



U.S. CHAMBER

Institute for Legal Reform

A 'Fair Deal' for Consumers?

An Update on EU Consumer Attitudes Towards Collective Actions and Litigation Funding

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JULY 2018





U.S. CHAMBER
Institute for Legal Reform

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Executive Summary

European Collective Redress

Collective redress or collective actions are a form of civil litigation used to group together plaintiffs, often consumers, who have all allegedly been harmed in the same way. These lawsuits are similar to 'class actions' commonly used in the United States. Some form of collective redress can now be found in almost every Member State of the European Union (Member State).

On April 11, 2018, the European Commission released a comprehensive consumer protection policy package, known as the 'New Deal for Consumers'. This package contains a proposal for a directive on representative actions, which would introduce an EU-wide system for consumer collective actions.

As the European Parliament and the Council of the European Union debate this proposal, it is important to understand how European consumers view this initiative.

This survey was completed by 5,097 consumers from five Member States: France, Germany, the Netherlands, Poland, and Spain. The mean margin of error across the five markets is 3.07. All respondents were shown a short explanatory passage outlining the principle of collective action cases. They were then shown some information about the potential benefits of the European Commission's proposal and potential drawbacks.

Respondents were then asked about specific protections, commonly known as safeguards, which have been suggested to ensure that collective action lawsuits operate in consumers' best interests. Respondents were also asked about methods of funding collective action claims and the operation of third party litigation funding (TPLF) in the EU.

ATTITUDES TOWARDS THE EUROPEAN COMMISSION'S PROPOSAL ON COLLECTIVE ACTIONS

- Only 13% of consumers support the European Commission's proposal on collective actions as it is currently drafted.
- The majority (57%) support the introduction of the European Commission's proposal on collective actions, but only with additional safeguards in place. 13% oppose the European Commission's proposal as drafted and 17% don't know.
- 82% agree that collective action safeguards should be made consistent across the EU.
- 67% agree that without the introduction of safeguards, the European Commission should not introduce collective actions across the EU.

“ 67% of consumers agree that without the introduction of safeguards, the European Commission should not introduce collective actions across the EU. ”

SUPPORT FOR COLLECTIVE ACTION SAFEGUARDS

A significant majority (79%) of consumers say that they support the introduction of safeguards for collective action lawsuits.

When presented with four potential safeguards against litigation abuse that are not currently included in the European Commission’s proposal on collective actions, a significant majority of consumers support each safeguard:

- 77% of consumers support requiring that consumers actively ‘opt-in’ to cases to ensure that they are not included without their knowledge, consent, or control.
- 75% support establishing minimum criteria that a case must meet before it can go forward as a collective action, to make it harder for lawyers to bring frivolous mass cases or force settlements.
- 74% support requiring parties to demonstrate that they have tried to resolve a claim through quicker, less expensive means, such as arbitration or mediation, before permitting a collective action to go forward.
- 65% support only allowing claims that are initiated by consumers or publicly funded consumer associations that are not affiliated with law firms or litigation investors.

Third Party Litigation Funding of Collective Actions

TPLF is a growing industry across the EU, whereby financial firms (such as investment firms running ‘hedge funds’) invest money to bring lawsuits in exchange for a percentage of the settlement or judgment if the case is successful. As the name states, these funders are third parties and usually have no relation to the claim. The major litigation funding firms started out by backing cases in Australia, and the practice has quickly spread around the world, including throughout Europe.

In the European Commission’s proposal for a directive on representative actions, two oversight measures for TPLF are included. Survey respondents were given a brief background on TPLF and asked about the TPLF safeguards included in the European Commission’s proposal and other potential safeguards for the practice.

ATTITUDES TOWARDS FUNDING OF COLLECTIVE ACTION CASES

- 20% of consumers think the practice of TPLF should be banned entirely and 57% think TPLF should be allowed to operate, but only with safeguards in place.
- Only 6% support the operation of TPLF without safeguards.

“ A significant majority (78%) of consumers support the introduction of safeguards for TPLF generally, and a notable majority of consumers support additional TPLF safeguards not currently included in the European Commission’s proposal. ”

SUPPORT FOR TPLF SAFEGUARDS

A majority of consumers support the two TPLF safeguards included in the European Commission’s proposal:

- 75% of consumers support requiring the involvement of third party litigation funders in a class action case to be transparent and disclosed to the judge and defendant(s), so that they are aware that a third party is invested in the case.
- 66% support prohibiting third party litigation funders from influencing the decisions of the certified organisation bringing the claim, including on settlements.

A significant majority (78%) of consumers support the introduction of safeguards for TPLF generally, and a notable majority of consumers support additional TPLF safeguards not currently included in the European Commission’s proposal:

- 78% of consumers support a duty of care so that funders are obligated to act in the best interests of the consumers they are seeking to represent and that funders have the capital necessary to see the case through to the end.
- 76% support ensuring consumers, not funders, control management of the case, for example, the decision to settle or continue a case.
- 72% support requiring that all third party litigation funders are accredited or licensed and overseen by a government agency.
- 70% support the ‘loser pays’ principle, where if the funders who invested in the case lose, they pay the defendants’ costs to ensure that defendants are not financially harmed when cases have been wrongfully brought against them.
- 69% support setting a maximum amount that funders can recover from a case.

Background and Methodology

Background

Collective redress is not a new issue for the European Union. The European Commission itself has stated that it has been working on collective redress issues for almost 20 years, particularly in the areas of consumer protection and competition policy.

In June 2013, the European Commission adopted a non-binding Recommendation on common principles for collective redress mechanisms in Member States. The Recommendation proposed safeguards against litigation abuse, such as a ban on punitive damages and favouring opt-in over opt-out collective actions. The Recommendation asked Member States to incorporate collective redress mechanisms into their national systems, and planned to assess the implementation of its Recommendation after a period of four years.

In January 2018, the European Commission released its report on the implementation of the 2013 Recommendation. The report finds that there has been limited follow-up to the Recommendation, and that Member States have developed vastly different systems of collective redress, without many of the safeguards included in the European Commission's 2013 Recommendation. In the next steps included in the report, the European Commission stated its intention to include collective redress as part of its 'New Deal for Consumers', a package of consumer-focused legislative initiatives.

In April 2018, the European Commission published its New Deal for Consumers, and with it a proposal to create the first pan-EU consumer collective action system. The proposal would allow 'qualified entities', such as consumer organisations, to represent a group of consumers harmed by an illegal commercial practice, in some cases without the permission or knowledge of those consumers.

