Statement
on the Draft Bill of the Federal Ministry of Justice
for the Modernisation of Arbitration Law

For more than 100 years, the German Arbitration Institute (DIS) has been the leading institution in Germany for questions relating to arbitration and alternative dispute resolution for national and international commercial disputes. As a registered association, the DIS is independent and committed only to its more than 1,500 members, which include all the major players in arbitration in Germany.

Over more than 100 years, the DIS has increased its expertise in the administration of arbitral proceedings and other alternative dispute resolution proceedings. Every year, around 150 arbitral proceedings are initiated under the DIS Arbitration Rules, and the number is rising. This makes the DIS by far the largest provider of administered arbitral proceedings in Germany and one of the largest in Europe.

The board of the DIS is grateful for the opportunity to comment on the Draft Bill for the Modernisation of Arbitration Law. In order to put its statement on as comprehensive a basis as possible and to utilize the expertise of its members, the DIS has asked its members and the interested national and international professional public to comment on the objectives of the Draft Bill and the individual subject matters by means of a survey. The subject matters that proved to be more controversial in this survey were also discussed individually with members of the DIS and the professional public in a German and an English-language online event.

On 16 May 2023, the DIS has already commented on the White Paper of the Federal Ministry of Justice on the Modernisation of German Arbitration Law of 18 April 2023, which the present statement builds on.

I. Objectives and Structure of the Draft Bill

The DIS shares the assessment of the Federal Ministry of Justice that private arbitration complements state court litigation and that together they both play a key role for Germany as a forum for legal proceedings and a place to do business. The DIS supports any strengthening of the arbitration venue as well as any strengthening of the forum for legal proceedings.

As already explained in the statement on the White Paper, the DIS welcomes the modernisation of the well-established German arbitration law by means of a minor reform. Such a reform can not only further improve German arbitration law, but also provides an opportunity to draw more international attention to Germany as an arbitration venue. It is therefore an important building block in an overall strategy to promote Germany as an arbitration venue.

II. Individual Subject Matters of the Draft Bill

The DIS comments on the individual provisions of the Draft Bill as follows.

1. Enforcement of Interim Measures Issued by Foreign Arbitral Tribunals (Draft Section 1025(2) of the German Code of Civil Procedure (ZPO-E))

As set out in more detail in its statement on the White Paper, the DIS welcomes the fact that the current unclear legal situation regarding the enforcement of interim measures issued by foreign arbitral tribunals is to be clarified and the enforcement of these measures is to be allowed. The proposed regulation is sensibly implemented with section 1025(2) ZPO-E.

2. Conclusion of Form-Free Arbitration Agreements in Commercial Transactions (Section 1031(4) ZPO-E)

Under current law, arbitration agreements must be contained either in a document signed by the parties, or in an exchange of letters, telefaxes, telegrams or other means of telecommunication which provide a record of the agreement (section 1031(1) of the German Code of Civil Procedure (ZPO) with simplifications in subsections 2 and 3). Arbitration agreements to which a consumer is a party must be contained in a document which has been personally signed by the parties. No agreements other than those referring to the arbitral proceedings may be contained in such a document (section 1031(5) ZPO).

According to section 1031(4) ZPO-E, arbitration agreements may be concluded free of form if the agreement is a commercial transaction (*Handelsgeschäft* as defined in section 343 of the German Commercial Code as transactions of a merchant that relate to the operation of the merchant's commercial business) for all parties to the agreement. In case of an arbitration agreement having been concluded without any form requirements being observed, each party has the right to have the content of the arbitration agreement confirmed in text form. This essentially restores the provisions of section 1027(2) and (3) ZPO in its previous version that applied until 1997. The existing form requirements for arbitration agreements with consumer participation (section 1031(5) ZPO) and for the remaining arbitration agreements (section 1031(1) to (3) ZPO) are to remain applicable.

In its statement on the White Paper, the DIS welcomed the idea of allowing arbitration agreements in commercial transactions to be concluded without any form requirements. This was based on the principle of freedom of form, the practicability of the freedom of form for arbitration agreements that applied in Germany until 1997, the freedom of form for choice-of-forum agreements and the comparison with the form requirements of the UNCITRAL Model Law liberalised in 2006.

Despite the criticism expressed in the discussion, the DIS adheres to this approach in line with the prevailing opinion in the literature on the reform proposal. The reform legislator must be careful to ensure that a new provision fits into the existing regulatory framework and avoids breaks in valuation with comparable situations.

