



## CONSUMER REDRESS – Germany

### 1. Alternative Dispute Resolution (ADR)

Germany has more than 200 public and private ADR. They are organised by professional organisations and guilds. Some ADR schemes operate at local level; others have a national coverage (e.g. Reiseschiedsstelle, Bundesnetzagentur). Gaps have been identified in particular in the energy, transport and tourism sectors.

Most of ADR cases are solved within 30 to 90 days. On average, the compliance rate to ADR decisions is 81%.

### 2. Court proceedings for small claims

A small claims procedure for claims under €600 is available in Germany. The court may, however, apply the ordinary procedure if the claim is too complex. Before going to court, parties must attempt in-court mediation. No appeal is possible, except in specific circumstances. 67.6% of the cases are dealt with within three months.

Regulation n° 861/2007 establishing a European Small Claims Procedure<sup>1</sup> provides a simplified court procedure for cross border claims under €2,000. All local courts are competent to deal with the claims under the Small Claims Regulation.

### 3. Injunctions – Directive n° 98/27/EC on injunctions for the protection of consumers' interests<sup>2</sup>

Qualified consumer organisations may seek injunctions before the courts. Negotiation before going to court is encouraged. Courts may order the publication of the judgement at the expense of the losing party. On average, injunction procedures take up to three years.

### 4. Compensatory collective redress

Two different types of collective redress mechanisms are in place in Germany:

- A test-case procedure in the area of financial investments. This opt-in procedure has two steps: First, the common factual and legal questions are decided in a test case procedure. In a second step, this decision has to be applied to the individual cases. The procedure was introduced in 2005 for a period of five years. It is currently under review.
- A representative action where consumers can assign their claims to a consumer organisation which will bring the cases to court. This mechanism might either be used as a test-case procedure (by selection of one or a small number of persons affected) or a collective procedure in which claims are collected and the compensation granted by

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<sup>1</sup> Regulation n° 861/2007/EC of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31 July 2007, p 1-22

<sup>2</sup> Directive n°98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L166, 11 June 1998, p 51-55

the court will be distributed among the consumers afterwards. However, in no case can the judgement be binding on persons who are not parties of the lawsuit.



The test case procedure in the area of financial services was designed to deal with the "Telekom case" where 17,000 investors (out of the 3 million investors concerned) claimed that the German Telekom, when issuing shares, did not inform them correctly in its prospectus of its real estate holdings. The total value of the claims is €80 million; the average claims damage per capita is said to be around €700.<sup>3</sup>

## 5. Others

A skimming-off procedure in the area of unfair competition law brought to court inter alia by consumer organisations also exists in Germany. As a result, any ill-gotten gains arising from a violation of the rules on unfair competition will have to be paid over to the Treasury.

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<sup>3</sup> Astrid Stadler, *A Test case in Germany: 16 000 private investors vs. Deutsche Telekom*, ERA Forum, Volume 10, Nr 1, p 37-50, DOI: 10.1007/s12027-009-0099-2