

Country Report: Germany

Marta Reysner (*APPLIED project*)

1. Introduction and general overview

For many years, collective redress was relatively unknown in German law. Gradually, the strict adherence to the principle according to which legal procedures normally apply only *inter partes* (§ 325(1) of the German Code of Civil Procedure *Zivilprozessordnung*, “ZPO”), was gradually softened. The framework was first revised in response to the *Dieseldgate* scandal. Procedures of collective redress started developing in Germany, mostly by way of model declaratory action (*Musterfeststellungsklage*) and by the right given to certain organizations to start proceedings for the protection of interest of others, as it was the case with action for injunction under Act on Injunctive Relief (*Unterlassungsklagengesetz*) and under the Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb*).

Overall, Germany allows a limited number of mechanisms for bringing collective actions, most of which are dedicated to specific legal areas. They are widely criticized and relatively unpopular – for instance, during the first 18 months after entry into force of model declaratory action, less than 12 such actions have been initiated. The insufficiency of the German collective redress system resulted in reliance on other traditional legal instruments, such as assignments, to aggregate similar claims.

A groundbreaking change is expected in relation to the collective private enforcement, including in the field of data protection, with the implementation of the EU *Representative Actions Directive* (*Verbandsklagenrichtlinienumsetzungsgesetz*, “VRUG”). A centrepiece of the VRUG is the Representative Actions Act (2023 *Verbraucherrecht durchsetzungsgesetz*, “VDuG”), which introduced new mechanisms for the protection of collective interests of consumers, including two types of representative actions: one pre-existing but “refurbished” to fit the newly established European standards, one completely new. Their entry into the legal system was celebrated by the German Minister of Justice with promises of increased access to justice for the consumers and legal certainty for companies. The enthusiasm was shared in the literature, where it was recognized that the reforms provide the necessary legal tools for the enforcement of data protection law.

It is noteworthy that German implementation introduces several variations to the original EU Directive, such as extending consumers’ protection to small businesses (§ 1(2) VDuG). Restrictions introduced for qualified entities in VDuG are quite narrow (especially regarding the relative weight of private funding), possibly in response to mounting accusations of attempts to introduce a (much feared) *Klageindustrie*. Nonetheless, the complexity of proceedings might impair the effectiveness of these new instruments, making it difficult for parties to successfully launch and defend a claim.

Section 2 of this report gives a brief description of the legal framework which applies to collective litigation also, or specifically, in the field of data protection law. It addresses four key issues: (i) opt-in regime, (ii) limitation period, (iii) recognition as a qualified entity, and (iv) funding.

Section 4 identifies the main collective actors working in the field of data protection in Germany, either specifically, or as an element of general consumer protection.

In the absence of proper collective private parties' litigation in the field, Section 5 describes cases where consumer protection organizations filed injunction actions for violations of data protection & privacy law and cases where prospective claimants have flagged their intention to explore future possibilities of claims.

2. Legal Framework

a. National implementation of Art. 80 GDPR

Act for Injunctive Relief (*Unterlassungsklagengesetz*, “UKlaG”) provides a mechanism (under § 2) that allows specific entities (listed in § 3) to bring collective actions, originally only in consumer law.

On 17 February 2016, a new amendment (*Gesetz zur Verbesserung der zivilrechtlichen Durchsetzung von verbraucherschützenden Vorschriften des Datenschutzrechts*, Law to Improve the Civil Enforcement of Consumer Protection Provisions of Data Protection Law) was introduced, allowing associations to bring actions against violations of consumer protection-related provisions of data protection law.

A second significant change in this provision was introduced by the Collective Actions Directive. Under the previous regime (§ 2(2)(11) UKlaG), only certain violations of data protection regulations were included in the scope of § 2. Under current law, on the other hand, all provisions of the [General Data Protection Regulation](#) (“GDPR”) fall within the scope of the Representative Actions Directive insofar as they are applicable to the relationship between entrepreneurs and consumers and regulate data processing (2(2)(13) and § 2(2)(14) UKlaG).

b. National framework on collective redress

- **Action for injunction under Act on Injunctive Relief and the Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb*, “UWG”)**

An action for injunctive relief against unfair standard contract terms can be enforced by qualified consumer associations (registered per § 4 UKlaG or Article 4(3) of Directive 2009/22/EC) qualified trade associations (registered per § 8b UWG) and chambers of commerce. This aims to prevent breaches of consumer law and eliminate commercial practices constituting unfair competition, as well as any effects thereof. Following the entry into force of § 204a BGB (*Bürgerliches Gesetzbuch*, German Civil Code), applications and actions for injunctive have the effect of suspending the limitation period for claims by consumers based on the same infringement against which the UKlaG or UWG proceedings are directed.

