

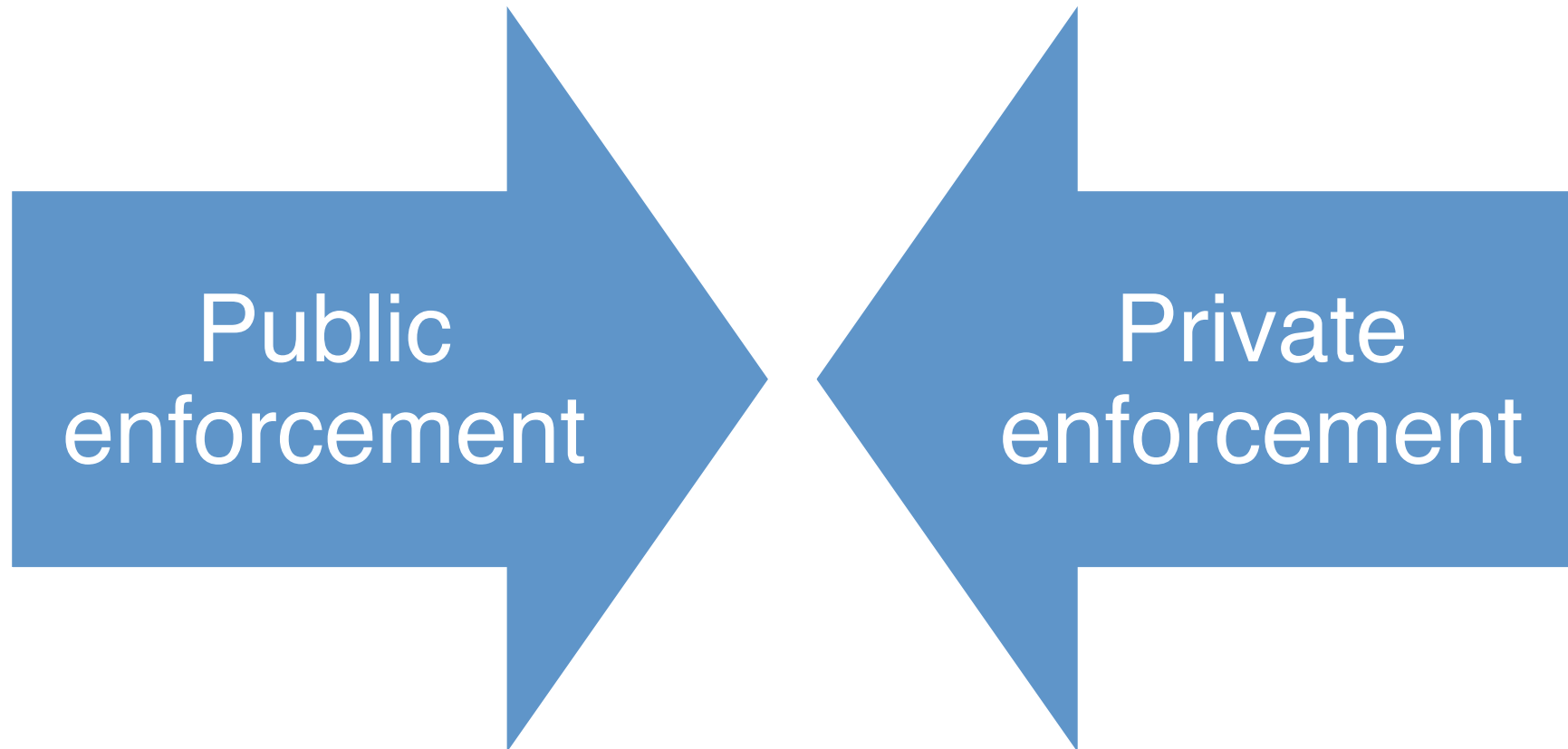


## **MECANISMOS DE EJECUCION DEL DERECHO DE COMPETENCIA DESDE UNA PERSPECTIVA EUROPEA Y ESTATAL**

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Autoridad Vasca de la Competencia  
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# MECANISMO DE EJECUCION DUAL



