
Kluwer Arbitration Blog

Checking In With Competition In Europe: Where Do International Commercial Courts Stand?

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Over the last few years, the arbitration community's attention was drawn to the establishment of English-speaking international commercial courts in various jurisdictions around Europe, Asia and the Middle East. Some said these courts would become a competitor of arbitration, providing an alternative forum to the international business community. Others were sceptical that the mere promise of court proceedings in the English language would be enough.

Some years and one pandemic later, arbitration is thriving, but what about the international commercial courts? Where are they now and are they in a position to challenge arbitration?

This post follows several contributions on this blog, including [here](#), [here](#), and [here](#) as well as in the [Journal of International Arbitration](#), which provide a more detailed overview of the procedures before international commercial courts. The present contribution aims to check in on the European international commercial courts and their positioning on the disputes market.

Germany

The trailblazer of English language proceedings in Germany has been the Cologne Higher Regional Court with its [English-speaking senate](#). It first experimented with running proceedings in English in 2010.

Since then, Germany has seen a boom of international commercial courts. In 2018, two courts were set up: the [Chamber for International Commercial Disputes at the Regional Court of Frankfurt am Main](#) and the [English-Speaking Civil Division and Commercial Division at the Regional Court of Hamburg](#). Amidst the pandemic, in 2020, the state of Baden-Württemberg established what it markets as a fully independent [Commercial Court](#) with two locations in Stuttgart and Mannheim and a [Commercial Court of Appeal](#). However, those are in fact chambers at the Mannheim and Stuttgart Regional Courts as well as senates at the Higher Regional Courts of

Stuttgart and Karlsruhe. In 2021, two [International Chambers](#) were also set up at the [Regional Court of Berlin](#). Next to a chamber for commercial disputes, the latter also has an international chamber on construction law and general civil disputes.

These chambers have jurisdiction over disputes with an international element that are filed with the respective court. English will be used during the hearing upon parties' request, for example for witness and expert testimony. English documents also need not be translated. There is, however, no other difference between the normal German court proceedings and proceedings before the international chambers: written and oral pleadings would, for instance, still be submitted in German. Instead, to appeal to international parties, these chambers focus on the freedoms and wiggle room already available within the tight corset of German procedural law. For example, case management conferences as well as block trials have always been legally possible but are not part of the normal practice in German civil courts. The parties also already have the option to limit court proceedings to one instance by waiving their right to appeal, if they want to have a one-stop-shop. These tools could be implemented by the international chambers without the need for additional legislative reform.

Based on the limited information available, the uptake of what these international chambers offer appears to vary. The Mannheim court completed one proceeding from its inception in November 2020, while the related Stuttgart court appears to have over 100 cases on its docket (but it is not clear whether the number includes purely domestic matters); the Frankfurt court had just [one case pending](#) before it within a year of establishment. Universally, however, the use of English appears to be very limited. For instance, the Hamburg court has only ever had two cases (currently in the preliminary stage of proceedings) where the use of the English language was requested.

France

In a major hub of international arbitration, Paris, two courts have been set up: the [international chambers](#) of the Paris Commercial Court (in 2010) and the Court of Appeal (in 2018).

The [procedures of the Paris courts](#) require that "written submissions in English may be given without translation", however, pleadings must be conducted in French. The parties, witnesses, experts, and foreign legal counsel authorised to appear before the Paris courts are allowed to interact with the court in English. The judgment will be issued in French with an option to request a translation. Some elements of the procedure have also been borrowed from common law, for example, the holding of a case management hearing or the establishment of a procedural timetable. These innovations, however, appear to still be [within the confines of the existing procedural rules](#), i.e. no reform of the French civil procedure rules has taken place.

Since the establishment of the international chamber at the Paris Court of Appeal in 2018, it [heard 64 cases](#). 19 of them were arbitration-related matters in setting aside and enforcement proceedings. It is not apparent in how many cases parties actually

made use of English, but translations are available for about 31 judgments, which may be an indicator.

Netherlands

The [Netherlands Commercial Court](#) (NCC) was created in 2019 with three chambers. The first instance courts are the NCC District Court and the NCC Court in Summary Proceedings. The latter deals with matters requiring expedited proceedings, e.g. interim measures. The second instance is the NCC Court of Appeal.

The NCC accepts international disputes, which are heard in English from start to finish including the final judgment, if the parties give their consent to English language proceedings. Documents submitted in Dutch, English, German or French do not require any translation. The NCC has a fully digital case management system, where the court file remains confidential while the hearings are still public. Otherwise, the NCC functions on the basis of the procedural law applicable in the Netherlands.

Since its establishment in 2019, the NCC issued only [nine judgments](#). Four of the cases landed with the NCC as a result of a jurisdiction clause and subsequent agreement by the parties on the use of the NCC, and [one case](#) even involved a waiver of the right to resolve the dispute through ICC arbitration.

Belgium

The Brussels International Business Court project was the most ambitious in Europe. The one-stop-shop proceedings were to have no option for appeal and run completely in English including submissions, hearings and judgments on the basis of the UNCITRAL Model Law on International Commercial Arbitration. The court was set to start operating in 2020, but the project has now been [abandoned by the government](#) as the project lost the support in the Belgian Parliament.

