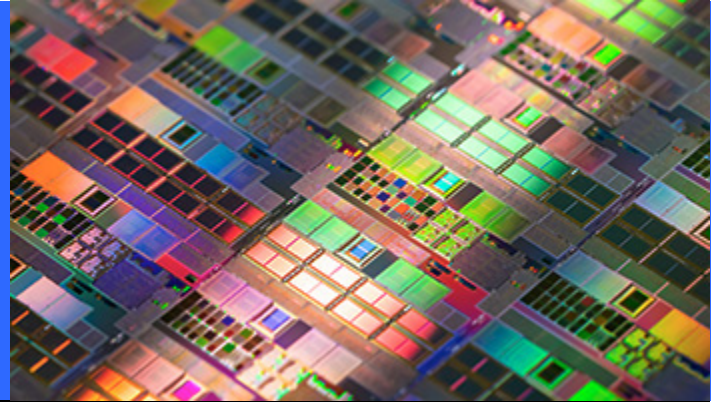


GIBSON DUNN



Privacy, Cybersecurity & Data Innovation |  
Class Actions Update

July 8, 2026

## German Court Rejects Collective Damages Claim Under GDPR Due to Lack of “Similarity” of Claims

*When can thousands of individual GDPR claims be pursued as a single collective action in the EU?*

*In a significant ruling, a German appeals court made filing collective actions for damages materially harder.<sup>[1]</sup> The Berlin Court of Appeal (Kammergericht) dismissed a collective redress action against the platform X, holding that non-material damages resulting from alleged GDPR violations are not sufficiently “similar” to be bundled under Germany’s collective redress regime. The decision, which is subject to appeal to the German Federal Court of Justice (Bundesgerichtshof, FCJ), highlights a fundamental tension between the individualized nature of German tort law and the procedural logic of collective redress. If approved by the FCJ, questions about “similarity of claims” would likely become more contested in German collective redress and could become a vital defense tool, similar to contesting “commonality” in U.S. class actions.*

### 1. Background and Facts of the Case

The case concerns a collective action brought by a Dutch consumer protection organization against X in connection with two categories of alleged GDPR violations:

- extensive data processing and tracking practices for personalized content and advertising, and
- an “API bug” that allegedly enabled the association of user accounts with phone numbers or email addresses.

The claimant sought non-material damages on behalf of users located in Germany in the form of lump-sum compensation, including a minimum of EUR 750 per user. The action was brought under the German Consumer Rights Enforcement Act (*Verbraucherrecht durchsetzungsgesetz – VDuG*), which transposes the EU Directive 2020/1828 on representative actions (**RAD**) and enables qualified entities to pursue collective redress actions (*Abhilfeklage*) on behalf of consumers.

This procedure consists of two stages.

- In the first stage, a court issues a judgment deciding the common questions of law and fact (*Abhilfegrundurteil*). Critically, that judgment must specify by which means individual consumers can prove that they rightfully opted into the action and are entitled to claim damages.
- In the second stage, an appointed administrator (*Sachwalter*) distributes the collective sum to registered consumers purely by checking these stipulated proofs of eligibility. Importantly, there is **no assessment of individualized harms possible at this stage**. This makes the similarity requirement central: only claims that can be resolved without a detailed, case-by-case inquiry into individual harm are suitable for a collective redress action.

## 2. Key Holdings

The court held the claim inadmissible for lack of “similarity” (*Gleichartigkeit*) of claims required by § 15(1) VDuG.

### Central requirement: “similarity” of claims

Under the VDuG, collective actions require that claims be “essentially of the same kind” (*gleichartig*). The court emphasized that this requirement is particularly strict in collective redress proceedings as this type of action enables consumers to claim damages without further individualized consideration of the facts specific to their case.