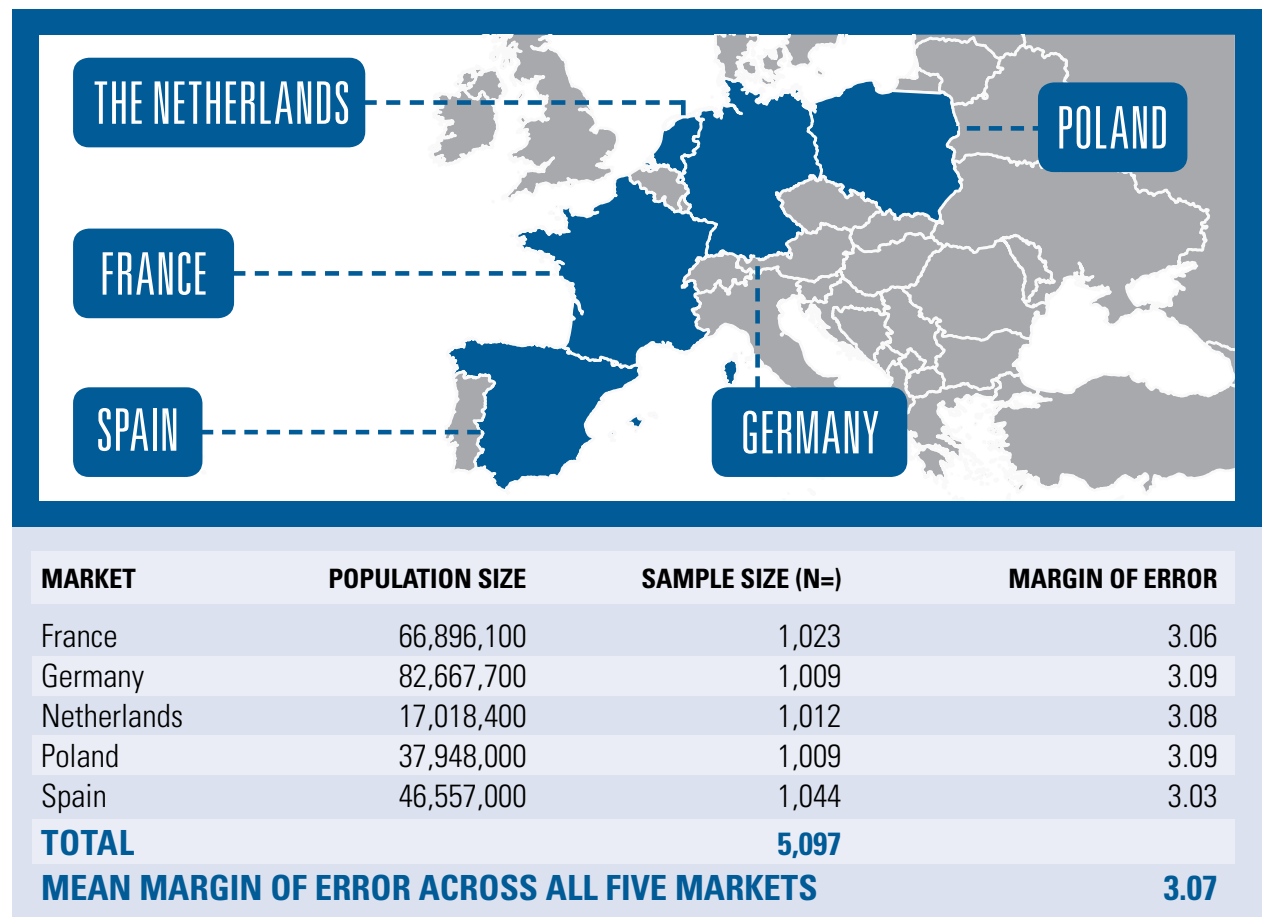
While it is already possible for consumers to bring collective actions in many Member States, the proposal would allow qualified entities to bring cases in the courts of every Member State on behalf of consumers from any Member State.

Unfortunately, the system for collective actions proposed by the European Commission is a significant departure from the 2013 Recommendation on how collective action systems should be developed. The majority of safeguards proposed in the European Commission's Recommendation are missing from this proposal.

Before the European Parliament and Council of the European Union legislate on collective actions, it is useful to understand how European consumers view the proposed system that is, in theory, meant to help them receive redress. This report outlines current consumer perceptions of the European Commission's collective redress proposal and the potential means by which these cases could be funded. The report is based on a survey conducted in June 2018 in five Member States (France, Germany, the Netherlands, Poland, and Spain).

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 five EU markets in which collective action models have been introduced, and which represent a spread of different Member States across the EU in terms of size, location, and accession date.

Quantitative findings are based on an online survey of 5,097 consumers, designed and weighted to be nationally representative of the adult population aged 18+ of each of the five Member States by gender, age, and income. All Member States

were surveyed in their official language. Numbers of responses for each market break down as shown in the chart above.

Throughout this report, verbatim quotations relate to an open-ended question included in the survey, while figures and percentages are derived from the quantitative portion of the survey. Differences among 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.

ATTITUDES TOWARDS THE EUROPEAN COMMISSION'S PROPOSAL ON COLLECTIVE ACTIONS

Methodological Note

To ensure that all survey respondents had sufficient understanding of collective action cases and the European Commission's proposal to engage with the survey, all respondents were shown a short explanatory passage outlining the principle of collective action cases: that they aim to obtain redress for large groups of consumers who have allegedly been wronged in the same way. They were then shown information about what supporters of the European Commission's proposal say are the potential benefits, including that it could make it easier, cheaper and quicker for consumers to access justice; and what critics say are the potential drawbacks, such as the opportunity for the system to be abused by those looking to make a profit. (See Appendix 1 for the full supporting text.)

Overall Support for the European Commission's Proposal on Collective Actions

Fifty-seven percent of consumers support the European Commission's proposal on collective actions, but only with additional safeguards in place to protect the parties involved in the case. A minority of consumers support the introduction of the proposal without safeguards, and the same proportion oppose the introduction of the proposal, even with safeguards in place (13% for each).

“ I think it's necessary to review the terms of the proposal, so that there is an assurance that lawyers will not take advantage and take cases on subjects that bring them the most money.”

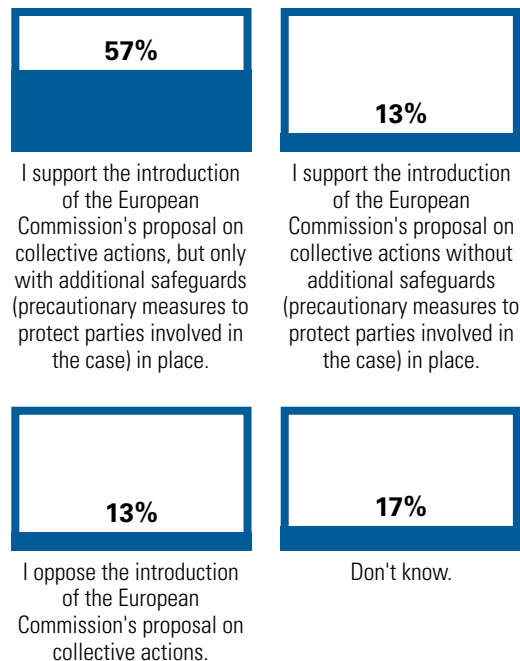
Survey respondent, France

“ Useful, but only with safeguarding measures. It should not be possible to have conditions like in the US.”

Survey respondent, Germany

Perceptions of the European Commission's Proposal on Collective Actions

Showing responses for all surveyed Member States



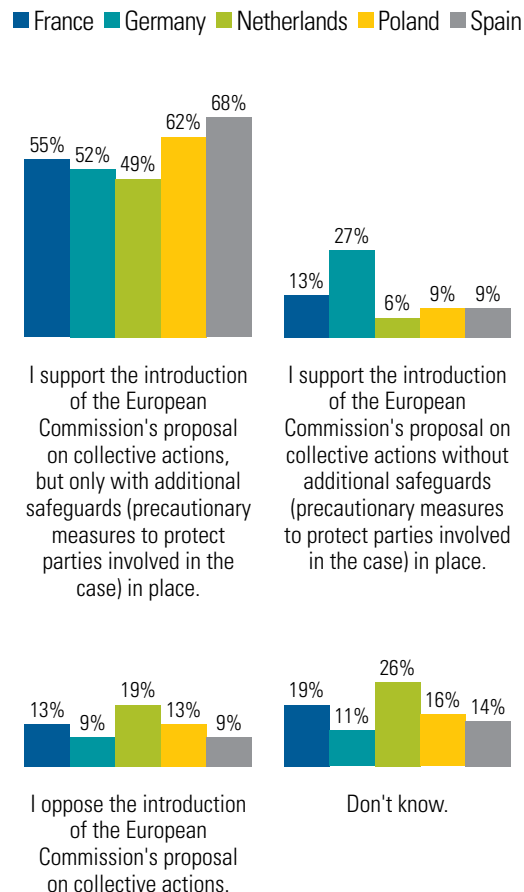
Based on what you have read so far, which of the following best describes your position on the European Commission's proposal on collective actions? Base: all respondents (n=5097)

This pattern is relatively consistent across the five surveyed Member States, with a plurality of consumers in each market saying that they support the introduction of the European Commission's proposal on collective actions, but only with additional safeguards in place.

Of all the surveyed Member States, consumers in the Netherlands are most likely to state that they oppose the introduction of the European Commission's proposal on collective actions (19%), while only 6% of Dutch consumers say that they support the proposal without safeguards.

Perceptions of the European Commission's Proposal on Collective Actions by Country

Shown by Member State



Based on what you have read so far, which of the following best describes your position on the European Commission's proposal on collective actions? Base: all respondents (n=5097)

“If the proposed legislation contains the necessary safeguards, it should be adopted — but only then!”

