

Contents

Contents

Acronyms	21
1. Introduction	23
1.1 Globalisation and Arbitration by Means of Electronic Commerce.....	23
1.2 Advantages of International Arbitration.....	24
1.3 Bodies Responsible for Arbitration	25
1.3.1 Institutions on National Levels.....	25
(1) Argentina	25
(2) Australia	25
(3) Austria	25
(4) Bahrain	25
(5) Belarus.....	25
(6) Belgium	25
(7) Bhutan.....	25
(8) Brazil	25
(9) Bulgaria	25
(10) Canada.....	26
(11) Chile	26
(12) China	26
(13) Columbia	26
(14) Costa Rica.....	26
(15) Croatia	26
(16) Cyprus	26
(17) Czech Republic.....	26
(18) Denmark	27
(19) Ecuador.....	27
(20) Egypt	27
(21) El Salvador	27
(22) Estonia	27
(23) Finland.....	27
(24) France	27
(25) Germany	27
(26) Greece.....	28
(27) Guatemala.....	28
(28) Honduras.....	28
(29) Hungary	28
(30) India.....	28
(31) Indonesia.....	28
(32) Ireland.....	28
(33) Israel	28
(34) Italy.....	28
(35) Japan.....	28
(36) Latvia.....	28
(37) Lebanon	28
(38) Lithuania.....	29
(39) Luxembourg	29
(40) Korea	29
(41) Malaysia	29
(42) Malta.....	29
(43) Mexico.....	29
(44) Moldova.....	29
(45) Mongolia.....	29
(46) Netherlands.....	29
(47) New Zealand.....	29
(48) Norway	29
(49) Oman	29
(50) Panama	29
(51) Peru.....	29
(52) Poland.....	30
(53) Portugal.....	30
(54) Romania.....	30
(55) Russia	30

(56)	Singapore.....	30
(57)	Slovenia.....	30
(58)	South Africa	30
(59)	Spain.....	30
(60)	Sweden	30
(61)	Switzerland.....	31
(62)	Turkey	31
(63)	Ukraine	31
(64)	United Arab Emirates	31
(65)	United Kingdom.....	31
(66)	Uruguay.....	31
(67)	USA.....	31
(68)	Yugoslavia.....	32
1.3.2	International Institutions.....	32
(1)	Centre Européen de la Negotiation.....	32
(2)	Chartered Institute of Arbitrators, European Branch.....	32
(3)	Court of Arbitration for Sport (CAS)	32
(4)	European Court of Arbitration.....	32
(5)	European Network for Dispute Resolution.....	32
(6)	G.C.C. Commercial Arbitration Centre.....	32
(7)	International Centre for Settlement of Investment Disputes (ICSID).....	32
(8)	International Chamber of Commerce, International Court of Arbitration	32
(9)	International Council for Commercial Arbitration (ICCA).....	32
(10)	International Court of Justice	32
(11)	Islamic Chamber of Commerce and Industry (ICCI-OIC)	32
(12)	OHADA, Cour Commune de Justice et d'Arbitrage.....	32
(13)	Permanent Court of Arbitration at The Hague.....	32
(14)	WIPO Arbitration and Mediation Center	32
1.3.3	Traditional Bodies Responsible for Arbitration Offering Particular Online Arbitration Services.....	33
a.-)	Arbitration Court Attached to the Economic Chamber and Agricultural Chamber of the Czech Republic	33
b.-)	Hong Kong International Arbitration Centre.....	33
c.-)	(US) American Arbitration Association	33
1.4	Organisations Providing General Information on Arbitration	33
1.4.1	General Information	33
(1)	Cameron May	33
(2)	E-Arbitration-T.....	33
(3)	EU's Website on Consumer Redress	33
(4)	LLRX – International Commercial Arbitration	33
(5)	ODR.Info.....	33
(6)	SICE – Foreign Trade Information System.....	33
(7)	University of Chicago.....	33
(8)	University of Salzburg.....	33
(9)	WWW Virtual Library – Private Dispute Resolution.....	33
1.4.2	Information for Consumers	34
(1)	EEJ-Net	34
(2)	FIN-NET	34
(3)	Global Business Dialogue	34
(4)	US Federal Trade Commission.....	34
1.5	Bodies Using Means of Electronic Commerce for Dispute Settlement.....	34
1.5.1	1-2-3 Settle.Com	34
1.5.2	ADR Center die Roma.....	34
1.5.3	Adventist Reconciliation Services (ARS)	34
1.5.4	AllSettle.Com.....	34
1.5.5	American Arbitration Association.....	34
1.5.6	ARyME	34
1.5.7	Bankers Repository Corporation	35
1.5.8	Better Business Bureau Online.....	35
1.5.9	CACNIQ.....	35
1.5.10	Cibertribunal.....	35
1.5.11	ClaimChoice.com	35
1.5.12	CPR Institute for Dispute Resolution	35

