

VI. Country report Germany

Document Control

<i>Document</i>	<i>Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union – country report Germany</i>
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1.1 Overview of collective redress mechanisms¹

There are three different types of collective redress mechanisms in Germany: the recovery of ill-gotten claims under § 10 of the Unfair Competition Act (a skimming-off procedure), the representative action under the Legal Advice Act (recently replaced by the Legal Services Act) and an interim group procedure under the Capital Market Model Claims Act.

1.1.1 **Collective redress mechanism 1: The Gewinnabschöpfungsklage – recovery of ill-gotten gains**

In 2004, the German legislator made a step in the struggle against minor and dispersed damage with the amendment of the Unfair Competition Act (UWG). Consumers who suffer minor damage due to unfair advertisement or other unfair practices often do not raise their claims since potential gains and expenses of litigation bear no proportion. Moreover, in many instances individual litigation would not even be possible since the law of unfair competition as such is not enforceable by consumers, and not all breaches of the Unfair Competition Act cause liability under contract or tort law. In this way, many companies that are involved in relevant infringements may have a significant pecuniary advantage.

§ 10 UWG tries to combat such unfair strategies with the so-called claim for the recovery of ill-gotten gains. Any person who infringes against the rules of unfair competition law intentionally can be held liable by associations to pay over the ill-gotten gains. § 10 UWG does not aim at individual compensation. Instead, the payment goes into the public purse.

Details

A. LEGAL BASIS

The legal basis of the recovery of ill-gotten gains is § 10 of the Unfair Competition Act.

B. COMPETENT AUTHORITY

The District Courts (*Landgericht*) have exclusive jurisdiction. Appeals to the Higher Regional Courts (*Oberlandesgericht*) and usually also to the Supreme Court (*Bundesgerichtshof*) are possible.

C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING

Complaints may be initiated by organisations whose purpose is to promote commercial or independent professional interests and that have to fulfil certain requirements. Additionally, suits may be brought by so-called “qualified entities”. “Qualified entities” are consumer associations that are either registered with the Federal Office for Justice (*Bundesamt für Justiz*) in Bonn or, in case of an organisation from another EU member

¹ This is an update of a previous study commissioned by DG SANCO. See: Centre for Consumer Law of the Katholieke Universiteit Leuven 2007, An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings.

state, with the European Commission. In order to be registered, qualified entities in Germany must have legal capacity and be capable of promoting the interests of consumers.

The action for recovery of ill-gotten gains thus lies in the hands of consumer and trader organisations. The most important organisations at the national level are the *Verbraucherzentrale Bundesverband* (vzbv) and the *Zentrale zur Bekämpfung des unlauteren Wettbewerbs*.

D. TYPES OF DISPUTES

Unfair commercial practices.

E. MAIN PROCEDURAL RULES

The general procedural rules apply. Collective actions are treated like any other litigation between private parties.

F. REMEDIES THAT CAN BE OBTAINED

The only remedy available is the recovery of ill-gotten gains, to be paid to the public purse.

G. COSTS INVOLVED FOR THE PARTIES

The litigation costs – court fees as well as lawyer's fees - depend on the amount in controversy. The parties can agree upon higher lawyer's fees, whereas they are not allowed to agree upon lower lawyer's fees for representation in court. The "loser pays principle" applies. The Ministry of Justice has however facilitated the use of third party financing (for details see 1.6.1, at 7.).

H. AVERAGE DURATION OF THE PROCEDURE

This is not yet clear. The only case that was decided until now took one year at first instance but is now pending on appeal. Other cases have been brought two or three years ago and are still pending in the District Courts.

1.1.2 Collective redress mechanism 2: *Sammel - or Musterklage*

Under the Legal Advice Act, (recently replaced by the Legal Services Act) two types of representative actions are possible.

a) The *Musterklage* (model claim) is a test case brought by a publicly sponsored centre for consumer protection or by a consumer association on behalf of a consumer. It was introduced in order to grant consumer associations legal standing to bring test cases, or model cases, but has not introduced any further effects of the judgment obtained. Most importantly, the limitation of the same type of claims by other consumers is not suspended during the test case procedure. Broader effects can only be achieved by (voluntary) pre-trial contracts between the parties but this is not relevant to this study.

b) The *Sammelklage* (representative action) allows the consumer organisations to bring collective claims on behalf of consumers. There are no legal restrictions as to the number of consumers who can be represented. In practice, however, the procedure

only works in cases in which the total number of individuals who have suffered damages is not too high and where those persons can be identified without major problems. In such a case, they may all assign their claims to the consumer organisation. The consumer organisation is the sole claimant but will in case of success distribute the recovered damages amongst the consumers who have assigned their claims.

In December 2007, the new Legal Services Act was passed. It replaced the Legal Advice Act from July 2008 on and maintains both the test case procedure and the representative action. The few changes brought by the new law are mentioned below.

Details

A. LEGAL BASIS

The legal basis for the representative action was, until June 2008, Article 1 § 3 no. 8 of the Legal Advice Act.

The Legal Advice Act was replaced by the Legal Services Act in July 2008.

B. COMPETENT AUTHORITY

The District Courts (*Landgericht*) have exclusive jurisdiction. Appeals to the Higher Regional Courts (*Oberlandesgericht*) and usually also to the Supreme Court (*Bundesgerichtshof*) are possible.

C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING

Only publicly sponsored centres for consumer protection or consumer associations can bring representative actions under the Legal Services Act (similar to the previous situation under the Legal Advice Act).

The precondition under the Legal Advice Act was, until June 2008, that they could bring such actions “as far as this is necessary in the interest of consumer protection”. This particular criterion had been criticised from the outset by academics² because they had feared its restrictive interpretation by the courts. Indeed, it has initially proved to be a problem. In one case, the consumer centre of North Rhine-Westphalia had sued a bank. Bank customers had assigned their claims to the consumer centre. In every case, thieves had stolen the customer’s payment cards and used them to withdraw money from the customers’ bank accounts. The question was whether the customers had been in breach of their duty to take care of their payment cards and their personal identification numbers (PIN). The OLG Düsseldorf thought that the representative action by the consumer centre was not “necessary in the interest of consumer protection” because the individual claims were not so low that consumers would not sue individually and the matter was not particularly difficult.³ This judgment was,

² See Stadler, A. and Micklitz, H.-W. (2003), at 561.

³ See OLG Düsseldorf, NJW-RR 2006, 127.

however, successfully appealed by the consumer centre, and its legal standing was confirmed by the Supreme Court (BGH)⁴ that argued that consumer organisations could also act in the interest of consumer protection when collecting claims beyond values that are so low that no consumer would sue individually if the action is of broader relevance.

With the enactment of the new Legal Services Act, legal standing of consumer associations is transferred into the Civil Procedural Act (Zivilprozessordnung, ZPO). Under the new § 79 par. 2 no. 3 ZPO, the eligible consumer associations can bring representative actions “within their field of activity and responsibility”. No other restrictions apply.

D. TYPES OF DISPUTES

The law does not define the type of disputes, e.g. what is meant by consumer law. Under the previous Legal Advice Act, the remedy was limited to the recovery of third party (i.e. individual) claims which have been assigned to consumer organisations by individual consumers. Since the coming into force of the Legal Service Act, assignment of the claims is no longer necessary. Consumer organisations can claim on behalf of consumers.

Until now, one focus has been on disputes between consumers and banks, and cases were also brought in the air transportation sector.

E. MAIN PROCEDURAL RULES

The general rules apply. If the consumer has assigned his or her claim to a consumer organisation, the latter will be the sole claimant. No right of intervention of individual consumers in the *Muster-Sammelklageverfahren* is provided for.

F. REMEDIES THAT CAN BE OBTAINED

The Legal Services Act entitles associations to initiate actions for damages but also to file other types of suits for specific performance, e.g. after the cancellation or rescission of a contract.

G. COSTS INVOLVED FOR THE PARTIES

The litigation costs – court fees as well as lawyer's fees - depend on the amount in controversy. The parties can agree upon higher lawyer's fees, whereas they are not allowed to agree upon lower lawyer's fees for representation in court. The losing-party-pays principle applies. There are no costs for the consumers who are represented by the consumer association.

H. AVERAGE DURATION OF THE PROCEDURE

Most cases are still pending. In the case described above, partial judgment has in the meantime after almost four years been delivered by the OLG Düsseldorf, to which the case was returned by the BGH.

⁴ BGH, NJW 2007, 593.

1.1.3 Collective redress mechanism 3: Kapitalanlegermusterverfahren (Capital Market Model Claims Act)

The Capital Market Model Claims Act (*Kapitalanleger-Musterverfahrensgesetz* or *KapMuG*) was designed in order to strengthen the position of investors under securities law.⁵ Its main objective, however, is seen by some authors to allow the competent court to deal with the 17 000 claims that investors had brought against the Deutsche Telekom AG in a capital market law case.

The KapMuG is supposed to be an "experimental law", introducing, for the first time, a model case procedure into German civil procedural law. After a trial period of 5 years, the law will automatically expire on November 1, 2010. If it is found to work satisfactorily, the legislator may decide to have it extended or to have its rules even incorporated into the Code of Civil Procedure. In the latter event, model case proceedings would become generally available in civil litigation. Current comments demonstrate a tendency towards the extension of the Act.

The main idea was to decide the common factual and legal questions in a group of similar legal actions only once with a binding effect for all the affected plaintiffs. It is a two step procedure: the common factual and legal questions will be decided in a collective procedure, which will then have to be applied to the individual cases. The law applies to damage that occurs in series to many capital investors, independently from the amount of the damage. If several affected individuals bring an action for damages due to wrong, misleading or omitted information on the capital market or if they seek the fulfilment of a contract pursuant to the Law Governing the Purchase and Acquisition of Stocks, the plaintiffs and the defendants in each individual lawsuit are then entitled to request the collective procedure. Once ten such requests have been made, the collective procedure is initiated. In this case, all individual lawsuits for which the outcome of the collective procedure is relevant are suspended, and the individual claimants become included in the collective procedure unless they withdraw their claim. The judgment in the collective procedure shall be binding on all individual cases in process at the same time as the collective procedure, including those cases that have been brought after the collective procedure has been initiated.

Details

A. LEGAL BASIS

The Capital Market Model Claims Act of 2005.

⁵ See the explanation by the German government on the Capital Market Model Claims Bill, BT-DrS. 15/5091 of 14 March 2005, at p. 1.

B. COMPETENT AUTHORITY

Due to the significance of the common factual and legal question, the Higher Regional Courts have exclusive jurisdiction for the collective interim procedure. Appeal to the Supreme Court is possible.

C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING

Only individuals can initiate their own procedures that may then be joined together to a collective interim procedure. Individuals can apply for the interim procedure. Once 10 such requests have been made, the collective procedure is initiated by the district court.

D. TYPES OF DISPUTES

During a five-year pilot stage, it is limited to investor's rights and claims. After the end of the pilot stage, the scope of application could be broadened.