Survey respondent, Germany

Perceptions of Potential Safeguards for the European Commission's Proposal on Collective Actions

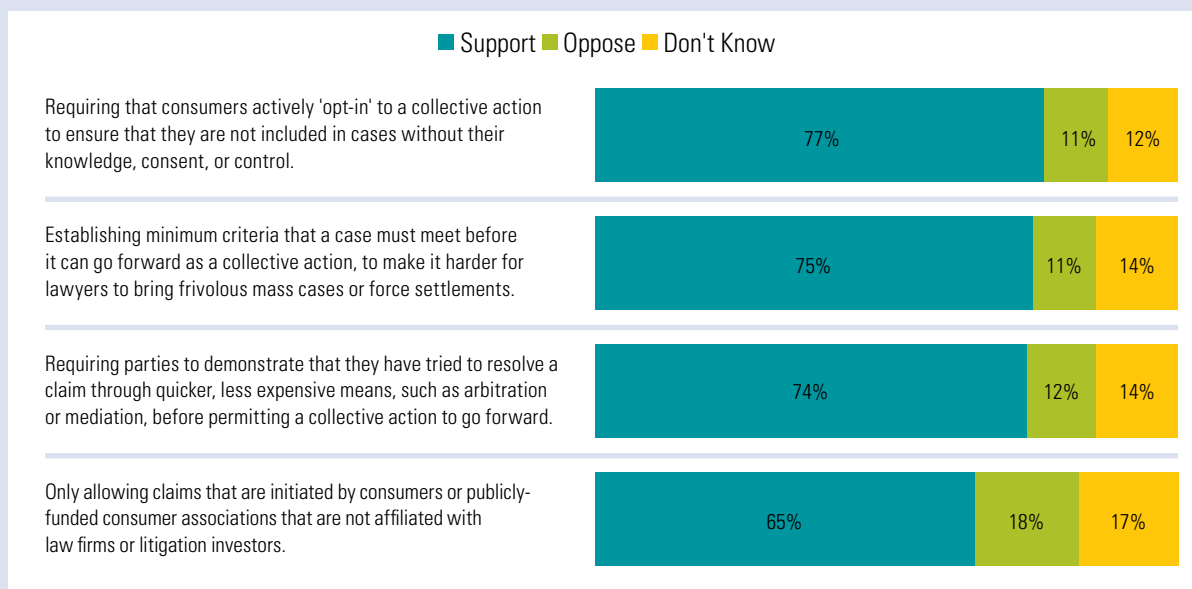
When presented with four potential safeguards that are not currently included in the European Commission's proposal on collective actions, a significant majority of consumers support each safeguard, with

an average of between two thirds and three quarters supporting each safeguard tested. These results are consistent across the five surveyed Member States.

Support is particularly high for ensuring that consumers actively 'opt-in' to a collective action to ensure that they are not included in cases without their knowledge or consent (77%).

Support for Specific Collective Action Safeguards

Showing responses for all surveyed Member States



Here are some safeguards (precautionary measures to protect parties involved in the case), which could be put in place in relation to collective action cases. These safeguards are not currently included in the European Commission's proposal on collective actions. For each of the following options, please rate how much you support or oppose the introduction of this safeguard. Base: all respondents (n=5097)

“ In principle, [collective action] is not so bad, but the consumers don’t always want to be a part of collective action lawsuits, and they might be included without their permission.”

Survey respondent, Spain

“ I agree with the fact that it facilitates the consumer to be able to confront a company that hasn’t acted correctly, but I believe that more protection measures must be added, especially so that the consumer can make the decision to be part of the case or not.”

Survey respondent, Spain

There are some differences in the level of support for each safeguard tested among the five surveyed markets.

Support for requiring parties to demonstrate that they have tried to resolve a claim through quicker, less expensive means is highest in Spain (82%), and lowest in the Netherlands (65%), with one in five consumers in the Netherlands saying that they don’t know if they support or oppose this safeguard (21%).

Support for establishing minimum criteria that a case must meet before it can go forward as a collective action (66%), and support for consumers having to actively ‘opt-in’ (63%), is lowest in the Netherlands. For both of these safeguards, consumers in the Netherlands are more likely to say that they don’t know if they support these safeguards (21% for each) than consumers in any other surveyed Member State.

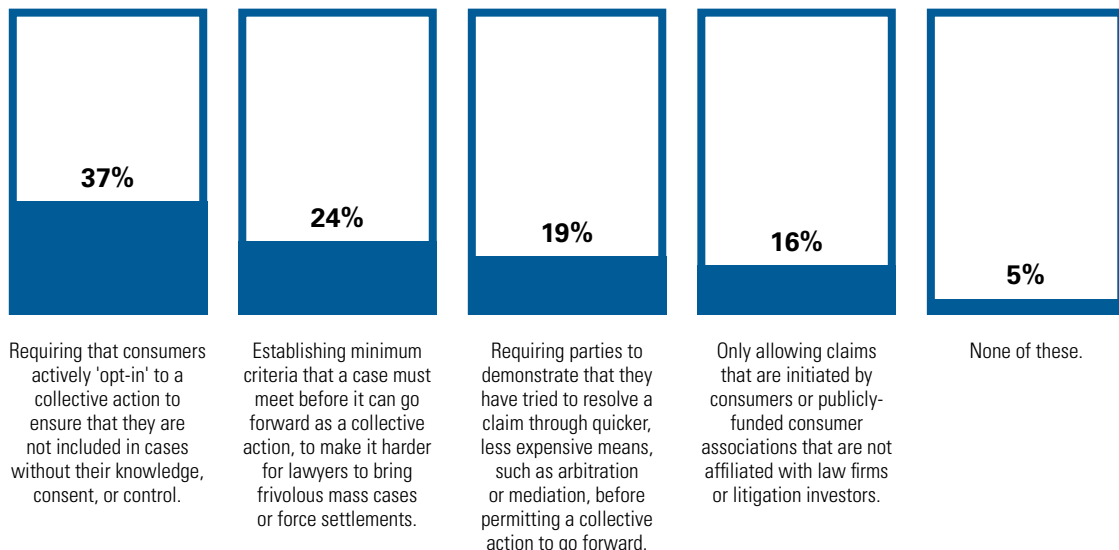
When consumers who supported any of these safeguards are asked which single safeguard is most important to them, requiring that consumers actively ‘opt-in’ to a collective action to ensure that they are not included in cases without their knowledge, consent, or control clearly emerges as consumers’ top priority (37%).

Consumers in Germany are more likely than those in the other surveyed Member States to say that the ‘opt-in’ safeguard is most important (48%).

“ When consumers who supported any of these safeguards are asked which single safeguard is most important to them, requiring that consumers actively ‘opt-in’ to a collective action to ensure that they are not included in cases without their knowledge, consent, or control clearly emerges as consumers’ top priority (37%). ”

Perceptions of Which Collective Action Safeguard is Most Important

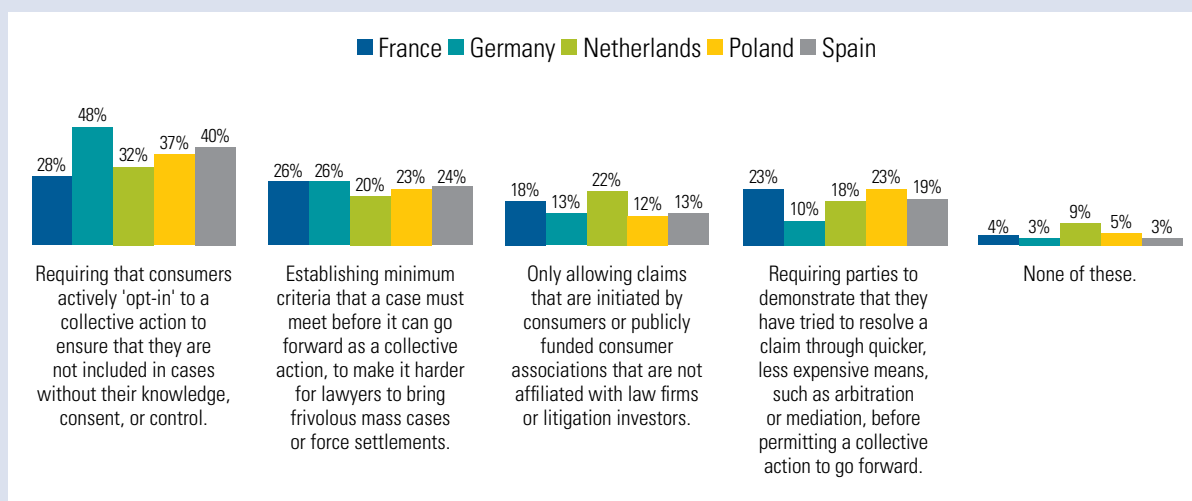
Showing responses from all consumers who support at least one safeguard across all surveyed Member States



And which one of these safeguards, if any, is most important to you? Base: all respondents who support any safeguard (n=4525)

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 who support any safeguard (n=4525)

“The proposal is good, but there are some things that are not right. That’s why safeguarding measures are essential in order to protect consumers and so as not to have too many collective action cases which wouldn’t be useful.”

