CONVENȚIA EUROPEANĂ DE ARBITRAJ COMERCIAL INTERNAȚIONAL*

ÎNTOCMITĂ LA GENEVA LA 21 APRILIE 1961

EUROPEAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION,

DONE AT GENEVA ON APRIL 21, 1961

* *În vigoare pentru Republica Moldova din 5 martie 1998*

PREAMBLE

The undersigned, duly authorized, Convened under the auspices of the Economic Commission for Europe of the United Nations,

Having noted that on 10th June 1958 at the United Nations Conference on International Commercial Arbitration has been signed in New York a Convention on the Recognition and Enforcement of Foreign Arbitral Awards,

Desirous of promoting the development of European trade by, as far as possible, removing certain difficulties that may impede the organization and operation of international commercial arbitration in relations between physical or legal persons of different European countries,

Have agreed on the following provisions:

Article I
Scope of the Convention

1. This Convention shall apply:

(a) to arbitration agreements concluded for the purpose of settling disputes arising from international trade between physical or legal persons having, when concluding the agreement, their habitual place of residence or their seat in different Contracting States;

(b) to arbitral procedures and awards based on agreements referred to in paragraph 1(a) above.

2. For the purpose of this Convention,

(a) the term "arbitration agreement" shall mean either an arbitral clause in a contract or an arbitration agreement being signed by the parties, or contained in an exchange of letters, telegrams, or in a communication by teleprinter and, in relations between States whose laws do not require that an arbitration agreement be made in writing, any arbitration agreement concluded in the form authorized by these laws;

(b) the term "arbitration" shall mean not only settlement by arbitrators appointed for each case (ad hoc arbitration) but also by permanent arbitral institutions;

(c) the term "seat" shall mean the place of the situation of the establishment that has made the arbitration agreement.

Article II

Right of legal persons of public law to resort to arbitration

1. In the cases referred to in Article I, paragraph 1, of this Convention, legal persons considered by the law which is applicable to them as "legal persons of public law" have the right to conclude valid arbitration agreements.

2. On signing, ratifying or acceding to this Convention any State shall be entitled to declare that it limits the above faculty to such conditions as may be stated in its declaration.

Article III

Right of foreign nationals to be designated as arbitrators

In arbitration covered by this Convention, foreign nationals may be designated as arbitrators.

Article IV

Organization of the arbitration

1. The parties to an arbitration agreement shall be free to submit their disputes:

(a) to a permanent arbitral institution; in this case, the arbitration proceedings shall be held in conformity with the rules of the said institution;

(b) to an ad hoc arbitral procedure; in this case, they shall be free inter alia

(i) to appoint arbitrators or to establish means for their appointment in the event of an actual dispute;

(ii) to determine the place of arbitration; and

(iii) to lay down the procedure to be followed by the arbitrators.

2. Where the parties have agreed to submit any disputes to an ad hoc arbitration, and where within thirty days of the notification of the request for arbitration to the respondent one of the parties fails to appoint his arbitrator, the latter shall, unless otherwise provided, be appointed at the request of the other party by the President of the competent Chamber of Commerce of the country of the defaulting party's habitual place of residence or seat at the time of the introduction of the request for arbitration. This paragraph shall also apply to the replacement of the arbitrator(s) appointed by one of the parties or by the President of the Chamber of Commerce above referred to.

3. Where the parties have agreed to submit any disputes to an ad hoc arbitration by one or more arbitrators and the arbitration agreement contains no indication regarding the organization of the arbitration, as mentioned in

paragraph 1 of this article, the necessary steps shall be taken by the arbitrator(s) already appointed, unless the parties are able to agree thereon and without prejudice to the case referred to in paragraph 2 above. Where the parties cannot agree on the appointment of the sole arbitrator or where the arbitrators appointed cannot agree on the measures to be taken, the claimant shall apply for the necessary action, where the place of arbitration has been agreed upon by the parties, at his option to the President of the Chamber of Commerce of the place of arbitration agreed upon or to the President of the competent Chamber of Commerce of the respondent's habitual place of residence or seat at the time of the introduction of the request for arbitration. Where such a place has not been agreed upon, the claimant shall be entitled at his option to apply for the necessary action either to the President of the competent Chamber of Commerce of the country of the respondent's habitual place of residence or seat at the time of the introduction of the request for arbitration, or to the Special Committee whose composition and procedure are specified in the Annex to this Convention. Where the claimant fails to exercise the rights given to him under this paragraph the respondent or the arbitrator(s) shall be entitled to do so.

