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Anti-Suit Awards Are Compatible With the Original Brussels I Regulation

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Anti-Suit Awards Are Compatible With the Original Brussels I Regulation

(Gazprom OAO v Republic of Lithuania, Case C-536/13, Judgment dated 13 May 2015)

The European Court of Justice decision in Gazprom v. Lithuania answers long-outstanding question regarding the recognition and enforcement of injunctions issued by arbitral tribunals.

By Christine Gaertner, Hanna Roos and Anna Hyde

Introduction

The highly anticipated decision in Gazprom v. Lithuania confirms that recognizing and enforcing anti-suit injunctions issued by arbitral tribunals is compatible with EC Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the original Brussels I Regulation). The decision does not address, however, the wider question of whether Member State courts may issue anti-suit injunctions in aid of arbitration.

Background

On 24 March 2004, the Ministry of Energy of the Republic of Lithuania entered into a shareholders' agreement with, *inter alia,* Gazprom regarding their shares in Lietuvos dujos AB, one of Lithuania's leading energy companies. The shareholders' agreement contained an arbitration clause, which provided that: "[a]*ny claim, dispute or contravention in connection with this Agreement, or its breach, validity, effect or termination, shall be finally settled by arbitration* […]".

In March 2011, the Ministry of Energy applied for the commencement of an investigation before the Regional Court in Vilnius regarding the activities of the company's general manager and two members of the board of directors that were appointed by shareholder Gazprom. The Ministry simultaneously requested corrective measures as provided for under the Lithuanian Civil Code.

In response, Gazprom filed a request for arbitration against the Ministry of Energy at the Arbitration Institute of the Stockholm Chamber of Commerce, alleging that the Ministry's application before the Regional Court in Vilnius had been brought in breach of the arbitration clause and requesting an order that the proceedings before the court be discontinued.

The arbitral tribunal agreed that the arbitration clause had been partially infringed and ordered that the Ministry withdraw or limit its claim before the Regional Court in Vilnius. However, shortly thereafter, the Regional Court in Vilnius granted the Ministry's earlier application and confirmed its jurisdiction, holding that the matter was not arbitrable as a matter of Lithuanian law.

The Vilnius Regional Court rejected Gazprom's application for recognition and enforcement of the arbitral award for, *inter alia*, public policy and national sovereignty reasons.

Upon appeal, the Supreme Court of Lithuania was asked to rule on whether the recognition and enforcement of the arbitral award (by this point classified as an anti-suit injunction) could be refused because the award would restrict the Lithuanian court's powers to rule on its own jurisdiction.

The Supreme Court referred the matter to the European Court of Justice (ECJ) for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union (TFEU).[1] The Supreme Court asked the ECJ to decide whether an EU Member State court could refuse to recognize and enforce an arbitral award that:

1. Contains an anti-suit injunction, on the grounds that the award limits the jurisdiction of the national court to rule on its own competence,

2. Contains an anti-suit injunction, if it orders a party to limit their claims in another EU Member State, and/or

3. Limits the right of the national court to rule on its own jurisdiction, for the purpose of ensuring the supremacy of EU law and full effectiveness of the original Brussels I Regulation.

The ECJ's Decision

In its decision, the ECJ referred to its *West Tankers* judgment (*Allianz SpA and Generali Assicurazioni Generali SpA v. West Tankers Inc*, Case C-185/07), which had held that an EU Member State court restraining a party from commencing or continuing proceedings before another Member State's court would be contrary to the original Brussels I Regulation.[2] The ECJ reasoned that each Member State court is entitled to rule on its own jurisdiction for reasons of mutual trust accorded by Member States to each other's legal systems.[3]

The ECJ, however, distinguished the *West Tankers* decision on the basis that the question here was whether EU Member State courts were allowed to recognize and enforce an anti-suit injunction awarded by an *arbitral tribunal* rather than by the *courts* of another Member State. In reaching its decision, the ECJ considered the following factors:

1. Article 1.2(d) of the original Brussels I Regulation, the so-called "arbitration exception", expressly excludes arbitration from its scope. The original Brussels I Regulation, therefore, does not cover conflicts between orders or awards of arbitral tribunals and orders or judgments of the courts of Member States.

2. As the award in question was one rendered by an arbitral tribunal, it does not infringe the principle of mutual trust between the courts of Member States.

