

GEULEN & KLINGER
RECHTSANWÄLTE

COLLECTIVE CONSUMER PROTECTION IN THE LAW OF DIFFERENT EU MEMBER STATES



RECHTSANWÄLTIN SILVIA ERNST – GEULEN & KLINGER

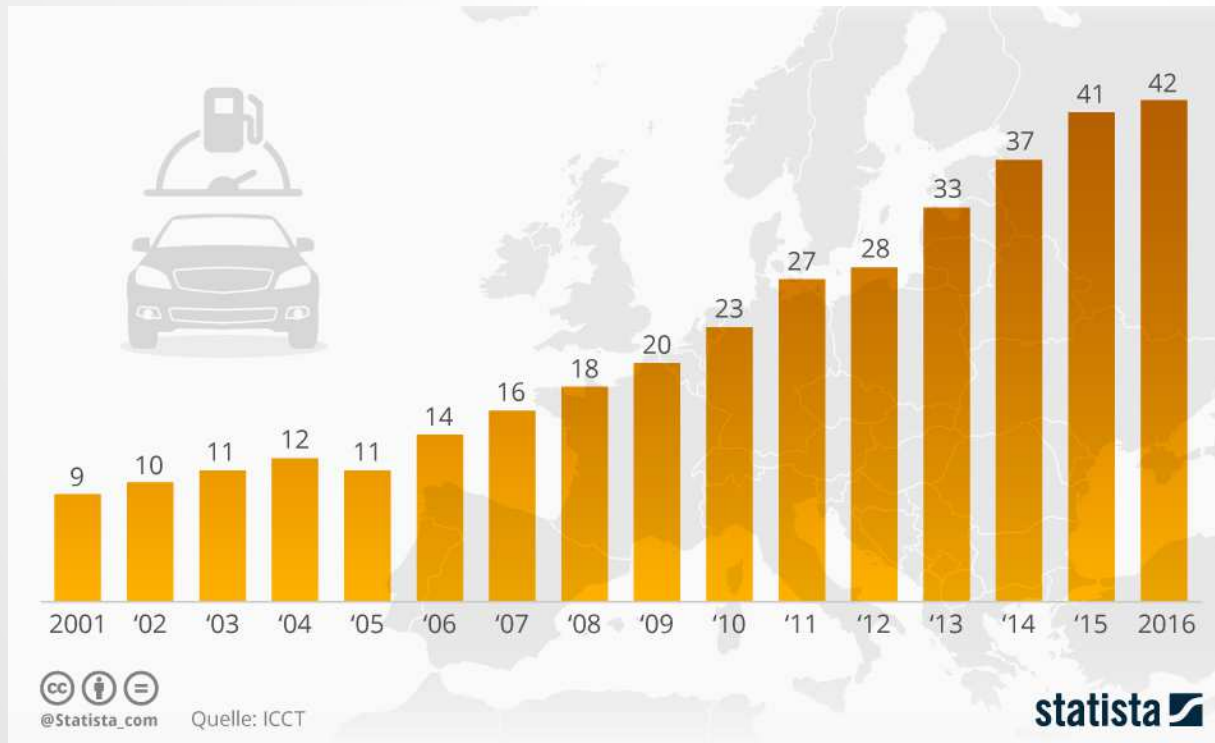
WHAT TO DO IN CASE OF INCORRECT FUEL DATA?



- Belgium
- Germany
- France
- Italy
- Netherlands
- Austria

WHY DO WE NEED AN OVERVIEW?

Deviation of the fuel consumption of new passenger cars in comparison with the manufacturer's data in %



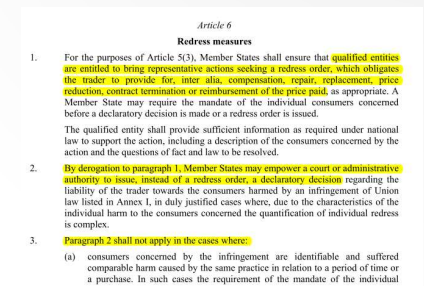
WHY DO WE NEED AN OVERVIEW?

