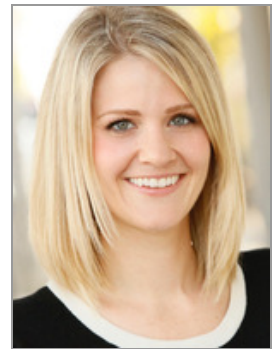


Amended EU Class Action Proposal Is A Loss For Consumers

By **Laura Antonini** (April 9, 2019, 3:34 PM EDT)

The European Union has granted the U.S. Chamber of Commerce — the lobbying arm of American mega-corporations — a veto over legislation that would give consumers on the continent the right to join together to bring “collective actions” — class actions, as they are known in the U.S.

That’s a slap in the faces of the eight million European victims of the “Dieselgate” scandal who have watched in disbelief as their American counterparts collected an estimated \$10 billion through a class action settlement against Volkswagen, whose software-based “defeat devices,” secretly implanted in 11 million diesel cars worldwide, overrode emissions controls and contributed to the costly climate change-related storms that have plagued the continent in recent years.



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The collective action proposal drafted by the European Commission was intended to answer consumers’ outrage over their powerlessness to challenge corporate misconduct exemplified by Dieselgate. But the U.S. Chamber is poised to turn collective actions into mass disenfranchisement with a series of debilitating amendments. On March 26, 2019, the European Parliament Committee on Legal Affairs approved an amended version of the original EU collective action proposal to incorporate many of the changes the U.S. Chamber demanded:

- The current proposal does not authorize consumers to bring collective actions to recover small amounts of money. Collective actions are the only option for consumers who cannot afford to bring their own lawsuits to redress relatively minor thievery.
- The current proposal empowers nongovernmental organizations to bring cases — but not individual consumers. Moreover, no NGO can bring collective actions unless it has received the approval of the government of the country in which they operate. This will inevitably lead to politically motivated exclusions and deprive the most effective (and thus perhaps controversial) NGOs of the right to bring a case. Exhibit A: Among the excluded organizations would be the leading voice for environmental and consumer protection in Europe: Deutsche Umwelt Hilfe.
- The proposal bans attorneys from bringing a consumer collective action on a contingency fee basis — a U.S. procedure that enables consumers to join together to pursue mass injustices by hiring lawyers who are paid only if the class action succeeds. Contrary to corporate propaganda, this arrangement discourages attorneys from bringing frivolous litigation. Astonishingly, under the current proposal, European nonprofits that bring collective actions would be required to pay the corporation’s attorneys’ fees if the nonprofit loses. That’s guaranteed to discourage most collective actions.

- The current proposal lets EU member states decide whether resident consumers must “opt in” to participate in a lawsuit, and requires affected consumers living in different member states to opt in to participate. Requiring consumers to take steps to participate in a lawsuit will undoubtedly limit the number of affected consumers who may benefit from the lawsuit (and the amount of money companies have to pay out). The “opt out” system — where affected consumers are automatically covered by a lawsuit but are given an opportunity to opt out of participating — is a cornerstone of class actions in the U.S. Consumers who are not comfortable with the outcome of a case and wish to pursue their own actions are free to do so. The opt-out system protects the independent legal rights of consumers while also maximizing the number of affected consumers who may benefit from the outcome of a case.

The U.S. Chamber has managed to neuter the EU collective action proposal by misrepresenting the U.S. class action system. It’s not perfect of course, but Americans’ success in allowing citizens to hold corporations like Volkswagen accountable is exactly what the chamber and its allies in the European business community fear.

The battle is not over yet: The proposal will next go to the Council of the EU, where representatives from each member state will be able to restore consumer protections. Access to the judicial system is an essential component of civil society and crucial to the public’s confidence in their government. European leaders would be well advised to improve upon the U.S. system, not abandon it.

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