

Work Aid for Electronic Data Transmission to the Litigation Register for cases until 31/10/2012

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1 Introduction

The Capital Markets Test Case Act, in force since 1 November 2005, introduces test cases for capital investors who are (potentially) harmed due to false, misleading capital market information or capital information which has not been made public – whether in annual financial statements or stock exchange prospecti.

Questions of fact and law, which identically arise in at least ten individual damage procedures pending before a Regional Court, can be bundled into one test case and be uniformly decided by the Higher Regional Court for all plaintiffs and defendants by means of a binding model case decision.

The electronic litigation register which was newly-introduced with this law moreover allows the capital investor to inform himself on the Internet about whether parallel cases corresponding to his own case are pending, in which the implementation of a test case was proposed or a test case has already been introduced and in which stage this case is currently in.

However, only the court involved makes entries into the litigation register. The Federal Gazette publisher only assumes the task of making a legally-compliant, electronic publication platform available and to ensure its trouble-free operation.

Please note: There is a separate work aid on the publication platform for cases dating 01/11/2012 and later.

2 Electronic Data Transmission Method in Detail

2.1 General Information

2.1.1 Registration/Authentication

One-time registration at the Federal Gazette publisher is required for using electronic order submission. You can register on the publication platform's home page, <https://publikationsplattform.de>. The "Register" button will take you to the registration forms. You can find additional, more detailed information there under "Useful Information » How It Works » Registration".

A written authorisation from the Federal Gazette publisher is also required for entry into the litigation register. To that end, please use the form which you can retrieve on the publication platform. You can find it in the order forms, if you select a publication type in the "Litigation Register" and/or "Criminal Cases" category within order processing. Please send the form signed and with a cover letter from the competent magistrate to the specified address. After the documents have been received, you will be authorised to use the litigation register.

2.1.2 TAN Process

To ensure that only authorised users post publications in the litigation register, a transaction number (TAN) must be requested by the Federal Gazette publisher every time an order is sent (even for changes, deletions, cancellations and notifications of orders for reference). They will each be sent to one of the fax or mobile phone numbers specified once during authentication. The "Request TAN" button is made available to you on the publication platform to request the transaction number (TAN) after authentication. The TAN's validity is time-limited to 15 minutes and is only valid for one order at a time. A new TAN must be requested for each additional assignment and whenever the validity time period has lapsed. These requirements originate from the BSI security concept.

Note: In order to not exceed the transaction number's validity time period, request it only after entering all required information for your order.

2.2 Electronic Publication by the Trial Courts (Competent Regional Court)

Trial courts can publish their sample proceeding petitions using detailed, on-the-fly entry forms (meaning direct without processing by the publisher). Using this system, courts can decide on their publication dates within the publication time frame (Monday to Friday from 8:00 to 18:00) regardless of processing times. The order of the petition creation and deletion time points is specified through the automatic documentation of the date and time.

2.2.1 Search for Rectified Cases

If a sample proceeding petition is entered into the litigation register, the trial court will first investigate to see whether a parallel case has already been published. Using the "Finding Objective", "Company" and "Subject" and "Entry into Court" search fields, you can search for parallel cases, which are shown in a list of hits. Select the case which is relevant to you in the "Connect" column. If no case parallel to the test case petition was found, then a new case can be created. To do so, select the "New Case" item. The data required for publishing the test case petition can then be entered into the form for sending the publication text.

2.2.2 Enter Data for Publication

If a parallel case was found in the previous step, then the fields are already filled by default. This information may be amended and edited.

Important: The "Finding Objective" entry field has a limited entry capacity. Please formulate the finding objective as briefly as possible.

2.2.3 Add Defendants

A maximum of 30 defendants may be added per case. The information on the defendant can be entered in the "Add Defendant" form.

In order to give magistrates the opportunity to fill out these forms beforehand on paper and to delegate online transmission to employees, these can be printed out under the Work Aids & Standards »Work Aids »Sample Templates menu or in the order forms as template forms. Intermediate results during petition editing can be saved under »My Data »Federal Gazette Orders and retrieved and continued to be edited.

2.2.4 Preview

After you have entered the required data for publishing the sample proceeding petition, a preview of your publication in the Federal Gazette will be shown to you in the next step. The depiction shows how the publication will subsequently be made in the Federal Gazette. The preview must be explicitly confirmed and approved for publication.

