

Journal of Law & Commerce

Vol. 43, No. 2 (2025) • ISSN: 2164-7984 (online)

DOI 10.5195/jlc.2025.314 • <http://jlc.law.pitt.edu>

INTERNATIONAL COMMERCIAL COURTS “MADE IN GERMANY”: ATTRACTIVE ALTERNATIVE FOR BIG BUSINESS?

Giesela Rühl and Nicolas Dewitte Langenfeld***



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.



This journal is published by [Pitt Open Library Publishing](http://pittopenlibrarypublishing.com).

INTERNATIONAL COMMERCIAL COURTS “MADE IN GERMANY”:
ATTRACTIVE ALTERNATIVE FOR BIG BUSINESS?

Giesela Rühl and Nicolas Dewitte Langenfeld***

Table of Contents

I.	Introduction.....	311
II.	The Bigger Picture: Commercial Litigation in Germany and Beyond	314
	A. The German Civil Justice System	315
	B. The Status Quo Ante of International Commercial Litigation in Germany	318
	C. The Global Rise of International Commercial Courts.....	320
III.	The ‘Justizstandort-Stärkungsgesetz’ of 2024	322
	A. English as Court Language.....	323
	1. Judicial Bodies Responsible for Conducting English Language Proceedings.....	324
	2. Requirements for Conducting English Language Proceedings	326
	3. Practical Questions	328
	B. New Specialized Judicial Bodies for High-Volume Commercial Disputes	329
	1. Establishment by the Federal States	330
	2. Jurisdictional Requirements	332
	a. Agreement to Settle a Dispute before a Commercial Court	332

* Professor of Law, Humboldt University Berlin, Faculty of Law. The author gave expert testimony before the Legal Affairs Committee of the German Parliament during the legislative process. The following Article is based on the written statements prepared for the expert hearings.

** Research Fellow and Doctoral Candidate, Humboldt University Berlin, Faculty of Law, Graduate School “DynamInt.”

b.	Dispute that Concerns Certain Subject-Matters.....	334
c.	Dispute with a Value of More than € 500.000,00	335
3.	Arbitration-Style Proceedings	337
a.	Mandatory Case Management Conference.....	338
b.	Verbatim Records of the Oral Hearing	340
C.	Enhanced Protection of Business Secrets.....	342
IV.	Conclusion and Outlook, or: Expectation Management	342
A.	Implementation by the States Necessary	343
B.	Limited International Impact.....	344
C.	Towards a European Commercial Court?	346

I. INTRODUCTION

The German civil justice system is generally considered to be one of the best in the world. According to the 2024 World Justice Project Rule of Law Index the German civil justice system ranks fifth out of 140 countries.¹ However, during the past two decades, German civil courts have experienced a dramatic loss of cases.² This holds particularly true for the regional courts (*Landgerichte*) that hear commercial disputes with a value of more than € 5.000,00. They have lost almost 32% of their cases between 1995 and 2022³ suggesting that German courts are not (or no longer) perceived as attractive places to deal with commercial disputes, especially high-volume (and as the case may be: international) disputes. Is this a problem?

Scholars and practitioners have answered this question with a very clear yes for many years.⁴ Pointing to research that shows that there are entire groups of commercial disputes—most prominently high-volume post-M&A

¹ WORLD JUST. PROJECT, RULE OF LAW INDEX 22 (2024), <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf>.

² See generally CAROLINE MELLER-HANNICH ET AL., ABSCHLUSSBERICHT ZUM FORSCHUNGSVORHABEN “ERFORSCHUNG DER URSACHEN DES RÜCKGANGS DER EINGANGSZAHLEN BEI ZIVILGERICHTEN” [FINAL REPORT ON THE RESEARCH PROJECT “INVESTIGATING THE CAUSES OF THE DECLINE IN THE NUMBER OF CASES RECEIVED BY CIVIL COURTS”] 22–57, 309–29 (Apr. 21, 2023), https://www.bmj.de/SharedDocs/Downloads/DE/Fachinformationen/Abschlussbericht_Eingangszahlen_Zivilgerichte.html?nn=110490; GERHARD WAGNER, RECHTSSTANDORT DEUTSCHLAND IM WETTBEWERB [GERMANY IN COMPETITION AS A LEGAL CENTER] 93–99 (Dec. 2017).

³ Specifically, regional courts received 418,807 new filings in 1995 and 286,209 in 2022. It must be noted, though that numbers briefly went up in 2020 to a total of 366,296 newly submitted cases in 2021. However, these were special effects resulting from the Diesel emission scandal that can be ignored for the purposes of this article. For the development of the case numbers between 1995 and 2008 as well as 2009 and 2022, see STATISTISCHES BUNDESAMT [FEDERAL STATISTICAL OFFICE], FACHSERIE 10 REIHE 2.1 - 2008 [SPECIALIST SERIES 10 SERIES 2.1 - 2008] 36 (June 29, 2010), https://www.destatis.de/DE/Service/Bibliothek/_publikationen-fachserienliste-10.html; STATISTISCHES BUNDESAMT [FEDERAL STATISTICAL OFFICE], STATISTISCHER BERICHT—ZIVILGERICHTE 2022 [STATISTICAL REPORT—CIVIL COURTS 2022] (Aug. 9, 2023), <https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/Publikationen/Downloads-Gerichte/statistischer-bericht-zivilgerichte-2100210227005.html>.

⁴ For a detailed discussion, see WAGNER, *supra* note 2, at 76–77, 239–41; HERRMANN HOFFMANN, KAMMERN FÜR INTERNATIONALE HANDELSACHEN 116–43 (Oct. 21, 2011); Rupprecht Podszun & Vincent Weber, *Die Ziele des Zivilprozesses und seine Reform* [The Goals of Civil Procedure and its Reform], ZEITSCHRIFT FÜR ZIVILPROZESS [JOURNAL OF CIVIL PROCEDURE] 71 (2024) (considering that civil procedure is in a state of crisis). For a voice from commercial and industrial practice, see Tobias Freudenberg, *Location Factor Dispute Resolution*, BECK-AKTUELL HEUTE IM RECHT [BECK AKTUELL TODAY IN LAW] (Mar. 26, 2025), <https://rsw.beck.de/aktuell/daily/magazin/detail/interview-njw-2025-13-standortfaktor-streitbeilegung>.

disputes—that have completely vanished from the public court system, it has been argued that the loss of cases hinders the development of the law, most importantly commercial law.⁵ In addition, reference has been made to the potential disadvantages that German business parties, as well as German lawyers, may experience if they are forced to agree on the jurisdiction of foreign courts or arbitral tribunals because German courts are not perceived to be competent fora to settle international commercial disputes.⁶ Finally, it has also been argued that the German civil justice system as such would benefit from more high-volume commercial disputes. Since court fees increase gradually with the value of the dispute,⁷ high-volume commercial disputes may help to fund German courts for the benefit of all parties, including parties with lower-volume disputes.

However, despite all this, the German legislature was long reluctant to become active and to enact reforms that could have allowed German courts to compete with courts in other jurisdictions and arbitration tribunals. Proposals to strengthen the ability of German courts to settle international commercial disputes introduced in 2010,⁸ 2014,⁹ 2018,¹⁰ and 2021¹¹ by the

⁵ HOFFMANN, *supra* note 4, at 138–43. *See also* WAGNER, *supra* note 2, at 129–31 (acknowledging that international arbitration is highly attractive and that many German inhouse counsel explicitly prefer arbitration).

⁶ *See* Volker Triebel, *Der Kampf ums anwendbare Recht [The Fight for Applicable Law]*, ANWALTSBLATT 305–08 (2008); Jan Curschmann, *Justizstandort Deutschland stärken! [Strengthen Germany as a Center of Justice!]*, ZEITSCHRIFT FÜR INTERNATIONALES WIRTSCHAFTSRECHT (IWRZ) [JOURNAL OF INTERNATIONAL BUSINESS LAW] 241 (2018). *See also* Matthias Lehmann, ‘Law Made in Germany’—The Export Engine Shuttles, in INTERNATIONAL BUSINESS COURTS 83–106 (Xandra Kramer & John Sorabji eds., 2019) (pointing to the paradox that despite the fact that the German economy has a strong export orientation, domestic fora are not prorogated frequently).

⁷ *See* Gerichtskostengesetz [GKG] [Court Fee Act], Feb. 27, 2014, BUNDESGESETZBLATT, Teil I [BGBL I] at 154, § 34(1), Annex 2 (Ger.). For a detailed presentation of the German court fee system, see Burkhard Hess & Rudolf Huebner, *Cost and Fee Allocation in German Civil Procedure*, in COST AND FEE ALLOCATION IN CIVIL PROCEDURE: A COMPARATIVE STUDY 151–52 (Mathias Reimann ed., 2012); Thomas Riehm & Quirin Thomas, *Germany*, in NEW INTERNATIONAL COMMERCIAL COURTS: A COMPARATIVE PERSPECTIVE 293, 322–23 (Man Yip & Giesela Rühl eds., 2024).

⁸ Gesetzentwurf [Draft Law of the Federal Council], Deutscher Bundesrat: Drucksache [BR] 42/10 (Ger.).

⁹ Gesetzentwurf [Draft Law of the Federal Council], Deutscher Bundesrat: Drucksache [BR] 93/14 (Ger.).

¹⁰ Gesetzentwurf [Draft Law of the Federal Council], Deutscher Bundesrat: Drucksache [BR] 53/18 (Ger.).

¹¹ Gesetzentwurf [Draft Law of the Federal Council], Deutscher Bundesrat: Drucksache [BR] 219/21 (Ger.).

Federal Council (*Bundesrat*)¹² were met with little interest and were not even discussed in the Federal Parliament (*Bundestag*). Things, however, changed with the federal elections of 2021. They brought into power a three-party coalition government that promised to introduce English-speaking special chambers for international commercial disputes.¹³ Shortly before the government coalition collapsed in November 2024, it delivered and passed the Law on the Strengthening of Germany as a Place to Settle (Commercial) Disputes (*Justizstandort-Stärkungsgesetz*).¹⁴

The new Law amends both the Courts Constitution Act (*Gerichtsverfassungsgesetz—GVG*¹⁵) and the Code of Civil Procedure (*Zivilprozessordnung—ZPO*¹⁶)¹⁷ and sets out to do what its title suggests,

¹² The Federal Council (*Bundesrat*) is one of the main legislative bodies in Germany. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law for the Federal Republic of Germany], Mar. 22, 2025, Bundesgesetzblatt, Teil I [BGBl I] at 94 Art. 50 (Ger.). It represents the 16 federal states (*Bundesländer*) and plays a crucial role in the lawmaking process in that it reviews all laws that have been adopted by the Federal Parliament. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law for the Federal Republic of Germany], Mar. 22, 2025, BGBl I at 94 Art. 77 (Ger.). The Federal Council, however, also has the right to initiate (propose) laws to the Federal Parliament. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law for the Federal Republic of Germany], Mar. 22, 2025, BGBl I at 94 Art. 76(1) (Ger.). However, it remains free to discuss and adopt (and even discuss) these proposals. Unlike the Federal Parliament, which consists of directly elected representatives of the people, the Federal Council consists of representatives from the state governments. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law for the Federal Republic of Germany], Mar. 22, 2025, BGBl I at 94 Art. 51(1) (Ger.).

¹³ KOALITIONSVERTRAG 2021–2025 ZWISCHEN DER SOZIALDEMOKRATISCHEN PARTEI DEUTSCHLANDS (SPD), BÜNDNIS 90/DIE GRÜNEN UND DEN FREIEN DEMOKRATEN (FDP) [COALITION AGREEMENT 2021–2025 BETWEEN THE SOCIAL DEMOCRATIC PARTY OF GERMANY (SPD), ALLIANCE 90/THE GREENS, AND THE FREE DEMOCRATIC PARTY (FDP)], MEHR FORTSCHRITT WAGEN BÜNDNIS FÜR FREIHEIT, GERECHTIGKEIT UND NACHHALTIGKEIT [MAKE MORE PROGRESS: ALLIANCE FOR FREEDOM, JUSTICE, AND SUSTAINABILITY] 106 (last visited Apr. 2, 2025), https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf.

¹⁴ Gesetz zur Stärkung des Justizstandortes Deutschland durch Einführung von Commercial Courts und der Gerichtssprache Englisch in der Zivilgerichtsbarkeit (Justizstandort-Stärkungsgesetz) [Act to Strengthen Germany as a Center of Justice by Introducing Commercial Courts and English as a Court Language in Civil Proceedings (Justice Location Strengthening Act)], Oct. 7, 2024, BGBl I No. 302, at 1 (Ger.).