3. A party who disputes the validity of an arbitration agreement is not barred from later also contesting the recognition and enforcement of the arbitral tribunal's award issuing the anti-suit injunction.

4. The recognition and enforcement of the arbitral tribunal's award will be a matter of applicable national procedural law and international law in the courts of the Member State in which recognition and enforcement is sought (for example, the New York Convention).

Comment

The recast Brussels Regulation,[4] which came into force in January 2015 but applies "*only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015*" (Art. 66), does not apply to the current dispute.[5] However, given the timing of the judgment, observers had hoped that the ECJ would nonetheless provide guidance on whether the so-called "arbitration exclusion" in new recital 12 goes any further than the arbitration exception in article 1.2(d) of the original Brussels I Regulation. In particular, clarification would have been helpful as to whether the arbitration exclusion would allow an EU Member State court to issue an anti-suit injunction in aid of arbitration. However, the ECJ declined to comment on this wider question and restricted its judgment to the application of the original Brussels I Regulation.

We are therefore likely to see this question return to the ECJ in relation to the recast Brussels Regulation.

In the meantime, until the precise scope of the arbitration exclusion is determined and the application of *West Tankers* clarified, parties to an arbitration agreement with an EU nexus would be advised to consider seeking anti-suit injunctions from arbitral tribunals in addition to or instead of from Member State courts. Parties are also advised to consider carefully the choice of dispute resolution forum in their contract, to seek to minimize the likelihood of a need to bring proceedings in an alternative venue later down the line.

The New LCIA Guidance Notes: Useful Reading for Parties

The London Court of International Arbitration (LCIA) has issued three sets of free, practical, guidance notes: Notes for Parties, Notes on Emergency Procedures and Notes for Arbitrators.[6]

By Philip Clifford, Hanna Roos and Alanna Andrew

The LCIA's Notes highlight points for consideration in the conduct of LCIA arbitrations and shed light on the operation of the LCIA Arbitration Rules (Rules) and the LCIA itself. Key themes include running arbitrations expeditiously, tailoring the process, cost control and the LCIA's active supervision.

Notes for Parties

The Notes introduce the Rules and discuss the stages of an arbitration, from the arbitration agreement and commencement of an arbitration through the filing of a Response, appointment of an arbitral tribunal, presentation of evidence, confidentiality and determination of the costs.

Practical points explained in the Notes include:

- ***Commencing arbitration*:** The arbitration will not commence until receipt of the Registration Fee (including any value added tax (VAT)). The LCIA therefore recommends making payment before filing the Request for Arbitration.
- ***Arbitrator selection/appointment and diversity*:** Unless agreed otherwise, the LCIA selects the arbitrator(s) in light of their experience, qualifications, availability, seniority, national and cultural characteristics and so forth, striving for "*strong diversity (in all its guises) among the candidates selected.*" If parties agree to select arbitrators themselves the LCIA can provide a list of suitable candidates (if desired).
- ***Timetable*:** The parties are encouraged to agree to timetable proposals for the tribunal's consideration, although the Rules provide a default timetable in the absence of agreement to the contrary.
- ***Duration*:** The LCIA takes a "*proactive and robust approach*" to managing the process. The Rules impose obligations on the tribunal both to inform the LCIA and the parties of the time set aside for deliberations and to avoid delay in producing the award. The LCIA does not formally scrutinize awards and so "*there is no delay caused by a formal scrutiny process.*"
- ***Fees*:** The LCIA is a not-for-profit organization. The LCIA's charges and the tribunal's fees are calculated by reference to hourly rates (rather than the value of the dispute, as, *e.g.*, in ICC proceedings), with deposits payable in stages. The LCIA will fix the arbitrators' hourly rates according to the nature of the dispute but the top rate is currently £450 per hour.