1.5.13	Cyberlaws.net	35
1.5.14	Cybercourt	35
1.5.15	CyberSettle	35
1.5.16	E-Global ADR Tribunal	35
1.5.17	e-Mediator	35
1.5.18	e@adr.....	35
1.5.19	Electronic Consumer Dispute Resolution (ECODIR)	35
1.5.20	Eneutral.....	35
1.5.21	Equifax Online Dispute	36
1.5.22	Gesellschaft für Wirtschaftsmediation und Konfliktmanagement e.V. (gwmk).....	36
1.5.23	Global Arbitration Mediation Association (GAMA).....	36
1.5.24	Global Arbitration and Mediation Service (GAMS).....	36
1.5.25	I-courthouse	36
1.5.26	Internationales Online Schiedsgericht	36
1.5.27	InternetNeutral	36
1.5.28	Internet Ombudsman (Austria).....	36
1.5.29	Internet Ombudsman (Sweden)	36
1.5.30	Intersettle	36
1.5.31	Iris Médiation	36
1.5.32	JAMS ADR	36
1.5.33	Mediation America	36
1.5.34	Mediation Arbitration Resolution Services Inc. (MARS).....	36
1.5.35	National Association of Securities Dealers (NASD)	37
1.5.36	National Arbitration Forum (NAF).....	37
1.5.37	NovaForum.com	37
1.5.38	Online Confidence	37
1.5.39	Online Mediators	37
1.5.40	Online Ombuds Office.....	37
1.5.41	Online Public Disputes	37
1.5.42	Online Resolution	37
1.5.43	Peruvian Cybertribunal.....	37
1.5.44	Private Judge.....	37
1.5.45	Resolution Forum	37
1.5.46	ResolveItNow.com	37
1.5.47	RisolviOnline.....	37
1.5.48	SettlementNOW.....	37
1.5.49	SettlementOnline	38
1.5.50	SettleOnline	38
1.5.51	SettleSmart	38
1.5.52	SettleTheCase	38
1.5.53	Smart Settle.....	38
1.5.54	SquareTrade.....	38
1.5.55	The Claim Room	38
1.5.56	TRUSTe.....	38
1.5.57	TrustEnforce.org.....	38
1.5.58	U.S. Settle	38
1.5.59	VirtualCourthouse	38
1.5.60	Virtual Magistrate.....	38
1.5.61	WebAssured.com.....	38
1.5.62	Web Trader	38
1.5.63	WEBDispute.com	39
1.5.64	WebMediate.....	39
1.5.65	WeCanSettle	39
1.5.66	Word&Bond	39
2	Legal Framework of International Arbitration in Electronic Commerce	41
2.1	Legal Framework and Efficiency of International Arbitration	41
2.1.1	The Internationality of the Dispute	41
a.-)	Internationality According to the New York Convention and the Geneva Convention	42
b.-)	Places of Business in Different States	42
c.-)	Internationality by Declaration	42
d.-)	Internationality of Consumer Arbitration	42

2.1.2	International Commercial Arbitration as the Most Effective Means for the Settlement of Cross-Border Disputes.....	43
2.1.3	Costs of Arbitration.....	43
2.2	International Instruments Regulating Arbitration.....	44
2.2.1	New York Convention.....	44
2.2.2	Geneva Convention.....	45
a.-)	Relations Between the New York Convention and Geneva Convention.....	45
b.-)	Revision of Geneva Convention.....	45
2.2.3	Council of Europe's Convention Providing a Uniform Law on Arbitration.....	45
2.2.4	Panama Convention.....	46
2.2.5	Montevideo Convention.....	46
2.2.6	Arbitration in Arab Countries.....	47
a.-)	Convention on the Enforcement of Judgements, Disputes and Judicial Summons.....	47
b.-)	Arab League Convention on Judicial Cooperation (Riyadh Convention).....	47
2.3	United Nations Committee on International Trade Law (UNCITRAL).....	47
2.3.1	UNCITRAL Model Law on International Commercial Arbitration.....	47
a.-)	International Arbitration.....	48
b.-)	Arbitration Agreement.....	48
c.-)	Requirement of Writing.....	48
(1)	Report of the Working Group on Arbitration of March 2000: Requirement of Written Form.....	49
(2)	Reports of the Working Group on Arbitration in 2000.....	50
(3)	Working Group on Arbitration and Conciliation, Preparation of Uniform Provisions on Written Form for Arbitration Agreements, note by the Secretariat of 06/02/02.....	51
d.-)	Arbitral Tribunal.....	52
e.-)	Jurisdiction of the Arbitral Tribunal.....	53
f.-)	Conduct of Proceedings.....	53
g.-)	Making of Award.....	53
h.-)	Recourse Against the Award.....	53
i.-)	Enforcement of Award.....	54
2.3.2	UNCITRAL Arbitration Rules.....	54
2.3.3	UNCITRAL Notes on Organising Arbitral Proceedings.....	54
2.3.4	UNCITRAL Model Law on Electronic Commerce.....	54
a.-)	Definitions.....	54
b.-)	Variation by Agreement.....	55
c.-)	Recognition of Data Messages.....	55
d.-)	Incorporation by Reference.....	55
e.-)	Writing.....	55
f.-)	Signature.....	56
g.-)	Original.....	56
h.-)	Communication of Data Messages.....	57
i.-)	Compatibility of the Model Law with EU Law.....	57
2.3.5	UNCITRAL Work on Dispute Settlement on the Internet.....	57
2.3.6	UNCITRAL Draft Convention on the Use of Electronic Communications in International Contracts..	57
a.-)	Applicability to the Formation and Performance of Arbitration Agreements in the Sense of the New York Convention.....	57
b.-)	Scope of Application.....	58
(1)	Places of Business in (Different) States.....	58
(2)	Irrelevance of the Nationality of Parties and Their Commercial or Civil Status.....	58
(3)	Relation to the New York Convention.....	58
(4)	Place of Business in Electronic Commerce.....	59
c.-)	Exclusions: Consumer Contracts, Contracts on a Regulated Exchange.....	59
d.-)	Written Form.....	59
e.-)	Online Conclusion of the Arbitration Agreement.....	60
(1)	Time of Dispatch.....	60
(2)	Time of Receipt.....	60
(3)	Places of Dispatch and Receipt.....	61
(4)	Use of Automated Message Systems.....	62
f.-)	Errors of Communication.....	62
3	Voluntary International Arbitration on the Basis of the New York Convention and Means of Electronic Commerce.....	63
3.1	Definition of the Terms 'Arbitration' and 'Arbitration Agreement'.....	63
3.2	Voluntary Arbitration.....	63

