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## Conquering the Legal World: The Use of English in Foreign Courts

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**Key words** – Civil jurisdiction, legal translation, jurisdictional competition.

**Abstract:** This article discusses the initiatives to allow the use of English in German and French courts. The difficulties arising out of such initiatives are highlighted and the aims evaluated. The article illustrates how, at present, such proposals suffer from insufficient English language translations of statutes and highlights the legal and practical obstacles. The article demonstrates that language is not the primary reason why parties do not chose Germany or France as place of litigation and concludes that therefore the initiatives will not bring about the desired effect.

**Résumé:** Cet article discute les initiatives pour permettre l'utilisation de l'anglais dans les tribunaux allemands et français. Les difficultés découlant de ces initiatives sont mises en évidence et les objectifs évalués. L'article montre comment, à l'heure actuelle, de telles propositions souffrent d'insuffisance de traductions des lois en langue anglaise, et souligne les obstacles juridiques et pratiques. L'article démontre que la langue n'est pas la raison principale pour laquelle les parties n'ont pas choisi l'Allemagne ou la France comme lieu de litige, et conclut donc que les initiatives n'auront pas l'effet désiré.

**Zusammenfassung:** Dieser Artikel diskutiert die Initiativen bezüglich der Zulassung von englischer Sprache in deutschen und französischen Gerichten. Die Schwierigkeiten, die diese Initiativen hervorrufen, werden hervorgehoben, und ihre Zielsetzung bewertet. Der Artikel zeigt auf, dass derzeit die Vorschläge darunter leiden, dass keine hinreichende Übersetzung von Gesetzen in englischer Sprache vorliegt, und weist auf die rechtlichen und praktischen Hürden der Initiativen hin. Der Artikel zeigt, dass Sprache nicht der vorrangige Grund dafür ist, dass die Parteien nicht Deutschland oder Frankreich als Gerichtsstand wählen, und schlussfolgert, dass die Initiativen aus diesem Grund nicht den erwünschten Erfolg haben werden.

### 1. Introduction

In the federal German Parliament, there is currently a bill pending that would allow certain commercial proceedings to be conducted exclusively in English language.<sup>1</sup> Pilot projects are already in place in courts in the states of Nordrhein-Westfalen and Hamburg. At the same time, the *Tribunal de Commerce de Paris* has designated one of its chambers as an international chamber, which will accept evidentiary

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1 An overview of the legislative initiative with particular emphasis on the cost advantages of litigation in Germany is provided by M.ILMER, 'Fishing in Foreign Waters: International Commercial Litigation in English with German Cost Advantage', 29 *CJQ* (Civil Justice Quarterly) 2010, p. 290.

documents in English, German, and Spanish. Both initiatives aim to promote the attractiveness of Germany and France, respectively, as places of litigation and to increase revenue from court fees as well as increase income of the local legal profession. Ultimately, the dominance of the common law is hoped to be limited and Civilian systems to be given a greater standing internationally.

There are multifaceted problems with these initiatives, which this article will examine in turn. The problems can be broken down into three areas: practical problems (section 4), legal problems (section 5), and problems relating to the initiatives' motivation (section 6). Before addressing these issues, the proposals must be studied in more detail and be placed in the context of their respective legal settings.

## 2. The German Initiative

*Die Gerichtssprache ist deutsch*<sup>2</sup> is the simple statement in section 184 of the *Gerichtsverfassungsgesetz*,<sup>3</sup> which so far renders any attempt to use a foreign language in a German court futile.<sup>4</sup> The *Länder* (federal states) of Nordrhein-Westfalen, Hamburg, and Hessen have initiated a legislative proposal<sup>5</sup> to allow the use of English in certain international commercial chambers of the *Landgerichte* (regional courts) and certain senates of the *Oberlandesgerichte*<sup>6</sup> (regional courts of appeal). Despite the apparent prohibition on the use of other languages in Hamburg and Nordrhein-Westfalen, a pilot project is under way allowing the use of English in the oral hearing in court. This pilot project exploits an

2 The language in court is German. The translation sanctioned by the Federal Ministry of Justice (<[www.gesetze-im-internet.de/englisch\\_gvg/index.html](http://www.gesetze-im-internet.de/englisch_gvg/index.html)>, 28 Oct. 2011) reads: 'The language of the court shall be German' and thus contains less clear an order than the German original. The modal verb 'shall' might either express a mandatory action or substitute for 'can' or 'may'. N. TILLMAN & S. BARRETT TILLMAN, 'A Fragment on Shall and May', 50 *American Journal of Legal History* 2010, p. 453. On the difficulties regarding translations of statutes in general, see *infra* sec. 4.3.

3 Act on the Constitution of Courts, hereinafter referred to as 'GVG'.

4 Anecdotal evidence can be adduced in illustration: The author, in the oral part of the second legal state examination, was reprimanded for the use of a Latin expression (*lex commissoria*, to express the content of sec. 1149 of the Civil Code, hereinafter referred to as 'BGB') and reminded by an examiner that 'the language in court is German'. There is an exception for the Sorbs, a minority group in East Germany, who are allowed to speak Sorbian in the courts within their area of settlement, sec. 184 sentence 2 GVG. Sorbian is a Slavonic language spoken around Cottbus.

5 *Bundesrat Drucksachen* (documents of the *Bundesrat*) BR Drs 42/10 and *Bundestag Drucksachen* (documents of the federal Parliament) BT DRs 17/2163.

6 *Landgerichte* are courts of first instance for disputes of more than EUR 5,000 in value and for commercial matters irrespective of the amount in question. (*Landgerichte* also have final appeal jurisdiction for matters below EUR 5,000 that have commenced in the *Amtsgericht*.) Panels of judges are called *Kammer* (chamber) at the *Landgericht* and *Senat* (senate) at the *Oberlandesgericht*.