

TRAINING OF NATIONAL JUDGES IN EU COMPETITION LAW

UNIVERSITY OF VALENCIA

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(EU General Court)*

PASSING-ON
(THE LEGAL VIEW)
EVIDENTIARY ISSUES

INTRODUCTION

PASSING-ON

EVIDENTIARY ISSUES : INTRODUCTION

Case C-453/99, *Courage and Crehan*, 20 September 2001

The full effectiveness of Article [101] of the Treaty and, in particular, the practical effect of the prohibition laid down in Article [101(1)] would be put at risk...

...if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition.

**PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION**

RIGHT

TO

**ARTICLE
3**

FULL COMPENSATION

PASSING-ON

EVIDENTIARY ISSUES : INTRODUCTION

Case C-453/99, *Courage and Crehan*, 20 September 2001

the Court has held that [EU] law does not prevent national courts from taking steps to ensure that...

... the protection of the rights guaranteed by [EU] law does not entail the unjust enrichment of those who enjoy them

→ ***CASE LAW ON TAX REIMBURSEMENT***

PASSING-ON

EVIDENTIARY ISSUES : INTRODUCTION

**RIGHT
TO
FULL COMPENSATION**

UNJUST ENRICHMENT



PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

RECOGNITION

NOT

SELF-EVIDENT

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

INDIRECT PURCHASERS

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

INDIRECT PURCHASERS

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

INDIRECT PURCHASERS

→ *RIGHT TO FULL COMPENSATION*

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

INDIRECT PURCHASERS

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

INDIRECT PURCHASERS

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

DEFENDANT

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

DEFENDANT

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

DEFENDANT

→ ***AVOID UNJUST ENRICHMENT***

PASSING-ON
EVIDENTIARY ISSUES : INTRODUCTION

DEFENDANT

PASSING-ON
(THE LEGAL VIEW)
EVIDENTIARY ISSUES

EVIDENTIARY ISSUES

PASSING-ON
EVIDENTIARY ISSUES

BURDEN

#1

OF

PROOF

PASSING-ON

EVIDENTIARY ISSUES: BURDEN OF PROOF

**DIRECT
PURCHASER**

→ ***RIGHT TO FULL COMPENSATION***

→ ***EXCEPTION: RESTRICTIVE INTERPRETATION***

**PASSING-ON
EVIDENTIARY ISSUES: BURDEN OF PROOF**

DEFENDANT

PASSING-ON
EVIDENTIARY ISSUES: BURDEN OF PROOF

INDIRECT PURCHASERS

PASSING-ON EVIDENTIARY ISSUES: BURDEN OF PROOF

INDIRECT PURCHASERS

PRESUMPTION

PASSING-ON EVIDENTIARY ISSUES: BURDEN OF PROOF

INDIRECT PURCHASERS

REBUTTABLE

PASSING-ON EVIDENTIARY ISSUES

ACCESS

#2

TO

EVIDENCE

**PASSING-ON
EVIDENTIARY ISSUES: ACCESS TO EVIDENCE**

DEFENDANT

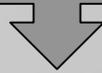
PASSING-ON
EVIDENTIARY ISSUES: ACCESS TO EVIDENCE

INDIRECT PURCHASERS

**PASSING-ON
EVIDENTIARY ISSUES: ACCESS TO EVIDENCE**

DEFENDANT & INDIRECT PURCHASERS

ARTICLE 5 OF THE DAMAGES DIRECTIVE



→ CASE C-163/21, PACCAR

PASSING-ON EVIDENTIARY ISSUES

TYPE

#3

OF

EVIDENCE

PASSING-ON

EVIDENTIARY ISSUES: TYPE OF EVIDENCE

Opinion of AG Geelhoed *in*
Case C-129/00, *Commission v Italy*, 3 June 2003

“it will be virtually impossible to demonstrate the degree to which the economic burden resulting from the charge has been passed on”

PASSING-ON EVIDENTIARY ISSUES: TYPE OF EVIDENCE

PRICE EFFECT AND VOLUME EFFECT

- Qualitative evidence
- Quantitative evidence

2019
PASSING-ON
GUIDELINES

PASSING-ON EVIDENTIARY ISSUES

POWER

#4

TO

ESTIMATE

PASSING-ON EVIDENTIARY ISSUES: POWER TO ESTIMATE

ARTICLE 12(5) OF THE DAMAGES DIRECTIVE

PASSING-ON OF OVERCHARGES AND THE RIGHT TO FULL COMPENSATION

Member States shall ensure that the national courts
have the power to estimate,
in accordance with national procedures,
the share of any overcharge that was passed on.

PASSING-ON EVIDENTIARY ISSUES: POWER TO ESTIMATE

ARTICLE 17(1) OF THE DAMAGES DIRECTIVE

QUANTIFICATION OF HARM

(...) Member States shall ensure that the national courts are empowered, in accordance with national procedures, to estimate the amount of harm

if

it is established that a claimant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available.

PASSING-ON EVIDENTIARY ISSUES: POWER TO ESTIMATE

QUANTIFICATION OF HARM

ARTICLE 17(1) OF THE DAMAGES DIRECTIVE

→ **CASE C-312/21, TRÁFICOS MANUEL FERRER**

PASSING-ON OF OVERCHARGES AND THE RIGHT TO FULL COMPENSATION

ARTICLE 12(5) OF THE DAMAGES DIRECTIVE