



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS GERMANY



With financial support from the Civil Justice Programme of the European Union



Updated in collaboration with Aston University





**British Institute of
International and
Comparative Law**

Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

Table of Contents

I.	General Collective Redress Mechanism	5
1.	Joinder, stay, consolidation	5
2.	Assignment of Claims	5
3.	Test Case Agreements	5
II.	Sectoral Collective Redress Mechanisms	6
A.	Consumer and Competition Law	6
1.	Representative Actions under the Act on Injunctive Relief (UKlaG)	6
a.	Scope	6
b.	Standing	6
c.	Procedure	6
d.	Participation of Foreign Plaintiffs	6
e.	Available Remedies	6
f.	Costs and Funding	7
2.	Actions on Behalf of the Consumers (<i>Sammelklagen</i>)	7
a.	Standing	7
b.	Procedure	7
c.	Remedies	7
d.	Problem	7
3.	Representative Actions under the Unfair Competition Act (UWG)	7
a.	Scope	7
b.	Standing	7
c.	Procedure	7
d.	Participation of Foreign Plaintiffs	8
e.	Available Remedies	8
f.	Costs and Funding	8
4.	Actions under the Antitrust Act (<i>Gesetz gegen Wettbewerbsbeschränkungen</i> - GWB)	8
a.	Scope	8
b.	Standing	9
c.	Procedure	9
B.	Investor claims - Capital Market Model Claims Act (Kapitalanleger-Musterverfahrensgesetz, KapMuG)	9
1.	Scope	9
2.	Standing	9
3.	Procedure	9
a.	Competent Court	9

b.	Main Procedural Rules.....	9
c.	Certification	10
d.	Opt-in/ Opt-out Procedure	10
e.	Multi-Stage Process	10
f.	Participation of Foreign Plaintiffs	10
g.	Expediency	10
h.	Res Judicata	10
4.	Costs and Funding	10
5.	Number of claims	11
C.	Other areas.....	11
III.	Information on Collective Redress.....	12
IV.	Case summaries of major cases.....	13

I. General Collective Redress Mechanism

A general collective redress mechanism is not available in German law. 'Traditional' civil procedure rules on joinder or consolidation of claims and stay of proceedings are not tailored to mass claims and lack efficiency. A method to pool claims that has been tested in practice is the assignment of similar claims against the same defendant to a specific body that brings a lawsuit based on the bundled claims. While this method has been used in a high value antitrust case it is not per se limited to a specific sector.

1. Joinder, stay, consolidation

A joinder of claims (Sec. 59 ff ZPO, Streitgenossenschaft) can allow several parties to bring a claim against the same defendant, but the rules as they stand do not guarantee uniform treatment of all claims (Sec. 61 ZPO). Suits remain de facto individual actions with their own individual chances of success or failure. Only a necessary joinder (notwendige Streitgenossenschaft, Sec. 62) can link lawsuits in a way in which absent parties are deemed to be represented by co-litigants and bound by their declarations. This however presupposes that the legal relationship at the centre of the litigation can only be established uniformly vis-à-vis all joined parties (eg. joint tenants, or heir and administrator) which is not the case in typical mass claims scenarios. Similar considerations apply to third party intervention in support of litigants (Sec. 66 – Nebenintervention). A stay or joinder of proceedings on the initiative of the court (Sec. 147 and 148 ZPO) can be helpful in organising a plurality of claims but these rules alone don't do justice to the needs of mass claims. None of the classical mechanisms fits their specific requirements.

2. Assignment of Claims

A method to concentrate claims is founding an association or company/SPV to which claims of a plurality of parties are assigned and which is acting in court on their behalf. This enables a suit to be brought by a single body, assignee of all claims. Under German law, this assignment model needs to comply with various requirements, eg. of the Legal Services Act¹, the Code of Civil Procedure as well as with company law.

