



U.S. CHAMBER

Institute for Legal Reform

Supporting Safeguards

*EU Consumer Attitudes Towards
Collective Actions and Litigation Funding*

.....
SEPTEMBER 2017





U.S. CHAMBER
Institute for Legal Reform

An Affiliate of the U.S. Chamber of Commerce

© U.S. Chamber Institute for Legal Reform, September 2017. All rights reserved.

This publication, or part thereof, may not be reproduced in any form without the written permission of the U.S. Chamber Institute for Legal Reform. Forward requests for permission to reprint to: Reprint Permission Office, U.S. Chamber Institute for Legal Reform, 1615 H Street, N.W., Washington, D.C. 20062-2000 (202.463.5724).

Table of Contents

Executive Summary.....	1
Background and Methodology	4
Context.....	6
Attitudes Towards Collective Action Safeguards	8
Attitudes Towards Funding of Collective Action Cases	17
Appendices	25
Appendix 1: Full Text Shown to Survey Respondents to Describe Collective Action	25
Appendix 2: Full Text Shown to Survey Respondents to Describe Third Party Litigation Funding	26

Executive Summary

The Development of European Collective Actions

Collective redress or collective actions are a relatively new development in Europe. A collective action is a form of civil litigation which aims to obtain redress for groups of plaintiffs, often used in consumer cases. These lawsuits are similar to 'class actions' commonly used in the United States, whereby cases can be brought on behalf of large groups of individuals, all of whom have allegedly been wronged by a company in the same way. While still recent, some form of collective redress exists in almost every EU Member State.

The U.S. Chamber Institute for Legal Reform released a report in March 2017, titled *The Growth of Collective Redress in the EU*, on the development of collective redress models in ten EU Member States, representing 79% of the population and 82% of the GDP of the EU. The report covered 16 types of collective action from these Member States.

The report found several troubling trends in the development of European collective redress models, including the filing of multiple billion euro claims, the arrival of U.S. class action firms, the explosive growth of a new and unregulated litigation funding industry, the exploitation of

loopholes in rules regarding standing, experimentation with opt-out mechanisms, and the gradual dilution of a host of other traditional safeguards or protective measures for consumers and defendants.

As the European Commission prepares to make a significant policy decision on collective actions, it is useful to assess how European consumers feel about the development of these collective action mechanisms.

This survey was asked of 6,177 consumers in six EU Member States, including France, Germany, the Netherlands, Poland, Spain, and the UK. Each survey respondent was provided with background information on collective actions. This information was designed to be carefully balanced. Respondents were then asked about specific protections, commonly known as safeguards, that have been suggested to ensure that collective action lawsuits operate in consumers' best interests.

CONSUMER ATTITUDES TOWARDS COLLECTIVE ACTION SAFEGUARDS

- 85% of respondents support the introduction of safeguards for collective action lawsuits. Only 5% of consumers oppose the introduction of safeguards and 10% 'don't know'.

“69% of consumers do not support the introduction of collective action lawsuits in their country without safeguards.”

- A further 69% of consumers do not support the introduction of collective action lawsuits in their country without safeguards. This pattern is consistent across all six of the surveyed EU Member States.
- Nearly 80% of consumers feel it is important that collective action safeguards are made consistent across the EU.

SUPPORT FOR SPECIFIC COLLECTIVE ACTION SAFEGUARDS

A significant majority of consumers across all EU markets support the following proposed safeguards:

- 78% of consumers support certification standards, meaning the establishment of threshold criteria that a case must meet before a judge will allow it to go forward as a collective action.
- 77% of consumers support requiring that all collective action cases be 'opt-in' (rather than 'opt-out'), which would ensure that consumers cannot be included in collective action cases without their knowledge, consent or control.
- 74% of consumers support allowing claims to be initiated only by consumers or consumer associations. This provision would prevent lawyers from actively seeking out consumers and initiating a case without direct consumer involvement.
- 76% of consumers support requiring parties involved in a dispute to demonstrate that they have tried to resolve it through alternative means before bringing a collective action.

The Growth of Third Party Litigation Funding in Europe

As collective actions are becoming more common in Europe, so is a practice known as third party litigation funding (TPLF). TPLF is a growing industry across the EU. In TPLF, financial firms (such as investment firms running 'hedge funds') invest in a case by paying lawsuit expenses in return for a portion or percentage of the proceeds in successful cases, even if they have no connection to the lawsuit.

Similar to how consumers were asked their opinions on collective actions, survey respondents were given a brief background on TPLF and asked about potential safeguards.

CONSUMER ATTITUDES TOWARD THIRD PARTY FUNDING OF LAWSUITS

- Just 5% of consumers believe that TPLF will ensure that collective action cases operate in consumers' best interests.
- Qualitatively, consumers express concerns that third party funders are more likely to be motivated by profit and may not act in the best interests of the consumers.
- 25% of consumers feel TPLF should be banned entirely. A further 54% say that TPLF should only be allowed to operate with safeguards in place. Only 6% of consumers feel that TPLF should be allowed to operate without any safeguards.

“ 81% of consumers support the introduction of safeguards for TPLF. ”

SUPPORT FOR SPECIFIC TPLF SAFEGUARDS

- 81% of consumers support the introduction of safeguards for TPLF.
- In each of the six surveyed EU Member States, there is significant support for the following safeguards:
 - ◆ 81% of consumers support a duty of care so that funders are obligated to act in the best interests of consumers and have the capital necessary to see the case through to the end.
 - ◆ 78% of consumers support ensuring consumers, not funders, control management of the case.
 - ◆ 78% of consumers support requiring that the involvement of funders in a collective action case be disclosed to the judge and defendant(s).
 - ◆ 75% of consumers support requiring that all third party litigation funders are accredited or licensed and overseen by a government agency.
 - ◆ 72% of consumers support setting a maximum amount which funders can recover from a case.
 - ◆ 72% of consumers support applying the 'loser pays' principle to funders, so if the case is lost, the funders who backed the case must pay the defendants' costs to ensure that defendants are not financially harmed by meritless cases.

Background and Methodology

Background

Collective redress or collective action is a form of civil litigation that aims to obtain redress for groups of consumers (e.g., a resolution or compensation offered to a consumer who has been wronged by a company or organisation). These mechanisms have long been around in the United States but are relatively new to Europe.

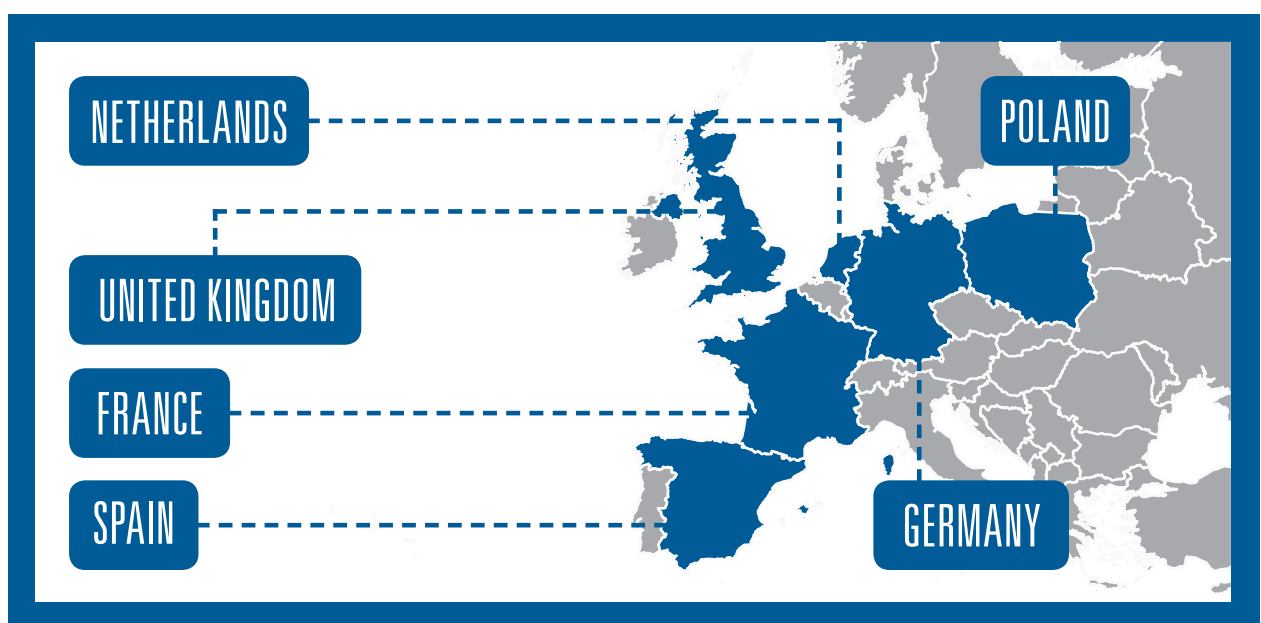
In June 2013, the European Commission issued a Recommendation on Collective Redress, inviting Member States to adopt by July 2016 a collective redress framework as outlined by the European Commission. The Recommendation asked Member States to report on the development of these models by July 2017, at which point the European Commission would evaluate if further EU action is needed. As the European Commission undertakes

its review, this survey aims to provide the consumer perspective on these issues from six EU Member States in which collective action models have been introduced.

