

Opinion **Law**

## American big business must not hobble EU consumer redress

The US Chamber of Commerce seeks to weaken plans to allow collective action

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In the UK, more than 50,000 Volkswagen customers have joined a group lawsuit following the emissions scandal © Bloomberg

Laura Antonini 5 HOURS AGO

American big business, frustrated in its attempts to limit class action lawsuits at home, is now attempting to derail efforts to give European consumers similar legal redress against corporate misconduct like Volkswagen's [emissions scandal](#).

Last year, the EU Commission [proposed legislation](#) to allow consumers who have been ripped off to join together in “collective actions” in EU courts to get their money back. Policymakers took this step because they were unhappy that VW’s customers in Europe were treated differently from those in the US. While 500,000 American buyers of diesel cars with falsified emissions records used the class action system to collect [more than \\$10bn](#), 8m Europeans have received almost nothing. In the UK, under the [Consumer Rights Act](#) of 2015, more than 50,000 VW customers have joined a group lawsuit to seek compensation that could be worth as much as they paid for their cars. But most other EU citizens do not have the ability to club together. They were offered a

software update for their vehicles that does not pay them back for the decreased value of the car or their unwitting contribution to pollution.

But the commission's proposal has run into a buzzsaw of lobbying by the US Chamber of Commerce. America's largest business group is seeking to reshape the EU collective action proposal to limit consumers' rights.

At their urging, the proposal was amended by the European Parliament committee on legal affairs last month to prohibit the use of contingency fees and restrict the use of collective lawsuits to non-governmental organisations that must meet stringent government requirements. Both changes will sharply limit consumer redress efforts.

No-win, no-fee arrangements are one of the most misunderstood — and most important — elements of the American civil justice system. They allow consumers to hire skilled lawyers without having to pay up front. That makes it possible to attract those with enough expertise to make it a fair fight against highly paid corporate lawyers. Such arrangements can also discourage frivolous cases because the legal team will not be compensated if they lose.

Allowing government-approved non-profit organisations to bring collective actions is an improvement on the US system, where NGOs cannot lead cases in most states. But the amended EU proposal errs when it prevents private parties acting on behalf of their peers. This is a fundamental element of the US system and ensures that every consumer who has been harmed has the right to seek relief in the courts. Limiting legal action to organisations favoured by the government would create a dangerous opportunity for political interference.

The EU proposal also calls for a “loser pays” approach to these cases, another departure from the US system. That means that an NGO that loses a case will have to pay the defendant's lawyers' fees. That would discourage most, if not all, non-profit organisations from bringing an action.

The US chamber's efforts to limit consumer redress in Europe come after a decade-long campaign to do the same at home. American class actions are not perfect, but EU lawmakers should not allow misinformation about the US system to dissuade them from reforms that will enhance public confidence in civil society and help average citizens to resolve disputes through the law.

The European Council will probably review the legislation after the European Parliament elections in May and it will have an opportunity to make changes that help consumers instead of big business. It should revisit the changes that the parliament has made with an eye to protecting the ability of ordinary people to have their day in court. Only then will the EU be acting in the best interests of its citizens and ensure that European consumers have access to justice.

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