Cartel Damage Claims S.A. (CDC) has brought claims in a selection of jurisdictions, ia. in Germany, as assignee of antitrust damages claims from a variety of businesses which had contracted with cement producers forming a cartel. Although this model can work in principle, the action failed in the concrete case: The court refused to grant CDC standing considering the assignments invalid due to a lack of authorisation under the Legal Services Act. Despite subsequently repeating the assignments observing all requirements, the next instance² dismissed the claim due to a lack of upfront guarantee to cover procedural costs. Coverage of all adverse costs needs to be given at the time of the assignments. This model has procedural and economic advantages where no other mechanism is viable, but has not (yet) been successful in Germany.³ Courts in the Netherlands and Finland have been more pragmatic and not dismissed such actions.

3. Test Case Agreements

Agreeing on test case proceedings (Musterklagevereinbarung) could theoretically be a potential way for plaintiffs to concentrate claims with similar issues of law and fact, but there is no broader general legal framework for such approach outside the KapMuG. Test case proceedings would only be brought by consumer associations to create a precedent, but as yet without real binding effect on other cases. Whilst a legislative proposal has been made to extend the KapMuG test case proceedings and create a general collective redress mechanism based on this model, no concrete results have yet been achieved.

¹ Act on Legal Services (*Rechtsdienstleistungsgesetz* (RDG)) of 12. December 2007 (BGBl. I p. 2840), last amendment 1 October 2013 (BGBl. I p. 3714).

² OLG Düsseldorf 18. Februar 2015 (Az. VI U 3/14), LG Düsseldorf, 17. Dezember 2013 (Az. 37 O 200/09).

³ See LG Düsseldorf, 9.3.2006, 34 O 147/05, BB 2007, 847 ff. and the subsequent decisions LG Düsseldorf, 21.02.2007 - 34 O (Kart) 147/05; LG Düsseldorf, 21.02.2007 - 34 O 147/05; LG Düsseldorf, 21.02.2007 - 34 O Kart 147/05; OLG Düsseldorf, 14.05.2008 - U (Kart) 14/07; OLG Düsseldorf, 14.05.2008 - VI U Kart 14/07; BGH, 07.04.2009 - KZR 42/08.

II. Sectoral Collective Redress Mechanisms

A. Consumer and Competition Law

In consumer law representative actions brought by associations can provide a form of collective redress, mainly seeking injunctions on behalf of consumers: see the Act on Unfair Competition (UWG)⁴, the Act on Injunctive Relief for consumer rights and other violations (UKlaG)⁵ and Sec. 79 (2) Nr. 3 ZPO.⁶ Claims under the UKlaG and suits under Sec. 8 UWG are frequent actions.

1. Representative Actions under the Act on Injunctive Relief (UKlaG)

a. Scope

Representative actions under the UKlaG aim at injunctive relief and at the elimination of the sources for a violation of consumer rights. Defendants are businesses using unfair commercial terms (Sec. 1 UKlaG) or businesses using other practices violating consumer law (Sec. 2 UKlaG).

b. Standing

Consumers themselves are not parties to the proceedings. They can only be brought by:

(1) associations 'promoting commercial or independent professional interests'. Among its members must be a considerable number of entrepreneurs active in the same market, they need to effectively promote commercial or independent professional interests and the contravention needs to affect the interests of their members.

(2) qualified listed entities (Sec. 4 UKlaG: established consumer associations fulfilling certain criteria as to the seriousness with which they pursue consumer interests; it is presumed that consumer advice centres and publicly funded consumer associations fulfil these criteria); and

(3) Chambers of Industry and Commerce.

c. Procedure

The Regional Court (*Landgericht*) in the area in which the defendant has his place of business/ place of residence is competent to hear UKlaG proceedings. To facilitate redress, Sec. 6(2) UKlaG enables under certain circumstances a concentration of claims in one Regional Court.

There are no specific certification criteria.

UKlaG proceedings follow Sec. 12 of the Act on Unfair Competition (UWG) and the general procedural rules in the Code of Civil Procedure (ZPO). The debtor should be notified prior to the initiation of court proceedings and obtain the opportunity to resolve the dispute out of court by making a cease and desist declaration under a penalty. Provisional injunctions can be granted under simplified conditions.