**PROTECCION DE INTERESES  
PUBLICOS Y GENERALES**

**USO DEL PODER PUBLICO (Y DE LOS  
RECURSOS) PARA INVESTIGAR LAS  
CONDUCTAS Y BUSCAR PRUEBAS**

**PUBLIC  
ENFORCEMENT**



**ASESORAMIENTO A LA  
ADMINISTRACION PUBLICA  
(ADOVACY) &  
ACCION JUDICIAL PARA CONTRASTAR  
MEDIDAS ESTATALES  
ANTICOMPETITIVAS**

**SANCIONES ADMINISTRATIVAS >  
PRESUPUESTO PUBLICO**

## PROTECCION DE DERECHOS SUBJETIVOS

*“cualquier persona física o jurídica que haya sufrido un perjuicio ocasionado por una infracción del Derecho de la competencia puede reclamar y obtener pleno resarcimiento de dicho perjuicio”*

(Art. 3 - DIRECTIVA UE 2014/104)

## LIMITADOS PODERES Y RECURSOS PARA ENCONTRAR PRUEBAS & ONUS PROBANDI SOBRE EL DEMANDANTE

PODER DE ORDENAR EXHIBICION DE PRUEBAS por parte de terceros (includas NCA y DG COMP)

\*\*\*



PRESUNCION DE EXISTENCIA DE UN DAÑO  
(CARTELES)

(DIRECTIVA UE 2014/104)

## PRIVATE ENFORCEMENT

## COSTES & RIESGO DEL JUICIO SOBRE EL DEMANDANTE

(REDUCCION POR EL LOSER PAYS RULE)

## RESARCIMIENTO PLENO

DAÑO EMERGENTE + LUCRO CESANTE +  
INTERESES

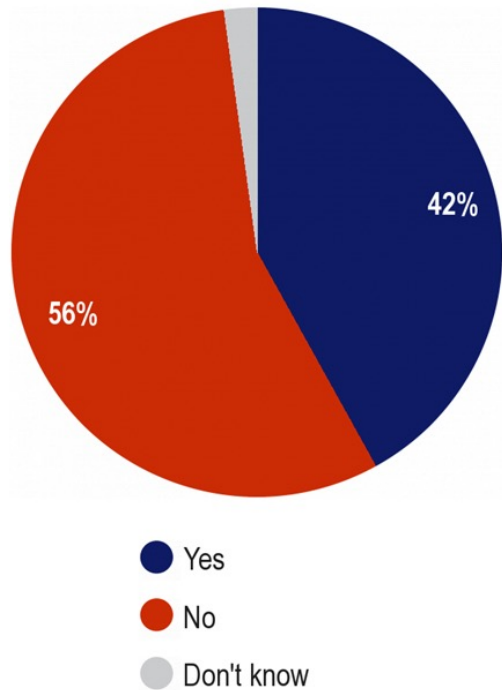


## ACCIONES COLECTIVAS

(RECOMENDACION COLLECTIVE REDRESS - 2013)

# EL MECANISMO DUAL ES REALMENTE CONOCIDO?

Q5. Would you know where or who to turn to if you were to identify a major problem in terms of competition, such as those mentioned in the previous questions?



Q6. Where or who would you turn to? (MULTIPLE ANSWERS POSSIBLE)



Base: Those that know where or who to turn to if they were to identify a major problem, in terms of competition (N=11269)



- In the majority of Member States, a **consumer organization** is the place that respondents would most likely turn to if they were to identify a major problem in terms of competition.
- In 7 MS, most respondents would contact their **national competition authority**. The highest figures can be observed in Finland (73%), the Czech Republic (70%) and Poland (70%), while only a small proportion would contact their national competition authority in Malta (12%) or **Spain (16%)**.
- Respondents in the Czech Republic are more likely than those in other Member States to say that they would contact **the police (32%)**, with high figures also seen in Portugal (26%), Belgium (25%) and Slovakia (25%).
- The highest proportion that say they would contact **a court (41%)** can, by far, be found in Belgium.
- Respondents in Belgium are also more likely than those in other Member States to say that they would turn to **the European Commission (36%)**, with a high figure also seen in Luxembourg (26%).