„New Deal for Consumers“

A proposal on representative actions for the protection of the collective interests of consumers and repealing the Injunctions Directive 2009/22/EC ('Representative Actions Proposal')

This proposal aims at

- improving tools for stopping illegal practices
- **facilitating redress for consumers** where there are widespread infringements of their rights



WHY DO WE NEED AN OVERVIEW?

Article 6

Redress measures

1. For the purposes of Article 5(3), Member States shall ensure that **qualified entities are entitled to bring representative actions seeking a redress order, which obligates the trader to provide for, inter alia, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid**, as appropriate. A Member State may require the mandate of the individual consumers concerned before a declaratory decision is made or a redress order is issued.

The qualified entity shall provide sufficient information as required under national law to support the action, including a description of the consumers concerned by the action and the questions of fact and law to be resolved.

2. **By derogation to paragraph 1, Member States may empower a court or administrative authority to issue, instead of a redress order, a declaratory decision** regarding the liability of the trader towards the consumers harmed by an infringement of Union law listed in Annex I, in duly justified cases where, due to the characteristics of the individual harm to the consumers concerned the quantification of individual redress is complex.

3. **Paragraph 2 shall not apply in the cases where:**
 - (a) consumers concerned by the infringement are identifiable and suffered comparable harm caused by the same practice in relation to a period of time or a purchase. In such cases the requirement of the mandate of the individual

WHY DO WE NEED AN OVERVIEW?



The New Deal for Consumers

How will the new Collective redress mechanism work?

Fact sheet | April 2018


Věra Jourová
*Commissioner for Justice,
Consumers and Gender Equality*



Directorate-General for
Justice and Consumers



The New Deal for Consumers will provide all European consumers with new and stronger ways to obtain redress if their rights are not respected. The next time a Dieselgate-type scandal happens¹, EU Member States will be better equipped to respond to it.

 **Today: limited redress possibilities**

Today, individual consumers hesitate to take action when their rights have been breached, as the procedures to obtain redress or compensation may be costly and lengthy, not always worth the effort especially if the damage is small.

Currently, the Injunctions directive allows a court or an administrative authority to stop a practice violating consumer rules. However, such injunctions do not give harmed consumers possibilities to obtain at the same time redress or compensation. Public authorities are also not always in the position to act effectively to tackle harmful commercial practices. Thus,

HOW WAS THE OVERVIEW PREPARED?