¹⁵ Gerichtsverfassungsgesetz [GVG] [Courts Constitution Act], May 9, 1975, BGBl I at 1077, as amended by Art. 2 of the Act of Oct. 25, 2023, BGBl I at 294, <https://www.gesetze-im-internet.de/gvg/> (Ger.).

¹⁶ Zivilprozessordnung [ZPO] [Code of Civil Procedure], <https://www.gesetze-im-internet.de/zpo/> (Ger.).

¹⁷ English language translations of both the [GVG] [Courts Constitution Act] and the [ZPO] [Code of Civil Procedure] are available at https://www.gesetze-im-internet.de/Teilliste_translations.html. Note, however, that both translations do not yet include the amendments introduced through the new Law discussed in this Article.

namely to make German courts a more attractive place to settle international commercial disputes, thereby improving Germany's position vis-à-vis recognized litigation and arbitration venues, notably London, Amsterdam, Paris, and Singapore. Specifically, it allows the German federal states (*Bundesländer*) to establish specialized "Commercial Courts" that may hear certain high-volume (international) commercial disputes in English and in an arbitration-style fashion. Does this mean that German courts will soon be an attractive alternative for "big business"—and that foreign courts and international commercial arbitration tribunals will face serious competition from Germany?

In the following Article we set out to provide a first tentative answer to this question. To that end, we will contextualize the new German Law by giving an overview of the German civil justice system, the current German dispute resolution landscape and the global trend to establish specialized courts for international commercial disputes (*infra* II). We will then move on to discuss the details of the new German Law (*infra* III) and then offer some thoughts on its likely impact on the dispute resolution landscape in Germany and beyond (*infra* IV). All in all, we will show that the new Law introduces welcome innovations that will actually improve the framework conditions for the settlement of international commercial disputes in Germany. However, we will also demonstrate that shortcomings remain which prevent German courts from becoming serious competitors for leading international commercial courts as well as international commercial arbitration.

II. THE BIGGER PICTURE: COMMERCIAL LITIGATION IN GERMANY AND BEYOND

The Law on the Strengthening of Germany as a Place to Settle (Commercial) Disputes marks the end of a decade-long discussion about how to make German courts, in particular German regional courts (*Landgerichte*—*LG*) more attractive dispute resolution fora for international business parties. Triggered by a staggering loss of cases over the past twenty-five years, as well as competition from other countries and, of course, international commercial arbitration, the Law brings a number of procedural innovations that include the introduction of English as a court language and the establishment of specialized commercial courts. However, even before the adoption of the new Law, Germany had courts, or rather, court chambers, that were commonly referred to as (international) commercial courts and

included in relevant comparative analyses.¹⁸ These court chambers had been created bottom-up by various German federal states or individual courts without legislative change and, hence, by only using the leeway offered by the applicable (federal) laws, notably the Courts Constitution Act and the Code of Civil Procedure. To understand the changes the new Law has brought, the following section provides an overview of the German civil justice system (*infra* A), describes the German dispute resolution landscape prior to adoption of the new Law (*infra* B) and situates the new Law in the context of international commercial courts more broadly (*infra* C).

A. The German Civil Justice System¹⁹

The German civil justice system is characterized and shaped by the fact that Germany is a federal republic. Like in the U.S., power, including judicial power in civil and commercial matters, is divided between the federal, i.e., the national level (*Bund*) and the sixteen federal states that constitute the whole of Germany (*Bundesländer*). With regard to civil justice, the German Constitution²⁰ mandates that the federal level is responsible for adopting

¹⁸ See, e.g., Georgia Antonopoulou, *The 'Arbitralization' of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts*, J. INT'L DISP. SETTLEMENT 1, 4 (2023); Lehmann, *supra* note 6, at 98; INTERNATIONAL COMMERCIAL COURTS: THE FUTURE OF TRANSNATIONAL ADJUDICATION (Stavros Brekoulakis & Georgios Dimitropoulos eds., 2022); Riehm & Thomas, *supra* note 7, at 293. See also Pamela Bookman, *The Adjudication Business*, 45 YALE L.J. 227, 255 (2020); Lucas Clover Alcolea, *The Rise of the International Commercial Court: A Threat to the Rule of Law?*, J. INT'L DISP. SETTLEMENT 413, 415 (2022); Weixia Gu & Jacky Tam, *The Global Rise of International Commercial Courts: Typology and Power Dynamics*, 22 CHICAGO J. INT'L L. 444, 473 (2022); Marta Requejo Isidro, *International Commercial Courts in the Litigation Market*, 9 IJPL 4, 21 (2019); Stephan Wilske, *International Commercial Courts and Arbitration—Alternatives, Substitutes or Trojan Horse?*, 11 CONTEMP. ASIA ARB. J. 153, 172 (2018); S.I. Strong, *Judging Judiciaries: How Sticky Defaults, Status Quo Bias and the Sovereign Prerogative Influence the Perceived Legitimacy of the New International Commercial Courts*, 74 AM. U. L. REV. 691, 719 (2025).

¹⁹ A more detailed English-language presentation of the German civil justice system can be found in Riehm & Thomas, *supra* note 7, at 296; PETER L. MURRAY & ROLF STÜRNER, *GERMAN CIVIL JUSTICE* (2015).

²⁰ In addition to the Federal Court of Justice which serves as the supreme court for all civil (and commercial) cases, the federal government entertains the Federal Administrative Court (*Bundesverwaltungsgericht—BVerwG*), the Federal Fiscal Court (*Bundesfinanzhof—BFH*), the Federal Labour Court (*Bundesarbeitsgericht—BAG*) and the Federal Social Court (*Bundessozialgericht—BSG*) as supreme courts for administrative, fiscal, labour and social justice disputes (Art. 95(1) GG). Finally, the

rules that regulate the organization of all German courts as well as rules of civil procedure that apply in all German courts (Art. 74 No. 1 GG). In addition, the federal level entertains the Federal Court of Justice (*Bundesgerichtshof—BGH*) which serves as the supreme (and last instance) court for (most) civil (and commercial) cases (Art. 95(1) GG).²¹ The federal states, in contrast, entertain the first and second instance civil courts (Art. 92, 30 GG), namely the local courts (*Amtsgerichte—AG*), the regional courts (*Landgerichte—LG*) and the higher regional courts (*Oberlandesgerichte—OLG*).

The German civil justice system, thus, differs substantially from its U.S. counterpart. The most striking difference relates to the relationship between federal and state courts. Whereas the U.S. operates two parallel court systems, namely the state and the federal court system each with its own jurisdiction,²² Germany has only one court system that combines state and federal courts. In that system, civil proceedings always start in the state courts, namely in the local courts, if the value in dispute does not exceed € 5,000.00, and in the regional courts in all other cases (§§ 23 No. 1, 71 GVG).²³ State courts are also responsible for dealing with cases in second instance (so-called *Berufung*).²⁴ Specifically, cases will be heard by the

federal government also runs the Federal Constitution Court (*Bundesverfassungsgericht—BVerfG*) which is specifically tasked with the interpretation of the Basic Law (Art. 92 GG).

²¹ In addition to the Federal Court of Justice which serves as the supreme court for all civil (and commercial) cases, the federal government entertains the Bundesverwaltungsgericht (BVERWGE) [Federal Administrative Court], the Bundesfinanzhof (BFH) [Federal Finance Court], the Bundesarbeitsgericht (BAG) [Federal Labor Court], and the Bundessozialgericht (BSG) [Federal Social Court] as supreme courts for administrative, fiscal, labour and social justice disputes (Art. 95(1) GG). Finally, the federal government also runs the Federal Constitution Court (*Bundesverfassungsgericht—BVerfG*) which is specifically tasked with the interpretation of the Basic Law (Art. 92 GG).

²² On the structure of the federal and the state court systems, see DAN ROSEN ET AL., AN INTRODUCTION TO AMERICAN LAW 97 (3d ed. 2017); PETER HAY, LAW OF THE UNITED STATES 59, 63 (4th ed. 2016); E. ALLAN FARNSWORTH, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE UNITED STATES 43 *et seq.* (4th ed. 2010); JOHN B. OAKLEY & VIKRAM AMAR, AMERICAN CIVIL PROCEDURE 37, 41 (2009).

²³ Note, however, that there are some disputes that fall into the competence of the local courts irrespective of the value in dispute. This holds true for family disputes as well as for disputes between landlords and tenants. In a similar vein, there are cases that fall into the competence of the regional courts even if the value in dispute does not reach € 5,000.00. For details see Gerichtsverfassungsgesetz [GVG] [Courts Constitution Act] at §§ 23(2), 23(a), and 72(2) (Ger.).

²⁴ The *Berufung*, or first appeal, allows parties to have first instance judgements checked for both errors of fact and law. Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 513(1), https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.pdf (Ger.).

regional courts if the case started in a local court, and by the higher regional court if the case started in the regional court (§§ 72, 119(1) No. 2 GVG). In the third instance (so-called *Revision*),²⁵ however, the Federal Court of Justice and, hence, a federal court, comes into the picture. It serves as the last instance court for civil (and commercial) cases (§ 133 GVG). However, in order to prevent the Federal Court of Justice from being flooded with small and less important cases, an appeal to the Federal Court of Justice is only admissible if the case is of fundamental significance, if a decision by the Federal Court of Justice is required to further the development, or to ensure uniform application of the law (§ 543 ZPO). If these conditions are not met, the case will end in the state courts and not reach the federal level. But be that as it may, at least as a matter of principle—and unlike in the U.S.—federal and state courts in Germany are interconnected—with state courts (local courts, regional courts and higher regional courts) serving as first- and second-instance courts and the Federal Court of Justice serving as third- (and usually last) -instance court.

The allocation of jurisdiction and the relationship between federal and state courts, however, is not the only difference between the German and the U.S. civil justice system. In addition, the German civil justice system is also much more uniform. Since federal and state courts form part of one and the same court system, all German courts are essentially subject to the same rules, namely the Courts Constitution Act and the Code of Civil Procedure adopted by the federal government. It follows, that German federal states—unlike their U.S. counterparts that have broad autonomy with regards to the organization of their judiciary²⁶—have to organize their courts in essentially the same fashion. This is why, for example, cases are heard by one professional judge in all German local courts (§ 22 GVG), whereas three professional judges (sitting in so-called civil chambers or civil senates) hear cases at all regional courts and higher regional courts (§§ 75, 116(1), 122(1) GVG).²⁷ However, this is not to say that there is nothing for the states or

²⁵ The *Revision*, or second appeal, allows parties to have a second instance judgment checked for errors of law only. Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 545(1), https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.pdf (Ger.).

²⁶ See ROSEN ET AL., *supra* note 22, at 98; HAY, *supra* note 22, at 34; FARNSWORTH, *supra* note 22, at 44; OAKLEY & AMAR, *supra* note 22, at 41.

²⁷ Note, however, that in practice one professional judge decides a case at the regional courts. Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 348(1), sentence 2, https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.pdf.

individual state court to decide. In fact, states may determine the number of courts they wish to establish, their location, the number of judges they employ, as well as the procedure for selecting judges. In addition, individual regional courts may decide to establish specialized chambers for commercial matters (*Kammern für Handelssachen*) (§ 93 GVG). In contrast to regular civil chambers, these chambers are staffed with one professional and two lay judges. They hear disputes that are designated as commercial (§ 95 GVG), if one of the parties so requests (§§ 96(1), 98(1) GVG). Finally, individual regional courts may also decide to set up a case allocation schedule (*Geschäftsverteilungsplan*) that allows them to send certain cases to certain court chambers. It is this, albeit limited, leeway that German federal states and state courts have used during the past years to establish—bottom-up—specialized court chambers for the resolution of international commercial disputes. It is these court chambers that we turn to next.

B. The Status Quo Ante of International Commercial Litigation in Germany

Germany has known specialized court chambers for the resolution of (international) commercial disputes for more than fifteen years. Back then, in 2010, the state of North Rhine-Westphalia was the first state that decided to establish so-called international chambers at the regional courts of Bonn, Cologne, and Aachen. In 2018, in the wake of Brexit and with the hope of bringing litigants from London to Germany,²⁸ the states of Hamburg and Hesse followed suit and established international chambers at the regional courts of Hamburg and Frankfurt. Then, in 2020, the state of Baden-Württemberg jumped onto the bandwagon with the establishment of international chambers at the regional courts in Stuttgart and Mannheim. In

internet.de/englisch_zpo/englisch_zpo.pdf (Ger.). Three professional judges will only decide a case if it concerns certain matters or if the responsible judge feels that three judges are needed. Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 348(1), No. 2, https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.pdf (Ger.); Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 348(3), https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.pdf (Ger.).