### Individualized nature of GDPR damages

The *Kammergericht* opined that damages **cannot be established in the abstract, divorced from the individual consumer**. In its view, damages for data privacy violations inherently depend on individual circumstances which, as presented by the claimant, defeat the similarity requirement. Among these individual circumstances the court includes

- the duration of the loss of control,
- the development of negative emotions such as fear or distress,

- any actual misuse of the data,
- the nature and sensitivity of the affected data,
- whether the person had already lost control over the same data,
- the user's own handling of their data (including voluntary public disclosure),
- the duration and intensity of platform use, and,
- for minors, age and degree of maturity.

### **No “average consumer” or abstract harm model**

The court rejected the claimant's reliance on an “average affected person” or “average internet user,” holding that German law recognizes no such generalized standard for this assessment.

### **No minimum compensation to all users**

The court also refused to award uniform minimum compensation to all users, which would allow them to pursue further compensation individually. Such an approach would undermine the purpose of collective proceedings which aim to increase efficiency by combining individual claims.

**The judgment is subject to appeal to the German Federal Court of Justice, which has not yet ruled on a similar case.**

## **3. Takeaways and Outlook for Collective Enforcement**

### **A new certification-style battleground**

The decision, if confirmed on appeal, is likely to elevate “similarity” into the central contested gateway of German collective redress, particularly for lump-sum non-material damage claims, much as “commonality” and “predominance” operate as the decisive battleground in U.S. class certification. Defendants facing collective claims in Germany should therefore expect “similarity” to become an important early line of defense and resource it accordingly, just as U.S. defendants concentrate on defeating certification.

### **A potentially higher bar than U.S. class certification**

The German “similarity” requirement may prove more demanding than its U.S. analogue. U.S. courts have developed tools to accommodate individualized damages without denying certification outright, so they do not necessarily defeat a class.

Due to the *Kammergericht's finding* that individualized damages cannot be “parked” for a later phase, as they can in U.S. practice, similarity functions as a fused commonality-and-predominance gate.

## A European defense strategy becomes vital

In line with the principle of procedural autonomy, the RAD explicitly leaves it up to the Member States to specify the required degree of similarity of individual claims.<sup>[2]</sup> Claimants may seek to circumvent the structural rigidity of the “similarity” requirement in Germany by fine-tuning future claims or forum-shopping toward more permissive EU jurisdictions.

In 2025, the Amsterdam Court of Appeals held that GDPR claims for non-material damages can be pursued collectively under the Dutch Civil Code.<sup>[3]</sup> That approach is the mirror image of the *Kammergericht’s* and points to growing fragmentation across the EU. An effective defense of future class and representative actions in the EU will need to take a broad view across multiple EU jurisdictions. It will require constantly monitoring developments at the European level and evaluating whether and when to advocate before national courts for a referral to the Court of Justice of the European Union as the final authority on the interpretation of EU law.

<sup>[1]</sup> Kammergericht Berlin, judgement of 30 April 2026, 20 VKI 1/25.

<sup>[2]</sup> Recital 12 RAD.

<sup>[3]</sup> Gerechtshof Amsterdam, Judgement of 07 October 2025, ECLI:NL:GHMAMS:2025:2666.

**The following Gibson Dunn lawyers prepared this update: Friedrich Wagner, Alexander Schürmann, Carla Baum, and Katharina Heinrich.**

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these topics. Please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm’s Privacy, Cybersecurity & Data Innovation or Class Actions practice groups, or the authors:

Friedrich A. Wagner – Munich (+49 89 189 33 262, [fwagner@gibsondunn.com](mailto:fwagner@gibsondunn.com))

Alexander Schürmann – Frankfurt (+49 69 247 411 537, [aschuermann@gibsondunn.com](mailto:aschuermann@gibsondunn.com))

Carla Baum – Munich (+49 89 189 33 263, [cbaum@gibsondunn.com](mailto:cbaum@gibsondunn.com))

Katharina Heinrich – Munich (+49 89 189 33 275, [kheinrich@gibsondunn.com](mailto:kheinrich@gibsondunn.com))

**Attorney Advertising:** These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm,  
please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists,  
please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).