E. MAIN PROCEDURAL RULES

In order to enhance the information flow between the courts, the KapMuG introduces a new electronic register of lawsuits in order to publish and exchange relevant news and information. If at least ten applications for the collective interim procedure are filed, the first court that has received such an application may decide that the procedure shall be transferred to the Higher Regional Court. The Higher Regional Court must decide the common points in dispute by declaratory judgment. Similarly to the choice of a "lead plaintiff" in the US *Private Securities Litigation Reform Act 1995*, § 8 par. 2 no. 1 KapMuG contains the assumption that the claimant with the highest individual claim has the strongest interest in the litigation. As a consequence, it shall be that person who may guarantee the best possible performance of the test case. Until the final decision in the collective interim procedure, the individual legal proceedings are suspended. Once the judgment in the collective interim procedure has been released (the German Federal High Court is competent to take a final decision), the individual lawsuits are continued. The courts deciding on the individual claims are bound by the decision in the interim procedure. They will still have to judge on causation issues and individual damages. Notably, the decision of the district courts on the individual claims can be appealed to the higher regional court and to the Supreme Court as well so that there may be five instances until the case has been finally decided.

F. REMEDIES THAT CAN BE OBTAINED

The Act pursues a double aim of 1) compensation and 2) performance of investment contracts.

G. COSTS INVOLVED FOR THE PARTIES

The litigation costs – court fees as well as lawyer's fees - depend on the amount in controversy. The parties can agree upon higher lawyer's fees, whereas they are not allowed to agree upon lower lawyer's fees for representation in court. The "loser pays principle" applies. However, there are some complicated particularities which result from the two-step procedure. In essence: the costs for the collective action are treated as being part of the costs for the following individual actions. In the collective action, the lead plaintiff and the other registered plaintiffs bear the costs *pro rata* according to the value of their individual claim. If the lead plaintiff or any other registered plaintiff appeals

against the judgment on the collective action, he or she bears the risk of losing the appeal alone.

H. AVERAGE DURATION OF THE PROCEDURE

There is not much experience yet. The *Telekom* case is expected to take many years. In the *D.* case, the collective interim procedure before the Higher Regional Court of Stuttgart was decided within 7 months but went on appeal with the Supreme Court. By order of 25 February 2008, the Supreme Court referred the case back to the Higher Regional Court of Stuttgart where it is still pending. Again, one has to remember that this is only the interim procedure, and the whole litigation that started in early 2006 may go through up to five instances.

1.2 Overview of relevant literature

□ Literature on § 10 UWG

There is a considerable body of literature on § 10 UWG that cannot be detailed out here. The opponents of this provision, for example *Sack* (2003) and *Wimmer-Leonhard* (2004) basically refer to its alleged inconsistency with fundamental principles of German private law, in particular because the provision is deemed to have a punitive effect.

Whilst *Schaub* (2005) considered § 10 UWG to be an important new mechanisms against rogue traders and *Engels and Salomon* (2004) even regarded the instrument as excessive sanction, there seems to be a common perception amongst consumer lawyers that § 10 UWG is not very effective, the simple reason being that it requires the claimant consumer association to prove the defendant's intentional breach of the Act Against Unfair Competition. This has been argued by *Stadler and Micklitz* (2003) and by *Edda Müller* (2004). In the debates that preceded the introduction of § 10 UWG, there were attempts to let grossly negligent conduct suffice but this met heavy resistance by trade and industry (see also *Schaub* (2005)).

From an incentives perspective, *Stadler and Micklitz* (2003) have argued that the procedure is highly unattractive for the potential claimants, i.e. the consumer organisations, since they bear the cost risk of the litigation under the "loser pays principle" whereas the skimmed-off profits go to the purse of the state in case of success.

□ Literature on the Legal Advice Act and its successor, the Legal Services Act

The collective mechanism under the Legal Advice Act and its successor, the Legal Services Act, has been introduced largely unnoticed by legal scholars. The only article on the representative procedure under the Legal Advice Act is from *Helke Heidemann-Peuser* (2002) who works with the German consumer association vzbv. She points out that the opt-in procedure is enormously cumbersome and time-consuming, and that therefore there is little incentive for a consumer association to bring a collective action. The former head of the vzbv, *Edda Müller* (2004) has supported this view.

Another element that was suspected to limit the effectiveness of the Act was that the collective action had to be necessary in the collective interest of consumers. *Micklitz and Stadler* (2003) had criticized this as an impediment to litigation. As mentioned above, the criterion was interpreted by some courts in such a way that the procedure could only apply where the individual claims were so low that consumers could not be expected to sue individually. These decisions have been commented on in case-notes. Some legal scholars, including *Heß and Michailidou* (2004) thought that such an interpretation was to be welcomed because it could prevent unmeritorious claims, whilst other authors, in particular *Metz* (2004) and *Micklitz and Beuchler* (2004), emphasized the lack of effectiveness of such an interpretation. The Bundesgerichtshof took a more generous stand and accepted the collective action arguing that a consumer organisation could also act in the interest of consumer protection when

collecting claims beyond values that are so low that no consumer would sue individually if the action is of broader relevance.

□ **Literature on the Capital Market Model Claims Act**

The Capital Market Model Claims Act has attracted a lot of attention amongst German scholars.

The drafter of the Capital Markets Model Claims Act, *Fabian Reuschle* (2004a and 2004b), pointed out as positive aims and effects that the possibilities for an individual to obtain redress in capital market cases were going to be improved. He was followed by *Meier* (2005). In cases where the individual suffers relatively low financial damage, the risk to lose a case and the costs involved in a lawsuit often prevented that individual from taking action. According to the new law, there would be a cost rule aiming at making litigation cheaper for the individual claimant. Thus, the costs that arise in the actual model case in the higher instance court would be distributed to the individual lawsuits in proportion to the amount of damages sought. Additionally, no extra court fees or lawyer's fees apply for the model case.

Also, it has usually been problematic to submit effective evidence, for example, of mistakes of a prospectus or of ad-hoc information. This is often only possible by obtaining expensive expert evidence. In the model case, only one expert has to be included in the process, instead of every individual who suffered a loss having to find and to pay for an expert.

Another aspect of the effectiveness is that the decision in the model case is binding for all individual cases included in the procedure, and this in relation to all the questions in law and fact that were raised. This means that even if an individual based his or her claim only on a mistake in a prospectus that cannot be proven in the model case, he or she can still be successful with the lawsuit if others based their claims on a different mistake in the same prospectus that has indeed been proven in the model case. Thus, *Schneider* (2005) argues that the KapMuG invokes an extension of the liability of the opposed party towards the investors.

Furthermore, *Schneider* (2005) argues that the fact that model cases are made public in an electronic register has been interpreted to lead to more efficient coordination of the activities of the lawyers dealing with protection of investors and therefore to further stimulate commercialisation of this sector of consultancy.

Finally, the new model cases aim at relieving the courts, which, carrying out a test case, do not have to decide about a large amount of similar questions on law and facts in parallel lawsuits anymore.

Critics such as *Braun and Rotter* (2004) argue that individuals still face high financial risks since they have to file an individual lawsuit and thus pay lawyer's and court fees. It is necessary to motivate individuals to actually take their case to court. This might fail according to the still high financial risks. *Braun and Rotter* therefore suggest that it should be possible to sign up to a collective action free of charge instead of filing an individual lawsuit. Another possibility that might influence effectiveness is that, if the

interim procedure is unsuccessful for the claimants, most of them might simply take back their claims.

Keller and Kolling (2005) think that many investors might not even register a claim because if they are chosen as the model-claimant their lawyer will face a tremendous amount of work. *Platzmeier (2005)* also writes that there is no incentive at all to take up the role of the model claimant in the test case.

The lawyer of the lead plaintiff can normally only ask for a fee that is in relation to the amount in dispute in the individual case and not the (very high) amount in dispute of the whole proceeding that are connected in the model case. Thus, *Schneider (2005)* criticizes that if the lead plaintiff chosen was one with a relatively low-value claim, the lawyer would get an exceptionally low fee which is neither related nor proportionate to the workload he or she faces in the model case proceedings. Moreover, he holds that the lead plaintiff's lawyer also faces high risk of liability in case he or she makes a mistake. This makes it even more unattractive to join such mass proceedings. The lack of attractiveness can only partly be balanced by the fact that if a law firm presents a large amount of claimants, that law firm can obtain more lawyer's fees since there will be a fee for every individual case. Also, an office can be able to make a name of itself and gain a certain reputation which will then in turn make it easier to attract more plaintiffs – but see *Heß (2005)* who thinks that this is not going to be the case.

The aim of relieving the courts will, according to *Platzmeier (2005)*, not be achieved either. A part of the burden will simply be shifted to the higher court that decides on the interim procedure. The lower court still has to deal with a very large amount of single lawsuits, prepare files and analyse them in order to make the interim procedure possible in the first place. Furthermore, the proceedings will not be faster since the lower instance court has to carry out considerable work before the actual model case can be taken to the higher court. There is also the possibility of appeal, so the decision of the higher court on the model case might be annulled and the case taken back to the higher court for a review which leads to a considerable expenditure of time.

What also makes proceedings more time-consuming is the fact that every participant in the proceedings even though he or she is not the lead plaintiff can request an extension of the original issues in question in the model case. The lower instance court has to decide upon that extension and the higher court that decides the model case is bound by the decision. The problem is that files have to be sent back and forth between the courts and the proceedings in the model case come to a halt while the lower court decides upon the extension. In that context, *Heß (2005)* argues that a concentration of the full proceedings at a single court (the lower instance court) would be more effective.

The concentration at one lower instance court would also prevent a disruption of the process of taking the evidence which now happens partly at the court which decided the model case question and partly at the lower instance court.

Ertmann and Keul (2007) criticize that proceedings might also be made longer due to many regulations and practices concerning the proceedings at the lower instance court, before the model case is taken to the higher court. In the first place, courts may be

hesitant to register the first request for the taking up of a model case because the higher court responsible in the region of the first court who registered such a request will later be the court that has to decide the model case and thus face that considerable workload. Secondly, model case proceedings are not admissible if the underlying issues are ready to be decided upon. The lower instance court has to assess if this is the case. That means that it has to analyse the case in depth and also take into account the objections made by the opponent etc. Therefore, proceedings become more time consuming and the workload of the court is immense.

A third point made concerning the proceedings before the actual model case is that the lower instance court has to formulate the question to be decided in the model case and has to take into account not only the requests made by the first ten registered requests for a model case but also by any later registered requests that might base their claims on different issues, such as other allegedly wrong statements in a prospectus. The court thus has to analyse facts and law in all the many requests for a model case. Finally, requests for a model case may have been registered at a number of lower instance courts but only one of them is responsible for the formulation of the question to be decided by the higher court assessing the model case. Thus, the one lower instance court has to put together information from many cases spread over different courts.

Finally, *Schneider* (2005) adds that due to rules on lapse of time and the binding effect of the model case decision, affected individuals are practically forced to take their cases to court so that there will be a general increase of capital market mass proceedings.

1.3 Difficulties to obtain redress for mass claims

This issue is subject of a complementary study⁶ and results from the country studies are integrated therein.

1.4 Collective actions filed so far

The collective actions filed so far are presented in the table on the following page. For more details, please see part III of this study.