²⁸ For a more detailed analysis of the effect that Brexit has had on the settlement of international commercial disputes as well as the reactions of various Continental European countries, see Giesela Rühl, *Settlement of International Commercial Disputes Post-Brexit, or: United We Stand Taller*, in BREXIT AND THE LAW. AN INTERDISCIPLINARY STUDY 195 (Jörn Axel Kämmerer & Hans-Bernd Schäfer eds., 2021).

2022, it was for Berlin to announce the opening of an international chamber at the regional court in Berlin.

It follows that, prior to the adoption of the new Law, Germany had eight regional courts in five states that entertained specialized international chambers. And while the various chambers differed with regards to the details,²⁹ they all had one thing in common: they were trying to conduct proceedings in a manner that was meant to appeal to international business parties. In particular, they offered to conduct proceedings in English, to the extent possible, and in a more business-friendly, professional, and arbitration-style manner. In the end, however, the success of the international court chambers was limited. In fact, each chamber had less than a handful of cases and the combined number of cases did not exceed twenty per year.³⁰ The newly created court chambers, thus, did not manage to attract a large number of business parties. In fact, the bulk of international commercial disputes continued to be dealt with by ordinary courts and international arbitration tribunals. What were the reasons for this?

For want of empirical studies there is no clear answer to this question. However, it seems plausible that the newly founded court chambers simply did not offer enough benefits to make parties change their dispute resolution habits.³¹ Since the overall legislative framework remained unchanged, they were bound by the general rules and regulations of German law, notably the Courts Constitution Act and the German Code of Civil Procedure. The newly founded chambers, therefore, could only make use of the leeway that was granted by these rules and regulations. And the leeway was certainly limited. The use of English as court language, for example, was confined to the oral

²⁹ Some specialized court chambers were regular civil chambers staffed with three professional judges, others were commercial chambers with one professional and two lay judges. For a detailed presentation, see Riehm & Thomas, *supra* note 7, at 207, 302; NICOLE GROHMANN, DIE INTERNATIONALISIERUNG DER HANDELSGERICHTSBARKEIT 22 (2022).

³⁰ Riehm & Thomas, *supra* note 7, at 302. Note, however, that things are different for the specialized chambers established at the regional courts of Mannheim and Stuttgart. They have received several hundred cases per year ever since their creation. However, the large number of cases is mainly due to the fact that according to the applicable case allocation schedule (*Geschäftsverteilungsplan*) the chambers are competent to hear certain commercial disputes (notably post-M&A disputes) irrespective of whether the parties have agreed on the competence of the chambers. All other specialized chambers, in contrast, may only hear cases if both parties so wish.

³¹ Lehmann, *supra* note 6, at 98; Man Yip & Giesela Rühl, *Success and Impact of International Commercial Courts: A First Assessment*, 24 YB. PRIV. INT'L L. 45, 59 (2022–2023).

hearing (§ 185(2) GVG) and the submission of English-language evidence (§ 142(3) ZPO). All party briefs, in contrast, as well as all court orders, the records of the proceedings as well as all judgments had to be made in German. In addition, there was no certain prospect for an English-language second and third instance. In fact, only the higher regional court of Cologne (North Rhine-Westphalia), Karlsruhe, and Stuttgart (Baden-Württemberg) promised to continue proceedings in English whereas higher regional courts in all other states as well as the Federal Court of Justice refused to commit themselves to English-language proceedings.³²

However, as indicated at the beginning, with the adoption of the Law on the Strengthening of Germany as a Place to Settle (Commercial) Disputes, things are about change. In particular, it will allow civil proceedings to be conducted completely in English. Before going into the details, however, we want to take a step back and contextualize the developments that have been taking place in Germany by looking at the global rise of international commercial courts.

C. The Global Rise of International Commercial Courts

The creation of specialized court chambers for the resolution of international commercial disputes is not a unique—or an exclusive—German phenomenon. In fact, in addition to Germany, a number of jurisdictions around the world have established special bodies for the resolution of international commercial disputes over the past two decades.³³ Located in the Gulf Region, (Abu Dhabi,³⁴ Dubai³⁵ and Qatar³⁶), in Asia, (China,³⁷

³² Riehm & Thomas, *supra* note 7, at 314.

³³ For an in-depth comparative analysis of international commercial courts, see Man Yip & Giesela Rühl, in *NEW INTERNATIONAL COMMERCIAL COURTS: A COMPARATIVE PERSPECTIVE 1 et seq.* (Man Yip & Giesela Rühl eds., 2024), for a brief overview see Yip & Rühl, *supra* note 31, 45 *et seq.*

³⁴ Abu Dhabi Global Markets Courts, <https://www.adgm.com/adgm-courts> (last visited Apr. 2, 2025).

³⁵ Dubai Financial Centre Courts, <https://www.difccourts.ae> (last visited Apr. 2, 2025).

³⁶ Qatar International Court and Dispute Resolution Centre, <https://www.qicdrc.gov.qa> (last visited Apr. 2, 2025).

³⁷ China International Commercial Court, <https://cicc.court.gov.cn/html/1/219/193/195/index.html> (last visited Apr. 2, 2025).

Kazakhstan³⁸ and Singapore³⁹), and in other European countries, (France⁴⁰ and the Netherlands⁴¹), these bodies are commonly referred to as “international commercial courts.”⁴² These courts differ from ordinary courts because they are primarily tasked with resolving not only international commercial disputes but also in that they display innovative features with regards to their institutional and procedural framework which are geared towards greater internationalization.⁴³ The details vary from court to court and move along a broad spectrum depending on the motivation and the context for their creation.⁴⁴ However, it appears that European international commercial courts tend to be less ambitious than their counterparts in Asia and in the Gulf region. Courts in the Gulf region, in Kazakhstan and Singapore, for example, allow foreign judges to sit on the bench of their international commercial courts.⁴⁵ In addition, they allow court proceedings to be completely conducted in English and in accordance with rules that are either taken from the English law of procedure, from international commercial arbitration or both.⁴⁶ International commercial courts in France, Germany, and the Netherlands, in contrast, only employ national judges. France and Germany permit the use of English as a court language is—or has been thus far—somewhat limited.⁴⁷ In addition, both countries require their

³⁸ Astana Financial Centre Court, <https://court.aifc.kz/en> (last visited Apr. 2, 2025).

³⁹ Singapore International Commercial Court, <https://www.judiciary.gov.sg/singapore-international-commercial-court> (last visited Apr. 2, 2025).

⁴⁰ Paris International Commercial Chamber, <https://www.cours-appel.justice.fr/paris/presentation-generale-ccip-ca-iccp-ca> (last visited Apr. 2, 2025).

⁴¹ Netherlands Commercial Court, <https://www.rechtspraak.nl/English/NCC/Pages/default.aspx> (last visited Apr. 2, 2025).

⁴² In addition, international commercial courts are currently being established in Bahrain and Switzerland. See <https://www.tamimi.com/news/enhancing-global-commerce-the-bahrain-international-commercial-court-law-explained/> and <https://www.baerkarrer.ch/en/publications/news-regarding-the-jurisdiction-of-commercial-courts-legal-insight-series-on-the-revision-of-the-cpc-entering-into-force-on-1-january-2025-part-2> (last visited Apr. 2, 2025). For more details on the Swiss project see Martin Bernet et al., *International Commercial Courts: What's up, Switzerland?*, 24 ANWALTSREVUE 474 (2021); Eva Lein, *International Commercial Courts in Switzerland: The Roadmaps for Geneva and Zurich*, in INTERNATIONAL BUSINESS COURTS 115 (Xandra Kramer & John Sorabji eds., 2019).

⁴³ Yip & Rühl, *supra* note 33, at 9 *et seq.*; Yip & Rühl, *supra* note 31, at 47.

⁴⁴ See for a detailed analysis Yip & Rühl, *supra* note 33, at 31 and 25; Yip & Rühl, *supra* note 31, at 51.

⁴⁵ Yip & Rühl, *supra* note 33, at 31; Yip & Rühl, *supra* note 31, at 52.

⁴⁶ Yip & Rühl, *supra* note 33, at 35 *et seq.*; Yip & Rühl, *supra* note 31, at 53 *et seq.*

⁴⁷ Yip & Rühl, *supra* note 33, at 36 *et seq.*; Yip & Rühl, *supra* note 31, at 54. For Germany see also *supra* II.B.

international commercial courts to apply the general (i.e., national) rules of civil procedure.⁴⁸

The noticeable differences when comparing international commercial courts, however, do not change the fact that all of the above-mentioned courts (or court chambers) have one thing in common: they claim to offer an alternative to international commercial arbitration and have, therefore, attracted a great deal of attention by both legal scholarship and practice.⁴⁹ In fact, it is often said that the rise of international commercial courts is “a game changer in the arena of international dispute resolution institutions” because they “fundamentally reshape the landscape of international legal adjudication by disrupting the traditional dichotomy between international litigation and arbitration as mutually exclusive dispute resolution service providers, and by challenging the conventional advantage of international arbitration in handling cross-border commercial disputes.”⁵⁰ Whether this actually holds true, remains to be seen. In this Article, however, we will venture the hypothesis that the specialized court chambers that will soon be created based on the new German Law are unlikely to have disruptive force and that international commercial arbitration will most likely remain the most popular dispute resolution mechanism when it comes to international commercial disputes. The Law, however, may have an impact with regards to domestic commercial disputes.⁵¹

III. THE “JUSTIZSTANDORT-STÄRKUNGSGESETZ” OF 2024

As indicated at the beginning of this Article the Law on the Strengthening of Germany as a Place to Settle (Commercial) Disputes (*Justizstandort-Stärkungsgesetz*) got off to a rocky start. In fact, it took fourteen years and numerous legislative proposals before it finally crossed the finish line at the end of 2024. Exactly why it took so long for the Law to be passed remains somewhat unclear. However, there is no denying the fact that the staggering loss of cases and especially the loss of high-volume international cases had reached a point where it could no longer be ignored. Moreover, there was broad consensus in the legal and the business

⁴⁸ Yip & Rühl, *supra* note 33, at 39; Yip & Rühl, *supra* note 31, at 54.

⁴⁹ See sources *supra* note 18.

⁵⁰ Gu & Tam, *supra* note 18, at 445.

⁵¹ See *infra* Section IV.

community that the dispute resolution service offered by German courts did not meet the expectations of (international) business parties. In fact, lawyers and businesses alike complained that German judges were not sufficiently specialized, that proceedings took too long and that the overall set up of German courts, including their technical equipment and their way of communicating with parties, fell short of the standards offered by leading foreign courts and arbitration tribunals.⁵² The new Law, therefore, seeks to remedy these (and some other) perceived shortcomings. It does so by bringing no less than three innovations:⁵³ First, it allows the use of English as court language (*infra* A). Second, it provides for the establishment of specialized judicial bodies for high-volume (international) commercial disputes at the higher regional courts (*infra* B). Finally, third, it improves the protection of business secrets in civil proceedings (*infra* C).

A. English as Court Language

The use of English as court language is one of the defining characteristics of international commercial courts. In fact, with the exception of China,⁵⁴ all jurisdictions that have recently established specialized bodies for the resolution of international commercial disputes allow these bodies to conduct proceedings in English.⁵⁵ In Germany, however, the use of English was, thus far, rather limited making it unattractive for non-German speakers to choose German courts for the settlement of their international disputes. With the new Law this will change: It allows proceedings to be conducted in

⁵² MELLER-HANNICH ET AL., *supra* note 2, at 132, 146, 152, 321.

⁵³ See for an overview of the new Law (in German): Stefanie Fay, Katharina Shingler & Florian Kleinschmitt, *Einführung von englischsprachigen Commercial Courts—deutsche staatliche Gerichtsbarkeit mit internationalem Anstrich als Alternative zur Schiedsgerichtsbarkeit?*, RECHT DER INTERNATIONALEN WIRTSCHAFT 93 (2024); Thomas Klink, *Der Commercial Court nach dem Justizstandort-Stärkungsgesetz—ein Modellprojekt für grenzüberschreitende Gerichtsverfahren*, PRAXIS DE INTERNATIONALEN PRIVAT 349 (2024); Giesela Rühl, *Das Justizstandort-Stärkungsgesetz: (International) Commercial Courts für Deutschland*, ZFPW 397 (2024) [hereinafter Rühl, *Das Justizstandort-Stärkungsgesetz*]; Gerhard Wagner, *Commercial Courts: Stärkungsmittel für den deutschen Justizstandort*, ZEUP 221 (2025). For a brief English language discussion see Giesela Rühl, *Improving the settlement of (international) commercial disputes in Germany*, THE EUROPEAN ASSOCIATION OF PRIVATE INTERNATIONAL LAW (Nov. 28, 2024), <https://eapil.org/2024/11/28/improving-the-settlement-of-international-commercial-disputes-in-germany/>.

