Claiming Consumers' Rights: Patterns and Limits of adversarial Legalism in European Consumer Protection

Christoph Strünck
Department of Political Science
University of Siegen

Abstract

Litigation has turned into an instrument that of consumer protection in Europe. However, the institutional and political barriers for adversarial legalism American style are high in European countries. Contrary to the United States punitive damages are not an option and contingency fees for lawyers are strictly limited. The paper states that a distinctive way of European adversarial legalism has emerged instead. It is much more based on public interest groups than on law firms that bundle claims. This model fits in national cultures and to business groups it looks less risky. For the European Commission policy tools like collective redress are a decentralized way to bolster compliance in member states. So national legal traditions, business groups behavior and the commission' preferences have paved the way to a European way of law enforcement in consumer policy.

„To those who have come all the way to Lisbon to hear the words ‚class action', let me be clear from the start: there will not be any. Not in Europe, not under my watch".

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> European Commissioner for Consumer Protection Meglena Kuneva addressing a conference on collective redress in Lisbon, 10. Nov. 2007[1]

1 Introduction

A specter is haunting Europe - the specter of class actions. Usually, European business groups jealously look to the United States with its flexible markets and benign government regulation. But when it comes to consumers' legal rights and their private enforcement most business groups would rather have more government intervention than any kind of adversarial legalism American style. However, there are signs that private enforcement of consumer protection is on its way to Europe, giving courts a bigger role.

In the United States, the role of courts and the judiciary in policy-making has long since been a subject for political science. Due to the fragmented system of government, common law and activist judges court rulings may serve as equivalent for comprehensive policies (Reagan 1987).

Consequences of different legal systems have often been neglected in European policy analysis. Yet there are signs of change (Rehder 2007). Many scholars point out that the European Union shares one feature that fuels adversarial legalism in the US: a fragmented political system (Kelemen 2006). Also, the European Commission has to rely on legal instruments to see European rules enforced.

In the European Union, conflicts about mobile phone rates, energy prices or food labeling are looming, too. In comparison to the US those conflicts pose different challenges. The more European markets become integrated the more consumer protection turns into an

[1] Kuneva 2007.

issue beyond the nation state. In complex and cross-cutting markets it is getting difficult to enforce the law from the perspective of governments and the European Commission.

The European Union with its fragmented political system and its integrating markets is a peculiar setting when it comes to consumer protection. Government agencies are not capable of enforcing the law on their own. This is why litigation and collective redress have made headway in European debates as the quote by Commissioner Kuneva indicates.

However, member states still have different legal systems. Not all of them allow for bundling claims and class actions. In the meantime a couple of countries have adopted laws that resemble the American way of law at first glance. There are even signs of convergence among European countries. If consumer litigation congealed into one model of collective redress it would enable the European commission to embark on a common framework in the future.

So the basic question is: has adversarial legalism already affected consumer policy in Europe? This paper holds that the American way of law still meets strong obstacles in European consumer policy. It is not class actions but collective redress by public interest groups that increasingly shapes European consumer policy, both at national and European level. The emerging European regulatory state and business groups' resistance to American class actions have paved the way to a light version of adversarial legalism in European consumer policy.

In the literature on policy convergence scholars allude to adversarial legalism in general. This paper takes a closer look at adversarial legalism in consumer policy. It draws on recent empirical studies on European countries to illustrate distinctive legal features of consumer protection. Whatever the European Commission aims at, those national legal cultures curb a fully fledged system of class actions in Europe. However, the Commission has managed to indirectly

influence the way collective redress is handled in member states.
The paper will first highlight the increasing role of private actors when it comes to enforcing consumer protection. In a second section the legal framework in member states is presented. Those empirical examples show that class actions are unlikely in most European countries.
Yet the European Union provides an additional layer for litigation in the name of consumers. Looking at the European level, the US and the EU share some features that usually ease adversarial legalism. Thus in a third section the roots of adversarial legalism in the US and the European Union are discussed. That section draws on the concept of the "regulatory state" (Majone) in which law enforcement is mainly delegated to independent agencies and private actors. The European Union has clearly become that kind of regulatory state.
In a fourth section the paper explores independent variables that help to explain the EU approach towards law enforcement in consumer policy. In the last section the paper will shed light on recent changes at EU level. Those changes might help to craft a common European framework when it comes to consumer litigation.