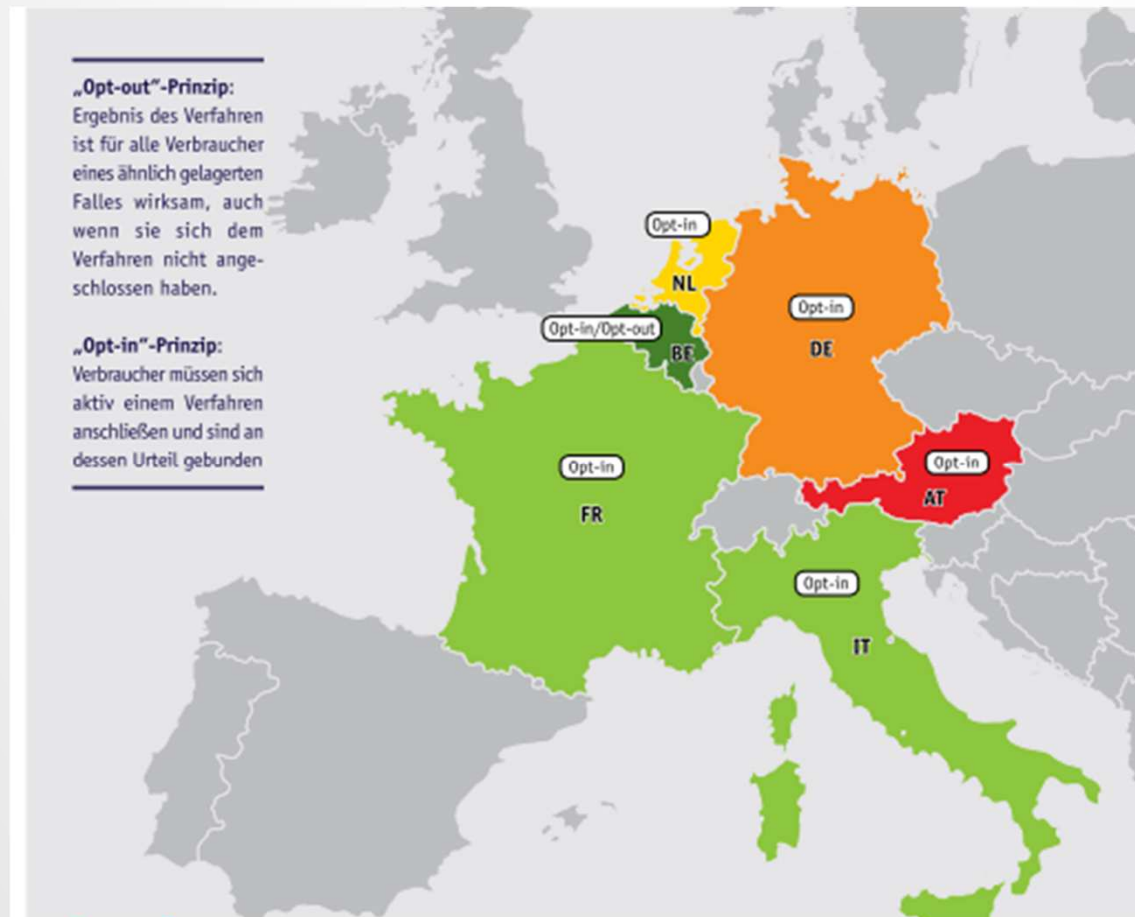
BASIC QUESTIONS	OPTIONS FOR ACTION
What forms of class action are planned in your country?	What concrete measures does a consumer have to take to join or initiate an ongoing class action?
Since when?	What is the consumer's claim against the car seller?
What are the main characteristics of these forms of collective redress?	What are consumers' claims against the manufacturer?
What conditions must be met?	



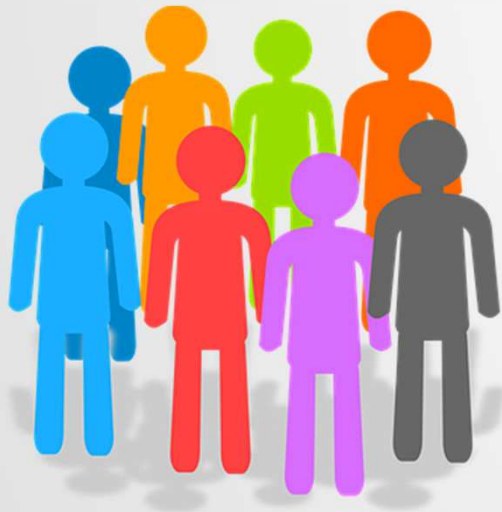
PART I – BASIC QUESTIONS

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OVERVIEW: COLLECTIVE CONSUMER ACTIONS



OVERVIEW: COLLECTIVE CONSUMER ACTIONS



DECLARATORY ACTIONS IN GERMANY „LEX DIESEL“ – MUSTERFESTSTELLUNGSKLAGE

- Declaratory actions

Article 6 sets out procedural modalities for representative actions seeking a redress order available under the Directive as a measure eliminating the continuing effects of the infringements. As a rule the redress order must be available. Exceptionally, in complex cases, Member States may empower the courts and administrative authorities to issue, instead of a redress order, a declaratory decision on the trader's liability towards consumers harmed by an infringement. However in two types of cases the possibility to issue a declaratory decision