⁵⁴ Zhengxin Huo, *China*, in NEW INTERNATIONAL COMMERCIAL COURTS: A COMPARATIVE PERSPECTIVE 196 (Man Yip & Giesela Rühl eds., 2024).

⁵⁵ See Yip & Rühl, *supra* note 33, at 36 ff. and 42 *et seq.* for a detailed comparative analysis.

English from the very beginning to the very end, from first to last instance. The details, however, are complicated because the German legislature could not bring itself to simply require *all* German courts to offer English language proceedings. In addition, it limits the use of English as court language to certain disputes.

In the following we will first look at the judicial bodies that are permitted (and as the case may be: mandated) to conduct court proceedings in English (*infra* 1) before discussing the requirements for English language proceedings and some practical questions (*infra* 2 and 3).

1. Judicial Bodies Responsible for Conducting English Language Proceedings

In jurisdictions that have established specialized bodies for the resolution of international commercial disputes it is common practice that only these bodies may conduct proceedings (entirely) in English. Germany is no exception to this rule—at least when looking at the first instance: According to the new Law responsibility for the conduct of English language proceedings is vested in specialized chambers to be established at selected regional courts (§ 184a(1) Sentence 1 No. 1 GVG).⁵⁶ Before these chambers—which are referred to as “commercial chambers” (§ 184a(1) Sentence 1 No. 1 GVG) but must not be confused with the chambers for commercial matters (*Kammern für Handelssachen*)⁵⁷—parties will be allowed to file their briefs and all their statements in English. In addition, the oral hearings will be held in English and witnesses will be examined in English. Finally, commercial chambers will communicate with the parties in English and write all orders, decisions, and the final judgments in English. Compared to the status quo, this is a huge step forward.

⁵⁶ All other chambers—whether regular civil chambers or chambers for commercial matters—will not be allowed to conduct proceedings entirely in English. However, they may use English in accordance with the current rules meaning that they can hold the oral hearing in English and accept English-language evidence (Courts Constitution Act, § 185(2) (1975); Code of Civil Procedure § 142(3) (1950)).

⁵⁷ Chambers for commercial matters (*Kammern für Handelssachen*) are chambers in the meaning of § 93 (1975). They hear certain commercial matters that are listed in Courts Constitution Act, § 95 and are always staffed with one professional and two lay judges (Courts Constitution Act, § 105(1)). Commercial chambers in the meaning of the new Law, in contrast, may either be chambers for commercial matters (staffed with one professional and two lay judges) or regular civil chambers (staffed with three professional judges).

It should be noted that the new Law does not establish English language commercial chambers itself. Instead, it leaves the establishment to (the discretion of) the federal states (§ 184a(1) Sentence 1 No. 1 GVG). It remains to be seen how many states will make use of their powers under the new Law. First reactions, however, have been largely positive. In fact, five states, namely Baden-Württemberg, Berlin, Hamburg, Hesse, and North Rhine-Westphalia have already announced plans to establish commercial chambers.⁵⁸ It does not take a crystal ball to predict that more will follow suit. It is worth noting, however, that broad access to English language proceedings does not require all states to become active. This is because the new Law allows states to cooperate and to establish commercial chambers across state borders (§ 184a(2) Sentence 2 GVG). In addition, parties are generally free to agree on the jurisdiction of a regional court that actually has an English language commercial chamber (§§ 38, 40 ZPO).

Things are easier when turning to the second and third instance: In contrast to the first instance, there are no specialized judicial bodies responsible for conducting English language proceedings.⁵⁹ Instead, all senates at the higher regional courts as well as all senates of the Federal Court of Justice⁶⁰ will be allowed to hear appeals in English (§ 184a(1) No. 1

⁵⁸ *Cabinet paves way for next chapter of Commercial Court success story*, BADEN-WÜRTTEMBERG.DE (Jan. 4, 2025), <https://jum.baden-wuerttemberg.de/de/presse-service/presse/pressemitteilung/pid/kabinett-ebnet-weg-fuer-naechstes-kapitel-der-erfolgsgeschichte-commercial-court>; *Senate introduces English-speaking Commercial Courts and Commercial Chambers*, BERLIN.DE (Jan. 4, 2025), <https://www.berlin.de/rbmskzl/aktuelles/pressemitteilungen/2025/pressemitteilung.1546972.php>; *Judicial expertise in international commercial disputes*, BREMEN.DE (Jan. 4, 2025), <https://www.senatspressestelle.bremen.de/pressemitteilungen/richterliche-spezialkompetenz-fuer-internationale-wirtschaftsstreitigkeiten-465773>; *Commercial Courts come*, HAMBURG.DE <https://www.hamburg.de/politik-und-verwaltung/behoerden/bjv/themen/rechtspolitik/commercial-courts-933452>; *Justice in North Rhine-Westphalia introduces Commercial Court and Commercial Chambers*, HESSEN.DE (Mar. 12, 2025), <https://justizministerium.hessen.de/commercial-court>; see also Rüdiger Soldt, *Wie die Zukunft der Justiz aussehen könnte*, FRANKFURTER ALLGEMEINE ZEITUNG (Mar. 28, 2025), <https://www.faz.net/aktuell/politik/inland/commercial-court-in-stuttgart-wie-die-zukunft-der-justiz-aussehen-koennte-110378987.html>.

⁵⁹ Note that the new Law allows federal states to establish specialized senates for high-volume commercial disputes at higher regional courts (Courts Constitution Act, § 119b (1975)). Referred to as commercial courts these senates will also be allowed to hear cases in English (Courts Constitution Act, § 184a(1) (1975)). However, their actual prerogative will not be the language of the proceedings, but their first instance jurisdiction for disputes with a value of € 500.000,00 or more. See *infra* Section III.B.

⁶⁰ At the higher regional courts as well as at the Federal Court of Justice cases are decided by a panel of professional judges referred to as senates (Courts Constitution Act, §§ 116(1), 130(1) (1975)).

GVG). However, only the senates at the higher regional courts are mandated to conduct the appeals proceedings in English if the parties so wish.⁶¹ The Federal Court of Justice, in contrast, can decide on a case-by-case basis whether it will hold the proceedings in English—or switch to German (§ 184b GVG). The latter is, of course, unfortunate, as parties cannot be sure that a case that is filed in English (and heard in English at first and second instance) will also be heard in English by the Federal Court of Justice thus reducing the incentives to commence proceedings in English—or in Germany—in the first place. The good news, however, is that the new Law guarantees at least two full hearings in English. While it remains to be seen how many parties will be interested in conducting civil proceedings in English before German courts,⁶² it must be acknowledged that the German civil justice system has finally opened up to English as the language of court proceedings.⁶³

2. Requirements for Conducting English Language Proceedings

The preceding analysis shows that the new Law does not allow all German first instance courts and court chambers to conduct court proceedings entirely in English. However, even the commercial chambers may not proceed. Since the use of English is still the exception from the rule that court proceedings have to be conducted in German (§ 184 GVG) the new Law stipulates that two requirements need to be met before cases can be heard in English.

At the higher regional courts panels consist of three professional judges (Courts Constitution Act, § 122(1) (1975)), at the Federal Court of Justice of five (Courts Constitution Act, § 139(1) (1975)).

⁶¹ Note, however, that federal states may decide that appeals against English language first instance judgments will be heard by the commercial courts to be established at the higher regional courts (Courts Constitution Act § 119b(4) (1975)). If the federal states make use of this option English language appeals will be concentrated in the commercial courts relieving the remaining senates of the obligation to conduct appeals proceedings in English.

⁶² For a skeptical view see, Thomas Riehm, *Commercial Courts: Ein Upgrade für den Justizstandort Deutschland*, ZIP 1561, 1566 (2023); Wagner, *supra* note 53, at 228. More optimistic, in contrast, Reinmar Wolff, *Bewegung am Streitbeilegungsstandort Deutschland: Einführung von Commercial Courts und englischer Gerichtssprache durch das Justizstandort-Stärkungsgesetz*, SCHIEDSVZ 209, 217 (2023).

⁶³ Fay, Shingler & Kleinschmitt, *supra* note 53, at 98; Klink, *supra* note 53, at 355; Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 400; Wagner, *supra* note 53, at 225–26.

The first—and rather unsurprising—requirement is that parties must agree on English as the language of the proceedings (§ 184a(3) Sentence 1 GVG). The agreement can be entered into before or after a lawsuit is filed. This agreement can be express or implied, as it does not need to meet any formal requirements. Parties can, therefore, agree on English language proceedings in writing, electronically or orally. If an agreement to litigate in English is missing, proceedings can still be conducted in English if the plaintiff files an English-language claim and the respondent submits an English-language statement of defense without objecting to the choice of English as the language of the proceedings (§ 183a(3) Sentence 1 GVG).⁶⁴

The second requirement for the conduct of English language proceedings is less straightforward than the first: According to the new Law the use of English is limited to certain types of disputes. Specifically, the new Law stipulates that federal states may offer English language proceedings only for disputes that fall within the jurisdiction of the specialized senates at the higher regional courts—referred to as commercial courts—which the federal states may establish under the new Law (§ 119b(1), Sentence 1 Nos. 1 to 3 GVG).⁶⁵ It follows that only three types of disputes qualify for the use of English as court language, namely (1) disputes between two or more companies (with the exception of disputes relating to industrial property rights, copyright and unfair competition), (2) disputes arising from or in connection with the acquisition of a company or shares in a company and for (3) disputes between a company and the members of the management body or supervisory board (§§ 184a(1), 119b(1), Sentence 1 Nos. 1 to 3 GVG).⁶⁶ Why the federal legislature chose to align the admissibility of English as language of the proceedings with the jurisdiction of the specialized

⁶⁴ It should be noted that the new Law does not regulate how English language proceedings will end up before the competent commercial chamber. The easiest solution seems to be to treat an agreement to conduct proceedings in English as an (implied) choice of the competent commercial chamber and to have the competent regional court assign the case to that chamber in accordance with its case allocation schedule (*Geschäftsverteilungsplan*). In this case, however, it is unclear what happens if an English language claim is filed with a regional court that does not have an English language commercial chamber? For want of an express regulation it is submitted that courts should inform the claimant that he/she may either withdraw the claim and bring it before a regional court that has a commercial chamber—or to have the case tried in German (or partly in English) before a regular court chamber.

⁶⁵ See *infra* Section III.B.

⁶⁶ For a more detailed discussion of the disputes that fall into the scope of Courts Constitution Act, § 119b(1) No. 1 to 3 (1975), see Klink, *supra* note 53, at 351.

senates remains somewhat unclear. After all the rationale of allowing English language proceedings is not so much to foster specialization of judges, but to ease the resolution of international disputes. It would therefore have been better if the federal legislature had dispensed with the second requirement and allowed English proceedings for all civil and commercial disputes.⁶⁷

3. Practical Questions

The provisions on the responsible judicial bodies and the requirements for the conduct of English language proceedings obviously lie at the heart of the new Law. In addition, however, the legislature also addresses a number of practical questions associated with the use of English as a court language. These relate to the commencement of English language proceedings (§ 606 ZPO), the submission of German language documents (§ 184a(3) Sentence 1 No. 3 GVG), the exceptional use of German for party submissions (§ 184a(3) Sentence 2 GVG), the exceptional call for a translator (§ 184(3) Sentence 1 No. 1 GVG), the complete switch to German as the language of the proceedings (§ 184a(5) GVG), the subsequent involvement of third parties in English language proceedings (§ 184a(4) GVG, § 607 ZPO) and the translation of English language judgments (§ 608 ZPO). The details are beyond the scope of this Article—and most likely of little interest for the international reader.⁶⁸ Suffice to say that the German legislature manages to adequately address most of the problems that may arise when proceedings are conducted in English in an otherwise German context. This holds particularly true for the subsequent involvement of third parties that have not agreed to the use of English as language of the proceedings. Whereas earlier drafts effectively gave third parties the right to request that proceedings are continued in German,⁶⁹ the final version only allows third parties to ask for a translator (§ 184(4) GVG). Equally reasonable are the provisions that deal with the translation of English judgments. They distinguish two cases. If the judgment is meant to be published, it has to be translated in full and at the

⁶⁷ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 404.