Of course, it is advisable to put arbitration agreements in writing in order to avoid disputes about their content. However, this is the case for all contracts of a certain importance. Under current law, a multi-million Euro supply contract can be concluded without any formal requirements, just like a contract on the construction of a large infrastructure project. As far as it appears, the principle of freedom of form is not called into question for these contracts. It is not apparent that there is a particular need in these cases to stipulate a legal form for the submission to the decision of an arbitral tribunal which does not exist in these cases.

Section 38(1) ZPO, according to which merchants can enter into choice-of-forum agreements free of form, is based on the same assessment. It is not known that this provision has led to any significant number of disputes over jurisdiction which arise due to the assertion of non-existing form-free choice-of-forum agreements. The invocation of a form-free choice-of-forum agreement has the same potential to delay a legal dispute as the invocation of a form-free arbitration agreement. The freedom of form for arbitration agreements in economic transactions, which applied in Germany until 1997, has also shown the practicability of such a provision. It was only abandoned and replaced by the current version of section 1031 ZPO in order to harmonise it with the requirements stipulated in the UNCITRAL Model Law 1985. This is also the case for countries such as Sweden, where arbitration agreements may be concluded without complying with a specific form requirement.

The reasoning to the Draft Bill correctly emphasises that Art. VII(1) NYC, Art. II(1) and (2) NYC do not impede the recognition and enforcement of arbitral awards made on the basis of a form-free arbitration agreement. Admittedly, it is not certain that Art. VII(1) NYC is applied to arbitration agreements worldwide. Even now, however, the formal requirements pursuant to section 1031(1) to (3) ZPO fall short of Art. II NYC without causing practical problems for the recognition and

enforcement of arbitral awards made on this basis. Further problems regarding recognition are not associated with form-free arbitration agreements.

At the same time, however, the DIS believes that the proposed regulation in section 1031(4) ZPO-E could be improved. On the one hand, section 1031 ZPO-E is not very clear with a total of three different form requirements (subsections 1 to 3, subsection 4 and subsection 5). On the other hand, the provision is based both on the distinction between traders and consumers and on the distinction between merchants and non-merchants, which is similar but not congruent. With the term „commercial transaction", section 1031(4) sentence 1 ZPO-E also refers to national commercial law. This makes it more difficult for foreign parties to grasp the regulatory content of section 1031(4) ZPO-E, which was one of the regulatory objectives of the Arbitration Proceedings Reform Act 1998.

With that in mind, the DIS is in favour of providing for form-free arbitration agreements in all cases in which no consumer is involved. Germany would thus implement option 1 of Art. 7 of the UNCITRAL Model Law, which the General Assembly of the United Nations has recommended all states to implement. Alternatively, the implementation of option 2 of Art. 7 of the UNCITRAL Model Law for all cases without consumer involvement is preferable to the current regulatory proposal.

Irrespective of the above considerations, the DIS considers the documentation claim under section 1031(4) sentence 2 ZPO-E to be dispensable. In cases where the conclusion and content of the arbitration agreement are in dispute, the documentation claim is usually of no practical help. This is also demonstrated by the minor importance of section 1027(3) ZPO in its previous version. The party in need of documentation may make use of section 1031(2) ZPO or section 1032(2) ZPO.

3. Final Decision on the Arbitration Agreement Pursuant to Section 1032(2) ZPO (Section 1032(2) Sentence 2 ZPO-E)

As explained in its statement on the White Paper, the DIS welcomes the fact that the determination of the validity of the arbitration agreement, which regularly forms a preliminary question in proceedings pursuant to section 1032(2) ZPO, shall be made binding for subsequent proceedings for the setting aside and the declaration of enforceability of the arbitral award.

The DIS welcomes the proposed structure of the provision in section 1032(2) sentence 2 ZPO-E. At the same time, the DIS suggests extending the proposed provision to the question of whether the subject matter of the arbitration is covered by the terms of the arbitration agreement (section 1059(2) no. 1 lit. c ZPO) and whether it is arbitrable (section 1059(2) no. 2 lit. a ZPO). A parallel provision should be given for the decision pursuant to section 1040(3) ZPO. The subject matter of this decision is the jurisdiction of the arbitral tribunal and not the absence of grounds for setting aside relating to jurisdiction.