2 New roles for private actors in consumer protection

What is the rationale behind private law enforcement in consumer protection? Following economic theories of law breaches of consumer law or corporate misconduct are not very likely to be sanctioned (Sunstein 2000). Especially in the case of small claims individual consumers are not willing to sue or accept any other burden. Thus if no other actor steps in to enforce the law it will remain ineffective. Even if consumers were willing to sue they would be facing a time- and money-consuming procedure which would deter a lot of possible plaintiffs. As a result, markets do not work

properly because they reward inefficiency and even fraud.
Governments cannot detect any possible flaw in consumer protection and sometimes there are not willing to do that, either. So in the sense of effective markets and comprehensive law enforcement it is new incentives to consumers or collective actors to sue or deal with companies that can bring about change. In theories of the regulatory state it is those judicial functions that are delegated to interest groups. This distinctive form of delegation marks a difference to theories of neo-corporatism where it is more about quasi-public or quasi-executive functions (Lehmbruch/Schmitter 1982).
Closer scrutiny reveals that paths to private law enforcement are multi-fold. This holds true for Europe, as well. If you take a look at what can be called consumer redress you can see legal as well as non-legal paths. The following procedures figure most prominently in European consumer redress:

- Direct negotiation,
- Mediation and arbitration,
- Small claims procedures,
- Collective action for damages,
- Actions for injunctive relief.

In a recent study for the European Commission Stuyck et al. (2007) figured out the scope and impact of those procedures in different European countries. Their aim was to analyze alternative dispute resolution beyond classic court rulings. Consequently, they also touched on the subject of group action or collective action. They distinguish between “group actions”, “representative actions” and “test procedures”. All three procedures can be found in European countries, whereas the classic group action in terms of American class action is barely found in Europe.

Group actions usually occur when individual claims are bundled before going to the courts. American class actions fit in this model. The most important feature is an opt-in or opt-out clause. If group actions are based on an opt-in system possible plaintiffs have to be notified in advance (Mulheron 2007). Those possible class members have to explicitly agree to be included in the claim. Consequently, any decision is binding only for those who have agreed. Also, opt-in systems are more demanding than opt-out. In an opt-out system a note is sent to possible class members once the case has reached the court. If people do not answer they are automatically included in the claim.

Of all class actions the opt-out system is the most effective one from the perspective of plaintiffs. It is also the one which is typically applied in the United States. Yet in Europe doubts have been raised whether opt-out might be at odds with due process rights in Continental law (Micklitz/Stadler 2006). Only the Netherlands and Portugal have introduced opt-out clauses, yet with more safeguards for individual members.

There are some additional features that shape group actions such as scope of application, rules of standing and a range of procedural dimensions. Of course, costs are an overwhelming aspect because their distribution and compensation sets crucial incentives for group actions. Costs are linked to notifying class members and all procedural costs, including lawyers' fees. Most importantly, contingency fees are banned in continental civil law. Thus another driving force for adversarial legalism is missing in the European legal framework.

Whatever the shape of collective actions in European countries, the consequences for interest intermediation are similar. Instead of government agencies acting on behalf of consumers this task is delegated to law firms and interest groups. It is not government agencies that are in charge of enforcing the laws they enacted but private actors. This is not to say that adversarial legalism will necessarily flourish. Interestingly, business representatives are much more in favor of

consumer organizations suing than typical class action. They consider non-profit organizations to be more reliable (European Commission 2007).

3 Group action instead of class action: the European way of adversarial legalism

It is important to note that most countries in the EU have not introduced any collective damage procedure for consumer interests. But aside from Italy, all big member states allow for certain types of group action. As for consumers' attitudes, almost half of those polled for Eurobarometer would be more willing to file lawsuits if they could join others in a collective case (European Commission 2006).
Among recent policy innovations the Dutch and the Swedish case are the most intriguing ones. At first glance, both strikingly resemble US class action. Yet both share features that blend a more adversarial approach and barriers to collective redress. The following portraits draw on insights from the recent empirical study by Stuyck et al. (2007).

3.1 The Netherlands

The Law on the Collective Settlement of Mass Damage came into force in 2005. However, its scope is not very broad because the government was anxious of skyrocketing numbers of cases. Thus the law only covers settlements that have already been agreed on. Another striking difference to the US model is the rules of standing. Only organizations are entitled to present collective cases before a court. However, the Dutch government decided on an opt-out system which is very rare in Europe. So dynamics may unfold in the

foreseeable future because the barriers for bundling claims are comparatively low.