Q6 Where or who would you turn to? (MULTIPLE ANSWERS POSSIBLE)

	Consumer organisations in (YOUR COUNTRY)	Your national competition authority	Other authorities in (YOUR COUNTRY)	The police	A court	The European Commission	Other (SPONTANEOUS)	Not interested – Wouldn't turn to anyone (SPONTANEOUS)	Don't know
EU28	69%	40%	26%	14%	14%	10%	11%	1%	2%
BE	88%	53%	56%	25%	41%	36%	8%	1%	1%
BG	40%	50%	10%	9%	7%	7%	8%	2%	6%
CZ	52%	70%	49%	32%	18%	12%	10%	1%	1%
DK	49%	68%	12%	5%	3%	4%	8%	1%	1%
DE	84%	42%	30%	14%	14%	11%	9%	1%	1%
EE	65%	53%	4%	3%	3%	2%	6%	1%	1%
IE	57%	40%	27%	4%	6%	9%	13%	1%	2%
EL	68%	29%	21%	12%	9%	11%	9%	2%	1%
ES	75%	16%	9%	12%	14%	4%	13%	0%	3%
FR	80%	43%	25%	11%	18%	14%	9%	0%	1%
HR	62%	39%	14%	9%	7%	9%	4%	2%	3%
IT	61%	24%	5%	12%	11%	5%	8%	2%	2%
CY	49%	51%	3%	3%	1%	8%	8%	1%	3%
LV	68%	47%	16%	8%	8%	9%	7%	1%	1%
LT	47%	42%	11%	5%	4%	5%	10%	3%	3%
LU	82%	47%	34%	22%	23%	26%	6%	0%	0%
HU	79%	38%	10%	4%	5%	7%	4%	2%	1%
MT	76%	12%	4%	1%	0%	1%	10%	1%	2%
NL	74%	33%	24%	10%	13%	12%	20%	1%	2%
AT	75%	32%	30%	7%	10%	7%	20%	2%	0%
PL	37%	70%	14%	6%	6%	6%	7%	1%	3%
PT	68%	44%	35%	26%	21%	15%	14%	0%	3%
RO	54%	30%	11%	15%	11%	8%	8%	3%	5%
SI	70%	37%	4%	3%	1%	3%	6%	2%	1%
SK	35%	31%	12%	25%	9%	7%	12%	3%	2%
FI	40%	73%	10%	7%	6%	6%	15%	0%	2%
SE	64%	68%	16%	8%	11%	5%	10%	0%	1%
UK	74%	43%	74%	22%	26%	18%	14%	1%	1%

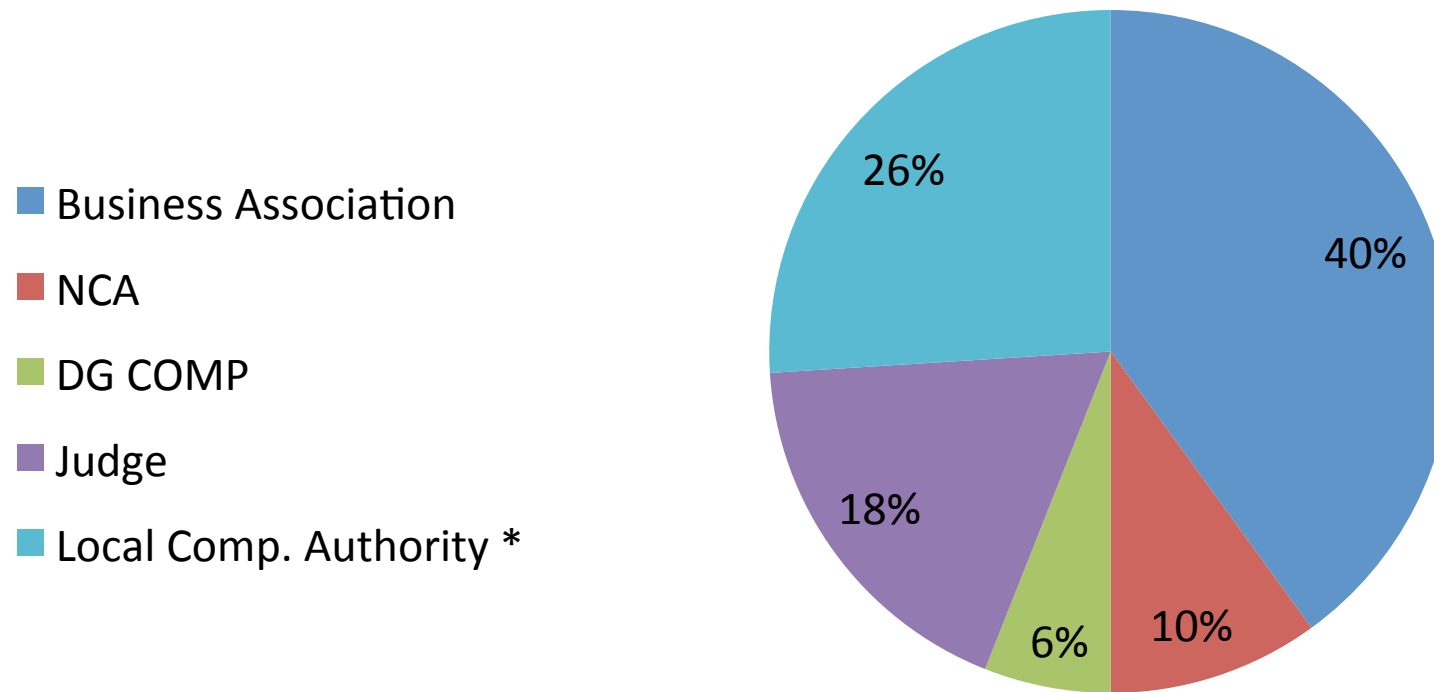
**Highest percentage per country**  
 Highest percentage per item

