

The logo for The Economist, featuring the words "The Economist" in white serif font on a red rectangular background.

## Business and the law

# Chasseurs d'ambulances

### Class-action suits are coming to Europe

May 11th 2013 | PARIS | From the print edition

FOR years French governments have promised to permit class-action lawsuits. But French businesses hate the idea and besides, who wants to copy the Americans? Now, however, François Hollande and his Socialists may allow such suits, if a bill on consumer rights presented to the Council of Ministers on May 2nd is adopted in anything like its present form.

This has upset people who fear that ambulance-chasing and colossal damages are invading Europe. But that is not what Mr Hollande has in mind. This is to be class action *à la française*, or, as its fans prefer to call it, “*action de groupe*”.

The point of collective action is to enable people who have been injured by the same wrongful behaviour, but are unlikely to be compensated much individually, to pool their costs to secure redress. The risk is that the scales will be so tipped towards the claimant (as they are in America, through contingency fees and punitive damages) that lawyers can force blameless defendants to settle. Since 1992 France has tiptoed between the two, with a form of collective representation so restrictive that only a handful of cases have relied on it.

#### Class conscious

“Group actions” would strengthen consumers’ hands a bit. With a few dossiers, a consumer association could bring a case on behalf of all those who had suffered the same injury. A judge would decide on its merits, and set damages or devise a formula for them. The decision would be publicised, and members of the class given time to come forward, and also to opt out. But only associations would be allowed to bring such suits. Only consumer and antitrust cases would be eligible. And only financial damage, not physical or emotional harm, would be taken into account.

Other countries in Europe are interested in extending collective redress too, in part because American judges have taken to kicking out non-American claimants from suits against non-American companies filed in the United States. Around 20 EU members permit some sort of

collective action to seek compensation, the European Commission says.

The pace is picking up. Italy and Poland climbed aboard in 2010; Malta in 2012. Germany recently extended a temporary law passed in 2005 to facilitate a case brought by disgruntled Deutsche Telekom shareholders. Belgium's consumer-affairs minister has produced a class-action proposal for debate. And the commission, which asked for views on collective action in 2011, plans to say more about it soon.

Amsterdam and London are vying to be the favoured venue for hearing cross-border disputes. Anne Maréchal, a lawyer with DLA Piper in Paris, points to the legally binding class-action-style settlements that have developed in the Netherlands since 2005. Claimants can negotiate on behalf of an entire class, as long as a few are Dutch and a foundation is set up under Dutch law. The Amsterdam Appeals Court reviews the settlement, class members have a chance to opt out and the agreement has the force of law. The most recent big-ticket settlement involved a non-Dutch defendant—Converium Holding, a Swiss insurer—in a dispute with mainly Swiss and British shareholders.

London is loth to be left behind. In January the British government proposed opt-out class-action suits in competition cases. Third-party litigation funds, which raise money for suits from investors, crossed from Australia and America to Britain several years ago. Australia's biggest such fund, IMF, is now eyeing the Netherlands, and Europe's newest, Alter Litigation, was launched in February—in France.

From the print edition: Business