If it has been established that a business used unfair commercial terms (Sec. 1 UKlaG), the relevant terms are deemed to be invalid also in relation to other consumers bringing individual actions against this business, provided they invoke the injunction of the court.

d. Participation of Foreign Plaintiffs

Sec. 4a UKlaG allows the participation of foreign associations as it extends to intra-EU violations of consumer rights.

e. Available Remedies

Only injunctive relief is available.

⁴ Act on Unfair Competition (*Gesetz gegen den Unlauteren Wettbewerb (UWG)*) in its version of 3 March 2010 (BGBl. I p. 254), last amendment 1 October 2013 (BGBl. I p. 3714).

⁵ Act on Injunctive Relief for consumer rights and other violations (*Gesetz über Unterlassungsklagen bei Verbraucherrechts- und anderen Verstößen (Unterlassungsklagengesetz - UKlaG)*).

⁶ Code of Civil Procedure (*Zivilprozessordnung (ZPO)*).

f. Costs and Funding

The loser pays rule applies. However, costs need to be paid in advance. According to Sec. 12 (4) the pecuniary value of the claims for injunctive relief pursuant to Sec. 8 (1) can be reduced under certain circumstances to limit total costs. This occurs in practice, as such actions are an important financial burden and risk for associations.

2. Actions on Behalf of the Consumers (*Sammelklagen*)

Sec. 79 (2) Nr. 3 of the Code of Civil Procedure (ZPO) allows consumer associations to pool claims of consumers by collecting several claims or to bring a single consumer case to the court as a sort of test case. The meaning of consumer law is broader than in UKlaG cases and can eg. comprise product liability incidents. In practice, associations rather bring single test cases for consumers. Collective actions based on a plurality of collected claims are subject to administrative hurdles and costs.

a. Standing

Sec. 79 (2) Nr. 3 ZPO grants standing to consumer advice centres and other publicly funded consumer associations.

b. Procedure

These proceedings are only viable for smaller groups of identifiable consumers. The method of pooling claims compares to the opt-in principle and proceedings follow general procedural rules. As the association bears the litigation costs, such actions can be a financial risk if a plurality of claims is brought.

c. Remedies

The actions can either aim at the recovery of damages, which, in case of success, are distributed amongst the affected consumers; or at specific performance.

d. Problem

Due to a lack of specific procedure for collective proceedings and a lack of financial incentives, such actions are not a viable option in practice.

3. Representative Actions under the Unfair Competition Act (UWG)

a. Scope

The UWG provides for injunctive relief, damages and skimming off actions in cases of unfair competition and inappropriate business tactics (Sec. 8-10 of the Unfair Competition Act (UWG)). These actions aim at controlling market behaviour of businesses. Sec. 4 ff UWG lists and defines unfair commercial practices (e.g. practices suited to impairing the freedom of decision of consumers or other market participants through applying pressure; or practices suited to exploitation of a consumers mental or physical infirmity, age, commercial inexperience, credulity or fear; or the constraint to which the consumer is subject.)

Remedies are: injunctive relief according to Sec. 8 UWG against businesses using illegal commercial practices; damages (sec. 9); and skimming off of profits of businesses intentionally violating the UWG (sec. 10).

b. Standing

Injunctive relief under Sec. 8 can be sought by (a) associations representing interests of businesses provided that they fulfil certain criteria; by (b) qualified listed entities (see associations having standing under Art. 4(3) Dir 2009/22/EC); (c) by Chambers of Industry and Commerce; and, importantly, (d) by competitors.

Damages (Sec. 9 UWG) can only be claimed by competitors.

A Sec. 10 suit can be brought by all those having standing in injunctive relief cases, except for competitors.

c. Procedure

Actions under Art. 8 and 10 are representative actions that do not aim at compensating the victims of unfair competition but at skimming off the profits from the unfair trader. The profits then go to the Treasury. Such action cannot be classified within the categories of opt-in or opt-out.