Survey respondent, France

Overall Support for the Introduction of Safeguards for Collective Actions

Having seen these specific examples of safeguards that are not currently included in the European Commission’s proposal on collective actions, a majority of consumers say that they support the introduction of safeguards for collective action lawsuits (79%). This is consistent across countries.

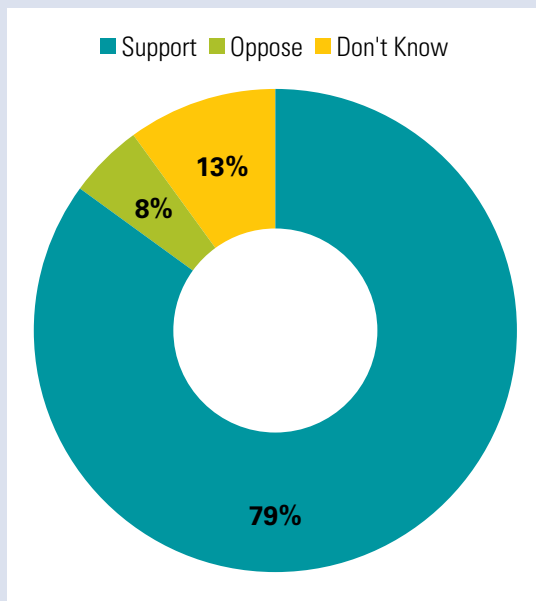
Just 8% of consumers oppose safeguards for collective action lawsuits and 13% don’t know.

“ [Collective actions] can be very useful for some groups, but it can also turn out bad for some. In order to ensure that everyone benefits, some measures must be taken.”

Survey respondent, the Netherlands

Levels of Support for the Introduction of Safeguards for Collective Actions

Showing responses for all surveyed Member States



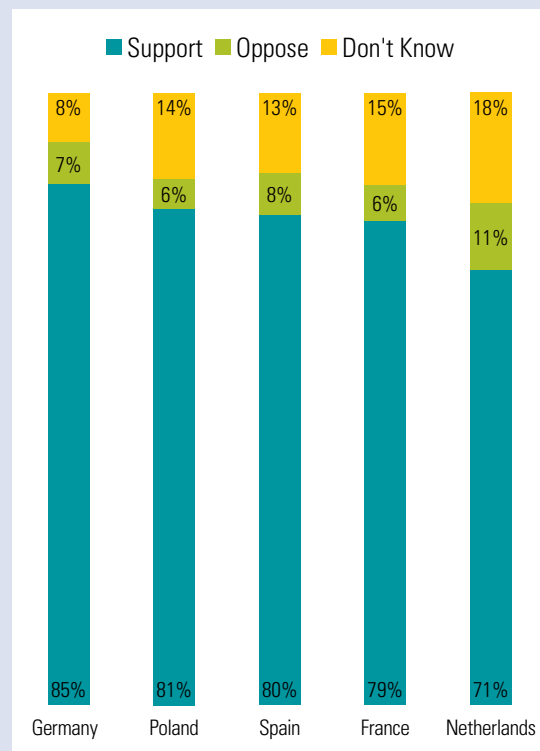
In view of what you have read, how strongly do you support or oppose the introduction of safeguards for collective action lawsuits? Base: all respondents (n=5097)

There are high levels of support in each of the five surveyed Member States, with a minimum of seven in ten consumers in each market stating their support for safeguards for collective action lawsuits.

Notably, support for safeguards for collective action lawsuits is highest in Germany at 85%. The lowest level of support is in the Netherlands, where 71% of consumers support safeguards.

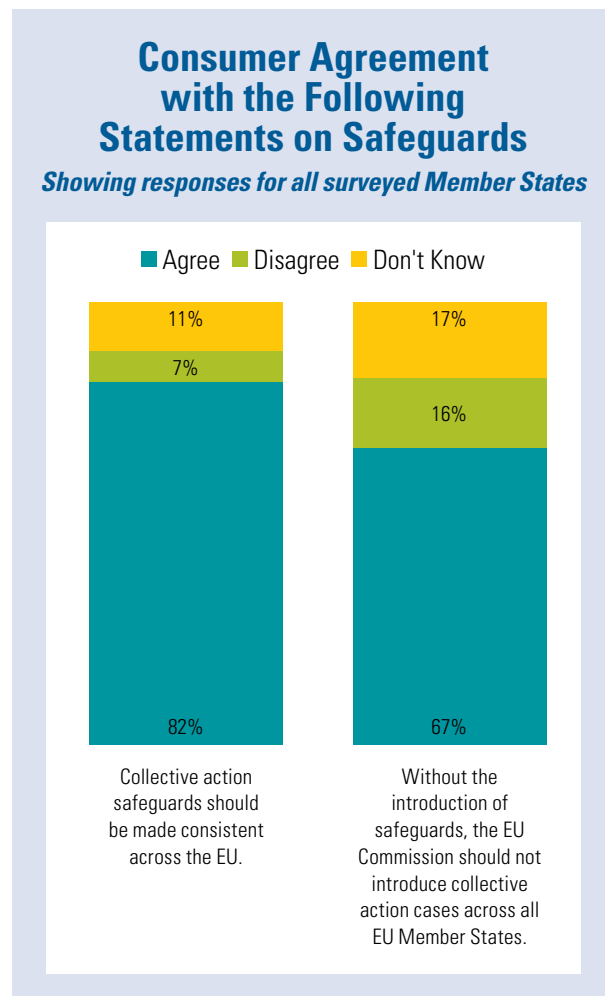
Levels of Support for the Introduction of Safeguards for Collective Actions by Country

Shown by Member State



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 (n=5097)

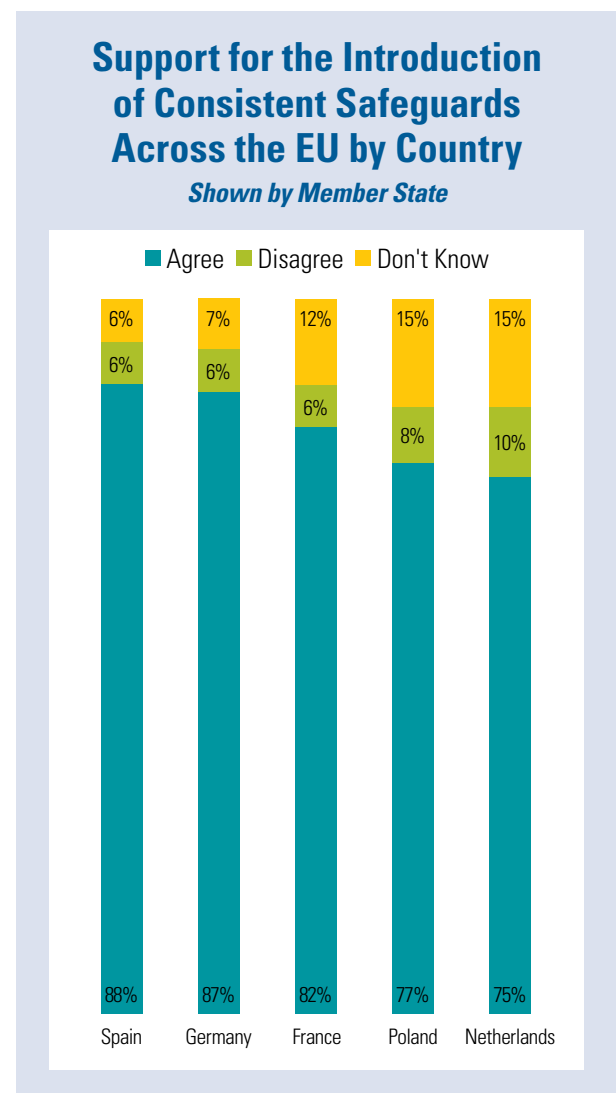
The Importance of Consistent Collective Action Safeguards Across the EU