It should be considered to limit the scope of application of section 1032(2) ZPO to cases in which the place of arbitration is in Germany or has not yet been determined.

4. Appointment of Arbitrators in Multi-Party Proceedings (Section 1035(4) ZPO-E)

The DIS welcomes the implementation of dispositive statutory provisions on the appointment of the arbitral tribunal in multi-party proceedings. The proposed provision, which corresponds to Art. 20 of the DIS Arbitration Rules, sensibly implements the regulatory objective. However, in order to fully ensure the practical execution of the arbitration agreement, a substitute appointment by the court should be possible at the request of each party and each joined party.

5. Negative Decisions on Jurisdiction by an Arbitral Tribunal (Section 1040(4) ZPO-E)

In its statement on the White Paper, the DIS explained that it is questionable whether the implementation of an additional ground for setting aside for false-negative decisions on jurisdiction increases Germany's attractiveness as an arbitration venue.

In the event that the regulatory objective of the draft bill remains as proposed, the DIS suggests implementing the additional ground for setting aside provided for in section 1040(4) sentence 2 ZPO-E into the catalogue of grounds for setting aside pursuant to section 1059(2) ZPO. This serves to make the law clearer and easier to read and makes the reference in section 1059(1) sentence 2 ZPO-E to section 1040(4) sentence 2 ZPO-E superfluous.

The implementation of an additional ground for setting aside for false-negative decisions on jurisdiction already makes it sufficiently clear that such decisions are made in the form of an award. Hence, the provision in section 1040(4) sentence 1 ZPO-E is unnecessary, so that the DIS is against its adoption. If the provision is retained, it is advisable to replace the term „procedural award", i.e., an award denying jurisdiction, with „arbitral award". This is because the law does not use the term „procedural judgement", on which the term „procedural award" is based. Not creating a further category of arbitral awards also makes it unnecessary to equalise it with other arbitral awards, as it is provided for in section 1053(2) sentence 2 ZPO for the arbitral award on agreed terms. Not adopting section 1040(4) sentence 1 ZPO-E also leaves aside the question of the arbitral tribunal's competence to decide on the form of the decision regarding its jurisdiction.

6. Declaration of Enforceability of Interim Measures of the Arbitral Tribunal (Section 1041(2) ZPO-E)

Pursuant to section 1041(2) ZPO, the court may permit the enforcement of interim measures ordered by the arbitral tribunal, unless a corresponding measure has been filed with the court. If necessary, the court may recast the measure.

The Draft Bill specifies these provisions and replaces the court's discretion with a bound decision. The application is to be dismissed only if one of the grounds specified in section 1041(2) sentence 3 ZPO-E applies, which especially include the grounds for setting aside an arbitral award stipulated in section 1059(2) ZPO. Domestic measures are then to be terminated, and the lack of recognisability in Germany is to be established for foreign measures. Section 1064(1) and (3) ZPO must be applied mutatis mutandis and, in all other regards, allegations must be demonstrated to the satisfaction of the court.

The DIS welcomes the objective of section 1041(2) ZPO-E to specify the grounds for refusing the enforcement of interim measures based on Art. 17 I of the UNCITRAL Model Law. The structure of section 1041(2) ZPO-E also deserves broad approval.

However, the provisions on the termination of interim measures ordered by arbitral tribunals in section 1041(2) sentence 4 ZPO-E and on prima facie evidence in section 1041(2) sentence 6 ZPO-E should not be included in the law.

Pursuant to section 1041(2) sentence 4 ZPO-E, interim measures of domestic arbitral tribunals are to be terminated if the application for permission of their enforcement is dismissed pursuant to sentence 3 of the provision. Contrary to the proposed provision, termination cannot take place in all cases of sentence 3, but only in the cases of sentence 3 no. 1, i.e., if there are grounds for setting aside an arbitral award. This does not only follow from the substance of the matter – a security that has not yet been provided (sentence 3 no. 3), for example, is clearly only an obstacle to a declaration of enforceability but cannot lead to the termination of the measure itself – but also from the legal situation in the case of arbitral awards, which section 1041(2) sentence 4 ZPO-E is based on. This is because, pursuant to section 1060(2) sentence 1 ZPO, an application for a declaration of enforceability is only to be denied and the award to be set aside if it is denied due to the existence of a ground for setting aside. However, if the application for a declaration of

enforceability fails for other reasons, for example due to a lack of passive legitimacy or because objections pursuant to section 767 ZPO are upheld, the award will not be set aside.