Regional Courts (Landgerichte) have exclusive jurisdiction. Local jurisdiction lies with the court in whose district the defendant has his place of business/ place of residence, or, under certain circumstances, with the court in whose district the act was committed (Sec. 14 UWG).

The procedure follows the general rules in the Code of Civil Procedure plus specific requirements as listed in Sec. 12 UWG. Parties entitled to injunctive relief should notify the debtor prior to initiating court proceedings and give him the opportunity to resolve the dispute by making a cease and desist declaration under a penalty. Provisional injunctions can be granted under simplified conditions.

d. Participation of Foreign Plaintiffs

In principle, foreign consumer associations can participate in a representative action brought in Germany, see Sec. 8(3) UWG.

e. Available Remedies

Available remedies depend on the type of action brought:

- (1) injunctive relief (Sec. 8 UWG) against businesses using illegal commercial practices;
- (2) damages (Sec. 9);
- (3) skimming off of profits of businesses intentionally violating the UWG (Sec. 10).

f. Costs and Funding

The loser pays rule applies. According to Sec. 12 (4) UWG, the pecuniary value of the claims for injunctive relief pursuant to Sec. 8 (1) UWG can be reduced under certain circumstances to limit total costs. As to Sec. 10 UWG claims⁷, there have been suggestions to amend the current regime. Due to the risk of losing the action and bearing the costs, and due to the fact that illegal profits go to the Treasury in case of a successful action, this type of redress is rarely sought.⁸ Reportedly, reforms are envisaged, which could include the creation of a fund into which skimmed off profits can be paid and which can potentially be used for future actions in favour of consumers.

4. Actions under the Antitrust Act (Gesetz gegen Wettbewerbsbeschränkungen - GWB)

a. Scope

In Art. 101 or 102 TFEU infringement cases Sec. 33 GWB permits private actions (injunctive relief and damages claims). Sec. 34 and 34a GWB allow skimming off the defendant's profits, which go to the Treasury. There is no specific collective action (brought by competitors or other market participants) but such action is not excluded: Sec. 88 GWB allows a consolidation of actions if they have a legal or direct economic link, even in cases of exclusive jurisdiction. Sec. 33 (4) GWB secures a common basis for a plurality of claims (binding decision of a competition authority or the Commission for private follow-on actions). Recently, collective antitrust damages actions have (unsuccessfully) been brought by CDC via a different method: victims assigned their claims to CDC.⁹ The assignment model was considered a more viable option for damages claims but failed for rather formal reasons (see above) under I.

⁷ Actions under Sec. 8 UWG are frequent. On the contrary, only one case seems to have been brought under Sec. 10 as it is difficult to determine the amount of profits made through the use of unfair commercial practices. See eg. OLG Frankfurt, 20.5.2010, 6 U 33/09. MMR 2010, 614 ff.

⁸ It has therefore been suggested to grant a pro rata participation in the skimmed-off profits limited by an absolute cap (e.g. a 50 % participation with a cap of 10 Million Euro). See Wagner, G, Neue Perspektiven im Schadensersatzrecht - Kommerzialisierung, Strafschadensersatz, Kollektivschaden, Gutachten A für den 66. Deutschen Juristentag (Munich 2006), p. 112; Möllers, T./ Pregler, B., Civil Law Enforcement, Unfair Commercial Practices Directive and Collective Redress in Economic Law, Jus Civile 2013, p. 374, 375.

⁹ See the Cement Cartel Case in which CDC lead the proceedings for 28 victims of a cement cartel: LG Düsseldorf, 9.3.2006, 34 O 147/05, BB 2007, 847 ff. and the subsequent decisions LG Düsseldorf, 21.02.2007 - 34 O (Kart) 147/05; LG Düsseldorf, 21.02.2007 - 34 O 147/05; LG Düsseldorf, 21.02.2007 - 34 O Kart 147/05; OLG Düsseldorf, 14.05.2008 - U (Kart) 14/07; OLG Düsseldorf, 14.05.2008 - VI U Kart 14/07; BGH, 07.04.2009 - KZR 42/08.

b. Standing

Actions can be brought by the victims of antitrust infringements (competitors/ other market participants); by associations promoting commercial or of independent professional interests; or by consumer advice centres and publicly funded consumer organisations.

c. Procedure

Where associations bring claims on behalf of the competitors or other market participants, the latter have to actively agree to the case being brought to court. The Regional Courts (Landgerichte) have exclusive jurisdiction (Sec. 87 GWB).