- **Action for absorption of profits (*Gewinnabschöpfungsklage*)**

Anyone who wilfully carries out a commercial practice that is unlawful under § 3 or § 7 UWG in accordance with § 10 UWG and thereby makes a profit at the expense of a large number of customers can be required to surrender this profit to the federal budget by those entitled to assert a claim for injunctive relief in accordance with § 8(3)(2)-(4) UWG. Similar to the model declaratory action, a large

number of customers must be affected for the claim to be asserted. Whether there is a large number of customers depends on the circumstances of the individual case, and is not determined by fixed numbers (unlike in the case of the model declaratory action). The decisive factor is whether the infringement has a widespread effect. Subject to prior authorisation of the BfJ (*Bundesamt für Justiz*, Federal Office of Justice) third-party litigation funding is permitted.

- **Model declaratory action (*Musterfeststellungsklage*)**

The *Musterfeststellungsklage* was first introduced in ZPO in the wake of the *Dieseltgate*, and has now been revised and transposed in the VDuG, following the implementation of the RAD.

The subjects entitled to bring an action are 1) 'qualified consumer associations' listed in § 4 UKlaG (number of members, duration of registration, statutory tasks, purposes and financing) that do not receive more than 5% of their financial resources from donations from companies, and 2) qualified entities from other Member States of the European Union that are list of the European Commission pursuant to Art. 5 RAD and demonstrate the consumer quorum of 50. These bodies are then authorized to seek a determination of liability and declaration of existence or non-existence of claims, rights and legal relationships (in other words, decisions upon common issues of law and relevant facts for the later individual actions taken up by consumers). Actions for damages or reimbursement must then later be claimed in separate proceedings by the affected consumers. The benefit to the individual claimant stems from the binding effect of a model declaratory judgment. Aggravated consumers do not participate directly in a model case. Of key importance is the role of the representative action register, where consumer shall register their claims or legal relationships that depend on the declaratory objectives of the model declaratory action. § 204a BGB applies in relation to the limitation period, with the effect of suspending the limitation period for claims by consumers based on the same infringement against which the Model declaratory action is directed.

- **Redress action (*Abhilfeklage*) 2023**

The *Abhilfeklage* was first introduced in VDuG as one of the two types of representative actions that EU Member States need to provide following the RAD. A claim for damages, specific performance, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid can be brought by qualified associations (same requirements as for *Musterfeststellungsklage*: § 2(1) VDuG, consumer quorum). An additional requirement concerns the similarity of the claims concerned, which includes the existence of the same facts or a 'series of essentially comparable facts' and a certain degree of similarity of the legal and factual issues relevant to the decision. Affected consumers can join the action by way of registration in the representative action register. The claim can be brought under three models. In the first one, the association seeks performance directly for identified consumers and is subsequently ordered to pay them the obtained sum. Under the second model, the process consists of 3 stages: issuing a basic remedial judgment (declares the liability of the trader sued to be justified on the merits, includes proof of authorization by each consumer; in the case of payment claims, can also set parameters for the specific calculation of consumer claims; can be appealed), a settlement proposal (under a deadline); if the latter is unsuccessful, a final remedial judgement based on which the court determines quantum. A court-appointed administrator is then

responsible for redistribution according to the payment plan (appeals allowed) as a part of the implementation procedure. Under the third model, the parties follow the steps under the second model but apply for a single judgment. § 204a BGB applies to limitation periods.

For collective redress mechanisms introduced under VDuG (*Musterfeststellungsklage*, *Abhilfeklage*), litigation financing is inadmissible under certain circumstances. Firstly, the success fee of the funder cannot exceed 10% of the sum owed by the defendant. Secondly, the action cannot be financed by a third party that is a competitor of the defendant company or dependent upon the defendant company. Finally, a litigation funder cannot be expected to influence the process to the detriment of the consumers. The claimants are also subject to obligations regarding disclosing the sources used to fund the representative action, as well as the financing agreement, to the court.

- **An alternative: assignment of claims model**

In the absence of legislatively mandated pathways of collective rights enforcement, parties started making active use of the traditional legal instruments, in particular the assignment of claims mechanism. Assignment of claims is generally permissible in German law under § 298 BGB (unless a prohibition on assignment applies, §§ 399, 400). This instrument is utilized also by companies that offer reimbursement in case of data breaches.

