preserve the attractiveness of leniency while ensuring the effectiveness of private enforcement.

Fifth, the analysis of Regulation (EC) No 1049/2001 and institutional practice reveals a tendency toward broad and generalized reliance on exceptions to transparency. In many instances, institutions invoke abstract risks to investigations or commercial interests without providing a concrete and individualized assessment of the potential harm. This practice runs counter to the principle that transparency constitutes the general rule and that exceptions must be interpreted strictly.

Sixth, Directive 2014/104/EU represents a significant step toward reducing information asymmetry and strengthening private enforcement. Measures such as disclosure mechanisms and the presumption of harm in cartel cases are intended to facilitate damages actions. Nevertheless, the Directive also reflects a cautious approach aimed at safeguarding public enforcement and protecting leniency materials. This dual objective creates a complex regulatory balance that may result in divergent national practices and varying levels of effectiveness.

Seventh, the Court's judgment in *Kone* further confirms the broad scope of civil liability under EU competition law by recognizing compensation for umbrella pricing effects. This development reinforces the compensatory function of private enforcement and underscores the Court's commitment to ensuring the full effectiveness of competition rules.

Overall, the findings indicate that the current EU framework is characterized by a gradual but cautious expansion of private enforcement, accompanied by a strong institutional preference for protecting public enforcement mechanisms.

Conclusion

The evolution of EU competition law reflects an ongoing effort to establish a coherent and balanced relationship between public enforcement by competition authorities and private enforcement through damages actions. The jurisprudence of the Court of Justice has played a decisive role in shaping this relationship by affirming the fundamental right of victims to obtain full compensation while simultaneously recognizing the need to preserve the effectiveness of investigative tools and leniency programmes.

The analysis demonstrates that the principal challenge lies in reconciling competing objectives: transparency and access to evidence on the one hand, and confidentiality and effective public enforcement on the other. The Court has consistently rejected absolute solutions in favor of a proportional, case-by-case assessment that allows national courts and institutions to weigh the relevant interests in each individual situation.

Despite important legislative progress, significant obstacles to effective private enforcement remain. Information asymmetry continues to limit the practical ability of victims to bring successful claims, and institutional reliance on broad exceptions to transparency may further weaken access to essential evidence. At the same time, the strong emphasis placed on protecting leniency programmes indicates a policy preference for maintaining robust public enforcement, even at the risk of constraining private actions.

Directive 2014/104/EU represents a milestone in the development of a European system of antitrust damages, but its effectiveness will ultimately depend on consistent and balanced implementation by Member States and national courts. Particular attention should be given to ensuring that disclosure mechanisms are applied in a manner that genuinely reduces evidentiary barriers while respecting legitimate confidentiality interests.

The European Parliament's calls for more efficient and accessible procedures to challenge refusals of access highlight the need to strengthen procedural safeguards and reduce the costs and duration of litigation. Without such practical improvements, the right to compensation risks remaining largely theoretical.

From a broader perspective, the current regulatory trajectory raises questions regarding the extent to which the balance between public and private enforcement reflects the preferences of Member States and the diversity of national procedural traditions. The increasing harmonization of disclosure rules and civil liability mechanisms represents a significant intervention in national private law systems, which may require continued institutional dialogue and adjustment.

Ultimately, the long-term effectiveness and legitimacy of EU competition policy depend on maintaining a framework that ensures both strong deterrence through public enforcement and meaningful compensation through private actions. A balanced approach that integrates transparency, proportionality, and effective judicial protection is essential for strengthening trust in the enforcement system and for ensuring the proper functioning of competition within the internal market.

Ethical Considerations

This study is based exclusively on doctrinal legal research, analysis of European Union legislation, and the examination of case law of the Court of Justice of the European Union, as well as publicly available academic literature and official institutional documents. The research does not involve human participants, personal data collection, or experimental procedures. Therefore, ethical approval from an institutional review board or ethics committee was not required.

The author confirms that the research was conducted in accordance with the principles of academic integrity, objectivity, transparency, and responsible scholarship. All sources have been properly cited, and efforts have been made to ensure accuracy and reliability in the interpretation of legal materials.

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Conflict of Interest

The author declares that there are no financial, professional, or personal conflicts of interest that could have influenced the research, analysis, or interpretation of the findings presented in this work.