2.2.5 Invoicing

In this form, your information from registration will be shown to you for invoicing. You can change it directly in the entry form for the respective order. If you would like to generally change your invoicing data, please make the change in the » My Data »Invoice Data menu.

2.2.6 Data Overview/Placing Order

All of your order data will be clearly shown "at a glance" once more in this form. Please check here to see if all data is correct. You can go back and make any changes using the "Correct Data" button. A binding order placement for publication in the Federal Gazette will not be made until you click on the "Issue Order" button at the end of the form. You are required to enter a transaction number (TAN) for issuing an order (see also "TAN Process" section).

Publication takes place after issuing of the publication order, at the very latest after 15 minutes, on the Federal Gazette's publication days between 8:00 and 18:00. Cancellations are not possible. No editorial processing is performed.

2.2.7 Menu: My Data »Federal Gazette Orders

In this menu, previously-published sample proceeding petitions were already listed under "Ongoing Orders/Completed Publications". PDF vouchers can be printed from the published sample proceeding petitions.

You can also find intermediately-saved orders in a separate table here. You may invoke and resume the saved intermediate result anytime within 12 months and resume order processing. The temporary storage will be deleted after expiry of 12 months.

Please note: Using intermediate storage does not submit the order to the publisher yet. You must perform this separately at the end of the order submission in the overview form.

2.2.7.1 Notification of Waiver and Date of the Order for Reference

If an order for reference for a sample proceeding petition has been entered into the competent Higher Regional Court, the waiver and date from the trial court will be published in the litigation register. The order for reference notification is done in the "Ongoing Orders/Completed Publications" menu item via the "Order for Reference Notifications" in the "Action" column. You are required to enter a transaction number (TAN) for the order for reference notification (see also "TAN Process" section).

2.2.7.2 Correction

Publication texts can be corrected, i.e. overwritten by the trial court via the "Ongoing Orders/Completed Publications" menu item via the "Correct" button in the "Action" column. The correction is noted as such in the litigation register with the date and time of the change. You are required to enter a transaction number (TAN) for corrections (see also "TAN Process" section).

2.2.7.3 Delete Function

Sample proceeding petitions can be deleted by the trial court due to expiry of a time period, withdrawal of an action, a legally-binding decision, or other reasons in the "Ongoing Orders/Completed Publications" menu via the "Delete" button in the "Action" column. With the exception of the deleted sample proceeding petitions which are deleted due to expiry of a time period (they remain visible until final deletion with the deletion date and time listed in the litigation register, therefore "visibly deleted"), they are immediately removed from the litigation register. The pertinent trial court only has access to data records that it itself has created and can only edit and delete these. You are required to enter a transaction number (TAN) for deletions (see also "TAN Process" section).

2.2.7.4 View

You can view order data for the respective publication via the "Ongoing Orders/Completed Publications" menu item via the "View" button in the "Action" column.

2.3 Electronic Data Submission by the Higher Regional Court

The Higher Regional Courts submit their publications via the upload process, which is already used in the Federal Gazette for other publications. MS Word and RTF are permissible transmission formats. You can find more information regarding this matter on the publication platform homepage under »Work Aids & Standards »Work Aids » Documentation. The transmitted files are converted into an Internet-compatible format by the Federal Gazette publisher.

2.3.1 Form for Submission

Publishing Test Cases

Submission, Step 1:

First, enter the information required for publication in this form pursuant to § 6 KapMuG [Capital Markets Test Case Act] (Name of the model plaintiff, name and address of the model defendant, finding objective of the test case etc.). The data entered are a part of the publication.

Important: The “Finding Objective” entry field has a limited entry capacity. Please formulate the finding objective as briefly as possible.

Submission, Step 2:

Please submit the text file here with the content of the order for reference pursuant to § 6 KapMuG. Please note: The information provided in “Submission 1” are a part of the publication. They should not be repeated in the text file of the publication resolution.

Additional Publications

In the case of additional publications such as a dated summons, expanded order for reference and model case decision, the text file is sent with the content of the respective individual publication to the publisher. Only file numbers are accepted as ancillary information.