Furthermore, the Draft Bill provides for a peculiar asymmetry if, on the one hand, it does not provide the party burdened by the interim measure with a termination procedure, but, on the other hand, provides the application for a declaration of enforceability with an overriding legal consequence of termination in the event of rejection. Insofar as the reasoning to the Draft Bill is based on the fact that there is no urgent need to terminate interim measures in the absence of a substantive res judicata effect within the meaning of section 1055 ZPO, this does not show why the interim measure should be terminated if the application for a declaration of enforceability is rejected, even though there is no such need. A need to have an interim measure ordered by an arbitral tribunal terminated by a state court is in any case questionable due to the arbitral tribunal's power to terminate the interim measure (see section 1041(2) sentence 3 no. 4 ZPO-E).

According to the reasoning to the Draft Bill, the prima facie evidence provided for in section 1041(2) sentence 6 ZPO-E corresponds to the legal concept underpinning the procedure for seizures and injunctions. However, the procedure for a declaration of enforceability pursuant to section 1041(2) ZPO-E is conceptually not a procedure for temporary relief, as provided for by law in section 1063(3) ZPO. Therefore, lowering the standard of proof for the procedure on the declaration of enforceability is not recommended.

7. Oral Hearing as a Video Hearing (Section 1047(2), (3) ZPO-E)

As explained in more detail in its statement on the White Paper, the DIS welcomes a waivable provision according to which the arrangement of an oral hearing in the form of a video conference is covered by the procedural discretion of the arbitral tribunal. The proposed provision is sensibly implemented with section 1047(2), (3) ZPO-E.

The DIS also welcomes the fact that the Draft Bill has not implemented the intention of the White Paper to regulate the recording of oral hearings conducted by video conference. In this respect, the existing provisions are sufficient.

8. Arbitral Award as an Electronic Document (Section 1054(2), (4) with Section 1064(1) Sentence 3 ZPO-E)

Pursuant to section 1054(1) ZPO, the arbitral award shall be made in writing and shall be signed by the arbitrator or arbitrators. A copy of the arbitral award signed by the arbitrators shall be delivered to each party (section 1054(4) ZPO). The arbitral award or a certified copy thereof must be submitted with an application for a declaration of enforceability (section 1064(1) sentence 1 ZPO).

The Draft Bill provides that the arbitral award may also be contained in an electronic document that sets out the names of the arbitrators at the end of the award and that has been signed by each arbitrator using their qualified electronic signature (section 1054(2) ZPO-E). It thus transfers the provisions on judicial electronic documents (section 130b ZPO) to arbitral awards. It shall be possible to transmit such an arbitral award as an electronic document to the parties (section 1054(5) ZPO-E) and to the court for a declaration of enforceability (section 1064(1) sentence 3 ZPO-E).

The DIS welcomes the creation of rules for electronic arbitral awards. The possibility to issue arbitral awards electronically, which has hardly been used so far, can considerably reduce the time required for the signing of arbitral awards in paper form by several arbitrators at different locations and eliminates an anachronism in times of advancing digitalisation of procedural law.

However, the DIS is in favour of more flexibility when it comes to structuring the rules on electronic arbitral awards. For example, the legislator already amended section 1054(4) ZPO in 2005 – as the Draft Bill also points out – in order to enable the electronic transmission of arbitral awards to the parties. If and because this refers to original arbitral awards and not merely digital copies of

arbitral awards, the receipt of which does not trigger the time limit for filing an application to set aside the award under section 1059(3) ZPO, arbitral awards can already be issued in the form of an electronic document under current law. The conclusively worded provision of section 1054(2) ZPO-E („in derogation of subsection 1 sentence 1“) falls behind this legal status without necessity.

The requirement to set out the names of all arbitrators at the end of the award transfers the requirements of section 130b ZPO regarding judicial electronic documents to electronic arbitral awards. Section 1054(2) ZPO-E thus goes beyond the requirements for arbitral awards in paper form, the form and content of which section 1054 ZPO specifies in less detail overall, for no good reason. This question is of practical importance because an arbitral award cannot be assumed already if the form requirements are not met.

