



**Vilnius
University**

INVESTMENT ARBITRATION REFORM AND THE TERMINATION OF INTRA-EU BILATERAL INVESTMENT TREATIES

Vilnius University Law Faculty invites for the discussion and reflection on the current status of Investor-State Dispute Settlement in Europe and especially in its Eastern region.

27-28 May 2021

INFORMATION PARTNERS



27 May 2021

10:00 - 10:05

Welcome

10:05 - 11:35

Panel 1. The debate on ISDS reform, main narratives and tensions moderated by **Dr Inga Martinkutė**, Vilnius University

The first panel shall explore the main narratives in the field and the tensions that exist between them. Panellists shall discuss the current state of affairs in investment arbitration and how to situate the region in the process of the reform? How is the United Nations Commission on International Trade Law managing the legitimacy crisis of ISDS? What alternatives are on the table, and what is left unsaid?

- **Emeritus Prof M Sornarajah**, the Faculty of Law of the National University of Singapore – „Deflecting Change and Investment Arbitration“
- **Prof Yarik Kryvoi**, Senior Fellow, Director, the Investment Treaty Forum, British Institute of International and Comparative Law – „Investor-State dispute settlement: private adjudication dressed in public clothes?“
- **Colin Brown**, Head of Unit, Legal aspects of trade and sustainable development and investment, Directorate General for Trade, European Commission – „UNCTRAL working group III and establishment of a Multilateral Investment Court“
- **Dr Crina Baltag**, Senior Lecturer in International Arbitration, Co-Director of International Commercial Arbitration Law (ICAL) LLM, Stockholm University – „ADR and ISDS Multilateral Advisory Centre: immediate (and necessary) reform options“

11:45 - 13:15

Panel 2. Investment arbitration experience and investment law reform from a regional perspective moderated by **Prof Solveiga Palevičienė**, Mykolas Romeris University

The second panel is devoted to the experience of neighbouring countries sharing their practice on investment cases related to intra-EU BITs and discussing the prospective termination. The goal is to debate arbitration experience in investment cases and to identify whether regional specificity of Eastern and Central European countries implies different perspectives and interests that have to be taken into account considering investment law reform at the EU level.

- **Dr Dafina Atanasova**, Lecturer at the Geneva LL.M. on International Dispute Settlement (MIDS) – “The place of Central and Eastern Europe in ISDS: present and future”

- **Miriama Kiselyova**, Investment Expert and Legal Adviser, Permanent Representation of the Slovak Republic to the EU, Slovakia – “Experience with arbitrations from intra-EU BITs against the Slovak Republic and the Slovak process of intra-EU BIT termination”
- **Dr Jaroslav Kudrna**, the Head of the International Arbitration and Investment Protection Unit at the Ministry of Finance of the Czech Republic – “Investment Arbitration Reform in the EU and Beyond from the Czech Perspective: Where Are We Headed”
- **Dr Wojciech Sadowski**, Founding Partner of Queritius, Poland – “Should we burn behind us unfinished bridges? – a caution story from Poland”
- **Ilze Mikulana (ex Dubava)**, Legal Advisor of the State Chancellery of the Republic of Latvia – “Impartiality requirement of arbitrators and the practice of double hatting and UNCITRAL and ICSID approach to it in their rule amendment processes”



28 May 2021

10:00 - 11:30

Panel 3. Intra-EU BITs termination and what's next within the EU and externally?
(in Lithuanian) moderated by **Dr Eglė Zemlytė**, Vilnius University

This session will focus on the intra-EU BITs termination. The 2020 Agreement on the Termination of Bilateral Investment Treaties between the Member States of the European Union was currently submitted for the ratification to the Parliament of the Republic of Lithuania. What were the reasons for signing this agreement? How will it change the investment dispute resolution system? Is Lithuania's approach different from other European Union Member States? We will discuss the approach of the European Commission to the relationship between EU law and international investment obligations in order to highlight (i) the root causes for termination of the intra-EU BITs and (ii) some of the implications of the termination of the intra-EU BITs from the perspective of foreign investors as well as third-country trade partners. Also, this session will take a glance at the investment protection in Asia, as well as discuss the EU-Singapore Investment Protection Agreement.

