Questionnaire Addressed to the National Reporters

Answers of the German Reporter Prof. Dr. Karsten Thorn, LL.M. *

QUESTION 1:

From your national law perspective, would it be proper to include within the notion of "Uniform Law" usages of the trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational law, lex mercatoria, general rules of procedure? Uniform Law below shall mean Uniform Law according to the meaning assigned to this expression in your reply to this Question 1.

From the German national law perspective, "Uniform Law" only includes codifications or international treaties that are the result of an international codification procedure. Examples are the United Nations Convention on the International Sale of Goods or the Rome Convention on the law applicable to contractual obligations.

Some legal scholars intend to extend the notion of "Uniform Law" to general principles of law or *lex mercatoria*. The application of those principles leads to a harmonization of the application of law in international trade. However, they are not part of "Uniform law" in a strict sense. Law encompasses only rules that were made or adopted by states. Usages of trade or "customs", general principles of law, general principles of contract law or of the law of obligations, *lex mercatoria* or general rules of procedure may be applicable, but only by virtue of party autonomy and to the extent to which national law allows party autonomy. Hence, they are not included in the notion of "Uniform Law".

Model Laws such as the UNCITRAL Model Law on International Commercial Arbitration may be considered as "Uniform Law". Such Model Laws are, however, distinctly different from international treaties, as it is entirely at the discretion of the national legislator to make any changes they desire, whereas in international treaties there is seldom the possibility to make reservations.

QUESTION 2:

To what extent has your country incorporated Uniform Law as national law through treaty ratification, other enactments or court decisions?

* In preparing this report I was supported by my research assistant Felix Dörfelt, LL.M. (Pepperdine).

In the area of commercial arbitration, the following Uniform Law is directly or indirectly applicable in Germany:

Germany has ratified the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958; see § 1061 German Civil Procedure Code).

Another Convention ratified by Germany is the European Convention on International Commercial Arbitration of 1961 (Geneva, 21 April 1961) and the modifying Agreement relating to application of the European Convention on International Commercial Arbitration (Paris, 17 December 1962).

The *Worldbank Convention* (Washington, 18 March 1965) was also ratified by Germany, which forms arbitral rules on special subjects.

Not considered genuine Uniform Law, but also important in the area of uniform rules, is the *UNCITRAL Model Law on International Commercial Arbitration of 1985.* As every state can make any reservation or change to the Model Law it can only be seen as factual Uniform Law: In 1998 Germany reformed its national law on arbitration and in this process Germany generally adopted the *UNCITRAL Model Law.* The major difference between the model law and the German adoption was the scope of application: Germany applies the arbitral rules not only to international commercial arbitration, but also to any arbitration, national or international. The adoption of the UNCITRAL Model Law should raise the attractiveness and reputation of arbitration awards in Germany in order to host more proceedings. For the exact differences between the Model Law and the reformed German Civil Procedure Code concerning arbitration, see *Lionett/Lionett, Handbuch der internationalen und nationalen Schiedsgerichtsbarkeit, S. 139 ff.*

Apart from commercial arbitration Germany ratified, for example, the *United Nations Convention on Contracts for the International Sale of Goods* (Vienna, 11 April 1980), the *UNIDROIT Convention on International Factoring* (Ottawa, 28 May 1988), the *Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes* (Geneva, 7 June 1930), and the *Convention Providing a Uniform Law for Cheques* (Geneva, 19 March 1931).

QUESTION 3:

To what extent should your national law be considered as including Uniform Law when designated as proper law of the contract? the law governing the tort? When your country is designated as place (seat) of the arbitration?

Following the German doctrine, Uniform Law becomes part of the respective national law through ratification. Under German legal theory international treaties become part of the German national law through ratification and incorporation and stand on the same level of hierarchy as the normal national law. Hence, it is considered included when designating the proper law of the contract and/or the law governing the tort. This is not influenced in any way, if Germany is designated as seat of the arbitration.

QUESTION 4:

To what extent will legal notions in your country applicable in the process of deciding a dispute by courts or arbitrators (including public policy and international mandatory rules or lois de police (national or foreign)) accept Uniform Law incorporated in the foreign law (substantive or procedural) applicable, as the case may be, to the contract giving rise to the dispute/at the foreign arbitral place or seat?