**Lowest percentage per country**  
 Lowest percentage per item

# ... Y ENTRE LAS EMPRESAS?

## WHERE OR WHO YOU WOULD TURN TO?

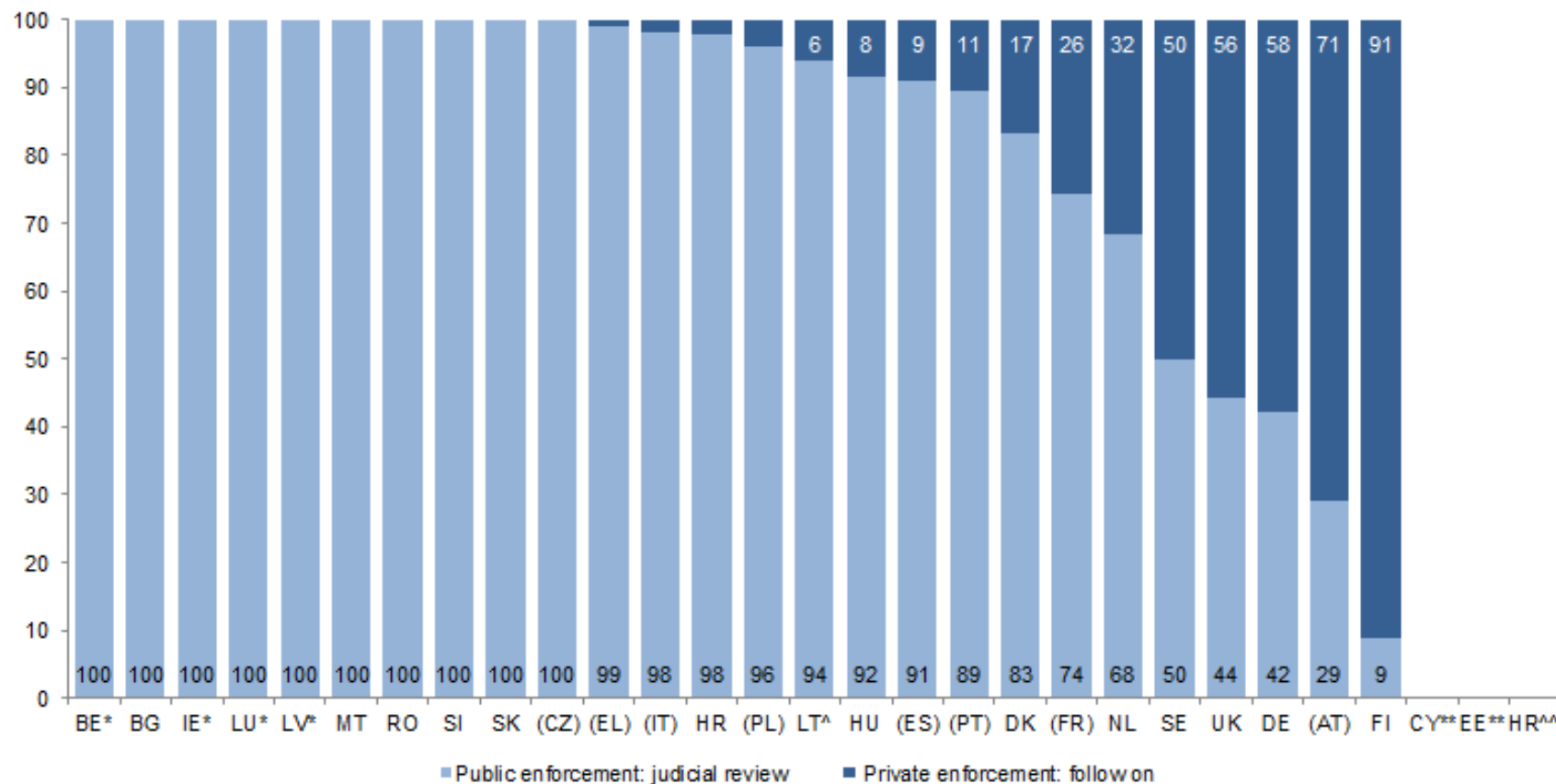
(Source: Osservatorio Antitrust, 2011 – only for trentino region)



