ADR- SAB Working Group 3: position paper on the Singapore Convention on Mediation

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1. Introduction

The development of a Position Paper outlining the main features of interest of the Singapore Convention on Mediation, for EU business and users of the IP system in the EU, was decided during the 4th ADR-Stakeholders Advisory Board (ADR-SAB) meeting to provide substantive elements for the consideration of stakeholders, users and institutions at the EU level regarding the Convention. The Position Paper has been developed with the support of a Working Group of experts as part of the ADR-SAB Work Plan 2022.

2. Background

The present document aims to highlight the main features of the Singapore Convention on Mediation[1] and its potential impact for EU businesses competing internationally, with a special focus on intellectual property.

In mediation, when a settlement agreement is reached, parties normally voluntarily abide by its terms, but sometimes fail to do so. The absence of an international, cross-border, mechanism to enforce settlement agreements resulting from mediation is one of the main barriers to a more widespread adoption and use of mediation, since mediated settlement agreements are basically only enforceable in the same way as any other contract. According to a recent survey carried out by the Singapore International Dispute Resolution Academy (SIDRA), users ranked enforceability as the most important factor (71%) for their choice of a dispute resolution mechanism[2]. Similar conclusions were reached in the International Mediation Institute Global Pound Conference[3]. In order to enforce the settlement agreement resulting from a mediation in a Member State of the EU, it is necessary either to have it incorporated into an arbitration award (consent award) or, depending on the jurisdiction, have it converted or incorporated into a court judgment. In some EU Member States, having the mediated settlement agreement certified by a notary may facilitate enforcement and may even be a required preliminary step prior to obtaining a declaratory judgment. In other cases, it would be necessary to bring an action for breach of contract before the competent court.

Enforcement of judgments and settlement agreements in an intra-EU framework have been greatly facilitated, albeit with some limitations, by the mechanisms introduced by the Mediation Directive, the Rome I Regulation[4] concerning the law applicable to contractual obligations and the Brussels I Recast Regulation[5]. However, significant challenges remain for enforcement of a mediated settlement against a party domiciled or with its assets outside the EU. In this context, the main options are either to convert the mediated settlement into a consent award given by an arbitral tribunal and thereby benefit from enforcement under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[6] or sue for breach of contract in a court with jurisdiction (which may or may not be in the EU) with possible (and highly complicated) exequatur foreign enforcement of any ensuing judgment if ultimately a third country's courts are to be involved.

In these cross-border contexts, it should be noted that while international conventions address court litigation (Hague Convention on Choice of Court Agreements[7] and the Hague Judgements Convention[8]), making it somewhat easier for rulings in civil or commercial cases to be recognised and enforced in foreign jurisdictions, or target arbitration (New York Convention), there was a gap at international convention level in enforcement facilitation mechanisms for mediated settlements. The Singapore Convention now aims to fill that gap.

It is clear that without the Singapore Convention, the potential complications of this legal patchwork – which undermine the confidentiality of the agreement through notarization and publicly available court

judgments - seriously erode the benefits, attractiveness and effectiveness of mediation in an international context. Moreover, enforcing a mediated settlement as a private contract exposes the parties to the peculiarities of contractual law that often vary significantly from one jurisdiction to another. Parties will be subject to a further set of proceedings, often needing different legal counsel, where the contents of the settlement might have to be proved according to the particular contract law in question and the legal regime of the enforcing jurisdiction. Issues of the law applicable to the settlement agreement may further complicate matters, with enforcing courts reluctantly having to grapple with the law of another jurisdiction.

The Singapore Convention is an international treaty[9] of the United Nations that intends to provide a solution to this conundrum. It establishes a legal framework that enables the enforcement of mediation settlement agreements resulting from the mediation of disputes that are international and commercial in nature. In this sense, it somehow mirrors the approach of the New York Convention, which has become one of the most successful instruments of international trade law, decisively supporting the effectiveness of arbitration in international disputes for over 60 years[10]. One of the main advantages of the Singapore Convention is the fact that the parties to a mediation, including governmental bodies, are free to apply the Convention without it depriving any interested party of any right it may have in regard to the settlement agreement under domestic law or the treaties to which the signatory state adheres[11] (see point 4.6 “Reinforcement of the autonomy of the parties” below).

The Singapore Convention has already been received very positively by the European Commission for the Efficiency of Justice (CEPEJ)[12]. Nevertheless, to-date no EU Member State or the EU itself has signed the Convention[13].