Notes on Emergency Procedures

The Notes explain the two types of emergency procedures:

- ***Expedited formation of the tribunal*:** This is for cases of exceptional urgency and no additional fee is required. The application is best made simultaneously with filing the Request for Arbitration. The LCIA may shorten time limits for the selection of arbitrators stipulated in an arbitration agreement.
- ***Emergency Arbitrator procedure*:** A temporary, sole, arbitrator can be appointed to address an urgent application for interim relief, pending the formation of the tribunal. A fee of £28,000 (plus any VAT) must be paid up front for this and, unless agreed otherwise, the procedure is only available if the arbitration agreement was concluded on or after 1 October 2014. If the application is granted, the LCIA Court will appoint an Emergency Arbitrator within three days of receipt of the application. The appointed Emergency Arbitrator then has 14 days to render a decision and has "*the power to make any award or order that the Arbitral Tribunal could make under the parties' arbitration agreement or the Rules and may decide to adjourn any claim for emergency relief to the Arbitral Tribunal yet to be formed.*"

If possible, an applicant should give advance notice of its intended application to the LCIA. The LCIA Court will usually solicit comments from the other side(s) and may, but does not need to, give reasons for its decision.

Case studies for expedited formation show that whilst each case is considered on its merits, "*exceptional urgency*" may be found if the claimant is likely to suffer irreparable harm because, for example, a temporary injunction is about to expire, or a service about to cease with dramatic consequences. By contrast, the claimant simply relying on the respondent's performance as its primary source of revenue may not be enough.

Notes for Arbitrators

These Notes address issues of independence, impartiality, availability, confidentiality, effective management of time and costs, and the need to keep the LCIA informed as to progress:

- ***Form*:** Potential arbitrators are required to complete a form regarding their availability, including their forthcoming hearings and outstanding awards, so that the LCIA can assess the time they will have to devote to the arbitration.
- ***Tailored process*:** Arbitrators are encouraged to adopt a sensible timetable tailored to the circumstances of the case. To this end, arbitrators should liaise with the parties at an early stage and, as appropriate, hold an early procedural conference to fix the timetable.

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Chile Enacts New Direct Foreign Investment Law

The new Framework Law aims to attract better and more investment in the country. This regulation has no impact on international investment arbitrations.

By Stéphane Lheure

On 16 June 2015, Chile promulgated the new Framework Law for foreign investment in Chile (*Ley marco para la Inversión Extranjera Directa en Chile* (IED Act)), repealing the previous regulation of 1974 (*Decreto Ley 600* (DL 600)).

The IED Act emphasizes the proactive role of Chilean public institutions when interacting with new and potential investors. To this end, the IED Act foresees the creation of an Investment Promotion Agency (*Agencia de Promoción de la Inversión Extranjera*), in line with Organization for Economic Cooperation and Development (OECD) standards. The agency would be a public body authorized to promote foreign investment in coordination with the Chilean Ministry of Economy.

An upcoming executive regulation will set the foreign investment promotion strategy, specify the sectors to promote and detail the organization of the Investment Promotion Agency. The IED Act will enter into force once the Agency is duly created and starting its activities.

The IED Act also recognizes certain investor's rights. An investor (defined in the IED Act as any foreign natural or legal person, not residing in Chile, investing in Chile) has the right to (i) freely remit abroad the profits earned on investments in Chile once taxes have been paid and (ii) access Chile's formal foreign-exchange market for settling exchange, such as for the remittance of profits and to convert foreign currency.

The IED Act also contains an autonomous definition of "investment," as a transfer of foreign capital or assets, owned or controlled by a foreign investor, to Chile for a value greater than (or equal to) US$5 million or the equivalent in another foreign currency. Any acquisition (for an amount greater or equal to US$5 million) that results in the direct or indirect control of at least 10% of the voting rights or of a company's shares or an equivalent percentage interest in a company's capital also constitutes an investment.

The IED Act does not, however, provide for arbitration of disputes. Its effects and benefits are therefore limited for foreign investors, who profit from Chile's bilateral investment treaties and access to ICSID arbitration.

Is a Debt an Investment?

(State Enterprise "Energorynok" (Ukraine) v. The Republic of Moldova, SCC Arbitration V2012/175, Award dated 29 January 2015)

An arbitral tribunal has declined to hear a dispute under the Energy Charter Treaty (ECT), finding that a debt, on its own, is not a protected "Investment".

By Catriona E. Paterson

In 1998, an overflow of electricity from the Ukraine to Moldova triggered an obligation on Moldova to pay to the Ukraine compensation in excess of US$ 1.6 million pursuant to the Agreement between the two States on the Parallel Operation of the Energy Systems (APO). In May 2000, the claimant, a state-owned enterprise, allegedly acquired the right to collect that compensation by virtue of various orders and approvals of the relevant Ukrainian authorities. The Kiev courts subsequently ordered the Moldovan State Department of Energy Industry and Energy Resources to pay the claimant the compensation allegedly due under the APO. After several years of complex litigation during which the alleged debt remained unpaid, the claimant commenced arbitral proceedings against Moldova under the ECT.

