

## ***The government draft on legal tech debt collection - does it deliver what it promises?\****

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**A fierce dispute has been raging for years about the authorisations of debt collection firms. It is mainly about those that are grouped together under the term "legal tech debt collection companies". The BGH's (note from the editor: Highest German Civil Court) Lexfox decision of 27 November 2019 on [wenigermiete.de](https://www.wenigermiete.de) (AnwBl Online 2020, 63) has apparently not been able to clarify central issues in dispute. Since then, numerous regional courts have dismissed actions brought by debt collection companies (most recently in bundled cartel damages actions). With the draft law on the promotion of consumer-friendly offers in the legal services market, the legislator wants to solve the disputes of legal tech-debts-collection and make sure that it is again about the substantive legal issues and not only about the entitlement to the claim of the debt collection companies. The author's theses have been summarised in excerpts by the Anwaltsblatt.**

The full article can be found at [AnwBl Online 2021, 152](https://www.anwbl.de/2021/152), in which the author examines, on the basis of current cases from consumer and corporate debt collection, whether the draft law achieves the goal of creating legal certainty for those who want to enforce their rights through debt collection.

### **Developments since the Lexfox ruling**

The BGH's Lexfox ruling on [wenigermiete.de](https://www.wenigermiete.de) has largely liberalised debt collection services. Since then, however, numerous regional courts have denied the entitlement of debt collection companies that had a debt collection licence but, in the view of the regional courts, acted beyond the scope of the debt collection licence: because of too extensive legal advice, because of a lack of expertise in cartel law, because of alleged conflicts of interest between the debt collection service provider and the litigant in accordance with § 4 of the Legal Services Act (RDG) or because of too wide a deviation from the "model" of debt collection, because the debt collectors were aiming for a court settlement from the outset.

### **Government Proposal - What will now be regulated?**

The [government proposal](#) attempts to provide answers to the controversial points. The legislator addresses the following questions:

- The concept of debt collection and its scope,
- Judicial activity,
- Conflicts of interest under section 4 in relation to the involvement of litigation funders or because of the bundling of claims,
- Required legal knowledge and
- Legal consequences of a possible violation of the RDG.

The draft law restricts the concept of debt collection by only permitting, in addition to the actual collection of claims, such examinations and consultations that relate to the debt collection. Explicit reference is made to previous case law, including that of the BVerfG [note from the editor: German Constitutional Court], and it is clarified that new forms of debt collection, understood as recovery, are also to be permissible. Other, so to speak debt-collection-accompanying activities, must in future be

\* Please note: this is an unofficial translation from German into English.

measured against § 5 RDG (explanatory memorandum of the government draft, p. 20). In this respect, there is a degree of uncertainty, for which, however, extensive case law can be relied upon.

The government draft now explicitly takes into account the risk of a conflict of interest in the role of the litigation funder by, on the one hand, referring to the positive effects of the bundling of claims for consumers (explanatory memorandum of the government draft, p. 52 f.) and, on the other hand, introducing a duty to inform to ensure that consumers are aware of the risks that may be associated with the bundling of claims. The model of bundling claims as a whole is thus approved.

The Regional Court of Hanover was of the opinion that debt collection companies could not enforce claims for damages under cartel law, irrespective of the bundling, because they lacked the necessary expertise to do so. The government proposal now also provides for an amendment to the Legal Services Regulation (Rechtsdienstleistungsverordnung). This will allow for a differentiated treatment of diverse cases, which require different levels of expertise. If a debt collection company wants to enforce claims for cartel damages, the authority can decide whether further evidence of expertise is required. If the authority does not require this or if the expert knowledge has been proven to the satisfaction of the authority, the lack of expert knowledge can no longer be criticised by the court.

### **Significance for debt collection companies, courts and consumers**

If the government proposal becomes law, there will be a more reliable basis for debt collection companies that enforce claims for damages or compensation on behalf of consumers or companies. The restriction of the notion of debt collection together with the information obligations lead to a more predictable legal situation for the classic legal tech debt collection companies. The arguments from the decisions of the courts of appeal would then be invalidated once again.

However, the government proposal cannot solve one problem: the bundled or mass enforcement of claims by appropriately organised and technically equipped debt collection service providers is met by a judiciary that is not prepared for such proceedings, so that it is perfectly understandable if the judges concerned, faced with this challenge, look for ways to get rid of such actions. It would be desirable for all parties involved that the judiciary is promptly put in a position to also deal with the content of the claims for damages, because as a result of the decisions of the regional courts, the RDG is developing away from the protection of the legal subjects and the legal system towards the protection of companies and cartelists acting fraudulently. This form of RDG debtor protection was expressly disapproved of by the BVerfG in its fundamental decision on debt collection.

### **Complete article**

The complete article can be found at [AnwBl Online 2021, 152](#), in which the author explains the effects of the reform in detail on the basis of current cases and explains what the reform means for litigants and consumers.