⁶ CPEC 2008, Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems, Final Report (study prepared for DG SANCO).

Table 1: Overview of cases collected – mechanism 1: Skimming-off procedure under § 10 UWG

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
Kammergericht Berlin, 5 U 164/07	Verbraucherzentrale Bundesverband e.V. ./.J. GmbH	The defendant is selling mobile ring tones via the internet. Although he accepted a cease and desist letter he kept on using a certain presentation on his web page which the plaintiff held mistakable. The plaintiff is suing for skimming off the money that was earned by selling ring tones via this webpage.	February 2006, Landgericht Berlin	Still pending	None
Landgericht Würzburg , 12 O 2579/04	Verbraucherzentrale Bundesverband e.V. ./.K.. mbH	The defendant keeps sending advertising mail in which he asks consumers to attend a sweepstake. A consumer has to call a value-added service line if he wants to know whether he won a prize. The court issued a cease-and-desist order with the intent to stop this. In the main proceedings the plaintiff – the Verbraucherzentrale Bundesverband e. V. (Association of the German consumer advice centres) – is also suing for skimming off the money that was earned in this way.	January 2005, Landgericht Würzburg	Still pending	Yes The respective company is based in Austria and sends from there advertisement by post to German consumers.
OLG Stuttgart, 2 U 58/06	Verbraucherzentrale Bundesverband e.V. ./.L. GmbH & Co.KG	The defendant, a company running hundreds of supermarkets in Germany, was promoting a mattress via using a certificate that was given by the “Stiftung Warentest” (a non-profit German consumer organisation conducting independent tests) although this certificate was linked to another product. The Plaintiff is suing for disclosure and for skimming off the money that was earned in this way.	November 2005, Landgericht Heilbronn - 3. Kammer für Handelssachen	November 2006, judgment by OLG Stuttgart, 2 U 58/06	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
16 O 366/07, Landgericht Darmstadt	Verbraucherzentrale Bundesverband e.V. ./.A. GbR	The defendant offered certain services via the internet. The advertisement for these services had been anticompetitive. The plaintiff is therefore suing for disclosure and for skimming off the money that was earned in this way.	May 2006, Landgericht Darmstadt	Still pending	None
3 O 11392/04, Landgericht Nürnberg-Fürth	Verbraucherzentrale Bundesverband e.V. ./ R.	Plaintiff suing for skimming off profit that was earned by the defendant via anticompetitive advertising. The defendant was telling on his webpage that he could perform legal services although he wasn't allowed to do so under the legal advice act.	February 2004, Landgericht Nürnberg-Fürth	November 2005, settlement	None
33 O 17282/07	Verbraucherzentrale Hamburg ./. O.	Plaintiff suing for skimming off profit that was gained by O. through incorrect conversion of bills from DM to Euro.	September 2007	Pending	No information available.
12 O 33/05, Landgericht Bonn	Verbraucherzentrale Bundesverband e.V. ./ . B	The company promoted a mattress with the judgement of "Stiftung Warentest" (a non-profit German consumer organisation conducting independent tests) "very good", although such a judgement was never awarded.	December 2004	2005	None

Table 2: Overview of cases collected – mechanism 2: *Sammel - or Musterklage*

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
5 O 521/03, Landgericht Düsseldorf; I-16 U 160/04, Oberlandesgericht Düsseldorf; XI ZR 294/05, Bundesgerichtshof	Verbraucherzentrale NRW ./. S.	The Verbraucherzentrale Nordrhein Westfalen (consumer centre of North Rhine-Westphalia) sued for compensation of loss suffered by customers of a bank (the defendant). Bank customers had assigned their claims to the consumer centre. In every case, thieves had stolen the customer's payment cards and used them to withdraw money from the customers' bank account. The question was whether the customers had been in breach of their duty to take care of their payment cards and their personal identification numbers (PIN).	2003, Landgericht Düsseldorf	October 2007, partial judgement. For the rest: still pending	None
6 O 1981/07	Verbraucherzentrale Sachsen/DREWAG II	This claim was filed by the Verbraucherzentrale Sachsen (Consumer advice centre of Saxony). Defendant is the S. GmbH, an energy supplier. The plaintiff is suing for return of excessive fees for gas delivery for a total of 29 consumers. Before this case was filed it was via legally binding judgment stated that the underlying fee-increase-clause was unlawful.	July 2007, Landgericht Dresden	Still pending	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
6 O 341/06	Verbraucherzentrale NRW ./.R. AG	This claim was filed by the Verbraucherzentrale NRW (Consumer advice centre of North Rhine-Westphalia). The defendant is an energy supplier. The plaintiff sues for return of excessive fees for gas delivery for a total of 25 consumers covering the years 2003 to 2005.	September 2006, Landgericht Dortmund	January 2008	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
Landgericht Köln, 29 O 196/07	Verbraucherzentrale Bundesverband e.V. ./ L. AG	L. AG is a German air carrier. The Verbraucherzentrale Bundesverband e. V. (Association of the German consumer advice centres) is suing for claims of compensation for defeasance (European Union directive 216/2004) for 13 members of a party. The court abated legal proceedings in order to wait for a decision by the ECJ (E./ S. A/S (C-396/06)).	August 2007, Landgericht Köln	Still pending	Partly The case concerns a flight from Norway to Germany. Both parties are however of German nationality.
Landgericht München, 12 O 17192/05	Verbraucherzentrale Bundesverband e.V./P. GmbH & Co. KG	The Verbraucherzentrale Bundesverband e. V. (Association of the German consumer advice centres) is acting as a nominal plaintiff for two consumers. This two consumers subscribed a pay tv service by the defendant. As the defendant missed to inform the consumers they failed to cancel the service within the time limit. The defendant did not return the deposit that was paid by the consumers. The general terms and conditions of the defendant are saying that the subscription will last longer if the customer missed to cancel subscription within time limit an that monthly rate will be increased. The plaintiff holds this term to be unlawful and is therefore suing for claims of compensation.	August .2005, Landgericht München	Finalised without judgment because the defendant paid in February 2006	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
1 S 489/06, Landgericht Gera	Verbraucherzentrale Bundesverband e.V. / S. GmbH	The Verbraucherzentrale Bundesverband e. V. (Association of the German consumer advice centres) is acting as a nominal plaintiff. Defendant is the S. GmbH (electric power company). The plaintiff is suing for the return of fees paid by 6 customers of the defendant.	December 2005, Amtsgericht Jena	Still pending	None
231 C 30904/06, Amtsgericht München	Verbraucherzentrale Hamburg ./ P. AG	The Verbraucherzentrale Hamburg was acting as nominal plaintiff for almost 200 consumers. The defendant was P. AG, a provider of pay-TV services. The consumers had cancelled their contracts and were required to return their "smartcards". In a vast number of cases, P. claimed not to have received these smartcards and therefore claimed 75 Euros in compensation. The Verbraucherzentrale Hamburg sued for the return of these fees.	October 2006, Amtsgericht München	Settled in March 2007, the defendant paid.	None
20 O 564/01	Verbraucherzentrale Stuttgart ./ I.	The Verbraucherzentrale Stuttgart was acting as a nominal plaintiff. The defendant had acted as credit intermediary and had claimed fees for this activity in breach of the Consumer Credit Act.	Landgericht Stuttgart, January 2002	Decided in July 2002	None

Table 3: Overview of cases collected – mechanism 3: Capital Markets Model Claims Act

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
901 Kap 1/06, Oberlandesgericht Stuttgart	D. AG	Action for damages; shareholders are suing for compensation because of a delayed ad hoc announcement concerning the retirement of the Chief Executive Officer of the defendant.	2006, Landgericht Stuttgart	February 2007, decision, pending on appeal	None
23 Kap 1/06, 23 Kap 2/06 Oberlandesgericht Frankfurt am Main	Deutsche Telekom AG	The plaintiffs are suing for declaration as they held the information given by the defendant via a prospectus invalid and incomplete.	2005	July 2006, submission decision	No information available
24 Kap 15/07, Kammergericht Berlin	L. Berlin u. a.	The plaintiff is suing for declaration as he holds the information given by the defendant via a prospectus invalid, incomplete and misleading.	2006	August 2007, submission decision	No information available

Note: At the moment 177 applications for assessment are pending in court. A constantly updated list can be found at www.ebundesanzeiger.de under the link “Klageregister (nach dem Kapitalanleger-Musterverfahrensgesetz)”.

1.5 Hypothetical example cases

The following section contains data concerning the costs of 3 “hypothetical example cases”. A “hypothetical example case” is hereby understood as being an action proceeding which is “invented” on basis of existing cases, and defined through the type of individual damage suffered by a number of consumers, the sector, the category of law, the value of the case, the affected number of consumers, etc. For each case analysed are:

- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).*
- b) The effects on consumers who do not bring the collective action.*
- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).*
- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).*
- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.*
- f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?*

In all cases it is assumed that claims are brought at the same court. The consumers are not in a state of poverty and are not eligible for legal aid targeted exclusively at the poor. All cases are decided after appeal.

1.5.1 Case 1 - telecommunication

Due to a technical defect, the telecommunications services provider T has miscalculated the duration of all telephone calls made by customers as being 2-3 percent longer than they were in reality, resulting in extra profits of 1 million Euro. 100,000 customers suffered damages; with certain differences as to the individual case. The consumer organisation or other intermediary preparing the claim estimates the average damage per consumer to be 1 Euro per month. The service provider claims to have repaired the defect after 10 months. Therefore the average damage per consumer could be estimated at 10 Euro.

- If the relevant mechanism is an opt-out system: consumer organisation or other intermediary represents all consumers (combined value of claims 1 million Euro)*
- If the relevant mechanism is an opt-in system: consumer organisation or other intermediary could mobilise 1,000 consumers (combined value of claims 10,000 Euro)*

- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

This action could be brought as a representative action under the Legal Services Act.

- b) The effects on consumers who do not bring the collective action.**

The action under the Legal Services Act is brought by a consumer association. It has only effect on consumers who have assigned their claims to the consumer association and thus would have no effects on consumers who do not.

- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

See table below.

- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**

See table below.

- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

See table below.

- f) Is there a "loser pays principle"? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

The "loser pays principle" applies. The losing side has to pay the court fees and also the lawyer's fees of the winning side. It may be noted that if the consumer association wins the case, its internal costs for preparing the claim, sending letters to the potential claimants who might wish to assign their claims, analysing the suitability of their alleged claims, preparing the file, communicating during the law-suit with those consumers who have assigned their claims and finally distributing the money in case of a successful claim are not recoverable.