Can European International Commercial Courts Compete with Arbitration?

The above European international commercial courts were designed largely within the confines of local procedural law and in a way that ties them closely to the national court system. It therefore follows that they do not offer the same features as available in arbitration. For example: parties are not able to choose their own adjudicators or agree on confidentiality of proceedings. The latter is something that is particularly unlikely to change - it is hard to imagine European judicial systems dismantling the principle of open justice.

The issue of enforcement is also likely to remain a major benefit of arbitration for the foreseeable future. Arbitration provides parties with access to enforcement in 167

jurisdictions through the New York Convention. European international commercial courts, on the other hand, offer enforcement in the 27 EU jurisdictions through the Recast Brussels Regulation, further seven jurisdictions through the Lugano Convention and the Hague Convention on Choice of Court Agreements, and other jurisdictions through reciprocity.

In the future, however, the Hague Judgments Convention may bring the number of enforcement jurisdictions for court judgments up as it enters into force and is signed by additional countries. The Convention allows for recognition and enforcement of foreign judgments in civil or commercial matters.

An option to conduct hearings and submit documents in English is a great opportunity for the parties to save cost on translations and in-hearing interpreters for witness or expert testimony. It is also great to see various jurisdictions re-discover already existing procedural frameworks to make court proceedings more efficient. These changes, are, however, unlikely to convince the frequent arbitration users to make the switch. On the other hand, however, the frequent court users have gained additional options and flexibility with these internationally specialised courts.

The number of judgments coming out of the international commercial courts appears to be still rather low. But this is something that may improve over time as a bigger investment is made into the visibility and marketing of these courts to the international business community. On this front, the situation varies from the [Paris first instance commercial court](#) having a blank English website version to a high quality online presence of the [Stuttgart and Mannheim Commercial Court](#) or the [NCC](#).

At this time, European international commercial courts seem to be best placed to market themselves not as an alternative to arbitration but perhaps rather an alternative to courts of other European jurisdictions and even other courts within their own jurisdiction, or as competition to the post-Brexit London. These courts could also be excellent venues for setting aside and enforcement of arbitral awards where the proceedings and the award are already in English therefore not requiring extensive translations, as [advertised by the Netherlands Commercial Court](#).

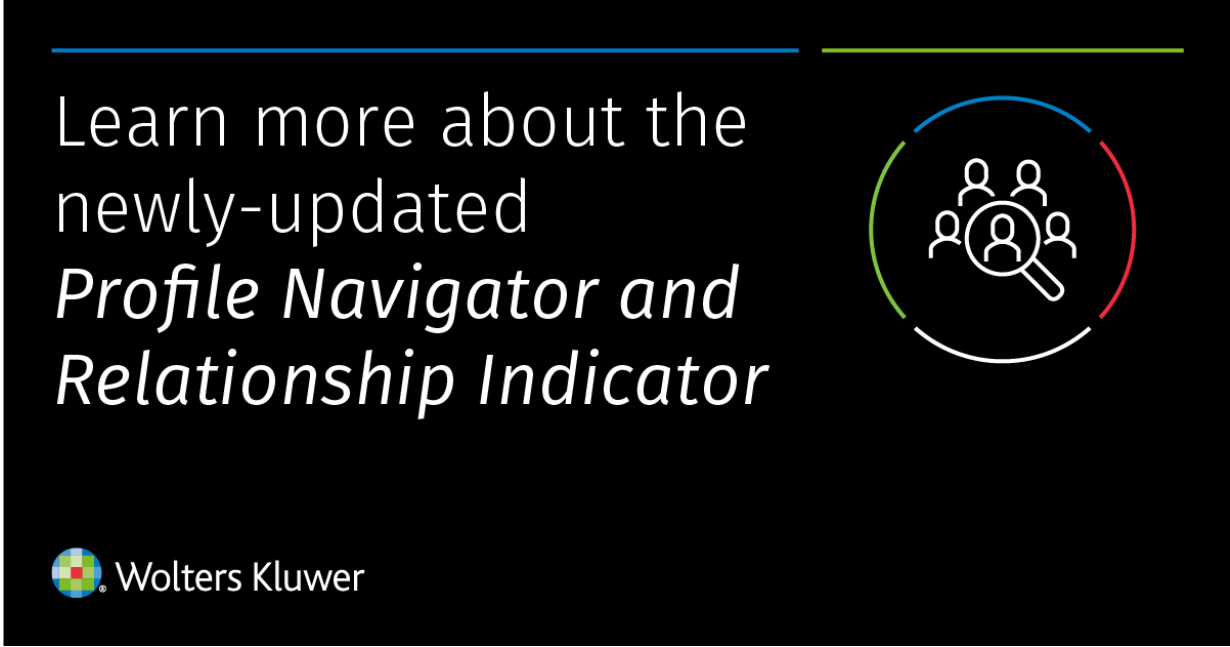
A better approach may therefore be not to question whether these international commercial courts compete with arbitration, but rather how the two co-exist. Arbitration may have gained an ally on the path to simpler enforcement, setting aside proceedings, and court assistance in support of arbitration.

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