

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

- In Germany, Directive 93/13/EEC has been implemented by the German Civil Code (*Bürgerliches Gesetzbuch*, "**BGB**") and German Act on Injunctive Relief (*Unterlassungsklagengesetz*, "**UKlaG**").
- Directive 98/6/EC has mainly been implemented by the Price Indication Ordinance (*Preisangabenverordnung*, "**PAngV**"); few definitions have been implemented by the BGB.
- Directive 1999/44/EC has mainly been implemented by the BGB; minor parts have been implemented by the German Product Liability Act (*Produkthaftungsgesetz*, "**ProdHaftG**") and Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*, "**EGBGB**").
- Directive 2005/29/EC has mainly been implemented by the Act Against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*, "**UWG**"); minor parts have been implemented by the BGB.
- Directive 2006/114/EC has been implemented by the UWG.
- Directive 2011/83/EU has been implemented by the BGB, the EGBGB and the UKlaG.
- Directive 90/314/EEC has been implemented by the BGB, the EGBGB and the Civil Code Information Obligation Regulation (*BGB-Informationsverordnung*, "**BGB-InfoV**").
- Directive 2008/122/EC has mainly been implemented by the BGB, the EGBGB, and in very minor parts by the UWG.

In summary, at least parts of every Directive have been implemented in the BGB, parts of four Directives have been implemented by the EGBGB and parts of three Directives have been implemented in the UWG.

Unlike other Member States of the EU, Germany does not address violations of consumer protection provisions through state bodies or state agencies by applying administrative law, but instead through consumer associations and by applying civil law. Because this approach in which legal actions are brought by associations has been positive, the German legislator opted for a twofold system.

According to Section 2 No. 1 lit. a) of the German Consumer Protection Enforcement Act (*Verbraucherschutzdurchsetzungsgesetz*, "**VSchDG**") the Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz "BMJV") is the competent authority for EU-internal violations of the implementation or performance of legal act provisions referred to in the annex of Regulation (EU) No. 2006/2004. Within the meaning of this provision, the requirements for an EU-internal violation are met if the Member State in which the harmed consumer has his residence is different from the Member State in which the trader (company) has its residence.

This annex of Regulation (EU) No. 2006/2004 inter alia refers to Directives 90/314/EEC, 93/13/EEC, 2008/122/EC, 98/6/EC, 1999/44/EC and 2005/29/EC, which are subject to this enforcement fiche.

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| | <p>The BMJV takes necessary measures, which are required for determination, elimination of or prevention against EU-internal violations of consumer protection legislation. In particular, inter alia, the BMJV may (1) oblige the responsible seller/ service provider to eliminate a violation or to desist further violations, (2) request necessary information within a reasonable period (3) or request printed versions of data stored electronically.</p> <p>Additionally, the BMJV is the central liaison office for the cooperation with the Commission and the competent administrations of other EU Member States.</p> <p>With regard to Directive 2011/83/EU, there is no administrative authority. This Directive stipulates provisions with regard to the right of withdrawal. These consumer rights are protected by section 2 (2) No. 1 UKlaG. Authorised parties may assert elimination and injunctive reliefs.</p> <p>According to Section 3 (2) VSchDG, the BMJV in its function as central liaison office reports to the highest and competent regional authorities once a year, in a comprehensive and anonymous way, administrative assistance requests and information exchange requests, which relate to the VSchDG. These reports can be accessed via the website of the BMJV.</p> |
| <p>Who can file administrative complaints? Can investigations be initiated ex officio?</p> | <p>If necessary, for the performance of Regulation (EC) No. 2006/2004 and the VSchDG, the BMJV can investigate ex officio, according to section 5 (2) VSchDG. The BMJV can enforce its orders in accordance with the provisions applying for the enforcement of administrative measures, section 10 S. 1 VSchDG. The penalty payment may amount to 250,000.00 EUR per individual case.</p> |
| <p>Do any specific procedural requirements apply to filing administrative complaints?</p> | <p>No specific requirements or limitations apply.</p> |
| <p>Do the administrative authorities have an obligation to investigate the complaint?</p> | <p>Yes, due to general administrative principles.</p> |
| <p>Are there any specific requirements regarding the provision of evidence to the competent authorities?</p> | <p>No.</p> |
| <p>II. ENFORCEMENT THROUGH COURT ACTION</p> | |
| <p>Which court actions are available to enforce the Directives?</p> | <p>1. Firstly, the UKlaG stipulates injunction suits in case of consumer rights violations. In general, by violating consumer protection legislation, injunction claims or claims for removal may be triggered. Consumer protection legislation includes, inter alia, provisions of BGB regarding:</p> <ul style="list-style-type: none"> • off-premises contracts • distance contracts • consumer goods purchases |