⁶⁸ For a detailed discussion (in German) see Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 405 *et seq.*

⁶⁹ Gesetzentwurf des Bundesrates [Draft Law of the Federal Council], *Entwurf eines Gesetzes zur Stärkung der Gerichte in Wirtschaftsstreitigkeiten*, BUNDESRATS-DRUCKSACHE [BR] 79/22, 5 *et seq.* (§ 183(3) GVG-E) (Ger.).

expense of the state (§ 608(3) ZPO). If, in contrast, the judgment is not meant for publication, but “merely” for enforcement, any translation will only extend to the header (*Rubrum*) and the court’s ruling (*Urteilsformel* or *Tenor*), but not to the summary of facts (*Tatbestand*) and the legal reasoning (*Entscheidungsgründe*).⁷⁰ This is because the enforcement authorities will only need to know the names of the parties involved and the obligations that follow from the judgment.

B. New Specialized Judicial Bodies for High-Volume Commercial Disputes

The introduction of English as court language is without any doubt an important building block of the Law on the Strengthening of Germany as a Place to Settle (Commercial) Disputes. Even more important, however, is the second innovation that the new Law brings:⁷¹ the establishment of specialized senates for the settlement of high-volume commercial cases (whether international or not) at the higher regional courts (*Oberlandesgerichte*). Referred to as commercial courts these senates will hear (certain) commercial cases in *first* instance if the parties so wish (§ 119b(1) GVG). According to the legislature they serve two aims: First, they are meant to foster the specialization of the German judiciary and to build confidence in the ability of German courts to handle high-volume commercial disputes. Specifically, they seek to offer businesses a dispute resolution mechanism that resembles arbitration in terms of specialization. Second, commercial courts are meant to speed up legal proceedings by allowing parties to initiate their case at the higher regional court level with appeal to the Federal Court of Justice only, thus limiting the proceedings to two instances (instead of three).⁷²

⁷⁰ The structure and content of a judgment is determined by ZPO § 313(1). With regards to the header ZPO § 313(1) No. 1 to 3 stipulates that it must designate the (1) court and the names of the judges, (2) the names of the parties and their attorneys and (3) the end date of the oral hearing. Details regarding the summary of facts and the legal reasoning are to be found in ZPO § 313(2) and (3).

⁷¹ Wagner, *supra* note 53, at 224 calls these provisions the “flagship” of the new Law.

⁷² As indicated earlier higher regional courts are usually not competent to hear cases in first instance. Still, first instance competence of higher regional courts is not unheard of. According to § 118 GVG, e.g., higher regional courts have jurisdiction to hear and rule in first instance on model proceedings under the Act on Model Proceedings in Capital Markets Law Disputes (*Kapitalanlegermusterverfahrensgesetz—KapMuG*). And according to § 3(1) of the Consumer Rights Enforcement Act (*Verbraucherrehtedurchsetzungsgesetz—VDuG*) higher regional courts are competent

In this section we will first elaborate on the way commercial courts will be established (*infra* 1) before discussing the special jurisdictional and procedural rules that will govern their proceedings (*infra* 2 and 3).

1. Establishment by the Federal States

Regarding the establishment of commercial courts, the new Law follows the same approach as for the English language commercial chambers to be created at the regional court level.⁷³ Rather than establishing the courts themselves, it grants federal states the authority to do so (§ 119b(1) GVG) recognizing that—due to regional and economic differences—not all federal states require special senates for high-volume disputes.⁷⁴ In addition—and again as with the English language commercial chambers—the new law allows the federal states to cooperate and to establish commercial courts across state borders (§ 119b(6) GVG). At least theoretically, federal states could, therefore, get together and create a single commercial court for the whole of Germany—a German Commercial Court. Unfortunately, however, this is not what will happen. Indeed, a number of states, namely Baden-Württemberg, Berlin, Bremen, Hamburg, Hesse, and North Rhine-Westphalia have already announced that they will establish commercial courts in accordance with the new law.⁷⁵ It should be noted, however, that

to hear first instance representative actions (class actions) brought by consumer protection entities on behalf of consumers.

⁷³ See *supra* Section III.A.

⁷⁴ See Gesetzentwurf der Bundesregierung [Draft Law of the Federal Government], *Entwurf eines Gesetzes zur Stärkung des Justizstandortes Deutschland durch Einführung von Commercial Courts und der Gerichtssprache Englisch in der Zivilgerichtsbarkeit (Justizstandort-Stärkungsgesetz)*, BUNDESTAGSDRUCKSACHE (BT) 20/8649, 24.

⁷⁵ See *Kabinett ebnet Weg für nächstes Kapitel der Erfolgsgeschichte Commercial Court*, BADEN-WÜRTTEMBERG MINISTERIUM DER JUSTIZ UND FÜR MIGRATION (Jan. 4, 2025), <https://jum.baden-wuerttemberg.de/de/presse-service/presse/pressemitteilung/pid/kabinett-ebnet-weg-fuer-naechstes-kapitel-der-erfolgsgeschichte-commercial-court>; *Neues Expertengericht: Heute startet am Kammergericht der Commercial Court Berlin*, BERLIN (Jan. 4, 2025), <https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2025/pressemitteilung.1547078.php>; *Die Senatorin für Justiz und Verfassung*, FREIE HANSESTADT BREMEN (Jan. 4, 2025), <https://www.senatspressestelle.bremen.de/pressemitteilungen/richterliche-spezialkompetenz-fuer-internationale-wirtschaftsstreitigkeiten-465773>; *Commercial Courts kommen*, HAMBURG.DE, <https://www.hamburg.de/politik-und-verwaltung/behoerden/bjv/themen/rechtspolitik/commercial-courts-933452> (last visited May 12, 2025); *Commercial Court und Commercial Chambers in Frankfurt*, JUSTIZ.HESSEN.DE, <https://justizministerium.hessen.de/commercial-court> (last visited May 12, 2025); *Justiz in Nordrhein-*

other countries that have recently established specialized bodies for the resolution of (international) commercial disputes have decided to set up only one such body each. Examples include the Netherlands (with the Netherlands Commercial Court)⁷⁶ and Singapore (with the Singapore International Commercial Court).⁷⁷ In both countries, the singularity of the newly created special court has significantly boosted its international visibility.

The new law finally also leaves almost all details regarding the establishment of commercial courts to the states. Federal states may, therefore, decide how many commercial courts, i.e., specialized senates they wish to establish (§ 119b(1) Sentence 1 GVG). And they may choose to set up commercial court(s) only for certain subject matters (§ 119b(1) Sentence 2 GVG).⁷⁸ However, there is one important limit on the states' authority to set up commercial courts: states that have more than one higher regional court⁷⁹ may establish commercial courts at only one of them (§ 119b(1) Sentence 1 and (3) GVG). And while this limitation may seem unnecessarily rigid,⁸⁰ it is based on the well-founded rationale that concentrating commercial courts in a single location enhances their national and international visibility.⁸¹ In addition, concentrating commercial courts helps to ensure that they receive a sufficient number of cases, promoting specialization and the development of a specialized legal profession.

Westfalen führt Commercial Court und Commercial Chambers ein, DIE LANDESREGIERUNG NORDRHEIN-WESTFALEN (Mar. 12, 2025), <https://www.land.nrw/pressemitteilung/justiz-nordrhein-westfalen-fuehrt-commercial-court-und-commercial-chambers-ein>; see also Soldt, *supra* note 58.

⁷⁶ See Eddy Bauw, *Commercial Litigation in Europe in Transformation: The Case of the Netherlands Commercial Court*, 9 ERASMUS L. REV. 15 (2019); Harriët Schelhaas, *The Brand New Netherlands Commercial Court: A Positive Development?*, in INTERNATIONAL BUSINESS COURTS: A EUROPEAN AND GLOBAL PERSPECTIVE 46 (Xandra Kramer & John Sorabji eds., 2019); Jeroen A. van der Weide, *The Netherlands Commercial Court: Its Challenges and Perspectives*, in DISP. RESOL. CHINA, EUR. WORLD 81 (Lei Chen & André Janssen eds., 2020).

⁷⁷ See Kwan Ho Lau, *Singapore*, in NEW INTERNATIONAL COMMERCIAL COURTS: A COMPARATIVE PERSPECTIVE 411, 414 *et seq.* (Man Yip and Giesela Rühl eds., 2024) for a detailed presentation.

⁷⁸ For a more detailed discussion of the subject-matter jurisdiction of commercial courts follows, see *infra* III.B.2.b.

⁷⁹ This holds true for Baden-Württemberg, Bavaria, Lower Saxony, North Rhine-Westphalia, and Rhineland-Palatinate. In contrast, the states of Hamburg, Berlin, Bremen, Brandenburg, Hesse, Mecklenburg Western Pomerania, Saxony, Saxony-Anhalt, Schleswig Holstein, and Thuringia each have only one higher regional court. See *Übersicht der Gerichte des Bundes und der Länder*, BUNDESAMT FÜR JUSTIZ (Sept. 12, 2024), https://www.bundesjustizamt.de/SharedDocs/Downloads/DE/Justizstatistiken/Gerichte_Bund_Laender.pdf?__blob=publicationFile&v=7.

⁸⁰ Torsten Henning, *Bundesweite Einführung von Commercial Courts—der Referentenentwurf zur Stärkung des Justizstandorts Deutschland*, Jm 273, 276 (Ger.).

⁸¹ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 411.

2. *Jurisdictional Requirements*

If and to the extent that federal states make use of their powers under the new law to establish commercial courts, parties will be able to settle their disputes in the first instance at the higher regional courts. However, just like commercial chambers cannot simply go ahead and conduct English language proceedings, commercial courts cannot just go ahead and settle any commercial dispute. Rather, they may only become active if three requirements are met (none of which is beyond doubt). First, parties must agree to settle their dispute before a commercial court (§ 119b(1) Sentence 1 GVG). Second, the dispute must concern certain subject matters (§ 119b(1) Sentence 1 Nos. 1 to 3 GVG). Third, the dispute must have a value of more than € 500.000,00 (§ 119b(1) Sentence 1 GVG).

a. Agreement to Settle a Dispute Before a Commercial Court

The first requirement is probably the most straightforward. In fact, most jurisdictions that have recently established specialized bodies for the settlement of international commercial disputes require parties to agree on the jurisdiction of these bodies in one form or another.⁸² However, it is important to note some international commercial courts may also hear cases based on other (objective) grounds of jurisdiction. The French International Chamber in Paris and the Singapore International Commercial Court, for example, have the authority to hear all arbitration-related cases.⁸³ The Chinese International Commercial Courts as well as the Singapore International Commercial Court may hear cases that are transferred to the international commercial court from other domestic courts or divisions.⁸⁴ These rules may ensure that international commercial courts have a sufficient number of cases to develop expertise and reputation. It is, therefore, to be regretted that the German legislature did not adopt proposals to introduce

⁸² Yip & Rühl, *supra* note 31, at 29 *et seq.*

⁸³ Gustavo Cerqueira, *France*, in NEW INTERNATIONAL COMMERCIAL COURTS. A COMPARATIVE PERSPECTIVE 247, 251 (Man Yip & Giesela Rühl eds., 2024); Lau, *supra* note 77, at 416.

⁸⁴ Huo, *supra* note 54, at 181 *et seq.*; Lau, *supra* note 77, at 416.

similar rules into the new German law but instead chose to limit the jurisdiction of the commercial courts to cases based on party consent.⁸⁵

The requirements that an agreement to settle a dispute before a German commercial court must meet follows the example of other jurisdictions and does not place too heavy a burden on the parties. In fact, the agreement can be made expressly or implicitly and without the need to comply with any formal requirements (§ 119b(2) Sentence 1 GVG). In addition, the plaintiff may request a hearing before the commercial court in the statement of the claim, even without any prior agreement. Commercial courts will then be allowed to hear the case if the respondent submits a statement of defense without objecting (§ 119b(2) Sentence 3 GVG). Finally, a case can be transferred from another court to a commercial court upon the request of one party if the other party agrees (§ 611(1) ZPO). In light of all this, establishing that the parties have agreed to settle a dispute before a commercial court should not present significant difficulties.

The agreement to settle a case before a commercial court may, however, raise problems if the dispute is international in nature. In this case, the agreement to settle a dispute before a commercial court must be understood to also determine the international jurisdiction of German courts. International jurisdiction of German courts, however, is very often governed by European or international rules—such as the Brussels Ia Regulation⁸⁶ or the Hague Choice of Court Convention.⁸⁷ These rules supersede German law and very often establish certain form requirements for international choice of court agreements.⁸⁸ It may, therefore, happen that parties validly agree to

⁸⁵ It should be noted, however, that the German Federal Government published a draft law aimed at reforming the German law of arbitration in June 2024 that, had been adopted, would have conferred jurisdiction for all arbitration related matters to the commercial courts (following the French and the Singapore examples). However, the draft law was not adopted before the federal elections of February 2025. It remains to be seen whether it will be reintroduced by the new government coalition. See *RefE: Entwurf eines Gesetzes zur Einführung eines Leitentscheidungsverfahrens beim Bundesgerichtshof*, BUNDESMINISTERIUM DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ (June 14, 2023), https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/RefE/RefE_Leitentscheidungsverfahren.html for the text of the draft law.