3. Main Actors

In Germany, consumer protection and data protection activities are led by several key organizations. The *Verbraucherzentrale Bundesverband (vzbv)* is a nationwide umbrella organization representing all 16 consumer centers across Germany's federal states, along with 26 other consumer and socially-oriented organizations. Primarily funded by public sources, these centers are independent, non-profit entities. As one of Germany's most active consumer protection organizations, vzbv frequently initiates collective actions and is recognized as a qualified institution under § 4(1) UKlaG. In the realm of data protection, *Digitalcourage e.V.* stands out as the only organization explicitly focused on privacy and digital rights. Formerly known as *FoeBuD*, Digitalcourage e.V. it advocates for fundamental rights and the protection of personal data and is also listed as a qualified institution under § 4(1) UKlaG. Additionally, legal platforms such as *RightNow GmbH*, specializing in claim assignment and the litigation of individual and aggregated claims, and the *Europäische Gesellschaft für Datenschutz mbH*, a registered debt collection service, play significant roles in helping consumers enforce their rights. These platforms facilitate the enforcement of claims, including those arising under Article 82 of the GDPR, by offering legal support and expediting the claims process for consumers.

Several authorities are responsible for enforcement of data protection law: this is, in particular, the Federal Commissioner for Data Protection and Freedom of Information (competent to supervise the public bodies of the federation and representing Germany in the European Data Protection Board as joint representative and single point of contact) and data protection authorities active in each one of 16 Federal States overseeing the data processing activities of public and non-public entities in each *Bundesland*.

4. Legal Proceedings

The objective of this last section is to provide an overview of pending and adjudicated data protection CPE proceedings as per 31 August 2024.

Collective actions (both *Musterfeststellungsklage* and *Abhilfeklage*) are registered in [Verbandsklageregister](#). As of now, the register contains 33 actions brought under *Musterfeststellungsklage altes Recht*, 1 combined *Abhilfeklage* and *Musterfeststellungsklage neues Recht*, 2 *Abhilfeklage*, all based on general consumer law. No collective claim has been brought for violation of GDPR.

However, the following cases are worth mentioning:

<i>Verbraucherzentrale NRW v Meta Platforms Ireland Limited</i>	
Date of Initiation of the Claim	2023
Summary	In violation of consumer law, Meta introduced Privacy or Pay model on its platforms, Facebook and Instagram.
Claimant	<i>Verbraucherzentrale NRW</i>
Defendant	Meta Platforms Ireland Limited
Type of Action	Action for injunction under Act on Injunctive Relief (UKlaG)
Remedies Sought	Injunction
Status/Outcome	The High Court of Düsseldorf has decided in its final judgement that companies are legally obliged to label order buttons with clear wording such as 'order with obligation to pay', and that Meta's 'proceed to payment' button also did not meet the statutory consumer protection requirements. The judgement is final. <i>Verbraucherzentrale</i> is currently considering starting an <i>Abhilfeklage</i> to grant consumer compensation/refund.

<i>Verbraucherzentrale NRW v Telecom, Telefónica, and Vodafone</i>	
Date of Initiation of the Claim	2022
Summary	The phone companies carried out transfer of positive data to credit agencies without the consent of the persons concerned.
Claimant	<i>Verbraucherzentrale NRW</i>
Defendant	Telecom, Telefónica, and Vodafone

Type of Action	Action for injunction under Act on Injunctive Relief (UKlaG)
Remedies Sought	<ul style="list-style-type: none"> • Injunction • a non-better-identified monetary relief of 520 plus interests
Status/Outcome	The injunction was granted in all cases, the monetary relief was not granted

<i>Verbraucherzentrale Bundesverband vs Tesla</i>	
Date of Initiation of the Claim	2022
Summary	Case combined both the failure to inform misleading advertisement buyers about the CO2 emission and the lack of information about the incompatibility of the Tesla Sentry Mode with the GDPR.
Claimant	<i>Verbraucherzentrale Bundesverband</i>
Defendant	Tesla
Type of Action	Action for injunction under the Unfair Competition Act
Remedies Sought	Injunction
Status/Outcome	Claim rejected in March 2023 (they will appeal)

<i>Digitalcourage e.V. vs Deutsche Bahn</i>	
Date of Initiation of the Claim	2022
Summary	App DB navigator is accused of performing illegitimate tracking and passing on data to multiple data-marketing companies. Unclear why this has not been brought has a collective action.
Claimant	<i>Digitalcourage e.V.</i> (Paddelun)
Defendant	<i>Deutsche Bahn</i>
Type of Action	Individual action
Remedies Sought	Injunction
Status/Outcome	In 2022, <i>Digitalcourage</i> filed a lawsuit against the app's extensive tracking at Frankfurt am Main Regional Court.

<i>(possible future claim): CIRF Germany & Acxiom</i>	
Date of Initiation of the Claim	A complaint filed in 2021; currently, 'noyb is ready to file further complaints or sue

	companies like Acxiom for injunctive relief and damages based on the new representative actions directive.’
Summary	Unlawful processing of personal data by the the credit reference agency CRIF and address trader Acxiom
Claimant	NOYB
Defendant	CRIF Germany & Acxiom
Type of Action	--
Remedies Sought	Injunctive relief and damages
Status/Outcome	--