3.2 Sweden

In its Group Proceedings Act of 2002 the Swedish government introduced a new form of collective redress which departs from the established "negotiation model" of consumer protection. Contrary to the US model the Swedish law has implemented an opt-in system for class members. Yet contingency fees are possible and even a public interest groups can hier lawyers on that basis (Stadler 2005). One case has figured prominently: The consumer ombudsman - representing the negotiation model best – sued an energy company on behalf of consumers in 2002. They had been automatically transferred to an alternative supplier after the contracting supplier had to stop delivery. But the new prices were significantly higher. Sweden has the most lenient rules of standing since any interested party may resort to collective claims.

3.3 Germany

Like Austria and France the German government primarily focuses on interest groups as agents for collective action. Collective claims as well as test cases are major instruments. With test cases a single consumer group may pick a contentious case and sue one or a group of companies without any binding effect for other consumers. This is normally meant to be an incentive for out of court settlements and for changes of business methods. There is also a special law that covers capital investors so that interest groups of shareholder may use the same tool for test cases.

There has been one prominent case of collective claims against an energy company (E.on Hanse). The subject was alleged wrongful price shifts. The defendant had to pay the plaintiffs but the court also ruled that cases like this are restricted to minor sums. So the scope of collective cases in Germany is rather limited. In terms of plaintiffs the German "information model" provides two channels. The common consumer organization is the publicly subsidized center for consumer protection. In the meantime real public interest groups without public assistance have become key players, as well. Both types are entitled to use collective claims.

3.4 Austria

Austria embraces its consumer organizations as major actors in representative collective law enforcement. A group of negatively affected consumers may authorize a consumer group which will file a lawsuit. This concept of collective claims is also known in Germany (Micklitz/Stadler 2006). Austria also applies test cases that are brought to the courts by consumer organizations without any individual compensation. Collective cases in Austria may only be filed by organizations not by individuals bundling claims. Austria represents the "information model" of consumer protection that rests on semi-public bodies testing products. Recent developments point in a different direction, namely empowering private organizations to sue in the public interest (Stadler/Mom 2006).

3.5 France

Private organizations like consumer groups have to be licensed by the state in order to file lawsuits on behalf of consumers. It is very much a representative tool, similar to those of Austria and Germany. Empirically, though, there have only been very few cases that made

it to the courts (Franke 2002). A telling example is the attempt of *Que Choisir*, a French consumer organization, to obtain individual compensation for fraudulent operations by mobile phone companies. It could claim damages in the collective interest but no compensation for individual harm. Due to the opt-in clauses *Que Choisir* had to invite and mobilize consumers to join in but only a minuscule percentage was willing.

3.6 UK

In 2002 the British government signed new provisions into law that allow for bundling claims by the courts. Actually, this procedure still sticks with individual lawsuits. The only change is that a court can decide to issue a Group Litigation Order (GLO) to economize the first stage of trials. Remarkably, the UK does not follow the path of other common law countries like the US or Australia with this practice (Mulheron 2005).

Figure 1: Features of group action in European countries

	Rules of standing					Costs	
	Individuals	Consumer organizations	Public authorities	Opt-in	Opt-out	Losing Party	Each Party pays
Austria		x		x		x	
France		x		x		x	
Germany		x	x	x		x	
Nether-lands		x			x		x
Sweden	x	x	x	x		x	
UK	x		x	x			x

Source: Stuyck et al. 2007; arrangement by author

A combination of two different legal models shapes the EU and most of its Member States. Whereas the U.S. rests on the "private initiative model" of class actions, it is the "consumer organization claim model" as well as the "administrative authority model" that prevail in Europe (Hodges 2001).

In Member States such as Germany, France or Austria consumer organizations are allowed to file lawsuits. In the UK or Sweden it is about public authorities that are capable of suing in the interest of consumers. Summed up, it is group actions not class actions that serve as the most important legal tool in the European Union. Group actions are not supposed to compensate consumers for their losses. Instead, they are meant to achieve injunction and affect statutory law (Howells/Wilhelmsson 1997).