All findings are based on research designed and conducted by the independent research organisation WorldThinks in accordance with the ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics. The research was commissioned by the U.S. Chamber Institute for Legal Reform.

Methodology

This research focuses on the attitudes among consumers in six EU Member States in which collective action models have been introduced, and which represent a diverse grouping of EU Member States in terms of size, location and accession date.



Findings in each Member State are based on a two-stage methodology, commencing with qualitative focus groups in order to explore consumers' starting points on this issue, and the specific language consumers use to describe their views of collective action cases.

Quantitative findings are based on an online quantitative survey of 6,177 consumers, designed and weighted to be nationally representative of the adult population (aged 18+) of each of the six EU Member States by gender, age and income. All EU Member States were surveyed in their official language. The number of responses for each Member State breaks down as follows:

United Kingdom	1,022
France	1,032
Germany	1,032
Netherlands	1,031
Poland	1,030
Spain	1,030
TOTAL	6,177

Throughout this report, verbatim quotations relate to findings from the qualitative focus groups, while figures and percentages are derived from the quantitative survey. Differences among EU Member States and between other criteria (such as demographic factors) have only been drawn out if they are statistically significant at a confidence interval of 95%. Where figures do not add up to 100%, this is due to rounding.

The questionnaire and all supporting information were carefully designed to present a balanced picture, and the specific language and terminology used in the survey was derived from and tested in the qualitative phase of research to ensure that it was accessible and easily understood by respondents.

The full quantitative survey, including all of the background information shown to respondents as part of the survey to ensure that they had adequate knowledge to answer the questions, is available at instituteforlegalreform.com.

Context

Qualitative Data on Consumers' Opinions of Collective Actions

Many consumers see potential benefits when they think and hear more about collective action cases, and are generally positive about any mechanism (legal or otherwise) which helps consumers secure redress. In addition, in Member States where consumers generally feel that their legal system can be slow, bureaucratic and ineffective—particularly in Poland—collective action models are thought to increase access to justice.

“It is a group of people who are injured, not just one person, but a group. It's more effective if more people are involved.”

*Focus group participant,
Warsaw, Poland*

“How do they get my data? That's a breach of privacy!”

*Focus group participant,
Rotterdam, the Netherlands*

However, while consumers often feel positive about the concept of collective action cases in theory, they are more cautious about the way in which these mechanisms are likely to be used in practice. Specifically, consumers express concerns that these cases might be open to abuse and may not operate in consumers' best interests, particularly if the model requires consumers to 'opt-out' of collective action cases rather than 'opt-in', and if consumers belonging to the class are unknown to one another at the outset of and in the process of the case.

This concern is strongly felt in the UK, where consumers spontaneously describe an increasing commercialisation of the legal system. This is evidenced by a growing 'compensation culture', seemingly 'opportunistic' claims management, and legal firms looking to make a profit from consumers seeking redress in relation to workplace accidents, travel delays and the mis-selling of Payment Protection Insurance.

“ Insurance premiums are so high because people that don't need to claim do, then everyone suffers with how high they are. With the no-win no-fee thing, people think that they might as well give it a go because they have nothing to lose.”

*Focus group participant,
Birmingham, UK*

“ It's very American. It's blurring the lines of where Britishness ends and Americanism starts. It's leading to globalisation and the eradication of British culture.”

*Focus group participant,
Birmingham, UK*

Attitudes Towards Collective Action Safeguards

Methodological Note

To ensure that survey respondents had sufficient understanding of collective action cases, all respondents were shown a short explanatory passage outlining the purpose of collective action cases: to obtain redress for large groups of consumers who have allegedly been wronged in the same way. They were then shown some information about the potential benefits of collective action cases, including increasing consumers' access to justice, and the potential drawbacks, including the risk of abusing the system for profit. The order of the potential benefits and drawbacks was randomised equally across the total sample to avoid biasing respondents' views, and the number of points were identical on each side. (See Appendix 1 for the full supporting text.)

“ I think collective action is obviously of enormous interest to the lawyers, but not the consumers.”

*Focus group participant,
Barcelona, Spain*

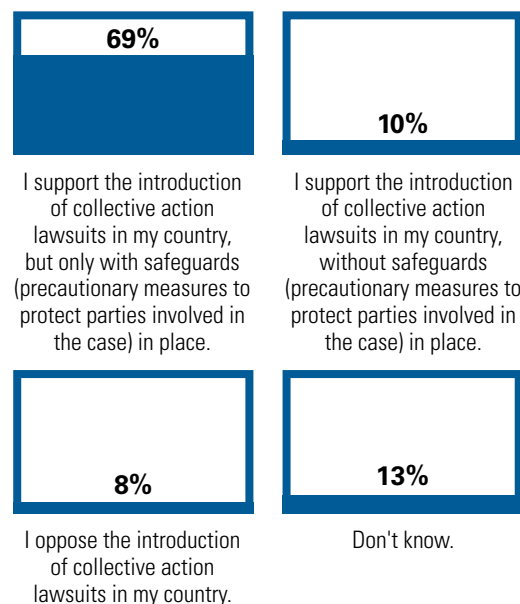
Support for the Introduction of Collective Action Safeguards

Nearly 70% of consumers do not support the introduction of collective action lawsuits in their country without safeguards against abuse in place.

A small minority of consumers (10%) support the introduction of collective action cases without safeguards, while 8% oppose the introduction of collective action lawsuits in their country, even with safeguards in place.

Perceptions of Collective Action Lawsuits and Safeguards

Showing responses for all surveyed Member States



Based on what you have read so far, which of the following best describes your position on the issue? Base: all respondents across all surveyed markets (n=6177)

“The defendant should not go bankrupt because of the high claims. There needs to be a protective measure in there.”

*Focus group participant,
Rotterdam, the Netherlands*

“There should be a mediator or controller who is external to the whole process.”

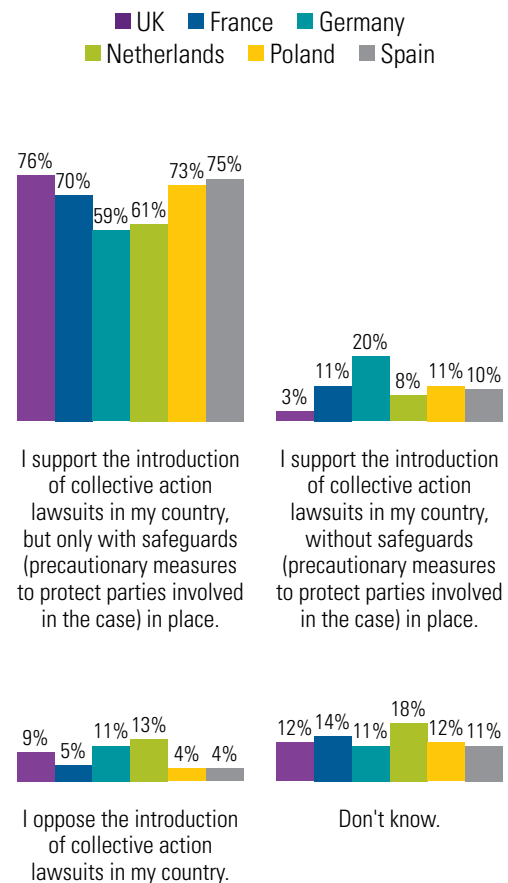
*Focus group participant,
Barcelona, Spain*

This pattern is relatively consistent across the six surveyed EU Member States, with a majority of respondents in each individual country stating that safeguards are necessary for collective action systems.

Consumers in the UK are most likely to state that collective action mechanisms should only be introduced with safeguards in place, potentially reflecting higher levels of concern there about the increasing commercialisation of the legal and justice systems.

