

Alessio Carosi

---

***LE UNCITRAL EXPEDITED  
ARBITRATION RULES DEL 2021***

---

Estratto

**Le UNCITRAL Expedited Arbitration Rules del 2021.** — Il 9 luglio 2021 l'UNCITRAL ha emanato le *UNCITRAL Expedited Arbitration Rules* (“EAR”), entrate in vigore dal 19 settembre 2021 e di cui è stata pubblicata anche una nota esplicativa <sup>1</sup>.

Le EAR sono il risultato del lavoro di oltre un biennio, all'esito del quale la Commissione ha potuto adottare, per la prima volta nella sua storia, le proprie regole sull'arbitrato accelerato <sup>2</sup>.

Le EAR non formano un complesso di norme a sé stante rispetto alle *UNCITRAL Arbitration Rules* (“UAR”). Infatti, le EAR sono state introdotte sotto forma di appendice alle UAR, per cui devono essere lette ed applicate in interazione con queste ultime.

L'art. 1 UAR è modificato, con l'introduzione di un nuovo par. 5, ai sensi del quale « 5. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree ». Ne emerge, quindi, il primo vero tratto distintivo delle EAR, rispetto alle *expedited rules* adottate da altre istituzioni, perché la loro applicazione è del tutto svincolata dal criterio del valore della controversia <sup>3</sup>. L'adesione delle parti all'arbitrato accelerato ai sensi delle regole UNCITRAL deve essere oggetto di espressa manifestazione di volontà, la quale può risultare dalla convenzione di arbitrato o in forza di accordo scritto successivo, purché contenente l'esplicito riferimento alle EAR <sup>4</sup>.

L'art. 1 delle EAR rende chiaramente l'idea della stretta connessione tra le UAR e la loro appendice. Esso dispone che, quando la controversia sia deferita

<sup>1</sup> Cfr. al link <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/acn9-1082-add1-e.pdf>.

<sup>2</sup> Differentemente da quanto è avvenuto per altre istituzioni, le quali hanno da tempo arricchito la propria offerta con norme dedicate all'arbitrato semplificato.

<sup>3</sup> Cfr. a titolo esemplificativo l'art. 30 e l'Appendix VI delle *ICC Arbitration Rules* (2021), dai quali risulta che, se non altrimenti disposto dalle parti, il procedimento è condotto ai sensi delle *expedited rules* se il valore della disputa non eccede US\$ 2.000.000 o US\$ 3.000.000, a seconda che il patto di arbitrato sia stato concluso dal 1° marzo 2017 e sino al 1° gennaio 2021 o dal 1° gennaio 2021 in poi. Si veda anche l'art. 5 delle *SIAC Arbitration Rules* (2016), che fissa in US\$ 6.000.000 il valore che la disputa non deve eccedere, ma che non prevede un automatismo per l'accesso all'arbitrato accelerato, dovendone fare richiesta la parte prima della costituzione del tribunale arbitrale.

<sup>4</sup> Le EAR contengono in allegato una clausola modello, il cui testo così recita « Any dispute (...) shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules ».

dalle parti in arbitrato da svolgersi ai sensi delle EAR, « (...) such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Expedited Rules and subject to such modification as the parties may agree ». In altri termini, l'arbitrato accelerato UNCITRAL segue le UAR, come emendate dalle EAR o dalle parti stesse.

L'art. 1 delle EAR si pone anche il problema del coordinamento tra UAR e EAR e ne agevola la soluzione: una nota a piè di pagina elenca proprio gli articoli delle UAR la cui applicazione è esclusa nell'ambito dell'arbitrato accelerato ai sensi delle EAR. Questa nota precisa che « Unless otherwise agreed by the parties, the following articles in the UNCITRAL Arbitration Rules do not apply to expedited arbitration: article 3(4)(a) and (b); article 7; article 8(1); first sentence of article 20(1); article 21(1); article 21(3); article 22; and second sentence of article 27(2) ».

L'art. 2, par. 1, delle EAR prevede la facoltà di *opt-out*, che le parti possono esercitare congiuntamente in ogni momento, mentre il par. 2 dispone che il tribunale arbitrale possa, a richiesta di parte e dopo aver provocato il contraddittorio sul punto, decidere, ove ricorrano circostanze eccezionali e motivando il proprio orientamento, che le EAR non trovino più applicazione. Il par. 3 stabilisce che, in entrambi i casi, l'arbitrato prosegue secondo le UAR.