- Only **qualified entities**

- Members:

- at least ten associations active in the same field of activity or
- 350 natural persons

DECLARATORY ACTIONS IN GERMANY „LEX DIESEL“ – MUSTERFESTSTELLUNGSKLAGE

- Members
 - must be qualified for at least 4 years
 - must protect consumer interests through non-commercial educational or advisory activities
 - declaratory actions only for non-profit reasons
 - are not allowed to get more than 5 % of their financial resources from companies
- At least 50 consumers must join



PART II – WHAT CAN CONSUMERS DO?

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WHAT CAN CONSUMERS DO?

- INFORMATION
 - Consumer centres, associations, lawyers
- ACTION
 - Initiate or join a class action
 - Observe deadlines

CLAIMS AGAINST CAR SELLERS

- WARRANTY CLAIMS DUE TO DEFECTIVENESS
 - Limitation period for new cars 2 years; used cars partly shorter
- CLAIMS FOR UNFAIR AND MISLEADING COMMERCIAL PRACTICES
- CLAIMS ARISING FROM CONTESTATION

CLAIMS AGAINST CAR MANUFACTURER

- GERMANY & AUSTRIA
 - Conclusion of contract usually with car seller; no warranty rights vis-à-vis manufacturer
- BELGIUM
 - Liability for incorrect product information
- FRANCE
 - Warranty rights based on "hidden defects"
- NETHERLANDS
 - as against seller (misinformation, unfair business practices, etc.)
- ITALY
 - possibly unfair commercial practices

WHEN CAN WE SPEAK ABOUT DEFICIENCY?

Court decisions so far only in Germany

- DEFICIENCY : more than **4 percent**
(OLG Düsseldorf, judgment of 18 August 2008 - 1 U 238/07)
 - 2 percent fault tolerance for technical products
 - 2 percent deviation due to measurement inaccuracies
- SIGNIFICANCE of the deficiency: more than **10 percent**
(BGH, Resolution of 8 May 2007 - VIII ZR 19/05, DAR 2007, p. 516)

BURDEN OF PROOF



Does a consumer meet the requirements to join the class action?



Does the additional fuel consumption constitute a defect?