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| | <ul style="list-style-type: none"> • timeshare, long-term holiday product, brokerage contracts and exchange system contracts • consumer credit agreements, financial aid and contracts for delivery by installments • travel contracts • credit intermediation contract • payment services contracts <p>For claims asserted by virtue of the UKlaG, the regional court, which is located in the region where the defendant has his commercial place of business or in the absence thereof, his place of residence, shall have the exclusive jurisdiction.</p> <p>2. Additionally, the UWG stipulates several legal consequences in case anyone performs an unfair commercial practice. Section 8 UWG determines elimination and injunctive relief (for competitors and qualified entities), section 9 UWG compensation for damage (only for competitors) and section 10 UWG confiscation of profits (in case of unfair commercial practice or unacceptable harassment). If these claims exist, they can be enforced at a competent court.</p> <p>However, section 12 UWG provides for a specific cease-and-desist procedure according to which parties entitled to assert a claim to cease and desist should warn the debtor prior to initiating court proceedings and should give him the opportunity to resolve the dispute by incurring the obligation to cease and desist subject to a reasonable contractual penalty. With regard to the jurisdiction as to subject-matter, the regional courts shall have exclusive jurisdiction over all civil law disputes where a claim is asserted by virtue of the UWG. With regard to the local jurisdiction, for court actions brought by virtue of the UWG jurisdiction shall lie with the court competent for districts where the defendant has his commercial place of business or his independent professional place or business, or in the absence thereof, his place of residence. Moreover, for court actions brought by virtue of the UWG, jurisdiction shall lie solely with the competent court for the district where the act was committed.</p> |
| <p>Who can start a court action?</p> | <p>1. UKlaG In general, claims by virtue of the UKlaG may be asserted by:</p> <ul style="list-style-type: none"> • qualified institutions • associations with legal personality which exist for the promotion of commercial or independent professional interests, if a considerable number of entrepreneurs belong thereto, and which distribute goods or services of the same or similar type in the same market, provided such associations are actually in a position, particularly in terms of their personnel, material and financial resources, to pursue the tasks, under their memoranda of association, of promoting commercial or independent professional interests, and so far as the contravention affects the interests of their members • Chambers of Industry and Commerce or Craft Chambers. <p>2. UWG Regarding elimination and injunctive relief, claims can be asserted by:</p> <ul style="list-style-type: none"> • Competitors • associations with legal personality which exist for the promotion of commercial or of independent professional interests, if a considerable number of entrepreneurs belong thereto, and which distribute goods or services of the same or similar type |