The question of the acceptance of Uniform Law incorporated in the foreign law can arise in the course of the application of foreign law by a court or an arbitral tribunal when deciding a case on its merits as well as in the proceeding of recognition and enforcement.

If a German court has jurisdiction to decide a case, it will apply its own procedural law, so there the question doesn't arise. As for the application of substantive law, if the German conflict of law rules lead to a foreign substantive law, the German court will apply it as a whole, irrespective of its origin. This includes Uniform Law being part of the applicable foreign law.

The court will only refuse to apply a substantive foreign legal provision if the result of its application would violate German public policy, for example basic human rights under our constitution (art. 6 EGBGB). Of course, if the Uniform Law has been equally implemented into German Law, it is logically impossible that the application of the foreign law based on the same Uniform Law violates the German public.

Furthermore, in the field of contract law, art. 34 EGBGB states that German mandatory rules will apply irrespective of the law applicable to the contract (*lex contractus*).

Mandatory rules are, for example, antitrust law, export/import regulations, provisions with regard to the trade of arms or works of art and provisions protecting the weaker party in a contractual relationship like workers, tenants, consumers and so on. With regard to overriding domestic mandatory rules, it doesn't make any difference, if the foreign law is based on Uniform Law or not.

Foreign mandatory rules might be taken into consideration by German courts as well when deciding a case depending on a variety of factors. As this seems more likely to be the case if the foreign provision is based on a policy for which there is an international consensus here the fact that the foreign provision is based on Uniform Law might favour its application by German courts.

In the proceedings for the recognition and enforcement of foreign judgments German courts will examine the violation of German public policy in two ways. On one hand, it will examine, if the foreign court when deciding the case has not violated fundamental rights of the defendant (procedural public policy). On the other hand, it will examine the possible violation of the substantive German public policy as it has already been explained above. Again, the fact that the foreign legal provisions applied by the foreign court are based on Uniform Law does not formally make a difference with regard to the public policy test although the violation of public policy seems less likely in this case.

An arbitral tribunal will apply the substantive law chosen by the parties. The arbitrator shall apply German ordre public to avoid a subsequent challenge of the award in front of the German court.

QUESTION 5:

To what extent are arbitral awards officially published or informally disseminated in business and legal circles in your country? Is your country a stare decisis country? If so, to what extent does stare decisis apply to arbitral determinations/awards? To what extent is issue preclusion or collateral estoppel (if accepted in your legal system) applicable in arbitration (from court of law to arbitral tribunal and viceversa / between arbitral tribunals)?

Arbitral awards are not officially published in Germany. There are three legal journals that publish on international commercial arbitration, the IPRax, the Internationales Handelsrecht and the SchiedsVZ (German Arbitration Journal), the two later journals occasionally

publish arbitral awards. As far as I know, the awards are also not informally disseminated in business or legal circles.

German, as a civil law country, is not a *stare decisis* country.

The effects of the arbitral award are governed by § 1055 ZPO. It reads:

Effects of the arbitral award

The arbitral award has the same effects between the parties as a final and binding judgement.

From this follows:

Issue preclusion or collateral estoppel from court of law to arbitral tribunal:

An arbitral award is null and void and unenforceable if a German court has found that the dispute is not covered by an arbitration agreement.

German court decisions have *res judicata* effect for any arbitral tribunal. Foreign court decisions have such effect as well, in so far as they are recognisable and enforceable under German law.

Issue preclusion or collateral estoppel from arbitral tribunal to court of law:

A foreign arbitral award has *res judicata* effect if the award was declared enforceable by a German court. The other courts and arbitral tribunals are bound by that decision.

A domestic arbitral award has *res judicata* effect from the moment it is rendered. This creates a problem, if one party is seeking to enforce the award in German city A and the other is seeking to have it set aside by the competent court in German city B. Here the court of the enforcement (in German city A) has the possibility to stay proceedings for the competent court (in German city B) to decide on the setting aside proceeding. According to the BGH (Federal Supreme Court) the court in the setting aside procedure is not bound by the factual findings of the arbitral tribunal and may revisit the facts (BGH NJW 1972, 2180).

