

ANTI-SUIT INJUNCTIONS AND SHIPPING ARBITRATION

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I Outline of English position

Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk [2013] UKSC 35
Donohue v Armco Inc [2001] UKHL 64, [2002] 1 Lloyd's Rep 425
Essar Shipping Ltd v Bank of China Ltd [2015] EWHC 3266 (Comm)

New York Convention Article II r.3:

“The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed”

II Impact of European rules on jurisdiction

Brussels Convention 1968
Brussels I Regulation 2001
Recast Brussels I Regulation (Regulation (EU) No. 1214/2012)

Art 1(4): “The Regulation shall not apply to:d) arbitration....”

Marc Rich & Co AG v Societa Italiana Impianti SpA, The Atlantic Emperor (C-190/89)
Allianz SpA v West Tankers Inc Case C-185/07 [2009] 1 Lloyd's Rep 413
Toyota Tsusho Sugar Trading Ltd v Prolat SRL [2014] EWHC 3649 (Comm) [2015] 1 Lloyd's Rep 344

III Remedies available from the arbitral tribunal

- Anti-suit injunctions
Gazprom OAO C-536/13 (CJEU) [2015] 1 Lloyd's Rep. 610
- Declarations
West Tankers Inc v Allianz SpA [2012] EWCA Civ 27, [2012] 1 Lloyd's Rep 398
- Damages
West Tankers Inc v Allianz SpA [2012] EWHC 854 (Comm), [2012] 2 Lloyd's Rep 103

The Recast Brussels I Regulation - Regulation (EU) No. 1214/2012

Provisions relating to arbitration

Art 1(4): “The Regulation shall not apply to:d) arbitration....”

Art 73(2): “This Regulation shall not affect the application of the New York Convention”

Recital 12 (paragraph numbering added)

- (1) This Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.
- (2) A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.
- (3) On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court’s judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (‘the 1958 New York Convention’), which takes precedence over this Regulation.
- (4) This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.