

Draft Bill for the Modernisation of German Arbitration Law

THE KEY PROPOSALS OF THE DRAFT BILL



Executive Summary

- On 26 June 2024, the Federal Government of Germany presented a draft bill to modernise German arbitration law. This follows an extensive public consultation to identify and discuss potential amendments.
- The primary objectives are to enhance efficiency, adapt to modern needs, and boost Germany's attractiveness as an arbitration venue.¹
- The last major reform of German arbitration law was in 1998. This new draft bill aims to resolve ambiguities and update regulations to reflect current needs.
- Key proposals include the expansion of the jurisdiction of German Commercial Courts, more relaxed formal requirements for arbitration agreements, the increased use of English in proceedings, the recognition of electronic documents and video hearings, the publication of arbitral awards, and provisions for retrial requests.

¹ bmj.de



A. Overview

On 26 June 2024, the Federal Government introduced a draft bill (*Entwurf eines Gesetzes zur Modernisierung des Schiedsverfahrensrechts*) which seeks to align German arbitration law with international standards and modern practices. With an emphasis on efficiency and digitalisation, the reform intends to strengthen Germany's position as a leading arbitration hub.

According to the German Federal Ministry of Justice, the proposed changes are designed to reduce formal barriers and embrace digital solutions, thus improving the arbitration process.

B. Key proposals

1. Jurisdiction of German Commercial Courts and submission of English-language documents

The draft bill extends the jurisdiction of the German Commercial Courts to decide on certain arbitration-related court proceedings such as setting-aside and enforcement proceedings. This expansion aims at speeding up the resolution of disputes through the specialised expertise of the Commercial Courts (Sec. 1062 (5) of the ZPO (German Civil Code of Procedure) draft).

The draft bill also permits parties to submit arbitral awards and documents in English in proceedings before the Commercial Courts, which will substantially reduce the resources needed for the translation of documents (Sec. 1065 (3) ZPO draft).

2. Relaxation of formal requirements for arbitration agreements

2.1.1. Relaxation of written form requirement

The requirement for arbitration agreements to be concluded in written form will be relaxed for all-party commercial transactions (Sec. 1031 ZPO draft). This change aligns with the UNCITRAL Model Law's approach and

reflects practices in countries like Belgium, Luxembourg, Ireland, Scotland, and Sweden.

2.1.2. Confirmation in text form

Parties can request confirmation of the arbitration agreement's substance in text form, although the existence of such documentation will not affect the agreement's validity.

3. Increased use of English in proceedings

Documents prepared or submitted in English during arbitral proceedings can be used in state court proceedings without translation, unless a special need for translation arises (Sec. 1063a/b ZPO draft).

4. Recognition of electronic documents and video hearings

4.1.1. Electronic arbitral awards

Arbitral awards can be issued as electronic documents unless the parties agree otherwise. Traditional hard copies can still be requested for enforcement in jurisdictions that do not recognise electronic awards (Sections 1054 (2), (5), 1064 (1), 1047 (2), (3) ZPO draft).

4.1.2. Video hearings

The draft bill formally recognises video hearings, allowing arbitral tribunals to hold oral hearings via video conference. In this regard, parties do not have a right to be heard in person as the arbitral tribunal is given procedural discretion to order a video hearing. The arbitral tribunal must therefore weigh up the right to be heard and the right to access justice while also taking into account certain additional factors, e.g. the substance of the arbitration, the obligation to conduct arbitral proceedings in an efficient manner as well as climate neutrality concerns. This change aligns with the increasing digitalisation of arbitration practices (Sections 1054 (2), (5), 1064 (1), 1047 (2), (3) ZPO draft).



5. Publication of arbitral awards with consent

With the parties' consent, arbitral awards and dissenting opinions can be published in anonymised or pseudonymised form. An opt-out mechanism assumes consent unless the parties object within one month of the consent being requested by the arbitral tribunal (Sec. 1054b ZPO draft).

6. Request for retrial

The draft introduces the possibility for a state court to set aside an arbitral award if the conditions for a retrial are met, even after the deadline for setting aside the award has passed. Grounds include false documents, fraudulent testimony, criminal offences related to the award, and newly discovered documents (Sec. 1059a ZPO draft).

However, since grounds for a retrial are generally quite rare, the number of successful retrial requests is expected to be low. This observation is supported by the fact that jurisdictions with similar provisions, such as Switzerland and Austria, have not experienced a significant increase in the number of overturned awards. This is also in line with previous experience regarding requests for retrial against German court judgments. Consequently, the concept of arbitration as a single-instance procedure should remain unaffected.

C. Additional clarifications

1. Appointment of arbitrators in multi-party arbitration

In arbitration proceedings with more than one arbitrator, joined parties must jointly appoint an arbitrator. If they fail to do so within a month, the court may appoint arbitrators for both sides (Sec. 1035 (4) ZPO draft).

2. Enforcement of foreign arbitral awards on interim measures

The draft clarifies that foreign arbitral awards on interim measures can be enforced by German state courts. The new provisions outline when enforcement applications should be dismissed (Sections 1025 (2), 1041 (2) ZPO draft).

3. Extended court review of arbitral tribunal jurisdiction

The jurisdiction of the state courts to review jurisdiction decisions of arbitration tribunals now includes negative jurisdiction decisions, *i.e.* when an arbitral tribunal rules that it does not have jurisdiction to decide on the case (Sec. 1040 ZPO draft).

4. Concurring or dissenting opinions

The draft bill allows for the inclusion of concurring or dissenting opinions in arbitral awards, clarifying that such opinions do not violate procedural public policy (Sec. 1054a ZPO draft).

5. Thoughts on the draft bill

The draft bill incorporates several provisions aimed at enhancing efficiency and addressing current needs.

As the Federal Government of Germany considers the recommendations put forth by the Federal Ministry of Justice in the draft bill, it remains to be seen which proposals will withstand scrutiny during the Bundestag debates. Additionally, the input from the arbitration community will be crucial in shaping the final outcome of the legislative process.



D. Legal support

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