3.2.1	Arbitration Agreement: Requirements of Validity	64
3.2.2	Applicable Law	64
3.3	Content of the Arbitration Agreement	64
3.4	Form of the Arbitration Agreement According to the New York Convention	65
3.4.1	Fulfilment of Form Requirements on the Basis of the UNCITRAL Draft Convention on the Use of Electronic Communications in International Contracts	65
3.4.2	Broad Definition of the Term 'Agreement in Writing' in the Sense of Article II(2) of the New York Convention	66
a.-)	Scanning of Handwritten Signature	66
b.-)	UNCITRAL Model Law on Electronic Commerce	66
c.-)	UNCITRAL Model Law on Electronic Signatures	67
(1)	Definition of 'Electronic Signature'	67
(2)	Determination of Satisfactory Criteria	68
(3)	UNCITRAL Draft of Uniform Rules on Electronic Signatures	69
d.-)	EU Directive on a Community Framework for Electronic Signatures	70
(1)	Advanced Electronic Signatures	70
(2)	Interpretation of the New York Convention in the Light of the EU Directive on Electronic Signatures	71
(3)	Obligations of EU Member States According to the EU Directive on Electronic Signatures	71
e.-)	US Law	71
3.4.3	Exchange of Letters or Telegrams	71
a.-)	UNCITRAL Model Law on International Commercial Arbitration	72
(1)	Telegram	73
(2)	Telex	73
(3)	Fax	73
(4)	Computerfax	73
(5)	Email	73
b.-)	Requirement of 'Writing' and Data Messages Usable for Subsequent Reference in the Sense of the UNCITRAL Model Law on Electronic Commerce	73
(1)	Broad Definitions in the Guide to the Enactment of the UNCITRAL Model Law on Electronic Commerce	74
(2)	Interpretation of the Form Requirement	75
c.-)	Electronic Data Interchange in the Sense of the UN/CEFACT Recommendation to UNCITRAL	76
3.4.4	Requirement of Form and the United Nations Convention on the Law of Treaties	76
a.-)	Interpretation of the Form Requirement on the Basis of the UNCITRAL Model Law on Electronic Commerce	77
b.-)	Interpretation of the Form Requirement and EU Law	77
(1)	Modification of the Form Requirement Through EU Law	78
(2)	Requirement of Form and National Laws of EU Member States	78
3.4.5	Form Requirements According to National Laws	79
a.-)	Austrian Law	79
b.-)	Belgian Law	79
c.-)	French Law	80
d.-)	German Law	80
e.-)	Italian Law	81
f.-)	Spanish Law	82
g.-)	Swiss Law	82
h.-)	UK	83
i.-)	United Arab Emirates	83
3.4.6	Proof of the Arbitration Agreement by Means of Electronic Commerce	83
3.5	National and Supra-National Legal Frameworks for Arbitration	84
3.5.1	The EU's 'Acquis Communautaire' Relating to Arbitration Law	84
a.-)	The Recognition and Enforcement of Arbitral Awards in the EU's Internal Market	84
b.-)	Definition of Term 'Arbitration'	84
c.-)	Non-Applicability of International Conventions on Jurisdiction and Conflict of Laws	85
(1)	EU Brussels Regulation and EU Brussels Convention	85
(2)	EU Rome Convention	85
d.-)	Remedies Against the Award	86
e.-)	Application of Mandatory Rules of EU Law	86
f.-)	EU Law Relating to the Use of Electronic Means for Arbitration	86
g.-)	Settlement of Disputes in the Sense of Article 17 of the EU Directive on Electronic Commerce	87
(1)	Scope of the Term Out-of-Court Dispute Settlement	87

(2)	Recognition of Arbitration Agreements Concluded by Electronic Means	87
h.-)	EU's European Model EDI Agreement.....	88
i.-)	Dispute Resolution According to the UN Economic Commission for Europe: Proposal Concerning Dispute Resolution for EDI.....	89
j.-)	European Parliament's Resolution on the Promotion of Recourse to Arbitration.....	89
k.-)	EU Public Policy	90
(1)	Jurisprudence of the European Court of Justice	90
(2)	Application of EU Law by the Arbitrator.....	91
(3)	Enforcement of Agreements to Arbitrate and Public Policy.....	92
(4)	EU Public Policy and Antitrust	93
(5)	EU Public Policy and Consumer Arbitration.....	93
(6)	Mandatory Rules of Law and Public Policy	94
3.5.2	Necessity of an Adaptation of the New York Convention to Conditions of Electronic Commerce?	94
a.-)	Possible Measures to Avoid Risks from an Incoherent Interpretation of the New York Convention	95
(1)	Amendment of the New York Convention	95
(2)	Amendment of the Geneva Convention	96
(3)	Adaptation of National Legislation	96
(4)	Possible Initiatives at the EU Level.....	96
b.-)	Alternative: Reference to the New York Convention in the UNCITRAL Draft Convention on the Use of Electronic Communications in International Contracts	97
3.5.3	Conclusion of Arbitration Agreements by Means of Electronic Commerce	98
a.-)	Solution Adopted by the EU Directive on Electronic Commerce	98
(1)	Placing of Orders.....	98
(2)	Public Offer through a Website	99
(3)	Conclusion of Contract Including Arbitration Agreement	100
b.-)	UNCITRAL Model Law on Electronic Commerce.....	100
(1)	Formation of Contract	100
(2)	Requirements of Form	100
(3)	Attribution of Data Messages	100
(4)	Acknowledgement of Receipt	101
(5)	Time and Place of Dispatch and Receipt of Data Messages.....	102
c.-)	UN/CEFACT E-Agreement	103
(1)	A Framework for Electronic Transactions.....	104
(2)	Offer and Acceptance by Individual Email	104
(3)	Receipt and Acknowledgement of Receipt.....	104
d.-)	European Model EDI-Agreement.....	105
3.5.4	Choice of a Transnational Law for Electronic Commerce	106
a.-)	UNCITRAL Model Law on Electronic Commerce.....	106
b.-)	UNCITRAL Draft Convention on the on the Use of Electronic Communications in International Contracts.....	106
3.5.5	Non-Negotiated 'Click-wrap' Arbitration Agreement.....	106
a.-)	Click-Wrap Arbitration Agreement in the Business-to-Business Sector.....	106
b.-)	Click-Wrap Arbitration Agreement in the Business-to-Consumer Sector.....	107
3.6	Arbitration Not Falling Within the Scope of the New York Convention	107
3.6.1	Delimitation of Arbitration from other Types of Dispute Settlement.....	107
a.-)	Decisions as Contracts.....	107
b.-)	Decisions as Judgements	108
c.-)	Mandatory Consumer Arbitration	108
3.6.2	Uniform Domain-Name Dispute-Resolution Policy.....	109
3.6.3	Adjudication	110
3.6.4	Expert Opinion and Referee Decision	111
a.-)	Expert Opinion	111
b.-)	Referee Decision	112
3.6.5	'Non-Procedural' Arbitration	113
3.6.6	Binding Advice.....	114
3.6.7	Office for Settlements.....	114
3.7	Necessity to Interpret International Instruments in a Uniform Manner.....	115
3.7.1	Role of Jurisprudence of National Courts	115
3.7.2	Arbitrability and Applicable Law	116
3.7.3	Legal Security for Electronic Commerce through Efficient Arbitration of Disputes	116
a.-)	Establishment of Electronic-Confidence in International Arbitration by Means of Electronic- Commerce	117

