

Comments on the implementation of the representative actions Directive (EU 2020/2018) in Germany

I could have understood the subject of the implementation of class actions in Germany is of great interest to Professor Stadler, as she proposed the implementation of Muster actions in accordance with the Administrative Court Act at the 62nd German Bar Conference in 1998 and drafted a law to regulate collective actions, Muster action and class actions on behalf of the Federal Ministry of Consumer Protection, Food and Agriculture in 2005. I could also understand that she has a certain appreciation for the implementation of a system that is more similar to the class action system in the U.S. than ever before, with respect to the realization of consumers' claims. Therefore, I would like to ask a few questions.

First, Japan has introduced some kind of a two-step procedure, such as the model declaratory judgement action, for the collective recovery of property damage by consumers. However, Professor Stadler seems to have a low evaluation of these two-step procedures. From a Japanese point of view, Germans are aggressive in terms of asserting their rights, and I cannot imagine that two-step procedures would be an obstacle to their use. Please tell me why the two-step procedure is not highly regarded in Germany.

Second, Professor Stadler mentioned that opt-in to a representative action would prevent the filing of an individual lawsuit. She also used the term "*Prozessstandschaft*," but does the consumer stand in the relationship of granting the qualified organization the power to pursue the lawsuit?

Also, would the effect of a judgment received by the Qualified Organization be extended to the consumer?

Furthermore, once a consumer has opted in, can he/she withdraw the grant of the power to pursue the lawsuit and withdraw from the lawsuit if, for example, he/she loses patience with the lengthy proceedings of the representative action?

Third, it has been pointed out that the fact that such a representative action covers collective claims for only small amounts of property damage, for example, when a railroad company misconfigured a ticket vending machine and charged many

purchasers 10 euros more each, may lead to those who do not consider themselves victims to exercise their rights. How would Professor Stadler evaluate these opinions? Does she think that representative actions should be used aggressively in such cases once the cost issue is resolved?

Fourth, Professor Stadler suggests the creation of a fund for state funding of representative actions because of the restrictions on funding by third parties, which would limit the availability of qualified organizations to pursue representative actions. By the way so-called "crowd funding" has become a popular method of providing such third-party funding in recent years. In Japan, for example, this method has been used to provide large sums of money for museum operating expenses. Does Professor Stadler consider it would be realistic to adopt such a method for representative actions as well.

Finally, in connection with the implementation of representative actions, is there any consideration of further expanding the disclosure of evidence in the realm of the opposing party or third parties?

I sincerely thank Professor Stadler for the many suggestions her excellent paper has given me.

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