2.3.2 Date

The following date options are available to you:

1. With the “Within normal processing time” option, your publication will appear within the next 5 publication days, beginning on the day after it was sent to the Federal Gazette.
2. You can specify a fixed publication date using the “Date” option taking into account the processing deadline of 2 work days. Shortening the 2-day processing time period is only possible in very limited exceptional cases after coordinating with the editorial office beforehand.
3. “As quickly as possible” means that your announcement, if the data is sent at the very latest by 14:00 on the transmission day, would be published at the very latest on the Federal Gazette publication day after the next one.

2.3.3 Invoicing

In this form, your information from registration will be shown to you for invoicing. You can change it directly in the entry form for the respective order. If you would like to generally change your invoicing data, please make the change in the » My Data › Invoice Data menu.

2.3.4 Overview/Placing Order

All of your order data will be clearly shown “at a glance” once more in this form. Please check here to see if all data is correct. You can go back and make any changes using the “Correct Data” button. A binding order placement for publication in the Federal Gazette will not be made until you click on the “Issue Order” button at the end of the form. You are required to enter a transaction number (TAN) for issuing an order (see also “TAN Process” section).

2.3.5 Menu: My Data › Federal Gazette Orders

In this menu, ongoing and previously-published orders are listed under “Ongoing Orders/Completed Publications”. PDF vouchers can be printed from the published orders.

2.3.5.1 Change

You can view order changes before submission to the publisher for publication via the “Ongoing Orders/Completed Publications” menu item via the “Change” button in the “Action” column.

Order changes always correspond to existing orders which have not yet been published. You can overwrite the existing order and its content by changing the order. Only the state of the last change is published. You can review changes to the order under “My Data”. The order number remains the same during an order change. It is not possible to create a new order via this method.

Changes are free of charge if your order is in the “Order Received” status. Changes incur a cost in the “Processing” status. If your order is in another status, then changes can no longer be made via the publication platform. Please contact the publisher if you still need to urgently make a change in such a case. You can find the service number on the publication platform under “We can further assist you”. You are required to enter a transaction number (TAN) for changes (see also “TAN Process” section).

2.3.5.2 Cancel

You can cancel orders before submission to the publisher for publication via the “Ongoing Orders/Completed Publications” menu item via the “Cancel” button. Please note that in case of cancellation, no publication will be made for this order.

Cancellation is free of charge if your order is in the “Order Received” status. If your order is in another status, then cancellation will incur a cost (see General Terms and Conditions). In case cancellation can no longer be made via the publishing platform, and you must urgently make a cancellation, please contact the publisher. You can find the service number on the publication platform under “We can further assist you”. You are required to enter a transaction number (TAN) for cancellations (see also “TAN Process” section).

2.3.5.3 Delete Function

You can delete Higher Regional Court publications from the litigation register via the “Ongoing Orders/Completed Publications” menu item via the “Delete” button. These are immediately deleted from the litigation register. The pertinent Higher Regional Court only has access to data records that it itself has created and can only edit and delete these. You are required to enter a transaction number (TAN) for deletions (see also “TAN Process” section).

2.3.5.4 Correction

Publication texts by Higher Regional Courts cannot be overwritten in contrast to trial courts’ sample proceeding petitions submitted in another case. Corrections must be entered into the litigation register as a new order. You are required to enter a transaction number (TAN) for corrections (see also “TAN Process” section).

2.3.5.5 View

You can view order data for the respective publication via the “Ongoing Orders/Completed Publications” menu item via the “View” button in the “Action” column.

2.4 Electronic Data Submission by the Federal Supreme Court

The Federal Supreme Court submits its publications via the upload process, which is already used in the Federal Gazette for other publications. MS Word and RTF are permissible transmission formats.

The transmitted files are converted into an Internet-compatible format by the Federal Gazette publisher.

2.4.1 Form for Submission

Appeal

Upon receipt of an appeal, the text file is sent with the content of the respective individual publication to the publisher. Only file numbers are accepted as ancillary information.

2.4.2 Date

The following date options are available to you:

1. With the “Within normal processing time” option, your publication will appear within the next 5 publication days, beginning on the day after it was sent to the Federal Gazette.
2. You can specify a fixed publication date using the “Date” option taking into account the processing deadline of 2 work days. Shortening the 2-day processing time period is only possible in very limited exceptional cases after coordinating with the editorial office beforehand.
3. “As quickly as possible” means that your announcement, if the data is sent at the very latest by 14:00 on the transmission day, would be published at the very latest on the Federal Gazette publication day after the next one.

