

# GERMAN ARBITRATION DIGEST

<b>GAD No.:</b>	GAD 2025, 12	<b>Decision date:</b>	11 June 2024	<b>Res judicata:</b> Yes
<b>Court:</b>	Higher Regional Court of Frankfurt (Oberlandesgericht Frankfurt)			
<b>Case No. :</b>	26 Sch 9/24			
<b>Keywords:</b>	Foreign arbitral award, declaration of enforceability, oral hearing, grounds for refusal, equal treatment, New York Convention			
<b>Key legal provisions:</b>	Section 1059(2) German Code of Civil Procedure (ZPO) Section 1061 German Code of Civil Procedure (ZPO) Section 1063(2) German Code of Civil Procedure (ZPO)			

## Higher Regional Court of Frankfurt harmonizes the procedural requirements for declaring foreign and domestic arbitral awards enforceable

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On 11 June 2024, the Higher Regional Court of Frankfurt (OLG Frankfurt) declared an arbitral award of the International Commercial Arbitration Tribunal of the Chamber of Commerce and Industry of Ukraine enforceable without an oral hearing. With this, the OLG Frankfurt confirmed that foreign arbitral awards are to be declared enforceable under the same procedural requirements as domestic arbitral awards. The OLG Frankfurt furthermore concluded that the declaration of enforceability does not require an oral hearing, unless grounds for setting aside the arbitral award pursuant to Section 1059(2) German Code of Civil Procedure are to be considered.

### Facts

The applicant supplied the respondent with printed products and packaging cartons under a supply contract containing an arbitration clause which provided that "all disputes, disagreements or claims arising out of or in connection with this contract [...] shall be settled by the International Commercial Arbitration Court of the Chamber of Commerce and Industry of Ukraine in accordance with these Rules. [...]". The respondent was in default with a partial payment in the amount of EUR 37.761,49 under this contract.

The applicant started arbitration proceedings. The seat of the arbitration was Kyiv. The tribunal ordered the respondent to pay the total sum of EUR 62.684,37, including a contractual penalty due, interest and costs incurred by the applicant for the arbitration proceedings.

The applicant filed an application with the OLG Frankfurt to have the arbitral award declared enforceable. The respondent did not respond to this application.

The OLG Frankfurt declared the arbitral award enforceable without an oral hearing. The respondent did not appeal this decision.

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## **Key findings**

The OLG Frankfurt ruled that the arbitral award is enforceable and that an oral hearing was not required.

The court found that neither grounds for setting aside the arbitral award pursuant to Art. IX of the European Convention on International Commercial Arbitration of 21 April 1961, nor grounds for non-recognition under Art. V(1) of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (NYC) were apparent.

Regarding the requirement of an oral hearing, the court referred to Section 1063(2) alt. 2 of the German Code of Civil Procedure (ZPO) and declared that an oral hearing will only be necessary if grounds for setting aside the arbitral award come into consideration in accordance with Section 1059(2) ZPO. Section 1059(2) ZPO requires that the respondent asserts grounds for setting aside the arbitral award. The OLG Frankfurt ruled that this requirement applies equally to foreign and domestic arbitral awards, although Section 1061 ZPO provides that the enforceability of foreign arbitral awards shall depend upon the NYC or other international treaties.

Domestic and foreign arbitral awards are therefore to be treated equally in this regard. This shall also apply to any substantiated objections to the award.

## **Comment**

The decision of the OLG Frankfurt brings the procedural requirements for the declaration of enforceability of foreign arbitral awards in line with the requirements for domestic arbitral awards and thus follows the principle of equal treatment. Although the enforceability of a foreign arbitral award is governed by the NYC or other international treaties pursuant to Section 1061(1) ZPO, Section 1063(2) ZPO governs the necessity of an oral hearing.