Perceptions of Collective Action Lawsuits and Safeguards by Country

Shown by Member State



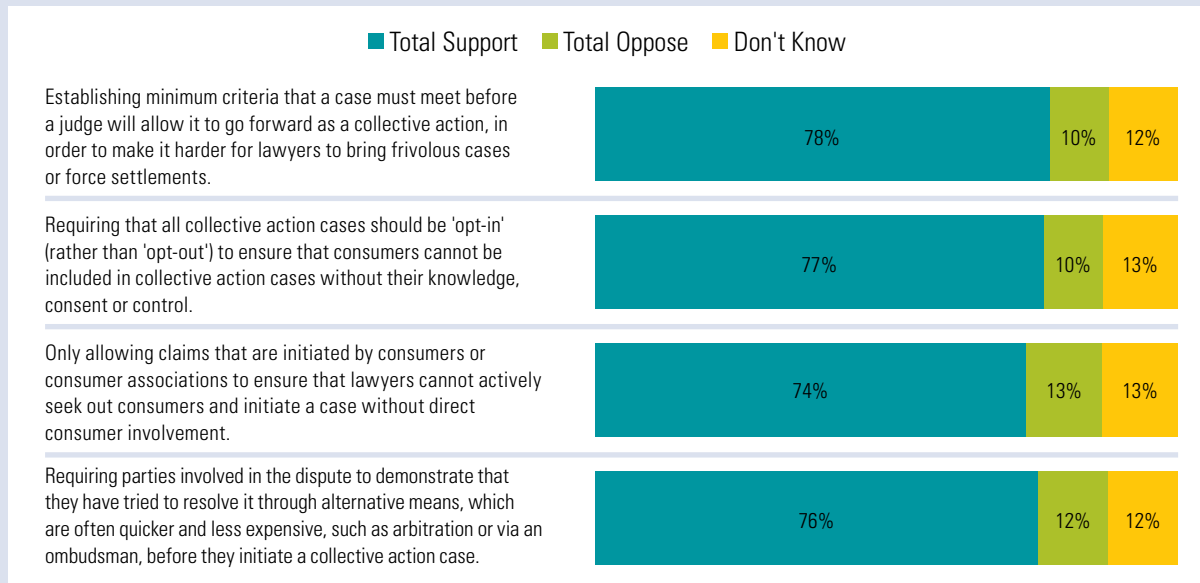
Based on what you have read so far, which of the following best describes your position on the issue? Base: all respondents across all surveyed markets (n=6177)

Perceptions of Potential Safeguards for Collective Action Lawsuits

Presented with four potential safeguards for collective action lawsuits, a significant majority of consumers across all EU Member States surveyed support each safeguard, with an average minimum of three-quarters (74%) saying that they support each of the tested safeguards.

Support for Specific Collective Action Safeguards

Showing responses for all surveyed Member States



Above are some safeguards (precautionary measures to protect parties involved in the case) which could be put in place in relation to collective action cases. For each of the following options, please rate how much you support or oppose the introduction of this safeguard. Base: all respondents across all surveyed markets (n=6177)

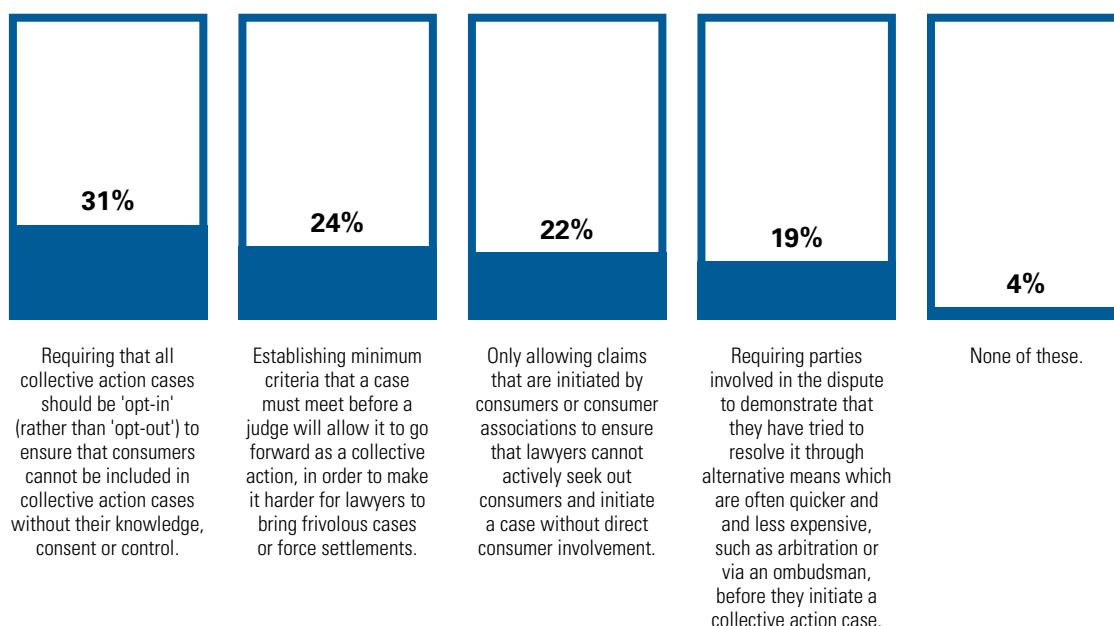
When consumers who support any of these safeguards are asked which single safeguard is most important to them, ensuring that collective action models are adopted according to an 'opt-in' rather than 'opt-out' mechanism emerges as consumers' top priority (31%).

This reflects findings from the qualitative focus groups, in which consumers expressed significant levels of concern about their personal information being used without their consent, and lack of control over the case.

“When consumers who support any of these safeguards are asked which single safeguard is most important to them, ensuring that collective action models are adopted according to an 'opt-in' rather than 'opt-out' mechanism emerges as consumers' top priority (31%).”

Perceptions of Which Collective Action Safeguard is Most Important

Showing responses from all consumers who support at least one safeguard across all surveyed Member States



And which one of these safeguards, if any, is most important to you? Base: all respondents across all surveyed Member States who support any safeguard (n=5566)

“If it’s opt-in, the consumer has the power, and if it’s opt-out, the lawyer has the power.”

*Focus group participant,
Munich, Germany*

“I think it’s illegal! They can’t decide what you want to do with your life!”

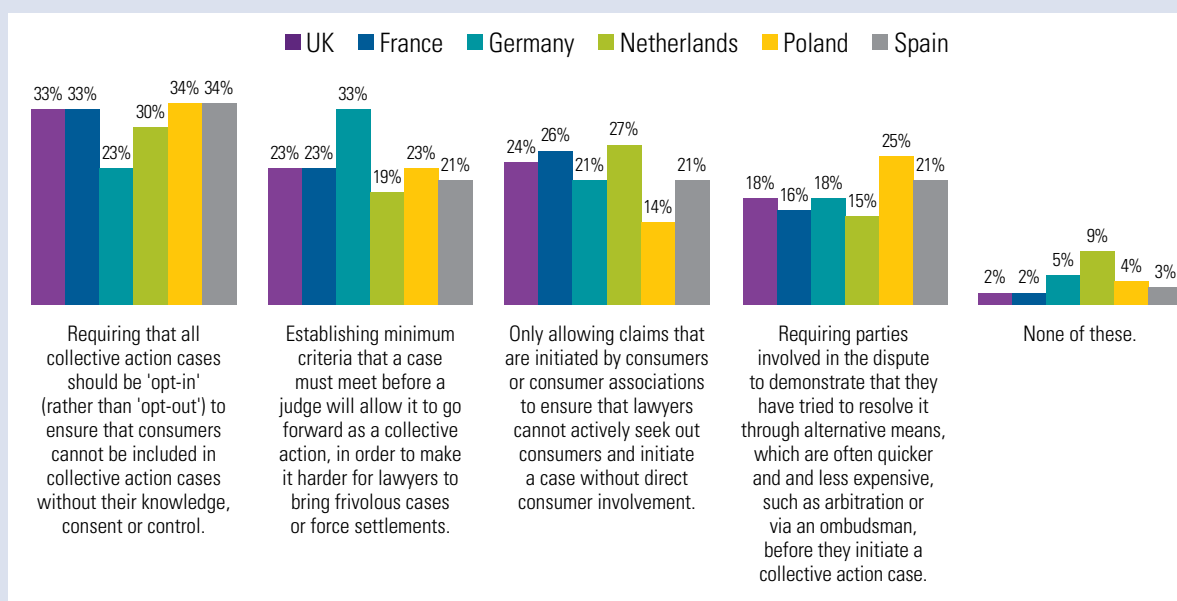
*Focus group participant,
Barcelona, Spain*

This pattern is relatively consistent across the six surveyed EU Member States, with the exception of consumers in Germany. There, the majority of consumers (33%) selected the safeguard of ‘establishing minimum criteria that a case must meet

before a judge will allow it to go forward as a collective action’, known as certification standards, as the most important to them and 23% selected the safeguard of ‘requiring that all collective action cases are ‘opt-in’ (rather than ‘opt-out’)’.