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| | <p>on the same market, provided such associations are actually in a position, particularly in terms of their personnel, material and financial resources, to pursue the tasks, under their memoranda of association, of promoting commercial or independent professional interests, and so far as the contravention affects the interests of their members</p> <ul style="list-style-type: none"> • qualified institutions • Chambers of Industry and Commerce or Craft Chambers. |
| Can court actions be initiated by competitors? | Yes, insofar as a claim can be asserted by virtue of the UWG. |
| Can the case be handled through an accelerated procedure? | <p>Yes, according to section 12 (2) UWG, provisional (preliminary) injunctions can be granted in order to secure the claim to cease and desist specified in this Act, also without exposition and substantiation of the conditions required by sections 935 and 940 of the Civil Procedure Code. A preliminary injunction is an enforceable title, as well as a title in a main proceeding. The main proceeding remains priority.</p> <p><u>Conditions that need to be fulfilled are:</u></p> <ul style="list-style-type: none"> • Competent court is the court of the main proceeding, Section 937, 919 Code of Civil Procedure (Zivilprozessordnung, "ZPO") • Need for legal relief • Particular petition for a preliminary injunction • Claim entitlement (injunctive relief/claim for removal/claim to information) and reason for preliminary injunction (objective urgency "Dringlichkeit"): - > According to section 12 (2) UWG, one can request a preliminary injunction without needing to fulfil the requirements according to section 935, 940 ZPO) However, please note that section 12 (2) UWG only applies for injunctive reliefs, but not for claims for removal or claims to information) <p>Section 12 (2) UWG also applies for the UKlaG, according to Section 5 UKlaG.</p> |
| Are there any specific requirements regarding the provision of evidence to the court? | <p>In general, in German Civil Law, each party must prove its statements.</p> <p>§ 5 IV UWG and Annex (no. 5) contain a reversal of the burden of proof. In addition, German jurisdiction eases the burden of proof in favour of the claimant if his lack of knowledge of the facts is justifiable.</p> |
| Are there specific procedural reliefs for consumers or consumer associations? | <p>According to section 12 (4) UWG, the court has some discretion when fixing the total amount in controversy. According to this provision, the court may reduce the amount based on the financial strength of the parties. ("Where a party in a legal dispute in which an action is brought to assert a claim resulting from one of the legal relations governed by this Act substantiates that the burden of the costs of the proceedings based on the full value in dispute would pose a substantial risk to his economic situation, the court may, upon the application of said party, order that said party's obligation to pay court costs shall be proportionate to a part of the value in dispute as adjusted to his economic situation.") The aim of this provision is to ensure that the high costs of the proceedings do not deter parties from bringing lawsuits against unfair competition.</p> <p>This section also applies for proceedings based on the UKlaG according to section 5 UKlaG.</p> |

III. SANCTIONS

What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?

Directive 93/13/EEC: The Directive itself does not contain possible civil sanctions or remedies. As Directive 93/13/EEC on unfair terms in consumer contracts has been implemented by the BGB and the UKlaG, the possible sanctions rely on these legal acts. As consequence of the use of unfair terms in consumer contracts, the relevant provisions may be deemed to be void, according to section 307 et seq. BGB. Additionally, section 1 UKlaG determines that anyone who uses unfair terms in consumer contracts or recommends them, may be held against an injunctive relief or a claim to withdrawal of the recommendation. These claims shall vest in qualified entities that prove that they are entered in the list of qualified entities pursuant to section 4 of the Injunctive Relief Act or on the list of the European Commission pursuant to Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumer interests (OJ L 110 of 1.5.2009, p. 30), associations with legal personality which exist for the promotion of commercial or independent professional interests, if a considerable number of entrepreneurs belong thereto, and which distribute goods or services of the same or similar type in the same market, provided such associations are actually in a position, particularly in terms of their personnel, material and financial resources, to pursue the tasks, under their memoranda of association, of promoting commercial or independent professional interests, and so far as the contravention affects the interests of their members, Chambers of Industry and Commerce or Craft Chambers.

This provision also constitutes a preliminary injunctive relief.

Directive 98/6/EC does not stipulate any sanctions either and requires the Member State to determine adequate sanctions. This Directive has mainly been implemented by the PAngV, which lists certain administrative offences. Any non-compliance with provisions of the PAngV may be fined with up to 25.000,00 EUR. In case of only negligent non-compliance, the fine may amount up to 12.500,00 EUR. These administrative offences will be prosecuted ex-officio by the competent regional authority or by an administrative authority determined by the state government through legislative decree.

Directive 1999/44/EC on consumer sales and guarantees has mainly been implemented by the BGB. According to section 2 (1), (2) UKlaG, anyone who infringes provisions which serve the purpose of consumer protection may be held against an injunctive relief or a claim to elimination. Consumer protection acts within the meaning of this provision are among others, the provisions relating to consumer goods purchases.

