

## Statement of the Legal Tech Verband Deutschland

on the draft bill dated June 5, 2023 (processing status) of the Federal Ministry of Justice on the law on the introduction of a lead decision procedure at the Federal Court of Justice

The Legal Tech Verband Deutschland e.V. (hereinafter "Association") is committed to shaping a progressive and innovation-friendly regulatory environment that creates legal certainty for legal tech ventures inside and outside law firms. In doing so, the association is guided by the goal of protecting law seekers, legal transactions and the legal system from unqualified legal services and strengthening the rule of law. We thank you for the opportunity to comment on the draft bill of the Federal Ministry of Justice.

### 1. INTRODUCTION

Der The association welcomes the initiative. In a modern digital legal market, it must be possible to enforce existing claims within a reasonable period of time. Especially in the so-called mass proceedings, this does not seem to have been unconditionally guaranteed in recent years. Above all, there is an acute need to equip the judiciary with a modern form of procedural management in order to be able to handle these proceedings properly.

In addition, a stringent clarification of (similar) legal issues relevant to the decision is an important instrument for optimizing the factual enforcement of existing claims and ensuring the functionality of the courts of instance.

## 2. CORE REQUIREMENTS

The purpose of the initiative is the swift clarification of central legal issues by the Federal Court of Justice. This purpose is to be supported without reservation. The possibility of a leading decision by the Federal Court of Justice is therefore to be welcomed. However, the draft is not far-reaching enough insofar as it continues to be possible to prevent supreme court decisions on the basis of the disposition maxim.

The Association therefore calls for the initiative to be expanded as follows:

- The jump appeal is extended ("jump appeal to the leading decision")
- The Federal Court of Justice is to decide within a period of time whether a "jump appeal" is to be designated as the leading decision
- The suspension possibility of the planned Section 148 (4) ZPO is conceived independently of the consent of the parties
- Evaluation of the possibility of a preliminary ruling procedure

## 3. EXPLANATIONS

### a) „JUMP REVISION ON THE LEADING DECISION“

The purpose of the draft can only be realized in procedural reality if the Federal Court of Justice is also quickly given the opportunity to decide on the legal issues within the framework of a leading decision. Under the current draft, there is still a risk that a leading decision will be severely delayed or even prevented, especially by the appellate court. Thus, it is still possible to prevent a leading decision by the supreme court and thus the clarification of significant legal issues by withdrawing the actions or concluding court settlements in the appeal proceedings - for example, for reasons of procedural tactics. The planned Section 565 (1) ZPO does not avert this danger.

The solution lies primarily in an expansion of the jump appeal. The ZPO must be amended to the effect that the first-instance court must allow a jump appeal for legal questions whose decision is of significance for a large number of further proceedings ("jump appeal to the leading decision").

In the case of such a "jump appeal to the leading decision", the Federal Court of Justice should then decide by way of a ruling within 3 months of receipt of the appeal objection whether the proceedings are to be designated as leading decision proceedings. If the Federal Court of Justice negates a determination for the leading decision procedure, the procedure can then be continued by the parties in the appellate instance. Only a "jump appeal to the leading decision" ensures that the Federal Court of Justice is presented with the significant legal issues that are relevant to the decision in a large number of cases within an acceptable period of time. This in turn is the basic prerequisite for rapid legal certainty, which promotes the factual possibility of enforcing existing claims and relieves the burden on the courts of instance. A "jump appeal to the leading decision" will also directly relieve the burden on the courts of appeal.

#### **b) ADAPTION OF § 148 Abs. 4 ZPO**

In order to ensure that the courts of instance can function properly by reducing the workload, the possibility of suspending the planned Section 148 (4) of the Code of Civil Procedure must not be made dependent on the consent of the parties. If it remains as it is at present, each party has the possibility of refusing consent and thus of "driving" proceedings, for which the pending leading decision is relevant to the decision, further through the instances until the leading decision. This does not appear to be appropriate, since the intended relief for the courts of instance would be thwarted, again for reasons of procedural tactics or purely economic motives.

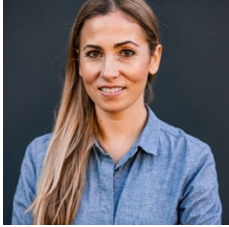
### c) POSSIBILITY OF A PRELIMINARY RULING?

It should be evaluated whether the possibility of a preliminary ruling procedure by submission of the legal issues - relevant for insolvency proceedings - by the courts of instance to the Federal Supreme Court (similar to the preliminary ruling procedure at the ECJ) is another instrument to significantly promote the purpose of the initiative. The current draft is dependent on the parties to the dispute submitting the proceedings to the Federal Court of Justice by obtaining judgments and by filing appeals on appeal. This design is obvious according to the disposition maxim prevailing in the ZPO. However, on the way to a modern digital legal market, in which citizens must also be able to obtain justice within a reasonable period of time, previous achievements must also be put to the test.

It is precisely the principle of the disposition maxim that gives the parties and thus ultimately also a party (by steering the litigant accordingly through economic incentives) the possibility of greatly delaying the necessary clarification of the legal situation.

Giving the courts of instance the opportunity to have the legal issues relevant to insolvency proceedings stringently clarified by the Federal Court of Justice within the framework of preliminary ruling proceedings by means of a - ultimately moderate - relaxation of the disposition maxim appears to be a courageous idea, but one that should certainly be seriously considered. Such a preliminary ruling procedure (similar to the preliminary ruling procedure at the ECJ) would, above all, promote the intended relief of the courts of instance significantly more than the planned - and welcome - lead decision procedure. A preliminary ruling procedure is not necessarily to be seen as an alternative to the planned final decision procedure; rather, coexistence is conceivable.

## CONTACT



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