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3 May 2021

## Experiences in the lawsuit vzbv vs. VW

Dear [REDACTED],

As a contribution to the upcoming Commission activities on the implementation of Directive (EU) 2020/1828, we would like to share the experience derived from our case against Volkswagen AG (VW). Our insights may prove beneficial for other Member States and qualified entities.

On 1 November 2018, the German Act on the introduction of the model declaratory action came into effect. On the same day, the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V., short: vzbv) filed a lawsuit making use of this new instrument against VW. The company had deceived millions of consumers about manipulations in the exhaust gas purification of their diesel vehicles. The aim of this lawsuit was to help as many buyers as possible to obtain compensation in a simple way.

Two years later, these proceedings were brought to a conclusion. This enables us to provide an evaluation of the whole case.

The response to the lawsuit was enormous from the start. By 29 September 2019, the Federal Office of Justice had received over 440,000 registrations. Even taking into account the fact that about 78,000 registrations were withdrawn later and that there were about 35,000 duplicate or invalid registrations, the number of registrations significantly exceeded vzbv's expectations.

After two sessions before the Higher Regional Court of Braunschweig and intensive negotiations, VW and vzbv finally reached an out-of-court settlement on 28 February 2020.

The result of this settlement was that approximately 262,000 consumers were offered a one-off payment between €1,350 and €6,257, depending on the model and age of the vehicle. Consumers had until 30 April 2020 to choose whether to accept this offer or to go for a possibly higher compensation awaiting the Federal Supreme Court's decision expected in May 2020. Unfortunately, no agreement could be reached with VW on those consumers who were not residents in Germany at the time of purchase. This affected about 20,000 individuals. VW was not willing to compromise on this point. Due to the relatively small number and the fact that it was uncertain which law would apply in these cases, vzbv decided to relent lest the settlement fail on account of this issue.

The settlement result received overwhelming support from the affected customers. In total, more than 240,000 consumers accepted the one-off payment. This corresponds to an acceptance rate of more than 90 percent, and Volkswagen had to pay a total of about 750 million euros in compensations.

It was important to vzbv from the beginning of the negotiations that the settlement be executed in a secure and transparent manner. To this end, an auditor was commissioned who checked both the calculation basis for the individual settlement amounts and performed random checks on the settlement process. The auditor confirmed to vzbv that the calculations were plausible and that consumers actually received the sum agreed upon in the random samples checked.



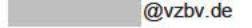
A proper execution of the settlement was also ensured by the fact that VW and vzbv agreed on the establishment of an independent ombudsman. Former Federal Minister Brigitte Zypries, former President of the Federal Court of Justice and former insurance ombudsman [REDACTED] and former Federal Data Protection Commissioner [REDACTED] were appointed as ombudspersons. Consumers could turn to the ombudsperson's office in particular when disputes arose with VW as to whether the settlement requirements were met. The ombudsman's office ruled on over 1,250 complaints. About half of these were decided in favour of the consumers.

The numerous registrations in the action against VW show that consumers are eager to sue companies jointly in certain cases. With the new EU Directive on collective redress, not only binding decisions in favour of deceived consumers but also direct payments to consumers and other forms of redress will be possible in the future.

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vzbv is currently working on approaches for a consumer-friendly implementation of the new EU representative action, taking into account the experience gained so far from the model declaratory action.

We hope this description of the proceedings in our case will be of use for your corresponding work. Please do not hesitate to contact me if you have any questions.

  
  
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