

Alternative Dispute Resolution in Germany



– A manual for navigating the quick(er) way to justice! –

List of institutions for the out-of-court settlement of disputes between consumers and entrepreneurs

Clearinghouse Germany

National contact point supported by the Federal Ministry of Justice and the European Commission





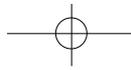
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The production of this guide was funded by the
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Commission.





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You as a consumer are involved in a dispute and would like to find the competent dispute resolution body?

Information on the pertinent institutions in Germany and Europe can be obtained from:

Euro-Info-Verbraucher e.V.

– Clearinghouses Germany and France –
Rehfusplatz 110
D-77694 Kehl

www.eej-net.info

info@euroinfo-kehl.com

Tel. 07851-9 91 48-0

Fax 07851-9 91 48-11





The principal aim of all institutions offering a “Schlichtung” is the expedient and free (or at least cost-effective) resolution of a dispute through an impartial third party or decision-making body.

Many professional associations and trade organizations in Germany have established institutions for the out-of-court settlement of certain disputes.

This is especially true for the financial services sector and the automobile trade, as well as in regard to disputes with retailers, craftsmen, lawyers, tax advisors, architects and members of the medical profession. Consumers and patients find that they can turn to special “Schlichtungsstellen” for help (see page 13).

The services offered by these institutions are not always taken into account when involved in the proverbial “heat of battle”. This might be attributed to insufficient information regarding the existence of such institutions or to the fact that the mechanisms of dispute resolution are sometimes not easily understood at first glance.

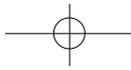
Although “Schlichtung” cannot guarantee a resolution to a given conflict, experience shows that it can often spare those seeking justice a trip to the courts.

It is currently estimated that two million cases (not counting family matters) are adjudicated by the German civil courts each year. These proceedings usually take several months, financially straining both parties as well as the state budgets.

This is not to say that litigation (be it at home or abroad) would not make sense under quite a few circumstances. It is, however, certainly not the only way to achieve justice.

The “Schlichtungsstellen” are not set up with the aim of completely replacing litigation. The applicant can terminate the proceedings anytime without having to state his or her reasons for the termination. Therefore, “Schlichtungsstellen” and courts should rather be regarded as complementing each other in providing those seeking justice with the tools fitting their respective needs.





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Advantages

The advantages of an out-of-court settlement via a “Schlichtungsverfahren” are manifold, with both parties likely to profit:

- proceedings are expeditious
- and cost-effective
- represents a bridge to an amicable settlement
- customer relations are being preserved
- private matters and business secrets are kept confidential
- expert knowledge (legal as well as trade/industry specific) can be tapped
- the (already overcrowded) courts are relieved, while...
- the period of limitation is suspended
- no precedence is being set
- the way to litigation remains open

5

Disputes abroad

Pan-European trade is steadily growing due to such factors as the continuing improvement of the Single European Market, the introduction of the Euro and the possibilities offered by new technologies such as the Internet. Therefore, even though most disputes still arise between parties domiciled in the same country, cross-border disputes are playing an ever-increasing role.

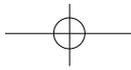
As differences and misunderstandings cannot always be avoided while conducting business, the demand for institutions aiding the out-of-court settlement of such disputes is also on the rise.

Easier access to alternative dispute resolution for cross-border conflicts

The German Federal Ministry of Justice and the European Commission are jointly committed to advancing alternative dispute resolution on a national and – against the background of the Single European Market – especially on a European level. Since 2002, both are supporting the Clearinghouse Germany situated in Kehl.

The Clearinghouse supports consumers in cross-border disputes and advises them on their choice of the appropriate dispute resolution body (see page 5).





5

Disputes abroads

In dealing with cross-border disputes, the Clearinghouse Germany is integrated into the European Extra-Judicial Network for cross-border dispute resolution (EEJ-Net).

Each EU country as well as Norway and Island is home to a central contact point (Clearinghouse) serving as a link between the disputing parties and the more than 400 EEJ-NET dispute resolution bodies available throughout Europe.