The arbitral tribunal, however, declined jurisdiction to hear the dispute. Article 1(6) of the ECT provides that protected "investments" include, inter alia, claims to money. However, that clause qualifies the scope of protected investments by stating that the term refers to "any investment associated with an Economic Activity in the Energy Sector" (as those terms are defined in the ECT).

During the course of the proceedings, the claimant conceded that it had no rights or obligations under the APO, nor any ability to control the economic activity undertaken pursuant to its terms. The claimant merely had acquired the right to collect on the debt. In the tribunal's view, this debt did not satisfy the autonomous definition of an investment under the ECT because the debt was not "associated with" an "investment" in the energy sector owned or controlled by the claimant.

The practical result of the tribunal's decision is that simply holding a debt arising out of an energy-related transaction may not be sufficient qualify as a protected "Investment" for the purposes of the ECT. The debt holder must also own or control an Economic Activity in the Energy Sector in order to benefit from the treaty's protections.

In recent years, the number of investment treaty disputes in which the claimed investment consists exclusively of debt has increased. The arbitral jurisprudence that has developed around this topic is complex. However, what is becoming clear is that whether a debt can benefit from the protections of an investment protection treaty will depend on a number of factors, such as the nature of the debt, how it was created or acquired, and the specific wording of the treaty relied on. As to this latter issue, the decision in *State Enterprise "Energorynok" (Ukraine) v. The Republic of Moldova* is significant as it clarifies the limits of protection offered by the ECT insofar as debt is concerned.

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The English Commercial Court Opines on Consequences of Non-Compliance with Arbitral Tribunal's Interim Order

(Swallowfalls Limited v. Monaco Yachting & Technologies S.A.M. and Mr. Peter Landers Jr [2015] EWHC 2013 (Comm.))

Court confirms an arbitral tribunal's award which dismissed the Claimant's claims on the basis of non-compliance with an interim order.

By Stéphane Lheure

The dispute arose after Swallowfalls Limited (Swallowfalls) hired Monaco Yachting & Technologies S.A.M. (Monaco Yachting) to construct a superyacht. The construction agreement provided for arbitration under the rules of the London Maritime Arbitrators Association in London. However, Swallowfalls provided loan financing to Monaco Yachting

— backed by a guarantee provided by Mr. Peter Landers Jr (Landers) — under an agreement which provided for disputes to be resolved in the English courts.

Two proceedings resulted:

- Monaco Yachting first initiated arbitration proceedings against Swallowfalls, alleging breaches of the construction agreement by Swallowfalls.
- Swallowfalls subsequently initiated court proceedings in England against Monaco Yachting and Landers, seeking payment under the loan agreement and guarantee. In response, Monaco Yachting and Landers raised counterclaims for set-off, making the same claims under the construction agreement that it had raised in arbitration.

In February 2013, the London Commercial Court granted a stay of the court proceedings, pending the resolution of the matters referred to arbitration.

In November 2013, the arbitral tribunal issued a final and peremptory order, requiring Monaco Yachting either to provide security for costs or to furnish the tribunal its accounts for the years 2010 to date. Monaco Yachting failed to comply with the order but gave little explanation, citing respectively, cash flow difficulties and confidentiality concerns.

Article 41(6) of the English Arbitration Act provides that "[i]*f a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.*" On the basis of this provision, and in light of Monaco Yachting's failure to comply with the order, the tribunal dismissed Monaco Yachting's claims.

Subsequently, the Court lifted the stay and Swallowfalls sought summary judgment on the claims under the loan agreement and guarantee. In response, Monaco Yachting asked the Court to consider whether the claims under the construction agreement provided a set-off to Swallowfalls' claims. On Monaco Yachting's argument, as the tribunal had not considered the merits of Monaco Yachting's and Landers' claims, the Court should be allowed to consider these claims by way of counterclaim or set-off.

On 16 June 2015, the English Commercial Court decided that even though the arbitral award was rendered on the grounds of non-compliance with a tribunal's order, it was a final and binding award. The Court reasoned that allowing Monaco Yachting to raise the same arguments in the court proceedings would be an "abuse of process," "any other conclusion would be offensive to justice and would not serve the public interest" and would "vex the claimant in these proceedings for a second time with these allegations."