B. Investor claims - Capital Market Model Claims Act (Kapitalanleger-Musterverfahrensgesetz, KapMuG)¹⁰

Triggered by the Telekom case¹¹ (17000 investors brought claims against the Deutsche Telekom), the Capital Markets Test Case Act (*Kapitalanleger-Musterverfahrensgesetz*, KapMuG) has been created in 2005. The Act was recast in 2012, ia. to include opt-out settlement proceedings.

1. Scope

The KapMuG establishes binding test case proceedings for damages caused by wrong, deceptive or omitted public capital market information or by the use of such information.¹² The request for test case proceedings clarifies which issues of law and fact are the object of the proceedings (Sec. 2), although the scope can be extended upon request of one of the parties.¹³ A declaratory judgment in the test case proceedings establishes the defendant's liability with binding effect on the individual damages claims of all investors.

2. Standing

Investors and the defendant can request test case proceedings, provided that a minimum of ten plaintiffs join. If this occurs, individual lawsuits are stayed until the test case is decided. The court selects a lead plaintiff in its discretion (Sec. 9 (2) KapMuG), considering the plaintiff's suitability and the value of his claim. The lead plaintiff is not a representative of the group of harmed investors, but the latter are interested parties in the test case, with the right to intervene (eg for the submission of evidence).

3. Procedure

a. Competent Court

The Code of Civil procedure provides for exclusive jurisdiction in (single) investor cases¹⁴. The court seized publishes a request for test case proceedings if such request was made to clarify specific questions of law and fact (Sec. 6 KapMuG). If within four months a minimum of 9 similar claims are filed, the first court seized refers the matter to the Higher Regional Court (*Oberlandesgericht*), which starts and leads the test case proceedings. In parallel, all individual proceedings in the same matter are stayed - whether or not the parties have requested test case proceedings. The success of the individual claims depends on the result of the test case proceedings (sec. 8 KapMuG).

b. Main Procedural Rules

The court determines the lead plaintiff in its discretion (Sec. 9 (2) KapMuG). All other parties will be intervening parties (Sec 9 (3) KapMuG). They have to accept the litigation in whatever situation it may be in at the time they

¹⁰ Capital Market Model Claims Act (Kapitalanlegermusterverfahrensgesetz – KapMuG), 19. Oktober 2012 (BGBl. I p. 2182), last amendment 23 June 2017 (BGBl. I p. 1693).

¹¹ The trial has been decided by the Higher Regional Court (OLG) Frankfurt on 16 May 2012 and is currently pending at the Federal Court of Justice (BGH), XI ZB 12/12; see also ZIP 2012, 1236.

¹² See Sec. 1 (2) KapMuG.

¹³ See Sec. 15.

¹⁴ Sec. 32b ZPO.

intervene but are entitled to submit evidence, file motions etc., if this does not run counter the actions of the lead plaintiff (Sec. 14 KapMuG).

Sec. 10 (2) KapMuG allows investors to join test case proceedings within a period of six months after information on the test case proceedings has been published, even without yet filing an individual suit. The limitation period is interrupted once investors have filed a claim with the Higher Regional Court, provided that the test case proceedings concern the same facts, and that an individual suit is filed three months after the test case proceedings have been terminated.¹⁵ Potential claimants can await the outcome of the test case proceedings before deciding upon an individual action. Once the 6 months deadline is expired, investors are precluded from KapMuG proceedings and have to pursue their own individual claim.