Table 4: Estimates regarding hypothetical example case 1 - telecommunications

	Estimated court fees [national currency]	Estimated lawyer's fees [national currency]	Other costs, if any [national currency]	Public support that is available [national currency]	Estimated time involved	Comments
Collective redress: Sammel - or Musterklage (Legal Advice Act)						
<i>For each individual consumer</i>	None	None	None	None	Ca. 20 hours	This time is needed for sorting the documents, assigning the claim and communicating with the consumer association
<i>For intermediary filing the action</i>	588 Euro	1 459.65 Euro	Expert fee of 5 000 to 10 000 Euro	Regular support by the Ministry that is responsible for Consumer Protection	24 working days	
Individual redress (through ordinary court procedure)						
<i>For each individual consumer</i>	75 Euro	89.25 Euro	None	Legal aid for poor consumers	Ca. 25 hours	When losing the case, the consumer would also have to pay for the defendant's lawyer, which amounts to 89.25 Euro.
Individual ADR						
<i>For each individual consumer</i>	25 Euro	None	None	None	Up to 25 hours if the <i>Netzagentur</i> decides to have a hearing.	Telecommunications services customers can approach the ADR scheme of the telecommunications regulator (<i>Bundesnetzagentur</i>)

1.5.2 Case 2 – financial services

Enterprise E released a third tranche of shares (230 million shares, 60 Euro per share). Following this, the value of the shares decreased rapidly during the next three years (to 10 Euro per share), leading to a loss in shareholder value of 11.5 billion Euro. Shareholders claimed that they had been victims of false information (considerably overestimated property; concealment of the burdensome acquisition of a foreign competitor) contained in the company's prospectus when the shares were put on the market. 15,000 investors bring their claims to the court, with an average value of the claim being 7,000 Euro each. The combined value of the claims is therefore 105 million Euro.

a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).

This is a case for which the procedure under the Capital Market Model Claims Act is available. In theory, the case could also be brought by a consumer association under the Legal Services Act but this would not happen in practice since the combined value of the claims is far too high and the risk would therefore be far too high as well.

The Capital Market Model Claims Act in itself does not provide for any alleviation of fees since it is only an interim procedure, whereas the costs arise for each individual claim. For the sake of this exercise, it is assumed that one lawyer represents 15 000 claimants and brings one joined action (a traditional joinder). In such a case, the court fees and the lawyer's fees are calculated on the basis of the aggregate amount of 105 000 000. The lawyer is, however, entitled to an extra due to the fact that he represents more than one claimant,⁷ which almost doubles the aggregate fees.

It should however be pointed out that in practice a law firm would never bring 15 000 claims in one joined action because it would be impossible to handle such a claim. The maximum of claims to be joined in one action would be around 100. Thus, the combined value of such a joined action would not exceed 700 000 Euro each, with consequences of the court fees and the lawyer's fees.

Moreover, a court would never accept such a joinder. In fact, courts have the competence to split joined actions if they think the joinder is inappropriate, and they have done that with joinders comprising only four different claimants. This may be due to the fact that the court fees are also lower when actions are brought as joined actions.

Thus, for the sake of this exercise, it will be assumed that a combined claim over 105 million Euro is brought but this is not realistic.

b) The effects on consumers who do not bring the collective action.

The procedure has no effect on consumers who do not bring an individual action that is then combined into a collective action or who do not join the action after the collective procedure has been initiated by the court.

⁷ VV-Nr. 1008.

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- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

See table below.

- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**

See table below.

- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

See table below.

- f) Is there a "loser pays principle"? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

The collective action is merely an interim procedure that forms part of the individual litigation. Thus, the normal rules on individual litigation apply, in particular the "loser pays principle". The only advantage on the claimant's side is that the common costs of the collective procedure, in particular expert evidence, are shared pro rata between the claimants if the claim is lost.

Table 5: Estimates regarding hypothetical example case 2 – financial services

	Estimated court fees [national currency]	Estimated lawyer's fees [national currency]	Other costs, if any [national currency]	Public support that is available [national currency]	Estimated time involved	Comments
Collective redress: Kapitalanleger-Musterverfahrensgesetz - KapMuG (Capital Market Model Claims Act)						
<i>For each individual consumer</i>	60.30 Euro ⁸	90.45 Euro	Potentially costs for expert evidence which can be very expensive in financial services but divided by 15 000	Legal aid for poor consumers	Impossible to assess	This has been calculated a pro rata costs from litigation over the whole amount of 105 million Euro which is unrealistic in practice.
<i>For intermediary filing the action</i>	None	None	None	None	Impossible to assess. In the Telekom case, ca. 100 working days have already been invested, and the case has not even reached the stage of the trial.	
Individual redress (through ordinary court procedure)						
<i>For each individual consumer</i>	453 Euro	1 139.43 Euro	Potentially costs for expert evidence which can be very expensive in financial services	None	Impossible to assess	
Individual ADR						
<i>For each individual consumer</i>						ADR is not available

⁸ This is based on the assumption that the case is decided by judgment. The initial fee only for bringing the claim is one third.

1.5.3 Case 3 - tourism

The tour operator T advertised on its website a “last-minute package” called “4-star” in which the consumers were supposed to be offered services in various hotels on various locations (Greece, Tunisia, etc.) in the 4-star category. However, the hotels were in very bad shape and in spite of the request of consumers no other accommodation was provided. The tour operator also categorically rejected all written claims of consumers for compensation. The only argument of the trader for rejection was that last-minute arrangements meant lower quality of services. About 500 travellers are affected, of which 200 claim a refund of 250 Euro each (which is 10% of the total price of the package). The combined value of the claims is therefore 50,000 Euro.

a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).

This action could be brought as a representative action under the Legal Services Act, although one would normally not do this as the facts appear to be different for the individual consumers who travelled to different hotels in different countries. For the sake of this exercise, it is assumed that such an action is brought.

b) The effects on consumers who do not bring the collective action.

The action under the Legal Services Act is brought by a consumer association. It has only effect on consumers who have assigned their claims to the consumer association and thus would have no effects on consumers who do not.

c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).

See table below.

d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).

See table below.

e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.

See table below.

f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?

The “loser pays principle” applies. The losing side has to pay the court fees and also the lawyer’s fees of the winning side. It may be noted that if the consumer association wins the case, its internal costs for preparing the claim, sending letters to the claimants who might wish to assign their claims, analysing the suitability of their alleged claims,

preparing the file, communicating during the law-suit with those consumers who have assigned their claims and finally distributing the money in case of a successful claim are not recoverable.

Table 6: Estimates regarding hypothetical example case 3 – tourism

	Estimated court fees [national currency]	Estimated lawyer's fees [national currency]	Other costs, if any [national currency]	Public support that is available [national currency]	Estimated time involved	Comments
Collective redress: Sammel - or Musterklage (Legal Advice Act)						
<i>For each individual consumer</i>	None	None	None	None	25 hours	
<i>For intermediary filing the action</i>	1 368 Euro	3 135.65 Euro	Witnesses etc., ca. 1 000 Euro	Regular support by the Ministry that is responsible for Consumer Protection	Ca. 60 days, depending on the number of hotels involved	
Individual redress (through ordinary court procedure)						
<i>For each individual consumer</i>	75 Euro	89.25 Euro	None	Legal aid for poor consumers	Ca. 25 hours	When losing the case, the consumer would also have to pay for the defendant's lawyer, which amounts to 89.25 Euro.
Individual ADR						
<i>For each individual consumer</i>	None	No legal representation necessary	Travel expenses etc.	None, no loser-pays principle.	Ca. 25 hours since both parties are heard.	ADR body: <i>Reiseschiedsstelle</i>

1.6 Effectiveness and efficiency of collective redress mechanisms

1.6.1 *Effectiveness of collective redress mechanism 1: The skimming-off procedure of § 10 UWG*

Objectives

1. Does the collective redress mechanism fulfil the objectives of the national law which introduced it?

No, until now it has not. According to the explanations of the legislator, the procedure was designed to skim off the profits from businesses that breach the Unfair Competition Act, and it should act as a deterrent to businesses. Due to its restrictive prerequisites, in particular, the necessity to prove the violator's intention to breach the law, only very few cases have been brought until now. Besides proving intention, it has turned out to be excessively difficult to calculate (and prove) the profits made from the breach of law. Thus, no deterrent effect can be found.

2. Has the mechanism enabled consumers to obtain satisfactory redress in cases which they would not otherwise have been able to adequately pursue on an individual basis?

No, but this is not the objective of the mechanism. If a claim is successful, the money goes to the public purse.

Incentives provided

3. a) Does the mechanism ensure a change in the behaviour of the defendant, which results in the reduction of future harm to all consumers?

No experience is available since only one case has been finally decided by the courts until now. Others have been pending for years.

3 b) Does the mechanism have a preventive effect and deter potential offenders, for instance by skimming off the profit gained from the incriminated conduct?

No, as mentioned above, under 1.

3 c) Does the mechanism provide incentives and sufficient opportunity for out-of-court settlement?

No, since the prospects of a successful claim are so weak.

4. Does the mechanism discourage the introduction of unmeritorious claims? Is there a "gatekeeper procedure" to certify whether a collective action is admissible to the court or not. If yes, how does it work?

Under the German Unfair Competition Act, abusive claims are inadmissible. Usually, consumer associations would sue for an injunction first and have the breach of the law of unfair competition confirmed in that way before they sue for skimming-off profits, as a kind of follow-on procedure.

Moreover, the profits that can be skimmed off go to the public purse so that there is nothing to gain for the claimant consumer association. This was also meant to prevent abuse.

Accessibility

5. Is the mechanism easily accessible to consumers? [Costs, rules of standing, length of proceedings and other factors hindering or facilitating access for consumers to the mechanism should be considered]

No, but it is not designed for that purpose.

6. What are the litigation costs of collective redress for consumers compared to individual redress? What is the risk of the consumer if case is lost?

Consumers cannot participate in the litigation.

Financing and distribution of proceeds

7. Are actions under the mechanism financed in a way which ensures that consumers are able to obtain effective legal representation? Are there mechanisms of public support for the party that brings forward a collective action (the intermediary⁹), are contingency fees/conditional fees¹⁰ allowed? What is the risk of the intermediary if a case is lost?

In Germany, some consumer associations and all the regional consumer centres receive public support, although this is not related to specific litigation but to their activities in general. Thus, they have to finance litigation out of the overall budget and have to be careful not to lose their cases. Public support is considered to be too low.

Generally speaking, the “loser pays principle” applies. § 10 UWG somewhat improves the situation of the consumer associations insofar as they can claim the necessary expenses for the claim from the public purse – but the amount of this claim is limited to the amount of the skimmed-off profits that the trader has paid into the public purse. With a view to the law-suit of Verbraucherschutz Hamburg v. O., the Federal Ministry of Justice has also made a decree under which the costs for third party financing can be regarded as “necessary expenses”, since otherwise the VZ Hamburg would not have been able to bring the claim at all.

Contingency fees or conditional fees have so far not been allowed since the legislator has feared that economic considerations on the part of the lawyer could otherwise prevail over his or her independence as part of the judiciary. This rule has, however,

⁹ A collective action is usually brought forward by an intermediary, that organises the action on behalf of consumers. This can be a public intermediary (e.g. an ombudsman), a representative organisation as intermediary (e.g. a consumer organisation) or private intermediaries (e.g. a private law firm/an individual consumer taking the lead in an action). Intermediaries may also engage a private lawyer, who is not considered to be an intermediary in this context, as long as he or she is not responsible for organising the action.