4. When seized of a request the President or the Special Committee shall be entitled as need be:

(a) to appoint the sole arbitrator, presiding arbitrator, umpire, or referee;

(b) to replace the arbitrator(s) appointed under any procedure other than that referred to in paragraph 2 above;

(c) to determine the place of arbitration, provided that the arbitrator(s) may fix another place of arbitration;

(d) to establish directly or by reference to the rules and statutes of a permanent arbitral institution the rules of procedure to be followed by the arbitrator(s), provided that the arbitrators have not established these rules themselves in the absence of any agreement thereon between the parties.

5. Where the parties have agreed to submit their disputes to a permanent arbitral institution without determining the institution in question and cannot agree thereon, the claimant may request the determination of such institution in conformity with the procedure referred to in paragraph 3 above.

6. Where the arbitration agreement does not specify the mode of arbitration (arbitration by a permanent arbitral institution or an ad hoc arbitration) to which the parties have agreed to submit their dispute, and where the parties cannot agree thereon, the claimant shall be entitled to have recourse in this case to the procedure referred to in paragraph 3 above to determine the question. The President of the competent Chamber of Commerce or the Special Committee, shall be entitled either to refer the parties to a permanent arbitral institution or to request the parties to appoint their arbitrators within

such time-limits as the President of the competent Chamber of Commerce or the Special Committee may have fixed and to agree within such time-limits on the necessary measures for the functioning of the arbitration. In the latter case, the provisions of paragraphs 2, 3 and 4 of this Article shall apply.

7. Where within a period of sixty days from the moment when he was requested to fulfil one of the functions set out in paragraphs 2, 3, 4, 5 and 6 of this Article, the President of the Chamber of Commerce designated by virtue of these paragraphs has not fulfilled one of these functions, the party requesting shall be entitled to ask the Special Committee to do so.

Article V

Plea as to arbitral jurisdiction

1. The party which intends to raise a plea as to the arbitrator's jurisdiction based on the fact that the arbitration agreement was either non-existent or null and void or had lapsed shall do so during the arbitration proceedings, not later than the delivery of its statement of claim or defence relating to the substance of the dispute; those based on the fact that an arbitrator has exceeded his terms of reference shall be raised during the arbitration proceedings as soon as the question on which the arbitrator is alleged to have no jurisdiction is raised during the arbitral procedure. Where the delay in raising the plea is due to a cause which the arbitrator deems justified, the arbitrator shall declare the plea admissible.

2. Pleas to the jurisdiction referred to in paragraph 1 above that have not been raised during the time-limits there referred to, may not be entered either during a subsequent stage of the arbitral proceedings where they are pleas left to the sole discretion of the parties under the law applicable by the arbitrator, or during subsequent court proceedings concerning the substance or the enforcement of the award where such pleas are left to the discretion of the parties under the rule of conflict of the court seized of the substance of the dispute or the enforcement of the award. The arbitrator's decision on the delay in raising the plea, will, however, be subject to judicial control.

3. Subject to any subsequent judicial control provided for under the lex fori, the arbitrator whose jurisdiction is called in question shall be entitled to proceed with the arbitration, to rule on his own jurisdiction and to decide upon the existence or the validity of the arbitration agreement or of the contract of which the agreement forms part.

Article VI

Jurisdiction of courts of law

1. A plea as to the jurisdiction of the court made before the court seized by either party to the arbitration agreement, on the basis of the fact that an arbitration agreement exists shall, under penalty of estoppel, be presented by the respondent before or at the same time as the presentation of his substan-

tial defence, depending upon whether the law of the court seized regards this plea as one of procedure or of substance.

