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EXTENDED ABSTRACT OF "INTERNATIONAL ARBITRATION AND EU LAW", EDITORS: JOSÉ R. MATA DONA AND NIKOS LAVRANOS[1]

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РОЗШИРЕНЕ РЕЗЮМЕ "МІЖНАРОДНИЙ АРБІТРАЖ ТА ЗАКОНОДАВСТВО ЄС", РЕДАКТОРИ: ЖОЗЕ Р. МАТА ДОНА І НІКОС ЛАВРАНОС

АНОТАЦІЇ (ABSTRACTS), КЛЮЧОВІ СЛОВА (KEY WORDS)

A resume of the monograph "International Arbitration and EU Law" edited by José R. Mata Dona and Nikos Lavranos, in which examines the intersection of EU law and international arbitration based on the experience of leading practitioners in both commercial and investment treaty arbitration law.

Key words: *resume; monograph; international arbitration; European Union legislation*

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Надане резюме монографії "Міжнародний арбітраж та законодавство ЄС" за редакцією Жозе Р. Мата Дона і Нікос Лавранос, в якій розглядається питання перетину законодавства ЄС та міжнародного арбітражу на основі досвіду провідних практиків як комерційного, так і інвестиційного арбітражного договору.

Ключові слова: *резюме; монографія; міжнародний арбітраж; законодавство Європейського Союзу*

For decades international arbitration and European Union law ('EU law') managed to develop independently. It has been largely so, because of the success of the New York Convention and decisions made on the European level not to interfere with the international (commercial) arbitration regime. In recent years, however, the amount of interaction has proliferated. The purpose of this book is to flag these instances where EU law is of relevance at the context of international arbitration. The arbitral tribunals should be mindful of the fact on what occasions EU law is relevant, both at the jurisdictional as well as at the merits phase. Contributions further in this book might offer invaluable guidance in this process by providing directions and identifying pitfalls one can face when applying EU law in international commercial arbitration.[2]

This book examines the intersection of EU law and international arbitration based on the experience of leading practitioners in both commercial and investment treaty arbitration law. It expertly illustrates the depth and breadth of EU law's im-

[1] International Arbitration and EU Law
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[2] https://www.elgaronline.com/view/edcoll/9781788973991/9781788973991.00011.xml.

pact on party autonomy and on the margin of appreciation available to arbitral tribunals.[3]

Extended Abstract of the Book

In the subsequent portions, this book abstract provides a primer on the chapters of the book as well as the directions the contributors endeavour to demonstrate on EU Law and investment arbitration. The book is edited by José R. Mata Dona and Prof. Dr. Nikos Lavranos.

The foreword for the book is written by the Honorable Judge Charles Brower. In a compendious manner, he examines the contents of the book accompanied by an incisive background on the interaction between international arbitration and EU law. He commends the editors and the contributors on the fruition of the book and lauds the remarkable efforts of the editors to bring about a publication on the intricate 'species' of EU law.

Part I: The Pre- and The Post-award Stage in International Commercial Arbitration *vis-à-vis* EU Law and the European Attitude Toward Anti-suit Relief

Chapter 1 of the book focuses on the interaction between international commercial arbitration and EU law before the award is rendered. Piotr Wiliński identifies and delineates the scope where EU law becomes relevant in the jurisdictional and merits phase before the arbitral award is delivered. Chapter 2 of the book deals with the impact of EU law on challenges, recognition and enforcement of international commercial awards. The contributors, Bo Ra Hoebeke and Juan Manuel Sànchez Pueyo detail the impact of EU law on the post-award stage of international commercial arbitration from two viewpoints of varying post-award regimes of EU members and their application by national courts across the EU. Lastly, pertinent questions on this inconsistency of EU law in this regard are highlighted.

Chapter 3 discusses the relationship between anti-suit relief, EU law and the New York Convention ('NYC'). Sophie Lamb QC, Bryce Williams and Robert Price examine the notion of anti-suit injunctions in the arbitral context and EU law. In closing, the chapter interestingly attempts to predict the potential implications of anti-suit injunctions on the post-Brexit scheme.

Part II: Selected Areas of Intersection Between EU Law and International Commercial Arbitration

In Chapter 4, Monica Tinta deliberates over the contours of international commercial arbitration *vis-à-vis* the European Convention on Human Rights. The chapter casts a spotlight on how human rights can be linked to protection under arbitration. Chapter 5 explores the overtones of the General Data Protection Regulation ('GDPR') compliance in arbitration. Alexander Blumrosen underscores the need for management of personal data by arbitration actors.

Chapter 6, authored by Niuscha Bassiri and Emily Hay, extends a perspective on consumer protection in international arbitration and EU law. In this context, it scrutinizes the EU approach to consumer protection disputes and its efficacy. Chapter 7 extensively discusses the nuanced subject of damages in international commercial arbitration. Herfried Wöss and Adriana Rivera present a nuanced discussion on underlying jurisprudence around damage claims.

Chapter 8 offers a perspective on arbitration in antitrust damages cases in the EU. The authors, Patricia Živković and Tony Kalliokoski enumerate the scope of application of arbitration clauses in antitrust damages cases and the potential ramifications on Member States of the EU. In Chapter 9, the author S.I Strong ventures into the emergence of collective redress arbitration in the EU. The chapter highlights the models of collective redress procedures in the EU and other jurisdictions. Lastly, the potential reforms and proposals to introduce collective redress arbitration by arbitral stakeholders are assessed.

