



Coding a Collective Consumer Redress Vehicle

- A market-based approach and its implications for consumer law enforcement

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I. 'Coding' a Consumer Redress Vehicle

- The German legal services market
 - Highly regulated
 - A (quasi) **monopolist setting**: 'Selling' legal services restricted to lawyers and a small number of other players
- Innovation: Using **Debt Collection Services** ('DCS') as consumer claim enforcement vehicles
 - Traditional role: Financial service allowed to sell limited legal services
 - New role: consumer allies
 - The **road to legitimacy**: 3 milestones rulings by the German Federal Court

I. 'Coding' a consumer redress vehicle

- How it works
 - Consumers irrevocably assign claims to the DCS
 - DCS enforces the claims in a bundle
 - out of & in court
 - Enforcement riskless + 'free of charge'
 - In case of success: DCS (and/or 3rd-Party Funder) receives share in enforcement proceeds
 - Examples: flight/train delays, overpaid rent, severance packages, insolvency-related claims

I. 'Coding' a consumer redress vehicle

- Potentially **high profit margins** in consumer claim enforcement
 - Specialization + scaling opportunities
- In reality: **tight restrictions for law firms**
 - Ban on 'outside' equity participation
 - necessary for upfront investments (advertising, legal tech, due diligence)
 - Ban on contingency fee arrangements
 - Ban on dodging the 'loser pays' rule
 - undertaking to pay court fees, administrative fees & costs of other parties
 - (restrictions 2 and 3 recently partly lifted)
- **DCS used to circumvent them**

II. A player-focused look at Directive 2020/1828

- Market-led innovation (DCS) **vs.**
- Regulatory take on improving consumers' access to justice (Directive 2020/1828)
 - Directive is top-down & tool-focused
 - *“Member States shall ensure that representative actions as provided for by this Directive **can** be brought by qualified entities designated by the Member States for this purpose.” (Article 4)*

III. Directive (EU) 2020/1828: Too little, too late

- 1) Needed: a **more holistic approach** to strengthen consumer law enforcement
 - The legal services market is innovation-ready
 - Lack of consumer redress tools might not be the 'real' problem
- 2) Top-down approach **lacks proper incentives** for market participants/entrants
 - Directive provides a legal tool – not a service model
 - (Overly) relying on non-profit Qualified Entities' financial capacities
 - No mechanism for TPF proceed-sharing
 - TPF restricted to 10 % of proceeds
 - Lawyer remuneration cap

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