This case confirms the effect of Article 41(6) of the English Arbitration Act and arbitral tribunals' powers to dismiss claims if a party fails to provide security for costs or otherwise comply with a tribunal's order.

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English High Court Orders Delivery Up of Arbitration Documents to Third Party

(AMEC Foster Wheeler Group Limited v. Morgan Sindall Professional Services Limited & Ors [2015] EWHC 2012 (TCC))

Order covers delivery up of the parties' written submissions and expert reports to a third party under principles of agency.

By Catriona E. Paterson

A dispute arising under the main contract and a sub-contract for the construction of Her Majesty's Naval Base Clyde has given rise to a novel question of law, and one with broader implications for agency in arbitration: can confidential documents in an arbitration be disclosed to a principal under the rules of agency?

The complex facts underlying the dispute are available in full **here**. The relevant point for the application to the court is that, as a result of various agreements, the defendants — certain members of the Morgan Sindall Group — agreed to defend a claim in arbitration brought by the Secretary of State for Defence (SSD), as agent for and on behalf of the AMEC Foster Wheeler Group Limited (AMEC). While the proceedings were ongoing, AMEC became concerned that it could be financially liable in the event the arbitral tribunal issued a monetary award against the defendants which the defendants were unable to pay in full or in part. AMEC accordingly asked the defendants for various documents in the arbitration, including the parties' written submissions and expert reports. When this request was refused, AMEC applied to the courts for delivery up of the documents.

In a judgment delivered on 14 July 2015, the English High Court granted AMEC's application. Having established the existence of a relationship of agency between AMEC and the defendants, the Court noted as a matter of established jurisprudence that it is a "legal incident" of the principal-agent relationship that "a principal is entitled to require production by the agent of documents relating to the affairs of the principal." Because AMEC had a financial interest in the arbitration (its potential liability to pay all or part of an award in damages), it had a right as principal to receive the documents in the arbitration from the defendants. In reaching this decision, the Court rejected arguments that the documents should not be disclosed to AMEC because they were the subject of confidentiality obligations owed to the SSD, noting that "[t]here is no authority to the effect that an agent need not provide documents to his principal if they are confidential to a third party".

The decision may come as a surprise to some users of arbitration in England, a jurisdiction in which the documents in an arbitration are traditionally viewed as being confidential to the parties and the tribunal. The Court's decision did not consider in any detail the impact of confidentiality obligations that exist in the context of an arbitration and further jurisprudence on this point can reasonably be expected. In the interim, a party to a dispute who knows or reasonably suspects that another party to the dispute is acting as agent should consider whether steps can or should be taken to preserve the confidentiality of their documents. This could be done, for instance, by requesting the principal to enter into a confidentiality agreement or otherwise agree to hold documents in confidence should they be disclosed by the agent.

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"Arctic Sunrise" Award Rendered

Arbitral tribunal awards Netherlands compensation for Russia's violations of international law in the 2013 "Arctic Sunrise" incident.

By Jan Erik Spangenberg

On 14 August 2015, an arbitral tribunal issued its final award on the merits in the "Arctic Sunrise" arbitration and confirmed that the Russian Federation must compensate the Kingdom of the Netherlands as flag state of the Greenpeace vessel, the "Artic Sunrise", for temporarily detaining the ship and its crew in 2013.[7]

The dispute arose from the Russian coast guard boarding, seizing and detaining Greenpeace International's vessel Arctic Sunrise by force on 19 September 2013. The Arctic Sunrise had come into conflict with personnel of a Russian oil platform in the Pechora Sea, located within Russia's exclusive economic zone (EEZ), as the vessel was protesting against Russian oil exploration activities in the territory. The Russian coast guard intervened, boarded the Arctic Sunrise, towing it to Murmansk and detaining the personnel on board.

