

EUROPEAN CONSUMER PROTECTION

Through Collective Redress



THE PROPOSAL

The European Commission has introduced a sweeping class action proposal creating new ways to sue for breaches of 59 separate EU consumer protection laws. It is intended to deliver an efficient and simple redress system for consumers while avoiding the abuses that plague the U.S. It fails on both fronts and in some respects is worse than the U.S. class action model.

WHY IT MATTERS

Without appropriate safeguards, collective litigation will benefit other players in the system, like lawyers and third party litigation funders, at the expense of consumers and businesses.

ECONOMIC WASTE

The U.S. has one of the most expensive and inefficient legal systems in the world. The total costs and compensation paid in the U.S. legal system in 2016 was over \$429 billion, or roughly €374 billion. This is twice the size of the EU budget today!

Only a small part of this enormous sum went to compensating claimants. Over 40 cents of every dollar went to paying lawyers and other legal fees. In class actions, claimants receive even less. A consumer who actually gets relief in a class action receives on average only \$32. The average fee for a class action lawyer is \$1 million.

KEY ISSUES WITH THE PROPOSAL

Loose standards on who may sue

Lawsuits can only be filed by non-profit “Qualified Entities” (QEs) on a list approved by Member States. Criteria to become a QE are extremely weak. Nothing prevents non-profit QEs being sponsored by, and having lucrative agreements with, law firms and litigation funders.

No class certification safeguards

There are no rules on who can be included in a claim or which cases will be suitable for class action treatment.

In some cases, no money for consumers

In cases of low value to individual consumers, no money will ever go to consumers (though of course the lawyers/funders will be paid). Instead, money will go to a “public purpose”.

Potential for overlapping or duplicative claims

Because claims can be brought by QEs without them needing to have buy-in from any consumers, there is no mechanism to prevent—or even know about—multiple QEs making claims on behalf of the same consumers arising from the same facts in multiple Member States.

SUGGESTED EU SAFEGUARDS: COLLECTIVE REDRESS

1. Implementing stringent class certification standards
2. Preserving the loser pays principle
3. Favoring opt-in over opt-out mechanisms
4. Promoting strict standing requirements
5. Mandating closure for defendants
6. Restricting contingency fees & third party litigation funding
7. Banning punitive damages
8. Curbing jurisdictional overreach/forum shopping



U.S. CHAMBER

Institute for Legal Reform