	b.-) Possible Adherence to Geneva Convention.....	117
4	Arbitration Procedure in Cyberspace	119
4.1	Place or Seat of Arbitration	119
	4.1.1 Territoriality of International Arbitration	119
	4.1.2 Legal Consequences of the Place or Seat of Arbitration	120
	4.1.3 Law of Procedure in the State of the Place or Seat of Arbitration.....	121
	a.-) Recognition and Enforcement of the Award	121
	b.-) Setting Aside of the Award.....	122
	c.-) Enforcement of 'Foreign' Awards in the State where the Award Was Made.....	122
	4.1.4 Choice of the Institution for Arbitration	122
	4.1.5 Delocalisation of Arbitration	123
	4.1.6 Online Technologies and the Place or Seat of Arbitration.....	123
	4.1.7 Electronic Forum Shopping.....	124
	4.1.8 Considerations for the Choice of the Place or Seat of Arbitration.....	124
	a.-) Factors for Determining the Place or Seat of Arbitration	125
	b.-) Legal Factors of Particular Importance	125
	c.-) Convenience within the EU's Internal Market.....	126
	4.1.9 Determination of the Place or Seat of Arbitration in the Absence of an Express Choice by the Parties.....	126
	a.-) ICC Rules of Arbitration	126
	b.-) Czech Online Rules	126
	c.-) Hong Kong Online Rules	126
	d.-) US AAA Online Rules	127
4.2	Procedural Guarantees.....	127
	4.2.1 Means of Electronic Commerce for Arbitration Procedures.....	127
	4.2.2 General Procedural Principles Applicable in International Arbitration.....	127
	a.-) General Procedural Principles	127
	(1) Principle of Good Faith	127
	(2) Order of Provisional and Protective Measures	128
	(3) Default of the Respondent	128
	(4) Neutrality.....	128
	(5) Hearing	128
	(6) Proof of Factual Veracity.....	128
	(7) Reasoned Award.....	128
	(8) Apportionment of Costs.....	128
	(9) Arbitral Economy	128
	(10) Waiver of Rights.....	128
	(11) Confidentiality	128
	b.-) Relevance for Online Proceedings.....	128
	(1) Collaboration in Online Communications	128
	(2) Online Neutrality	129
	(3) The Parties' Obligation of Cooperation	129
	(4) Proof of Digital Files	129
	(5) Objections and Complaints Concerning Online Communications	130
	(6) Adequate Security of Online Communications	130
	4.2.3 Adequate Procedural Guarantees Based on the European Convention on Human Rights and the Jurisprudence of the European Court of Human Rights.....	131
	a.-) Deweer Case.....	132
	b.-) Beer and Regan v. Germany	132
	c.-) Lithgow Case.....	132
	d.-) Jurisprudence of the Court.....	133
	4.2.4 The Right to a Fair Trial.....	134
	a.-) The UNCITRAL Model Law on International Commercial Arbitration.....	134
	b.-) UNCITRAL Arbitration Rules	135
	c.-) Geneva Convention	135
	d.-) Online Arbitration Rules	136
	e.-) Arbitration Clauses in General Terms of Contract	136
	f.-) Global Application of the Right to a Fair Trial.....	137
	g.-) Consequences of a Violation of the Right to a Fair Trial	138
	4.2.5 Procedural Guarantees for Online Arbitration Procedures	138
	a.-) Procedural Guarantees Based on Mandatory Laws, International Conventions and Public Policy	139
	b.-) Applicable Law and Procedural Guarantees.....	139
	c.-) Control of the Arbitration Procedure	140

(1)	Internal Control of Awards by the Arbitration Institution	140
(2)	Control of Decisions of the Arbitrator	141
(3)	Setting Aside of the Award	141
(4)	Appeal Against the Award	141
d.-)	The Regard of the Interests of the Parties	141
e.-)	Establishment of Terms of Reference by the Arbitrator	142
f.-)	'Electronic Documents' Procedure	142
(1)	Arbitration Rules	143
(2)	Use of Email for the Exchange of Documents	143
(3)	Proof of Authenticity	143
g.-)	Duration of Arbitration	144
h.-)	Confidentiality of the Proceedings	144
(1)	Confidentiality and Electronic Communications	145
(2)	Confidentiality in Rules for Arbitration	145
(3)	Technological Measures to Safeguard Confidentiality	145
4.2.6	Basic Requirements for Procedures in the Sense of Article 17(2) of the EU Directive on Electronic Commerce	146
a.-)	Ensuring Procedural Guarantees According to Article 17(2) of the EU Directive on Electronic Commerce	147
b.-)	Increase of State Control of Arbitration Through More Procedural Guarantees?	147
(1)	State Control According to the New York Convention	147
(2)	'More-Favourable-Rights' Rule	147
(3)	Rule of Maximum Effectiveness	148
4.2.7	Procedural Guarantees in the Sense of Article 17(2) of the EU Directive on Electronic Commerce ...	148
a.-)	Principle of Equality of the Parties	148
b.-)	Principle of Independence and Impartiality of the Arbitrator	149
c.-)	Principle of Contradictory Proceedings (Adversary System)	149
(1)	Exclusion of Manipulation of Technological Systems	149
(2)	Recording and Storage of Electronic Data	150
(3)	Electronic Protocols	150
(4)	Online Declarations	150
d.-)	Principle of a Fair Procedure	151
(1)	Oral Hearings and Videoconferencing	151
(2)	Deliberations of the Arbitrator in Ordering Hearings or Videoconferencing	151
(3)	Default of a Party and the Use of Email	152
(4)	Communication of Data Messages	152
(5)	Errors in Communication	152
(6)	Taking of Evidence	153
(7)	Security Measures	153
e.-)	Principle of the Absence of Discretion	154
f.-)	Principle of a Reasoned Decision	154
(1)	Content of Award	155
(2)	'Electronic' Awards	155
4.2.8	Earlier Drafts of the Proposal of an EU Directive on Electronic Commerce	156
a.-)	Principles Based on the Commission Recommendation Concerning Bodies for Consumer Disputes ..	156
(1)	Principle of Independence	156
(2)	Principle of Transparency	156
(3)	Adversarial Principle	157
(4)	Principle of Effectiveness	157
(5)	Principle of Legality	158
(6)	Principle of Liberty	158
(7)	Principle of Representation	160
b.-)	Economic Operation of Consumer Arbitration with Regard to the Principles of the Commission's Recommendation	160
4.3	Arbitration Rules Adapted to Electronic Commerce	160
4.3.1	Submission of Arbitration to the Arbitration Institution	160
a.-)	Establishment of Rules by the Parties	161
b.-)	Rules Permitting the Use of Means of Electronic Commerce	162
4.3.2	Request for Arbitration	162
4.3.3	Preparation for Procedure	162
4.3.4	Digital Arbitration Agreement	163
a.-)	Arbitration Laws of EU Member States	163