On 4 October 2013, the Netherlands instituted arbitral proceedings against Russia under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). Despite Russia's non-acceptance of the arbitration,[8] "its refusal to take part in this arbitration,"[9] and following Russia's absence during the proceedings, the tribunal confirmed that it had jurisdiction to decide on the merits.[10] The tribunal reasoned that the Netherlands and Russia in fact were in dispute concerning the interpretation and application of the UNCLOS, that Russia's action releasing the vessel and its personnel did not fully resolve this conflict[11] and that Russia's declaration upon its ratification of the UNCLOS not to accept the dispute settlement procedures for disputes "concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction" did not exclude "the present dispute from the procedures of Section 2 of Part XV of the Convention."[12]

The award rendered is based on the Russian Federation's breach of obligations owed to the Kingdom of the Netherlands under several Articles of the UNCLOS. Moreover, the tribunal found that Russia had failed to comply with its obligations arising from the order for provisional measures of the International Tribunal for the Law of the Sea (ITLOS) of 22 November 2015.

First, the tribunal held that protest at sea is an internationally lawful use of the sea related to the freedom of navigation, albeit such use can be limited in certain circumstances.[13] The tribunal found that the Russian coast guard neither had a right to enter the Arctic Sunrise on suspicion of piracy,[14] nor on suspicion[15] or prevention of terrorism[16] and further that the ship's protest did not violate any laws in Russia's EEZ which could have allowed Russia to exercise its law enforcement powers.[17] Therefore, boarding, seizing and detaining the Arctic Sunrise, and detaining its personnel, constituted a violation of Articles 56(2), 58(1), 58(2), 87(1)(a) and 92(1) of the UNCLOS.

Second, the tribunal found that Russia's non-compliance with the ITLOS order for provisional measures amounted to a breach of Articles 290(6), 296(1) of the UNCLOS despite the release of the vessel and its personnel in the meantime.[18] The ITLOS order demanded Russia to immediately release both the vessel and the personnel. Their final release with a delay of 27 days violated the order, which required Russia to act "promptly."[19]

Finally, the tribunal also found that Russia violated its obligations under Part XV and Article 300 UNCLOS in refusing payment of deposits for procedural costs.[20]

As a result of Russia's breaches, the tribunal held that the Netherlands is entitled to compensation. Whether the Netherlands will ever quantify its claim or if the Arctic Sunrise saga will come to a close with this decision remains to be seen. In any event, the proceedings remain noteworthy because they confirm that arbitration proceedings under UNCLOS can proceed with a State party to the dispute in *absentia*. To assuage any concerns about the integrity of the proceedings, the Arctic Sunrise tribunal took great care to preserve Russia's procedural rights by providing to Russia all case materials, notifying Russia of procedural steps and reiterating Russia's right to participate in the proceedings.

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Endnotes

1 See "The Supreme Court of Lithuania Seeks Clarification from the European Court of Justice in *Gazprom v. Lithuania*," Latham & Watkins International Arbitration Newsletter, January 2014, p. 6.

2 Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, 22 December 2000.

3 For further background on the original Brussels I Regulation and the *West Tankers* judgment see "*Lost at Sea or a Storm in a Teacup?*," International Arbitration Law Review.

4 Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, 12 December 2012.

5 For further background on the recast Brussels I Regulation, the major changes and their significance, please see "Reform of the Brussels Regulation – Latest Developments and the 'Arbitration Exception'," Latham & Watkins, In Practice – The London Disputes Newsletter, April 2013.

6 See http://www.lcia.org/adr-services/guidance-notes.aspx

7 Award on the Merits, PCA Case No 2014-02, 14 August 2015.

8 Diplomatic Note from the Russian Federation to the Kingdom of the Netherlands, No. 11945, 22 October 2013.

9 Diplomatic Note from the Russian Federation to the PCA, No. 487, 27 February 2014.

10 Award on Jurisdiction, PCA Case No 2014-02, 26 November 2014, paras. 78 et seq.

11 *Ibid*, paras. 61 et seq.

12 *Ibid* , paras. 79.

13 Award on the Merits, PCA Case No 2014-02, 14 August 2015, paras. 227 et seq.

[14] *Ibid*, para. 241.

[15] *Ibid*, para. 278.

[16] *Ibid*, paras. 322 et seq.

[17] *Ibid*, paras. 275, 285, 297, 312, 332.

[18] *Ibid*, para. 360.

[19] *Ibid*, paras. 350, 358

[20] *Ibid* , para. 370.

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If you have any questions about this publication please contact a lawyer on the editorial team, Sebastian Seelmann-Eggebert, Philip Clifford, Catriona E. Paterson, Jan Erik Spangenberg and Stéphane Lheure.

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