- **Ieva Kirkaitė**, Second Secretary in the Department of Law and International Treaties, the Ministry of Foreign Affairs of the Republic of Lithuania - „Lithuania's position on termination of the Intra-EU BITs“
- **Dr Emilija Leinartė**, British Academy PD Fellow at the Lauterpacht Centre for International Law, Cambridge University, the UK - „The status of EU law in investment arbitration: the European Commission's approach“
- **Aliona Bitkivskaja**, Counsel at Singapore International Arbitration Centre, Singapore - „A Comparative Perspective: investment protection in Asia and EU-Singapore Investment Protection Agreement“

11:45 - 13:15

Panel 4. The EU investment protection: practical implications for Lithuanian and EU investors (in Lithuanian) moderated by **Dr Rimantas Daujotas**, Vilnius University

This session will focus on the practical impact of the EU investment protection reform on possible future disputes between Lithuanian and EU investors and the state or state institutions. The main consequence of the termination of EU internal investment protection treaties will be that intra-EU investment disputes (at least those previously qualified as such) will have to be decided by national courts: administrative or general competence.

Therefore, the panel will discuss how the legal protection of Lithuanian or EU investors in Lithuania and the EU will change as compared to the current situation. Where such disputes should be addressed, what rules and what standards of protection should apply? It will also be discussed how the practice of disputes against the state in Lithuanian courts has developed so far, what is the relationship between administrative and courts of general competence, whether national investor protection standards provide adequate protection for Lithuanian and EU investors investing in Lithuania. Finally, it will be assessed what alternative legal protection instruments can be used by Lithuanian and EU investors in the EU.

- **Prof. Skirgailė Žalimienė**, Judge and Vice-president of the Supreme Administrative Court of Lithuania – “Competence of Lithuanian Courts in disputes between investors and the State“
- **Andžej Maciejewski**, Judge of the Supreme Court of Lithuania – „Lithuanian Court practice in disputes between investors and the State“
- **Prof. Jurgita Paužaitė-Kulvinskienė**, the Faculty of Law of Vilnius University – „Investors’ protection standards in Lithuanian law“
- **Rapolas Kasparavičius**, Associate, Ellex Valiunas – „Alternative remedies for Lithuanian and EU investors“

13:15 – 13:20

Concluding remarks and closing**Registration**

SPEAKER BIOGRAPHIES:



Dr Dafina Atanasova is a lecturer at the Geneva LLM on International Dispute Settlement (MIDS), where she teaches international commercial and investment arbitration and carries out research as part of the Geneva Center for International Dispute Settlement (CIDS), a joint research center of the Graduate Institute of International and Development Studies (IHEID) and the University of Geneva. Prior to joining the CIDS, Dafina was a research fellow at the Centre for International Law, National University of Singapore; she worked as a legal consultant at UNCTAD, as a research assistant at the University of Geneva, and as an associate at Dokovska, Atanassov and Partners (Sofia, Bulgaria). Dafina defended her PhD at the University of Geneva (summa cum laude) and is admitted to the bar in Bulgaria.