⁸⁶ Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast), 2012 O.J. (L 351), 1.

⁸⁷ Convention on Choice of Court Agreements; 30 June 2005 Trb. 2005, 37.

⁸⁸ According to Article 25 of Regulation No 1215/2012, a choice of court agreement shall be either in writing (including communication by electronic means which provides a durable record of the

settle their dispute before a German commercial court pursuant to § 119b(2) Sentence 1 GVG, but fail to enter into a valid jurisdiction agreement pursuant to the Brussels Ia Regulation or the Hague Choice of Court Convention. When drafting an agreement to settle an international case before a German commercial court, parties and their counsel must therefore carefully consider the form requirements established by European and international law.

b. Dispute that Concerns Certain Subject Matters

In addition to an agreement by the parties, jurisdiction of commercial courts requires that the case in question concern certain subject matters. Specifically, § 119b(1) Sentence 1 Nos. 1 to 3 GVG provides that the commercial courts may only hear: (1) disputes between two or more companies, (2) disputes arising from or in connection with the acquisition of a company or shares in a company, and (3) disputes between a company and the members of the management body or the supervisory board. The commercial courts' subject-matter jurisdiction is, thus, limited to core commercial disputes that are currently not (at least not primarily) handled by German courts, but by foreign courts or arbitration tribunals. By allowing commercial courts to focus on these disputes, the legislature clearly tries to lure them back into the state court system.

It is to be regretted, however, that the commercial courts' subject matter jurisdiction does not extend to disputes regarding the validity or legality of resolutions by shareholders or company bodies as well as corporate law proceedings with *erga omnes* effect.⁸⁹ This is because it remains unclear whether these disputes are actually arbitrable.⁹⁰ Including them in the list of

agreement) or evidenced in writing in a form which accords with practices which the parties have established between themselves or, in international trade or commerce, "in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned." According to Art. 3 lit. c of the Convention on Choice of Court Agreements, a choice of court agreement shall be in writing or be communicated by any other means "which renders information accessible so as to be usable for subsequent reference." For a more detailed discussion of the problems that may arise in international cases, see Klink, *supra* note 53, at 354 *et seq.*

⁸⁹ Klink, *supra* note 53, at 352.

⁹⁰ See Jochem Reichert & Jakob Groh, *Die Schiedsbarkeit von Beschlussmängelstreitigkeiten: Der 'Vierteiler' des BGH und seine Auswirkungen auf die Gestaltungspraxis nach Inkrafttreten des MoPeG*,

§ 119b(1) GVG would, therefore, have sent a clear signal to business parties that the commercial courts are willing and able to deal with all kinds of corporate law disputes. Well-founded, in contrast, is the exclusion of disputes relating to industrial property rights, copyright and unfair competition (§ 119(1) Sentence 1 No. 1 GVG). This is because the caseloads of German state courts in these disputes have not diminished in recent years. On the contrary, German regional courts have developed into internationally recognized centers of expertise in these fields.⁹¹ It follows that there is no need for additional specialized courts.⁹²

c. Dispute with a Value of More than € 500.000,00

The last requirement that needs to be met before a commercial court can become active relates to the value in dispute. In order to prevent commercial courts from being flooded with cases that do not need special treatment for want of complexity, they may only hear disputes that are worth € 500,000.00 (roughly U.S. \$ 550,000.00), or more (§ 119(1) Sentence 1 GVG). As a consequence, only parties with high value disputes will have access to the commercial courts. This is problematic for several reasons.⁹³ First, it is unclear whether a reference to the value of the dispute is actually able to distinguish complex from less complex cases. Second, any fixed threshold will create unfairness at the margin, as disputes with a value of slightly less than € 500,000.00 will not be allowed to go to the commercial courts. Third, requiring a minimum value can lead to uncertainty because the value of a dispute may not always be clear *ex ante* when the contract is concluded. Fourth, a fixed threshold may create the impression of a two-tier justice

ZPG 121 (2023); Bundesgerichtshof [BGH] [Federal Court of Justice] Sept. 23, 2021, Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 14, 15 (Ger.).

⁹¹ This is particularly true for the courts in the city of Düsseldorf. See Rupprecht Podszun & Tristan Rohner, *Staatliche Gerichte für wirtschaftsrechtliche Streitigkeiten stärken: Ein "Düsseldorf Commercial Court" als Antwort auf den Brexit*, JURISTISCHE FAKULTÄT, Nov. 2017, at 2, 5.

⁹² See Gesetzentwurf der Bundesregierung, *supra* note 74, at 24–25.

⁹³ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 415. For a more detailed discussion, see Wolff, *supra* note 62, at 213 (regarding an earlier draft of the law). For an equally critical account, see Markus Burianski & Lisa Fleckenstein, *Gelingt die Aufholjagd zugunsten des Justizstandorts Deutschland?*, ZRP 162, 163 (2023); Adriaan den Hertog, *Das Justizstandort-Stärkungsgesetz—Innovation für bedeutsame internationale Wirtschaftsstreitigkeiten in Deutschland?*, GWR 207, 209 (2023); Klink, *supra* note 53, at 353. For a more positive view, see Wagner, *supra* note 53, at 226 *et seq.*

system, in which there are “luxury” courts for the rich and “ordinary” courts for the poor.⁹⁴ Finally, there is a risk that the commercial courts will not receive enough cases to build up expertise and thus reputation.⁹⁵

Against this background, it would have been better to follow the example of France, Singapore, and London by opening commercial courts for all commercial cases regardless of the amount in dispute.⁹⁶ At the very least, the legislature should have set the limit much lower.⁹⁷ The Netherlands Commercial Court, for example, hears cases with an amount in dispute of more than € 25,000.00 (roughly U.S. \$ 27,000.00).⁹⁸ One may take comfort in the fact that the threshold was originally intended to be set at € 2 million (roughly U.S. \$ 2.2 million).⁹⁹ In addition, the German legislature is required to assess, after five years, whether the threshold served its intended purpose—or whether it can be abolished.¹⁰⁰

⁹⁴ Adapted from Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 415. In Belgium, a similar project was dismissed for that reason. Geert Van Calster, *The Brussels International Business Court: A Carrot Sunk by Caviar*, *INTERNATIONAL BUSINESS COURTS* 107 *et seq.* (Xandra Kramer & John Sorabji eds., 2019).

⁹⁵ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 415. This is also the view shared by the Chairman of the German Chamber of Commerce and Industry. See Freudenberg, *supra* note 4.

⁹⁶ See the corresponding proposal that were made during the legislative process: Entwurf eines Gesetzes zur Einführung eines Leitentscheidungsverfahrens beim Bundesgerichtshof: Drucksachen (BT) 20/13025 (Ger.); Entwurf eines Gesetzes zur Stärkung des Justizstandortes Deutschland durch Einführung von Commercial Courts und der Gerichtssprache Englisch in der Zivilgerichtsbarkeit (Justizstandort-Stärkungsgesetz): Drucksachen (BT) 20/11466 (Ger.); see also Giesela Rühl, *Öffentliche Anhörung im Rechtsausschuss des Deutschen Bundestages*, BUNDESTAG.DE (Mar. 1, 2023), <https://www.bundestag.de/resource/blob/935814/11a528400da8ad104591511ad1a7c5b0/Stellungnahme-Ruehl.pdf>; Giesela Rühl, *Öffentliche Anhörung im Rechtsausschuss des Deutschen Bundestages*, BUNDESTAG.DE 4 *et seq.* (Dec. 13, 2023), <https://www.bundestag.de/resource/blob/982646/1ce622797cfff0e9a02d99db3e51184/Stellungnahme-Ruehl.pdf>; Reinmar Wolff, *Stärkung der Ziviljustiz in internationalen Wirtschaftsstreitigkeiten durch Einrichtung von Commercial Courts*, BUNDESTAG.DE 17 *et seq.* (Mar. 1, 2023), <https://www.bundestag.de/resource/blob/935862/e7f491fd2bff44e2b9d886c246421dfc/Stellungnahme-Wolff.pdf>.

⁹⁷ See Wolff, *supra* note 62, at 214.

⁹⁸ The Netherlands Commercial Court has no jurisdiction for cases that fall into the jurisdiction of the Subdistrict Court (*kantonrechter*). Reglement voor de internationale handelskamers van de rechtbank Amsterdam (NCC District Court) en het gerechtshof Amsterdam (NCC Court of Appeal) 31 december, 2024, Stcrt. 2024, 3.

⁹⁹ See Gesetzentwurf des Bundesrates, *supra* note 69.

¹⁰⁰ See Gesetzentwurf der Bundesregierung, *supra* note 74, at 24.

3. Arbitration-Style Proceedings

As pointed out above, the most interesting feature of the commercial courts is that they may hear high-volume commercial cases in first instance, thus streamlining and shortening civil proceedings. In addition, commercial courts will benefit from special rules of procedure that will allow them to proceed in a more arbitration-style fashion. It follows that commercial courts will not only offer more specialized legal services, but also legal services that are more aligned with the needs and expectations of international commercial parties. International commercial courts “made in Germany” will, thus, follow in the footsteps of other international commercial courts, notably the Singapore International Commercial Court¹⁰¹ by adding to the “arbitralization”¹⁰² of state courts.

In the remainder of this section, we will shed light on the special rules of procedure that are modelled on international commercial arbitration, namely the requirement to hold a case management conference and the preparation of a verbatim record of the proceedings. However, for the sake of completeness, we should note that commercial courts will be subject to two further special rules of procedure. First, commercial courts will be allowed to conduct their proceedings entirely in English in accordance with the rules that also apply to the commercial chambers (§ 184(1) Sentence 1 No. 2 GVG).¹⁰³ Second, appeals against judgements of the commercial courts will be admissible without any further requirements. In particular—and deviating from the general rule (§ 543 ZPO)¹⁰⁴—there will be no need for either the higher regional court or the Federal Court of Justice to allow the appeal.¹⁰⁵ Parties can, therefore, be sure that they will have access to the

¹⁰¹ Yip & Rühl, *supra* note 33, at 38 *et seq.*; Yip & Rühl, *supra* note 31, at 53 *et seq.* See Antonopoulou, *supra* note 18, at 333; Dalma Demeter & Kayleigh Smith, *The Implications of International Commercial Courts on Arbitration*, 33 J. INT’L ARB. 441 (2016); Lau, *supra* note 77, at 414 *et seq.*

¹⁰² See Antonopoulou, *supra* note 18, at 328; Bookman, *supra* note 18, at 276 ff.; Pamela Bookman, *Arbitral Courts*, 61 VA. J. INT’L L. 161, 179 (2021). On the convergence of arbitration and civil procedure, see Giesela Rühl, *The (Changing) Role of Default Rules in Civil Procedure and Arbitration*, DEFAULT RULES IN PRIV. L. (Birke Häcker & Johannes Ungerer eds., forthcoming 2025).

¹⁰³ See *supra* III.A.

¹⁰⁴ See also *supra* II.A.

¹⁰⁵ According to § 543(1) ZPO, an appeal to the Federal Court of Justice is only admissible if is admitted by either the higher regional court or by the Federal Court of Justice (upon request of the parties).

highest German court in civil matters.¹⁰⁶ At the same time, the Federal Court of Justice will be put in a position to contribute to the development of core areas of commercial law.¹⁰⁷

a. Mandatory Case Management Conference

In international commercial arbitration, it is standard practice to kick off the proceedings with a case management conference. During that conference, arbitrators, parties, and their counsel identify the legal issues to be discussed and determine how to conduct the proceedings. They agree on the deadlines for submission of party briefs and the dates for the oral hearings. German courts, in contrast, organize court proceedings in a step-by-step fashion and without laying out a schedule for the proceedings at the very beginning. As a result, parties very often struggle to determine when they need to file briefs or be available for oral hearings, which necessarily leads to delays. The new German Law, therefore, draws inspiration from international commercial arbitration and imposes an obligation on commercial courts to also kick off with a case management conference (§ 612 Sentence 2 ZPO). Specifically, it requires commercial courts to meet with the parties and their counsel as early as possible to reach a binding agreement on the organization and the conduct of the proceedings.

It is worth noting that the new provision would not have been necessary: According to the German law of civil procedure, German courts are generally expected to take an active role in managing proceedings (§§ 136, 139 ZPO). Therefore, nothing would have prevented them from starting the proceedings with a case management conference. Yet, with the notable exception of the

According to § 543(2) ZPO, an appeal has to be admitted if the case is of fundamental importance or if a decision by the Federal Court of Justice is necessary to further the development or to ensure uniform application of the law.

