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REMEDIAL ACTION BYPASSES PRACTICE

The draft bill of the Federal Ministry of Justice rightly introduces a directly enforceable procedure for mass proceedings and thus goes a step further than the current model declaratory action. However, the implementation lags behind the German market development of recent years. Particularly with regard to the group of claimants and the financing instruments, the draft is too timid overall.

NEW TYPE OF LAWSUIT PRACTICALLY COMES TO NOTHING

With the new future. Its success will be measured by how often the new type of action is actually used in practice. This will largely depend on the extent to which the "qualified entities" as initiators succeed in persuading consumers to join the lawsuits. However, the current draft does not provide for any commercial litigation financing models. In practice, the initiators may often lack sufficient budget to even draw attention to the remedial action. However, a look at the so-called "no win, no fee models" of legal tech companies and law firms shows that this is essential for the success of mass actions. These regularly launch thousands of bundled individual lawsuits and have thus gained a huge knowledge advantage in the field of marketing and technologies. "Without significant financing instruments, it will be difficult for the lawsuit associations to generate enough attention for individual lawsuits and the type of lawsuit will thus come to naught," explains Dr. Philipp Plog, Chairman of the Board of the Legal Tech Verband Deutschland. The admissibility of third-party financing by commercial litigation financiers is necessary to create a real alternative for consumers in the legal tech market.

GERMANY TOO HESITANT IN IMPLEMENTATION

The current draft is very cautious in its implementation of the EU directive on representative actions. For example, the opt-in procedure provided for in the draft is based on a very early point in time for joining a lawsuit. If the legislator really wants to improve access to justice, it should be possible to join the action even after a settlement or judgment. "The purpose of the action for redress is precisely to improve access to justice for consumers. The later it is still possible to join the action, the more people will join the action," explains Dr. Philipp Hammerich, board member of the Legal Tech Association and a key author of the statement. A look at neighboring countries such as Austria or the Netherlands also shows that Germany should take more creative leeway with its implementation. For example, the draft places higher demands on domestic associations than on foreign plaintiffs with regard to active legitimation, which will weaken Germany as a legal location. Harmonization is therefore absolutely desirable.

For more information, read our detailed statement at:

<https://www.legaltechverband.de/aktivitaeten/referentenentwurf-zur-umsetzung-der-abhilfeklage-in-deutschland-geht-an-der-praxis-vorbei/>

About the Legal Tech Association Germany

Founded in 2020, Legal Tech Verband Deutschland e.V. stands for digitization and innovation in the German legal market and is the only association that represents all market players. Its members include, for example, law firms, companies, legal protection insurers, software providers and legal tech startups. The association advocates an innovation-friendly legal framework, legal certainty and the promotion of investments in legal tech in order to ensure the future viability and competitiveness of the German legal market.