Perceptions of Which Collective Action Safeguard is Most Important by Country

Shown by Member State



And which one of these safeguards, if any, is most important to you? Base: all respondents across all surveyed Member States who support any safeguard (n=5566)

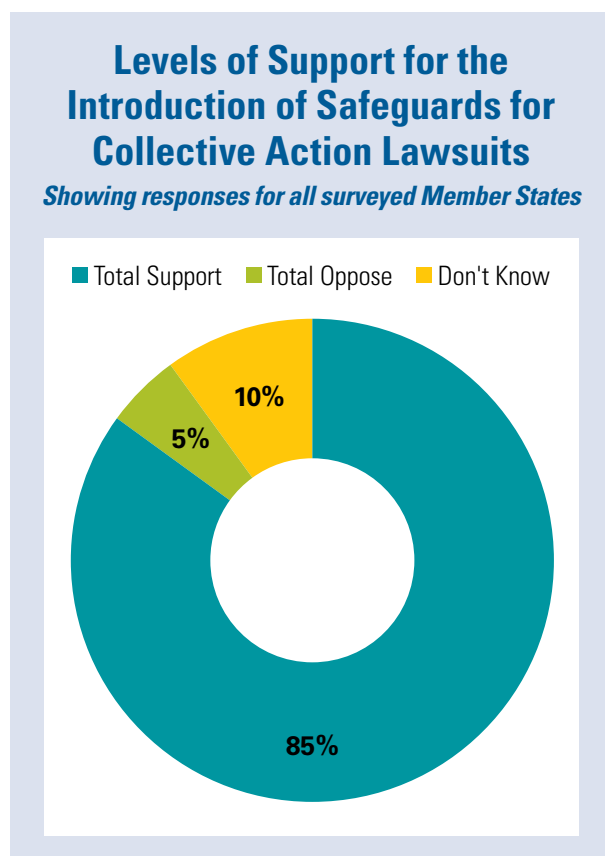
Other notable differences by EU Member State include higher than average levels of support for alternative means of dispute resolution (ADR) in Poland, and comparatively lower levels of support in Poland for the safeguard which requires claims to be initiated by consumers or consumer associations only.

“I think that the option of arbitration and the ombudsman shouldn't be discarded—this has worked really well for me in the past.”

*Focus group participant,
Barcelona, Spain*

Overall Support for the Introduction of Safeguards for Collective Actions

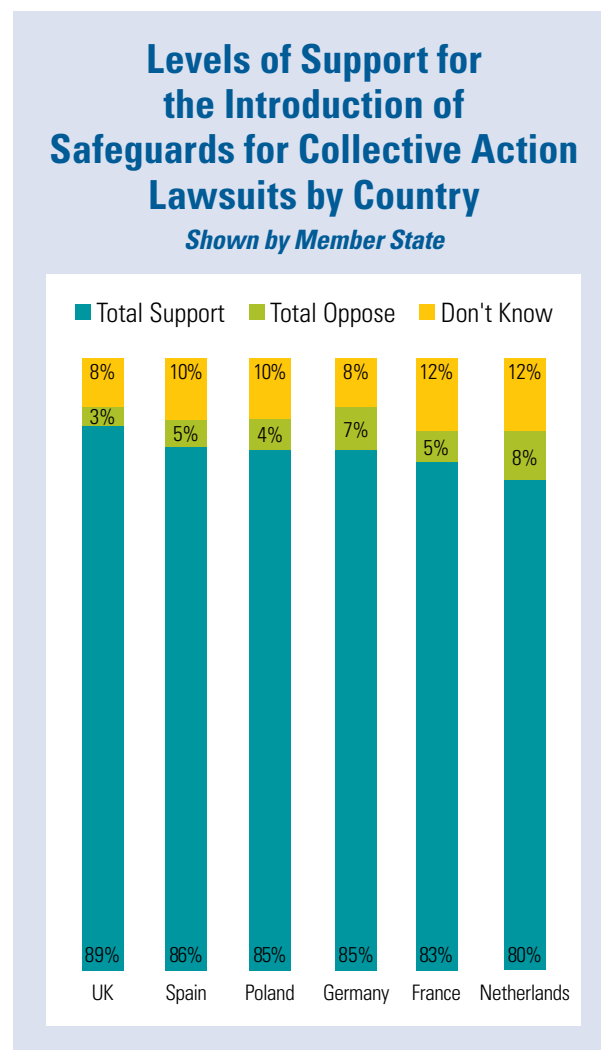
After seeing specific examples of potential safeguards to ensure that collective action cases operate in consumers' best interests, an overwhelming majority (85%) of respondents say that they support the introduction of safeguards for collective action lawsuits. Just 5% oppose the introduction of safeguards for collective action lawsuits, while 10% 'don't know'.



In view of what you have read, how strongly do you support or oppose the introduction of safeguards for collective action lawsuits? Base: all respondents across all surveyed Member States (n=6177)

Support is strongly held across all surveyed EU Member States, with a minimum of 4 in 5 respondents in each country stating that they support the introduction of safeguards for collective action lawsuits.

Support for the introduction of safeguards is highest in the UK, but only marginally so. Qualitatively, respondents in the UK and Spain tended to describe less trust in institutions ensuring that the justice system and models of redress work in consumers' best interests.



In view of what you have read, how strongly do you support or oppose the introduction of safeguards for collective action lawsuits? Base: all respondents across all surveyed Member States (n=6177)

The lowest level of support (80%) is in the Netherlands, which is still a very high percentage. This may reflect higher levels of trust in standards and regulation in the Netherlands and therefore perceptions that the legal system is less likely to be open to abuse.

The Importance of Consistent Collective Action Safeguards Across the EU

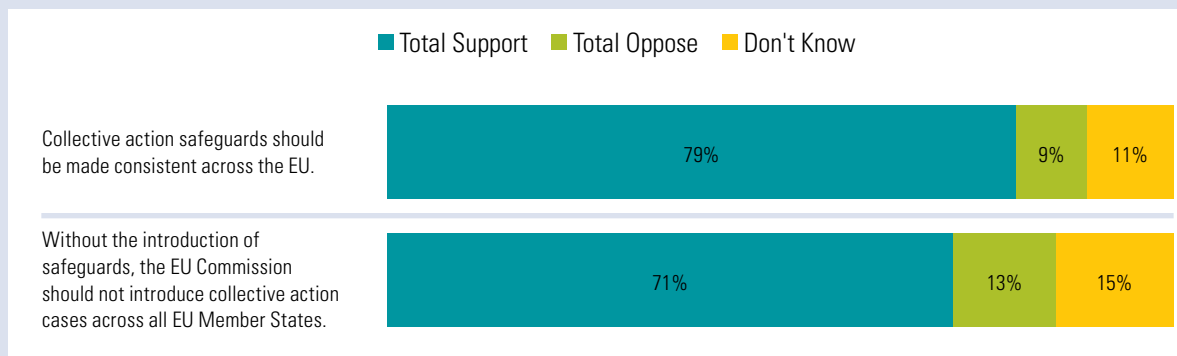
Nearly 80% of consumers feel it is important that collective action safeguards are consistent across the EU. Similarly, 7 in 10 consumers agree with the statement that 'without the introduction of safeguards, the EU Commission should not introduce collective action cases across all Member States' (71%).