The claims mentioned above shall vest in qualified entities that prove that they are entered in the list of qualified entities pursuant to section 4 of the Injunctive Relief Act or on the list of the European Commission pursuant to Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumer interests (OJ L 110 of 1.5.2009, p. 30), associations with legal personality which exist for the promotion of commercial or independent professional interests, if a considerable number of entrepreneurs belong thereto, and which distribute goods or services of the same or similar type in the same market, provided such associations are actually in a position, particularly in terms of their personnel, material and financial resources, to pursue the tasks, under their memoranda of association, of promoting commercial or

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| | <p>independent professional interests, and so far as the contravention affects the interests of their members, Chambers of Industry and Commerce or Craft Chambers.</p> <p>The Unfair Commercial Practices Directive (2005/29/EC) has mainly been implemented by the UWG. Civil sanctions in the UWG range from removal/cessation of the infringement and publication of the court ruling to damages and skimming of profits. The UKlaG determines only injunctive reliefs.</p> <p>According to Section 12 (3) UWG, whereby virtue of the UWG a court action has been brought for injunctive relief, the court can authorise the prevailing party to publicise the judgement at the expense of the losing party if the prevailing party demonstrates a legitimate interest therein. The authorisation shall expire if it is not used within three months after entry into final and binding force.</p> <p>Also, in the UKlaG it is determined that, in case the court rules in favour of the plaintiff, the plaintiff may upon request get the permission, to publish the decision in the Federal Gazette at the expense of the defendant. Similar to the provision in the UWG, the court can set a time limit for the permission.</p> <p>As Directive 2006/114/EC has also been implemented by the UWG, the aforesaid civil sanctions also apply to this Directive.</p> <p>The subject of Directive 2011/83/EU is consumer protection which is why it has mainly been implemented by general provisions in the BGB. With regard to civil sanctions, please refer to our statements regarding Directive 1999/44/EC.</p> <p>Directive 90/314/EEC, has been implemented by the BGB, by the EGBGB and by the BGB-InfoV. As the relevant implementation provisions are consumer protection provisions, section 2 (1) UKlaG, according to which, anyone who infringes provisions which serve the purpose of consumer protection may be held against an injunctive relief or a claim to elimination may apply. Again, these claims shall vest in qualified entities that prove that they are entered in the list of qualified entities pursuant to section 4 of the Injunctive Relief Act or on the list of the European Commission pursuant to Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumer interests (OJ L 110 of 1.5.2009, p. 30), associations with legal personality which exist for the promotion of commercial or independent professional interests, if a considerable number of entrepreneurs belong thereto, and which distribute goods or services of the same or similar type in the same market, provided such associations are actually in a position, particularly in terms of their personnel, material and financial resources, to pursue the tasks, under their memoranda of association, of promoting commercial or independent professional interests, and so far as the contravention affects the interests of their members, Chambers of Industry and Commerce or Craft Chambers.</p> <p>Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts contains consumer protection provisions. Thus, the aforementioned section 2 (1) UKlaG may apply, according to which, anyone who infringes provisions which serve the purpose of consumer protection, may be held against an injunctive relief or a claim to elimination.</p> |
| What are the possible | For the Directives which have been implemented in the UWG, Chapter |