3. Impact for EU businesses

The following elements should be considered regarding the impact of the Singapore Convention on the interests of EU business:

- **The EU is a major player in world trade.** With a total EUR 14.06 trillion GDP (2019), and 15.4% of the world’s share of exports and imports, the EU is one of the world’s largest players in global trade, with only China exporting more goods and the US importing more. Additionally, the EU is the world’s number one trader of services[14]. Six G20 members and major trading partners of the EU have already signed the Convention (Australia, Brazil, China, India, South Korea, United States of America). These six countries alone account for 36.9% of all EU exports and 40.6% of its imports. That a region with such an extensive volume of commercial trade may not be part of the Convention would be a significant disadvantage for the global community but will most particularly impact companies based in the EU. In a survey conducted by the International Mediation Institute in late 2014 among in-house counsel and business managers, almost 93% of respondents stated they were more likely to mediate a dispute with a party from a country that was a Party to a convention that made enforcement of mediated settlements easy in that country[15].

- **Legal certainty** in cross-border disputes will support businesses expansion, international trade and investment. A framework that ensures the enforcement of mediated settlement agreements will help spread a mediation culture and reduce uncertainty and risks when entering into new commercial relationships with non-EU business partners, fostering the overall competitiveness of EU business in the international arena.

- **Lower cost and high time efficiency**. According to a study commissioned by the European Parliament[16], the average cost to litigate in the EU is EUR 9,179, whereas the average cost to mediate is EUR 3,371. As far as time is concerned, the average duration of court litigation

in the EU is 566 days versus 43 days for mediation[17]. Complicated enforcement litigation in third countries with different sets of lawyers, foreign courts and foreign law, unfamiliar languages and culture, can lead to significant extra expense. This is a pivotal consideration for SMEs in particular. SMEs engage in import and export all over the world, often in time sensitive businesses, where quick resolutions are necessary, and will have disputes with their trading partners involving IP and other commercial matters. To encourage settlement by mediation, enforceability outside the EU must be addressed. Without it, long drawn-out proceedings and considerable legal uncertainty are likely to be the norm.

- **Ease of mediation enforcement compared with arbitration**. The Singapore Convention facilitates cross-border enforcement of settlement agreements in a way that is considerably simplified as compared with arbitration. For example, in mediation (unlike arbitration), there is no need for a seat or a supervisory court to whom parties may defer in the course of the process. The grounds of challenge to enforcement of mediated settlements are also much less than under the New York Convention[18], which (without not completely eliminating any risk) considerably reduces the prospects of the 'judicialization' of the process – a criticism that is increasingly being levelled against arbitration.

- **More accessible dispute resolution based on online mechanisms.** The Convention reinforces mediations carried out virtually by explicitly recognizing the use of electronic means[19] . This is a particularly valuable opportunity to expand access to mediation for smaller businesses, as it makes mediation more affordable for smaller companies, especially in cross border disputes. It also contributes to the goals of carbon footprint reduction, reduces the time of the process by cutting-out lost days through travel and minimizes disruption of corporate management time in attending such processes and facilitates attendance even where parties are in different time zones. In the WIPO Arbitration and Mediation Centre's experience, 94% of WIPO mediations were conducted entirely online in 2020 and 2021[20]. Likewise, all ADR services at the EUIPO have been performed online during the same period, a trend that is continuing currently.

- **Supporting EU ADR hubs and enhancing the attractiveness of the EU as a trading partner.** The importance of the EU in world trade has already led to the development of ADR hubs for cross-border commercial disputes. Some of the Member States have already started to promote themselves as international judicial centres for dispute resolution. To this end, France, Germany and the Netherlands have set up international commercial courts operating in English that seek to attract international litigation. Cities like Paris, Milan, Vienna and Stockholm have long been regarded as ADR hubs[21]. The attractiveness of the EU as a trading partner could be significantly boosted by becoming a Party to the Singapore Convention. Other major world trade centres such as New York and Singapore are located in countries that have already signed the Convention. The United Kingdom is currently studying signature of the Convention in a bid to further bolster the competitive advantage of London[22].

- **Image enhancement as a trade partner.** With large swathes of the world having signed the Convention, the EU risks being left behind, which would not be beneficial EU business. In contrast, being a Party to the Convention would demonstrate an openness to world trade and the appropriate legal mechanisms to ensure that commerce operates in a smooth environment with suitable legal safeguards to ensure that disputes are minimized and effectively dealt with.