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 (n=5097)

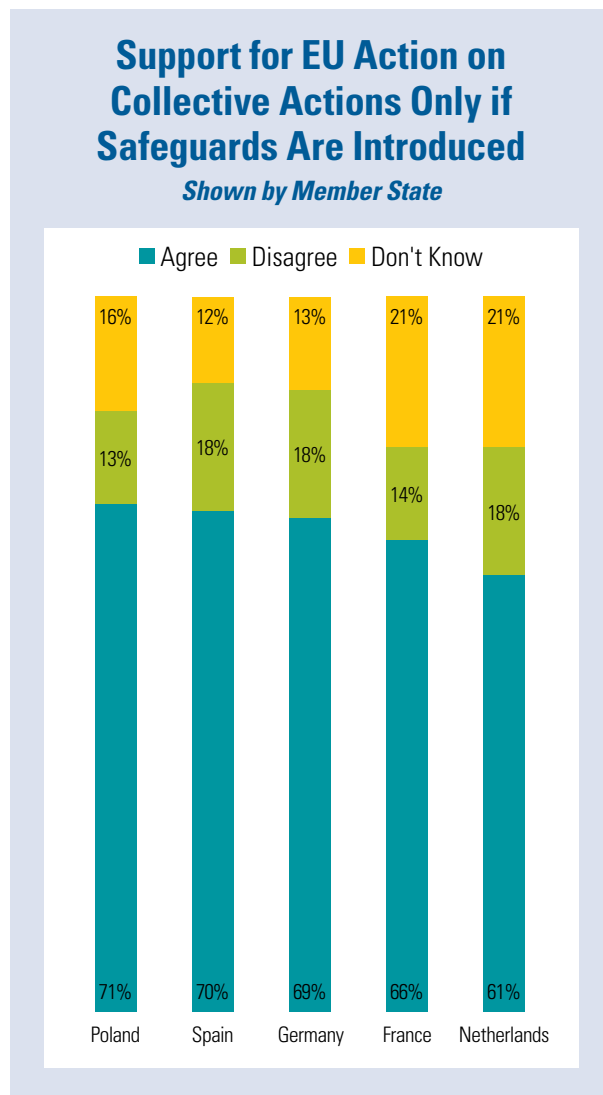
Eighty-two percent of consumers agree that collective action safeguards should be made consistent across the EU.

Consumers in Spain and Germany are more likely than those in the other surveyed markets to agree that collective action safeguards should be made consistent across the EU. Of those who agree, the percentage that strongly agrees is highest in Spain (49%), followed by Germany and the Netherlands (46% for each), despite the Netherlands having the lowest overall level of agreement out of the five 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 (n=5097)

Sixty-seven percent of consumers think that the European Commission should not introduce collective action cases across the EU without safeguards. The findings are consistent across the five Member States surveyed, with some variances.



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 (n=5097)

In Germany, the Netherlands, Poland, and Spain, 28-31% of consumers strongly agree that the European Commission should not introduce collective action cases without safeguards. Strong agreement is lowest in France (19%), however total agreement in France is at the average (66%).

Consumers who previously knew 'a little' about collective action cases in Poland and Spain prior to the survey are more likely to agree that the European Commission should not introduce these types of actions across all Member States without safeguards.

Summary of Key Findings on Collective Action Safeguards

- The majority of consumers across all five surveyed Member States support the introduction of the European Commission's proposal on collective actions, but only with additional safeguards in place (57%).
- Of the four additional safeguards tested that are not included in the European Commission's proposal, a majority of consumers in each of the five surveyed Member States support each safeguard.

- Consumers think requiring that consumers actively 'opt-in' to ensure that they are not included in cases without their knowledge, consent, or control is the most important safeguard (37%).
- 82% of consumers agree that collective action safeguards should be made consistent across the EU.
- Two thirds of consumers (67%) across the surveyed Member States also agree that without the introduction of safeguards, the European Commission should not introduce collective action cases across the EU.

“ I believe that the proposal to introduce a unified collective action institution across the EU is on point and necessary, provided that appropriate safeguards are applied. ”

Survey respondent, Poland

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 best ensure that they operate in consumers'

best interests, consumers are most likely to select either a 'success fee' arrangement (23%), whereby lawyers only receive payment for the case if it is successful, or funding by a consumer rights organisation or watchdog (22%).



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 (n=5097)

There are some differences in preference for how collective actions are funded between the five Member States surveyed.

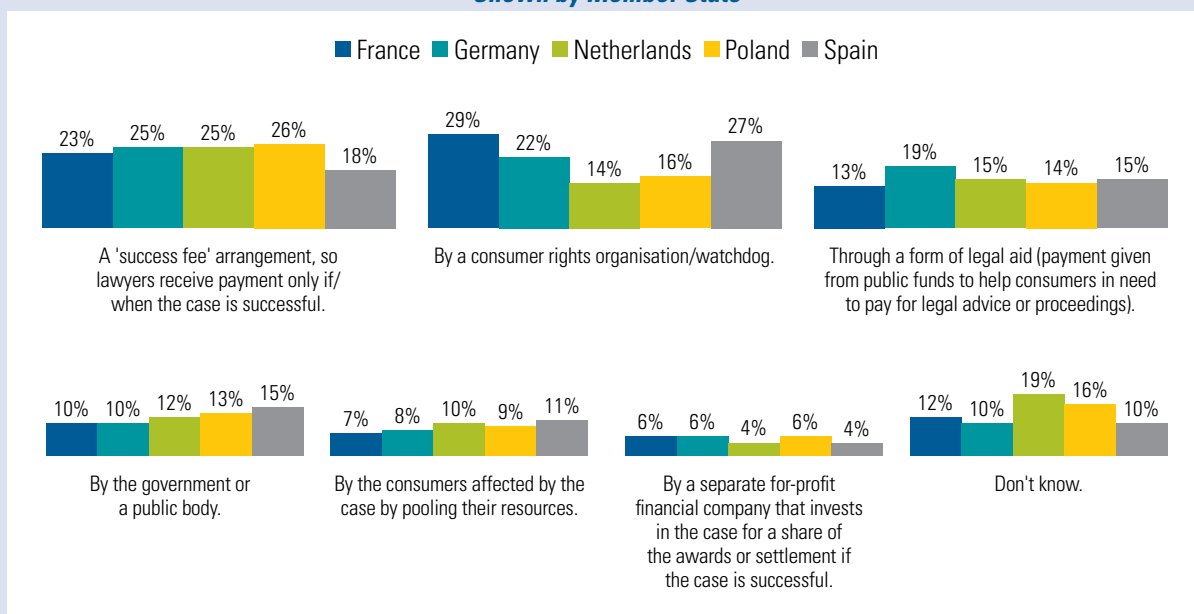
Consumers in Spain are less likely to choose a 'success fee' as their preferred method of funding collective action cases (18%), compared to approximately a quarter in all other markets.

Comparatively, consumers in France (29%) and Spain (27%) are more likely than those in the other surveyed Member States to say that a consumer rights organisation or watchdog would be their preferred method of funding these lawsuits.

Consumers in Germany are more likely than consumers in each of the other markets surveyed to state that a form of legal aid would best ensure consumers' interests are met by collective action cases (19%).

Perceptions of How Collective Action Cases Should be Funded by Country

Shown by Member State



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 (n=5097)

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

Twenty percent of consumers think that TPLF should be banned entirely. Fifty-seven percent of consumers assert that TPLF should be allowed to operate, but only with safeguards in place.

Only 6% of consumers think that TPLF should be allowed to operate without any safeguards in place.