¹⁰⁶ Riehm, *supra* note 62, at 1566; Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 420. See for a more critical account Burianski & Fleckenstein, *supra* note 93, at 163; Grunwald, *infra* note 112, at 1461; Henning, *supra* note 80, at 277; Jochem Reichert & Jakob Groh, *Lehren aus der Schiedsgerichtsbarkeit für staatliche Commercial Courts. Ein Zwischenruf aus der Praxis*, NZG 1007, 1009 *et seq.* (2023); Rudi Ruks, *Neuer Aufschlag in Sachen "Commercial Courts"—Der Referentenentwurf des Bundesministeriums der Justiz*, JURISPR-IWR para. 1 (3/2023); Wolff, *supra* note 62, at 216.

¹⁰⁷ See Riehm, *supra* note 62, at 1566 Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 420.

international chambers established at the regional courts in Mannheim and Stuttgart,¹⁰⁸ they simply did not do it. It is, therefore, a welcome development that the new law formally introduces a case management obligation.¹⁰⁹ However, given that German courts have no tradition of engaging in case management, it is to be regretted that the German legislature did not decide to provide more detailed guidance on how to actually conduct the case management conference. In fact, it would have been a good idea to follow international arbitration practice¹¹⁰ and to stipulate, at a minimum, that the case management conference should be used to establish binding deadlines for written submissions, to set the date of the oral hearing, and to identify the legal issues to be discussed.¹¹¹ In addition, it should have expressly been mentioned that the case management conference can be conducted digitally using video conferencing tools.¹¹²

Finally, it is also to be regretted that the German legislature decided to limit the case management obligation to the commercial courts and, more specifically, to cases where they serve as court of first instance.¹¹³ Indeed, there can be little doubt that all civil proceedings—whether first- or second-instance, whether international, commercial, high-volume or not—benefit from good case management.¹¹⁴ It would, therefore, have been better to extend the obligation to hold a case management conference to all German

¹⁰⁸ For a more detailed presentation of the commercial chamber in Stuttgart, see Patrick Melin, *Der neue Stuttgart Commercial Court—eine Antwort, auf die Herausforderung, internationale Wirtschaftsstreitigkeiten vor staatliche Gerichte zu bringen*, MANZ 2702 (Nov. 23, 2020); *Der Commercial Court Baden-Württemberg*, COM. CT. BADEN WÜRTTEMBERG, <https://www.commercial-court.de/commercial-court> (last visited Apr. 2, 2025).

¹⁰⁹ Henning, *supra* note 80, at 278; Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 419.

¹¹⁰ See, e.g., 2021 ICC Arbitration Rules, INT'L CHAMBER OF COM. Appendix IV, <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/> (last visited May 14, 2025.)

¹¹¹ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 418 *et seq.*

¹¹² Anne Grunwald, *Das Justizstandort-Stärkungsgesetz (RefE): Wird der Gerichtsstandort Deutschland attraktiver für internationale Wirtschaftsstreitigkeiten?*, DB 1459, 1461 (2023) (regarding an earlier draft of the law); Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 419.

¹¹³ According to Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 612, https://www.gesetze-im-internet.de/zpo/_612.html (Ger.), commercial courts must hold a case management conference when they hear cases *in first instance* thus excluding, on its face, cases where the commercial courts serve as second instance court.

¹¹⁴ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 418; see also Riehm, *supra* note 62, at 1565; Wolff, *supra* note 62, at 215 (regarding an earlier draft of the law).

courts and all court proceedings. One may take comfort in the fact that the German legislature, in the last stages of the legislative process, at least decided to extend the case management obligation to the English language commercial chambers to be established by the states at the regional courts level.¹¹⁵ It follows that at least all international cases will benefit from binding agreements as regards the organization and the conduct of the proceedings.

b. Verbatim Records of the Oral Hearing

Next to the case management conference it is an important prerogative of international commercial arbitration that there will be verbatim records of the oral hearing.¹¹⁶ In German civil courts, in contrast, the records of the oral hearing traditionally consist of a summary that is prepared by the presiding judge (and dictated during the oral hearing).¹¹⁷ And while German lawyers very often consider this as an efficient way to proceed,¹¹⁸ foreign parties, especially those who would usually go to arbitration to settle their disputes, find that practice surprising, to say the least. The new Law, therefore, stipulates that parties may request that the records of the proceedings be prepared as *verbatim* records—and not as mere summary (§ 613(1) Sentence 1 ZPO).¹¹⁹ As this corresponds to the expectations of the parties the change is generally to be welcomed.

The provision is nonetheless not without flaws. First, just as the newly introduced obligation to hold a case management conference, the obligation to prepare a verbatim record of the oral hearing is limited to the commercial courts and the commercial chambers if they act as first instance courts.¹²⁰ However, it is unclear why parties should not be allowed to request a verbatim record in other proceedings. Admittedly, not all parties will want a verbatim record and not all civil proceedings will need one. But as long as

¹¹⁵ Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 612, sentence 2, https://www.gesetze-im-internet.de/zpo/_612.html (Ger.).

¹¹⁶ Fay, Shingler & Kleinschmitt, *supra* note 53, at 96; WAGNER, *supra* note 2, at 223; Wolff, *supra* note 62, at 216.

¹¹⁷ WAGNER, *supra* note 2, at 223 *et seq.*

¹¹⁸ See Henning, *supra* note 80, at 278.

¹¹⁹ Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 613, para. 1, sentence 1, https://www.gesetze-im-internet.de/zpo/_613.html (Ger.).

¹²⁰ See *id.*

the parties bear the costs of producing the verbatim record, there is no reason to deny them one. Second, § 613(1) ZPO does not only establish a right of the parties to request a verbatim record of the proceedings. It establishes a right of the parties to request a *real-time* record, i.e., a record that is prepared during the oral hearing in real time and either directly displayed in the courtroom or sent to the parties' digital devices. As a result, parties have a right to the most sophisticated and, hence, most expensive form of a verbatim record, whereas a simple verbatim record that is sent to the parties in writing after the oral hearing will only be prepared if both parties unanimously waive their right to a real-time record. In order to save scarce resources and money, it would have been better to make the simple verbatim record the rule—and the real-time record the exception.¹²¹ Third, according to § 613(1) ZPO, a verbatim record of the oral hearing requires a joint application by *both* parties.¹²² However, this effectively gives each party a veto right which it can strategically use as a bargaining chip. The German legislature would, therefore, have been well-advised to require a verbatim record upon the request of only one party.¹²³ Finally, § 613(1) ZPO does not specify how the record of the oral hearing will have to be drawn up. Section 613(2) ZPO, however, regulates in detail which persons may be entrusted with the preparation of the records—suggesting that it will have to involve a human being.¹²⁴ Clearly, this does not do justice to the technical possibilities of today, let alone the future. It would, therefore, have been better to state explicitly that the verbatim records may be produced with the help of appropriate technological tools.¹²⁵

¹²¹ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 420 *et seq.*; *see also* Riehm, *supra* note 62, at 1565 *et seq.*; Wolff, *supra* note 62, at 216 (both regarding an earlier draft of the law).

¹²² Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 613, para. 1, sentence 1, https://www.gesetze-im-internet.de/zpo/_613.html (Ger.).

¹²³ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 420 *et seq.*; *see also* Riehm, *supra* note 62, at 1566; Wolff, *supra* note 62, at 216 (both regarding an earlier draft of the law).

¹²⁴ Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 613, para. 2, https://www.gesetze-im-internet.de/zpo/_612.html (Ger.).

¹²⁵ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 421; *see also* Wolff, *supra* note 62, at 216 (regarding an earlier draft of the law).

C. Enhanced Protection of Business Secrets

This brings us to the last innovation of the new Law: the protection of trade secrets. It stands out from the other two innovations—particularly regarding the procedural innovations relating to the case management conference and the right to a verbatim record of the oral hearing—in that it is *not* limited to certain chambers or senates (to be established by the federal states on the basis of the new Law). Instead, it applies to *all* civil courts and all civil proceedings. In fact, according to § 273a ZPO, all parties may apply to the court for protection of information that qualifies as a trade secret within the meaning of the German Act on the Protection of Trade Secrets (*Gesetz zum Schutz von Geschäftsgeheimnissen—GeschGehG*).¹²⁶ If the court grants the application, all information classified as a trade secret must be kept confidential during and after the proceedings.¹²⁷ In addition, the court may restrict access to confidential information at the request of a party and exclude the public from the oral hearing.¹²⁸ The last innovation, thus, accounts for the parties' legitimate interests in protecting their business secrets without unduly restricting the public nature of civil proceedings, which is one of the fundamental pillars of German civil justice. At the same time, it borrows—again—an important feature from arbitration. However, since the new rules are concerned with the protection of trade secrets only, they do not guarantee the confidentiality of the proceedings as such. As a result, the parties cannot request that the fact that there is a court case at all be kept secret.¹²⁹

IV. CONCLUSION AND OUTLOOK, OR: EXPECTATION MANAGEMENT

The preceding analysis shows that the Law on the Strengthening of Germany as a Place to Settle (Commercial) Disputes brings a number of important innovations to the German civil justice system. Above all, it introduces English as a court language and establishes special judicial bodies for the resolution of (international) high-volume commercial disputes that will conduct proceedings in a more arbitration-style way. The new Law, thus, lays the foundation for the establishment of international commercial courts that actually deserve that name.¹³⁰ And despite criticism that can and must be leveled against some provisions, the new Law will improve the framework for litigating high-volume (international) commercial disputes.¹³¹ However, there are two caveats:

A. Implementation by the States Necessary

The first caveat has its root in the Law itself. As it places the burden to establish commercial chambers and commercial courts on the federal states, the extent to which it will be possible for civil court proceedings to be conducted entirely in English and the extent to which there will be specialized senates for high-volume commercial disputes will depend on whether the federal states will exercise their powers.¹²⁶ In addition, the practical success of the Law will depend on whether the federal states will make the necessary investments to allow commercial chambers and commercial courts to strive.¹²⁷ For example, they will need to make sure that commercial chambers and commercial courts are staffed with qualified judges who have the necessary professional and linguistic qualifications and, ideally also, practical experience to settle high-volume (international) commercial disputes. In addition, they will have to ensure that judges have sufficient time to deal with complex (national and international) cases. Finally, federal states will have to ensure that sufficiently large and technically well-equipped hearing rooms are available for the kind of high-

¹²⁶ Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 273a, https://www.gesetze-im-internet.de/zpo/_273a.html (Ger.); Gesetz zum Schutz von Geschäftsgeheimnissen [GeschGehG] [German Act on the Protection of Trade Secrets], Mar. 18, 2022, BUNDESGESETZBLATT, TEIL I [BGBl. I] at 466 (Ger.).

¹²⁷ Gesetz zum Schutz von Geschäftsgeheimnissen [GeschGehG] [German Act on the Protection of Trade Secrets], Mar. 18, 2022, BGBl. I at 466, §§ 16(2), 18.

¹²⁸ *Id.* § 19.

¹²⁹ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 421 *et seq.*; see also Reichert & Groh, *supra* note 106, at 1011; Riehm, *supra* note 62, at 1569 *et seq.* (regarding an earlier draft of the law).

¹³⁰ See Yip & Rühl, *supra* note 33, at 9 *et seq.* (providing a more detailed discussion of the essential and distinguishing features of international commercial courts).

¹³¹ Fay, Shingler & Kleinschmitt, *supra* note 53, at 98; Klink, *supra* note 53, at 355; Rühl, *supra* note 53, at 421 *et seq.*; Wagner, *supra* note 53, at 229. Freudenberg, *supra* note 4; see also Maximilian Bülow, *Commercial Courts für den deutschen Zivilprozess BMJ will englischsprachige Prozessführung in Wirtschaftsstreitigkeiten ermöglichen*, DB M4-M5 (2023); den Hertog *supra* note 93, at 209; Henning, *supra* note 80, at 279; Hilmar Raeschke-Kessler, *Schiedsgerichtsbarkeit und Commercial Courts*, SCHIEDSVZ 158, 164 (2023); Riehm, *supra* note 62, at 1570; Wolff, *supra* note 62, at 223.

¹³² Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 422 *et seq.* See also Riehm, *supra* note 62, at 1570; Wolff, *supra* note 62, at 223 *et seq.* (regarding an earlier draft of the law).

¹³³ Klink, *supra* note 53, at 355; Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 422 *et seq.* See also Riehm, *supra* note 62, at 1570; Wolff, *supra* note 62, at 222 *et seq.* (regarding an earlier draft of the law).

volume disputes that they seek to attract. Should federal states not be willing to make these kinds of investments, commercial chambers and commercial courts will most likely be of limited use.