- **Supporting EU IP-intensive, innovative sectors.** The EU is increasingly a knowledge-based, IP-intensive economy, where research, innovation and creativity are major drivers of sustainable growth. According to the latest Report on IPR-intensive industries and economic performance in the European Union by the EPO and EUIPO[23], 45% of the total economic activity (GDP) of the EU is attributable to IPR-intensive industries, worth EUR 6.6 trillion. Additionally, these industries accounted for most of the EU's trade with the rest of the world.

IPR-intensive industries represented 81% of the total EU's trade in goods and services and generated a trade surplus, thus helping to keep the EU's external trade broadly balanced.

Therefore, the EU economy critically depends on a suitable IP protection and enforcement environment. There are key elements to consider from the perspective of the **users of the IP system** in the EU:

- **Internationalisation of IP.** Intellectual property is a highly globalised sector, and IP disputes are logically increasing between EU and non-EU parties. This is clearly reflected in the nationality of parties that avail of EUIPO's services. In the WIPO Arbitration and Mediation Centre's experience 68% of WIPO ADR cases involve parties domiciled in different jurisdictions and often involve IP protected in several Member States.

  In 2021, 44.6% of EU trade mark (EUTM) applications were filed by non-EU countries, China being the first origin country (19.2%) and the U.S the third (11.2%). Also in 2021, 44.5% of registered Community design (RCD) applications were filed by non-EU countries, again, China being the main origin country (24.2%) and the U.S. the third (9.9%). This pattern is not limited to EUTMs and RCDs. Patent applications at the European Patent Office originating from non-EU countries accounted for 63.5% of all applications in 2020.

  The large number of free trade agreements entered into by the EU with third countries, which contain significant IP chapters, mean that globalized, extra-EU trade is likely to increase further and, with it, the scope for disputes. Add to that equation the increase in investor-state activities, and one can see an obvious pressing need for effective dispute resolution at international level. That need can be meaningfully addressed by mediation, but only if it too is effective. Moreover, due to the lack of any requirement of reciprocity in the Singapore Convention, EU businesses, dealing globally, will not be able to avoid the Convention in all those countries where it applies.

- **Case volume.** Throughout Europe thousands of patents, trade marks and designs are registered in national offices and litigated in national courts. Little wonder that judicial backlogs are continuing to rise[24]. At the European Union Intellectual Property Office (EUIPO) there are some 300,000 trademark and design applications per annum. The European Patent Office received over 180,000 patent applications in 2020. While not all these applications generate disputes, it is inevitable that some of these applications will conflict with earlier similar intellectual property rights25. When they do conflict, it is a relatively cumbersome process. For example, EU trade mark and design disputes can go through two decision-making instances at the EUIPO. Thereafter, decisions can be appealed to the General Court of the European Union. Such appeals constitute about one third of all cases now handled by the General Court. Exceptionally, further appeals can be made to the Court of Justice of the European Union.

- **Multitiered disputes and long proceedings.** Proceedings before the EUIPO – like those before Member State IP Offices - can take a long time to finalise; at least three to four years if the case is further appealed before the courts and often more. For example, in 2020, more than 22,000 trade mark disputes were initiated in the EUIPO. While many of them were solved by negotiations, over 2,500 appeals were submitted to the EUIPO Board of Appeal and more than 320 of those disputes went on to be litigated before the General Court of the European Union. Apart from showing that mediation is woefully underutilized in the EU IP field, this demonstrates a time-consuming process that is not beneficial for business and demonstrates the need to encourage and promote the attractiveness of mediation. The Singapore Convention would shorten and simplify enforcement mechanisms that, in turn, help to support the attractiveness of the mediation process.

- **Benefits from consolidation of disputes**. The advantage of mediation is that it can combine all disputes between the same parties wheresoever they occur in the world into one mediation process. This can even include infringement proceedings between the same parties before national courts or intellectual property offices anywhere in the world and involving any IP right that can all be brought together and solved through a mediated settlement at the offices of the EUIPO or elsewhere. With EU product exports to China alone reaching € 223 billion in value in 2021 and imports from that country totalling € 472 billion in the same period, commercial disputes are an inevitability and will touch almost every size of company in the EU. Facilitating enforcement of mediated settlement agreements in the territory of major trading partners, like China, would be an advantage that would be visible and easy to grasp for all commercial operators.