“ I’d prefer every country to do the same thing, on a European level. Or everything should be done on an EU level first of all. ”

*Focus group participant,
Rotterdam, the Netherlands*

Consumer Agreement with the Following Statements on Safeguards

Showing responses for all surveyed Member States



Based on the information you have seen about collective actions, and the potential safeguards for collective actions, how strongly do you agree or disagree with the following statements? Base: all respondents across all surveyed markets (n=6177)

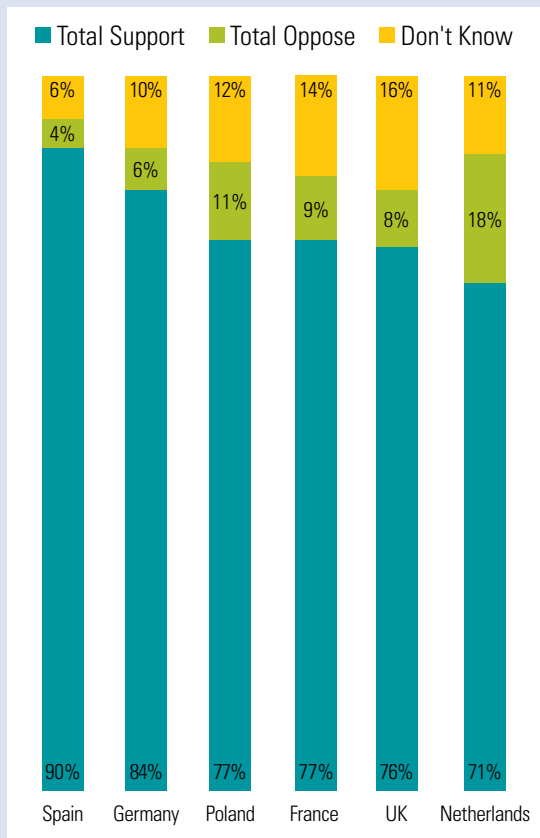
Out of the surveyed Member States, consumers in Spain and Germany are most likely to agree that collective action safeguards should be made consistent across the EU, with almost half of Spanish consumers (47%) surveyed strongly agreeing that safeguards should be consistent, and 44% of consumers in Germany selecting this option. Dutch consumers are least likely to agree that

it is important that safeguards should be made consistent across the EU, potentially reflecting higher levels of trust in the national system to protect consumers' best interests. Levels of positivity towards the national government in the Netherlands are higher than for any other Member State surveyed, at 43% compared to 32% overall.

“ Nearly 80% of consumers feel it is important that collective action safeguards are consistent across the EU. ”

Support for the Introduction of Consistent Safeguards Across the EU

Shown by Member State



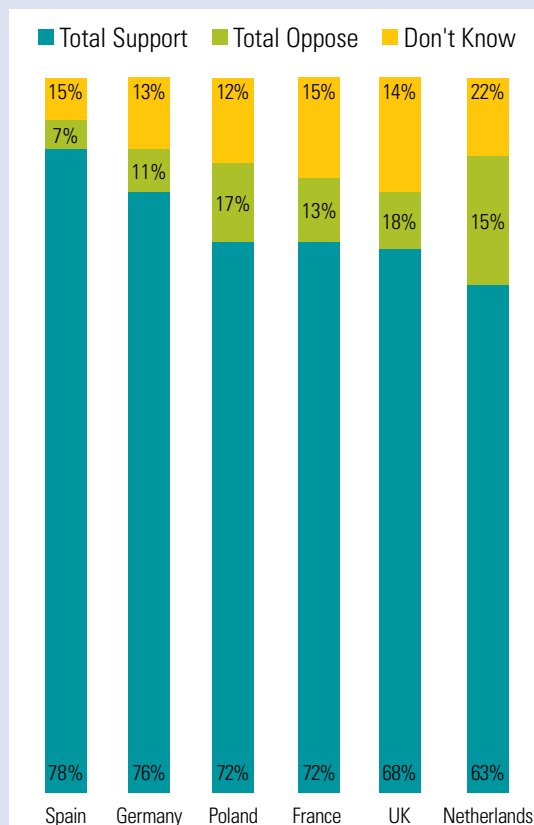
Based on the information you have seen about collective actions, and the potential safeguards for collective actions, how strongly do you agree or disagree the following statement? Collective action safeguards should be made consistent across the EU. Base: all respondents across all surveyed markets (n=6177)

Consumers in Germany (along with those from the UK) are also particularly likely to agree that the EU Commission should not introduce collective action cases across all EU Member States without the introduction of safeguards, with 76% and 78% of consumers in these markets respectively agreeing with this statement.

Agreement with this statement is slightly lower among French consumers (though the majority still agree), partly reflecting higher proportions of consumers who feel neutral or unsure about this statement.

Support for EU Action on Collective Actions Only if Safeguards Are Introduced

Shown by Member State



Based on the information you have seen about collective actions, and the potential safeguards for collective actions, how strongly do you agree or disagree the following statement? Without the introduction of safeguards, the EU Commission should not introduce collective action cases across all EU Member States. Base: all respondents across all surveyed markets (n=6177)

Sentiment towards the EU is a strong indicator of agreement with these statements. In all countries, those who are positive towards the EU are more likely to agree that safeguards should be made consistent across all Member States.

“ It’s positive that the EU might be getting more involved—they might be more neutral. ”

*Focus group participant,
Barcelona, Spain*

Summary of Key Findings on Collective Actions Safeguards

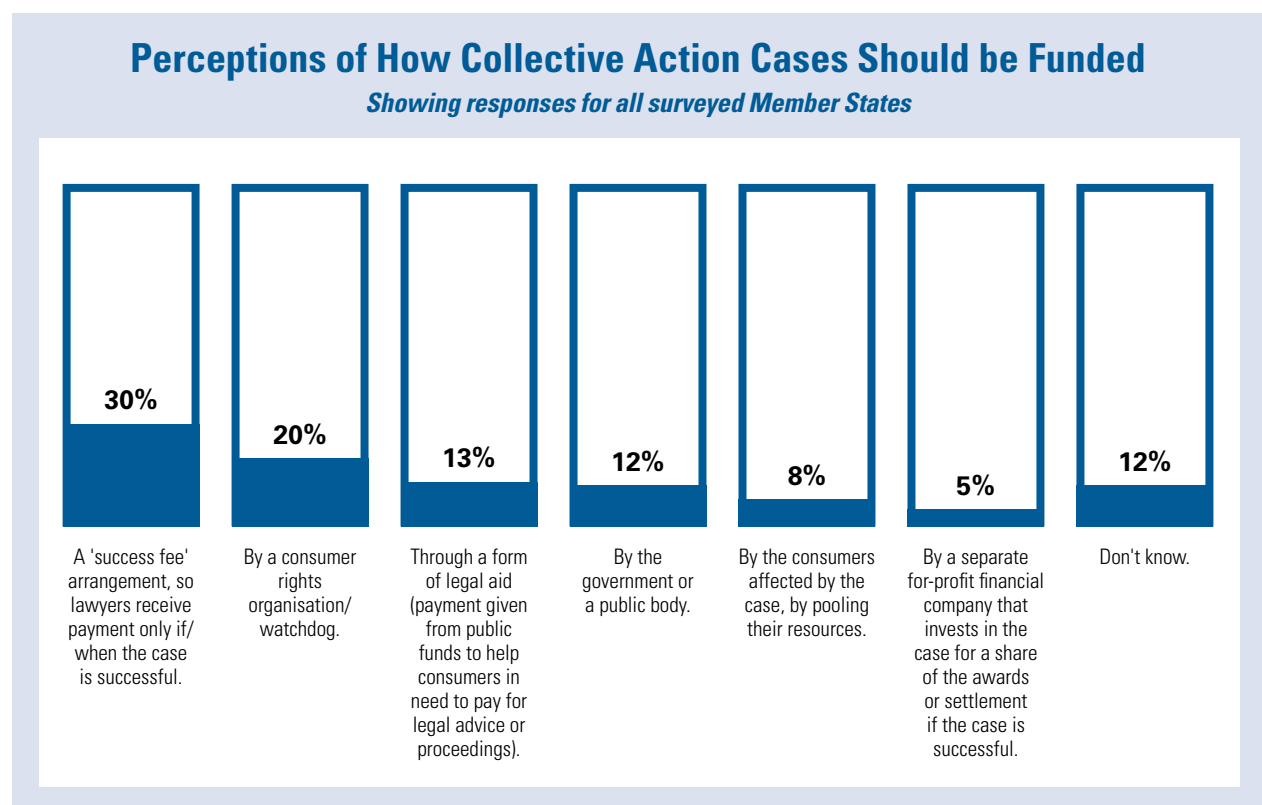
- 85% of consumers support safeguards for collective action lawsuits.
- Nearly 70% of consumers across the six surveyed EU Member States do not support the introduction of collective action lawsuits without safeguards in place to protect the parties involved in the case from abuse.
- A significant majority of consumers surveyed support each proposed safeguard. When consumers were asked which safeguard is most important to them, ensuring that collective action models are adopted according to an ‘opt-in’ rather than ‘opt-out’ mechanism emerges as consumers’ top priority (31%).
- Nearly 80% of consumers feel it is important that collective action safeguards are made consistent across the EU.
- 71% of consumers feel that without the introduction of safeguards, the EU Commission should not introduce collective action cases across all EU Member States.