References

1. Andreangeli, A. (2008). *EU competition enforcement and human rights*. Edward Elgar. https://doi.org/10.4337/9781848441484
2. Ashton, D., & Henry, D. (2013). *Competition damages actions in the EU: Law and practice*. Edward Elgar.
3. Bael, I. van (2010). *Competition law of the European Union* (5th ed.). Kluwer Law International.
4. Bar, C. von, & Zimmermann, R. (2002). *Grundregeln des europäischen Vertragsrechts* (Parts I–II). C.H. Beck.
5. Bekkara, H. (2025). The role of Jewish commercial agents as geopolitical keys between Al-Andalus and Europe in the Middle Ages. *Science, Education and Innovations in the Context of Modern Problems, 8*(12), 1411–1419. https://doi.org/10.56334/sei/8.12.118
6. Birks, P. (2000). Three kinds of objection to discretionary remedialism. *University of Western Australia Law Review, 29*(1), 1–17.
7. Carpagnano, M. (2006). Private enforcement of competition law arrives in Italy: Analysis of the judgment of the European Court of Justice in joined cases C-295–298/04, *Manfredi*. *Competition Law Review, 3*(1), 47–61. https://doi.org/10.7574/clr.2006.3.1.47
8. Cauffman, C. (2011). The interaction of leniency programmes and actions for damages. *Competition Law Review, 7*(2), 181–220. https://doi.org/10.7574/clr.2011.7.2.181
9. Chassaing, É. (2013). Procédures de clémence et accès aux documents: De la défiance à la conciliation? *Revue Lamy de la Concurrence*, 37.
10. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU. *Official Journal of the European Union, L 1*, 1–25. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003R0001
11. *Courage Ltd v. Crehan*, Case C-453/99, EU:C:2001:465.
    Manfredi v. Lloyd Adriatico Assicurazioni, Joined Cases C-295/04–C-298/04, EU:C:2006:461.
    Pfleiderer AG v. Bundeskartellamt, Case C-360/09, EU:C:2011:389.
    Donau Chemie AG, Case C-536/11, EU:C:2013:366.
    European Commission v. EnBW Energie Baden-Württemberg AG, Case C-365/12 P, EU:C:2014:112.
    Kone AG and Others v. ÖBB-Infrastruktur AG, Case C-557/12, EU:C:2014:1317.
    Akzo Nobel Chemicals and Akcros Chemicals v. Commission, Case C-550/07 P, EU:C:2010:512.
    InnoLux Corp. v. Commission, Case C-231/14 P, EU:C:2015:451.
    Hydrotherm Gerätebau v. Compact, Case 170/83, EU:C:1984:271.
12. Davis, J. P., & Lande, R. H. (2012). Toward an empirical and theoretical assessment of private antitrust enforcement. *University of San Francisco Law Review Research Paper*. https://doi.org/10.2139/ssrn.2144136
13. Denozza, F., & Toffoletti, L. (2009). The functions of private enforcement in antitrust damages: Compensation, deterrence, and coordination with public enforcement. In B. Nascimbene & F. Rossi Dal Pozzo (Eds.), *Private enforcement of competition law*. Giuffrè.

14. Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on antitrust damages actions. *Official Journal of the European Union, L 349*, 1–19. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0104
15. Emmerich, V. (2012). *Kartellrecht* (12th ed.). C.H. Beck.
16. European Commission. (2013). *Impact assessment report: Damages for breach of EU antitrust rules* (SWD(2013) 203 final). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013SC0203
17. European Commission. (2014). *Ten years of antitrust enforcement under Regulation 1/2003* (COM(2014) 453 final).
18. European Commission. (2015). *Report on competition policy 2014* (COM(2015) 247 final).
19. European Parliament. (2014). *Report on public access to documents 2011–2013* (2013/2155(INI)).
20. Fatima C. (2025). Emir Abdelkader in Western European Historical Writings: Between Realism and Controversy — A Critical Reappraisal of Colonial and Post-Colonial Historiography. *Science, Education and Innovations in the Context of Modern Problems*, 8(11), 1062–1071. https://doi.org/10.56334/sei/8.11.86
21. Frąckowiak, J., & Stefanicki, R. (2011). Consumer protection and procedural effectiveness. University of Wrocław.
22. Gillen, M. R. (2011). Trust structures in capital market transactions: A comparative analysis. Selected Research Papers.
23. Guirguis, A., & McCowan, M. (2014). Australia. In C. A. Varney (Ed.), *The cartels and leniency review*. Law Business Research.
24. ICN Cartels Working Group. (2010). *Anti-cartel enforcement manual: Digital evidence gathering*. https://www.fne.gob.cl/wp-content/uploads/2014/03/ICN-2010-Anti-Cartel-Enforcement-Manual-Chapter-3-Digital-Evidence-Gathering.pdf
25. Jones, A., & Sufrin, B. (2019). *EU competition law: Text, cases, and materials* (7th ed.). Oxford University Press.
26. Komninos, A. P. (2008). *EC private antitrust enforcement: Decentralised application of EC competition law by national courts*. Hart Publishing.
27. Lenaerts, K., Maselis, I., & Gutman, K. (2014). *EU procedural law*. Oxford University Press.
28. Lianos, I. (2011). Competition law remedies: In search of a theory. *Law and Governance in Europe Working Paper Series*, No. 14.
29. Monti, G. (2016). *EU competition law*. Cambridge University Press.
30. Piszcz, A. (2013). *Sanctions in Polish antimonopoly law*. Temida 2.
31. Smits, C., & Waelbroeck, D. (2006). Competition law and fundamental rights. In *Human rights in European Union policies*. Larcier.
32. Stadler, A. (2007). Collective actions and the enforcement of EU competition law. In J. Basedow (Ed.), *Private enforcement of EC competition law*. Kluwer Law International.
33. Stankiewicz, R. (2012). Administrative procedural rules in competition enforcement. *Yearbook of Antitrust and Regulatory Studies, 5*(6), 117–134.
34. Stefanicki, R. (2014). *Private law remedies for breaches of competition rules*. Wolters Kluwer.
35. Szpunar, M. (2008). *Liability of private entities for breach of EU law*. Wolters Kluwer.
36. Vandenborre, I., & Goetz, T. (2013). Procedural issues in EU competition law. *Journal of European Competition Law & Practice, 4*(6), 510–518. https://doi.org/10.1093/jeclap/lpt057
37. Waelbroeck, D., Slater, D., & Even-Shoshan, G. (2004). *Study on the conditions of claims for damages in case of infringement of EC competition rules*. European Commission. https://ec.europa.eu/competition/antitrust/actionsdamages/study.pdf
38. Walle, S. van (2013). *Private antitrust litigation in the European Union and Japan: A comparative perspective*. Maklu.
39. Whish, R., & Bailey, D. (2021). *Competition law* (10th ed.). Oxford University Press.
40. Wils, W. P. J. (2003). Should private antitrust enforcement be encouraged in Europe? *World Competition, 26*(3), 473–488. https://doi.org/10.54648/woco2003027
41. Zimmer, D. (2012). Competition law commentary. In U. Immenga & E. J. Mestmäcker (Eds.), *Wettbewerbsrecht* (Vol. 1). C.H. Beck.