Perceptions Towards TPLF

Showing responses for all surveyed Member States



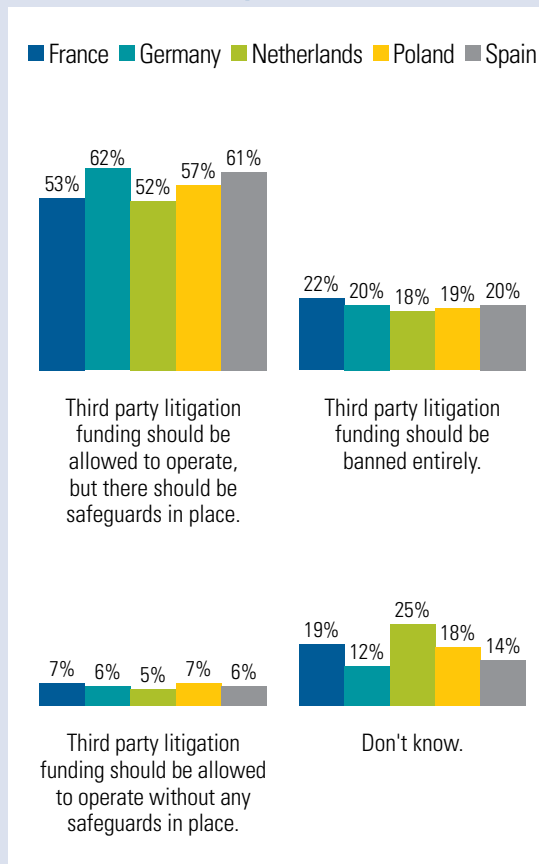
Based on what you have read so far, which of the following best describes your position on the issue? Base: all respondents (n=5097)

This pattern is relatively consistent across the five surveyed Member States, with a majority of consumers in each individual country stating that TPLF should be allowed to operate, but only if there are safeguards in place.

“ This pattern is relatively consistent across the five surveyed Member States, with a majority of consumers in each individual country stating that TPLF should be allowed to operate, but only if there are safeguards in place. ”

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 (n=5097)

Of all the Member States surveyed, consumers in Germany are the most likely to assert that TPLF should be allowed to operate, but only if safeguards are in place. In total, three in five consumers (62%) in this market selected this option as the best reflection of their position on the issue.

Just over half (52%) of consumers in the Netherlands selected this option, representing the lowest proportion of any market to assert that TPLF should be allowed to operate, but only if safeguards are in place.

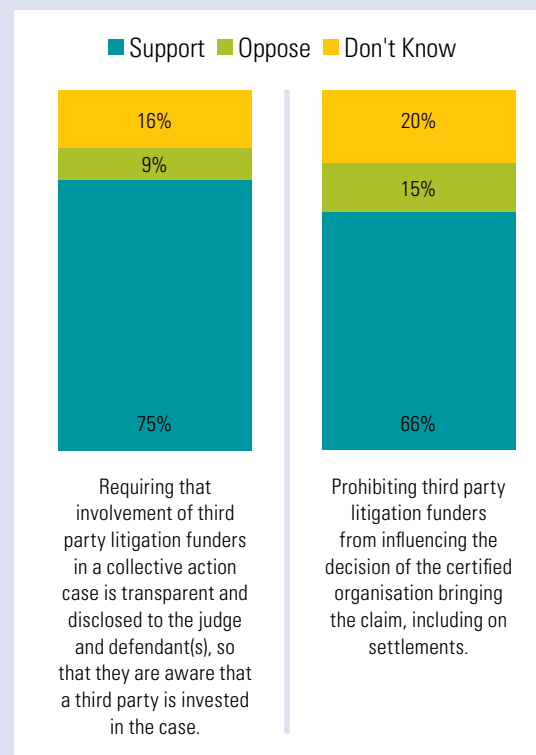
Support for TPLF Safeguards

In the European Commission's proposal on collective actions, two safeguards for the operation of TPLF are included. A majority of consumers across the five surveyed Member States support these two safeguards.

- 75% of consumers support requiring that involvement of TPLF in a collective action case is transparent and disclosed to the judge and defendant(s), so that they are aware that a third party is invested in the case.
- 66% of consumers support prohibiting third party funders from influencing the decisions of the certified organisations bringing the claim, including on settlements.

Support for the Two TPLF Safeguards Included in the European Commission's Proposal

Showing responses for all surveyed Member States

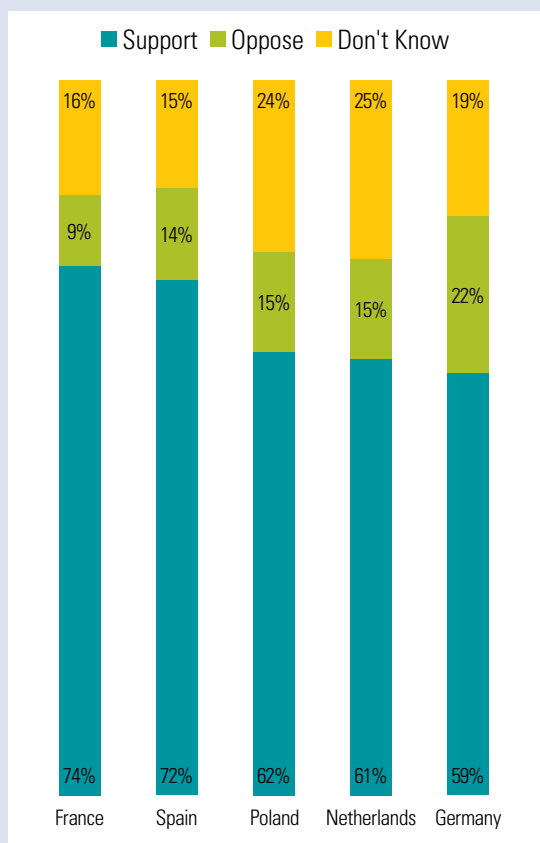


The European Commission's proposal on collective actions includes two safeguards for third party litigation funding. How strongly do you support or oppose the introduction of each safeguard? Base: all respondents (n=5097)

There is some variation in perceptions of these safeguards between the five surveyed Member States. Support for prohibiting third party litigation funders from influencing the decisions of the certified organisation bringing the claim, including on settlements, is highest in France (74%) and lowest in Germany (59%).

Support by Country for Prohibiting Funders from Influencing the Decisions of the Certified Organisation Bringing the Claim

Shown by Member State

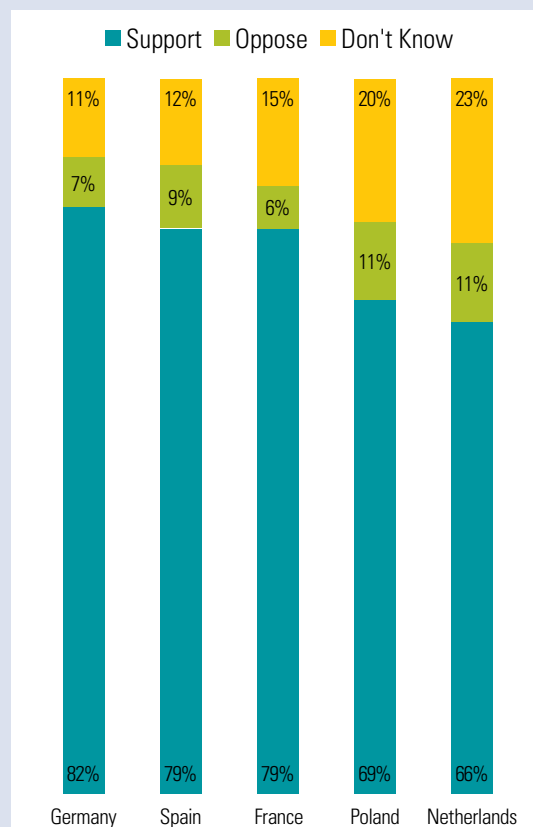


The European Commission's proposal on collective actions includes two safeguards for third party litigation funding. How strongly do you support or oppose the introduction of each safeguard? Base: all respondents (n=5097)

Support for requiring that involvement of TPLF in a collective action case is transparent and disclosed to the judge and defendant(s), so that they are aware that a third party is invested in the case, is greatest in Germany (82%) and lowest in the Netherlands (66%).