Not only are there crucial institutional differences that mark collective action in consumer protection. It is also obvious that those procedures are sharply limited in their scope and incentive. Obstacles to attract consumers for collective claims are tough to overcome. Only countries that provide for test cases like Austria and Germany grant consumer organizations relative independence in filing lawsuits. All the more important, the dominant "loser pays system" is a general obstacle to product liability litigation.

Contrary to the US the new legalistic style is clearly linked to public interest groups not lawyers, following a pattern of corporatist policy-making which is wide spread across Europe. Interestingly, even France has bolstered the position of public interest groups although it does not have a strong tradition of neo-corporatism.

4 American adversarial legalism and the European regulatory state

It is no wonder that consumer protection is partly based on litigation. Often the damage that is done to

individuals is relatively small in terms of money. This is why most consumers are reluctant to sue because the costs seem to be higher than the gains. To some extent consumer behavior results in market failure. Both legal scholars and economists point out that competition can be distorted by those companies that rely on consumers not complaining about wrongful practices.

Law enforcement by public agencies is a classic institutional solution to this problem. Another solution lies with private actors. In the United States law firms have huge incentives to sue in the name of consumers, thanks to class action. This legal instrument was invented to improve law enforcement in markets with high informational asymmetry. Class actions fit in the way lawyers are paid in the United States. Due to contingency fees lawyers have a huge incentive to bundle claims of consumers. This is another reason why consumer movements have been much more active in the US because they could get huge law firms to act on behalf of consumers (Vogel 1986).

Individual incentives for lawyers have been one peculiar ingredient of adversarial legalism in US consumer policy. Secondly, common law and the discretion of democratically elected judges have fostered forum shopping. Lawyers and interest groups will seek districts whose judges are sympathetic to their cause (Shapiro/Stone Sweet 2002).

General features of the political system account for adversarial legalism, too. Resolving conflicts is a cumbersome process in the United States. Thanks to the fragmentation of power among institutions such as the Presidency, Congress, and courts, tools of tort litigation have gained importance. By and large, litigation has proven a stronger instrument than federal legislation or state legislation when it comes to consumer issues (Strünck 2006).

There are controversies about the merits of adversarial legalism in the United States. Does it ensure precaution by keeping companies and agencies from fraud and misconduct? Does it help to economize law

enforcement by bundling claims and safeguard justice? Or does it primarily spur legal blackmailing by greedy lawyers and undermine comprehensive policy-making? Some argue that individual compensation simultaneously serves as a precautionary tool due to the high amount of money at stake (Schuck 2002). On the other hand, adversarial legalism may lower predictability of democratic decision-making and raise doubts about accountability. It may well be that a reliable legal solution for any case is traded for massive compensation in just a couple of cases. Yet historically, lots of policy innovations have occurred in the U.S. because new actors could gain access to the political process by the threat of litigation (Kagan 2001). Those normative questions are not primarily tackled in this paper. Instead, the different institutional setting in Europe and possible explanations stand at the core.

How about adversarial legalism in European consumer policy? Kelemen and Sibbitt (2004) state, that economic liberalization and political fragmentation have helped to spread American legal style in Europe. Due to global markets American law firms are more active across Europe. Their advice paves the way for contracting and business practices common in the US. Simultaneously, international corporations based in Europe adapt a legal strategy that resembles those of American companies.

Secondly, the political system of the EU provides a fragmented political environment which is closer to US government than to any of its member states. Also, the core mode of European policy-making is regulation which creates an environment akin to adversarial legalism (Majone 2005). In fields like environmental regulation, securities regulation or anti-discrimination policies private actors have been granted more rights to sue companies in Europe (Kelemen 2006).

Yet consumer protection does not quite fit in that pattern. Public interest groups are poorly funded and provide no incentives for lawyers. Secondly, most countries have installed opt-in clauses which raise the threshold for bundling claims (see section 3). Only

Sweden has recently enacted group actions that resemble US class actions (Stadler 2005). And if you take the quote by Commissioner Kuneva seriously there will be no way that the European Commission urges class actions at EU level.

It is obvious, though, that deregulation and privatization have created European markets that rest on regulatory politics close to the American tradition (Eisner 2000). Whenever regulatory politics set up individual or collective rights to keep markets going it is not only government that enforces laws and regulation but also private actors. The rise of social regulation in the United States is a telling example (Sunstein 1990).

The European Union has been described as a regulatory state (Majone 1997). Due to a lack of financial resources and effective monopolies of power the European Commission resorts to rule-making as major tool. But there is a major difference to regulatory politics in the US. The European Union is not capable of running independent regulatory agencies. The only exception is competition policy.

