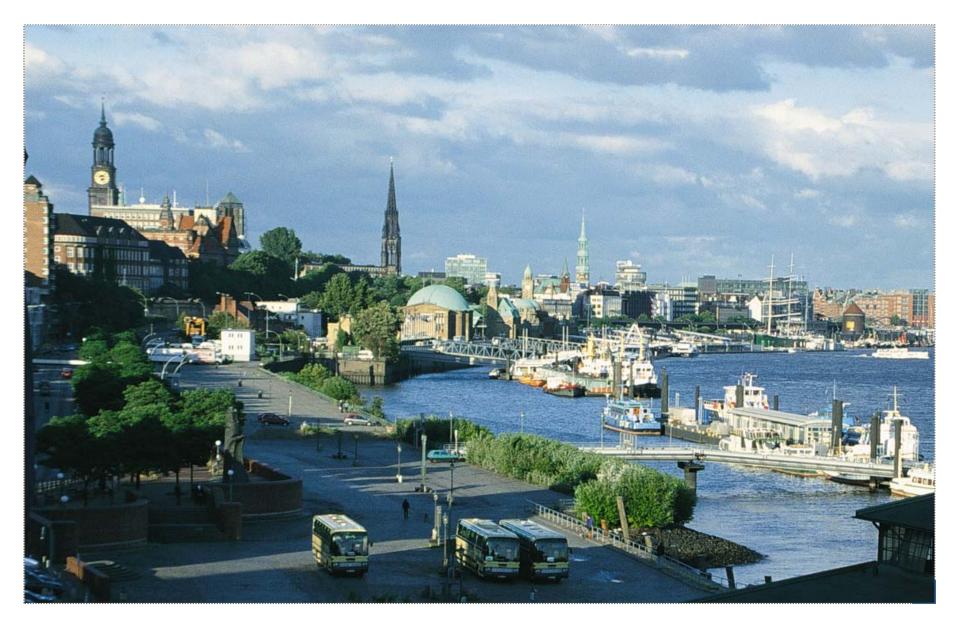
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# **Settlements -**

The German perspective

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Dr. Nicoletta Kröger



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# **Agenda**

A. Encouraging settlements – prejudiced judge/arbitrator?

**B.** Enforceability of settlements



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# A. Encouraging settlements – prejudiced judge/arbitrator?

#### I. The legal situation

### Section 278 para. 1 German Civil Procedure Code:

"The court is to be in the position at any time in the proceedings to consider an amicable settlement of the legal dispute or of individual points in dispute."



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# A. Encouraging settlements – prejudiced judge/arbitrator?

#### Section 278 para. 2 German Civil Procedure Code:

"Conciliation is to take precedence over oral negotiations for the purpose of the amicable resolution of the legal dispute, unless there has already been an attempt at settlement before a non-state court conciliation committee or the conciliation hearing appears to be recognisably without a chance of success. The court, during the conciliation hearing, has to discuss the status of the proceedings with the parties under a free appraisal of all circumstances (...)"



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# A. Encouraging settlements – prejudiced judge/arbitrator?

### II. The approach by German courts / arbitrators in practice

- Parties present their case in written statements
- The court hints at possibly missing facts
- In the oral hearing the court expresses its (preliminary) views on the legal situation and may make a settlement proposal
- The court may at any later stage of the proceeding encourage a settlement



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# A. Encouraging settlements – prejudiced judge/arbitrator?

#### III. Conclusion

Definition of "prejudiced":

"Determined by a prejudice and therefore not objective"

Definition of "prejudice":

"View taken hastily or adopted without an examination of the objective facts, mostly formed from hostile feelings against someone or something"

Concern about prejudice?

No!





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## **B.** Enforceability of settlements

- I. Types of settlements
  - 1. Out of court settlement
  - 2. Settlement in court
  - 3. Settlement in arbitration
  - 4. Lawyer's settlement
  - 5. Notary's settlement
  - 6. Settlement before a non-state court conciliation committee



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### **B.** Enforceability of settlements

#### II. Enforceability

1. Out of court settlement FRG: No EU: No

2. Settlement in court FRG: Yes EU: Yes

3. Settlement in arbitration FRG: Yes/No EU: Yes/No

4. Lawyer's settlement FRG: Yes EU: disputed

5. Notary's settlement FRG: Yes EU: disputed

6. Non-state conciliation com. FRG: Yes EU: Yes



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Thank you!