L'art. 3, parr. 1 e 2, afferma il generale dovere delle parti e del tribunale arbitrale di agire in modo tale da assicurare la celerità del procedimento; il par. 3 dell'art. 3 abilita il tribunale arbitrale a ricorrere alla tecnologia per comunicare con le parti e svolgere le udienze.

Gli artt. 4 e 5 disciplinano la fase di avvio del procedimento arbitrale, che consta della notifica della domanda di arbitrato, la quale deve contenere una proposta per la designazione di una *appointing authority* o per la nomina di un arbitro nonché le istanze dell'attore, e della notifica della risposta alla domanda di arbitrato, che deve aver luogo entro i quindici giorni successivi alla notifica della domanda di arbitrato e con cui il convenuto deve prendere posizione sulle proposte dell'attore in tema di *appointing authority* o di nomina dell'arbitro. Entro i successivi ulteriori quindici giorni il convenuto deve presentare all'attore e al tribunale arbitrale le proprie domande.

L'art. 6 regola l'ipotesi in cui le parti non raggiungano un'intesa sul soggetto a cui è affidata la designazione dell'arbitro: il par. 1 stabilisce che qualunque parte può chiedere al Segretario Generale della Corte Permanente di Arbitrato ("CPA") di indicare l'*appointing authority* o di agire in tale veste; il par. 2, invece, dispone che, quando una parte avanzi un'istanza ai sensi dell'art. 6, par. 4, delle UAR (*appointing authority* che non adempia l'incarico o ritardi nel farlo), ella può domandare al Segretario Generale della CPA di intervenire quale autorità di nomina.

L'applicazione delle EAR, ai sensi dell'art. 7, fa sì che l'arbitrato sia di regola, e cioè se non diversamente deciso dalle parti, condotto da un arbitro unico.

L'art. 10 consente al tribunale arbitrale, a propria discrezione, ma sempre dopo aver sentito le parti, di estendere o ridurre i termini previsti dalle UAR, dalle EAR o stabiliti dalle parti, escluso quello per la pronuncia del lodo, che, ai sensi dell'art. 16, è di sei mesi dalla costituzione del tribunale arbitrale (par. 1), prorogabile fino ad un massimo di nove (par. 2), salvo l'accordo tra le parti per un'unica ulteriore dilazione (par. 3).

L'art. 11 abilita il tribunale arbitrale a condurre l'arbitrato senza svolgere udienze, a meno che le parti non ne facciano richiesta.

L'art. 15, invece, lascia ampio spazio discrezionale al tribunale arbitrale in materia probatoria, per cui esso può decidere quali prove le parti devono produrre e, a meno che tutte le parti non ne facciano istanza, può anche stabilire che non si svolga una fase istruttoria per la produzione documentale.

[ALESSIO CAROSI]

Si riporta di seguito il testo delle *UNCITRAL Expedited Arbitration Rules* estraibile al link [https://uncitral.un.org/sites/uncitral.un.org/files/media-document/s/uncitral/en/uncitral\\_ear-e\\_website.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-document/s/uncitral/en/uncitral_ear-e_website.pdf).

### **UNCITRAL Expedited Arbitration Rules**

#### **A. Text of the additional paragraph in article 1 of the UNCITRAL Arbitration Rules**

“5. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree.”

#### **B. Text of the UNCITRAL Expedited Arbitration Rules**

#### **Appendix to the UNCITRAL Arbitration Rules UNCITRAL Expedited Arbitration Rules**

##### **Scope of application**

##### *Article 1*

Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Expedited Arbitration Rules (“Expedited Rules”), such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Expedited Rules and subject to such modification as the parties may agree <sup>1</sup>.

##### *Article 2*

1. At any time during the proceedings, the parties may agree that the Expedited Rules shall no longer apply to the arbitration.

2. At the request of a party, the arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, determine that the Expedited Rules shall no longer apply to the arbitration. The arbitral tribunal shall state the reasons upon which that determination is based.