The biggest challenge for the European regulatory state is compliance. To ensure that member states play by the rules litigation is a major instrument. This holds true for rule-making in general. In consumer policy the challenge is two-fold. First, member states have to adapt European provisions. Secondly, consumers or consumer organizations have to be willing to sue in case rules are not appropriately enforced.

In the European Union it is the Commission that launches or supports private interest organizations to better achieve its policy goals (Greenwood et al. 1999). Thus the Commission has a vital interest to enable collective redress in consumer policy both at national and European level. This institutional self-interest compensates for weak financial incentives to sue in European legal culture. In effect public interest groups - neither law firms nor consumers - are empowered to enforce consumers' rights in the European Union.

Collective redress and private law enforcement have only recently entered the stage of EU consumer policy. The European Commission has kept a low profile when it comes to legal instruments in consumer protection. It has preferred alternative dispute resolution (ADR) as a non-judicial tool to solve conflicts between companies and consumers. However, European legislation backs up national rules.

At first glance, it is just about providing better information for consumers. For example, the Commission has launched a mutual system of rapid alert for product safety (RAPEX) which figured prominently in the latest crisis on Chinese toys (Commission of the European Communities 2007). Additionally, by Consumer Protection Co-operation (CPC) the Commission longs for sound and swift cooperation between enforcement agencies. This strategy of information and cooperation also aims at consumers by forging the European Consumers Centers Network (ECC-Net), accompanied by campaigns tailored to member states.

However, with the Unfair Commercial Practices Directive (Directive 2005/29/EC) the European Union has unmistakably crossed the line of just improving the information model of consumer protection. A number of practices like aggressive marketing are banned and those bans will be enforced not only by national agencies but also by courts. This directive can be considered as trigger to a more legalistic and even adversarial approach in consumer policy. Yet it still restricts rights to individual rights and falls short of crafting group action.

The overall style of EU consumer protection can be characterized as increasing transparency and creating individual rights that can be effectively enforced (Kelemen 2006). Some provisions can be found in sectors such as air transportation. For example, in 2004 the EU granted new rights to passenger when flights are massively delayed or cancelled. Those rights have to be defended in national courts (Regulation 261/2004). This

bypass in consumer policy reveals a classic pattern of the European regulatory state. Because the EU lacks both budget and clear regulatory authority in many realms it is rights that bypass these problems and paves the way to positive integration (Majone 2005).

5 Explaining the European approach

How to explain the European Union's way of adversarial legalism in consumer policy? There are factors linked to organizational interests and factors that are more related to the overall institutional setting in the EU. Generally, spill over effects from European integration has helped to establish an environment which theoretically urges more adversarial relations (Kelemen/Sibbitt 2004). It is no wonder that sectors like air transportation have been pivotal for creating new enforceable consumer rights. When former public monopolies are privatized old ties between public authorities and state-run industries are cut.

To establish mutual trust in a chaotic and competitive environment legalistic and formal approaches are often picked by policy-makers. National regulatory authorities cannot tackle all challenges that derive from new competitive markets. Enhancing consumer rights is mainly a delayed effect of privatization and liberalization. It does not come as a surprise that most cases dealt with before courts stem from energy and telecommunication.

Aside from those spill-over effects there are also organizational interests at stake. Institutions like the European Parliament or the European Commission have long since figured out that private actors serve best to enforce European legislation. Member states are often lagging behind and try to avert swift transfer of European rules. Individuals, courts and interest groups might be better agents in this respect (Alter 2001).

This strategy is partly due to the fragmented structure of policy-making in the European Union. Theoretically, fragmentation affects relations between principals and agents (McCubbins et al. 1987). If principals like the European Commission or the European Parliament feel it is getting more difficult to control agents they seek to shift power to the courts. This exerts pressure on bureaucracies and governments. Thus it is not primarily companies that are the target but reluctant governments.
The multiple conflicts of interest between European institutions and the overlapping arenas of supranational decisions and intergovernmental negotiations have rendered the European Court of Justice an influential body. Also, the European Commission has been trying to support or even set up interest groups to gain more leeway towards vested interests and governments (Greenwood 2007). Summed up, there are more points of access for individuals and public interest groups which alter the course of consumer policy.
This is exactly the kind of policy that has enabled forum shopping in the United States. In the US consumer advocates will turn to courts, circuits and justices that are sympathetic to their cause. Of course, this is supported by higher democratic accountability in most American courts (Shapiro 1988). Despite such obvious institutional differences between the US and Europe the diverse map of group action in European member states is a possible venue for forum shopping. The Unfair Commercial Practices Directive or recent regulations on product liability in air transportation cover international businesses. Those companies might be sued before different courts across Europe. The drive by the European Commission for more transparency and formal rights combined with new laws in member states provides for forum shopping.
Tellingly, it is the European Commission that has frequently tried to spread collective redress in member states (Strünck 2005). By doing so the Commission enlarges the scope of the European regulatory state. It makes sure public interest organizations get certain

