

**OVERVIEW GERMANY-Author: Dr. Theo Langheid**

	Points	Germany Musterfeststellungsklage
1	<b>What kind of claim may be suitable for a collective redress claim?</b> <ul style="list-style-type: none"> <li>• Suitable</li> <li>• Not suitable</li> <li>• Injunctive</li> <li>• Financial redress</li> <li>• Examples</li> </ul>	All kind of mass claims could be suitable under German law; however it is a very complicated process and without an individual follow up trial there is no benefit for consumers
2	<b>In practical terms, how does the action come about?</b> <ul style="list-style-type: none"> <li>• Who 'creates' it - takes steps to put it forward?</li> <li>• Is there claimant demand</li> <li>• Book build/ opt-in claimants</li> <li>• Role of the lawyer</li> </ul>	Qualified consumer association (minimum of 10 other consumer associations or 350 natural persons and at least 4 years as a registered consumer protection association) only 10 consumers have to sign the claims register initially; within 2 months after filing the claim a minimum of 50 registered consumers is required
3	<b>Who may file a claim and who stands to gain?</b> <ul style="list-style-type: none"> <li>• Representative claimant/ plaintiff?</li> <li>• Equivalent?</li> <li>• Consumer association?</li> <li>• Role (if any) of 'Opt in' and 'Opt out'</li> <li>• Specific entities responsible for the pursuit of multi-claims procedures</li> </ul>	Consumer association only 'Opt in' initially 'Opt out' after a settlement (with courts approval) has taken place

4	<p><b>What are the basic procedural steps? Admissibility and Certification Procedure (by court)?</b></p> <ul style="list-style-type: none"> <li>• Leave?</li> <li>• Certification?</li> <li>• Trial on common issues?</li> <li>• Separate quantum / damages trial?</li> <li>• Is determination of liability separate from determination of quantum (i.e. damages awarded)?</li> </ul>	<p>The claim has to be registered The court of appeal as first instance decides whether the class has identical declaratory interests After the declaratory judgement there must be a follow up trial re individual damages, if the case is not settled (with the approval of the court) Two different trials: determination of liability first than an individual trial for damages</p>
5	<p><b>What are the likely levels of costs involved?</b></p> <ul style="list-style-type: none"> <li>• Own side's costs – please explain to congress</li> <li>• Adverse – please explain to congress</li> </ul>	<p>Max of 6.308, 40 EUR lawyer's fees for each party</p>
6	<p><b>How are own costs dealt with?</b></p> <ul style="list-style-type: none"> <li>• Paid on standard basis.</li> <li>• Conditional fee agreement / contingency fee?</li> <li>• Third party litigation funding?</li> <li>• Insurance cover BTE/ATE?</li> </ul>	<p>Cap for the sum in dispute is 250.000,- EUR</p>
7	<p><b>How is the risk of exposure to Opponent's costs dealt with?</b></p> <ul style="list-style-type: none"> <li>• Role of 'loser pays' principle –is it engaged/ 'costs shifting'</li> <li>• Insurance cover BTE/ATE?</li> <li>• Third party litigation funding</li> </ul>	<p>Loser pays Insurance cover is possible Third party funding is of no interest since there is the cap (see # 6) and the class action is only declaratory; the individual claims are led separately in a follow up trial</p>

8	<p><b>When is a multi-party claim a collective action?</b></p> <ul style="list-style-type: none"> <li>• Numbers of claimants? <ul style="list-style-type: none"> <li>○ Minimum</li> <li>○ Maximum</li> </ul> </li> <li>Who decides?</li> <li>• Other</li> </ul>	See # 2
9	<p><b>Are there different types of multiparty claims in your jurisdiction? E.g. below? Can you explain to congress?</b></p> <ul style="list-style-type: none"> <li>• Multiple claimants named in an action</li> <li>• Representative claimant proceedings</li> <li>• Test case</li> <li>• Group Litigation Order</li> <li>• Class action</li> <li>• Other</li> </ul>	Only a declaratory class action
10	<p><b>Who establishes which potential claimants can be included in the claim? Who decides if their claims are good enough?</b></p> <ul style="list-style-type: none"> <li>• Criteria?</li> <li>• Legal team?</li> <li>• Court?</li> <li>• Other?</li> </ul>	<p>All 'opt ins' have to register  Later the court decides which claims are justified  If a settlement can be reached one option is to define the requirements of a pay out</p>
11	<p><b>What is the role - if any - for IT in collective redress?</b></p> <ul style="list-style-type: none"> <li>• Legal technology</li> <li>• Web based actions</li> <li>• Collection of data</li> <li>• Communication with claimants/class</li> <li>• Analysis</li> <li>• Other</li> </ul>	No IT
12	<p><b>Please explain a typical collective redress action you have been involved in and discuss points of interest arising:</b></p> <ul style="list-style-type: none"> <li>▪ Difficulties</li> <li>▪ Obstacles</li> <li>▪ Plus points</li> <li>▪ What worked and what didn't work</li> <li>▪ What would you change if you could?</li> </ul>	My complete presentation deals with that point; it is impossible to repeat it here