

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

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(1) I am very pleased to engage in a discussion about the presenter's presentation, which contains profound insights from their extensive research on collective redress. I am deeply thankful for the detailed explanation provided regarding Germany's newly enacted Consumer Rights Enforcement Act (CREA). It is highly impressive that the CREA has introduced a mechanism allowing Qualified Entities, who act as plaintiffs, to claim the total damages on behalf of victim groups. This leads to the necessity of a distribution procedure and raises questions about the timing of victims' opt-in. Additionally, permitting third-party funding is a significant development, though the prescribed limit raises doubts about the system's accessibility. I recall that in any country, business associations have often obstructed the essential functions of such collective redress mechanisms by setting up stringent safeguards against the abuse of collective redress. I am concerned that in Germany's recent legislation, there may be an excessive focus on preventing misuse, potentially making it challenging to achieve its original objectives. I would like to briefly introduce the current status of Korea's unique US-type class action and pose a single question to the presenter.

(2) Since 2005, Korea has allowed a US opt-out style of class action exclusively in securities-related cases. Due to strong opposition from business associations, this approach was restricted to specific fields such as securities-related cases. To address concerns of abuse, various safeguards were put in place, including qualifications for plaintiff representatives, court oversight of attorney fees, and the requirement of court permission for filing a class action. There was no provision regarding third-party funding. As of 2023, approximately 15 cases have been reported, although the exact number is uncertain due to significant overlap among plaintiffs. Among these cases, three have recently completed distribution reports.

(3) Class actions brought by victims against institutions such as the Royal Bank of Canada were concluded in just nine years, ending in 2019. Similarly, a class action against Deutsche Bank AG also concluded in seven years, with a distribution report submitted on May 23, 2019. In the Deutsche Bank AG case, a total of approximately KRW 10 billion (US\$ 760,000)

was distributed among 455 victims based on the extent of their damages, with the remaining balance of approximately KRW 40 million (US\$ 30,000) returned to the defendant. The total cost of the distribution process was around KRW 16 million (US\$ 12,000), with KRW 11 million (US\$ 8,400) paid to the distribution administrator (typically the plaintiff's attorney). The fee arrangement disclosed to the court by attorneys at the commencement of the proceedings was a success fee of 15% without an initial fee, but the court approved this amount considering factors such as the duration of the case.

(4) There have been very few securities-related class actions filed in Korea over the past 23 years. Most Koreans do not believe that this is because the Korean securities market is particularly healthy. Rather, Korean lawyers are not interested in securities-related class actions, and this lack of interest is shared by individuals who wish to become representative plaintiffs. The United States' class action system, which is widely perceived as primarily benefiting lawyers, is rejected, leading to the introduction of stringent safeguards in civil litigation, including a court approval process for the filing of lawsuits, court oversight of the qualifications of parties and representatives, and reasonable attorney fees. In Korea, except for securities-related cases, collective redress, in the form of representative actions (Verbandsklage), is permitted only for injunction claims in areas such as consumer protection and personal information privacy. However, even in these areas, representative actions have not been particularly effective. While there have been attempts to expand the scope of US-style class action, discussions mainly focus on simplifying the approval process, minimizing court intervention, actively introducing third-party funding, and implementing a *cy-près* mechanism allowing the donation of judgment awards to public interest organizations.

(5) The presenter appears to have a somewhat pessimistic view of the CREA. In both Korea and Germany, representative actions filed by consumer groups or similar entities have long played a role as a form of collective redress. However, it is unclear which method among those adopted by the CREA will effectively serve as collective redress. For example, is allowing third-party funding alone sufficient, or is more needed? Additionally, I would like to hear the presenter's opinion on whether an opt-in style representative action can play a fundamental role similar to the US class action. In Korea, for instance, many victims of the VW diesel scandal chose to file a class action in a US federal district court rather than filing a domestic lawsuit, highlighting doubts about the competitiveness of opt-in style representative actions.