The tasks of the EEJ-Net are:

- **Coordinating** the out-of-court-settlement procedures for consumers throughout Europe.
- **Informing** consumers about the existence and the particularities of suitable out-of-court settlement procedures.
- **Aiding** consumers in the use of cross-border dispute resolution procedures.
- **Assuring** that consumer complaints are handled according to the suitable procedure.
- **Examining** the functionality of the employed procedures as well as the results achieved by their use.

6

Obligatory attempt at conciliation

The system of alternative dispute resolution is usually based on the voluntary participation of the disputing parties. In certain cases, however, state law can prescribe an obligatory attempt at conciliation (“Güteversuch”) as a prerequisite for subsequent court proceedings (see § 15a of the Introductory Law to the German Code of Civil Procedure [EGZPO]).

To be subject to an obligatory attempt at conciliation, the disputes must fall into one of three categories. They must be either: (a) financial disputes before the county court up to a litigation value of EURO 750, (b) certain neighbourhood disputes or (c) defamation disputes where the alleged defamation has not occurred through the media.

However, § 15a para. 2 EGZPO states that the requirement for an obligatory attempt at conciliation does not apply to family disputes and disputes that are subject to special procedural rules such as retrials, default actions, proceedings that have been preceded by a “Mahnverfahren” (a simplified and fast procedure for debt-collecting) and other enumerated procedures.

The obligatory attempt at conciliation is limited to parties residing in the same state or court district. Therefore, as far as consumers living abroad are concerned, any attempt at conciliation will always be a voluntary one.



The “Schlichtungsantrag” (application for conciliation) is used to call upon the help of a certain “Schlichtungsstelle” (dispute resolution body) in bringing about an out-of-court settlement

The institutions portrayed in this brochure can only be called upon if the dispute in question takes place between an entrepreneur or a member of the professional community on one hand and their private (not business!) customer/client on the other. An example for an admissible dispute would be: A disagreement over a sales or services contract if the sales or services have been acquired for private use.

In addition to that, the application is only admissible, if

1. You as the applicant are asserting a breach of your (own) rights
2. no court or other dispute resolution body has dealt with or is currently dealing with the given dispute
3. You have attempted an amicable settlement with the opposing party prior to the application.

The “Schlichtungsstelle” will review your application and keep you informed about further developments.

Some advice on completing the application:

- Supply your name and address as well as those of the opposing party in full. If applicable, name the legal counsel authorised to represent you and include his power of attorney.
- Affirm that the matter in dispute is not pending in court.
- Describe the efforts you made up to this point in trying to rectify the matter with the opposing party (e.g. by means of a letter of complaint or similar correspondence).
- Describe – in short – your grievance and relate any information that may be relevant regarding the situation. State your demands; explain what exactly it is you want the opposing party to do.
- Substantiate your claim by enclosing copies of all relevant documents (e.g. copies of the contract, invoices or other papers or communication). Mark the passages you want to object to or give special emphasis. List all documents you are supplying with your application on a separate sheet of paper.
- Sign the application and send it to the appropriate “Schlichtungsstelle”. The use of registered or certified mail is advisable.



General principles

The various “Schlichtungsstellen” portrayed in this brochure follow different procedures in providing dispute resolution. However, they all share the common goal of providing services with as little bureaucracy as possible.

Of course, certain standards have to be adhered to in order to insure legal security and feasibility of the service.

The specific procedure followed by a certain dispute resolution body can be gathered from its rules of procedure (“Schlichtungsordnung”). The applicable “Schlichtungsordnung” can be requested either from the individual institution providing the service or from the Clearinghouse and will be made available to you by mail, fax or e-mail.

Dispute resolution tribunal

The tribunal usually consist of only one member (most commonly this will be a fully qualified lawyer with special knowledge of the particular industry).

In some cases, the tribunal consist of three or five members with one fully qualified lawyer as chairman, and members of the relevant industry and/or consumer associations as assessors.

The members of the tribunal (“Schlichter”) are bound to confidentiality.

Voluntary Participation

Participation in the proceedings is usually a voluntary matter for both parties. As an exception, participation of the entrepreneur may be stipulated by the by-laws of his professional organization.

