

client alert

INTERNATIONAL DISPUTE RESOLUTION |

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CJEU ISSUES ITS DECISION IN *GAZPROM* ON THE INTERACTION BETWEEN ANTI-SUIT INJUNCTIONS AND THE BRUSSELS REGULATION

On 13 May 2015 the Court of Justice of the European Union ("**CJEU**") reached its decision in the case of *Gazprom OAO* (C-536/13) following a referral from the Lithuanian Supreme Court. The decision clarifies the interpretation of the arbitration exclusion contained in Regulation (EC) No 44/2001 (the "**Brussels Regulation**"), in particular with respect to the enforcement of anti-suit injunctions issued by arbitral tribunals.

As explained in an earlier client alert (available [here](#)), the Lithuanian Supreme Court had asked the CJEU to consider whether the recognition and enforcement of an arbitral award, which included an anti-suit injunction, was compatible with the Brussels Regulation.

It had previously been held (following the CJEU decision in *West Tankers*) that anti-suit injunctions issued by Member States in support of arbitral proceedings were incompatible with the Brussels Regulation, notably as they would restrict the right of Member State courts to determine their own jurisdiction.

The CJEU distinguished the *Gazprom* case from *West Tankers* on the basis that in the *Gazprom* case, the anti-suit injunction had been issued by an arbitral tribunal (rather than by the court of a Member State). Since the Brussels Regulation governs only conflicts of jurisdiction between courts of Member States, decisions of arbitral tribunals fall outside of its scope.

Accordingly, the CJEU considered that the enforcement and recognition of anti-suit injunctions issued by an arbitral tribunal are instead governed by national procedural law and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

Interestingly, in coming to its decision, the CJEU made no reference to Regulation (EU) No 1215/2012 (the "**Recast Brussels Regulation**"), which replaced the Brussels Regulation on 10 January 2015, nor to the opinion of Attorney General Wathelet of 4 December 2014.

As noted in our client alert of April 2015 (available [here](#)), AG Wathelet had opined that the CJEU should take into account the Recast Brussels Regulation, notwithstanding that it had not yet come into effect, on the basis that it clarified how the "*arbitration exclusion*" of Article 1(2)(d) of the Brussels Regulation should be interpreted.

AG Wathelet concluded, among other things, that the prohibition on anti-suit injunctions could no longer be justified. In his view, the Recast Regulation offered scope for anti-suit injunctions between Member State courts in support of arbitration proceedings.

While the CJEU has clarified that the recognition and enforcement of anti-suit injunctions issued by arbitral tribunals fall outside the scope of the Brussels Regulation, it did not go as far as suggested by AG Wathelet and has left open the key question of whether anti-suit injunctions issued by courts of Member States in support of arbitration proceedings by will be enforceable under the Recast Brussels Regulation. This leaves the argument open for future debate.

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