KapMuG proceedings either end by judgment (sec. 16) or settlement (Sec. 17 ff KapMuG). In a second phase, its result is used as a basis for the individual damages actions of all investors.

c. Certification

A minimum of 10 claimants is required to get test case proceedings started.

d. Opt-in/ Opt-out Procedure

KapMuG proceedings resemble opt-in proceedings, as claimants have to actively join the proceedings. Once a number of 10 claimants is achieved and proceedings commence, claimants who file a suit in the same matter against the same defendant are automatically included in the test case, but their identity is known from the outset. The result of the test case proceedings is binding on them.

The KapMuG settlement allows for a settlement, agreed upon between the lead plaintiff and the defendant. The settlement requires consent by 70 % of the claimants to have binding effect. The court has to approve the settlement. The procedure is an opt-out procedure - it binds all parties except those who have declared their opt-out. The opt-out system here operates differently from other regimes, as all claimants have been known from the beginning of the proceedings.

e. Multi-Stage Process

KapMuG proceedings are multi-stage proceedings: A first instance court needs to decide upon request that test case proceedings should be commenced at the Higher Regional Court. If approved, the original damages actions of the plaintiffs are stayed for the duration of the test case proceedings. The findings of the test case have binding effect on the individual actions. These are continued once the test case has been decided.

f. Participation of Foreign Plaintiffs

Provided that there is jurisdiction, participation of foreign plaintiffs is not per se excluded by the KapMuG.

g. Expediency

As the scope of the claim can be extended upon request of one of the parties,¹⁶ supplementary motions can delay the proceedings substantially (see Telekom case).

h. Res Judicata

The decision in the test case is binding and forms the basis of the individual damages claims (Sec. 22 KapMuG). A settlement is binding on all parties who have not opted-out, provided the court has declared it valid (Sec. 23 KapMuG).

4. Costs and Funding

The loser pays principle applies. The multi-step procedure renders the distribution of costs more complicated but also cheaper for each involved litigant: there is a pro rata distribution of costs for test case proceedings. They are considered as a part of the costs for the subsequent individual lawsuits and depend on their value (Sec. 24 KapMuG). In addition, costs for the individual proceedings (court fee and legal advice) have to be assumed.

¹⁵ Sec. 204 (1) Nr. 6a of the Civil Code (BGB).

¹⁶ See Sec. 15.

5. Number of claims

Data on the number of claims suggests that since its creation, various cases have been brought under the KapMuG. From 2005 to 2009 studies refer to 24 cases.¹⁷ Official statistics that include KapMuG cases since 2010 refer to 56 cases in 2010. (In 2011: 8 cases, in 2012:18 cases, in 2013: 89 cases). In 2014 the number rose to 124. In 2015, 22 were pending before the Higher Regional Court.¹⁸

C. Other areas

In other areas a proper mechanism is not available. However, exclusive jurisdiction for civil liability in mass environmental damage cases (Sec. 32a ZPO) enables a concentration of jurisdiction. Suits against the operator of a facility in view of compensating damages to the environment¹⁹ have to be brought in the jurisdiction in which the facility causing the event giving rise to the damage is situated, except if the facility is situated abroad. Representative actions exist in the telecommunications sector,²⁰ where standing is granted to qualified entities and associations to claim injunctive relief. Representative actions also allow to secure equality for the disabled.²¹

In contrast, there is no broader rule for mass torts that guarantees a concentration of jurisdiction. Jurisdiction can lie with the courts at the place where the damage arises or where the event giving rise to the damage occurred or at the domicile of the defendant. There is no specific mechanism for collective mass tort claims, e.g. in the area of product liability. Whilst the provisions on social insurance²² assure that claims of the victims for physical injury are satisfied by the insurance who then acts against the tortfeasor on the basis of subrogated claims, there is still a need for a proper collective redress mechanism covering economic losses and compensation for immaterial damage which are not covered by insurance.

¹⁷ Halfmeier/Rott/Feess, Ministry of Justice, KapMuG evaluation 2010.

¹⁸ Statistisches Bundesamt, Fachserie 10, Reihe 2.1, 2010-2015 on proceedings under Sec. 6 KapMuG.