2.In taking a decision concerning the existence or the validity of an arbitration agreement, courts of Contracting States shall examine the validity of such agreement with reference to the capacity of the parties, under the law applicable to them, and with reference to other questions

(a) under the law to which the parties have subjected their arbitration agreement;

(b) failing any indication thereon, under the law of the country in which the award is to be made;

(c) failing any indication as to the law to which the parties have subjected the agreement, and where at the time when the question is raised in court the country in which the award is to be made cannot be determined, under the competent law by virtue of the rules of conflict of the court seized of the dispute.

The courts may also refuse recognition of the arbitration agreement if under the law of their country the dispute is not capable of settlement by arbitration.

3. Where either party to an arbitration agreement has initiated arbitration proceedings before any resort is had to a court, courts of Contracting States subsequently asked to deal with the same subject-matter between the same parties or with the question whether the arbitration agreement was non-existent or null and void or had lapsed, shall stay their ruling on the arbitrator's jurisdiction until the arbitral award is made, unless they have good and substantial reasons to the contrary.

4. A request for interim measures or measures of conservation addressed to a judicial authority shall not be deemed incompatible with the arbitration agreement, or regarded as a submission of the substance of the case to the court.

Article VII

Applicable law

1. The parties shall be free to determine, by agreement, the law to be applied by the arbitrators to the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrators shall apply the proper law under the rule of conflict that the arbitrators deem applicable. In both cases the arbitrators shall take account of the terms of the contract and trade usages.

2. The arbitrators shall act as amiables compositeurs if the parties so decide and if they may do so under the law applicable to the arbitration.

Article VIII

Reasons for the award

The parties shall be presumed to have agreed that reasons shall be given for the award unless they

(a) either expressly declare that reasons shall not be given; or

(b) have assented to an arbitral procedure under which it is not customary to give reasons for awards, provided that in this case neither party requests before the end of the hearing, or if there has not been a hearing then before the making of the award, that reasons be given.

Article IX

Setting aside of the arbitral award

1. The setting aside in a Contracting State of an arbitral award covered by this Convention shall only constitute a ground for the refusal of recognition or enforcement in another Contracting State where such setting aside took place in a State in which, or under the law of which, the award has been made and for one of the following reasons:

(a) the parties to the arbitration agreement were under the law applicable to them, under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or

(b) the party requesting the setting aside of the award was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration need not be set aside;

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, with the provisions of Article IV of this Convention.

2. In relations between Contracting States that are also parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10th June 1958, paragraph 1 of this Article limits the application of Article V(1)(e) of the New York Convention solely to the cases of setting aside set out under paragraph 1 above.

Article X

Final clauses

1. This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.

2. Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.

3. The Convention shall be open for signature until 31 December 1961 inclusive. Thereafter, it shall be open for accession.

4. This Convention shall be ratified.

5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

6. When signing, ratifying or acceding to this Convention, the Contracting Parties shall communicate to the Secretary-General of the United Nations a list of the Chambers of Commerce or other institutions in their country who will exercise the functions conferred by virtue of Article IV of this Convention on Presidents of the competent Chambers of Commerce.

7. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning arbitration entered into by Contracting States.

8. This Convention shall come into force on the ninetieth day after five of the countries referred to in paragraph 1 above have deposited their instruments of ratification or accession. For any country ratifying or acceding to it later this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.

9. Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.

10. If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date on which the last of such denunciations takes effect.

11. The Secretary-General of the United Nations shall notify the countries referred to in paragraph 1, and the countries which have become Contracting Parties under paragraph 2 above, of

(a) declarations made under Article II, paragraph 2;

(b) ratifications and accessions under paragraphs 1 and 2 above;

(c) communications received in pursuance of paragraph 6 above;

(d) the dates of entry into force of this Convention in accordance with paragraph 8 above;

(e) denunciations under paragraph 9 above;

(f) the termination of this Convention in accordance with paragraph 10 above.

12. After 31 December 1961, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in paragraphs 1 and 2 above.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Geneva, this twenty-first day of April, one thousand nine hundred and sixty-one, in a single copy in the English, French and Russian languages, each text being equally authentic.