

Houthoff Class Action Survey: Germany

The Houthoff Class Action Survey 2024 provides an eye-opening journey into the future of class actions. It includes around 40 interviews with thought leaders from 12 different countries, preceded by an overview of the current class action regime in each jurisdiction. This is the overview for Germany.

In Germany, the Representative Actions Directive (RAD) is implemented by the *Verbandsklagenrichtlinienumsetzungsgesetz* (VRUG), which entered into force on 13 October 2023 (BGBl 2023/272). This Act introduced a new class action regime (*Verbraucherrecht durchsetzungsgesetz*, VDuG), which created the possibility to claim redress measures (*Abhilfeklage*), including compensation to class members. It also incorporated the existing Model Declaratory Action (*Musterfeststellungsklage*, MFK), which allows for a declaratory judgment. The MFK was introduced in 2018 and was predominantly used in the “Dieselgate” litigation.

The VDuG applies to all disputes between consumers and businesses regardless of the claims' legal basis or the areas in which they occur. Companies with less than ten employees and an annual turnover or annual balance sheet of EUR 2 million or less are equated with consumers. Qualified organisations that are designated and listed can bring a representative action for a group of at least 50 consumers. The Higher Regional Court in the district where the defendant is based has exclusive jurisdiction for actions under the VDuG. After filing a representative action, other qualified entities cannot initiate proceedings against the same defendant for the same facts, claims or objectives. Consumers can opt in the representative action until three weeks after the last oral hearing concludes. A court-approved settlement is binding on all consumers that opted in, unless they opt out within one month after the settlement's announcement.

Third party litigation funding (TPLF) in general is increasingly popular and not directly regulated. TPLF is also possible under the VDuG, but under strict conditions in addition to the RAD. The qualified entity cannot receive more than 5% of its financial resources from private companies to have standing. The funder cannot receive more than 10% of the awarded compensation. The claimant must disclose the funding agreement in court.

The losing party bears the litigation costs based on fixed statutory rates related to the amount in dispute. In representative actions, the cost risks for qualified entities are limited because the amounts in dispute are capped at EUR 300,000 for redress actions and EUR 250,000 for Model Declaratory Actions.

A court-appointed administrator, whose decisions can be reviewed in court, distributes the awarded damages. Consumers can start follow-on proceedings if they did not opt in the representative action or if the administrator fully or partly rejects their claims. If the court has only rendered a declaratory judgment, consumers can start individual proceedings to obtain an enforceable judgment.

The Capital Markets Model Case Act (*Kapitalanleger-Musterverfahrensgesetz*, KapMuG) provides for an opt-in collective action mechanism. This mechanism applies to capital market disputes that involve a minimum of ten investors. Defendants can include securities issuers or auditors. The KapMuG came into force on 1 November 2005, in response to the enormous number of claims in the *Telekom* case. The KapMuG has since been revised twice (in 2012 and 2024). KapMuG proceedings lead to a declaratory judgment, but damages cannot be awarded. The proceedings can be ended through a settlement, which becomes binding when the court approves it and fewer than 30% model proceedings participants opt out. Participants can also start individual follow-on actions for damages.

Class actions | VDuG (*Abhilfeklage* and MFK) / KapMuG

Scope	VDuG (<i>Abhilfeklage</i> and MFK): all civil law matters involving consumers as class members. KapMuG: securities issues.
Access granted to	VDuG (<i>Abhilfeklage</i> and MFK): qualified entities. KapMuG: capital investors.
Opt-in or opt-out	All: opt-in.
Declaratory relief or damages	VDuG: both. KapMuG: declaratory relief.
Frequently used	VDuG (<i>Abhilfeklage</i>): to be seen. KapMuG: yes, hundreds of cases. MFK: approx. 30 so far.
Regulatory framework	<i>Verbandsklagenrichtlinienumsetzungsgesetz</i> (VRUG); <i>Verbraucherrecht durchsetzungsgesetz</i> (VDuG); <i>Kapitalanleger-Musterverfahrensgesetz</i> (KapMuG).
Alternatives used in practice	Assignment of claims and representation by means of mandates.

Class settlements

Binding class members after court approval	Yes, in VDuG (<i>Abhilfeklage</i> and MFK) and KapMuG.
Opt-in or opt-out	All: opt-out.

Third party funding

Regulated by law	No, but qualified organisations may not receive more than 5% of their finances from corporate entities under the VDuG and MFK. TPLF's participation under VDuG is capped at 10% of the consumers' proceeds.
Frequently used	No, but increasingly seen; Germany has a long history of funding firms but only recently funding became more visible in litigation.

Good to know

In Germany, legal scholars and experts consider a sole opt-out system in class actions and class settlements to be unconstitutional.

In October, we are holding an interactive seminar where the main results of this research will be presented.

[Read more](#) about this event on our website and [pre-order the Houthoff Class Action Survey 2024](#).

CONTACT

If you have any questions about class actions or the survey, please feel free to contact Albert Knigge or Isabella Wijnberg.



ALBERT KNIGGE
ADVOCAT | PARTNER
T +31 20 605 65 62
M +31 6 5184 5323
a.knigge@houthoff.com



ISABELLA WIJNBERG
ADVOCAT | ADVISER
T +31 20 605 65 09
M +31 6 5316 8462
i.wijnberg@houthoff.com