Support by Country for Requiring that Involvement of TPLF in a Collective Action Case is Transparent and Disclosed to the Judge and Defendant(s)

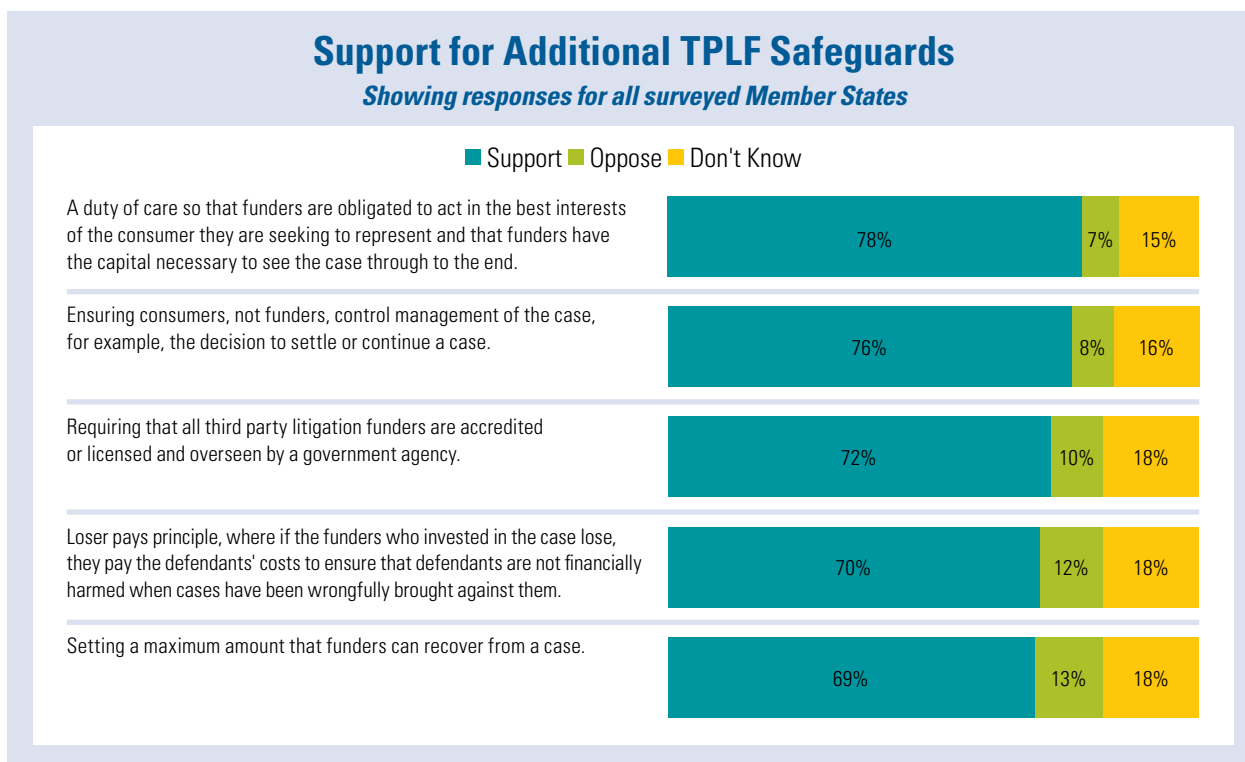
Shown by Member State



The European Commission's proposal on collective actions includes two safeguards for third party litigation funding. How strongly do you support or oppose the introduction of each safeguard? Base: all respondents (n=5097)

Alongside the two safeguards included in the European Commission's proposal on collective actions, consumers were asked their level of support for TPLF safeguards that are not currently included in the proposal.

- A notable majority of consumers across the five surveyed Member States support these suggested safeguards, with a minimum of 69% of consumers selecting each safeguard tested.
- The safeguard with the highest level of support is the introduction of a duty of care and other means to ensure that consumers maintain control of a case (78%).



Below are some specific safeguards that have been suggested to ensure that the practice of third party litigation funding operates in consumers' best interests. These safeguards are not currently included in the European Commission's proposal on collective actions. For each option, how strongly do you support or oppose the introduction of this safeguard? Base: all respondents (n=5097)

“Group claims are useful because a single consumer does not achieve anything in view of the time and costs. But it must be about the interests of the consumer and not for the enrichment of others.”

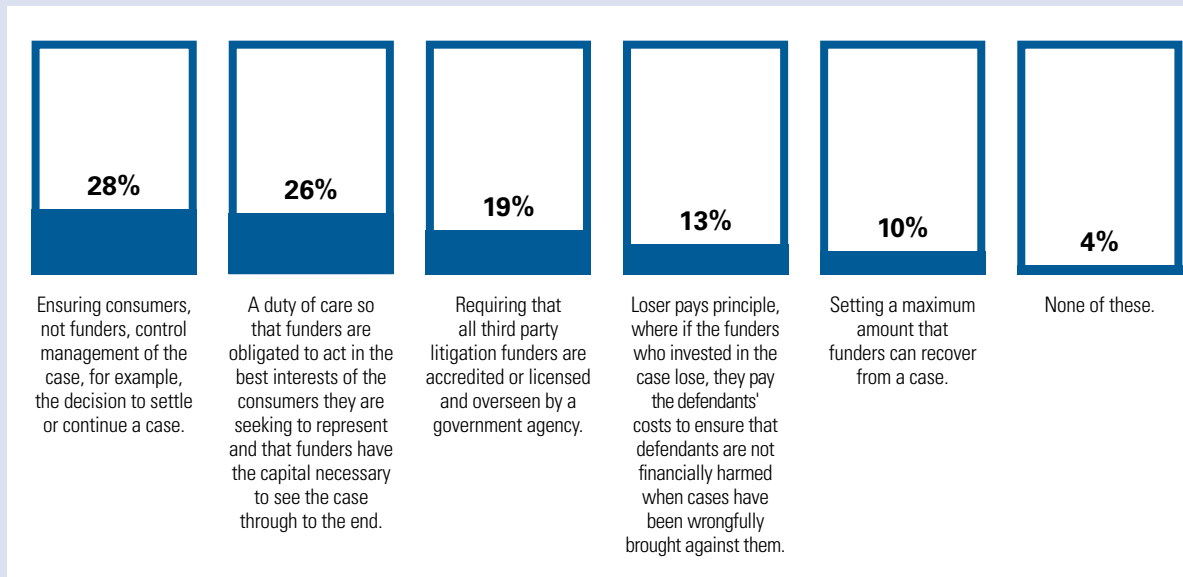
Survey respondent, the Netherlands

When asked which of these safeguards is most important, consumers who support the introduction of safeguards are most likely to select 'ensuring consumers, not funders, control management of the case' (28%) and 'a duty of care so that funders are obligated to act in the best interests of the consumers they are seeking to represent and that funders have the capital necessary to see the case through to the end' (26%).

A significant proportion of consumers also select 'requiring that all third party litigation funders are accredited or licensed and overseen by a government agency' (19%).

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 who support any safeguard (n=4433)

There are relatively high levels of variation for these findings between the Member States surveyed.

The top priority for consumers in France (28%) is 'a duty of care so that funders are obligated to act in the best interests of the consumers they are seeking to represent and that funders have the capital necessary to see the case through to the end'.

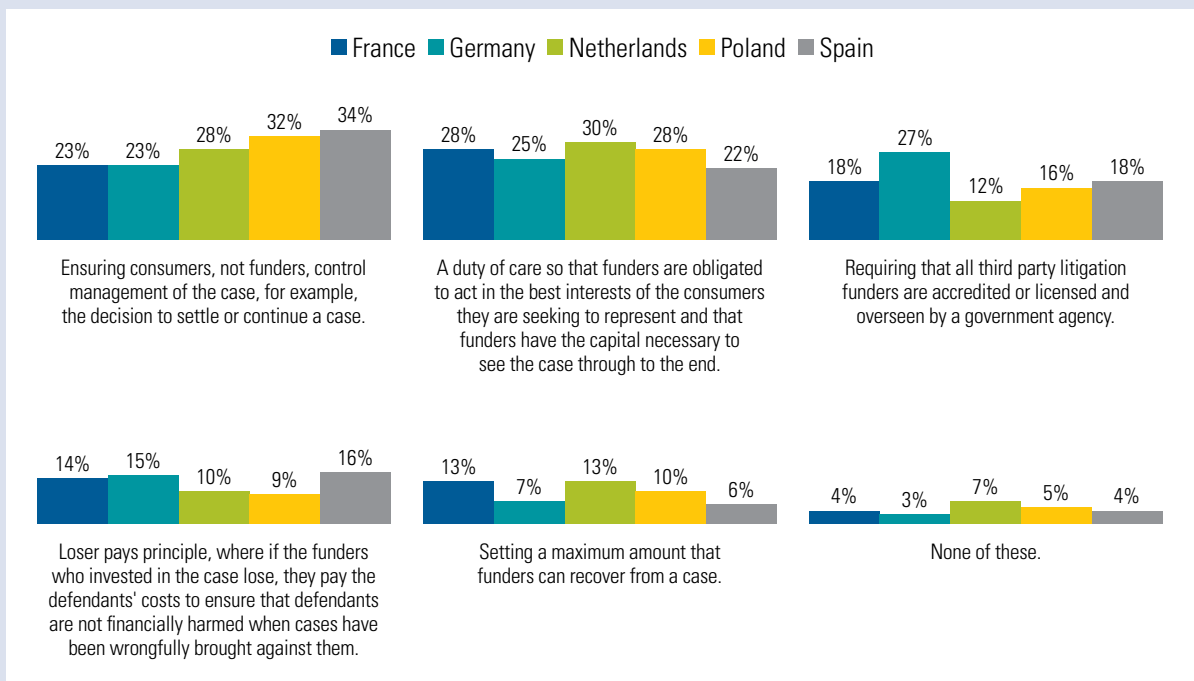
Consumers in Germany are more likely than consumers from other Member States to select the safeguard of 'requiring that all third party litigation funders are accredited' at 27% compared to the average of 19% across the five surveyed Member States.

