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Settlement of commercial disputes

Enforcement of settlement agreements resulting from international commercial conciliation/mediation

Compilation of comments by Governments (*continued*)

Addendum

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III. Compilation of comments

41. Czech Republic

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Responses to the questions of UNCITRAL Secretariat regarding legislative framework with respect to cross-border enforcement of international commercial settlement agreements (resulting from international commercial mediation/conciliation proceedings)

1. (i) There is no specific legislative framework with regard to the enforcement of international commercial settlement agreements arising out of mediation or conciliation proceedings. For the purposes of presented questions the Act No. 202/2012 Coll., on mediation which covers only the enforcement of domestic mediation agreement (the final act of mediation) will be applied.

The mediation agreement is binding as a private contract. However, it is not enforceable by itself. In the case that the mediation agreement is not carried on voluntary, there are three ways of enforcing it.

The enforceability of the mediation agreement is possible through the institution of the court proceedings in which the court recognizes such agreement as being equivalent to the court decision which can be subject to enforcement proceedings. The court examines the validity of the mediation agreement by itself. For further enforcement of the mediation agreement in another EU member State, the Council Regulation No. 44/2001, on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters is applied.

The second possible way is the notarial record with enforcement clause, which is issued by a notary. The notary draws up a document which has character of a public document and which is subject to statutory requirements.

The last option for enforcement of the mediation agreement is through arbitral proceedings. On the request of the parties the arbiter may issue the settlement as an arbitral award. As opposed to the previous methods the settlement of the parties does not arise from mediation but from arbitration proceedings.

(ii) No.

(iii) As it has been already mentioned, the settlement of dispute may be issued as an arbitral award only on the request of the parties. However, it arises from arbitral proceedings and not from mediation. The mediation agreement itself is not treated as a final award rendered by an arbitral tribunal.

(1) The commencement of arbitral proceedings is not required. In general the mediation commences by conclusion of an agreement on mediation. The agreement must contain following information: identification of the parties, identification of mediator, the subject matter, the remuneration of mediator and the determination of period during which is the mediation held.

- (2) Under the Czech law is required writing form of the mediation agreement which includes signature of parties, date and signature of mediator.
- (3) No.
2. Grounds for refusing enforcement of the mediation agreement:
- The subject matter of the mediation agreement is not capable of settlement by mediation or conciliation under the Czech law.
 - The mediation agreement is in conflict with the provisions of substantive law and the public order of the Czech Republic.
 - The mediation agreement is not valid under legal incapacity (undue duress; minors; insanity).
 - The mediation agreement is not valid or enforceable in the state of origin.
 - The mediation agreement was cancelled in the state of origin.
3. As it has been already mentioned, the mediation agreement must be valid and enforceable in the state of origin. Its subject matter must be capable of settlement by mediation under the Czech law and cannot be in conflict with the provisions of substantive law and the public order of the Czech Republic.
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