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| criminal sanctions for the infringement of the Directives' provisions? | <p>4 of the UWG determines provisions which penalise certain unfair trading practices (sec 16-19), including:</p> <ul style="list-style-type: none"> intentionally misleading advertising (sec 16 UWG - shall be liable to imprisonment not exceeding two years or to a fine) betrayal of trade or industrial secrets (sec 17 UWG - shall be liable to imprisonment not exceeding three years or to a fine) betrayal of documents or instructions of a technical nature (sec 18 UWG - shall be liable to imprisonment not exceeding two years or to a fine) seeking to induce another person to betrayal (sec 19 UWG - shall be liable to imprisonment not exceeding two years or to a fine) |
| What are the possible administrative sanctions for the infringement of the Directives' provisions? | <p>The BMJV can require termination of acts found to infringe consumer rights. Culpable contraventions are treated as administrative offences which may be fined with up to 10,000.00 EUR. The cessation of the infringement can be enforced by a penalty payment amounting up to 250,000.00 EUR per individual case.</p> |
| What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives? | <p>In most cases, cease-and-desist procedures are initiated by a competitor of the infringer. The individual transaction with the consumer will therefore not be affected by a cease-and-desist decision since it only produces effects between the parties to the procedure. If a consumer concludes a contract based on false statements or other information suited to deception according to section 5 (1) UWG, he may be able to avoid his declaration pursuant to section 123 (1) BGB, which would lead to initial invalidity of the contract.</p> |
| Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement? | <p>German law does not allow collective actions. Consumers have to file a claim for civil damages in accordance with general principles of German tort law.</p> <p>Consumers may file a claim for civil damages in accordance with general principles of German tort law.</p> <p>According to section 10 (1) UWG, whoever, while acting with intent, engages in an illegal commercial practice pursuant to section 3 or section 7, thereby making a profit to the detriment of numerous purchasers, can be sued for surrender of such profit to the Federal budget by those entitled, pursuant to section 8 (3), numbers 2 to 4, to assert a claim to cease and desist.</p> |
| Can the administrative authorities or the courts require the publication of their decisions? | <p>Section 12 UWG (3) stipulates that the court <u>can</u> authorise the prevailing party to publicise the judgement at the expense of the losing party if the prevailing party demonstrates a legitimate interest therein. The nature and extent of publication shall be determined in the judgement. The authorisation shall expire if it is not used within three months after entry into final and binding force. The declaration pursuant to the first sentence <u>shall not be provisionally enforceable</u>.</p> <p>Also, in the UKlaG, it is determined that in case the court rules in the favour of the plaintiff, the plaintiff may get permission, upon request, to publish the decision in der Federal Gazette at the expense of the defendant. Similar to the provision in the UWG, the court can set a time limit for the permission.</p> |
| IV. OTHER TYPES OF ENFORCEMENT | |
| Are there any self- | Yes, the right of competitors, associations, qualified entities, Trade |

regulatory enforcement systems in your jurisdiction that deal with aspects of the Directives?

associations and Chambers of Industry and Commerce to initiate proceedings in front of the Voluntary Board of Conciliation and to file claims against the infringer.

The "Wettbewerbszentrale" is an important and wide-reaching, independent institution with a judicially authorised right to prosecute unfair commercial practices.

All chambers of commerce, most trade and craft corporations, about 800 other industrial or commercial associations and approximately 1200 companies are members of the Wettbewerbszentrale. Its head office in Bad Homburg and five regional branch offices (Berlin, Dortmund, Hamburg, Munich, and Stuttgart) deal with about 13.000 complaints a year.

Competencies (to ensure market participants respect the relevant rules in order to maintain a functioning market)

- to avoid legal disputes from the beginning, the association gives advice to its members concerning advertising and marketing practices in the planning stage
- the association provides legal consultations and opinions regarding planned legislation at national and European level, conducts legal research, and gives information to the public by holding seminars on competition matters
- the association contributes to the development of the law by bringing test cases
- the association investigates and pursues infringements of competition law

Any member of the public (competitor or consumer) can submit a complaint to the Wettbewerbszentrale. It also receives complaints from public authorities such as the police, trade and health authorities. If the complaint is of substance, the Executive Directors write to the trader, asking him to sign an undertaking to amend or discontinue the advertising/commercial practice. Legal action is threatened in the case of non-compliance. If the trader is unwilling to amend or discontinue the advertisement or commercial practice, the Executive Directors decide whether to institute legal proceedings. Before taking court action, the Wettbewerbszentrale will – in appropriate cases – try to reach an amicable agreement. The complaint can therefore be brought before the Board of Conciliation of the regional Chamber of Commerce.

Complaints are handled free of charge. In average, the queried advertisement or unfair commercial practice is withdrawn or amended within 1 to 2 weeks from receiving the complaint. If the Wettbewerbszentrale claims a preliminary injunction before the civil courts, a settlement can be achieved within a day by immediate order.

In order to take action effectively, the Wettbewerbszentrale is authorised by law (§ 13 Unterlassungsklagengesetz / Law on injunctions) to request information from postal and telephone authorities and companies on a customer's personal data. Therefore, the Wettbewerbszentrale has the power to disclose the identity of the