\* If created in Trento Autonomus Province

# ... DE HECHO MUY POCOS ACUDEN A LOS TRIBUNALES

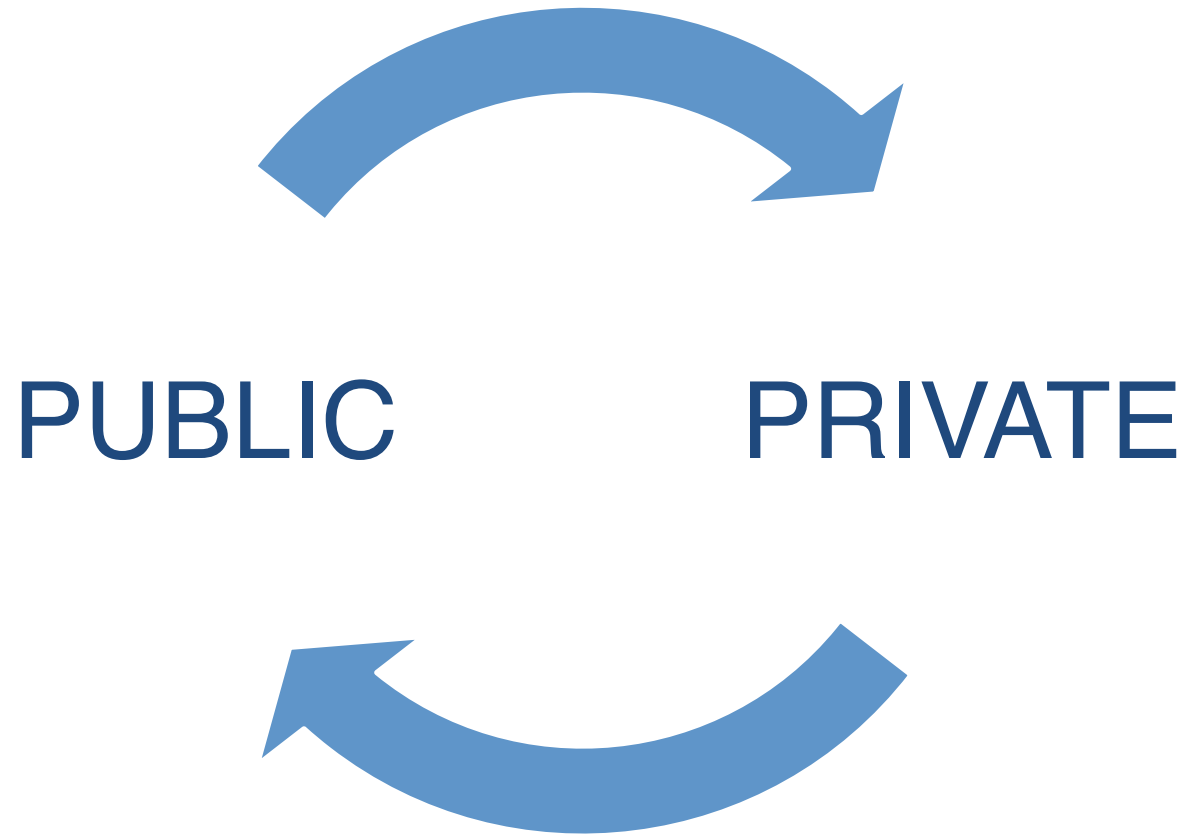
(FOLLOW-ON ACTIONS IN MSs - 1 May 2004 - 1 June 2013)



**Source:** DG Justice, Study: «Pilot field study on the functioning of the national judicial systems for the application of competition law rules», March 2014



# ENFORCEMENT COMPLEMENTARITY 2.0



# ENFORCEMENT COMPLEMENTARITY

3.0 ?