Consumers in the Netherlands are slightly more likely (30%) than consumers from other Member States to select the safeguard 'a duty of care so that funders are obligated to act in the best interests of the consumers they are seeking to represent and that funders have the capital necessary to see the case through to the end'. This is compared to the 26% average support across the five surveyed Member States.

Consumers in Spain are more likely than consumers from other Member States to select the safeguard of 'ensuring consumers, not funders, control management of the case, for example, the decision to settle or continue a case' at 34%, compared to the average of 28% across all Member States.

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 who support any safeguard (n=4441)

“Class actions are a very useful tool for improving consumer protection. But there need to be safeguards against interests shifting in favour of law firms and other profit-oriented institutions. Certainly, the basic requirement is that all participants are aware and are involved knowingly.”

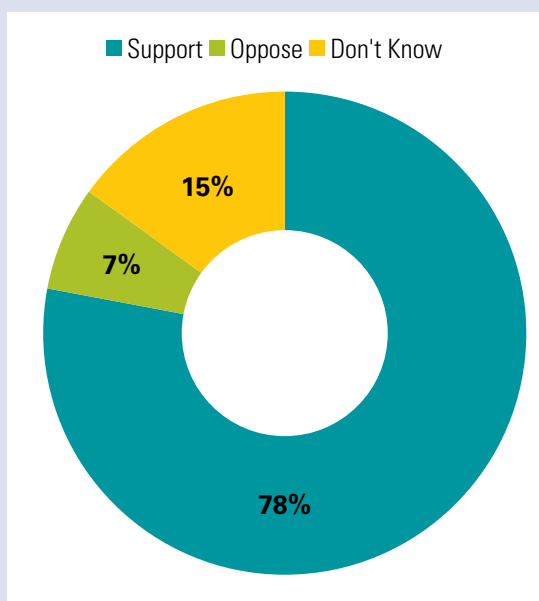
Survey participant, Germany

Overall, 78% of consumers across all five Member States state that they support the introduction of safeguards for TPLF.

The support for safeguards for TPLF is a position that is held consistently across all surveyed markets.

Overall Support for TPLF Safeguards

Showing responses for all surveyed Member States



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 (n=5097)

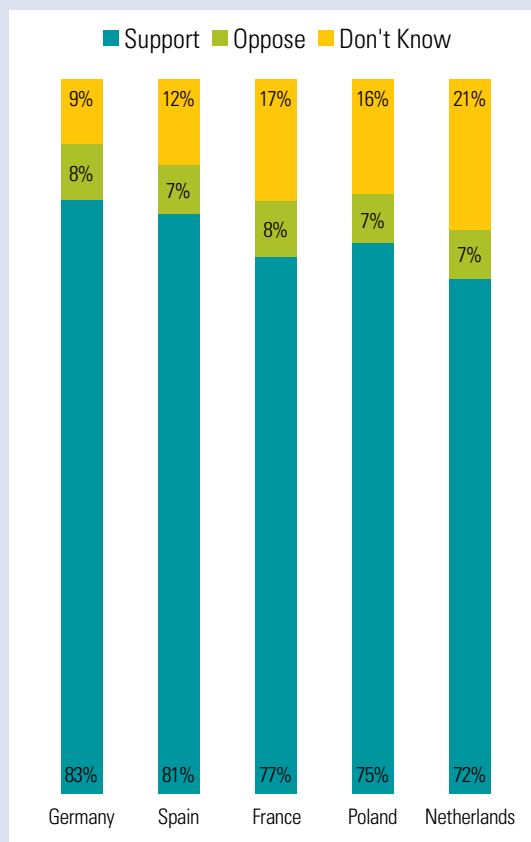
“If the proposal for collective action is not made with certain conditions, those who benefit will be lawyers who manage the cases and not the plaintiffs.”

Survey respondent, Spain

Support is particularly strong in Germany, where 83% of consumers say that they support the introduction of potential safeguards for TPLF (with a total of 37% strongly supporting). Only 1% of consumers in Germany say that they strongly oppose the introduction of potential safeguards.

Overall Support for TPLF Safeguards by Country

Shown by Member State



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 (n=5097)

Summary of Key Findings on TPLF

- 20% of consumers think the practice of TPLF should be banned entirely.
- 57% of consumers think that TPLF should be allowed to operate, but only with safeguards in place.
- Only 6% of consumers think TPLF should be allowed to operate without any safeguards in place.
- There is support across all surveyed Member States for the two safeguards proposed by the European Commission. Of these two, the most popular safeguard requires that the involvement of third party litigation funders in a collective action case be disclosed to the judge and defendants.
- There is strong support for additional TPLF safeguards, with a minimum of 69% of consumers supporting each safeguard tested.
- When consumers who support any of these statements were asked which one safeguard is most important, requiring that consumers control management of the case emerges as the top priority (28%).
- Overall, 78% of consumers support introducing safeguards for TPLF.

APPENDICES

Appendix 1: Full Text Shown to Survey Respondents to Describe Collective Actions and the European Commission's Proposal

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 or other certified organisation 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.

Some people say that the class action system in the United States has increased access to justice for consumers, while others have said that it has allowed lawyers to profit at consumers' expense by seeking out lucrative cases.

Collective actions are a relatively new practice in Europe, and will become law in every EU member state this year if a proposal from the European Commission is passed.

Some points have been raised by the European Commission in support of their proposal on collective actions. These include the following:

- This proposal will give consumers access to collective redress in every EU Member State, including those whose national laws currently do not allow it.
- The proposal will make it easier, cheaper, and quicker for consumers across the EU to obtain redress when their rights have been breached.
- The proposal will make it easier for individual consumers to secure redress in cross-border cases.
- The proposal empowers only certified organisations, such as consumer bodies, to bring class action cases to courts across the EU on behalf of consumers. The Commission believes that this will prevent law firms from bringing claims in order to make a profit.
- The Commission has argued that these measures are sufficient to protect consumers and to ensure that their proposal will not result in a U.S.-style class action system operating in the EU.

Some concerns have been raised about the European Commission's proposal on collective actions. These include the following:

- In the European Commission's proposal, consumers don't get compensation for small damages claims—instead that money goes to consumer causes that could even be unrelated to the claims.
- According to the proposal, consumers can be included in collective actions without their knowledge or consent, and in some cases, with no way to opt-out.
- The proposal does not prevent law firms or investors from investing in collective actions for a profit, or from starting their own certified organisations to bring cases.
- The proposal places no limits on the amount of fees that law firms or litigation investors can take from these cases.
- The proposal would create additional complexity, as EU collective action legislation would be imposed on top of the existing laws in each Member State.
- These critics have argued that the European Commission's proposal would not protect consumers and is actually worse than the U.S. class action system because it contains even fewer consumer protections and restrictions on law firms.

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 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 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.

The practice of third party litigation funding is allowed in the European Commission's proposal on collective actions.



U.S. CHAMBER

Institute for Legal Reform

202.463.5724 main
202.463.5302 fax

1615 H Street, NW
Washington, DC 20062

instituteforlegalreform.com