Issue preclusion or collateral estoppel from arbitral tribunal to arbitral tribunal:

An award has *res judicata* effect, but only between the parties.

QUESTION 6:

To what extent are national laws and state courts in your country "arbitration friendly"? Does your answer change depending on whether a state party or a state interest is directly involved in or affected by the resolution of the dispute or the contract may be labelled as "a public" or as an "administrative" contract under your legal system? Whether the arbitration is "international or domestic"? Whether its seat/place is within/outside your country?

1. German Law is "arbitration friendly"

The German national law on arbitration seems to be "arbitration friendly".

As Germany was not well recognised as a place of arbitration, it was decided as a matter of policy to subordinate the national law to the Model Law's aim of harmonisation, with a view to the fact that the latter was built on worldwide consensus and provided what was regarded internationally as a trusted and accessible system of rules.

Germany's adoption of the Model Law (with some desirable changes) is both a concrete measure of the fulfilment of this criterion and also a sign of Germany's desire to meet, the needs of the international arbitral community.

In some rules Germany goes even beyond the Model Law in a pro-arbitration way, for example "domestic" awards (that is, awards rendered in arbitral proceeding having their seat in Germany) have the same effect between the parties as a final court judgment (sect. 1060, 1055 of the Code of Civil Procedure (ZPO)).

Also, German Law follows the principle of party autonomy in many respects. The choice of an arbitration institution is accepted and enforced under German Law with the practical consequence that the arbitration rules of such an institution are effectively incorporated into the parties' arbitration agreement. If a German court is seized in a matter which is governed by an arbitration clause, the German court will refuse to rule upon the case, if the respondent makes an objection. This will even apply when the place of the arbitral tribunal is outside Germany (sect. 1025 Abs. 2 ZPO).

Furthermore, Germany has widened the scope of arbitrability in sect. 1030 ZPO, allowing more cases to be decided by an arbitral tribunal. The German concept of arbitrability includes the objective arbitrability (whether a particular kind of dispute is amenable to arbitration) and the subjective arbitrability (whether the parties have the capacity to dispose of the disputed claim).

Under former German law of arbitration, the concept of arbitrability was linked with the power of the parties to settle their dispute. The new law makes a distinction between pecuniary and non-pecuniary claims.

Pecuniary claims are said to be always arbitrable (sect. 1030 I ZPO). Nevertheless, despite this clear wording, certain pecuniary claims are not arbitrable, for example patent disputes or the claim of a shareholder when it has an influence on the interest of other shareholders. Antitust-claim, which weren't arbitrable, are now, with the changes of sect. 91 GWB (German Antitrust Act), always arbitrable.

The arbitrability of non-pecuniary claims is linked with the power of the parties to settle their dispute. If the parties lack the power to dispose of their dispute, they cannot defer that task to an arbitral tribunal. The parties are usually free to dispose of their civil rights, but are limited when interests of others (third parties or the public) are likewise at issue and, due to their importance, need to be protected (e.g. custody of child, status of spouse).

In the field of security transactions, according to sect. 37h WpHG (German Securities Acquisition and Takeover Act), an arbitration agreement made before the controversy arose is binding upon the parties only if both parties are *Kaufleute* (Merchant pursuing to the German Commercial Code (HGB)) or merchants. If a consumer is involved, the subjective arbitrability is missing.

2. Difference when a state is involved?

Under German Law, subjective arbitrability is given when a state is a party in an arbitration proceeding. The sovereign immunity pursuant to art. 18-20 of the Law on the Organisational Structure of the Courts (GVG), does not extend to arbitration, as an arbitral tribunal does not exercise sovereign power. Furthermore, the foreign state can waive its immunity by signing an arbitration agreement. Also, as far as the state engages in commercial activities (*acta de iure gestionis*), it won't be protected by sovereign immunity.

The only difference which might arise when a state is party to an arbitration proceeding consists of the execution of an arbitral award against that foreign state. The German court won't seize assets of the foreign state which are used by the foreign state in the exercise of its sovereign power.