¹⁰ Contingency fees are lawyer’s fees that consist of a percentage of the damages awarded. Conditional fees are (possibly additional) fees that are paid in case of success, but not related to the damages awarded.

been challenged in the Constitutional Court, and the Court has decided that the strict prohibition of contingency fees is unconstitutional since it does not allow for exceptions in special cases. Such special cases may occur where a claimant is not poor enough to be entitled to legal aid but would still not reasonably take the risk of bringing his or her case before a court. The Constitutional Court has obliged the legislator to amend the law by 30 June 2008.¹¹

The law was accordingly amended by the *Gesetz zur Neuregelung des Verbots der Vereinbarung von Erfolgshonoraren* of 12 June 2008¹² that came into effect on 1 July 2008. No distinction was made between conditional fees and contingency fees. Both types are allowed if the potential claimant would otherwise be prevented, due to his or her economic circumstances, from pursuing his or her claim.

For legal representation in court, Germany applies a cost table that forms part of the Lawyer's Fees Act (*Rechtsanwaltsvergütungsgesetz*). The lawyer's fees, as much as the court fees, depend upon the value of the claim but the fees rise more slowly than the value of the claim. There is a cap at a value of 30 million Euro beyond which the lawyer's fees are not automatically increased any further even if the matter is extremely complicated. The Constitutional Court has recently confirmed this cap.¹³ The cap of 30 million Euro does, however, not apply if there is more than one claimant. In that case, in particular in the case of a joinder, the cap is 100 million Euro.¹⁴

The parties to the lawyer's contract can agree upon a higher fee for in-court representation. These higher fees will, however, not be covered by the losing party, see § 91 ff. of the Civil Procedural Code.

8. Are proceeds of collective redress actions distributed in an appropriate manner amongst plaintiffs and their representatives?

The procedure is not a collective redress procedure. Skimmed-off profits go into the public purse.

¹¹ For details, see Constitutional Court, judgment of 12 December 2006, NJW 2007, 979 ff.

¹² BGBl. 2008 I, 1000.

¹³ Constitutional Court, judgment of 13 February 2007, NJW 2007, 2098 ff.

¹⁴ See § 22 par. 2 RVG.

1.6.2 Efficiency of collective redress mechanism 1: The skimming-off procedure of § 10 UWG

Length of proceedings

9. Is the length of the proceedings under the mechanism reasonable for consumers, consumer organisations, public bodies, and the defendants?

There is not much experience yet. The one case that has been decided took one year. However, as mentioned above, this was a sort of follow-on action, and the consumer organisation had already achieved an injunction in court before it sued for skimming-off the profits.

Costs for consumers, consumer organisations and public bodies

10. Are the costs related to bringing an action under the mechanism for consumers, consumer organisations and public bodies proportionate to the amount in dispute?

The court fees and also the lawyer's fees are regulated by law in Germany and therefore have to be proportionate to the amount in dispute. Other costs are the estimated time involved for getting information on the case, preparation of file, coordination, court hearings etc. required from the intermediary. The problem here is to find out about the profits that can be claimed. There is still some legal uncertainty about whether or not the consumer organisations can sue for disclosure first in order to be able to prepare the actual skimming-off procedure, which the LG Würzburg has recognized in one case but which cannot be regarded as guaranteed by now.

11. Does the mechanism minimise litigation costs for consumers?

Consumers do not participate in the litigation and do not incur litigation costs.

Costs for businesses

12. Information costs: Does the mechanism impose requirements on businesses (in terms of being informed about the existing collective redress mechanisms and providing related information to public authorities) that lead to additional costs? Do these costs weigh in heavily on Small and Medium Enterprises (SMEs)?

No such costs have been mentioned by the stakeholders.

13. Litigation costs and related insurance costs: Are cost for businesses for (legal) insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanisms unreasonable?

No such costs have been mentioned by the stakeholders.

14. Is the economic impact on traders against whom actions have been brought under the mechanism proportionate to the alleged harm caused by the trader's conduct?

No, it cannot be disproportionate by definition because the maximum that can be claimed is the unlawful profit of the trader. Even fines and money that has to be paid out to individual consumers are considered and the profits recalculated accordingly.

15. Does the mechanism lead to the *closing down* of businesses?

This has not happened until now, and it is highly unlikely.

Competitiveness and investment flows

16. Does the mechanism have an impact on the competitive position of EU firms in comparison with their non-EU rivals?

This is extremely unlikely, given the ineffectiveness of the mechanism. Apart from this, the rules of private international law of the Rome II Regulation (EC) No. 864/2007 render the domicile of the business fairly irrelevant. Under Article 6 of the Rome II Regulation, the law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected, which is the law of the market-place, irrespective of where the business is domiciled.

17. Does the mechanism provoke cross-border investment flows (including relocation of economic activity in Member States which do not have any collective redress mechanisms?)

This is extremely unlikely, given the ineffectiveness of the mechanism.

1.6.3 Effectiveness of collective redress mechanism 2: *Sammel - or Musterklage*

As the Legal Advice Act was only replaced by the Legal Services Act in July 2008, it is the experience made with the Legal Advice Act which is discussed in the following sections. Otherwise, where the rules have not changed and where statements apply to both the Legal Advice Act and the Legal Services Act, the latter is referred to.

Objectives

1. Does the collective redress mechanism fulfil the objectives of the national law which introduced it?

After a shaky start where some courts have interpreted the preconditions of the representative under the Legal Advice Act narrowly, this type of action appears to become used more widely, and also more efficiently, and therefore the mechanism can be considered to fulfil its objectives to a certain extent. However, until now the share of consumers who have assigned their claims to the suing consumer association has been fairly low, and the claim is too difficult to handle to cover real mass damages. It has also turned out that highly complicated legal issues, in particular insurance law cases, are extremely difficult to handle under the mechanism of the Legal Advice Act. This latter issue has not been remedied by the Legal Services Act.

2. Has the mechanism enabled consumers to obtain satisfactory redress in cases which they would not otherwise have been able to adequately pursue on an individual basis?

Yes. The estimates for the representative action under the Legal Advice Act are that a maximum of 10 % of the consumers that have assigned their claims to the consumer

associations would have sued individually otherwise. Equally striking, however, is the share of consumers who have not signed up to the representative actions and therefore have not obtained redress, although the representative action was brought.

Sometimes, the defendants appear to accept even this type of representative action as a test case and promise to extend the result to all consumers who are in the same situation, which happened in the case of the gas supplier in Bremen

Incentives provided

3. a) Does the mechanism ensure a change in the behaviour of the defendant, which results in the reduction of future harm to all consumers?

This seems possible, although evidence is scarce. Consumer organisation try to make successful claims known and to “name and shame” the defendants, although this appears to receive less public awareness in Germany than in other countries.

3 b) Does the mechanism have a preventive effect and deter potential offenders, for instance by skimming off the profit gained from the incriminated conduct?

Considering the relatively small number of cases and the low amounts involved such an effect is not very likely.

3 c) Does the mechanism provide incentives and sufficient opportunity for out-of-court settlement?

It seems that threat of taking action under the Legal Advice Act had the potential of facilitating out-of-court settlements, and so does the action under the Legal Services Act. This has been confirmed in some few cases where several businesses engaged in the same kind of practices and where one of them had been successfully sued. In such a case, the other businesses are likely to give in. This, however, very much depends on their interest in maintaining a good reputation, and this differs greatly from one sector to the other.

Also, there is a tendency to settle just before the negative judgment is made but after court has indicated that it will convict the business, as has just happened in the case of an airline that had refused to help its stranded passengers to find alternative transportation home.

4. Does the mechanism discourage the introduction of unmeritorious claims? Is there a “gatekeeper procedure” to certify whether a collective action is admissible to the court or not. If yes, how does it work?

The gatekeeper criterion until now has been that the representative action had to be necessary in the interest of consumer protection, as explained above. Under the new Legal Services Act, it suffices that the claim is in the field of activity of the recognized consumer organisation. Abuse of its position may cost a consumer organisation its recognition by the public authorities.

Apart from this, the “loser pays principle” is a disincentive to unmeritorious claims.

Accessibility

5. Is the mechanism easily accessible to consumers? [Costs, rules of standing, length of proceedings and other factors hindering or facilitating access for consumers to the mechanism should be considered]

Consumers only have to assign their claims to the consumer organisation. Usually, the consumer organisation will set up a website with instructions and a model form that the consumer has to fill in. Moreover, the consumer has to send documentation to the consumer organisation to give evidence of his or her claim.

6. What are the litigation costs of collective redress for consumers compared to individual redress? What is the risk of the consumer if case is lost?

The consumer organisation is the sole claimant. Consumers have no litigation risk.

Financing and distribution of proceeds

7. Are actions under the mechanism financed in a way which ensures that consumers are able to obtain effective legal representation? Are there mechanisms of public support for the party that brings forward a collective action (the intermediary¹⁵), are contingency fees/conditional fees¹⁶ allowed? What is the risk of the intermediary if a case is lost?

In Germany, some consumer associations and all the regional consumer centres receive public support, although this is not related to specific litigation but to their activities in general. Thus, they have to finance litigation out of the overall budget and have to be careful not to lose their cases.

Generally speaking, the “loser pays principle” applies. Contingency fees or conditional fees have only been allowed since 1 July 2008, under specific circumstances. For legal representation in court, Germany applies a cost table that forms part of the Lawyer's Fees Act (*Rechtsanwaltsvergütungsgesetz*). The lawyer's fees, as much as the court fees, depend upon the value of the claim but the fees rise more slowly than the value of the claim. The parties to the lawyer's contract can agree upon a higher fee for in-court representation. These higher fees will, however, not be covered by the losing party, see § 91 ff. of the Civil Procedural Code.

¹⁵ A collective action is usually brought forward by an intermediary, that organises the action on behalf of consumers. This can be a public intermediary (e.g. an ombudsman), a representative organisation as intermediary (e.g. a consumer organisation) or private intermediaries (e.g. a private law firm/an individual consumer taking the lead in an action). Intermediaries may also engage a private lawyer, who is not considered to be an intermediary in this context, as long as he or she is not responsible for organising the action.

¹⁶ Contingency fees are lawyer's fees that consist of a percentage of the damages awarded. Conditional fees are (possibly additional) fees that are paid in case of success, but not related to the damages awarded.

8. Are proceeds of collective redress actions distributed in an appropriate manner amongst plaintiffs and their representatives?

The proceeds are fully distributed amongst the consumers who have assigned their claims. The representative consumer organisation can recover its damages under the “loser pays principle” but has no advantage from the court action otherwise.

1.6.4 Efficiency of collective redress mechanism 2: *Sammel - or Musterklage*

Length of proceedings

9. Is the length of the proceedings under the mechanism reasonable for consumers, consumer organisations, public bodies, and the defendants?

Whilst the first court actions under the Legal Advice Act appear to have taken unduly long, this should change after the landmark decision of the Supreme Court that rejected a narrow interpretation of the admissibility of representative actions under the Legal Advice Act. With the new Legal Services Act, remaining problems with the admissibility should have disappeared anyway. Otherwise, the length of the proceedings should not exceed the normal length of proceedings in Germany.

Costs for consumers, consumer organisations and public bodies

10. Are the costs related to bringing an action under the mechanism for consumers, consumer organisations and public bodies proportionate to the amount in dispute?