Dr Crina Baltag is a senior lecturer in International Arbitration at Stockholm University and qualified attorney-at-law since 2004, with extensive practice in various aspects on international dispute resolution, private and public international law. Crina is a member of the Stockholm Chamber of Commerce Arbitration Institute (SCC) Board. Crina's publications include *The Energy Charter Treaty: The Notion of Investor* (Wolters Kluwer, 2012), *ICSID Convention after 50 Years: Unsettled Issues* (Wolters Kluwer, 2017), *The Future of Investment Treaty Arbitration in the EU* (co-editor, Wolters Kluwer, 2020) etc. and numerous publications in leading legal journals and reviews, including on the *Denial of Benefits in Investment Law* (co-author; Max Planck Encyclopaedia of International Procedural Law, Oxford University Press, 2019). Crina is the editor of Kluwer Arbitration Blog, co-managing editor of ITA Arbitration Report and member of editorial boards of prestigious journals and book series in the field, including of the Journal of International Arbitration and Bloomsbury's Global Energy Law and Policy. Crina has been appointed in numerous arbitrations as sole arbitrator and co-arbitrator under the rules of the ICC, LCIA, SIAC, FAI, and CCIR-Romania. Crina holds a PhD degree in International Arbitration from Queen Mary University of London (UK), LL.M in International Commercial Arbitration Law from Stockholm University (Sweden), M.Sc. in International Business from Academy of Economic Studies (Romania), LL.B. from the University of Bucharest (Romania).



Aliona Bitkivskaja is a senior counsel at the Singapore International Arbitration Centre (SIAC). As part of the SIAC's Secretariat for the last five years, she has administered over 300 international arbitrations under various editions of SIAC Rules, UNCITRAL Rules and LCIA Rules arising from the disputes in energy, construction, trade, maritime, commercial and corporate sectors. Aliona holds an LL.M in International Business Law from the National University of Singapore with a specialisation in International Arbitration, International Investment Law and Comparative Oil and Gas Law as well as a BA degree in Anthropology and Law from the London School of Economics and Political Science. She is admitted to practice as an attorney in the state of New York.

SPEAKER BIOGRAPHIES:



Colin Brown is an international trade and investment lawyer. Since November 2020, he is Head of Unit Legal aspects of trade and sustainable development and investment in the Directorate General for Trade of the European Commission. He leads the team of lawyers working on investor-state dispute settlement in the trade and investment policy of the European Union, in particular, the Investment Court System and now the work on the Multilateral Investment Court project. He is the head of the EU Delegation to UNCITRAL Working group III on ISDS reform. He also leads the teams providing legal advice on EU FTAs and on Trade and Sustainable Development. Before joining the Directorate General for Trade he worked for 6 years for the Legal Service of the European Commission, where he litigated WTO and EU law cases. He has been chair of the Legal Advisory Committee of the Energy Charter Treaty between 2004 and 2017. He is a guest lecturer in EU External Economic Relations Law at the Law School of the University of Edinburgh and the Academy of Internal Economic Law and Policy (Athens). He has taught EU and WTO law at IELPO, University of Barcelona and the Université catholique de Louvain.



Dr Rimantas Daujotas is an international disputes partner at Motieka & Audzevicius PLP in Vilnius and a lecturer of international investment law and arbitration at Vilnius University. Rimantas has extensive experience in international arbitration disputes, in particular, ones arising under bilateral and multilateral investment treaties and high-value commercial agreements. Rimantas serves as a consultant or representative to private parties and foreign governments. Rimantas' experience includes representation in commercial and investment arbitration cases constituted under the IC-SID, UNCITRAL, SCC, ICC, LCIA and other arbitration rules. Rimantas also sits as arbitrator or expert in international disputes. Rimantas is listed as a recommended arbitrator at numerous arbitral institutions around the world. Rimantas is also recommended by international rankings, such as GAR100, Who's Who Arbitration, Legal500 and others. Rimantas has defended his PhD thesis at Queen Mary University's School of International Arbitration and also at Vilnius University. In addition, Rimantas pursues or holds degrees from top universities, such as Harvard, Cambridge, Columbia, Singapore and others. Rimantas is also a prolific author on international law, international investment law and international arbitration.



Prof Yarik Kryvoi is a senior fellow in International Economic Law and Director of the Investment Treaty Forum at the British Institute of International and Comparative Law (BIICL). He holds law degrees from Harvard, Moscow, Nottingham, Utrecht and St Petersburg and is admitted to practice in the State of New York. Before moving to academia, he practising international investment law with Freshfields Bruckhaus Deringer in London, Morgan Lewis & Bockius in Washington, DC and Baker & McKenzie in Saint Petersburg. He is listed as an arbitrator by several institutions, including Hong Kong International Arbitration Centre, Asian International Arbitration Centre and Shenzhen Court of International Arbitration. Professor Kryvoi is the course leader of the Institute's new online course International Investment Law and Dispute Resolution, available at <http://biicl.org/isds>.