B. Limited International Impact

The second caveat concerns the likely success of the new Law with regards to *international* disputes. In fact, even if the federal states implement the new Law in a perfect manner, i.e., even if they establish a sufficient number of commercial chambers and commercial courts and even if they make the investments described above, German courts will continue to be less attractive for most business parties than leading foreign courts or international commercial arbitration.¹³⁴ For example, unlike in arbitration, the parties have no influence on the judges who get to decide their dispute. As a consequence, they have to live with the fact that their international legal dispute is decided exclusively by German (national) judges who will rarely be as specialized as arbitrators handpicked to settle a specific dispute.¹³⁵ In addition, digital communication and technical equipment of German courts is far behind what has been standard in arbitration for many years.¹³⁶ And finally, one must not forget that there is no uniform legal framework for state judgments that would ensure their uncomplicated worldwide recognition and enforcement.¹³⁷

However, the law will also fail to be a resounding success because it ignores the fact that the attractiveness of German courts largely depends on the attractiveness of German law.¹³⁸ To be sure, German courts may also apply foreign law. However, their real expertise—and thus their real competitive advantage, especially vis-à-vis foreign courts—lies in the application of German law, which enjoys only a moderate reputation in

¹³⁴ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 423 *et seq.*; Wagner, *supra* note 53, at 227–28. See also Riehm, *supra* note 62, at 1570 *et seq.* (regarding an earlier draft of the law).

¹³⁵ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 423; Wagner, *supra* note 53, at 230 *et seq.*

¹³⁶ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 423; Wagner, *supra* note 53, at 231.

¹³⁷ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 423 *et seq.*

¹³⁸ Riehm, *supra* note 62, at 1571; Riehm & Thomas, *supra* note 7, at 315 *et seq.*; Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 424; Wagner, *supra* note 53, at 227, 231; Wolff, *supra* note 62, at 223.

(international) practice.¹³⁹ Among the disadvantages repeatedly cited by practitioners are, on one hand, the numerous general clauses (e.g., §§ 138, 242 BGB), which give the courts a great deal of room for interpretation, and, on the other hand, the strict control of general terms and conditions in B2B transactions. In addition—and irrespective of the quality of its content—German law is also not particularly accessible to foreigners.¹⁴⁰ Laws, decisions, and literature are only occasionally available in English (or in official English translation).

Finally, a look at other countries that have set up international commercial courts in recent years shows that the adoption of the Law will not necessarily make German courts a blockbuster. Although some of these courts are procedurally much closer to international commercial arbitration or to the internationally leading London Commercial Court, their track record is—at least so far—rather disappointing.¹⁴¹

This applies first and foremost to the Netherlands Commercial Court (NCC), which began its work in Amsterdam in 2019 and offers much more than German courts will after the adoption and implementation of the Law: full English proceedings both in first and second instance, special rules of procedure inspired by English law on the one hand and international commercial arbitration law on the other, a court building equipped with all technical amenities, and its own internet-based communication platform.¹⁴² The advertising drum has also been sufficiently beaten. And yet, the NCC has not been too popular so far: in fact, around only thirty judgments have been rendered in the first six years of its existence¹⁴³ (which is significantly

¹³⁹ Riehm & Thomas, *supra* note 7, at 318 *et seq.* See also Stefan Vogenauer & Christopher Hodges, *Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law* (2008), https://www.fondation-droitcontinental.org/fr/wp-content/uploads/2013/12/oxford_civil_justice_survey_-_summary_of_results_final.pdf (last visited Apr. 2, 2025).

¹⁴⁰ Riehm, *supra* note 62, at 1571; Riehm & Thomas, *supra* note 7, at 317 *et seq.*; Rühl, *supra* note 53, at 424; Wolff, *supra* note 62, at 223.

¹⁴¹ Rühl, *Das Justizstandort-Stärkungsgesetz*, *supra* note 53, at 424 ff. See also Yip & Rühl, *supra* note 33, at 47 *et seq.*; Yip & Rühl, *supra* note 31, at 55 *et seq.* (providing a detailed discussion of the success and the impact of international commercial courts).

¹⁴² See Bauw, *supra* note 76, at 15 ff.; Schelhaas, *supra* note 76, at S. 46 ff.; van der Weide, *supra* note 76, at 81 *et seq.* (providing a detailed presentation of the Netherlands Commercial Court).

¹⁴³ List of NCC Commercial Court Judgments, DE RECHTSPRAAK, <https://www.rechtspraak.nl/English/NCC/Pages/judgments.aspx> (last visited Apr. 2, 2025).

less than the 50 to 100 annual cases expected when the court was set up).¹⁴⁴ The situation in France is similar—even though the newly established Paris Chamber for International Commercial Matters (*Chambre Commerciale Internationale*) cannot complain about a lack of incoming cases. In fact, more than 100 cases per year have been brought before the new chamber since 2018.¹⁴⁵ However, the majority of these proceedings are due to the objective competence of the chamber for International Arbitration, which is independent of the intention of the parties. In contrast, it is not known in how many cases the chamber was independently chosen by the parties. Insiders, however, assume that the numbers are “negligible” and do not exceed the single-digit range.¹⁴⁶ Finally, the Singapore International Commercial Court, which was set up in 2015 with similarly great effort and ambitions as the Netherlands Commercial Court, is equally little in demand. Since its establishment, it has only rarely been called upon by the parties themselves.¹⁴⁷ In most cases in which it has been involved, this has been at the instigation of the Singapore High Court, which can refer international cases to the Singapore International Commercial Court under certain conditions.

C. Towards a European Commercial Court?

In light of the above, it seems fair to conclude that the new Law holds the greatest potential for *national* high-volume commercial disputes while its impact on *international* disputes will remain marginal. However, it seems equally fair to conclude that the limited impact of the new Law on the settlement of *international* disputes is not only due to shortcomings of the Law itself, but also—and perhaps mainly—to structural limits on what national courts can offer to international business parties. Taking into account the experiences of other countries, one may wonder what this means for the future of international commercial litigation. Is the establishment of *national* international commercial courts—the semantic paradox aside—

¹⁴⁴ Raad voor de rechtspraak, *Plan tot oprichting van de Netherlands commercial court* 9, 12, <https://www.rechtspraak.nl/SiteCollectionDocuments/plan-netherlands-commercial-court.pdf#search=netherlands%20commercial%20court> (last visited Apr. 2, 2025).

¹⁴⁵ Cerqueira, *supra* note 83, at 251.

¹⁴⁶ *Id.* at 257 *et seq.*

¹⁴⁷ Lau, *supra* note 77, at 433.

actually the best way forward—or would it not be better to join forces and to create a single European Commercial Court as has been suggested elsewhere?¹⁴⁸ Clearly, such a Court would come with a number of advantages that national courts are not able to offer and which could, therefore, be attractive for international commercial parties.¹⁴⁹

To start, a European Commercial Court would create an extremely visible point of access to the European Judicial Area and overcome the diffuse signals of fragmented competing national initiatives. It would highlight the advantages associated with litigating in the European Union (EU) including the direct cross-border enforceability of judgments. In addition, a European Commercial Court would also be in a better position to settle international disputes than national courts: it would be a truly international court and could, therefore,—and unlike national courts—offer dispute resolution independent of national judicial structures. In addition, it could be staffed with judges from different states, ideally representing different legal traditions and professions. These judges would ensure that the Court has the necessary legal expertise and experience to settle international disputes, and they would credibly signal that the Court is neutral and unlikely to favour one of the parties for reasons of nationality.¹⁵⁰ A European Commercial Court could, therefore, offer commercial parties much of what

¹⁴⁸ See Giesela Rühl, *Building Competence in Commercial Law in the Members States, Study for the European Parliament's Committee on Legal Affairs* 58 *et seq.* available at [www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2018\)604980](http://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2018)604980) (last visited Apr. 2, 2025); see also Giesela Rühl, *Auf dem Weg zu einem europäischen Handelsgericht? Zum Wettbewerb der Justizstandorte in Zeiten des Brexit*, JZ 1073, 1079 *et seq.* (2018).

¹⁴⁹ See Alexandre Biard, *International Commercial Courts in France: Innovation without Revolution?*, 24 ERASMUS L. REV. 31,32 (2019); see also Sophie Hunter, *Will European initiatives to create international commercial courts be attractive enough for foreign litigants post Brexit?*, KSLR EU LAW BLOG (Feb. 7, 2019), <https://blogs.kcl.ac.uk/kslreuropeanlawblog/?p=1377#.Xk-6fi2brOQ> (last visited Apr. 2, 2025); see also Thomas Pfeiffer, *Ein europäischer Handelsgerichtshof und die Entwicklung des europäischen Privatrechts*, ZEUP 795, 797 *et seq.* (2016); see also Wilske, *supra* note 18, at 174. Equally supportive, even though slightly more cautious see Michael Stürmer, *Krise und Zukunft der staatlichen Gerichtsbarkeit als Instrument der Streitbeilegung im internationalen Handel*, in ABKEHR VOM MULTILATERALISMUS—INTERNATIONALES RECHT IN GEFAHR? 263 *et seq.* (Anne Peters et al. eds., 2023). For a critical view, see BURKHARD HESS, *EUROPÄISCHES ZIVILPROZESSRECHT*, para. 14.50 (2d ed. 2020).

¹⁵⁰ See Pfeiffer, *supra* note 149, at 797.

they get and expect from international commercial arbitration,¹⁵¹ but without sacrificing the inherent advantages associated with a state court.

A European Commercial Court, however, would not only enrich the European dispute settlement landscape and offer international commercial litigants an additional, international forum for the settlement of their disputes. It would also participate more convincingly in the global competition for international disputes which has gained momentum during the past years¹⁵² and triggered the establishment of international commercial courts around the world.¹⁵³ Clearly, a European Commercial Court would be the right answer here—and would certainly have a good chance of developing into an attractive global place for settling international legal disputes. Unfortunately, however, the European legislature does not (yet) seem ready to take up the idea of a European Commercial Court. In fact, while the European Parliament expressed support,¹⁵⁴ the European Commission politely said no.¹⁵⁵ For the foreseeable future, international business parties will, therefore, remain limited to a choice between arbitration and national courts, including international commercial courts “made in Germany.” Time will tell whether

¹⁵¹ For the role that expertise and neutrality play when parties choose to go to international commercial arbitration, see Queen Mary School of International Arbitration, *2015 International Arbitration Survey: Improvements and Innovations in International Arbitration* (2015) 6 (Chart 2), <http://www.arbitration.qmul.ac.uk/research/2015/> (last visited Apr. 2, 2025); see also Queen Mary School of International Arbitration, *2013 International Arbitration Survey: Corporate choices in International Arbitration—Industry Perspectives* (2013) 8, <http://www.arbitration.qmul.ac.uk/research/2013/> (last visited Apr. 2, 2025); see also Queen Mary School of International Arbitration, *2018 International Arbitration Survey: The Evolution of International Arbitration* (2018) 5 and 7 (Chart 7), <http://www.arbitration.qmul.ac.uk/research/2018/> (last visited Apr. 2, 2025); see also WAGNER, *supra* note 2, at 131 *et seq.*

¹⁵² See generally on regulatory competition in the field of dispute resolution Gerhard Wagner, *The Dispute Resolution Market*, 62 BUFFALO L. REV. 1085 (2014); WAGNER, *supra* note 2, 36 *et seq.*; Wagner, *supra* note 53, at 222–23.

¹⁵³ See *supra* II.C.

¹⁵⁴ See European Parliament, *Expedited settlement of commercial disputes: European Parliament Resolution of 13 December 2018 with recommendations to the Commission on expedited settlement of commercial disputes* (2018/2079(INL), Annex, III. 3., [https://oeil.secure.europarl.eu/en/oeil/en/procedure-file?reference=2018/2079\(INL\)](https://oeil.secure.europarl.eu/en/oeil/en/procedure-file?reference=2018/2079(INL)) (last visited Apr. 2, 2025).

¹⁵⁵ European Commission, *Follow-up to the European Parliament non-legislative resolution with recommendations to the Commission on expedited settlement of commercial disputes* 3 (SP(2019) 129), [https://oeil.secure.europarl.eu/en/oeil/en/procedure-file?reference=2018/2079\(INL\)](https://oeil.secure.europarl.eu/en/oeil/en/procedure-file?reference=2018/2079(INL)) (last visited Apr. 2, 2025). The European Commission, however, has indicated that it might review the need for a European Commercial Court “at a later stage taking into account the current attempts by a number of Member States to create new courts appropriate for international commercial litigation and the degree of success of these initiatives.” In addition, it has indicated to contemplate the “desirability of further studies in this field.”

the latter will manage to carve out a piece of the international dispute resolution pie—or whether their contribution will remain limited to national disputes.