MULTAS  
TAMBIEN A  
INDIVIDUOS  
(DIRECTORES,  
EMPLEADOS)?

PUBLIC



PRIVATE

OPT OUT  
COLLECTIVE  
REDRESS  
SCHEME?

YA ES ASI EN  
REINO UNIDO  
(Enterprise Act  
2002 + ERRRA  
2013) + 18  
EEMM

CRIMINAL

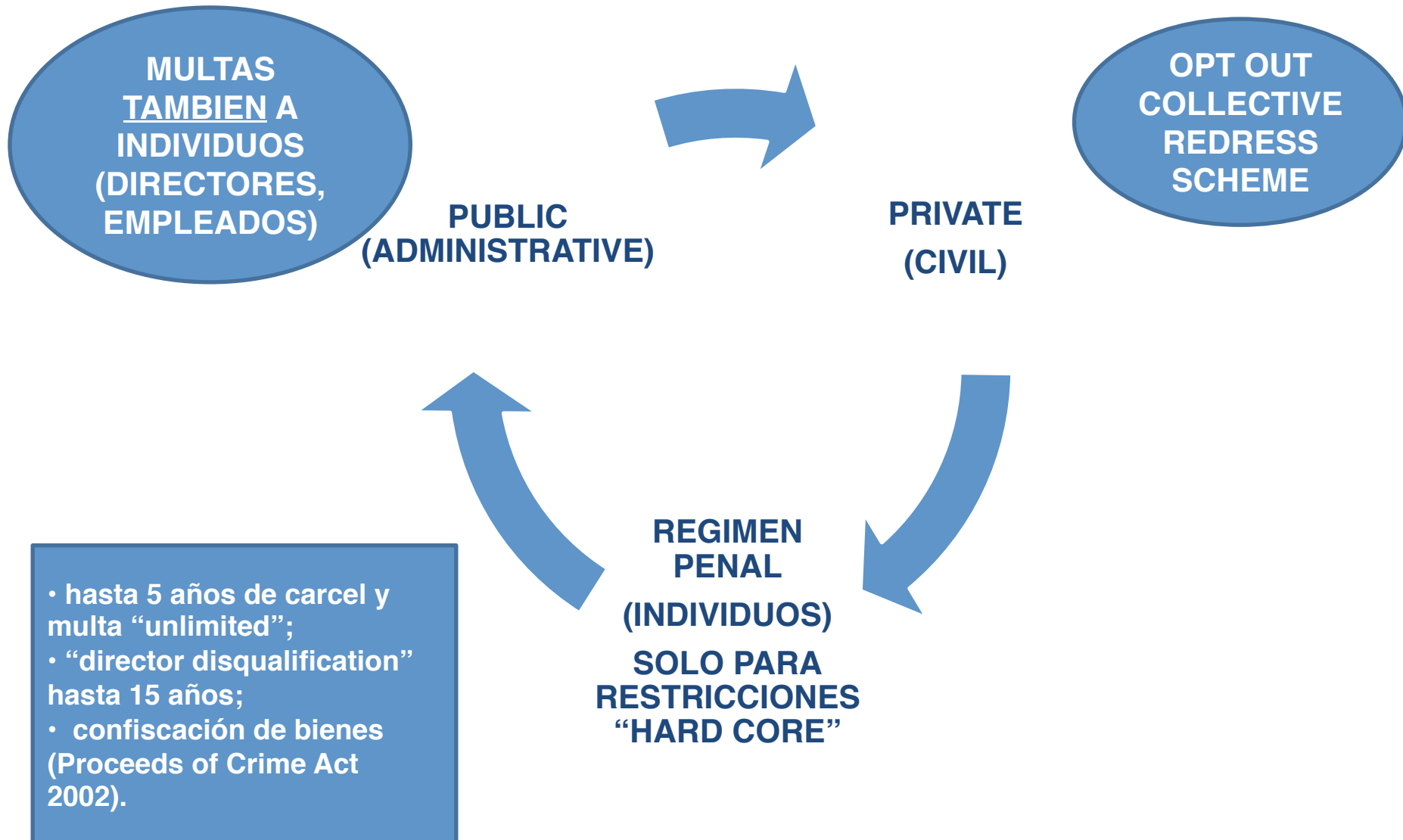


LOCAL



EXTENDER LA  
EXPERIENCIA  
ESPAÑOLA Y  
ALEMANA A  
OTROS EEMM?

# ENFORCEMENT 3.0 EN UK: <sup>NEW</sup> CMA



# MULTAS A INDIVIDUOS?

## MULTAS A INDIVIDUOS

- No hay obstáculos legales en el derecho primario de la UE para introducir *ex lege* multas a individuos, mientras que dichas multas no tengan un carácter penal (Art. 103 TFEU)
- Sería necesario modificar el Reg. 1/2003, ya que en eso se prevén multas sólo para “*undertakings and associations of undertakings*”

## SANCIONES DE CARACTER PENAL?

- Encarcelamiento y otras sanciones de derecho penal no se pueden introducir a nivel UE bajo el TFUE
- Art. 83(2) TFUE atribuye el poder a la UE para adoptar normas de derecho penal sustancial sólo a través de las Directivas. Esto parece negar la posibilidad de establecer un régimen penal de derecho de la competencia a nivel UE
- A través de una Directiva, la UE podría pedir a los EEMM la adopción de sanciones penales en caso de violación de los Arts. 101/102 TFEU

# OPT-OUT & LOCAL ENFORCEMENT?

## OPT-OUT COLLECTIVE REDRESS SCHEME?

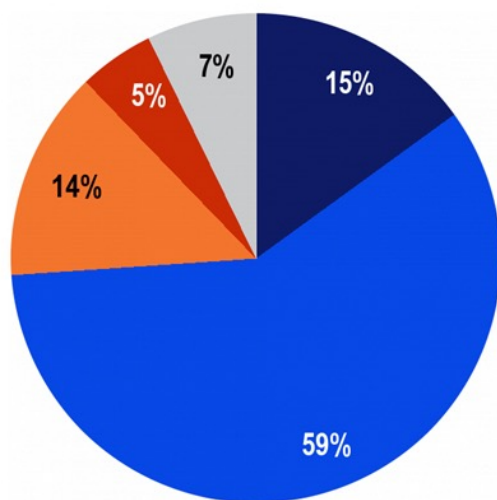
- Las instituciones EU están claramente en favor de un mecanismo OPT-IN
- «principio de participación voluntaria»**  
(par. 21, Recomendación, 2013)
- Algunos EEMM (Reino Unido & Portugal) están implementando mecanismos de OPT-OUT