3. Difference when a “public” or “administrative” contract is involved?

In German law “public” and “administrative” contracts are not always arbitrable. It depends upon the power of the parties to dispose over their rights, sect. 106, 54 VwGO (German Rules for the Procedure of the Administrative Courts). If the parties have the power to dispose over their rights, the rules applicable to the public or administrative contract are the same as in the event of a private contract sect.173 VwGO (German Rules for the Procedure of the Administrative Courts) in connection with sect. 1025 ss. BGB (German Civil Code).

4. Difference between “domestic” and “international” arbitration

Other than the UNCITRAL Model Law the German Arbitration Act does not differentiate between domestic and international arbitration.

5. Difference depending on the seat of arbitration (domestic or foreign proceedings)

Pursuant to sect. 1025 I ZPO, the provisions of the ZPO apply only if the place of arbitration, as defined in sect. 1043 I ZPO is in Germany (domestic proceedings). Germany now applies the modern principle of territoriality. Hence, arbitration with a seat outside of Germany will be considered a foreign proceeding. For those proceedings, the German Arbitration Act generally does not apply. However, sections 1032, 1033 and 1050 apply regardless of the place of arbitration. Sect. 1025 II ZPO enumerates these exceptions, all of which concern the powers of German courts of law with respect to arbitral agreements and proceedings. Thus, a German court must dismiss actions brought contrary to an arbitration agreement even if such arbitration were not governed by German law (sect. 1032 ZPO). It may order interim measures of protection under sect. 1033 ZPO even with respect to international arbitral proceedings and it may assist foreign arbitral tribunals in taking evidence pursuant to Sect. 1050 ZPO. The wording of sections 1025 II, 1032 II in connection with 1062 I Nr. 2 and 1062 II refers jurisdiction to the Court of Appeals of Berlin for every arbitration commenced in the world. It is assumed, however, that the courts will read an inherent limitation into this provision limiting the courts’ jurisdiction to cases, where there is a significant connection with Germany.

Concerning the enforcement of awards, there is a differentiation between domestic and foreign awards. Sect. 1054 III ZPO obliges the arbitral tribunal to state the place of

arbitration defined in sect. 1043 I ZPO in its award and accords this statement dispositive force. The classification of an award is therefore based on whether a domestic or a foreign place of arbitration has been stipulated by the arbitral tribunal. Therefore a "domestic" award is given when the seat of the arbitral tribunal is in Germany and a "foreign" award when the seat is outside Germany.

Sect. 1061 ZPO focuses on foreign awards and refers them to the New York Convention. The provision for domestic awards is sect. 1060 ZPO, which refers to sect. 1059 ZPO for the grounds of denying enforcement. The differences between the two rules of enforcement are only minor, as the grounds for denying enforcement set out in sect. 1059 ZPO are similar to the grounds in the New York Convention.

QUESTION 7:

To what extent are arbitral awards subject to control on the merits (including from the outlook of private international law or choice-of-law methodologies, rules or principles applicable or accepted in your country) or in respect of procedural notions or matters (e.g., due process) when rendered in your country or (if rendered abroad) when brought for enforcement/recognition in your country?

Arbitral awards that are rendered within Germany are subject to the same review as arbitral awards rendered outside of Germany. However, the basis for review is different. The enforcement and recognition of foreign arbitral awards is governed by the NY Convention. The enforcement and recognition and setting aside procedure for domestic arbitral awards is governed by the German incorporation of the UNCITRAL Model Law into the ZPO (German Code of Civil Procedure), cumulating all grounds in § 1059 ZPO. § 1059 ZPO sets out grounds identical to those of the NY Convention. The domestic arbitral award can be subject to court review in two different proceedings: recognition and enforcement of an arbitral award (§§ 1060 II 1 ZPO in connection with § 1059 II ZPO) and setting aside of an arbitral awards (§ 1059 ZPO). The intensity of review depends on the subject matter.

Merits: There is generally no *révision au fond*.

However, the enforcing/recognizing court is not bound by the tribunal's interpretation of the relevant provisions as well as to the application of such provisions to the facts established. The same applies to the factual finding of the arbitral tribunal. Hence, the court

may revisit the facts of the case and take its own evidence. This question arises with regards to alleged violations of public policy or the validity or scope of the arbitration clause. Especially with concern to the later issues, courts are willing to revisit the facts as there is no concept of binding *Kompetenz-Kompetenz* in Germany. Scholars allege that revisiting the fact may lead to a hidden *révision au fond* (Zöller-Geimer § 1059 Rn 53). Yet, these concerns cannot be substantiated by practical observation. Since the adoption of the UNCITRAL Model Law on International Commercial Arbitration the courts have been particularly reluctant to make their own determination of facts where the tribunal made a reasonable determination and considered all relevant legal aspects (OLG [Court op Appeal] Hamburg, IPRspr. 1999 Nr. 178).