The court fees and also the lawyer’s fees are, in principle, regulated by law in Germany and therefore have to be proportionate to the amount in dispute, although the parties can agree upon higher lawyer’s fees. The aggregation of the individual claims to one renders litigation cheaper as compared to many individual court actions, as the hypothetical examples 1 and 3 demonstrate.

Other costs are the estimated time involved for getting information on the case, preparation of file, coordination, court hearings etc. required from consumers and the intermediary. The representative action under the Legal Services Act can be extremely time-consuming to organise and carry through, which means that it involves weeks of staff working time. The claims to be brought have to be collected, checked and documented by the staff of the consumer organisation before the file can be prepared. After this, strictly speaking no unusual costs need to occur until the end of the litigation since the consumer organisation is the only claimant participating in the lawsuit. Nevertheless, the consumer organisation may have to communicate with the claimants during the lawsuit if aspects of the case turn out to be unclear. Importantly, these costs incurred by the representative are not recoverable under the “loser pays principle”.

11. Does the mechanism minimise litigation costs for consumers?

Consumers do not participate in the litigation and do not incur litigation costs.

Costs for businesses

12. *Information costs*: Does the mechanism impose requirements on businesses (in terms of being informed about the existing collective redress mechanisms and providing related information to public authorities) that lead to additional costs? Do these costs weigh in heavily on Small and Medium Enterprises (SMEs)?

No, the procedure is by no means special.

13. *Litigation costs and related insurance costs*: Are cost for businesses for (legal) insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanisms unreasonable?

No evidence has been given on this by stakeholders.

14. Is the *economic impact* on traders against whom actions have been brought under the mechanism proportionate to the alleged harm caused by the trader's conduct?

It is proportionate, since there is no punitive element in the action under the Legal Services Act. Moreover, experience so far shows that only a minority of the potential claimants assign their claims to the consumer organisation.

15. Does the mechanism lead to the *closing down* of businesses?

According to the available information, no such case has happened so far.

Competitiveness and investment flows

16. Does the mechanism have an impact on the competitive position of EU firms in comparison with their non-EU rivals?

There is no evidence that this has happened, and it seems highly unlikely.

17. Does the mechanism provoke cross-border investment flows (including relocation of economic activity in Member States which do not have any collective redress mechanisms?)

There is no evidence that this has happened, and it seems highly unlikely.

1.6.5 Effectiveness of collective redress mechanism 3: The Capital Market Model Claims Act

Objectives

1. Does the collective redress mechanism fulfil the objectives of the national law which introduced it?

Since not one case has been finalised until now, this cannot be finally verified. It should, however, be mentioned that the objectives of the Capital Market Model Claims Act are very specific, and they do not merely aim at facilitating mass litigation in the financial services sector. The Act has also been introduced as a case-management tool for the *Deutsche Telekom* case, and it is hoped that it will be useful for this particular case. Otherwise, the Act has so many restrictions – or flaws, depending on the perspective – that many claimants or their lawyers respectively decide not to use this mechanism but to use the traditional joinder or individual litigation instead.

2. Has the mechanism enabled consumers to obtain satisfactory redress in cases which they would not otherwise have been able to adequately pursue on an individual basis?

Not until now. First of all, the mechanism is one where individual actions are grouped together after having been filed. Thus, in these cases the consumers have already started to pursue their claims on an individual basis without being sure that there will be any collective action at all. This is particularly striking in the *Deutsche Telekom* case where the Act has only entered into effect three years after the claims have been brought.

Secondly, the claims are not solved through the collective procedure since this is only an interim procedure. After the interim procedure, in many cases there is little hope to prove causation between the breach of the law (that has been established in the interim procedure) and the individual damage. Whereas in the case of a stock market prospectus there is a presumption of a causal link if the shares have been bought within six months after the prospectus was published, this is not the case with other misleading information or lack of information on the capital market. The Supreme Court has time and again rejected the US American “fraud on the market theory”¹⁷ and insisted on the proof of the concrete causal link between the wrongful information and the investor's decision.¹⁸ Most claims fail on this causation requirement even where intentional misinformation has been proven.

¹⁷ Under the “fraud on the market theory”, the causal link between the investor's decision and the damage occurred is presumed where there has been a general disappointment in the integrity of the formation of the market price.

¹⁸ See, for example, Supreme Court, judgment of 4 June 2007, NJW 2008, 76 ff., with further references.

Incentives provided

3. a) Does the mechanism ensure a change in the behaviour of the defendant, which results in the reduction of future harm to all consumers?

In most cases, the defendant would be in liquidation anyway if the mass claims were successful; which is however not likely to be the case due to the requirement to prove causation.

3 b) Does the mechanism have a preventive effect and deter potential offenders, for instance by skimming off the profit gained from the incriminated conduct?

It does not seem likely at this stage, but there is little experience until now.

3 c) Does the mechanism provide incentives and sufficient opportunity for out-of-court settlement?

Rather not as the Deutsche Telekom case demonstrates. One can assume that cases that qualify for the procedure under the Capital Market Model Claims Act will take a long time and will turn out unsuccessful for many of the claimants.

4. Does the mechanism discourage the introduction of unmeritorious claims? Is there a “gatekeeper procedure” to certify whether a collective action is admissible to the court or not. If yes, how does it work?

Yes. The collective action under the Capital Market Model Claims Act requires at least ten individual cases to be brought with common questions of law.

Accessibility

5. Is the mechanism easily accessible to consumers? [Costs, rules of standing, length of proceedings and other factors hindering or facilitating access for consumers to the mechanism should be considered]

First of all, consumers have to take individual action to qualify for being joined into the procedure. This causes upfront court fees and lawyer’s fees. After this, it is easy to join the collective procedure if it is accepted by the court. However, there are downsides to the procedure. After joining, the claimants are more or less in the hands of the lead plaintiff, and they participate pro rata in the common costs that are produced in the collective proceedings. They also forego the opportunity of individual settlement in court because the Capital Market Model Claims Act only allows for settlement in court if all the claimants agree. Of course, claimants can still settle out-of-court and withdraw their claim.

Furthermore, the procedure increases the number of potential court instances from 3 to 5, extending potentially the length of the procedure by years.

Ultimately, many claimants (or their lawyers) have decided to avoid the procedure under the German Capital Market Model Claims Act, for a variety of reasons, and to pursue individual claims instead.

6. What are the litigation costs of collective redress for consumers compared to individual redress? What is the risk of the consumer if case is lost?

In principle, the litigation fees are the same since the collective procedure is merely an interim procedure, and the court action ultimately remains an individual action, and the “loser pays principle” applies.

However, the "common costs" that arise in the collective part of the procedure, are shared pro rata between the claimants. Common costs are those costs that arise in the context of issues that are common to all the claims of the group, in particular expert evidence on liability issues. This is said to be the main advantage of the Capital Market Model Claims Act. However, this advantage only arises where expensive expert evidence is needed.

Financing and distribution of proceeds

7. Are actions under the mechanism financed in a way which ensures that consumers are able to obtain effective legal representation? Are there mechanisms of public support for the party that brings forward a collective action (the intermediary¹⁹), are contingency fees/conditional fees²⁰ allowed? What is the risk of the intermediary if a case is lost?

Generally speaking, the “loser pays principle” applies. Contingency fees or conditional fees have only been allowed since 1 July 2008, under narrow circumstances.

For legal representation in court, Germany applies a cost table that forms part of the Lawyer's Fees Act (Rechtsanwaltsvergütungsgesetz). The lawyer's fees, as much as the court fees, depend upon the value of the claim but the fees rise more slowly than the value of the claim. There is a cap at a value of 30 million Euro beyond which the lawyer's fees are not automatically increased any further even if the matter is extremely complicated. The Constitutional Court has recently confirmed this cap.²¹ The parties to the lawyer's contract can agree upon a higher fee for in-court representation. These higher fees will, however, not be covered by the losing party, see § 91 ff. of the Civil Procedural Code.

Legal insurance usually excludes investors' claims. Public support is not available, although poor claimants can of course apply for legal aid.

¹⁹ A collective action is usually brought forward by an intermediary, that organises the action on behalf of consumers. This can be a public intermediary (e.g. an ombudsman), a representative organisation as intermediary (e.g. a consumer organisation) or private intermediaries (e.g. a private law firm/an individual consumer taking the lead in an action). Intermediaries may also engage a private lawyer, who is not considered to be an intermediary in this context, as long as he or she is not responsible for organising the action.

²⁰ Contingency fees are lawyer's fees that consist of a percentage of the damages awarded. Conditional fees are (possibly additional) fees that are paid in case of success, but not related to the damages awarded.

²¹ Constitutional Court, judgment of 13 February 2007, NJW 2007, 2098 ff.

8. Are proceeds of collective redress actions distributed in an appropriate manner amongst plaintiffs and their representatives?

There are no proceeds of the collective action since the procedure ultimately remains an individual court action.

1.6.6 Efficiency of collective redress mechanism 3: The Capital Market Model Claims Act

Length of proceedings

9. Is the length of the proceedings under the mechanism reasonable for consumers, consumer organisations, public bodies, and the defendants?

In real mass procedures such as the German Telekom case, with 17 000 claimants, the procedure under the Capital Market Model Act is certainly longer for the individual claimant than an individual law suit would be. However, it is expected to save much time over the total of 17 000 claimants.

One factor that is relevant to the length of the proceedings is that investor's claims tend not to be finally decided in the court of first instance. Certainly, this will be the case under the Capital Market Model Claims Act, in particular since many questions of law have already been raised in relation to this Act.

There is also the opportunity for the defendant to delay the procedure by bringing new aspects or defences now and then, which has been heavily criticized by stakeholders.

Costs for consumers, consumer organisations and public bodies

10. Are the costs related to bringing an action under the mechanism for consumers, consumer organisations and public bodies proportionate to the amount in dispute?

The court fees and also the lawyer's fees are regulated by law in Germany and therefore have to be proportionate to the amount in dispute.

However, the costs are disproportionate for the lawyer of the lead plaintiff. As a starting point, his or her fees are determined by the value of the claim of his own client only, not by the aggregate value of the claims that take part in the procedure. Nevertheless, the lead plaintiff's lawyer does not only have to do the biggest part of the work but he or she also is the intermediary between the court and all the other claimants or their lawyers. In the Deutsche Telekom case, the lead plaintiff's lawyer has to communicate with more than 300 law firms, without being compensated for this.

Due to the freedom of contract with a view to lawyer's fees, the parties can of course agree upon a higher fee. These higher fees will, however, not be covered by the losing party, see § 91 ff. of the Civil Procedural Code. Also, the lead plaintiff's lawyer can, in principle, make arrangements with other claimants or their lawyers. Whether or not this actually happens is not clear. There is evidence that lawyers tend to pursue the claim in individual litigation.

11. Does the mechanism minimise litigation costs for consumers?

The normal principles of litigation, including the “loser pays principle”, apply. Cost savings may only stem from sharing the common costs of the collective interim procedure.

