

NEWSLETTER

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The Court of Justice of the European Union about the actual effectiveness of arbitration agreements

We would like to draw your attention to the issue regarding the admissibility of the use of the judicial arbitration of so-called 'anti-suit injunctions', that is prohibitions of starting or continuing proceedings before an ordinary court in another country, and in the case of early initiation - orders the end of it. This particularly controversial issue was considered by the Court of Justice of the European Union in its judgment of the 13th of May 2015 in case file no C-536/13.

- I. Prohibition of litigation is an instrument particularly popular in Anglo-Saxon countries. Its aim is to ensure the effectiveness of the arbitration agreement by directing the parties to arbitration. A party who wishes to stop his opponent from doing the long and costly proceedings before the ordinary court can make a request to that court to forbade such actions, and thus 'force' the opponent to conduct the arbitration proceedings.
- II. In the Court's judgment it was finally adopted that so called 'The Brussels I Regulation' (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition of decisions and their enforcement in civil and commercial matters) shall be interpreted as meaning that it does not preclude the fact that a **Member State court recognized and executed arbitration ruling prohibiting a party's occurrence with specific requests before the court of that Member State or refused its recognition and enforcement** because the regulation does not regulate the issue of recognition and enforcement in a Member State of an arbitration ruling made by an arbitration court in another Member State.
- III. This ruling collapsed on the canvas following facts (specified in some simplification). Gazprom, the state of Lithuania and the German company entered into a shareholders' agreement, in which arbitration clause was included (arbitration agreement) providing that any disputes arising from the contract shall be resolved by the Arbitration Institute of the Stockholm Chamber of Commerce.
- IV. A conflict arose between the parties. As a result, the Lithuanian state, represented by the Ministry, has filed a claim before the common court

in Vilnius. However, Gazprom, considering that the action violates the arbitration clause contained in the contract, referred the matter to an arbitration court in Stockholm. Gazprom has filed for arbitration against the Ministry and ordering the Ministry the termination of the proceedings before the common court of Lithuania. The arbitral court partially agreed with this proposal and ordered the withdrawal of the Lithuanian minister within a specified range of claims brought against Lithuanian court. Then, Gazprom brought before the Lithuanian court to recognize the decision of the arbitration court.

- V. Lithuanian court refused to recognize the decision issued by the arbitration court, in consequence, the case came before the highest court in Lithuania, which directed the question referred to the Court of Justice of the European Union. **In short, it was about to answer the question whether, in the light of EU law, it is possible recognition and enforcement by the arbitration court rulings prohibiting the occurrence of specific requests before the courts of that Member State.**
- VI. Finally, the Court took the position that the arbitration is excluded from the scope of the so-called 'Brussels I Regulation', which applies to proceedings with an application for recognition or enforcement of an arbitration ruling. **Therefore, the question to recognize the outcome of anti-suit injunctions issued by the arbitral court remains the responsibility of the State in which recognition is sought.** State, under its own law - taking into account any international commitments, should itself decide whether the recognition of such a remedy is acceptable.
- VII. However, it should be noted that the dispute falls under the Brussels I Regulation. In general, the Court did not address the argument of Advocate General, who argued that the intention of the countries excluded from the scope of the arbitration was clearly confirmed in recital 12 of the Preamble of the Brussels I Regulation Bis (Regulation of the European Parliament and Council Regulation (EU) No 1215/2012 on jurisdiction and recognition of judgments and their enforcement in civil matters, which entered into force prior to judgment).
- VIII. In summary, the judgment of the Court of Justice of the European Union does indeed affect the actual effectiveness of arbitration agreements. However, it should be borne in mind that the issue of recognition of outcome-type anti-suit injunctions issued by the arbitral court remains the responsibility of the State in which recognition is sought.