	b.-) International Arbitration According to the New York Convention	164
	(1) Conclusion of Arbitration Agreements by Electronic Means	164
	(2) Choice of Law of the UNCITRAL Model Law on Electronic Commerce	164
	(3) UNCITRAL Draft Convention on the Use of Electronic Communications in International Contracts.....	164
	4.3.5 Contractual and Non-Contractual Disputes in Electronic Commerce	165
	a.-) Disputes Relating to Electronic Contracting Practices	165
	b.-) The Online Environment	165
	(1) The 'Delocalisation' of Electronic Commerce	166
	(2) Insufficiency of the Principle of Territoriality	166
	(3) Establishment of a Set of Legal Rules Applicable to Cross-Border Disputes in Electronic Commerce	166
	c.-) Expedited Arbitrations and Small Claims Arbitration.....	167
4.4	Rules of the Institution Responsible for Arbitration.....	168
	4.4.1 Law Applicable to the Arbitration Procedure.....	168
	4.4.2 Arbitration Rules and Mandatory Rules of National Law	169
	4.4.3 Adaptation of Arbitration Rules to the Use of Means of Electronic Commerce	169
	a.-) Notice of Arbitration	170
	b.-) Commencement of Arbitration Proceedings.....	170
	c.-) Arbitration Institution	170
	d.-) Arbitrator	170
	e.-) Place or Seat of Arbitration and Place of Rendering the Award.....	170
	f.-) Law Applicable to the Arbitration.....	170
	g.-) Online Procedures.....	171
	(1) Discretion of Arbitrator	171
	(2) Critical Sectors of Online Procedures.....	171
	h.-) Measures and Awards.....	171
	4.4.4 Rules on Law Applicable to the Substance of Dispute, the Arbitration and the Arbitration Agreement.....	172
	4.4.5 Reference to Online Arbitration Rules in Arbitration Clause.....	172
	a.-) Online Arbitration Clauses	172
	b.-) Ad Hoc Clauses	173
	(1) A typical ad hoc clause.....	173
	(2) Ad Hoc Clause Recommended by the Hong Kong Online Rules.....	174
	c.-) Arbitration Clauses.....	174
	(1) Czech Online Rules	174
	(2) Hong Kong Online Rules.....	175
	(3) UNCITRAL-Arbitration Clause	175
	(4) Typical Arbitration Clause	175
	(5) Typical Arbitration Clause Including Pre-arbitral Referee Procedure.....	175
	(6) Typical Expertise Clause.....	175
	(7) Multi-Party-Arbitration Clause.....	175
4.5	Organisation of the Arbitration in Cyberspace	176
	4.5.1 Ad Hoc Arbitration.....	176
	4.5.2 Means of Electronic Commerce	176
	a.-) Electronic Filing	177
	b.-) Email	177
	(1) Czech Online Rules	177
	(2) Hong Kong Online Rules.....	178
	(3) UNCITRAL Notes on Organising Arbitral Proceedings	178
	(4) Regulation of Emails by ICANN's Policy	180
	(5) NASD Online Arbitration Claim Filing System.....	181
	(6) GAMS Rules on Online Dispute Resolution	182
	c.-) Videoconferencing.....	182
	(1) Hong Kong Online Rules.....	182
	(2) Regulation of Videophone Conference According to Italian Arbitration Law	182
	(3) Rules of Milan Chamber of National and International Arbitration	183
	(4) Applicability of Regulation Concerning Videophone Conference to Videoconference	183
	(5) Regulation of Videoconference and Webconference by ICANN's Policy.....	183
	(6) Replacement of Traditional Hearings by Videoconference	184
	4.5.3 Requirements of Security	184
	a.-) Data Security	184
	(1) Data Protection	184