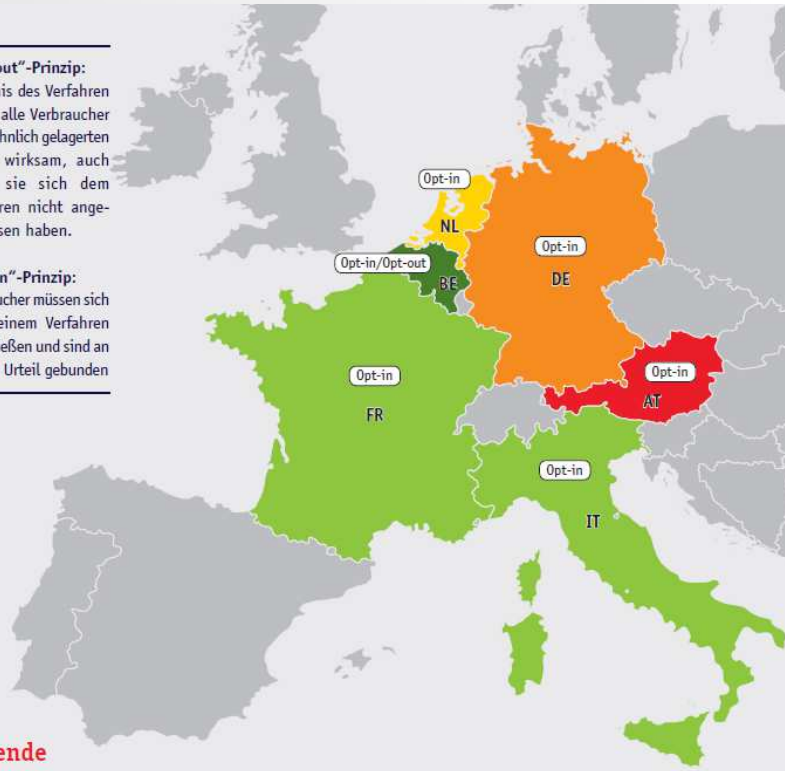
COSTS

- Low cost risk for consumers
 - Problem: full cost risk where only declaratory judgment can be obtained collectively because of following trials

COLLECTIVE REDRESS IN THEORY AND PRACTICE

„Opt-out“-Prinzip:
Ergebnis des Verfahrens ist für alle Verbraucher eines ähnlich gelagerten Falles wirksam, auch wenn sie sich dem Verfahren nicht angeschlossen haben.

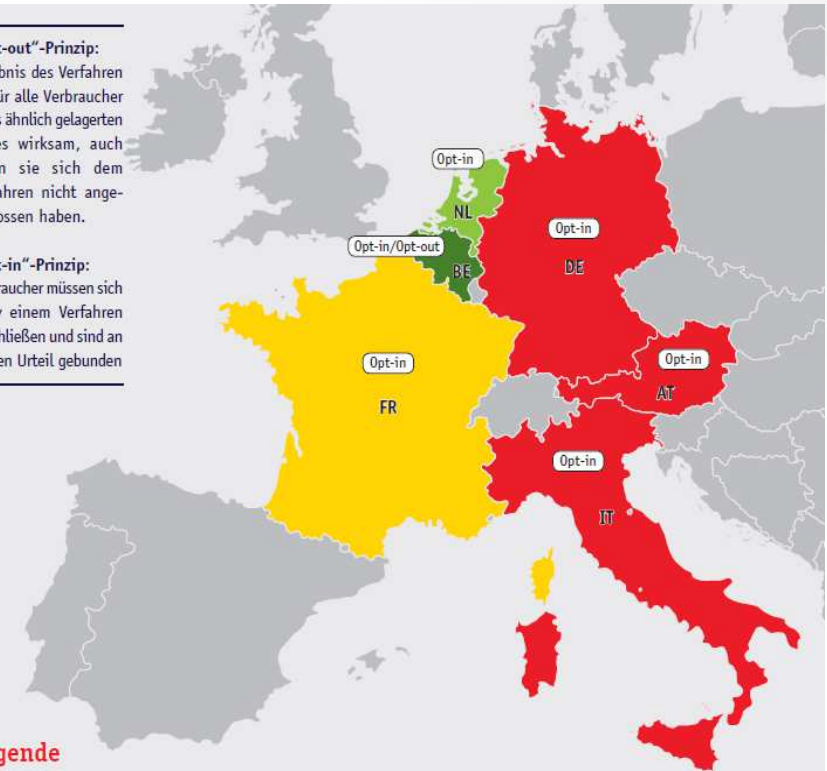
„Opt-in“-Prinzip:
Verbraucher müssen sich aktiv einem Verfahren anschließen und sind an dessen Urteil gebunden



Legende

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Legende

WHAT NEEDS TO BE BETTER?

- Right to sue for all environmental and consumer associations
- Action with focus on elimination of consequences, not only determination
- Legal standing also for consumer groups
- Limiting court costs to contain financial risk
- Contact point for incorrect fuel consumption data
- Correction of the official consumption values if deviation was detected
- Sanctioning fraudulent practices

**Rechtsanwältin Silvia Ernst
Geulen & Klinger Rechtsanwälte
Schaperstraße 15
10719 Berlin
www.geulenklinger.com**

**ernst@geulen.com
Tel.: 030-884 72 80
Fax: 030-884 72 810**

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