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MILAN
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ARBITRATION



Rome, 15 December 2023

10.30 - 13.00 CET

Via Panisperna, 28

PANEL DISCUSSION ON CONTRACT DRAFTING IN INTERNATIONAL ARBITRATION

Welcome Remarks

Maria Chiara Malaguti

(President Unidroit)

Panel Participants

Gianluca Buoro

Julia Busko

Filippo Innocenti

Edoardo Marcenaro

Edgar Miller

Peter Arnt Nielsen

Moderator

Giuditta Cordero-Moss

Panel discussion on contract drafting in international arbitration

Welcome to a panel discussion among transactional lawyers, both inhouse and from law firms, who regularly draft and negotiate international commercial contracts. Questions and comments from the audience will be welcome after the panel discussion.

The purpose of the discussion is to contribute material and experience on contract clauses whose construction has proven to be uncertain, clauses that are meant to be interpreted faithfully, clauses that will probably be read in the light of the governing law, etc.

The panelists will discuss among others the circumstances under which these clauses are drafted, and the expectations of the drafters when they insert them into the contract.

This discussion is one in a series of workshops organized in Oslo, New York, Paris, Sao Paolo and Singapore. It is part of an empirical research project which verifies whether international contracts are construed uniformly in arbitration, or whether legal traditions play a role even though the frame is international.

SHORT BIOS:

Gianluca Buoro has been since 2018 the General Counsel of Danieli Automation SpA, the Danieli Group subsidiary specialized in the supply of industrial automation software and hardware as well as electrical systems for steel plants. From 2010 to 2018 he worked as senior legal counsel at Danieli & C. Officine Meccaniche SpA's Legal Affairs Dept, managing litigation issues and in particular international arbitration proceedings. From 2006 to 2009 he worked at Danieli & C. Officine Meccaniche SpA's Financing & Contracting Dept, in charge of sales contracts negotiation and claim management. From 2000 to 2006 he worked at Sales Contracts and Commercial Agreements Dept at Snamprogetti SpA (ENI Group). Gianluca graduated in Law in 1998 at Università Cattolica del Sacro Cuore in Milan.

Julia Busko holds a law degree (LL.B.) from Belarus, LL.M. oec. from University of Jena, Germany and LL.M. in comparative, European and international law from the EUI, Italy. She has been working for more than 10 years for the Italian-based multinational company Danieli & C. Officine Meccaniche S.p.A. initially dealing primarily with contracting and export finance issues (with core activities in the CIS countries) and, starting from 2020, increasingly concentrating its focus on international dispute resolution.

Giuditta Cordero-Moss Dr. juris (Oslo), PhD (Moscow), Professor, Oslo University, publishes and lectures in Norway and internationally within the fields of contract law, private international law and arbitration. A former corporate lawyer, arbitrator in international disputes since 2002. She is, i.a.: Delegate for Norway, UNCITRAL Working Group on Arbitration (since 2007); Member of the ICC Court of Arbitration (2018-2024); Member of the Curatorium of the Hague Academy of International Law (since 2019); President of the International Academy of Comparative Law (since 2022); former President (2017-20) and Judge (2007-2020) of the European Bank for Reconstruction and Development Administrative Tribunal.

More on the project

We spend considerable resources in writing contract terms that reflect our business interests. But, in case of dispute, will arbitrators give the contract effect according to its wording?

Not really and not always, according to a pilot study carried out by Giuditta Cordero-Moss (University of Oslo), in cooperation with: New York University (prof Franco Ferrari), Sciences Po Paris (prof Diego Fernandez Arroyo), University of Sao Paulo (prof Cristiano Zanetti) and National University of Singapore (prof Gary Bell).

A pilot study was recently completed. It is briefly described here: [Pilot Empirical Project on Construction of Contracts in International Arbitration. - Kluwer Arbitration Blog](#)

The pilot study asked 32 experienced international arbitrators to solve three cases in which the outcome would differ according to how literally or purposive the contract would be read.

- The majority of participants read the contract in the light of the applicable law (53%). A minority considered the contract to be self-sufficient (26%) or subject to the transnational law (21%);
- Within each approach, the outcome is not consistent: considering the contract to be self-sufficient leads to both literal (64%) and purposive construction (36%), and so does the transnational approach, although to a lesser extent (respectively, 9% and 91%).

The pilot project will be followed by a main study, in which 200 experienced arbitrators will be asked to answer a questionnaire based on 10 contract clauses. The panel discussion will contribute to the development of the questionnaire.

Filippo Innocenti graduated in 2011 *magna cum laude* at the University of Florence. In the same year he joined the M&A department of the Italian law firm Legance – Avvocati Associati. Few years after passing the Italian bar, in 2017 Filippo spent one year working as an international associate in the M&A department of the New York law firm Simpson Thacher & Bartlett. After this experience Filippo rejoined Legance, where he currently holds the position as Counsel.

Filippo focuses his activity on advising national and international clients in relation to M&A transactions (such as sales, acquisitions and joint ventures) as well as on contractual and corporate matters.

Edoardo Marcenaro has been working in Enel Group since 2001, where he firstly took care of major M&A transactions in Eastern Europe up to 2008, following the legal affairs of the various companies acquired in the subsequent 10 years. Afterwards, he gave legal support in the establishment and start – up of Enel X, the company created for energy services, energy efficiency and electric mobility. Since January 2019 he is in charge of the legal department of Enel Grids srl, focusing on digitalisation and platformization of the networks. Eventually, Edoardo is frequently lecturer on international contracts and arbitration, M&A processes and construction projects organized by the most relevant institutions worldwide (e.g. ICC, CAM, AIA, UNIDROIT, Certificate on International Arbitration at RomaTre University).

Edgar Miller has a JD from The George Washington University and a BS (International Economics) from Georgetown University. He worked for 10 years at Willkie, Farr & Gallagher (international trade litigation) and 8 years at Steel, Hector & Davis (project finance and conventional and renewable energy projects in the U.S. and Brazil) prior to joining Enel in 2007.

Since joining Enel, Edgar has acted as general counsel for Latin America (Costa Rica and Chile), led the legal work on renewable energy projects in Africa and Asia, and, since October 2019, and is currently Head of Development Legal Affairs worldwide for Enel Green Power and Thermal Generation.

Peter Arnt Nielsen, PhD, LL.M., Cand.Jur. Professor at Copenhagen Business School since 2007 in Private International Law, International Commercial Arbitration, and International Contract Law. Since 2000, External Professor in EU-PIL at the College of Europe, Belgium. Member of Groupe européen de droit international privé (GEDIP), The International Academy of Comparative Law, the EU Working Parties on the Rome I Regulation, the Brussels I Regulation, the Recast of Brussels I, and the Danish Delegations to the Hague Conference for Private International Law concerning the Global Judgments Convention, the Choice of Court Convention and the Judgments Project. Arbitrator and mediator.