The case of missing signatures, which can be bridged by a statement on the reason for the inability to sign the award in accordance with section 1054(1) sentence 2 ZPO, must also find an equivalent in section 1054(2) ZPO-E. According to the proposed wording of the provision, however, the document must contain the signatures of all members of the arbitral tribunal.

The DIS suggests adding a technology-neutral alternative to section 1054 ZPO, as provided for by UNCITRAL rules in other contexts. Such an alternative, which could be based on the sufficient reliability of the chosen form, would also enable the declaration of enforceability of electronic arbitral awards from countries in which qualified electronic signatures are not common. In addition to such an alternative, provisions on qualified electronically signed arbitral awards would continue to make sense because they enable legally secure and unconditional fulfilment of the form requirements for electronic arbitral awards.

The international enforceability of electronic arbitral awards is not guaranteed, irrespective of the specific form requirements applicable to them, which means that arbitral awards in paper form continue to appear to be the safest option. In order to promote the dissemination of electronic arbitral awards, provision could be made for the arbitral tribunal to be able to subsequently issue an electronic award in paper form. Since the mandate of the arbitrators ends when the final award is issued (section 1056(1), (3) ZPO), section 1056(3) ZPO should be supplemented by a further exception in this respect. A right of the parties to subsequently request a paper copy would also be conceivable, but cannot be designed as a perpetual obligation.

9. Admissibility of Concurring or Dissenting Opinions (Section 1054a ZPO-E)

As explained in more detail in its statement on the White Paper, the DIS welcomes a legal clarification that concurring or dissenting opinions in a domestic arbitral award do not violate the confidentiality of deliberation and thus the German public policy. Only an opt-out provision, as provided for in the Draft Bill in section 1054a(1) ZPO-E, will fulfil this purpose.

It is obvious that the arbitrator should indicate during the deliberations that he intends to submit a concurring or dissenting opinion. However, the arbitrator’s duty to do so pursuant to section 1054a(2) ZPO-E is not justiciable and the legal consequences of its violation are unclear. The DIS therefore suggests its deletion.

10. Publication of Arbitral Awards (Section 1054b ZPO-E)

As explained in more detail in its statement on the White Paper, the DIS welcomes a provision on the publication of arbitral awards. Section 1054b ZPO-E sensibly implements this proposed regulation. In its statement on the White Paper, the DIS had already spoken in favour of a dispositive opt-out provision and the obligation to publish the arbitral award only in anonymised or pseudonymised form.

Concerns could be raised against section 1054b(1) ZPO-E insofar as the provision refers to „the arbitral tribunal“, but the mandate of the arbitrators has ended with the issuance of the final award

(section 1056(1), (3) ZPO). This concern may be taken into account by supplementing section 1054b (1) ZPO-E in the catalogue of provisions reserved under section 1056(3) ZPO.

11. Beginning of the Time Limit for Applications for Setting Aside an Arbitral Award (Section 1059(3) Sentence 3 ZPO-E)

Section 1059(3) sentence 3 ZPO-E essentially codifies the case law on the beginning of the time limit for filing an application for setting aside in the event that proceedings pursuant to section 1032(2) or section 1040(3) ZPO are pending. The DIS is in favour of this proposed regulation as it facilitates the comprehensibility of German arbitration law by itself.

12. Request for Retrial of the Case (Section 1059a ZPO-E)

In its statement on the White Paper, the DIS endorsed that the res iudicata effect of an arbitral award can be overcome under the same requirements as that of a judgement.

However, the drafting of this regulatory matter in section 1059a ZPO-E has raised some concerns. The regulatory technique of referring extensively to general civil procedural law does not help to ensure that German arbitration law is comprehensible on its own for foreign law users. In terms of content, some of the grounds for restitution mentioned in section 580 ZPO require adaptation because, for example, offences of false testimony (section 580 no. 1 ZPO) cannot be realised before the arbitral tribunal. However, this would disrupt the desired synchronisation of the grounds for restitution against judgments and arbitral awards. This synchronisation is also disrupted by section 1059a(1) sentence 2 ZPO-E, according to which the conviction requirement of section 581 ZPO does not apply to arbitral awards. The legal force of arbitral awards would then be easier to overcome than that of judgements. On the merits, it is questionable whether the subsequent discovery of a document (section 580 no. 7 lit. b ZPO) should break the res iudicata effect. These questions are, of course, based on the right of restitution against judgements according to sections 580 et seq. ZPO which are broadly considered to be insufficient.