Concerning private international law or choice of law, there is no review, as applying the "wrong" law does not constitute grounds for setting aside or denying enforcement of the award. However, exceptions are made if the tribunal openly disregards the parties' choice of law.

Procedural notions or matters:

The review in procedural notions or matters is likewise limited to the review permitted under the NY Convention.

QUESTION 8:

What is the notion of and role played by public policy in the recognition or enforcement of arbitral awards rendered abroad? Of lack of arbitrability? International mandatory rules or lois de police (national or foreign)? To what extent do any of these reservations/notions serve the purpose of advancing primarily local or domestic notions regarding both substantive law and procedural law matters?

The enforcement and recognition of foreign arbitral awards is governed by the NY Convention (sect. 1061 ZPO). Art. V 2 of the NY Convention allows the German court to consider its own notions of arbitrability and public policy.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

The question of the arbitrability of a subject-matter is governed by § 1030 ZPO. As seen above, German Law now has a quite wide notion of arbitrability.

An arbitral award will not be recognised if the court finds that it is in conflict with German public policy. It should be noted that German Law differentiates between "domestic *ordre public* and "international *ordre public*" The domestic "*ordre public"*applies in cases of domestic arbitrations (purely domestic conflicts) and the international "*ordre public*" in cases of international arbitration. The test for the international "*ordre public"* requires a stronger violation of German public policies as the connection to Germany is naturally less. Scholars speak in this context of the relativity of the "*ordre public"*. The stronger the connection to Germany, the lower the standard for a violation.

Not every mandatory rule of German Law serving public interests is part of the "international *ordre public*". The "*ordre public*" in this narrower sense contains only rules which are mandatory for the parties and of a major importance to fundamental principle of German law. Such fundamental principles may be derived from the German Constitution. Another major aspect of the *ordre public* are for eg. the law protecting competition and regulating commerce and trade.

The notion of "*ordre public*" involves not only substantive issues but also governs procedural questions. The so-called *ordre public processualis* guarantees a minimum standard of procedural justice. Procedural grounds of refusal are already included in Art. V 1 of the New York Convention, but only if a party makes a request. On the contrary, the so-called "*ordre public*" *processualis* must be recognized by the court ex officio Art. V 2 b) NY Convention. They are limited to very obvious violations of procedural rights, for example in cases where an award was obtained by means of bribery or fraud.

The foreign mandatory rules of the county where the arbitration took place will be considered by the German court over Art. V 1 (e) NY Convention, if the court at the place of arbitration set it aside. Art. V 1 (e) NY Convention states:

Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

As a whole, it can be said that German courts interpret the public policy ground of challenge more restrictively than other countries do and Germany uses the bias of public policy only to advance domestic procedural and substantive notions of the utmost importance.

QUESTION 9:

Bearing in mind your answers to question 3-8 above, to what extent do arbitral awards or determinations influence, or may be considered as possibly influencing state court decisions or legislative change in your country? To what extent do courts of law in your country defer to determinations made by local or international arbitral institutions in charge of administering arbitrations? If no experience at hand, what would be the prospective answer to these questions? Please differentiate the areas of law in which this influence exists or may potentially exist in the future?

On the grounds of accessible information in general, arbitral awards do not have an impact on court decisions or legislative changes. The most important reason for this being that arbitral awards are often not publicized and therefore not accessible for courts.

As far as I can tell the only area where arbitral awards have a certain but limited impact on court decisions is jurisdiction on cases in which the Convention on the International Sale of Goods (CISG) is applicable (see BGH v. 30.06.2004, NJW 2004, 3181). The reason for this might be that arbitral awards in this field of law are more frequently published (cp. for example the internet-database *http://www.cisg-online.ch*) and/or cited by treatises (*Schlechtriem/Schwenzer*, Kommentar zum Einheitlichen UN-Kaufrecht, München 2004). Thus, in this area courts can take arbitral awards into consideration, but rarely do so.

