



UNITED NATIONS CONFERENCE ON INTERNATIONAL
COMMERCIAL ARBITRATION

CONSIDERATION OF THE DRAFT CONVENTION ON THE RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRAL AWARDS (ITEM 4 OF THE AGENDA)

Federal Republic of Germany: amendments to articles III to V
of the draft Convention

1. Delete article III.
2. Replace article IV by the following text:

Article IV

Reference
to draft
Convention
(E/2704 and
Corr.1)
Art. IV c

Recognition and enforcement of the award shall be refused if the competent authority in the State where the award is relied upon is satisfied:

- (a) That the party against whom the award is invoked, being under a legal incapacity, was not properly represented; or
- (b) That the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or that it contains decisions on matters beyond the scope of the submission to arbitration; or
- (c) That the recognition or enforcement of the award would be incompatible with the public policy (ordre public) of the State in which the award is sought to be relied upon.

3. Replace article V by the following text:

Article V

Recognition and enforcement of the award shall be refused at the request of the party against whom it is invoked if that party furnishes proof:

- (a) That he was not given notice of the appointment of the arbitrator or of the arbitration proceedings in due form or in sufficient time to enable him to present his case; or

- Art. IV e (b) That the award the recognition or enforcement of which is sought, has been annulled in accordance with the applicable law; or
- Art. IV g (c) That the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement between the parties in this respect, was not in accordance with the applicable law.

4. Insert the following articles:

Article V bis

The competent authority of the State in which an award is relied upon may defer or stay its decision on a claim for recognition and enforcement thereof if the party against whom the award is invoked furnishes proof:

- (a) That he has initiated some ordinary procedure of recourse against the award; or
- (b) That he has applied for annulment of the award in accordance with the applicable law.

Article V ter

The party claiming the recognition or enforcement of an award must produce:

- Art. V (a) The original award or a duly authenticated copy thereof;
- (b) Documentary evidence to prove that the award derives from an arbitral agreement.

If the claim for recognition or enforcement is not made in an official language of the State in which the award is relied upon, the party claiming recognition or enforcement of the award shall produce a translation in such language of the claim and of the other evidence referred to. The translation shall be duly certified by a sworn translator of the State whose law is applicable to the award or of the State in which the award is relied upon, or by a diplomatic or consular agent of one of the two States.

Article V quater

When an award has been declared operative by the competent authority of one of the Contracting States, measures of enforcement may be taken in any of the said States.

Enforcement shall nevertheless be refused if the award is contrary to the public policy of the State in which the enforcement is requested or if under the law of that State the subject matter of the award is not capable of settlement by arbitration.

Article V quinter

The foregoing provisions shall apply mutatis mutandis to settlements arrived at before an arbitral authority with a view to terminating pending proceedings.