Oral or written proceedings

Depending on procedural rules, reasonability and pertinence, the proceedings will be conducted either orally or in writing.

Language

The working language of the proceedings will usually be German. You may want to contact your national Clearinghouse for assistance. A list of all national Clearinghouses is available at:

http://www.eejnet.org/chdb/list_chs.

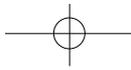
Costs

The proceedings are conducted either free of charge or for a modest fee, whose amount varies with the institution involved. Each party bears its own costs. Expenses (such as postage) are not reimbursed.

Evidence

The “Schlichtungsstellen” usually do not hear witness testimony. Evidence in writing is taken into account, though.





Limitation of actions

As long as the statute of limitations for a given dispute has not expired, entering into dispute resolution proceedings bears a distinctive advantage in that the period of limitations will (usually) be suspended until the end of the proceedings. The prospects of success for a subsequent court proceeding can therefore not be impaired by first attempting to achieve an out-of-court settlement.

As a prerequisite for the period of limitations to be suspended, the opposing party must have been notified of your application for conciliation (“Schlichtungsantrag”) by a dispute resolution body established or recognised by the state administration of justice or – if both parties agree to seek conciliation – by any dispute resolution body (see § 204 para. 1 lit 4 of the German Code of Civil Procedure).

The period of limitations will also be suspended for the period of time you are “merely” negotiating with the opposing party.

Your application for conciliation will be denied if the period of limitations applicable to the dispute has already expired and the other party pleads the limitation.

Form of the decision

Depending on the procedural rules governing the proceedings, the tribunal will either be conducting the proceedings in a proactive form by rendering a decision, proposing alternative solutions or giving certain recommendations to the parties or merely by using mediative skills to help the parties come to an amicable agreement.

The result of the proceedings is communicated to the parties in writing.

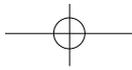
If the tribunal renders a decision or a proposal for an amicable settlement, it will explain its underlying reasoning, taking into account the applicable law as well as the principles of fairness and equity. A reopening of the proceedings is usually not possible.

Enforcement

Settlements concluded before a dispute resolution body established or recognised by the state administration of justice are executory titles in the sense of the German Code of Civil Procedure (§ 794 ZPO).

Other forms of settlement are deemed contracts and can be enforced via civil action.





In order to boost the confidence of European consumers as well as entrepreneurs in a system designed for the out-of-court settlement of disputes, the European Commission has – in its recommendations dating from 1998 and 2001 – laid down the following minimum criteria to be met by the proceedings:

- Voluntary Participation
- Independence of the decision-making body
- Right of each party to be represented by a third party
- Observance of fairness and equity
- Transparency and effectiveness of the proceedings
- Adequate opportunity for response and comment

Germany is home to several hundred institutions providing dispute resolution services.

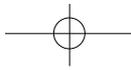
The high number is explained by Germany's federal structure. The jurisdiction of many institutions – for instance those in the area of skilled crafts, automobile trade or retail – is limited to a single state or to one or a few municipalities. In contrast to this, the institutions in the financial services sector (including the insurance industry) and the area of telecommunications cover the whole country.

The terms used to denote the different dispute resolution bodies vary depending on the (federal) state as well the branch of industry. Usually, one of the following terms will be employed:

“Schiedsstelle”, “Schlichtungsstelle” (the term used throughout this brochure), “Einigungsstelle”, “Vermittlungsstelle”, “Gütestelle” or “Ombudsmann”.

The differences in name do of course not impact the institutions common goal of providing high quality dispute resolution services.





