

Contents

1	Introduction	1
	References	7
2	Why Are Collective Actions Needed in Europe: Small Claims Are Not Reasonably Enforced in Practice and Collective Actions Ensure Effective Access to Justice	9
	2.1 What Are the Hurdles Faced by Small Claims in Europe	11
	2.2 How Do Collective Actions Overcome the Above Hurdles and Why Are They Efficient?	14
	2.3 Why Are Collective Actions Not Working Spontaneously if They Are Efficient?	16
	2.4 How Could Collective Actions Be Made Work?	17
	2.5 Summary	20
	References	20
3	Major European Objections and Fears Against the Opt-Out System: Superego, Ego and Id	23
	3.1 European Objections Against Class Actions: Scruples or Pretexts?	23
	3.1.1 Constitutional Concerns: Private Autonomy and Tacit Adherence	24
	3.1.2 Opt-Out Collective Actions Are Alien to Continental Legal Traditions	30
	3.1.3 It Is Very Difficult to Identify the Members of the Group and to Prove Group Membership	33
	3.1.4 Opt-Out Collective Actions Would Lead to a Litigation Boom and Would Create a Black-Mailing Potential for Group Representatives	35

3.2	The Headspring of European Taboos and Traditionalism: Party Autonomy and the State's Prerogative to Enforce the Public Interest	38
3.3	Summary	40
	References	42
4	Transatlantic Perspectives: Comparative Law Framing	45
4.1	Disparate Regulatory Environments	45
4.2	Why Should Europeans Not Fear the American Cowboy? Diverging Effects of Disparate Regulatory Environments	52
4.3	The Novel Questions of Collective Actions in Europe	59
4.3.1	Funding in the Absence of One-Way Cost-Shifting, Contingency Fees and Punitive Damages	59
4.3.2	Two-Way Cost-Shifting	62
4.3.3	Distrust of Market-Based Mechanisms in the Enforcement of Public Policy (No Private Attorney General)	62
4.3.4	European Opt-In Collective Actions and Joinders of Parties	63
4.3.5	Opt-Out Systems and the "Only Benefits" Principle	64
4.4	Summary	66
	References	67
5	European Models of Collective Actions	71
5.1	The European Landscape: To Opt in or to Opt Out?	73
5.2	Purview: Step-by-Step Evolution of a Precautious Revolution	85
5.3	Pre-requisites of Collective Action and Certification	88
5.4	Standing and Adequate Representation	95
5.5	Status of Group Members in Opt-in Proceedings: Liability for Legal Costs and Res Judicata Effect	98
5.6	Status of Group Members in Opt-Out Proceedings: Liability for Legal Costs, Res Judicata Effect and the "Only Benefits" Principle	101
5.7	Enforcement	105
5.8	Summary	106
	References	108
6	Conclusions	113
6.1	Collective Actions Are Needed in Europe to Ensure Access to Justice and Effectiveness of the Law	114
6.2	European Objections and Fears Against the Opt-Out System: Superego, Ego and Id	116
6.3	Transatlantic Perspectives: Comparative Law Framing	117

6.4	European Models of Collective Actions: A Transsystemic Overview	119
6.5	Closing Thoughts: “Small Money, Small Football, Big Money, Big Football”	121
	References	122