- **Added attractiveness of mediation.** The legal certainty and the huge saving of time and costs brought by a mediated settlement agreement are phenomenal benefits for business. The more enforcement of the mediated settlement agreement is facilitated, the more attractive it becomes. But perception remains a problem. Users may be justifiably concerned that it will be very complicated to enforce a mediated agreement against a Chinese party or against an American party. Given that the United States and China are both signatories to the Singapore Convention and major users of the EU trade mark and design systems, the benefits of that Convention for business operators involved in proceedings before the EUIPO will become apparent.

- **Following assets located outside the EU.** Enforcement will be an issue, in particular, if the third country party's assets are situated outside the European Union. The EU Mediation Directive is a wonderful tool, but it is only helpful on a regional level. Moreover, there are neighbouring countries like Georgia, Montenegro, North Macedonia, Serbia, Ukraine and Turkey (all of which are signatories of the Singapore Convention), where business is also done by EU-based companies and from where applications are filed before the EUIPO. IP and other commercial disputes can and will inevitably arise in this context. Direct enforcement as foreseen in the Singapore Convention is obviously a benefit.

4. Institutional and legal framework considerations

The following institutional and legal framework elements are relevant when considering the interests of EU business in regard to the Singapore Convention on Mediation[26]:

- **The Convention is consistent with all previous and current legislative initiatives and efforts of the EU to promote the use of mediation**, and, in effect, reinforces them, such as the Mediation Directive[27] or Article 81(2)(g) of the TFEU[28] highlighting the importance of ADR and many other initiatives and strategies both at EU and Member State level.
  Notably, EU Free Trade Agreements include provisions on dispute settlement mechanisms, including mediation, which would be greatly facilitated by the application of the Convention.

  These efforts are also present in the EU IP legal framework. Facilitation of friendly settlement of disputes is embedded in IP legislation, in particular concerning EU trade marks and Community designs. In that regard, reference should be made to Recital 35 of the Preamble to the EU Trade Mark Regulation (EUTMR)[29], as well as the relevant provisions regarding cancellation and opposition. Further, as per Article 151.3 of the EUTMR the Office may provide

voluntary mediation services, and Article 170 EUTMR provides the basis for the establishment of a Mediation Centre for this purpose.

- **Compatibility of the Convention with EU and Member State regulations.** The Singapore Convention's provisions are compatible with the existing EU legal framework. The Convention provides that the enforcement rules of foreign judgments between member States of regional economic integration organizations should prevail over the provision of the Convention[30]. The application of the Brussels I Recast Regulation[31] suggests that, should there be a conflict, the Regulation would take precedence on issues of enforcement, above Articles 4 and 5 of the Convention. Also, there is no overlap between the Singapore Convention and the Hague Judgements Convention and the Hague Convention on Choice Court Agreements. The purpose of the Singapore Convention is not to interfere with other regional laws or treaties[32]. Further, the Convention provides in Article 5 a list of substantial safeguards through grounds for refusal of the enforcement of mediated settlement, including a public policy defence.

  On the other hand, there is a risk of having disparate enforcement regimes at Member State level under national law depending on whether the settlement agreement concerns a dispute that is purely between domestic parties or whether one of the parties is from a third country.

- **Complementarity of the Convention with EU regulations.** The Singapore Convention is an addition and not an exclusion of other regimes. Indeed, the Mediation Directive was a fundamental step towards supporting the enforcement of cross-border mediated settlement agreements when parties are located in the EU. The Convention would apply where the Mediation Directive does not – i.e. in mediations between parties outside the EU or with one or more parties outside the EU- which, as has been seen, is already a reality that will be more and more relevant in the case of IP-related disputes.

- **The Model Law 2018[33] complements the Convention**. This is similar to the position in international arbitration where UNCITRAL has drawn up a Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.

  The main advantages of the Model Law are that it provides a baseline for the minimum standards to be observed and may also act as a guide for legislative transposition into domestic law, while providing room for flexibility to account for regional or national special considerations. It also aims to provide uniform rules in respect of the mediation process and encourage the use of mediation while ensuring greater predictability.

  While the Model Law is useful, it should not be seen as having the same benefits for business as the Singapore Convention. The Model Law could lay the groundwork for taking the further step of ratifying the Convention. However, any perception that adopting the Model Law would have the same positive commercial impact as joining the Convention, should be dispelled[34].