3. When the Expedited Rules no longer apply to the arbitration pursuant

<sup>1</sup> Unless otherwise agreed by the parties, the following articles in the UNCITRAL Arbitration Rules do not apply to expedited arbitration: article 3(4)(a) and (b); article 6(2); article 7; article 8(1); first sentence of article 20(1); article 21(3); article 22; and second sentence of article 27(2).

to paragraph 1 or 2, the arbitral tribunal shall remain in place and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

### **Conduct of the parties and the arbitral tribunal**

#### *Article 3*

1. The parties shall act expeditiously throughout the proceedings.
2. The arbitral tribunal shall conduct the proceedings expeditiously taking into account the fact that the parties agreed to refer their dispute to expedited arbitration and the time frames in the Expedited Rules.
3. The arbitral tribunal may, after inviting the parties to express their views and taking into account the circumstances of the case, utilize any technological means as it considers appropriate to conduct the proceedings, including to communicate with the parties and to hold consultations and hearings remotely.

### **Notice of arbitration and statement of claim**

#### *Article 4*

1. A notice of arbitration shall also include:
  - (a) A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon; and
  - (b) A proposal for the appointment of an arbitrator.
2. When communicating its notice of arbitration to the respondent, the claimant shall also communicate its statement of claim.
3. The claimant shall communicate the notice of arbitration and the statement of claim to the arbitral tribunal as soon as it is constituted.

880

### **Response to the notice of arbitration and statement of defence**

#### *Article 5*

1. Within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall also include responses to the information set forth in the notice of arbitration pursuant to article 4(1)(a) and (b) of the Expedited Rules.
2. The respondent shall communicate its statement of defence to the claimant and the arbitral tribunal within 15 days of the constitution of the arbitral tribunal.

### **Designating and appointing authorities**

#### *Article 6*

1. If all parties have not agreed on the choice of an appointing authority 15 days after a proposal for the designation of an appointing authority has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration (hereinafter called the “PCA”) to designate the appointing authority or to serve as appointing authority.
2. When making the request under article 6(4) of the UNCITRAL Arbitration Rules, a party may request the Secretary-General of the PCA to serve as appointing authority.

3. If requested to serve as appointing authority in accordance with paragraph 1 or 2, the Secretary-General of the PCA will serve as appointing authority unless it determines that in view of the circumstances of the case, it is more appropriate to designate an appointing authority.

### **Number of arbitrators**

#### *Article 7*

Unless otherwise agreed by the parties, there shall be one arbitrator.

### **Appointment of a sole arbitrator**

#### *Article 8*

1. A sole arbitrator shall be appointed jointly by the parties.
2. If the parties have not reached agreement on the appointment of a sole arbitrator 15 days after a proposal has been received by all other parties, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.

### **Consultation with the parties**

#### *Article 9*

Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.

881

### **Discretion of the arbitral tribunal with regard to periods of time**

#### *Article 10*

Subject to article 16 of the Expedited Rules, the arbitral tribunal may at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules and the Expedited Rules or agreed by the parties.

### **Hearings**

#### *Article 11*

The arbitral tribunal may, after inviting the parties to express their views and in the absence of a request to hold hearings, decide that hearings shall not be held.

### **Counterclaims or claims for the purpose of set off**

#### *Article 12*

1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it.
2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral

tribunal considers it appropriate to allow such claim having regard to the delay in making it or prejudice to other parties or any other circumstances.

### **Amendments and supplements to a claim or defence**

#### *Article 13*

During the course of the arbitral proceedings, a party may not amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to when it is requested or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

### **Further written statements**

#### *Article 14*

The arbitral tribunal may, after inviting the parties to express their views, decide whether any further written statement shall be required from the parties or may be presented by them.

### **Evidence**

#### *Article 15*

1. The arbitral tribunal may decide which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may reject any request, unless made by all parties, to establish a procedure whereby each party can request another party to produce documents.

2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.

3. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal if hearings are held.

### **Period of time for making the award**

#### *Article 16*

1. The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.

2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.

3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of

time. The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time.

4. If there is no agreement to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

### **C. Text of annexes to the UNCITRAL Expedited Arbitration Rules Model arbitration clause for contracts**

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules.

*Note: Parties should consider adding:*

- (a) The appointing authority shall be ... [name of institution or person];
- (b) The place of arbitration shall be ... [town and country];
- (c) The language to be used in the arbitral proceedings shall be ...;

### **Model statement**

*Note. Parties should consider requesting from the arbitrator the following addition to the statement of independence pursuant to article 11 of the UNCITRAL Arbitration Rules:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently, expeditiously and in accordance with the time limits in the UNCITRAL Arbitration Rules and the UNCITRAL Expedited Arbitration Rules.