2.4.3 Invoicing

In this form, your information from registration will be shown to you for invoicing. You can change it directly in the entry form for the respective order. If you would like to generally change your invoicing data, please make the change in the » My Data › Invoice Data menu.

2.4.4 Overview/Placing Order

All of your order data will be clearly shown “at a glance” once more in this form. Please check once more to see if all data is correct. You can go back and make any changes using the “Correct Data” button. A binding order placement for publication in the Federal Gazette will not be made until you click on the “Issue Order” button at the end of the form. You are furthermore required to enter the transaction number (TAN) here (see also “TAN Process” section).

2.4.5 Menu: My Data ›Federal Gazette Orders

In this menu, ongoing and previously-published orders are listed. PDF vouchers can be printed from the published orders.

2.4.5.1 Change

You can view order changes before submission to the publisher for publication via the “Ongoing Orders/Completed Publications” menu item via the “Change” button in the “Action” column.

Order changes always correspond to existing orders which have not yet been published. You can overwrite the existing order and its content by changing the order. Only the state of the last change is published. You can review changes to the order under “My Data”. The order number remains the same during an order change. It is not possible to create a new order via this method.

Changes are free of charge if your order is in the “Order Received” status. Changes incur a cost in the “Processing” status. If your order is in another status, then changes can no longer be made via the publication platform. Please contact the publisher if you still need to urgently make a change in such a case. You can find the service number on the publication platform under “We can further assist you”. You are required to enter a transaction number (TAN) for changes (see also “TAN Process” section).

2.4.5.2 Cancel

You can cancel orders before submission to the publisher for publication via the “Ongoing Orders/Completed Publications” menu item via the “Cancel” button. Please note that in case of cancellation, no publication will be made for this order.

Cancellation is free of charge if your order is in the “Order Received” status. If your order is in another status, then cancellation will incur a cost (see General Terms and Conditions). In case cancellation can no longer be made via the publishing platform, and you must urgently make a cancellation, please contact the publisher. You can find the service number on the publication platform under “We can further assist you”. You are required to enter a transaction number (TAN) for cancellations (see also “TAN Process” section).

2.4.5.3 Delete Function

You can delete Federal Supreme Court publications from the litigation register via the “Ongoing Orders/Completed Publications” menu item via the “Delete” button. These are immediately deleted from the litigation register. The Federal Supreme Court only has access to data records that it itself has created and can only edit and delete these. You are required to enter a transaction number (TAN) for deletions (see also “TAN Process” section).

2.4.5.4 Correction

Publication texts by the Federal Supreme Court cannot be overwritten in contrast to trial courts’ sample proceeding petitions submitted in another case. Corrections must be entered into the litigation register as a new order. You are required to enter a transaction number (TAN) for corrections (see also “TAN Process” section).

2.4.5.5 View

You can view order data for the respective publication via the “Ongoing Orders/Completed Publications” menu item via the “View” button in the “Action” column.

3 Publishing in the Federal Gazette

Publication is made in the “Litigation Register” category in the “Judicial Section” of the Federal Gazette.

3.1 Presenting the Sample Proceeding Petitions

Individual publications of sample proceeding petitions contain, in addition to information submitted via the order form such as subject, file number, company etc., drop-down menus in which (if applicable) “Pending Cases” as well as “Deleted Cases” are listed. From here, you can “jump” to the pending and/or deleted cases. Up to 20 pending cases can be listed. Information about the date and time are automatically generated and serve to precisely determine the order of the creation and deletion time points of the petitions. Moreover, each particular publication clearly shows whether an order for reference has been issued, a correction has been made, or if the case has been deleted.

3.2 Presentation of the Remaining Individual Publications

The presentation of the remaining individual publications follows the presentation of other publications in the “Judicial Section” of the Federal Gazette, e.g. expedited shareholder action.

3.3 Search Options

Publications in the Litigation Register can be investigated using the search options in the Federal Gazette. In addition to the standard search on the Federal Gazette homepage, you are also provided with an “Expanded Search” with the option to limit the search to certain criteria such as the publication time period, for instance. The search results will be displayed in the list of hits for these searches. The search can be refined further within the list of hits.

4 Contact

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