- **More expeditious enforceability.** While the Mediation Directive stipulates that in order for a decision resulting from mediation to be enforceable it must acquire the form of a judgment or decision or authentic instrument[35] (when required, if one of the parties refuses to abide by the terms on the settlement agreement), under the Convention, neither these formalities nor the consent of the parties is needed.

- **Reinforcement of the autonomy of the parties.** Firstly, the Convention includes a system of reservations. A Party to the Convention may declare that the Convention does not apply to government parties and that parties to a mediated settlement agreement have to opt in[36]. The

parties have to agree to operate under the Convention in the mediated settlement agreement, for the Convention to be applicable. Furthermore, reservations may be made[37] and withdrawn[38] by a Party to the Convention at any time. Additionally, there is no reciprocity reservation, and the application of the Singapore Convention cannot be avoided for entities operating cross-border beyond the EU. Maintaining the status quo of inertia may lead to the misguided perception by EU commercial operators that they need not consider the Singapore Convention when conducting business in third countries. However, where an EU party to a dispute has assets in, or other relevant connections to, a Contracting Party to the Convention, the Convention may be used for enforcement in that contracting party's territory. The Singapore Convention can have implications for EU parties, regardless of the EU's or a Member State's adherence to the Convention.

Secondly, there is no requirement for a seat of the mediation. Consistent with the flexibility needs of international mediation, the Convention does not assign a nationality to the settlement contract and only subjects its enforceability to its applicable law and to the laws of the place where relief is sought. This supports party autonomy at the core of the mediation processes and their freedom to choose the legislative framework. It recognises the nature of international mediation processes, in which parties and mediators often come from different countries, meetings take place in more than one location or virtually, making it practically impossible to establish a seat of the mediation.

- **Support to investor-State dispute resolution.** For investor-State disputes, the main dispute settlement mechanism has been traditionally arbitration. Lack of an effective system to enforce mediated settlement agreements explains the limited use of mediation in this area – as was the case for international arbitration before the widespread ratification of the New York Convention. The Singapore Convention can support the use of mediation for investor-State dispute resolution by introducing a comprehensive enforcement mechanism, as long as disputes relate to a commercial matter. Despite the reservation mentioned in the paragraph above (enabling a government to exclude itself from the application of the Convention), the Singapore Convention would make mediation more attractive by making enforcement of settlements easier and faster. Further, the Convention would support the EU's trend of encouraging mediation in investor-State disputes, as evidenced in recent EU free trade agreements[39].

5. Conclusion

Bearing in mind the huge volume and growth of trade mark, design and patent applications coming from non-EU countries, as well as the clear advantages offered by the Singapore Convention on the enforceability of mediated settlement agreements, it can be concluded that a possible future accession of the EU and its Member States to this international legal instrument would contribute to further support EU businesses in addressing more efficiently their disputes across multiple international jurisdictions and help maintain their competitive position globally.

Notes

[1] United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation")

[2] https://sidra.smu.edu.sg/sites/sidra.smu.edu.sg/files/survey/index.html

[3] https://www.simi.org.sg/News/List-Of-News-Events/Laura-Kaster-Jennifer-Brandt-David-Weiss-and-Robert-Margulies-Enforcing-mediated-settlement-NOW-in-a-flat-world

[4] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations

[5] Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

[6] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")

[7] The Hague Convention on Choice of Court Agreements, of 30 June 2005.

[8] Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgements in Civil or Commercial Matters.

[9] As of February 2022, 9 countries have ratified the Convention and 55 countries have signed it, 6 of which belong to the G20 (Australia, Brazil, China, India, South Korea, United States of America). A public consultation is open on whether the UK should become a party to the Convention (until 01/04/2022)

[10] However, the Singapore Convention has a number of distinguishing features, such as and absence of seat in mediation or the reservation to opt-in by the parties of the settlement agreement.

[11] Art. 7 of Annex I to the Convention states: 'This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.'

