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EU damages directive saw 'substantial changes' inserted in corrigendum - academic

 PaRR Strong evidence

- Changes make scope more restrictive
 - NCAs no longer can submit amicus curiae on damages estimation
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The corrigendum of the EU private damages directive contains substantial changes that limit its scope of application compared with the text adopted by the European Parliament (EP), according to an academic.

The text scraps provisions involving competition authorities directly in the damage-estimation process, Marco Botta from the University of Vienna's Institute for European Integration Research said at a seminar on "The New Directive on Private Enforcement on EU Competition Law: the way forward in its implementation" held by Austrian competition authority Bundeswettbewerbsbehörde (BWB) on 6 November.

The EU 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" aims at facilitating damages claims.

The [corrigendum](#) of the directive came after a group of jurists-linguists within the Council of the EU [reviewed the initiative](#) in July making technical modifications to the text [adopted](#) by the EP in April.

The modified text is currently awaiting final green light from the Council to enter into force. The member states' permanent representatives committee this week [forwarded](#) the corrigendum for the final vote to the Council.

But those changes were not just technical, said Botta. In Article 17, for example, the directive now says: "Member states shall ensure that, in proceedings relating to an action for damages, a national competition authority may, upon request of a national court, assist that national court with respect to the determination of the quantum of damages where that national competition authority considers such assistance to be appropriate".

Where it now says: "upon request of the national court", it used to say: "if the national competition authority deems it appropriate" in the text the EP approved in April, Botta highlighted.

"While the text as it read before allowed the competition authorities to get directly involved, now they have to be invited," he said, adding that "this is a substantial change to the law – not just a linguistic alteration".

Pursuant to Article 15 of Regulation 1/2003, which implements EU competition rules, the European Commission can submit written observations – "amicus curiae" observations – to courts of member states on the coherent application of Articles 101 or 102 TFEU.

National competition authorities are no longer able to submit an amicus curiae to estimate damages, said Botta. In some member states, civil courts might not have an incentive to be active in that respect, he anticipated.

Only competition authorities are really able to find information on what the damages inflicted by an

infringement of antitrust rules was, said Botta.

by Martha Ivanovas in Vienna