SPEAKER BIOGRAPHIES:



Rapolas Kasparavičius is a senior associate with Ellex Valiunas in Vilnius, specialised in commercial and investment arbitration. In the last ten years, he was involved in major investor-state arbitrations involving Lithuania, including investor-state arbitrations initiated by OAO Gazprom over the implementation of the EU's third energy package in Lithuania, Italian national Luigiterzo Bosca over unconsummated investment in the Lithuanian beverages sector, Latvian national Olegs Roscins overtaking of assets to the state ownership in relation to the failed bank in Lithuania. Rapolas also represented clients in a number of pre-arbitration negotiations related to investors' claims under bilateral investment treaties. He co-authored articles in the field of investor-state arbitrations, including a paper published in Yearbook on International Arbitration and ADR. Currently, Rapolas consults Investors' Forum, the association of foreign investors in Lithuania, on EU's investor-state arbitration reform.



Ieva Kirkaitė is a career diplomat and a lawyer with over 13 years of experience. She is currently the Second Secretary of the Law and International Treaties Department of the Ministry of Foreign Affairs of the Republic of Lithuania. Ieva is responsible for the matters related to the conclusion of Lithuania's international treaties, including negotiations of Investment protection agreements. She also deals with the EU trade policy issues in the area of investment, as well as follows OECD and UNCITRAL investment policy agenda. Prior to this position, including the period of the Lithuanian Presidency of the Council of the EU, she worked at the Permanent Representation of Lithuania to the EU and was responsible for the trade policy matters, including trade in services and investment. Before that, she dealt with export and investment promotion issues at the Ministry of Foreign Affairs. Ieva holds a Master's of Laws Degree from Vilnius University (2007) and a Master's Degree in Economics from Vilnius University (2011).



Miriama Kiselyova is an investment expert and legal adviser at the Permanent Representation of the Slovak Republic to the EU since 2018. She deals with Investment Protection Agreements, Multilateral Investment Court, WTO Investment Facilitation, Amendment of ICSID Rules, the Energy Charter Treaty modernisation, intra-EU BITs termination and amendment of the ESM Treaty. Before diplomacy, she was a senior state counsellor at the Ministry of Finance of the Slovak Republic, negotiating BITs, participating in international investment arbitration and the CJ EU proceedings and representing the Slovak Republic before OECD, UNCITRAL and UNCTAD in investment matters. She is currently a PhD candidate at the Charles University in the field of public international law. Before joining the public service, she was active in private practice as an attorney-at-law and was admitted to Slovak Bar Association.

SPEAKER BIOGRAPHIES:



Dr Jaroslav Kudrna is the Head of the International Arbitration and Investment Protection Unit at the Ministry of Finance of the Czech Republic. He defends the Republic in investment arbitrations, negotiates BITs on its behalf and represents it in international forums, including UNCITRAL (WG III) and ECT Modernization Group. Prior to joining the Ministry, Dr Kudrna worked several years as an associate in the International Arbitration group of White & Case in New York, where he focused on investment and commercial arbitration. He previously trained in leading law firms in Paris and Prague. Dr Kudrna obtained a PhD in public international law at Charles University in Prague, an LLM in International Business Regulation, Litigation and Arbitration at New York University and Masters of Laws at the University of Strasbourg and Sciences Po Paris. Dr Kudrna has passed the New York Bar and Paris Bar exams.