	(2) Data Security and Confidentiality	185
	(3) Encryption	185
	b.-) Technological Standards	186
	c.-) Agreement on Confidentiality	186
5	Online Procedures and National Laws	189
5.1	Bindingness of International Arbitration	189
5.1.1	Chances for the Establishment of a New International System of Non-Binding Arbitration	190
	a.-) Lacking Legal Framework for the Enforceability of Decisions Abroad.....	190
	b.-) Competition Between Different International Systems	190
	c.-) Risks for a System of Non-Binding Arbitration in the EU's Internal Market.....	190
5.1.2	Challenge of the Validity of the Arbitration Clause in Cyberspace	190
5.2	Laws Facilitating Online Arbitration with Consumers in EU Member States.....	191
5.2.1	Consumer Arbitration in the EU's Internal Market.....	192
	a.-) Non-National Choice of Law	192
	b.-) Choice of Law and Mandatory Rules of Consumer Protection Law	193
	(1) Mandatory Rules of Law Are Binding if Constituting Public Policy	193
	(2) Public Policy at the Place or Seat of Arbitration and Where Enforcement of the Award Is Likely .	194
	(3) Choice of Law and Enforcement on the Basis of National Law	194
	c.-) Choice of Transnational Law, the EU 'Community Acquis' and the Future 'Common Frame of Reference'	194
	(1) Acceptance of Transnational Law	195
	(2) Transnational Law and Consumer Protection.....	195
	(3) Development of Rules of Transnational Consumer Protection Law within the EU's Internal Market	195
	(4) The 'Acquis Consommateur' in Cross-Border Electronic Commerce.....	195
	(5) The Incorporation of the 'Community Acquis' in the Future 'Common Frame of Reference' (CFR)	196
5.2.2	State of Origin and Consumer Protection in the EU Directive on Electronic Commerce	196
	a.-) State of Origin and Measures by EU Member States in Derogation of the 'State of Origin' Principle.	196
	b.-) Observation of Mandatory Rules of Consumer Protection Law of the 'State of Reception'	197
	c.-) Observation of Contractual Obligations Relating to Consumer Contracts of the 'State of Reception' .	198
	d.-) Consumer Arbitration According to the New York Convention	198
	e.-) Consumer Arbitration, Mandatory Rules of a National Consumer Protection Law and the Non-Applicability of the EU Brussels Regulation and EU Rome Convention.....	199
	f.-) Arbitration Clauses and the EU Directive on Unfair Terms in Consumer Contracts	202
	(1) Judgement Océano vs. Quintero of the European Court of Justice	203
	(2) Exclusive Arbitration not Covered by Legal Provisions	203
	(3) Satisfactory Procedural Guarantees	204
	(4) Implementation: Online General Terms and Conditions concerning Out-of-Court Dispute Settlement.....	204
	(5) Arbitration Clauses for Businesses and Consumers	205
	(6) Law of a non-Member State and the Protection Afforded by the EU Directive on Unfair Terms in Consumer Contracts	205
	(7) Close Connection through the Place of the Conclusion of the Contract.....	205
	(8) Close Connection with the Territories of Member States Based on Good Faith	206
	(9) Measures to Be Taken by EU Member States	207
	g.-) Mandatory Consumer Protection Law and Public Policy.....	207
5.2.3	Arbitration Clauses with Consumers According to US Law	208
5.3	Liability of Arbitrators and Institutions Responsible for Arbitration	208
5.3.1	Scope of Obligations	208
	a.-) General Duties	208
	b.-) Hong Kong Online Rules: Use of Reasonable Endeavours to Provide Security	208
5.3.2	Implied Obligation to Exercise Skill and Experience and Exclusion of Liability	208
	a.-) Implied Obligations	209
	b.-) Exclusion of Liability	209
	c.-) Exclusion of Liability According to the Hong Kong Online Rules.....	209
	d.-) Immunity of Arbitrators	209
	e.-) Codes of Ethics.....	209
5.4	Languages.....	210
5.4.1	Language of Business Terms.....	210
5.4.2	Choice by the Parties	210
5.4.3	Regulation by Institutions Responsible for Arbitration or Arbitrator.....	210
	a.-) UNCITRAL Model Law on International Commercial Arbitration	210
	b.-) UNCITRAL Arbitration Rules	210

	c.-) Rules of Arbitration of the ICC	211
	d.-) US AAA Online Rules	211
	5.4.4 Regional and Minority Languages.....	211
6	Law Applicable to the Arbitration.....	213
6.1	Law Applicable to the Contract.....	213
	6.1.1 Autonomy of the Parties in International Arbitration	214
	6.1.2 Global Recognition of the Autonomy of the Parties	214
	6.1.3 Governing Law of Transactions	214
	6.1.4 Awards Based on a non-National Law	215
6.2	The Law Applicable to the Dispute	215
	6.2.1 Regulation in International Instruments and Rules of Arbitration.....	215
	a.-) Rules of Law to Be Applied by Arbitrator	216
	b.-) Selection of Law by Arbitrator	216
	6.2.2 Choice of a Transnational Law.....	216
	a.-) UNIDROIT Principles of International Commercial Contracts.....	217
	(1) Broad Scope of Principles	217
	(2) Principles Based on a Broad Consensus	218
	b.-) UNCITRAL Model Law on Electronic Commerce and Other International Instruments Related to Electronic Commerce	218
	c.-) United Nations Convention on the International Sale of Goods.....	219
	d.-) Validity of the Choice of Law Clause	219
	e.-) Mandatory National Law and Choice of a non-National Law	219
	6.2.3 Arbitration 'Ex Aequo et Bono' and 'Amiable Compositeur'	220
	6.2.4 Good Faith and Fair Dealing in Electronic Commerce.....	220
	a.-) Adaptability of the Principles to Electronic Commerce	221
	b.-) Offer and Acceptance in Electronic Commerce	221
	c.-) Effectiveness of Offer.....	222
	6.2.5 Supplementation of UNIDROIT Principles.....	222
	a.-) Supplementation Clause	222
	b.-) Arbitration Clause and UNIDROIT Principles.....	222
	6.2.6 Principles of European Contract Law.....	223
	a.-) Integration of Consumer Protection Law into the Principles.....	223
	b.-) Transposition of EU Directives into the European Principles	223
	6.2.7 Limitations of the Choice of Law	224
	a.-) Contract without a Law	224
	b.-) Choice of a Law.....	224
	c.-) Mandatory Rules of Law	224
6.3	Transnational Law and Political Economy in the EU.....	224
6.4	Law Applicable to the Arbitration Agreement	225
6.5	Law Applicable to the Procedure	225
	6.5.1 Autonomy of the Parties.....	225
	6.5.2 Rules for Arbitration, Choice by Parties, Selection by Arbitrator	226
6.6	Arbitration Rules and the Law Applicable to the Substance of the Dispute.....	226
	6.6.1 Connecting Factors for the Selection of Law by the Arbitrator.....	227
	6.6.2 Selection of the Applicable Law by the Arbitrator.....	228
	a.-) Place or Seat of Arbitration	228
	b.-) Enforcement of Award	228
	c.-) Public Policy.....	229
	d.-) Legitimate Expectations of the Parties	229
	(1) Reference to Set of Applicable Law in Arbitration Rules	229
	(2) Differentiation According to Interests Involved.....	229
6.7	The Law Applicable to non-Contractual Disputes.....	230
6.8	Application of Trade Usages	230
	6.8.1 Trade Usages and Lex Mercatoria.....	230
	6.8.2 Law of Electronic Commerce.....	230
6.9	Choice of Law Clauses Relating to Electronic Commerce.....	231
	6.9.1 Reduction of Transaction Costs.....	231
	a.-) Facilitation of Dispute Settlement	231
	b.-) Particular Advantages of Choice of Law Clauses in the EU's Internal Market	231
	c.-) Standardisation of Choice of Law Clause.....	232
	d.-) Choice of Law Clauses and Consumer Protection.....	232
	6.9.2 International Law of Electronic Commerce.....	232