Costs for businesses

12. *Information costs*: Does the mechanism impose requirements on businesses (in terms of being informed about the existing collective redress mechanisms and providing related information to public authorities) that lead to additional costs? Do these costs weigh in heavily on Small and Medium Enterprises (SMEs)?

This seems unlikely.

13. *Litigation costs and related insurance costs*: Are cost for businesses for (legal) insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanisms unreasonable?

There is no evidence for this. In contrast, one may assume that the mechanism decreases rather than increases litigation costs for businesses, in that a multitude of separate litigations, potentially in different courts, is replaced by one collective procedure. In fact, this is one of the explicit goals of the Act.

14. Is the *economic impact* on traders against whom actions have been brought under the mechanism proportionate to the alleged harm caused by the trader's conduct?

It is proportionate, since there is no punitive element in the action under the **Legal Advice Act**. Moreover, the requirement to start individual litigation with the upfront costs connected to this still prevents most consumers from starting litigation.

15. Does the mechanism lead to the *closing down* of businesses?

According to the available information, no such case has happened so far.

Competitiveness and investment flows

16. Does the mechanism have an impact on the competitive position of EU firms in comparison with their non-EU rivals?

There is no evidence that this has happened, and it is highly unlikely given the weak prospects of success at least at the final stage where causation and the individual damage must be proven.

17. Does the mechanism provoke cross-border investment flows (including relocation of economic activity in Member States which do not have any collective redress mechanisms?)

There is no evidence that this has happened, and it is highly unlikely for the same reason as stated in question 16.

1.6.7 Added value of available mechanisms

18. What is the added value of the collective redress mechanism(s) compared to individual judicial redress and ADR schemes, i.e. what is achieved by the mechanism(s) that is not achieved by individual redress?

a) The skimming-off procedure under § 10 of the Unfair Competition Act

In theory, this procedure may catch situations in which individual litigation would not even be possible since the law of unfair competition as such is not enforceable by the consumer or situations where many consumers suffer low-value damage from unfair commercial practices. This is the explicit goal of the procedure. However, since it has barely worked in practice until now, the added value is scarce.

b) The representative action under the Legal Services Act

This action has the potential to bring redress to consumers who would otherwise not take legal action. However, it causes much more work to the representative consumer organisation that has to collect all the claims and prepare the file, than an opt-in group action to which consumer sign up directly at the court would. The number of consumers that can be represented is therefore in practice limited to keep the file manageable. Those consumers that are not represented in the collective action are at risk of losing their claims due to limitation periods. For that reason, the procedure is less effective in the larger picture than it could be.²²

c) The procedure under the Capital Market Model Claims Act

On the whole, this procedure is not likely to bring much advantage to individual investors unless the costs for legal evidence are high and their sharing brings the individual share in litigation costs down. Its character of being a case-management tool clearly prevails over its potential of enforcing consumer rights.

19. Please estimate, what percentage of consumers who were represented in the collective redress cases would likely have undertaken individual redress through ordinary court procedures if no collective redress system was in place (e.g. none, 10%, 50%)?

This question does not apply to the skimming-off procedure from which consumers do not benefit. In the case of the representative action under the Legal Advice Act, less than 10 % of the consumers would likely have sued in an individual action, whereas in the Deutsche Telekom case with its 170 000 claimants all 100 % had already sued before the procedure under the Capital Market Model Claims Act was even invented.

²² The German Ministry of Justice explicitly disagrees with that conclusion.

1.7 Overview of alternative procedures for consumers

1.7.1 *Individual court action*

Is there any data available on the number of consumers seeking individual redress through ordinary court procedures?

No specific data regarding consumer-relevant cases is available.

Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking individual redress through ordinary court procedures?

In Germany, litigation fees are fairly modest in an international comparison. Thus, the threshold for a more or less clear-cut case could be relatively low. In fact, in the year 2005, 264,000 claims that were decided in the first instance courts had a value of less than 300 Euros, representing ca. 2.7 % of the totality of civil law law-suits decided in Germany. Estimates of the interviewees ranged from 50 to 250 Euro. Many consumers have legal insurance that would cover such claims.

However, a complicated matter such as liability for a misleading capital market prospectus, where litigation may be expected to cause high expenses for expert evidence and to go through three instances may trigger much higher thresholds. Stakeholders in Germany have argued that the risk of such litigation to cause expenses of 17 000 Euro if the case is lost in the end makes it unreasonable to sue in the case of damage below that threshold.

1.7.2 *Individual action – ADR scheme(s)*

Is there an ADR scheme(s) for consumer cases?

There are some 200 ADR bodies in Germany, some specially designed for business/consumer conflicts, some of a more general nature, but they are of limited relevance in practice, as compared to in-court litigation. Still, the number of consumers that approach ADR schemes such as the ADR scheme for e-commerce and the ADR scheme of the banking ombudsman is increasing.

Is there any data or an evaluation report available on the consumer relevant use of the ADR scheme(s)?

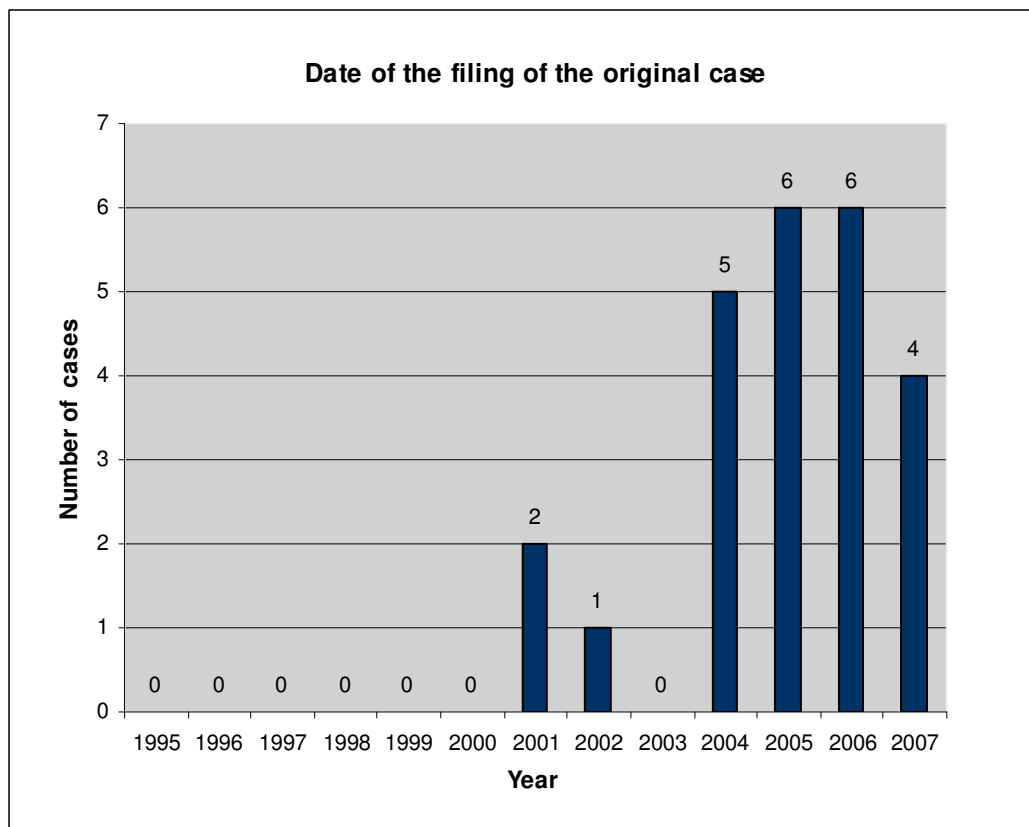
There are some 200 ADR bodies in Germany, and consistent data or a broad scale evaluation is not available.

Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking redress through an ADR scheme?

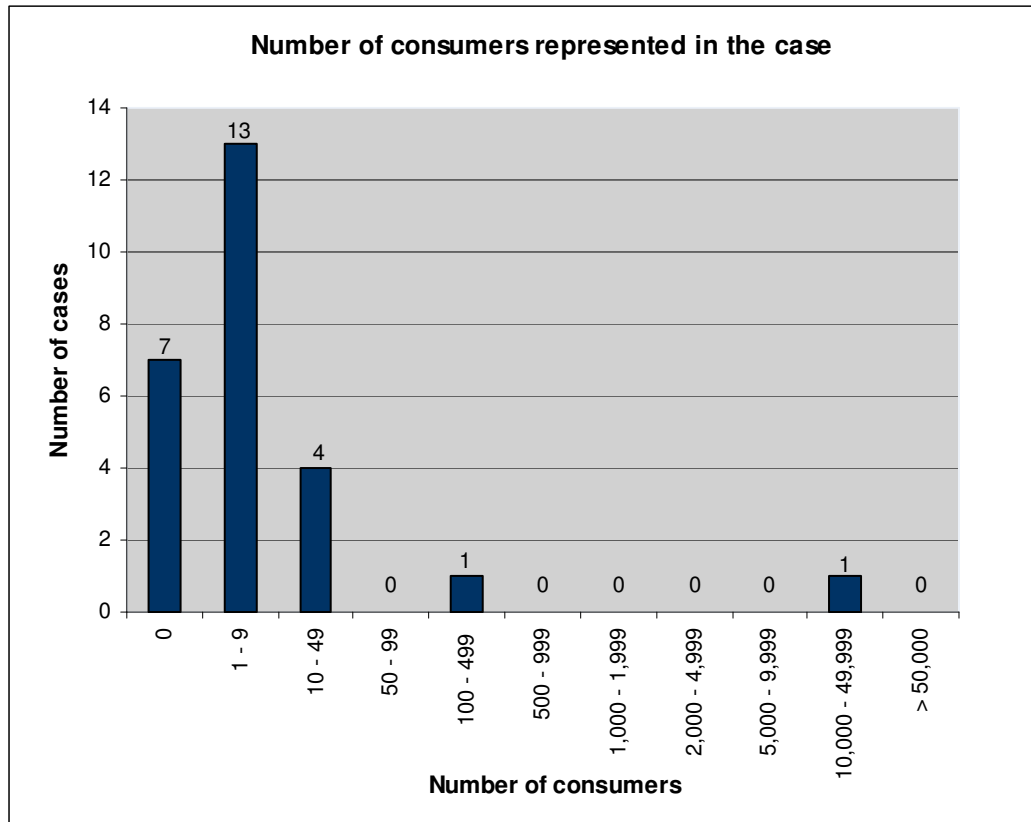
According to an estimate by the Ministry of Justice this threshold could be by approx. 10 Euro, and even less if, for example, a case is brought concerning which party has to pay postal charges (when a good is returned by mail).