Due to the interest of confidentiality in arbitral proceedings, a strong impact of arbitral awards on state court decisions or legislative changes is improbable in the near future as well.

QUESTION 10:

Bearing in mind your answers to questions 1-9 above, to what extent do arbitral awards rendered in your country, enforced or enforceable in your country or concerning nationals of or residents in your country apply or may be deemed as based on Uniform Law? If no experience at hand, what would be your prospective answer to these questions?

Concerning arbitral awards rendered in Germany, a distinction between ad-hoc Arbitration and institutional arbitration is necessary: As far as ad-hoc arbitration is concerned, Uniform Law is indirectly applicable because of the general adoption of the UNCITRAL Model Law. In the area of institutional arbitration the Model Law is also applicable, but where possible the rules of the chosen institution can differ from the Model Law.

The enforcement of arbitral awards is also regulated by Uniform Law as Germany ratified the *New York Convention on the Enforcement of Foreign Arbitral Awards*. The application of the New York Convention is independent of characteristics of the parties, such as domicile or nationality. It applies to all foreign arbitral awards (Art. 1 Para. 1 New York Convention). According to Art. 1 Para. 3 New York Convention, contracting states can declare that the convention shall only apply to those arbitral awards made in the territory of another contracting state. Germany originally used this opportunity, but in the process of reforming German arbitration rules Germany revoked the prior reservation. In conclusion, the enforcement of all foreign arbitral awards is now governed by the New York Convention.

The enforcement of domestic arbitral awards is governed by §§ 1060, 1059 Para. 2 German Civil Procedure Code, which complies with the New York Convention. Therefore the New York Convention indirectly applies to the enforcement of domestic arbitral awards as well.

Besides, arbitral awards are often based on Uniform Law as it is applied by arbitral tribunals. The CISG in particular is often applied in arbitral proceedings.

QUESTION 11:

Bearing in mind your answers to questions 1-10 above, what has been the impact of arbitral awards and determinations on introducing, firming up or applying Uniform Law, including through legislative change or the action of the courts, in your country? Of foreign court decisions regarding arbitral awards or determinations referring to or based on Uniform Law? If no experience at hand, what would be the prospective answers to these questions?

This question seems unclear.

As far as I can see arbitral awards did not have a direct impact on introducing Uniform Law. Arbitral awards also did not have an impact on firming up Uniform Law. On the grounds of accessible information, an impact of arbitral awards on applying Uniform Law is that Uniform Law, especially the UNCITRAL Model Law, was applied in arbitral awards as it became part of the national German Law. The application of Model Law was caused by the legislative change. This applies to the New York Convention as well. In conclusion, arbitral awards did not have an impact on the introduction or application of Uniform Law, but Uniform Law influenced arbitral awards by being implemented into German law.

The application of Uniform Law, e.g. the CISG, does not have a direct impact on the action of courts. In fact, courts rarely take arbitral awards into recognition and arbitral awards do not cause changes in their judgements.

QUESTION 12:

Bearing in mind your answers to questions 1-9 above what has been the impact on the fashioning of your national legislation on arbitration – domestic or international – or on arbitral awards rendered in your country or concerning nationals of or residents in your country of: (a) the action and rules of international arbitral institutions (e.g. the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), the London Court of International Arbitration (LCIA)); (b) the works of international organizations (e.g., UNCITRAL, UNIDROIT, the European Union, NAFTA, the Organization of American States); and (c) foreign court decisions or legislation reflecting the influence of the action or works of institutions or organizations like the ones mentioned in subparagraphs (a) or (b) above? If no experience at hand, what would be your prospective answers to these questions?

As previously mentioned, the German national legislation has implemented the UNICITRAL Model Law. The German Institution of Arbitration (DIS) was part of, along with the German Minister of Justice, the Arbitration Law Reform Commission.

As for the notion of arbitrability, which is not governed by the Model Law, the German legislator was influenced by the liberal approach of US case Law on arbitrability. Furthermore, the German legislator seems to have been influenced at some point by the Dutch Arbitration Act and the Swiss Private International Law Act.