a.-)	Lex Mercatoria	233
(1)	Insufficiency of Rules of Private International Law.....	233
(2)	State Control Ensuring Social Usefulness	233
(3)	Lex Mercatoria as a Catalyst for Legal Rules in the EU	234
(4)	Recognition of the Lex Mercatoria by Jurisprudence.....	234
(5)	Lex Mercatoria of Electronic Commerce	234
(6)	Lex Electronica.....	235
(7)	Netiquette	235
b.-)	Custom	236
(1)	Deletion of Emails after 30-Days	237
(2)	(Unauthorised) Copying via the Internet	237
(3)	Liability of Intermediaries.....	237
(4)	Model EDI Agreements.....	237
(5)	ICANN's Uniform Domain-Name Dispute-Settlement Policy	237
(6)	Future Developments.....	238
7	Recognition and Enforcement of Foreign Arbitral Awards in Electronic Commerce and the New York Convention.....	239
7.1	Recognition of Arbitral Award.....	239
7.1.1	Control of Arbitration Agreement	239
7.1.2	Scope of Control of Award.....	240
7.2	Operation of the Control System	240
7.2.1	Control by National Courts.....	240
7.2.2	Recognition of Electronic Awards	241
a.-)	Form Requirements of the New York Convention.....	241
b.-)	Location of the Online Award	241
c.-)	Czech Online Rules	242
7.2.3	Control by Primary and Secondary Jurisdiction	242
7.3	Recognition and Enforcement of Awards Relating to Arbitration not Covered by International Instruments in the EU's Internal Market	242
7.3.1	Recognition and Enforcement of National Awards Relating to Consumer Disputes in the EU's Internal Market.....	242
a.-)	Accreditation of Bodies Responsible for Arbitration of Consumer Disputes.....	242
b.-)	Factors of Relevance for the Assessment of the Public Interest in the Control of the Award	242
c.-)	Recognition and Enforcement of National Awards Relating to Consumer Disputes in the EU's Internal Market without Control by Secondary Jurisdiction	243
d.-)	EEJ-Net, ECC-Net and FIN-Net	244
7.3.2	Recognition and Enforcement of National Awards not Related to Consumer Disputes in the EU's Internal Market.....	244
a.-)	Measures Required for the Recognition and Enforcement of National Arbitral Awards in the EU's Internal Market.....	244
b.-)	Particular Measures for the Benefit of Electronic Commerce in the EU's Internal Market.....	245
8	Arbitration of Consumer Disputes	247
8.1	Consumer Arbitration in the EU.....	247
8.2	Some National Consumer Arbitration Schemes	248
8.2.1	Portugal	249
a.-)	Lisbon Arbitration Centre.....	249
b.-)	Portuguese Law Concerning Voluntary Arbitration and the Regulation of the Court of Arbitration... ..	249
c.-)	Arbitration Combined with Mediation	250
d.-)	Few Formal Rules.....	250
e.-)	Consumers not Domiciled in Lisbon and Portuguese-Spanish Cross-Border Disputes Arbitration	250
f.-)	Affiliation of Businesses with the Arbitration Centre	251
g.-)	Costs.....	251
h.-)	Enforceability of Awards	251
8.2.2	Spain.....	251
a.-)	Voluntary Arbitration	251
(1)	Electronic Arbitration Agreement	252
(2)	General Terms of Contracts.....	252
(3)	Limitation of Consumer Arbitration to Claims of Consumers	252
b.-)	Procedural Guarantees.....	252
c.-)	Arbitrability of Consumer Disputes	253
b.-)	Binding and Enforceable Decision as a Result of Consumer Arbitration.....	253
c.-)	Organisation of Consumer Arbitration.....	253

(1)	National Consumer Arbitration Court and Arbitration Boards.....	253
(2)	Request for Arbitration.....	254
(3)	Organisation of Arbitration by the Arbitration Boards.....	254
d.-)	Arbitration on the Basis of Equity or Law.....	255
e.-)	Logo of the Consumer Arbitration System and Businesses Adhering to the System.....	255
f.-)	Electronic Award.....	256
g.-)	Foreign Arbitral Awards in Consumer Disputes.....	256
8.2.3	United Kingdom.....	256
a.-)	Consumer Arbitration Schemes of the Chartered Institute of Arbitrators.....	256
b.-)	UK Industries Operating Consumer Arbitration Schemes.....	256
8.2.4	United States of America.....	257
a.-)	Unconscionability and Jurisprudence.....	258
(1)	Hill v. Gateway 2000.....	258
(2)	Brower v. Gateway 2000.....	258
b.-)	Mass-Market Licences (Click-Wrap) and the US Uniform Computer Information Transactions Act of 2002.....	259
c.-)	Unreasonable or Unjust Arbitration Clauses in the Sense of Section 110 of the US Uniform Computer Information Transactions Act of 2002.....	260
d.-)	International Contracts: Consent by Consumers and the US Electronic Signatures in Global and National Commerce Act.....	260
8.3	Consumer Disputes and International Arbitration.....	261
8.3.1	Consumer Arbitration Schemes and International Voluntary Arbitration.....	262
8.3.2	Consumer Protection and Cross-Border Legal Redress.....	262
a.-)	The Lack of Cross-border Consumer Arbitration Systems.....	262
b.-)	Advantages of International Consumer Arbitration.....	263
c.-)	Applicability of the New York Convention to International Consumer Arbitration.....	263
8.3.3	Commerciality of the International Consumer Arbitration.....	263
a.-)	Necessity to Operate at Economic Conditions.....	264
b.-)	International Instruments.....	264
c.-)	Consequences of the 'Commerciality' of the Consumer Arbitration.....	265
(1)	Disregard of Rules Applicable to 'Commercial' Arbitration'.....	265
(2)	Reference to Consumer Arbitration and the Applicable Law in Arbitration Rules.....	266
(3)	Applicability of UNIDROIT Principles of International Commercial Contracts.....	266
8.3.4	Transnational Law Applicable to Consumer Arbitration.....	266
a.-)	Principles of European Contract Law Including Aspects of Consumer Protection.....	267
b.-)	A European Civil Code and a Common Frame of Reference.....	267
(1)	Advantages and Disadvantages of a European Civil Code.....	267
(2)	EU Parliament's Call for a Single European Civil Code.....	268
(3)	Integration of Consumer Protection Law.....	268
(4)	Availability of the Principles of European Contract Law.....	268
(5)	The Future 'Common Frame of Reference'.....	269
c.-)	Supplementary Application of Other Transnational Laws.....	269
8.3.5	International Consumer Arbitration in EU Member States.....	270
a.-)	Arbitration Agreements with Consumers.....	270
b.-)	Electronic Arbitration Agreements with Consumers.....	270
(1)	Requirements of Form.....	271
(2)	Choice of Law.....	271
(3)	UN/CEFACT E-Agreement and Arbitration Agreements with Consumers.....	272
8.4	Arbitrability of Consumer Disputes.....	272
8.4.1	Arbitrability of Consumer Disputes on the Basis of National Law.....	272
a.-)	Success of National Consumer Arbitration Schemes.....	272
b.-)	Necessity of the Harmonisation of National Laws of EU Member States in Support of Consumer Arbitration.....	273
8.4.2	The Law Applicable to the Determination of the Arbitrability.....	274
8.4.3	Arbitrability of Consumer Disputes and Mandatory Arbitration of Consumer Disputes.....	274
8.4.4	Enforceability of Awards Relating to Consumer Arbitration.....	275
8.5	Public Policy and Consumer Arbitration.....	275
8.5.1	Transnational Public Policy and the Protection of the Weaker Party in International Commercial Arbitration.....	275
8.5.2	EU Public Policy on the Basis of the EU Directives on Distance Contracts and Unfair Terms in Consumer Contracts.....	276
a.-)	EU Directive on Distance Contracts.....	277