Chapter 10 of the book is titled 'the Law Governing Commercial Agency Agreements'. In this chapter, Dodo Chochitaichvili explores the role of intermediaries in international trade and EU law. The author recalls the EU framework for commercial agents and the interpretation of European Court of Justice ('ECJ') in certain cases and the conflict-of-laws issues that cropped up as a result. Further, the chapter draws on the Belgian case law to explore the potential arbitrability of commercial agency contracts. In the last chapter of Part II, Luis Capiel and Oliver Cojo write about the EU Directive 2014/24/EU on public procurement ('Directive') on construction arbitration in Europe. Chapter 11 gauges the impact of the Directive and the potential proliferation of construction arbitration and complex disputes, involving multiple parties and contracts.

Part III: Intersections Between International Investment Arbitration and EU Law

Under Chapter 12, George Bermann discusses the general aspects of investor-state dispute settlement ('ISDS') in relation to EU law. The chapter

[3] https://www.e-elgar.com/shop/gbp/international-arbitration-and-eu-law-9781788973991.html

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offers an overarching representation of the EU's stance on investment law and policy, both from the intra-EU and extra-EU perspective. The chapter also discusses the potential impact of landmark rulings of *Micula*[4] and *Achmea*[5], *inter alia,* on the EU investment policy and regime. In Chapter 13, Quentin Declève and Isabelle Van Damme analyze investment arbitration under intra-EU bilateral investment treaties ('BITs'). The chapter presents detailed discussion on the ramifications of the *Achmea* judgment on intra-EU BITs read with ECJ opinions *2/15*[6] and *1/17*[7] on EU law and international investment law.

Chapter 14 covers the important facet of arbitration under the Energy Charter Treaty ('ECT') and the relevance of EU law. Jeffrey Sullivan and David Ingle provide an insight into intra-EU disputes under the Charter in light of the *Achmea* ruling. It also goes on to examine extra-EU disputes under the ECT, which remain scarce. Chapter 15 written by Dorieke Overduin is entitled 'Investment Chapter in CETA: Groundbreaking or Much Ado About Nothing?'. This chapter discusses in detail, the Investment Chapter of the EU Canada Comprehensive Economic and Trade Agreement ('CETA') and the substantive and procedural rules under this chapter. It also examines the proposal for an investment court system under CETA among other novel reform provisions. To conclude, the author endorses the investment chapter as groundbreaking which will serve as a vanguard for prospective EU policies.

Chapter 16 focuses on procedural issues of annulment, recognition and enforcement of investment treaty awards by the International Centre for Settlement of Investment Disputes ('ICSID') and other non-ICSID systems. Olivier van der Haegen and Maria-Clara Van den Bossche trace the mechanism for ICSID and non-ICSID enforcement and annulment in view of cases before EU Member State Courts. Following which, they discuss the enforcement of intra-EU investment-treaty awards against the backdrop of the *Micula* and *Achmea* rulings before EU Member State courts and the notion of state immunity under the Belgian and French regimes.

In Chapter 17, the authors of Chapter 7 shed light on the subject of damages in investment treaty arbitration. This chapter is dedicated to examining the international damages law, with particular emphasis on the *Chorzów*[8] formula as a measure of damages in investment arbitration and other underlying theories of damages law. Chapter 18 traces the essential elements of taxation- investment protection and dispute settlement. Stefano Castagna underscores the interaction between taxation and investment law, with specific weightage to investment protection standards. It explains the interplay between the soft law standards by international tax payers and how they can be adopted into the ISDS framework.

Chapter 19 is dedicated to the highly topical proposal by the EU General Secretariat of establishing a Multilateral Investment Court ('MIC') as a response towards reforming the ISDS system. Friedrich Rosenfeld pursues the rationale behind having such a Court by contrasting the current ISDS regime with the proposed MIC mechanism. This chapter enumerates the challenges and pitfalls while implementing a multilateral court system from the perspective of EU Member States, EU and other international third States. While concluding, the author argues that the proposed system could further exacerbate ISDS reform and fragment the existing regime with its own perils and drawbacks.

Lastly, Chapter 20, authored by Anne-Karin Grill and Emanuela Martin scrutinize the impact of EU law on international commercial mediation. It depicts the expanding horizons on mediation as an effective dispute resolution mechanism and how it has permeated into EU law. This chapter explores the framework for mediation considering the European Mediation Directive (Directive 2008/52/EC) and its implementation by taking an example of Austria. On the international stage, the chapter discusses the relevance of the UNCITRAL Model Law on International Commercial Mediation and the momentous Singapore Mediation Convention. In concluding, the chapter establishes that these developments have catalyzed mediation as a vital tool for resolving disputes, with tremendous scope of development at the EU level and the international stage.

4 Achmea BV v The Slovak Republic (formerly Eureko BV v The Slovak Republic), UNCITRAL, PCA Case No 2008-13, Award on Jurisdiction, Arbitrability and Suspension, 26 October 2010.

5 Ioan Micula, Viorel Micula, SC European Food SA, SC Starmill SRL and SC Multipack SRL v Romania, ICSID Case No ARB/05/20, Final Award, 11 December 2013.

6 Opinion 2/15 Free Trade Agreement with Singapore [2017] EU:C:2017:376.

7 Opinion 1/17 Comprehensive Economic and Trade Agreement with Canada [2019] EU:C:2019:341.

8 Case Concerning the Factory at Chorzów (Claim for Indemnity) Judgement, 13 September 1928, PCIJ Series A, No 17, 47.

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