Contacts for institutions/organisations offering dispute resolution services (in alphabetical order):

Automobile Trade and Repair

“Schiedsstellen” of the automobile trade are available at the level of guilds and chambers. Contact via the regional guild/chamber of the automobile trade or via the

Deutsches Kraftfahrzeuggewerbe Zentralverband e.V.
(ZDK)
[German Federation for Motor Trades and Repair]
Postfach 150162 • 53040 Bonn
Tel. (0228) 91 27-0 • Fax (0228) 91 27-1 50
zdk@kfzgewerbe.de

Building and Construction

“Schlichtungsstellen” for the building industry have been established by the chambers of architects and engineers as well as (in some cases) by the chambers of trade, the chambers of commerce and industry and the (various) associations of the building industry

Contact via the regional chambers of architects (“Landesarchitektenkammern”) or via

Bundesarchitektenkammer
[Federal Chamber of Architects]
Askanischer Platz 4 • 10963 Berlin
Tel. (030) 26 39 44-0 • Fax (030) 26 39 44-90
info@bak.de

Contact via the regional chambers of architects (“Landesingenieurkammern“) or via

Bundesingenieurkammer
[Federal Chamber of Engineers]
GSW-Hochhaus
Kochstraße 22 • 10969 Berlin
Tel. (030) 25 34-29 00 • Fax (030) 25 34-29 03
info@bingk.de

For the dispute resolution bodies established by the chambers of trade, the chambers of commerce and industry and the (various) associations of the building industry see under “Retail” and “Skilled Crafts”.

Financial Services

Versicherungsombudsmann e.V.
[Ombudsman for the insurance industry]
Kronenstraße 13 • 10117 Berlin
Tel. 0180-4 22 44 24 • Fax 0180-4-22 44 25
beschwerde@versicherungsombudsmann.de

Ombudsmann für die private Kranken- und Pflegeversicherung
[Ombudsman for the private health and long term care insurance]
Leipziger Str. 104 • 10117 Berlin
Tel. 0180-2 55 04 44 • Fax (030) 20 45 27 85
www.pkv-ombudsmann.de





Ombudsmann der privaten Banken
 Bundesverband deutscher Banken
 [Private bank's ombudsman
 Federal Association of German banks]
 Postfach 040307 • 10062 Berlin
 Tel. (030) 16 63-0 • Fax (030) 16 63 31 69
ombudsmann@bdb.de

Ombudsmann der öffentlichen Banken
 Bundesverband Öffentlicher Banken
 [Public bank's ombudsman
 German Association for public banks]
 Lennestraße 17 • 10785 Berlin
 Tel. (030) 8 19 20 • Fax (030) 8 19 22 22
postmaster@voeb.de

Deutsche Bundesbank
 [German Federal Bank]
 Schlichtungsstelle
 Postfach 100602 • 60006 Frankfurt a. M.
 Tel. (069) 95 66 40 50 • Fax (069) 95 66 40 56
schlichtung@bundesbank.de

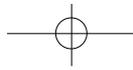
Ombudsfrau der privaten Bausparkassen
 [Ombudswoman for the private building societies]
 Postfach 303079 • 10730 Berlin
 Tel. (030) 59 00 91-5 00 • Fax (030) 59 00 91-5 01
bausparkassen@vdpb.de

Ombudsmann der Landesbausparkassen
 [Ombudsman for the public building societies]
 Postfach 7448 • 48040 Münster

Ombudsmann der deutschen genossenschaftlichen
 Bankengruppe
 [Ombudsman of the German cooperative banking
 group]
 c/o Kundenbeschwerdestelle beim Bundesverband
 der Deutschen Volksbanken und Raiffeisenbanken
 Postfach 309263 • 10760 Berlin
 Tel. (030) 20 21-0
 Fax (030) 20 21-19 00
info@bvr.de
www.bvr.de

Deutscher Sparkassen- und Giroverband
 [German Savings Bank Association]
 (Ombudsleute auf der Ebene der regionalen
 Sparkassenverbände)
 [Contacts for Ombudsmen/women on the regional
 level]
 Postfach 110180 • 10831 Berlin
 Tel. (030) 2 02 25-0
 Fax (030) 2 02 25-2 50
postmaster@dsgv.de
www.dsgv.de





Foreign dispute resolution bodies (responsible for cross-border disputes between consumers and entrepreneurs situated within the EU)

More than 400 dispute resolution bodies throughout the EU are registered with the European Extra-Judicial Network for cross-border dispute resolution (EEJ-Net).

Information on the appropriate institution can be obtained from the Clearinghouse Germany (see page 5).