1.8 ANNEX:

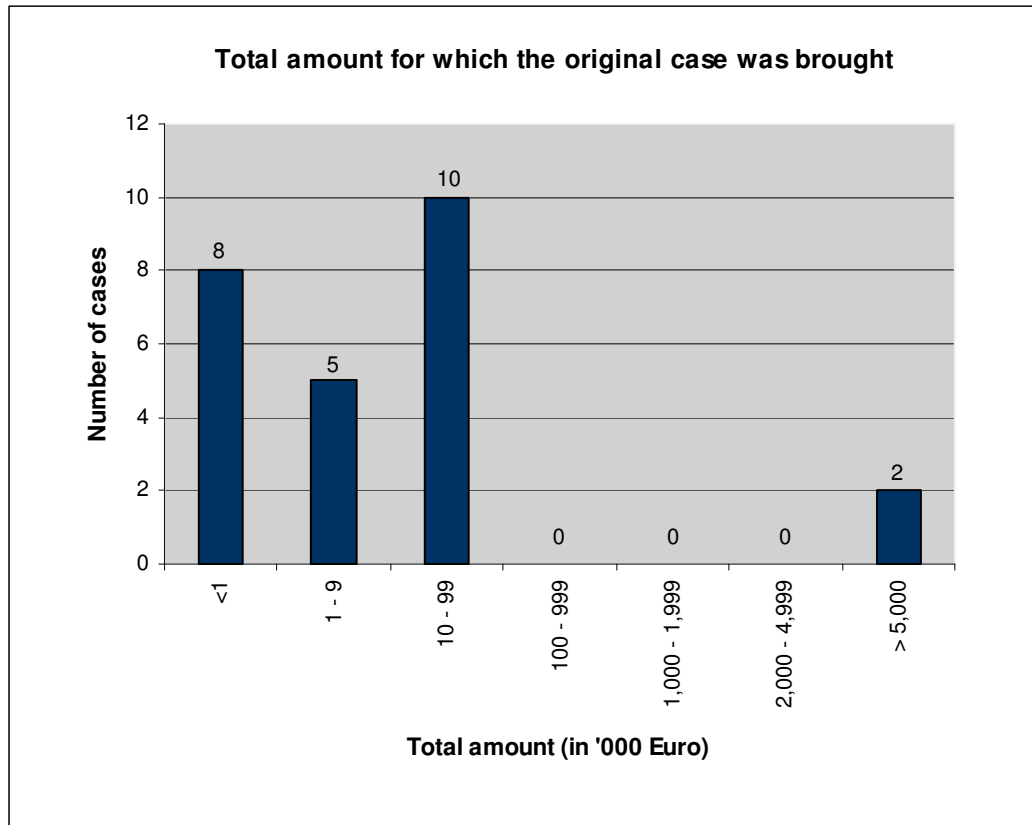
Annex 1: Case statistics



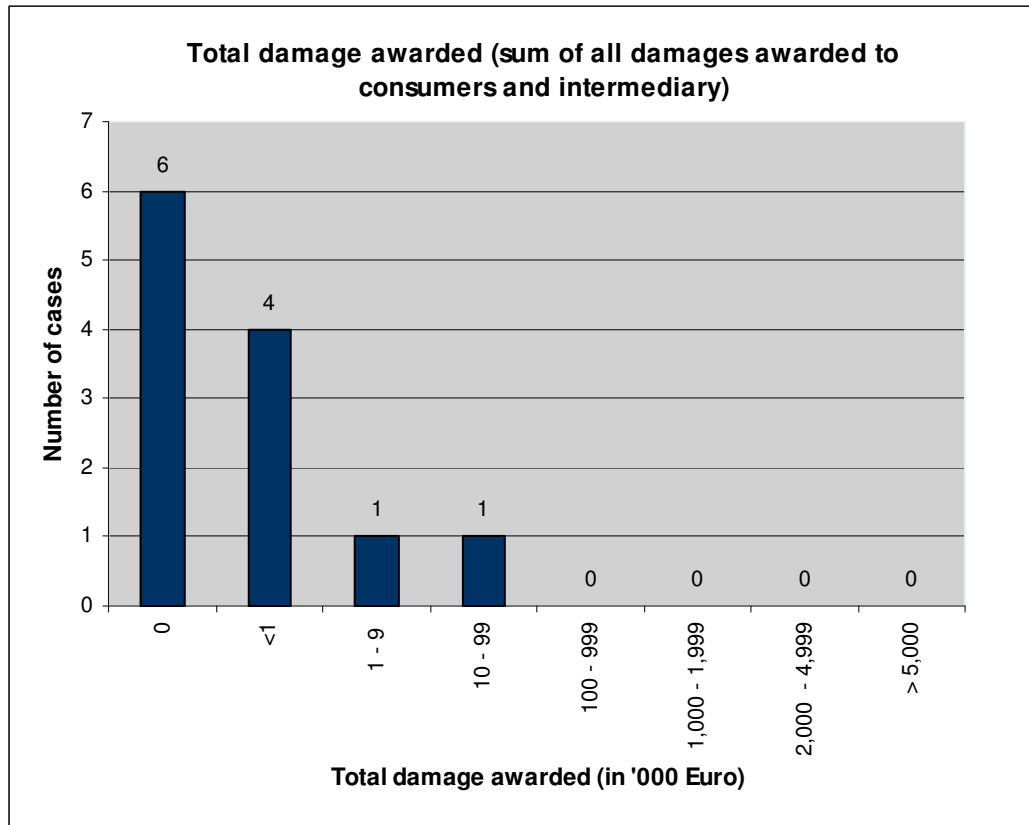
Note: No data available for 5 cases



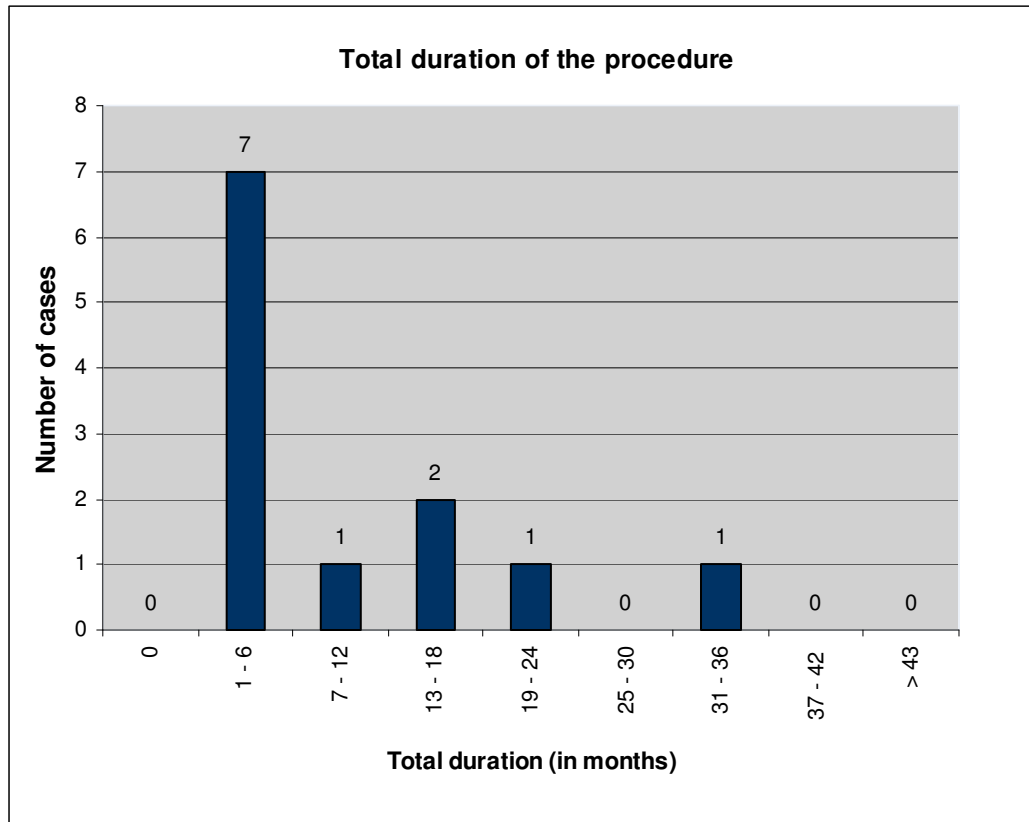
Note: No data available for 3 cases



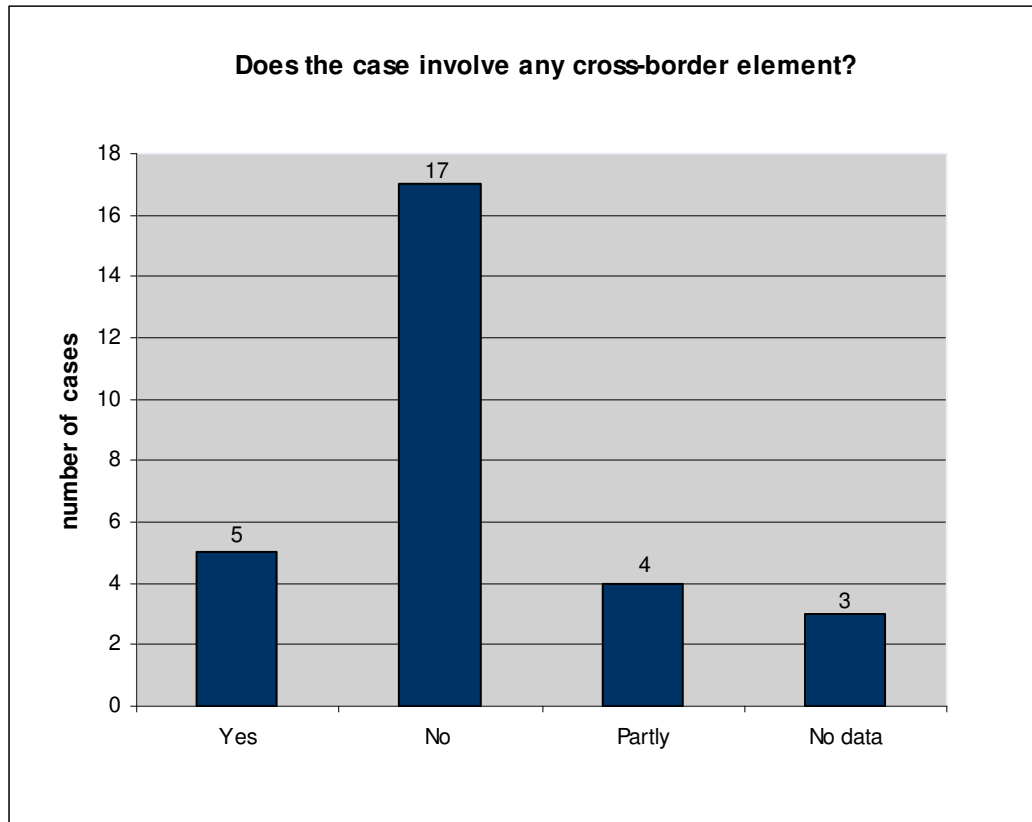
Note: No data available for 4 cases



Note: 17 cases are ongoing



Note: 17 cases are ongoing



Annex 2: Country literature on collective redress

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Annex 3: Organisations interviewed

- German Association for the Protection of Small Shareholders (*Schutzgemeinschaft der Kapitalanleger - SdK*)
- Federation of German Consumer Organisations (*Verbraucherzentrale Bundesverband - vzbv*)
- Federation of German industries (*Bundesverband der Deutschen Industrie - BDI*)
- Lawyers involved in collective redress

Date of interviews: December 2007, January and February 2008