Attitudes Towards Funding of Collective Action Cases

Consumers' Preferred Funding Model for Collective Action Cases

When asked how collective action cases should be funded to ensure that they are most likely to operate in consumers' best interests, 30% of the surveyed consumers say that collective actions should be funded by a 'success fee', whereby lawyers only receive payment

for the case if it is successful. A further 20% of consumers select funding by a consumer rights organisation or watchdog as their preferred funding model. Just 5% of consumers believe that funding by a separate for-profit financial company, known as third party litigation funding (TPLF), will ensure that collective action cases operate in consumers' best interests.



There are several different ways of funding collective action cases. Which of the following methods of funding do you think will best ensure that they operate in consumers' best interests? Base: all respondents across all surveyed markets (n=6177)

These findings are consistent across the six surveyed EU Member States. Other notable points include:

- Particularly strong support for the ‘success fee’ in the UK compared to other markets, with 36% of consumers in the UK selecting this option, compared to 30% on average.
- Higher levels of support for funding by a consumer rights organisation or watchdog in France than the other surveyed markets, with 26% of French consumers selecting this option compared to 20% on average.
- Slightly higher levels of support for legal aid in Germany (17%) compared to the average across all six surveyed Member States (13%).

*“ It’s making
a business of
absolutely everything
...it’s benefitting
from people’s
misfortune! ”*

*Focus group participant,
Barcelona, Spain*

Methodological Note

Having been asked to select which funding model they felt would best ensure that collective action cases work in consumers’ best interests, consumers were then shown a brief explanatory paragraph setting out the practice of TPLF and explaining that these financial firms (such as investment firms running ‘hedge funds’) invest in a case as a way to make profits, even if they have no connection to the lawsuit. This included a description of how third party funders tend to work and the current status of this industry in the EU. See Appendix 2 for the full supporting text.

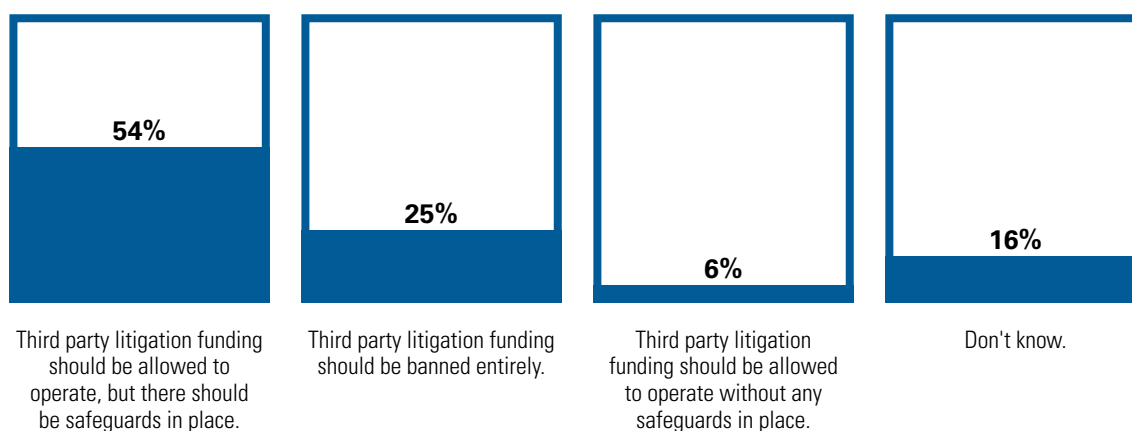
Perceptions Towards Third Party Litigation Funding

While a majority of consumers across the six surveyed EU Member States say TPLF should be allowed to operate if safeguards are in place (54%), a significant number believe that the practice should be banned entirely (25%).

In focus groups, consumers who adopted either of these positions tended to describe concern that third party funders would fail to act in consumers’ best interests, would take overall control over the case, and might pursue cases on the basis of profit rather than justice. Reflecting this, just 6% of the consumers surveyed believe that TPLF should be allowed without any safeguards in place.

Perceptions Towards TPLF

Showing responses for all surveyed Member States



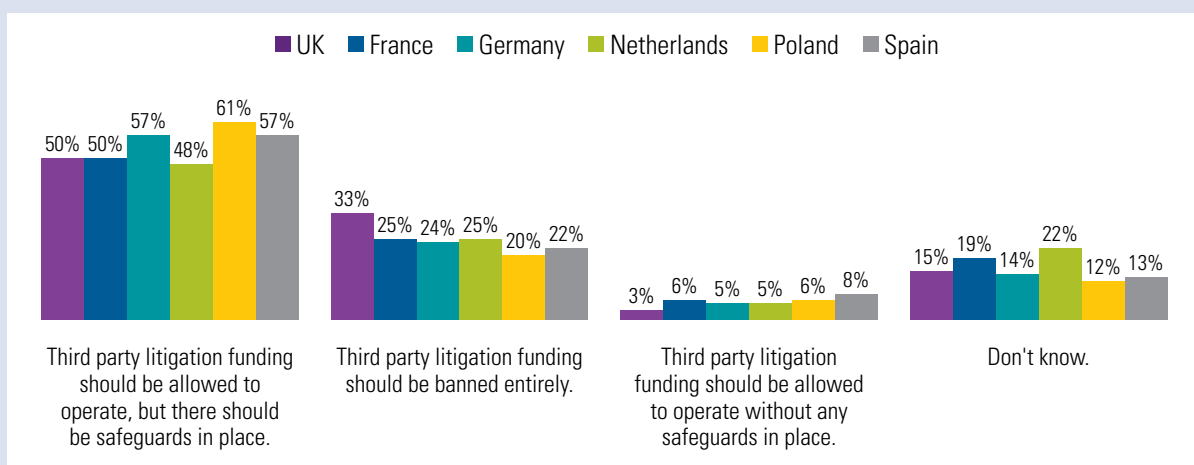
Based on what you have read so far, which of the following best describes your position on the issue? Base: all respondents across all surveyed markets (n=6177)

These findings are consistent across the six surveyed EU Member States, with the exception of the UK, where consumers are significantly more likely to adopt the position that TPLF should be banned entirely (at 33%, compared to the average of 25%). This reflects

qualitative findings in which consumers from the UK were particularly concerned about potential threats to the integrity of the legal system and had already detected an increasing commercialisation or Americanisation of the system.

Perceptions Towards TPLF by Country

Shown by Member State



Based on what you have read so far, which of the following best describes your position on the issue? Base: all respondents across all surveyed markets (n=6177)

“It’s just a way to make money isn’t it? They’re not trying to make good, they’re just thinking: Great—this is a good way to make money.”

Focus group participant, Rotterdam, the Netherlands

“If there are obligations they should obviously comply with them, but I reject third party funding. For me it’s a kind of exploitation. I would ban it.”

Focus group participant, Warsaw, Poland

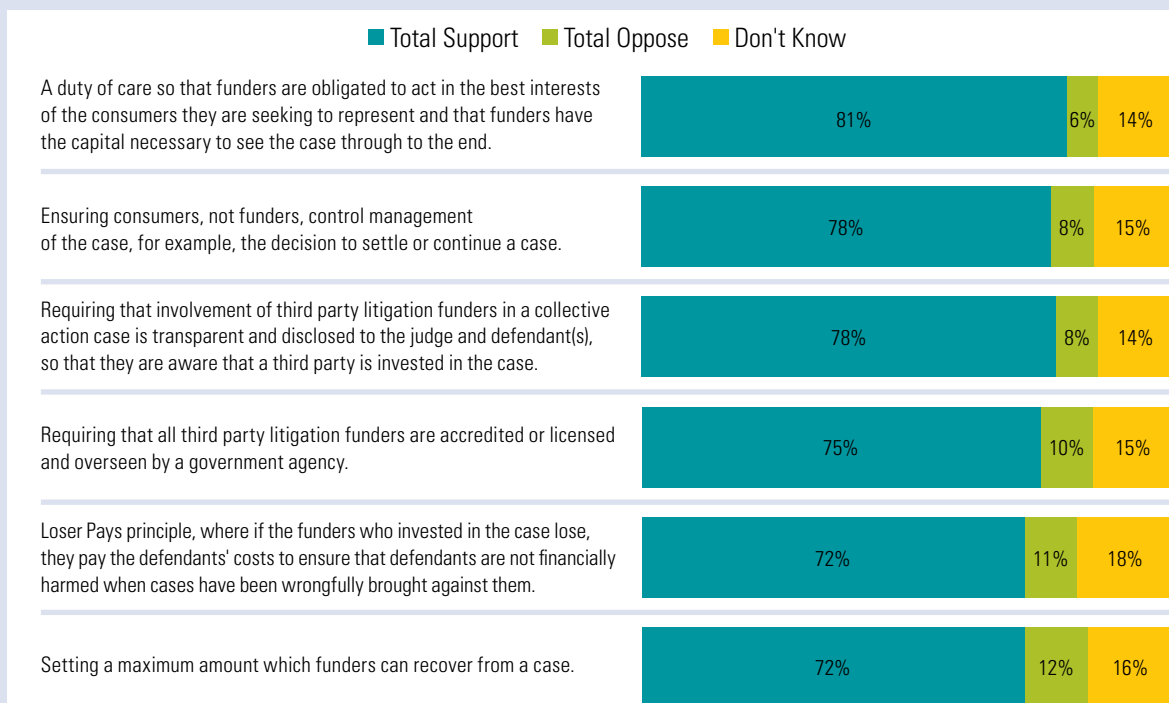
Support for Safeguards for Third Party Litigation Funding

Reflecting overall support for ensuring that TPLF is only introduced with safeguards in

place (if consumers support its introduction at all), a majority of consumers surveyed support each of the six tested safeguards, with a minimum of 72% of consumers supporting each safeguard.