b.-) EU Directive on Unfair Terms in Consumer Contracts.....	277
c.-) Choice of Law Clauses in Derogation from the Directives	277
(1) Relevance of the Place of the Conclusion of the Contract in Distance Contracts	278
(2) Place of the Conclusion of the Contract and Article 11 of the EU Directive on Electronic Commerce	278
(3) Place of the Conclusion of the Contract and Article 15 of the UNCITRAL Model Law on Electronic Commerce	279
8.5.3 National Public Policy and Transnational Public Policy	279
a.-) Public Policy of Member States and Transnational Public Policy.....	280
b.-) Mandatory Nature of Consumer Protection.....	280
(1) Close Connection with Territories of Member States and the Principle of Good Faith	280
(2) Definition of Unlawfulness of the Contract Term	281
c.-) Application of the Public Policy by the Arbitrator	281
8.6 Consumers' Access to Jurisdiction in the EU's Internal Market	281
8.6.1 Arbitration Clauses and Consumer Protection.....	282
a.-) Pre-contractual Obligations	282
b.-) Online Negotiation of Terms in Consumer Contracts	282
c.-) Possibility to Take Notice of the Online-Terms in Consumer Contracts.....	282
8.6.2 Arbitration Clauses, Fair or Unfair	283
a.-) Online Consent to Terms.....	283
(1) Possibility to Take Notice of the Terms	283
(2) Interactivity as Evidence of Knowledge.....	283
b.-) Unfairness of Arbitration Clauses	284
(1) Unfair Clauses in the Business-to-Business Sector	284
(2) Two Types of Arbitration Clauses on the Information Society Service's Website.....	284
c.-) Limitation of Choice of Law?	285
d.-) Fair Arbitration Clauses	285
(1) Fair Clauses with Regard to Lit. (q) of the Annex to the EU Directive on Unfair Terms in Consumer Contracts	285
(2) Exclusive Arbitration Clause.....	285
ANNEX 1: International Conventions on Arbitration.....	287
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).....	287
European Convention on International Commercial Arbitration of 1961, done at Geneva on 21/04/1961.....	293
Inter-American Convention on International Commercial Arbitration, done at Panama on 30/01/1975	299
ANNEX 2: UN and UNCITRAL Instruments	303
UNCITRAL Model Law on International Commercial Arbitration (1985)	303
UNCITRAL Model Law on Electronic Commerce (1996).....	311
UNCITRAL Draft Convention on the Use of Electronic Communications in International Contracts.....	317
UN Economic Commission for Europe Electronic Commerce Agreement	323
ANNEX 3: Online Arbitration Rules	331
Additional Procedures for Online Arbitration (Online Rules) of the Arbitration Court Attached to the Economic Chamber and Agricultural Chamber of the Czech Republic	331
Electronic Transaction Arbitration Rules of the Hong Kong International Arbitration Centre.....	335
US American Arbitration Association Online Rules: Supplementary Procedures for Online Arbitration	345
ANNEX 4: National and Supra-National Instruments	349
European Union.....	349
Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (Directive on Electronic Commerce) (Excerpts).....	349
Commission Recommendation on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes, document COM(1998) 198 final.....	353
Communication from the Commission on 'Widening Consumer Access to Alternative Dispute Resolution', document COM/2001/0161 final.....	357
EU Commission Recommendation of 19/10/1994 relating to the legal aspects of electronic data interchange (European Model EDI Agreement).....	361
Communication from the Commission to the European Parliament and the Council - European Contract Law and the Revision of the Acquis: the Way Forward, document COM/2004/0651 final.....	377
United States	389
Federal Arbitration Act, US Code Title 9 (Excerpts).....	389
Revised Uniform Arbitration Act (2000) (Excerpts).....	391
Bibliography.....	397
1. Cases and Awards	397

1.1. Austria	397
1.2. European Court of Human Rights	397
1.3. European Court of Justice	397
1.4. France	397
1.5. Germany	397
1.6. International Chamber of Commerce	397
1.7. Italy	397
1.8. Spain.....	398
1.9. Switzerland.....	398
1.10. United Kingdom.....	398
1.11. United States.....	398
2. Articles	399
3. Monographies.....	407
4. Collections, Festschriften	411
Index.....	413