Funeral Homes

Bundesverband Deutscher Bestatter
[Federal Association of German Undertakers]
Schlichtungsstelle
Volmerswerther Str. 79 • 40221 Düsseldorf
Tel. (0211) 1 60 08 10 • Fax (0211) 1 60 08 50
www.bestatter.de

Lawyers

Some (regional) chambers of lawyers have established “Schlichtungsstellen”.

Contact:
Bundesrechtsanwaltskammer
[Federal Chamber of Lawyers]
Littenstraße 9 • 10179 Berlin
Tel. (030) 2 84 93 90 • Fax (030) 28 49 39 11
zentrale@brak.de

Deutscher Anwaltverein
[German Bar Association]
Littenstraße 11 • 10179 Berlin
Tel. (030) 72 61 52-0 • Fax (030) 72 61 52 19-0
dav@anwaltverein.de

Medical Profession

Pharmacists and doctors have established “Schlichtungsstellen” as well as advisory boards.

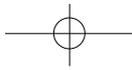
Contact via the regional chamber or via

Bundesärztekammer
[German Medical Association]
Herbert-Lewin-Str. 1 • 50931 Köln
Tel. (0221) 40 04-0
info@baek.de

Bundeszahnärztekammer
[German Dental Association]
Chausseestraße 13 • 10115 Berlin
Tel. (030) 4 00 05-0 • Fax (030) 4 00 05-2 00
info@bzaek.de

Bundesvereinigung Deutscher
Apothekerverbände
[Federal Union of German Association of Pharmacists]
Jägerstraße 49/50 • 10117 Berlin
Tel. (030) 4 00 04-0 • Fax (030) 4 00 04-5 98
www.bingk.de





Public Transportation

Verbraucher-Zentrale NRW
 [Consumer Association NRW]
 Schlichtungsstelle Nahverkehr,
 Mintropstraße 27 • 40215 Düsseldorf
 Tel. 0180-5 67 45 67 • Fax (0211) 3 80 96 66
nahverkehr@vz-nrw.de
www.schlichtungsstelle-nahverkehr.de

Retail

“Schlichtungsstellen” are available at the regional or local level. Contact can be established via the local chamber of commerce and industry (IHK) or via:

Deutscher Industrie- und Handelskammertag
 [German Association of Chambers of Commerce]
 Breite Straße 29 • 10178 Berlin
 Tel. (030) 20 30 8-0 • Fax (030) 20 30 8-10 00
dihk@berlin.dihk.de
www.dihk.de

- “IHK-Schlichtungsstellen” for consumer disputes have been established in the following regions: Aachen, Arnsberg, Darmstadt, Detmold, Dillenberg, Dortmund, Düsseldorf, Essen, Flensburg, Hagen, Hamburg, Hanau, Hannover, Heidenheim, Kiel, Leipzig, Lübeck, Lüneburg, Offenbach, Saarbrücken, Schwerin, Stade, Wiesbaden and Wuppertal.

- Further IHK-Centres have been established for the settlement of disputes arising
 - from unfair competition
 - with relation to apprenticeships
 - with relation to construction work
 - between merchants

Skilled Crafts

“Schiedsstellen” and/or “Vermittlungsstellen” are available on the level of the local or regional trade guilds or chambers (bakers, electricians, coiffeurs, butchers, painters, carpenters, etc.). Contact can be established through the local or regional professional organisations as well as via the

Zentralverband des Deutschen Handwerks
 [German Confederation of Skilled Crafts]
 Mohrenstraße 20/21 • 10117 Berlin
 Tel. (030) 2 06 19-0 • Fax (030) 20 61 94 60
info@zdh.de
www.zdh.de

Tax Advisors

“Schlichtungsstellen” with the chamber of tax advisors at the respective location (“Landesteuerberaterkammer”).

