

Germany Plans Class Action Legislation in 2018

IN SHORT

The Situation: German law does not provide a means of collective redress for consumer claims. Attempts to introduce a corresponding act in the previous legislative term were made; however, no political agreement was reached on the draft act.

The Plan: In 2018, Germany plans to introduce a proceeding for model claims, giving groups of consumers the right to combine their claims and sue as one. The German government's intention is to balance consumer rights to enforce claims while at the same time avoiding the development of a "claims industry."

Looking Ahead: Enacting the legislation may increase consumers' readiness to sue even in cases where consumers incurred small damages. This creates further litigation risks, in particular for large corporate entities.

Currently, German procedural law does not provide for a framework for class actions, claims of large groups of consumers. Due to the lack of a legal framework, various platforms have been created, providing for the possibility to bundle claims of groups of customers affected by the same action of a company. The bundling of claims is effected by assignment of the consumers' claims to the platform owner, who raises the group's claims in its own name and on its own behalf.

Such platforms exist in areas where consumers' claims are aggregated, e.g. against a car company or against an airline. However, these platforms are exceptions to the general rule, as they are limited to particular situations and do not give all customers the possibility to join a large group of plaintiffs to have their claims heard in court. Additionally, the assignment of claims with the intent of bundling the claims is often viewed as invalid and regularly opposed in court.

Proposal Made in the Coalition Agreement

Against this background, and based on the recommendation of the European Commission issued on June 11, 2013, inviting Member States to facilitate consumer claims, for example through collective redress, the coalition parties have now agreed on the implementation of a framework for class action lawsuits to take effect by November 1, 2018. The plan contained in the coalition agreement provides a procedural framework for model case proceedings (*Musterfeststellungsverfahren*) for all injured parties. However, this would not give the entire affected class the right to be involved in the claim. Rather, the proposal provides for the possibility to initiate a claim for a model group of a class. Once the court has rendered a judgment, this judgment would have binding effect for all parties that have registered their claims in a claims register (the opt-in model).

The main aspects of the model case proceedings proposed in the coalition agreement are:

- The proposal is based on the intention to improve the enforcement of consumer claims;
- The right to sue will be limited to registered qualified institutions, in order to prevent the creation of an excessive "claims industry" and to protect "reliable economic structures";
- The initiation of the claim requires a minimum of 10 affected individual parties;
- The execution of the proceedings requires that 50 applicants have registered their claims with the claims register within a time frame of two months;
- The judgment is binding for the defendant and the parties registered with the claims register. There is no binding effect if the registration has been withdrawn before the start of the first oral hearing; and
- The model proceedings act will be in force by November 1, 2018.



The coalition parties have agreed on the implementation of a framework for class action lawsuits to take effect by November 1, 2018.



Assessment

A similar group model act is already in place in the area of investor claims. The Act on Model

Proceedings in Capital Market Disputes (*Kapitalanleger-Musterverfahrensgesetz* or "KapMuG") allows court rulings won by individual investors to set damages for other investors in the same position. The drawback of KapMuG is that it is only for investors who have suffered losses on the capital market, not for consumers.

At first glance, it may seem questionable whether the implementation of model case proceedings in consumer disputes by itself will be of help for consumers, as the registered qualified institutions presenting a claim typically have neither the financial means nor the necessary back-office support to work on difficult high-volume cases. However, the qualified institutions could team up with litigation funders, which would provide the financial means and the necessary support to use the services of firms experienced in consumer actions.

It remains to be seen in what form the model proceedings claim will be implemented. However, on the basis of the current proposal, there is a risk that claims raised by groups of consumers against companies will become a much more regular occurrence in Germany. The plans of the new German government follow similar trends in other parts of the European Union, such as [the introduction of model proceedings \(*action de groupe*\) in France in 2014](#), under which [the first action was brought in 2014](#), leading to a [decision in 2016](#), and the [decision of the Italian Supreme Court](#) confirming for the first time the validity of class actions in Italy. Similarly, the Dutch Senate is currently deliberating a bill that would expand the Dutch class action system to direct damage claims (not only declarations of liability). Clearly, collective redress is gaining ground across the continent.

THREE KEY TAKEAWAYS

1. The legislative plan is to give the right to sue to registered qualified institutions. Groups of consumers will not be able to sue by themselves, regardless of their size, nor will any consumer be bound by a judgment rendered in model proceedings unless the consumer joins the claim.
2. The coalition agreement contains no limitation of model proceedings to a particular area. Should the act be implemented without further limitation, the right to sue could be used by registered qualified institutions in any area where consumers have incurred material or immaterial damages.
3. The introduction of model proceedings in Germany demonstrates that collective redress is gaining ground across the continent.

AUTHORS



Christian Fulda
Munich



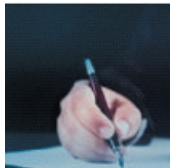
Jakob Hübert
Frankfurt



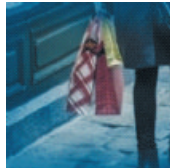
Dieter Strubenhoff
Frankfurt

[All Contacts >>](#)

YOU MIGHT BE INTERESTED IN: [Go To All Recommendations >>](#)



[Restructuring Recommended after CJEU Decision on Intra-EU Bilateral Investment Treaties](#)



[European Retail Trade Is on the Verge of Change](#)



[Australia: Adjudicators' Security of Payment Determinations Not Reviewable for Errors of Law](#)

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. We are One Firm WorldwideSM.

Disclaimer: Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.