13. Re-Entering Into Force of the Arbitration Agreement and Remanding After an Unsuccessful Declaration of Enforceability (Section 1060(2) Sentence 4 ZPO-E)

As explained in more detail in its statement on the White Paper, the DIS welcomes a statutory clarification that section 1059(4) and (5) ZPO apply not only in the event of a successful application for setting aside, but also in the event of a dismissal of an application for a declaration of enforceability and setting aside of the arbitral award pursuant to section 1060(2) sentence 1 ZPO. The proposed regulation is sensibly implemented with section 1060(2) sentence 4 ZPO-E.

14. Authority to Issue Orders Pursuant to Section 1063(3) ZPO Only in Urgent Cases

As explained in more detail in its statement on the White Paper, the DIS welcomes a statutory clarification that the authority to issue an order pursuant to section 1063(3) ZPO is given only in urgent cases. The proposed regulation is sensibly implemented with section 1063(3) sentence 1 ZPO-E.

15. Arbitration-Related Matters Before Commercial Courts (Section 1063a with Section 1062(5) ZPO-E)

As explained in more detail in its statement on the White Paper, the DIS strongly welcomes the fact that proceedings for the setting aside and the declaration of enforceability of arbitral awards can be conducted entirely in English with the consent of the parties. The DIS also strongly welcomes the proposed extension of section 1063a(1) ZPO-E to all proceedings designated in section 1062(1) ZPO.

The DIS welcomes, as it is also explained in more detail in its statement on the White Paper, that the federal states shall be able to assign arbitration matters to commercial courts in accordance with section 1062(5) ZPO-E. In deviation from the Draft Bill, however, English-language proceedings in arbitration matters should not be reserved for the commercial courts but should also be possible before other state court senates. In this way, federal states that do not establish a commercial court (which is expected for eleven federal states) and nevertheless wish to have arbitration matters decided by their courts, will be deprived of the opportunity to hear arbitration matters in English. The others would be faced with the unfortunate choice of transferring arbitration matters to the commercial courts (and thus abandoning the expertise acquired by the arbitration senates without necessity) or foregoing English-language proceedings for arbitration matters.

According to section 1063a(1) sentence 2 ZPO-E, English-language court orders in arbitration matters shall be translated into German to a greater extent than other English-language decisions under section 617(1) ZPO-E. Similarly, court orders issued by a commercial court in arbitration matters are to be published to a greater extent than other decisions pursuant to section 1063a(3) ZPO-E. These extensions serve the availability of arbitration case law.

Organisational hearings (section 621 ZPO-E) will only be useful in arbitration matters in exceptional cases and may then be held without a statutory order. The DIS therefore suggests deleting the reference to this effect in section 1063a(4) ZPO-E.

16. Submission of Documents Written in English (Section 1063b ZPO-E)

As explained in more detail in its statement on the White Paper, the DIS expressly welcomes the fact that, pursuant to section 1063b(1) ZPO-E, English-language documents may be submitted without translation in court proceedings under the Tenth Book of the German Code of Civil Procedure. The DIS also welcomes the fact that the provision is not limited to proceedings for the setting aside or the declaration of enforceability of arbitral awards.

Section 1063b(1) ZPO-E should not, however, be limited to documents that have been prepared or submitted in arbitral proceedings. In proceedings regarding the (in-)admissibility of arbitral proceedings pursuant to section 1032(2) ZPO, for example, there is a legitimate interest in not having to translate a comprehensive English-language contract containing an arbitration clause into German. However, this is not (yet) a document that has been prepared or submitted in arbitral proceedings.

III. Further Subject of the Reform: Emergency Arbitrator

The White Paper had proposed a provision on emergency arbitrators for an open-ended review, which was not, however, adopted in the Draft Bill. The DIS takes up this proposal and suggests clarifying by law that emergency arbitrators are also arbitrators within the meaning of sections 1025 et seq. ZPO. All that is needed is a provision in section 1029 ZPO that an arbitration agreement does not require the parties to have submitted to a decision of the arbitral tribunal in the main proceedings. This provision would particularly ensure that measures of an emergency arbitrator can be permitted for enforcement in accordance with section 1041(2) ZPO. Irrespective of the extent to which such a provision is utilised, it is certain to attract international attention.