

Comment and questions on Prof. Stadler's presentation:

“The Implementation of the Representative Action Directive (EU 2020/1828)  
in Germany”

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I would like to thank Prof. Stadler for the presentation on the implementation of directive Representative Action Directive in Germany.

I learned a lot from your presentation.

I am interested in contract law and consumer law. I am interested in German law and European law.

I understand that today's presentation dealt with a very interesting question of how to enforce or strengthen consumer rights at EU level and in Germany.

Let me ask you three questions.

It is about German law after the implementation of RAD. I have also been following the amendments to the UWG. I was so surprised that the provisions of Article 9, Paragraph 2 of the UWG, which were newly stipulated in 2021, recognized the right of individual consumers to claim damages against businesses. I felt the intention of the strong legislator to strengthen the substantive provisions of consumer rights.

I am interested to see how the substantive provisions of consumers' right to claim damages may work through the introduction of representative actions in Germany. Although there is an assessment of this as a paradigm shift, I think the debate is divided. If possible, could you tell us your outlook?

The second question is about the use of opt-out and opt-in procedures for the realization of consumer rights in representative action. I understood very well from your talk that EU law leaves the choice to member states, that German law adopted opt-in in principle in this amended law, and on the other hand, it relaxed the principle of opt-in. The German way is very interesting.

In the presentation, it was mentioned that consumers' right to dispose would be a threshold for not adopting the opt-out method.

In my view, the purpose of these representative action is not only to restore individual rights but also to skim off profits that businesses have unfairly gained. In that sense, as you pointed

out, I would like to ask whether it is possible to legislate in principle to opt out of a certain amount, for example, if the average amount of compensation for individual consumers is 500 euros or less. I thought that such an opt-out method would be appropriate to prevent consumer rights under substantive law from becoming paper tigers.

The third question is from a broader perspective. The question is: Why is the EU trying to increase the effectiveness of consumer rights in this way, what is its purpose, and what is it trying to do with it?

Best regards.