Support for Specific TPLF Safeguards

Showing responses for all surveyed Member States



Some specific safeguards that have been suggested to ensure that the practice of third party litigation funding operates in consumers’ best interests. For each option, please rate how much you support or oppose the introduction of this safeguard. Base: all respondents across all surveyed markets (n=6177)

“ If there were no safeguards then it would all go bust. Chaos. Look at what’s happening in America, it’s becoming a business model and the consequences will be very tough. Prices will go up, anti-claim insurances and all that. Shooting yourself in your own foot. ”

*Focus group participant,
Rotterdam, the Netherlands*

When asked which of these safeguards is most important, consumers are most likely to select ensuring that consumers, not funders, control management of the case (22%) and that all funders be accredited or licenced by a government agency (22%). A significant proportion also select introducing a duty of care so that funders are obliged to act in consumers’ best interests (20%).

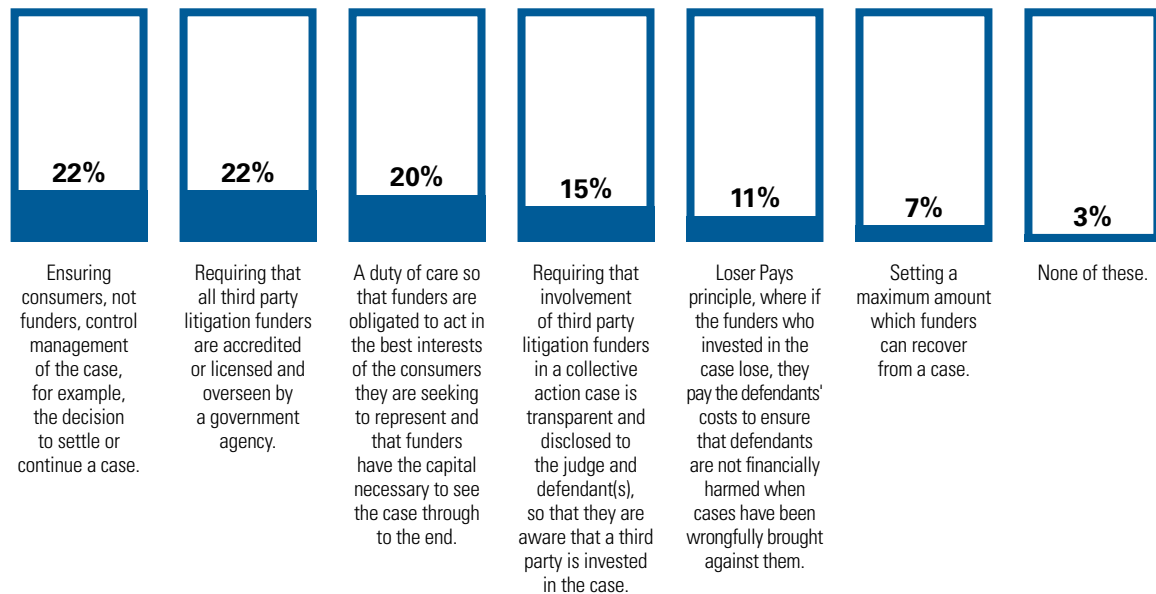
These top priority safeguards appear to reflect a broader sentiment, strongly felt in the focus groups, that third party litigation funders are unlikely to be accountable to the consumers in a class without controls or regulation in place. For many consumers, this is related to a broader point about conduct, and a perception that third party funders (or ‘hedge funds’) and large financial firms cannot be trusted to behave in consumers’ best interests without intervention from government and regulators.

“ I would like a body to control where the money comes from—we don’t know who is funding [lawsuits] at the moment. I want greater transparency. ”

*Focus group participant,
Lyon, France*

Perceptions of Which TPLF Safeguard is Most Important

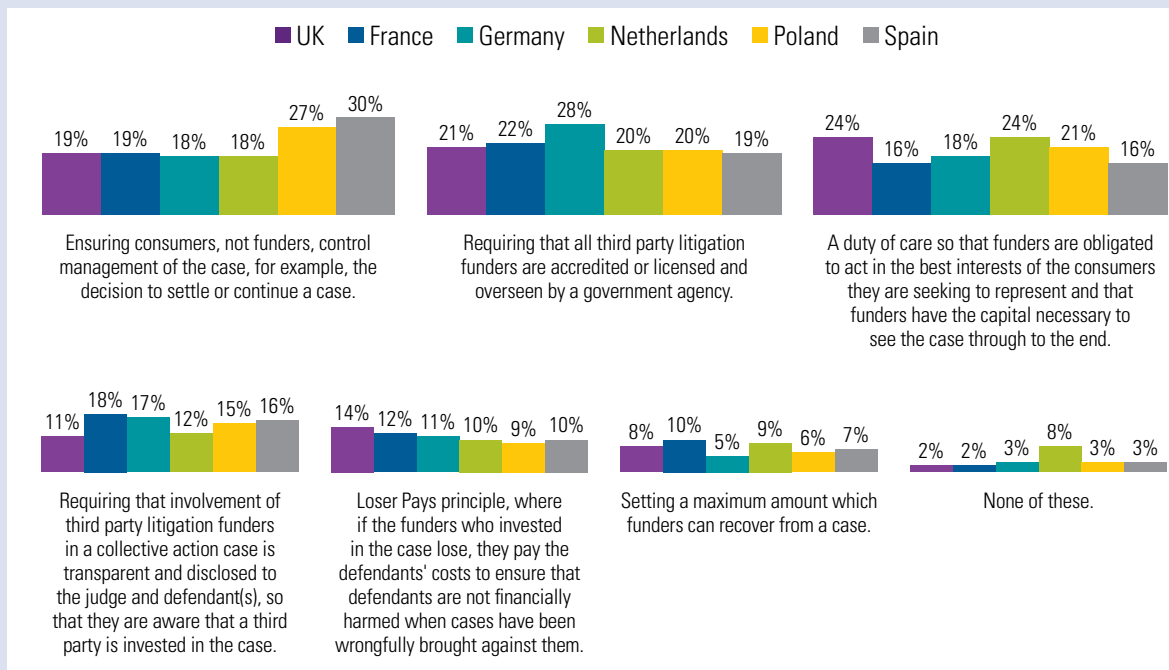
Showing responses for all surveyed Member States



And which one of these safeguards, if any, is most important to you? Base: all respondents across all Member States who support any safeguard (n=5509)

Perceptions of Which TPLF Safeguard is Most Important by Country

Shown by Member State



And which one of these safeguards, if any, is most important to you? Base: all respondents across all Member States who support any safeguard (n=5509)

