DIRITTO DEL COMMERCIO INTERNAZIONALE

VALIDITÀ ED EFFETTI IN DIRITTO ITALIANO DI ALCUNE CLAUSOLE DEL COMMERCIO INTERNAZIONALE: *MERGER CLAUSE*, *SOLE REMEDY CLAUSE*, *NO WAIVER CLAUSE*

The Author verifies whether some terms, which are frequent in international contracts (such as *merger clauses*, *sole remedy clauses, no waiver clauses*), are valid according to italian law, and examines the effects of such terms according to the general principles of italian contract law.

GIORGIO DE NOVA

I RAPPORTI INTERNAZIONALI D'IMPRESA AL VAGLIO DELLE MISURE RESTRITTIVE ADOTTATE DALL'UNIONE EUROPEA IN OCCASIONE DEL CONFLITTO RUSSO-UCRAINO

Economic *sanctions* adopted by the EU due to the Russia's military aggression against Ukraine have an impact on international contracts and foreign direct investments. The paper focuses on such impact, especially with respect to the flows between Italy and Russia.

ANTONIO LEANDRO

DIRITTO DELL'UNIONE EUROPEA E ARBITRATO SUGLI INVESTIMENTI: RECENTI SVILUPPI ALLA LUCE DELLA SENTENZA *KOMSTROY*

In September 2021, the Court of Justice of the European Union (CJEU) published its judgement in *Republic of Moldova* v. *Komstroy* which concerned the application of the Energy Charter Treaty (ECT) in the intra-EU investment disputes, arguing for the

incompatibility of intra-EU investment arbitration based on the ECT. This decision follows the path already taken with the 2018 *Achmea* judgment, where the CJEU had held that arbitration provisions found in BITs between two EU member states are incompatible with EU law. Furthermore, in October 2021, the CJEU published its decision in *Poland* v. *PL Holdings Sarl*, affirming that even *ad hoc* arbitration agreements between EU investors and EU members states can be invalid under EU law. Therefore, the judgment in *Komstroy* represents another expression of a "closed door" approach toward investment arbitration by the European institutions and an attempt to reform investor-State dispute settlement within the EU. This decision appears problematic not only from some legal aspects which emerge from the analisys of the Court, but also for its possible concrete implications on investors operating in the energy sector. The author concludes suggesting the introduction of new mechanisms in order to overcome the conflict between EU law and investment arbitration law and to apply both regimes in armony for a better safeguard of the investor.

MARIA ROSARIA MAURO

THE DEVELOPMENT OF E-MEDIATION: A COMPARATIVE APPROACH AND THE REASONS FOR A DOUBLE SPEED

The objective of the current study is to thoroughly examine the role of e-mediation (and online dispute resolution) as a valuable tool for resolving legal disputes in civil and commercial matters and to discuss the reasons why this remedy is growing at a slower speed in Europe than in the rest of the world. To this end, this paper gives an overview of the concept of 'mediation' in the context of alternative dispute resolutions (ADRs) and its status in the context of e-mediation in general. Then, this study provides an overview of the historical origin and worldwide practices concerning e-mediation, to understand the reasons behind its greater development in the countries where it originated: U.S.A., Canada, Australia and the UK. The work finally briefly analyses the perspectives for the development of e-mediation in Europe and in the rest of the world. The reason for the two rates of development of those systems is to be identified in the specific worry that European systems have about balancing the privatisation of justice with the guarantee of fundamental rights, especially concerning an effective access to justice.

MARCO GIACALONE, PAOLA GIACALONE

I FONDI DI INVESTIMENTO ALTERNATIVI (FIA) TRA REGOLAZIONE EUROPEA, NAZIONALE E PROSPETTIVE DI AUTODISCIPLINA

The collection of savings from the public has shown a constant suitability to incorporate, by making a participant, the requests of investors and, therefore, of the economic

system itself, basing the related regulatory apparatus on prudential criteria which — without abdicating control — have offered solutions of reconciliation between the interests involved. In the expansion of the phenomenon outlined, on the one hand, the need to regulate the entire asset management sector (on the sidelines of the overcoming of "*shadow banking*") was envisaged in order to guarantee the uniformity of sectoral regulations and, from on the other hand, the development of innovative investment instruments was appreciated, which highlighted the need to enhance the self-regulatory tools of credit operators, subject to verifying their compatibility with the current market structure.

C. ALESSIO MAURO