

MODEL CASE PROCEDURE – ONE FOR ALL

! Is a product not delivering what it promises? Consumers rarely get their money back when they have suffered a damage as a result of a company breaking the law. They have to bring their individual legal action and face the risk of having to pay all the costs themselves. What is urgently needed is a type of legal action that clarifies the right to compensation of all affected consumers in a particular case for a particular infringement.

In 2013, the European Commission recommended introducing collective redress mechanisms for compensation cases. Many EU Member States did so. There has been a great deal of discussion in Germany about bringing in a model case procedure as a new legal instrument, but to date there is still no effective way in which consumers can take legal steps to obtain the money to which they are entitled. Bringing a model case would enable an association to have the courts clarify entitlement to compensation. There would be one procedure for all consumers affected instead of a multitude of individual actions being brought.

The justice and consumer protection ministers of Germany's federal states have expressed their cross-party support for this new type of action. Moreover, the latest reforms proposed by the European Commission as part of the REFIT process of the consumer law acquis aimed at more effective enforcement of consumer rights.¹

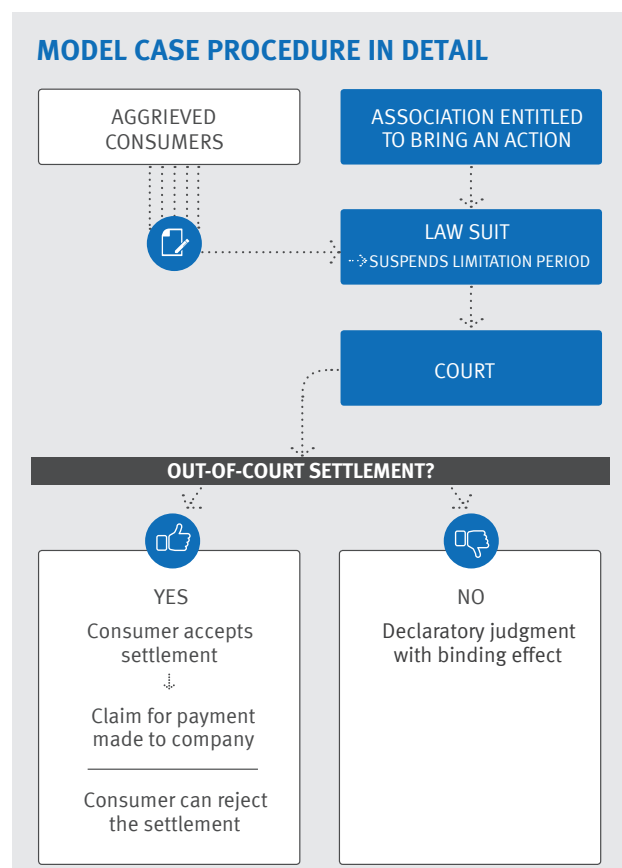
§ The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) is calling on the German government to introduce the model case procedure as quickly as possible.

VZBV'S POSITION

Model case initiated by associations: Currently, German consumer associations seek a cease-and-desist order to force companies to immediately stop breaking the law. But this does not lead to the aggrieved parties getting their money back. This is where the model case comes in, as it would allow associations to bring an action with a broader scope. Unlike in a class action, consumers would not be directly involved.

Suspension of limitation period: The limit on the period in which claims can be made needs to be suspended in a model case procedure so that consumers have a genuine chance of obtaining compensation. Otherwise, individual claims would become statute-barred because of the length of the proceedings. The limitation period needs to be automatically suspended for all affected consumers.

Binding judgment for all: A judgment in a model case has to be binding for the benefit of all affected consumers. The aggrieved parties could then invoke the model judgment and claim their individual compensation more easily. Subsequent arbitration proceedings would make it simpler to calculate the individual claims. If a case is settled rather than a judgment being reached, the affected consumers should be awarded compensation and receive the payment without delay.



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FACTS AND FIGURES

i The aim of the planned model case procedure is to ascertain the eligibility for compensation of a minimum of ten affected parties. Other affected consumers can then invoke the ruling. This simple process enables them to receive what they are entitled to under the applicable law, but no more. There will not be excessive compensation payments as seen in the US.

i In Germany, 70 percent of consumers would like an easier, less expensive way of going to court in order to achieve better consumer protection. And 76 percent believe the next German government ought to improve the courts' enforcement of justified claims.²

i A representative survey conducted by Mindline Media on behalf of vzbv was equally clear: 77 percent of consumers would participate in a consumer association's model case if they had the opportunity.³

i In 2006, the Hamburg Consumer Association brought an action against Premiere, which had demanded compensation from customers who ended their pay-TV subscriptions but did not return their smart cards. In this case, 86 customers individually assigned their claims against Premiere to the Consumer Association, which brought a debt collection action. Premiere accepted the claim. However, the costs were far higher than the total amount being sought of 3,600 euros.⁴

FEW GET THEIR MONEY BACK



A few years ago, Manfred received a letter from his energy provider saying that gas prices were going up and his annual charges would rise accordingly. The company justified this by citing a price adjustment clause enabling cost increases in long-term contracts. Manfred, and around 300,000 other customers of the energy company, started paying more for their gas. He then read in the newspaper that a consumer association considered the price adjustment clause to be invalid and was planning to bring an action against it.

Strength in numbers

Manfred, who has a degree in business administration, looked into the matter and found out that the consumer association believed customers would have a right to claim money back because of the unlawful clause. He did not dare to take the case to court himself because of the expected costs. However, when he heard that the consumer association was trying to represent as many of those affected as possible, he decided to take part. Collective redress instruments that are effective for all aggrieved parties do not exist in Germany, so he had to assign his claim to the consumer association. The bureaucracy involved meant that the consumer association was only able to take on his claim and those of 193 other affected customers. The effort was worthwhile for the people who participated because they got their money back after a settlement was reached. However, this meant only 194 of around 300,000 consumers received compensation. Sonja, Manfred's new partner, was one of those who missed out. "How unfair," they both thought, wishing there was an easier way of enforcing the rights of all those affected.



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¹ https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en

² Source: 2016 consumer report, representative survey carried out by Kantar Emnid on behalf of vzbv, October 2016, <http://www.vzbv.de/pressemitteilung/verbraucher-zaehlen-verbraucher-waehlen>

³ Source: representative survey on European consumer law carried out by Mindline Media on behalf of vzbv, November 2016, http://www.vzbv.de/sites/default/files/downloads/2017/06/09/17_06_02_chartbericht_verbraucherzentrale_europaeisches_verbraucherrecht.pdf

⁴ Source: more on this and other cases of collective enforcement https://www.vzbv.de/sites/default/files/downloads/kollektiver_rechtsschutz-beispiele-vzbv-2015.pdf

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