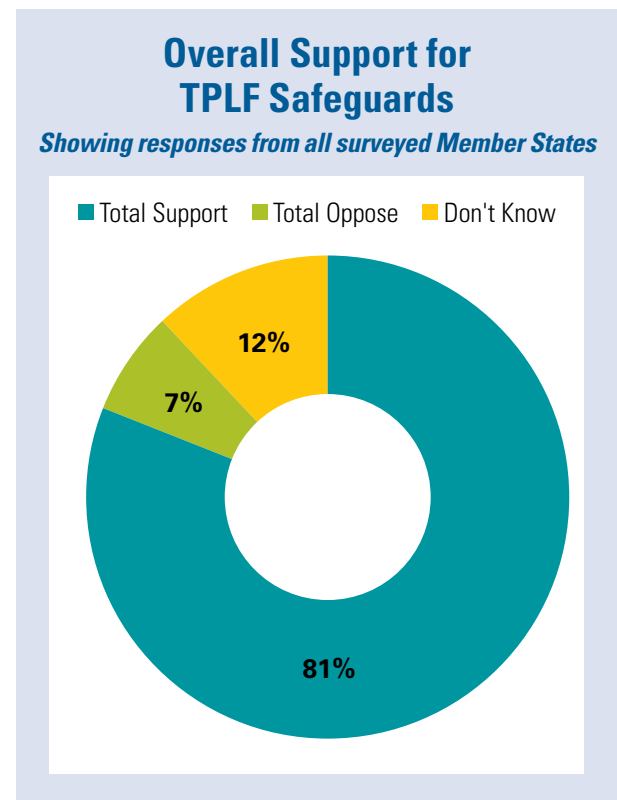
“ [M]ore than 4 in 5 consumers across all Member States surveyed state that they support the introduction of safeguards for TPLF. ”

Underlying these figures are relatively high levels of variation by EU Member State:

- Consumers in Poland and Spain are significantly more likely than consumers from other Member States to select the safeguard of 'ensuring that consumers, not funders, control management of the case' (at 27% and 30% respectively, compared to the average of 22% across all Member States).
- Consumers in Germany are particularly likely to select the safeguard of 'requiring that all third party litigation funders are accredited or licenced and overseen by a government agency' (at 28% compared to the 22% average).
- Consumers in the UK and in the Netherlands are most likely to select a 'duty of care' for funders as the most important safeguard that they would like to see introduced (at 24% in both markets, compared to the average of 20%).
- Consumers in France are slightly more likely than average to require that the involvement of TPLF is transparent and disclosed (at 18% compared to 15% on average), and are more likely than any other market to select the safeguard of 'setting a maximum amount which funders can recover from a case' (at 10% compared to 7% overall).

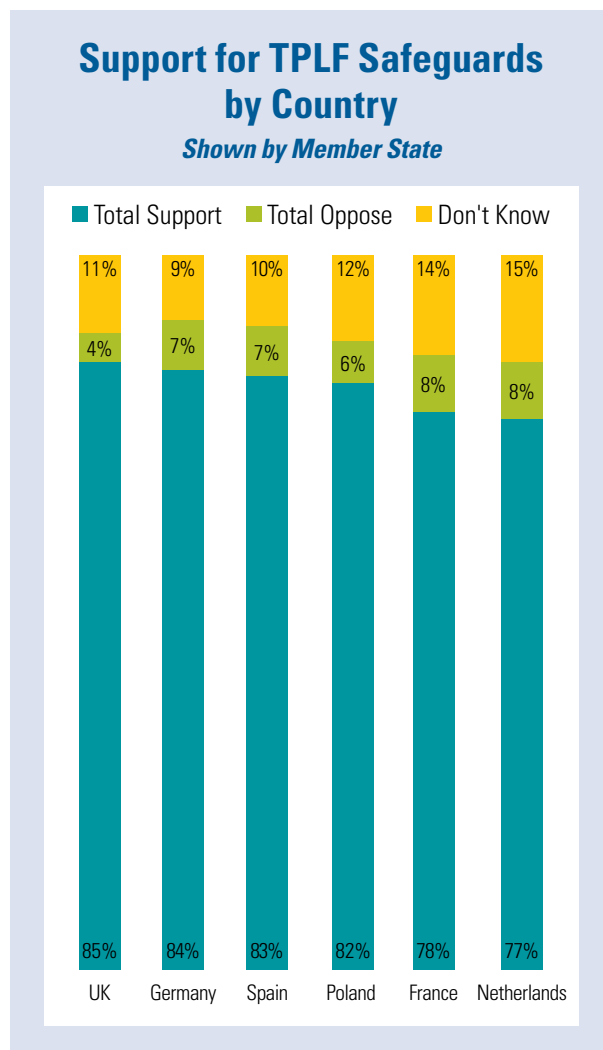
Overall Support for the Introduction of Safeguards for TPLF

Having read the examples of the kinds of safeguards which might be introduced to ensure that TPLF operates in consumers' best interests, more than 4 in 5 consumers across all Member States surveyed state that they support the introduction of safeguards for TPLF (81%).



After everything you have just read, how strongly do you support or oppose the introduction of safeguards to ensure that cases funded by third party litigation funding operate in consumers' best interests? Base: all respondents across all surveyed markets (n=6177)

This position is held consistently across all surveyed Member States, and is particularly prevalent in the UK, where 52% of consumers say that they strongly support potential safeguards for TPLF (with a total of 85% strongly supporting or supporting these safeguards).



After everything you have just read, how strongly do you support or oppose the introduction of safeguards to ensure that cases funded by third party litigation funding operate in consumers' best interests? Base: all respondents across all surveyed markets (n=6177)

Summary of Key findings on TPLF

- Just 1 in 20 consumers across the six surveyed EU Member States believe that funding by a separate for-profit financial company will ensure that collective action cases operate in consumers' best interests (5%).
- The majority of consumers surveyed (54%) say that TPLF should only be allowed to operate with safeguards in place, and a further 25% believe that the practice should be banned entirely.
- A majority of consumers in each of the six surveyed EU Member States support each of six tested safeguards for TPLF, with a minimum of 72% of consumers selecting each safeguard. When asked which of these safeguards is most important, consumers are most likely to select ensuring that consumers, not funders, control management of the case (22%) and that all funders be accredited or licensed by a government agency (22%).

Appendices

Appendix 1: Full Text Shown to Survey Respondents to Describe Collective Action

Collective action is a form of civil lawsuit which aims to obtain redress (i.e., a resolution or compensation awarded to a consumer who has been wronged by a company or organisation) for large groups of consumers at the same time.

Collective action lawsuits are similar to 'class action' cases commonly used in the United States: a lawyer brings a case to court on behalf of a group of consumers, all of whom have allegedly been wronged by a company in the same way.

Collective actions are a relatively new practice in Europe. These cases have grown in some EU member states, including the UK, France, Spain, and Poland, and after next year, may become law in every EU member state.

Some things that have been said *in support* of collective action lawsuits include:

- Collective action lawsuits allow consumers to claim redress from a company without putting in any of their own time, money and energy.
- Collective action cases give consumers more power against businesses and help consumers to hold businesses to account when they have been wronged.

- The threat of collective action cases can affect the way that businesses behave. For example, businesses might change their products, services or processes so that they avoid collective action cases.
- Collective action cases are more efficient than individual lawsuits because they secure justice for multiple individuals at once.

Some things that have been raised as *concerns* about collective action lawsuits include:

- Collective action cases are initiated and controlled by lawyers seeking to make a profit, rather than by consumers. The financial gain for lawyers tends to far outweigh the pay-out for consumers.
- Because they are so lucrative, lawyers actively seek out potential collective action cases to work on, and encourage people to join these cases. This means that frivolous lawsuits can be brought, even when no real consumer harm has taken place.
- Collective action cases are slower and less effective than alternative methods of dispute resolution for consumers, including arbitration (settlement by an independent third party) and ombudsmen (a public authority appointed investigate consumer complaints).

- ‘Opt-out’ rather than ‘opt-in’ collective action cases are being promoted, meaning that a consumer’s name and other personal details can be included in a case without their knowledge or consent.

Appendix 2: Full Text Shown to Survey Respondents to Describe Third Party Litigation Funding

As collective actions are becoming more common in Europe, so is a practice known as third party litigation funding. Third party litigation funding is a new and growing industry across the EU, which allows financial firms (such as investment firms running ‘hedge funds’) to invest in a case as a way to make profits, even if they have no connection to the lawsuit. One litigation funder, Bentham IMF (an American-owned firm which has entered into European markets), claims to average a 300% return on these investments. At present, third party litigation funding is not regulated in the EU.

Typically, the financial firm will pay the lawyers and other legal costs, and in return, they get a percentage of any money eventually won for the claimants (in the United States, up to 50% of the award for the claimants). If the claimants lose, the litigation funder recovers nothing.

Third party litigation funders have said that this practice increases access to justice for consumers by funding cases which may not otherwise get off the ground. Critics have said that third party litigation funders are unlikely to act in consumers’ best interests, but will instead be focused on the cases that are most likely to make them a profit. This may particularly be the case in collective actions, where the claimants have little control over the case.



U.S. CHAMBER

Institute for Legal Reform

202.463.5724 main
202.463.5302 fax

1615 H Street, NW
Washington, DC 20062

instituteforlegalreform.com