

US Chamber of Commerce v. Consumers **Showdown in Europe over Proposed Class Action Rules**

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The U.S. Chamber of Commerce is mounting a massive campaign to undermine a proposal by the European Union that would give European consumers the legal protections against corporate misconduct that American consumers have had for decades.

The EU Commission – the executive arm of the 28-country economic union – proposed new legislation in April 2018 to enable European consumers who have been ripped off to join together in “collective actions” to take companies to court. American consumers have been able to bring “class actions” since 1938, but the legal systems of most European nations require each individual consumer to hire their own lawyer and go to court to obtain compensation for financial scams, defective products or privacy violations. Most Europeans cannot afford to do so.

Animating the EU consideration is the fact that American consumers who were victimized by Volkswagen’s manipulation of its vehicles’ pollution emissions systems have already resolved their claims against Volkswagen, while European consumers have received no compensation because most EU state legal systems do not permit class actions.

“The U.S. Chamber of Commerce wants to kill collective actions in the EU because it would deter and punish wrongdoing by the companies the Chamber represents,” said Laura Antonini, consumer advocate. “The U.S. Chamber of Commerce is exporting the attack on consumer rights that it started in the United States in the 1980s to Europe. Europeans are now witnessing the beginning of the same David and Goliath battle to protect American consumers we have been fighting in the U.S. for decades.”

Ms. Antonini and Harvey Rosenfield, one of the leading consumer advocates in the United States, submitted written comments to the EU on behalf of a new California-based non-profit project, #REPRESENT, explaining why the U.S. Chamber of Commerce’s proposed revisions to the EU proposal would harm European consumers and suggesting ways to improve the draft legislation.

The comments submitted to the EU on behalf of #REPRESENT are available [here](#).

#REPRESENT Suggests Stronger Protections for EU Proposal

The EU’s proposed new law will permit “collective actions” to proceed in EU Member States’ courts, similar to U.S. class actions.

One significant advance over the U.S. class action system is that the EU proposal permits non-profits to bring collective actions on behalf of harmed consumers. These non-profits are eligible

to receive funding from the government, which will help them obtain the necessary funding to litigate against global corporations.

“We applaud the EU for taking an important step toward providing consumers in the EU with long-overdue protections against unfair conduct in the EU marketplace,” said Rosenfield.

However, improvements to the EU proposal are necessary to enhance the ability of EU consumers and non-profit organizations to protect consumer rights, ensure that wrongdoers are held accountable for violations of the law, and strengthen the integrity of the courts in Europe, according to Rosenfield and Antonini.

The #REPRESENT comments suggest that the EU proposal be improved to:

- Empower consumers and non-profits to hire attorneys on a contingency basis;
- Permit individuals, in addition to non-profits, to bring collective actions;
- Remove unnecessary and possibly arbitrary limitations that would prevent otherwise qualified non-profits from bringing collective actions;
- Create a system for consolidating multiple similar collective actions filed against one defendant;
- Ensure consumers can bring collective actions after a court has definitively found that a defendant has violated the law, rather than require individual consumers to pursue their own legal actions;
- Set forth specific factors that courts can use to assess the fairness of a proposed settlement of a collective action;
- Authorize courts to order a defendant to pay exemplary damages for intentional violations of the law, with the penalties directed to funding the taxpayer cost of the legal system;
- Prohibit the unnecessary use of “claim forms” that require consumers to submit paperwork in order to recover;
- Allow consumers affected by a settlement to voice their concerns about a settlement to the court.

The U.S. Chamber of Commerce’s Attack on the EU Proposal

Saying “consumers are the losers,” the U.S. Chamber of Commerce’s Institute for Legal Reform has published multiple critiques of the EU proposal and lately has rallied twelve European business associations to petition the EU Commission in support of the U.S. Chamber’s suggestion to revise the EU proposal to the detriment of consumers.

The U.S. Chamber of Commerce is proposing changes to the EU proposal that would force consumers affected by the Volkswagen dieselgate scandal to track down any class litigation and enlist in the litigation; in some cases, they would have to bring their own separate lawsuits to recover. The U.S. Chamber's chief goal is to prohibit contingency fees, which enable non-profit organizations and consumers to hire their own attorneys to bring a lawsuit without having to pay their lawyers up front. The Chamber's proposal would effectively deny aggrieved EU consumers access to any legal representation. The Chamber would also require non-profit consumer organizations representing consumers to pay companies' legal fees if the litigation is unsuccessful – a major deterrent to bringing a case.

The U.S. Chamber of Commerce has long been criticized for its campaign against American consumer protection laws. According to a report by the Center for Justice and Democracy, the U.S. Chamber of Commerce's agenda is “protecting corporations from liability, weakening the civil justice system and blocking the courthouse doors to sick and injured Americans.”

Background on Dieselgate Scandal

In 2015, it was revealed that Volkswagen installed emissions software, so-called “defeat devices,” in 11 million diesel cars sold worldwide, 8.5 million of which were in Europe. The defeat devices made the cars appear to emit less pollution than they were actually emitting. The broadening emissions scandal – dubbed “Dieselgate” in Europe – led policymakers in the EU and member states like Germany to call for collective action legislation for consumers.

Class actions are why the 500,000 American consumers who bought Volkswagens that were programmed to cheat on emissions tests were able to go to court and force Volkswagen to pay up to \$10 billion buy vehicles back from consumers at their prior market value and provide some consumers with cash payments.

But the 8.5 million affected Volkswagens customers in Europe – where Volkswagen has a 12% market share of car sales – have yet to receive any compensation for their defective vehicles because they currently have no legal recourse against Volkswagen that would entitle them to receive money that they lost.

Dieselgate started with Volkswagen, but now the scandal has spread to other automakers in Europe. On October 16, 2018, Audi, the luxury car division of Volkswagen, admitted to cheating emissions tests on its diesel cars, and has been ordered by German officials to pay an 800 million Euro fine. Automaker Daimler has also been accused of cheating emissions tests cars and may face steep fines. Daimler is recalling 775,000 of its diesel Mercedes cars. Additionally, BMW and Porsche are under investigation for cheating emissions tests.

Without the EU proposal, those who own Audi, Mercedes, BMW, and Porsche diesel cars in Europe may never receive compensation for the impact of the emissions cheat devices.

The EU's collective action proposal will be voted on by the European Parliament Committee on Internal Market and Consumer Protection on November 22, 2018, and the Committee on Legal Affairs on December 6, 2018.

#REPRESENT is a project of the Consumer Education Foundation, a California nonprofit consumer advocacy organization. Visit our Twitter @wheresourmoney.org.