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| | <p>owner of a German P.O.</p> <p>This process enables an effective withdrawal or amendment of the unfair commercial practice with minimum delay and costs. The danger of recurrence is minimal as a conventional penalty must be paid by the trader if he contravenes competition law with the same commercial practice.</p> <p>Offences by members of the association are dealt with in the same way as those by non-members. The Wettbewerbszentrale has its own legal right to follow up complaints and does so in its own name. The complainant's identity is treated in strict confidence.</p> <p>https://www.wettbewerbszentrale.de/de/informationenglfranz/engl/</p> |
| <p>Are there any out-of-court dispute settlement bodies available that deal with aspects of the Directives (e.g. mediation, conciliation or arbitration schemes ombudsmen)?</p> | <p><u>Arbitration</u></p> <p>German law allows for arbitral tribunals to replace courts in civil matters, granting them the same power and authority as state courts. German arbitration law (Book 10 of the German Code of Civil Procedure) applies to all arbitral proceedings having their place of arbitration in Germany. German arbitration law is generally acknowledged as arbitration-friendly. State courts are only allowed to interfere with arbitral proceedings subject to certain strict exceptions (e.g., if minimal procedural standards are violated.) This means that if the defendant invokes an arbitration agreement (Schiedseinrede), the court has to dismiss the state court proceedings as inadmissible.</p> <p>The arbitration-friendly legal environment is also demonstrated by the State's role during the different phases of arbitration proceedings. The state courts support the arbitral tribunal by granting the opportunity for interim measures and also offer their arsenal of enforcement methods. German courts, however, cannot assist the parties in enforcing broad disclosure as such orders would be inadmissible under the German rules governing civil procedure. (Although this might be disadvantageous for a party seeking to factually substantiate its claim, it can also be an advantage for parties that are interested in maintaining certain trade or commercial secrets and, thus, do not want to be subject to broad disclosure.)</p> <p>Furthermore, arbitration agreements to which a consumer is a party must be contained in a document which has been personally signed by the parties. (The written form pursuant to subsection 1 may be substituted by electronic form pursuant to section 126a of the Civil Code "Bürgerliches Gesetzbuch – BGB".)</p> <p>German arbitration law offers the parties the freedom to determine the number of arbitrators, the appointment procedure, and the rules of the arbitration procedure themselves. They are also free in their choice of the language of the proceedings, which makes Germany attractive to foreign companies as a place for arbitration.</p> <p>Where arbitration clauses only contain the bare minimum, German arbitration law provides a fallback regime to ensure certain procedural standards. In institutional arbitration, the parties can refer to an arbitration institution to provide the legal framework. The best-known German arbitration organisation in Germany is the German Institution of Arbitration, the DIS (Deutsche Institution für Schiedsgerichtsbarkeit</p> |

e.V.). The DIS provides well-established provisions regarding arbitration proceedings, a set of fast-track rules, as well as a list of arbitrators. Furthermore, the International Chamber of Commerce (ICC) is often chosen as the arbitration organisation, especially where the parties to an arbitration in Germany have an international background.

Arbitration cases only amount to less than 1% of all general legal proceedings in Germany. Moreover, Germany – along with 155 other signatory states – is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Thus, a foreign arbitral award can be enforced in Germany and a German arbitral award can be enforced in other signatory states.

In order to profit from the arbitration-friendly German laws, the parties need to agree on arbitration as the dispute resolution mechanism. The arbitration agreement is a separate agreement that exists independently from the validity of the main contract, whether it is incorporated in the contract or separated from it. There are no strict formal requirements with regards to the arbitration agreement. German arbitration law only provides that the arbitration agreement must be contained either in a document signed by the parties or in an exchange of letters, faxes, telegrams or other means of telecommunication which provide a record of the agreement.

Mediation

The German courts or other official institutions cannot order mediation before or during a court proceeding; they can only recommend mediation.

The Mediation Act (Mediationsgesetz), to promote mediation and other procedures for out-of-court dispute settlement entered into force in Germany on 26 July 2012. This Act formally regulates mediation services in Germany and also transposed the European Mediation Directive into German law. The scope of the German Mediation Act exceeds the requirements of the European Directive; while the Directive provides only for cross-border civil and commercial disputes, the German Mediation Act covers all forms of mediation in Germany, irrespective of the form of dispute or the place of residence of the parties concerned.