[12] European Handbook on Mediation Lawmaking, European Commission for the Efficiency of Justice, Council of Europe, 2019

[13] In order to promote considerations whether to sign the SCM, selected issues concerning the SCM were addressed at the Roundtable on the Position of the European union on the Singapore Convention on Mediation, organized by European Law Institute, Hub in Slovenia and Forum for International Conciliation and Arbitration on 18th June 2021. Available at http://www.ecdr.si/index.php?id=214

[14] https://ec.europa.eu/eurostat/cache/digpub/european_economy/bloc-1b.html?lang=en

[15] International Mediation Institute, "How Users View the Proposal for a UN Convention on the Enforcement of Mediated Settlements," https://www.imimediation.org/wp-content/uploads/2018/06/IMI-UN-Convention-on-Enforcement-Survey-Summary-final-27.11.14.pdf

[16] 'Rebooting' the Mediation Directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU. Directorate-General for Internal Policies, European Parliament.

[17] The time and cost savings of mediation identified also correspond to the WIPO Arbitration and Mediation Center's experience with mediation of intellectual property and technology disputes.

[18] Generally, the regime under the Singapore Convention applicable to mediated settlement agreements is comparable to the regime applicable to arbitral awards under the New York Convention. Article 5 of the Singapore Convention followed the model of the New York Convention by setting out an exclusive list of grounds on which a court can refuse to recognise or enforce a mediated settlement agreement. These grounds for refusal are similar to, and not significantly less than, those under the New York Convention.

[19] Article 2(2): "*The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference"*

[20] https://www.wipo.int/amc/en/eadr/checklist/index.html

[21] As a reference to the development of these centres see Study for the JURI Committee, Building Competence in Commercial Law in the Member states, EU Parliament, Legal and Parliamentary Affairs, Directorate General of the Internal Policies of the Union, 2018.

[22] A public consultation is open on whether the UK should become a party to the Convention (until 01/04/2022). The UK estimates that mediation can save businesses around £4.6 billion per year in management time, relationships, productivity and legal fees - see para 1.2 of https://www.gov.uk/government/consultations/the-singapore-convention-on-mediation/consultation-on-the-united-nations-convention-on-international-settlement-agreements-resulting-from-mediation-new-york-2018

[23] IPR-intensive industries and economic performance in the European Union, Industry-Level Analysis Report. European Patent Office (EPO) and European Union Intellectual Property Office. September 2019.

[24] See, further, The 2020 EU Justice Scoreboard, COM(2020) 306, European Commission

[25] This trend is also reflected in the recent increase in the WIPO Arbitration and Mediation Centre's mediation and arbitration caseload. In particular, in 2021 the WIPO Centre's mediation and arbitration caseload increased by 45%. 43% of parties in WIPO cases were based in Europe, and included SMEs and start-ups, large-sized companies, artists and inventors, research and development (R&D) centres, universities and copyright management organisation. The cases arose in the context of various types of disputes (e.g., licensing agreements, R&D agreements, IP infringement) in different sectors (e.g., information and communication technology, life sciences, digital copyright).

[26] While the EU has the competence to ratify the Singapore Convention on behalf of its members, as per Article 3(2) TFEU, this paper does not provide any position on this aspect as opposed to ratification by Member States.

[27] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

[28] Article 81(2)(g) TFEU: *"For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (g) the development of alternative methods of dispute settlement."*

[29] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark

[30] Article 12 (4)(b) of the Singapore Convention: *"This Convention Shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (b) as concerns the recognition or enforcement of judgements between member States of such an organization".*

[31] EU Regulation (EU) No 1215/2012 of the European parliament and the Council of 12 December 2012; Article 36(1), *"a judgement in a Member State shall be recognised in the other Member States without any special procedure being required*" and Article 39, "*a judgement given in a Member State which is enforceable in that*

Member State shall be enforceable in the other member States without any declaration of enforceability being required".

[32] Article 7 of the Convention: *"This Convention shall not deprive any interested party of any right it may have ti avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is ought to be relied upon"*.

[33] UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018.

[34] The decision of UNCITRAL to concurrently prepare the Singapore Convention and the Model Law, was "intended to accommodate the different levels of experience with mediation in different jurisdictions and to provide States with consistent standards on the cross-border enforcement of international settlement agreements resulting from mediation…" (Ref: UN General Assembly resolution 73/199 of 20 December 2018.)

[35] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, Article 6(2): *"The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made*".

[36] Article 8(1) of the Singapore Convention: "*A Party to the Convention may declare that: (a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified n the declaration; (b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention*."

[37] Article 8(3) of the Singapore Convention: "*Reservations may be made by a Party to the Convention at any time*".

[38] Article 8(5) of the Singapore Convention: *"Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time".*

[39] See for instance Article 8.20 of the Comprehensive Economic and Trade Agreement (CETA)