Dr Emilija Leinartė is a British Academy Postdoctoral Research Fellow at Cambridge University, Trinity College. From October this year, Emilija will be joining the Cambridge Law Faculty as a University Lecturer. Her forthcoming book titled '*Functional Responsibility of International Organizations: the European Union and International Economic Law*' will be published by the Cambridge University Press this summer. Dr Leinartė's research focus lies at the intersection of EU and international law, in particular the different forms of international economic cooperation and the law of international responsibility. She has published widely on the various aspects of the post-Brexit EU-UK relationship, including trade in services provisions under the Trade and Cooperation Agreement. Prior to her research fellowship, Emilija has been a research associate and a doctoral student at Cambridge. She has also completed an LLM at the University of Texas at Austin as a Fulbright grantee. Before her academic career, Emilija was an associate with the energy law team of Ellex Valiunas. Dr Leinartė is a member of the New York Bar.



Andžej Maciejewski is a judge of the Civil Cases Division of the Supreme Court of Lithuania. Andžej Maciejewski is a graduate of the Faculty of Law of Vilnius University. He has 24 years of legal experience, of which he has been a judge for over 18 years and has been working in the Court of Cassation since November 2014. Andžej Maciejewski is also a lecturer at the Department of Private Law of the Faculty of Law of Vilnius University, specialisation of scientific activity – law of obligations. In 2019 - 2020 Andžej Maciejewski was a member of the examination commission of candidates for judges, and currently, he is the chairman of the mediation activity evaluation commission.

SPEAKER BIOGRAPHIES:



Dr Inga Martinkutė teaches public international law and international dispute resolution at the Law Faculty of Vilnius University. She is an active ESIL member, organiser of various conferences and a frequent speaker at academic events on the topic of investment arbitration. Inga obtained her PhD at the National University of Singapore, where she focused on the interplay between national property regimes and international investment protection. She is conceptualising the tensions in the investor-state dispute settlement as a conflict between the individualistic and communitarian understandings of property. Inga is currently working on the book “National Property Laws and International Law on Investment Protection”. She is qualified in Lithuania and has been in private practice for more than fifteen years representing clients in the most significant and complex disputes and arbitrations of the Baltic region. Inga is a member of the ICSID panel of arbitrators and acts as an arbitrator.



Ilze Mikulana (ex Dubava) is a lawyer at the State Chancellery of the Republic of Latvia, where her task is to ensure state representation in investment treaty disputes. Prior to joining the State Chancellery, she was the legal editor for the weekly magazine for lawyers ‘Jurista Vārds’ and visiting lecturer at the Riga Graduate School of Law (RGSL). Dr Dubava obtained her PhD in Law at the European University Institute in 2014. She specialises in international investment law. Her latest publication on the topic came out in 2019 (‘The Future We Want: Sustainable Development as an Inherent Aim of Foreign Investment Protection’ in George Ulrich, Ineta Ziemele (eds) *How International Law Works in Times of Crisis* (OUP 2019)).



Prof Solveiga Palevičienė is a managing partner in Glimstedt law firm. Her practice covers a wide range of corporate and commercial litigation and arbitration at both the domestic and international levels. Solveiga has been designated a recommended arbitrator and conciliator of the International Centre for Settlement of Investment Disputes (ICSID) by the Government. She also performs the function of a regular arbitrator at the Vilnius Court of Commercial Arbitration and the Georgian Arbitration Institute. She obtained a Master of Laws (LLM) in International Dispute Settlement (MIDS), a joint program of the University of Geneva Law School and the Graduate Institute (IHEID) and practised at Pierre Tercier’s International law office in Switzerland. Solveiga is a professor at Mykolas Romeris University. She has been teaching comparative contract law, international investment law at the Institute of Civil Justice at Mykolas Romeris University Law School for more than seventeen years.

Solveiga has gained extensive experience in management as the Chief Legal Advisor to the President of Lithuania, as well as Chief Advisor to the Chairman of the Civil Division of the Supreme Court of Lithuania.

SPEAKER BIOGRAPHIES:



Dr Wojciech Sadowski is a founding partner of Queritius. He focuses on international and trans-border dispute resolution, working as counsel and arbitrator. Wojciech has been extensively involved in advisory work and client representation in matters involving international investment treaties and acted for both investors and states. He also has broad experience in commercial arbitrations and litigations before domestic courts, the European Court of Human Rights, the General Court of the EU and the Court of Justice of the European Union. Before founding Queritius, Wojciech was a Warsaw and London partner at a leading global law firm and had almost 20 years of working in top legal brands.