The German Mediation Act only establishes general mediation guidelines. According to the Act, mediation is a structured process whereby the implicated parties voluntarily seek a form of mutual dispute settlement with the help of one or more mediators. Mediators are independent and impartial persons, without decision-making power, who guide the parties concerned through the mediation procedure. The Act deliberately avoids establishing a precise code of conduct for the mediation procedure. However, it does set out a number of disclosure obligations and restrictions on activity. Moreover, legislation formally obliges mediators to maintain strict client confidentiality.

The Act promotes mutual dispute settlement by including a number of different incentives in the official procedural codes. For example, when parties bring an action in a civil court, they will have to say whether they have already sought to resolve the issue via out-of-court measures, such as mediation, and whether there are specific reasons for not considering this course of action. The court may furthermore suggest that the parties try to settle the conflict via mediation, or another form of

out-of-court settlement; if the parties refuse to apply this option, the court may choose to suspend the proceedings.

In principle, a mediation agreement can be enforced with the assistance of a lawyer or notary (cf. sections 796a to 796c and section 794(1)(5) of the Code of Civil Procedure).

http://www.bmjv.de/EN/Home/home_node.html

Alternative Dispute Resolution in Germany

In most disputes with a trader based in Germany, you can turn to an alternative dispute resolution entity. In addition to the many specialised dispute resolution bodies, there is the General Consumer Conciliation Body of the Centre for Conciliation. The national governments shall establish conciliation boards at the Chambers of Industry and Commerce for the resolution of civil law disputes where a claim is asserted under the UWG (Section 15 UWG). General Consumer Conciliation Body of the Centre for Conciliation can be turned to if no other dispute resolution body is competent to handle the complaint. Its competence is not determined for non-economic services of general interest, health services and graduate schools and university education by public institutions.

Dispute resolution bodies can be notified if they comply with quality standards valid all over Europe. In this case, they are allowed to be named „Verbraucherschlichtungsstelle“. Proceedings must be neutral, transparent and fast. One of the advantages proceedings before notified dispute resolution bodies offer is that they usually suspend the running of the "statute of limitations".

<http://bit.ly/2oHUTZN>

In Germany, proceedings before the notified dispute resolution bodies are for free. Requests to most dispute resolution bodies have to be filed in German and the proceedings will usually be held in German. If it is possible to submit complaints in English, this is indicated.

Requests to the dispute resolution bodies can usually be filed via mail, e-mail or online via an application form.

<https://www.evz.de/en/alternative-dispute-resolution/adr-in-germany/>

Train, bus, flight and ship companies - the Schlichtungsstelle für den öffentlichen Personenverkehr e.V. SöP* (Conciliation Body for Public Transport)

This ADR entity assists travellers with disputes against train, bus, flight and ship companies that are members of its conciliation scheme. Specifically, it helps with disputes regarding delays, cancellations, missed connections, cases of denied boarding and lost or damaged baggage.

Die Schlichtungsstelle Luftverkehr beim Bundesamt für Justiz* -

(Aviation Conciliation Body at the Federal Office for Justice)

This ADR entity deals with complaints against airlines which are not members of the Söp (see above). Travellers may address the complaint to this ADR entity even if the airline is not based in Germany. It is essential that the ADR entity is competent and that the journey is related to Germany.

Online-Schlichter

Consumers may contact Online-Schlichter to settle a dispute as long as the contract with the trader was concluded online and

- the consumer or the trader reside in Baden-Württemberg, Bayern, Berlin, Hessen, Rheinland-Pfalz or Schleswig-Holstein

OR

- the trader is related to the trust mark "Trusted Shops", the DEVK or the Bundesverband Direktvertrieb Deutschland e.V.

<https://www.verbraucher-schlichter.de/herzlich-willkommen-bei-der-allgemeinen-verbraucherschlichtungsstelle-%e2%80%93-ihre-schlichtungsstelle-fuer-verbraucherstreitigkeiten>

Schiedsstellen des Zentralverbands Deutsches Kraftfahrzeuggewerbe e.V. - (Arbitration Bodies of the Central Syndicate for German automobile trade)

Approximately 130 ADR bodies conciliate disputes between consumers and car dealers, which are members of this dispute resolution body. The dispute must concern a repair or a second-hand car purchase. The competent conciliation board is based at the same place as the car dealership. The proposal of this ADR-entity is legally binding for car dealers while the recommendations are voluntary for consumers.