- ... it is just a matter of policy (*rectius* politics)

## LOCAL ANTITRUST ENFORCEMENT?

- Existen experiencias muy válidas en los EEMM de aplicación descentralizada (España, Alemania)
- A nivel UE no hay límites a la introducción (a nivel nacional) de mecanismos locales de enforcement
- En algunos Estados miembros hay un problema de atribución de competencias: p.e. en Italia la defensa de la competencia es una materia de competencia exclusiva del Estado central
  - ... it is just a matter of policy (*rectius* politics)

# QUE PASA CON EL DERECHO DE LA COMPETENCIA Y SU ENFORCEMENT?

Q9. What impact does effective competition have on you as a consumer?



- Very positive impact
- Fairly positive impact
- Fairly negative impact
- Very negative impact
- Don't know



- ... para construir un mecanismo de enforcement realmente eficaz, independiente y que contribuya al desarrollo social y economico de un país es fundamental que la politica de competencia pueda contar con el necesario apoyo politico y social...
- *"The CMA is fortunate in enjoying broad political support for its mission. This is reflected not only in the creation of the CMA but also in recent reforms to the UK cartel offence to improve its effectiveness as a deterrent, as well as the strengthening of the CMA's civil competition enforcement powers"* (S. Blake, Director CMA).

**Source:** European Commission, Eurobarometer, «Citizens' Perception about Competition Policy», March 2015



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