Prof M Sornarajah is a renowned academic and Emeritus Professor at the Faculty of Law of the National University of Singapore. He is an author of a number of books on international economic law, commercial and investment arbitration, including *International Law on Foreign Investment* in its fourth edition (Cambridge University Press) as well as recent *Resistance and Change in the International Law on Foreign Investment* (Cambridge University Press 2015). He is joint editor of *China, India and the International Economic Law* (with Jiangyu Wang, Cambridge University Press 2010) and of *Good Faith in International Investment Law* (with Andrew Mitchell and Tania Voon, Oxford University Press, 2015). *The Misery of International Law*, written together with Margot Salomon and John Linarelli (Oxford University Press 2018), received the European Society of International Law Book Prize in 2019.

He was teaching and giving lectures around the world in the prominent universities and research centres, such as the Centre for International Law in Cambridge, the London School of Economics, the Max Planck Institute for Comparative Public Law and International Law, the University of Malaya at Kuala Lumpur, the Osgoode Hall Law School in Toronto, Carleton University in Ottawa, the University of Dundee in Scotland, the American University at Washington DC, etc. He was also the head of the Law School of the University of Tasmania, Australia.

He is a member of numerous academic forums, editorial boards and professional societies. He is an advocate of the Supreme Court of Ceylon, an advocate and solicitor of the High Court of Singapore and a solicitor of the High Court of England and Wales and has been involved in several leading investment arbitrations as arbitrator, counsel or expert.

SPEAKER BIOGRAPHIES:



Prof Jurgita Paužaitė-Kulvinskienė is a Professor of Public Law at Vilnius University (Lithuania) with reference to Comparative Administrative and Administrative Procedure Law, Constitutional Law, Heritage Law, Law on Administrative Liability, Public Market Regulation and Law. Her most important and significant research achievements were made in search of a more effective model of Lithuanian and European administrative justice at the interface of the supranational systems of the European Union and the Council of Europe. She is involved in a number of projects with EU Commission, J.W.Goethe University (Germany), Ludwig Boltzmann Institute of Human Rights (Vienna), Max Planck Institute for Comparative and International Law (Heidelberg) and etc. Previously she was director of the Law Institute of Lithuania and was appointed as a member of the Prosecutors' Ethics Commission (until 2014) and of the Judicial Ethics and Discipline Commission (until 2019). She is publishing in Lithuanian, German, English and Russian.



Dr Eglė Zemlytė is a lecturer at the Private Law Department of the Law Faculty of Vilnius University. She teaches international commercial arbitration (in both Lithuanian and English), the law on civil procedure, and the law on evidence. Her research focuses on international arbitration, alternative dispute resolution, and civil procedure. A significant part of her dissertation research was conducted at Ghent University (Belgium) and Max Planck Institute for Comparative and International Private Law (Germany). She is a co-author of the Commentary to the Law on Commercial Arbitration of the Republic of Lithuania and an author or co-author of various publications on arbitration and other dispute resolution methods. Being admitted to the bar of the Republic of Lithuania, she has been acting as the counsel in various arbitration and litigation cases for almost 15 years. She also regularly sits as arbitrator or chairs arbitrations. Before establishing her own boutique law firm to focus on her career as an arbitrator, she was an attorney-at-law at one of the biggest law firms in Lithuania.



Prof Skirgailė Žalimienė is a judge (since 2008) and vice-president (since 2019) of the Supreme Administrative Court of Lithuania, author of numerous publications in the field of EU law. She holds PhD from Vilnius University (2001) where she teaches EU law. Before joining the judiciary, she was the head of the European Law Department under the Ministry of Justice of the Republic of Lithuania (2002-2004) and deputy director general (2004-2008).