Contact:
 Bundessteuerberaterkammer
 [Federal Chamber of Tax Advisors]
 Neue Promenade 4 • 10178 Berlin
 Tel. (030) 24 00 87-0 • Fax (030) 24 00 87-99
zentrale@bstbk.de
www.bstbk.de



Telecommunications and Posts

Regulierungsbehörde für Telekom und Post
 [Regulatory Authority for Telecommunications and
 Posts]
 Ref. 114, Schlichtungsstelle
 Postfach 8001 • 53105 Bonn
www.regtp.de

“Schlichtung” for disputes between merchants, neighbours, next of kin, or for disputes at the work place

- Commercial disputes
- Neighbourhood disputes
- Family disputes
- Employment disputes

Institutions providing dispute resolution services are also offering help in the areas of neighbourhood disputes, disputes between landlords and tenants as well as employment related disputes. Further information can be obtained from the “Rechtsantragsstelle” (office for legal applications) at the local court, the local tenant association or a “Schiedsperson” (conciliator) in the respective area.

Some chambers of commerce and industry have established “Schiedsstellen” for disputes between merchants (for contact information see under “Retail”).

Contacts for complaints in administrative matters:**SOLVIT**

The SOLVIT-Net is designed to help citizens or businesses deal with cross-border problems between themselves and a national public authority involving a possible misapplication of EU law.

Bundesministerium für Wirtschaft und Arbeit
 [Federal Ministry of Economics and Labour]
 Solvit-Stelle
 Scharnhorststraße 34-37 • 10115 Berlin
 Tel.: +49 18 88-6 15 64 44
solvit@bmwa.bund.de
<http://europa.eu.int/solvit/site/>

European Ombudsman

The European Ombudsman investigates complaints regarding maladministration by the institutions and bodies of the European Community.

1 Avenue du Président Robert Schuman
 B.P. 403 • F-67001 Strasbourg Cedex
 Tel.: +33 3 88 17 23 13
 Fax :+33 3 88 17 90 62
euro-ombudsmann@europarl.eu.int
www.euro-ombudsmann.eu.int

National Complaint Centres

Complaints regarding national, regional or local administrative matters are dealt with by the ombudsman or the petition committee of the respective authority.



Arbitration

The “Schlichtungsstellen” portrayed in this guide are not to be confused with arbitration courts (“Schiedsgerichte”). Provided that a valid arbitration agreement exists between the parties (usually commercial entities), such arbitration courts make a binding decision that generally cannot be appealed. The decision is enforceable at law. The statutory rules relevant to arbitration proceedings are laid down in the tenth book of the German Code of Civil Procedure.

Contact:

Deutsches Institut für Schiedsgerichtsbarkeit
[German Institution of Arbitration]
Beethovenstraße 5-13
50674 Köln
Tel. (0221) 2 85 52-0
Fax (0221) 2 85 52-2 22
dis@dis-arb.de
www.dis-arb.de

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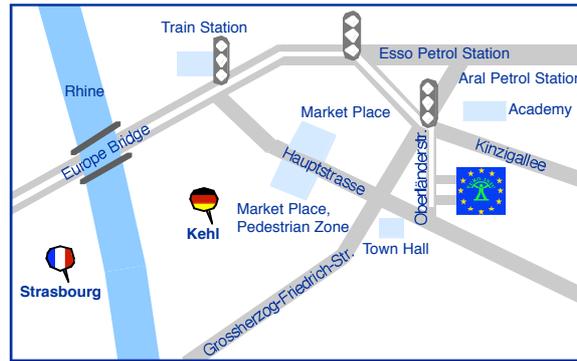
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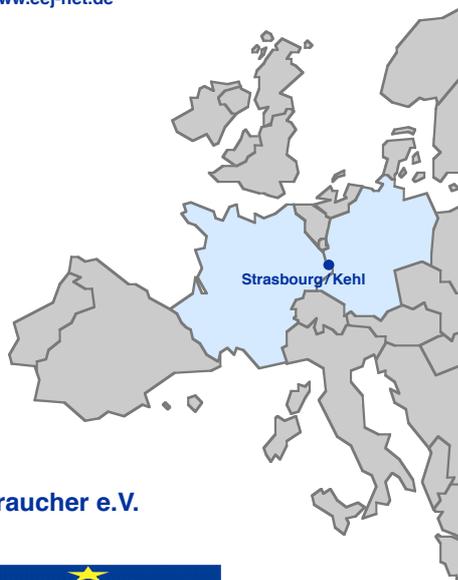


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