¹⁹ See Annex 1 of the Act on Environmental Liability (*Umwelthaftungsgesetz* – UmweltHG).

²⁰ Sec. 44 of the Telecommunications Act (*Telekommunikationsgesetz* - TKG).

²¹ Sec. 13 of the Act on Equality for the Disabled (*Behindertengleichstellungsgesetz* – BGG).

²² Sec. 116 SGB X, Sec. 67 VVG.

III. Information on Collective Redress

There is no national registry, but requests for test case proceedings have to be publicised and the court makes relevant documents available for participants in the proceedings.

IV. Case summaries of major cases

<p>CDC Antitrust Case – assignment</p> <p>OLG Düsseldorf 18. Februar 2015 (Az. VI U 3/14), LG Düsseldorf, 17. Dezember 2013 (Az. 37 O 200/09).</p>	<p>CDC initiated proceedings against a cement cartel as assignee of a bundle of individual damages claims. The claim was ultimately dismissed due to a lack of upfront guarantee by CDC to cover all adverse costs at the time of the assignments.</p>
<p>Deutsche Telekom Case - KapMuG</p> <p>(16.5.2012 23 Kap 1/06; 21.10.2014, BGH XI ZB 12/12)</p>	<p>17,000 investors claimed damages from Deutsche Telekom due to wrong information in the prospectus used by Telekom for their third initial public offering. Due to practical needs triggered by the sheer amount of claims, the KapMuG was introduced in 2005 by the legislator and the case was referred to the OLG Frankfurt under the new Act. In 2012, the case was dismissed but went to the BGH where it was held in 2014 that the prospectus was partially wrong and misleading. In 2016, the OLG Frankfurt decided in favour of the plaintiffs</p>
<p>Volkswagen Cases - KapMuG</p>	<p>Volkswagen shares dropped considerably in 2015 when the use of illegal devices to manipulate emissions became known. Several KapMuG actions have been initiated in Germany on behalf of VW investors.</p> <p>See eg Quinn Emanuel/ Bentham Europe, €700m claim: California State Teachers' Retirement System</p> <p>See eg. 3,25 billion claim of 277 institutional investors brought by Tilp, joining 170 private investors in the regional court in Braunschweig.</p>
<p>Corralcredit Bank AG – KapMuG</p> <p>(BGH II ZB 24/14)</p>	<p>KapMuG action based on failure to publish ad hoc announcements. Decision in favour of plaintiffs, appeal pending.</p>
<p>Hypo Real Estate - KapMuG</p> <p>(OLG Munich Kap 3/10; BGH XI ZB 13/14)</p>	<p>Failure to publish ad hoc announcements; misleading information about certificates held regarding the US subprime market</p> <p>Decision in favour of plaintiffs, appeal pending.</p>
<p>Daimler Case – KapMuG</p> <p>(LG Stuttgart, 21 O 408/05; OLG Stuttgart 20 Kap1/08; BGH II ZB 7/09)</p>	<p>Failure to publish ad hoc announcement concerning the resignation of the chairman of the supervisory board. See also CJEU C-19/11. The action was dismissed by the OLG but was referred back already twice by the BGH.</p>
<p>Sec. 10 UWG cases</p> <p>(more than 12 since 2004)</p>	<p>Several cases have been brought concerning the skimming off of profits following unfair competitive behaviour, although such cases do not present any financial incentive for the associations bringing the claim as the profits go to the Treasury. See eg. District Court Bonn (12 O 33/05); District Court Munich I, 33 O 17282/07; and 37 O 16359/13 or District Court Hannover 18 O 36/15. Many of these cases were brought by the Vzbv, ie the federal consumer association.</p>

Charles Clore House
17 Russell Square
London WC1B 5JP

T 020 7862 5151
F 020 7862 5152
E info@biicl.org

www.biicl.org

A company limited by guarantee
Registered in England No. 615025
Registered Charity No. 209425



**British Institute of
International and
Comparative Law**