rights that are usually linked to individuals. This is the most striking difference to the individualistic concept of regulatory politics in the US. Among other reasons, the Commission chose that path because companies are strongly opposed to class actions.

Business groups in Europe have succeeded in averting class actions American style. It was due to their lobbying that even the commissioner for consumer affairs did not ponder such legal instruments (European Commission 2007). Contrary to their European counterparts American business groups are remarkably weak at the federal level (Vogel 1996). Up until today they have not been capable of scaling back the costly procedures of tort litigation and class actions.

Thus successful strategies of European business groups are another factor that explains the weak mode of adversarial legalism in European consumer policy. Another reason might be that American law firms are not very active in the field of product liability compared to securities regulation, for example (Kelemen/Sibbitt 2004). Although product liability affects cross-border shopping no action has been taken to enhance group action. Summed up, it is not transatlantic ties that trigger adversarial legalism light. It is more about institutional development and organizational interests within the European that private actors have taken on new legal roles in consumer policy.

6 The changing face of European consumer policy

Up until now there has not been a wave of consumer litigation at national or European level. The paper shows that most actors in Europe dodged class actions and opted for a model in which public interest groups are in charge. Yet the stage has been set for a changing model of consumer policy in the European Union.

It is not only consumer and public interest groups that might benefit from changes. Private interest groups might also forge new organizations that can reap

revenue from bundling claims. A unique trial is pending that could boost the role of commercial competitors in class action throughout Europe (Frankfurter Allgemeine Zeitung 14/05/2008). A private company named Cartel Damage Claims has set up its headquarters in Brussels. It specializes in corporate claims concerning antitrust matters. Cartel Damage Claims has been assigned claims by German companies that feel betrayed by an alleged cartel in the cement industry. A state court has to decide whether transferring rights to a private organization is in line with legal practice. If the court upholds former decisions more companies might be willing to sue because they can minimize risks. Also, forum shopping will get more likely because private companies like the Cartel groups will seek promising countries for claims.

Yet forum shopping is widely feared by companies. Thus business groups will rather urge the Commission to craft European regulation on collective redress than accept looming forum shopping. Any such trial as the Cartel Damage Claims case yields more power to the European Commission to set up a European framework of collective redress.

The case also highlights that competition law turns into a major field of consumer policy when it comes to judicial politics. In April 2008 the European Competition Commissioner Neelie Kroes presented a white paper on collective redress in antitrust cases (European Commission 2008).

The paper aims at full compensation for damages that were inflicted by unlawful practices. Provisions do not equal punitive damages that are the cornerstone of US class actions. Yet deterrence is an acclaimed goal of the Commission's paper. Claims by interest groups and opt-in clauses for individual plaintiffs mark the proposed model. Given the high salience of antitrust matters over the last years competition policy might serve as the legal test case for consumer litigation in the European Union. In competition policy the European regulatory state is fully-fledged because the Commission acts as an

independent regulatory agency. So championing litigation in competition policy might transform consumer policy and bolster the European regulatory state.

Still, class actions are not deemed the most efficient tool of regulation in Europe. Even the Commissioner of Consumer Protection has emphasized frequently that she is not up to inventing true class actions. She considers them irresponsible. So the Commissions' drive for a common framework of collective redress appears to be a drive for comprehensive regulation. This is exactly the difference to adversarial legalism in the US. The political system of the EU might be as fragmented as the US. But in terms of policy output the Commission seeks to overcome fragmentation. This is meant to win over businesses and consumers for the ongoing process of integration.

So the legal tradition of European member states and the strategic choice of the European Commission set clear limits to class actions American style. That specter is not yet haunting Europe.

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