



July 2015

## CJEU Judgment on *Gazprom* Offers No Guidance on Revised Brussels I Regulation

### Introduction

On May 13, 2015, the Court of Justice of the European Union (CJEU) handed down its much anticipated judgment in the *Gazprom* case to a somewhat deflated fanfare.<sup>1</sup> The judgment was expected to provide clarity on whether intra-EU court anti-suit injunctions are permissible under the newly revised version of the Brussels I Regulation. Instead, however, the CJEU looked only to the provisions of the old Brussels I Regulation, shedding no light on the revised provisions.

Brussels I codifies the EU rules on jurisdiction and enforcement of judgments, and applies to disputes between parties domiciled in two EU Member States.<sup>2</sup> Important changes to the EU rules on jurisdiction have recently taken effect under the recast Brussels I Regulation (Recast Brussels I). Although Recast Brussels I has been in force since January 2013, it only applies to legal proceedings started on or after Jan. 10, 2015. Although the *Gazprom* case was initiated prior to that date, it was still expected that the CJEU would use Recital 12 of Recast Brussels I, which clarifies the scope of the exclusion of arbitration. The CJEU decided, however that Recital 12 did not apply in light of the facts of the case, and focused its decision on Article 1(2)(d) of Brussels I, which simply states that arbitration does not fall within the scope of Brussels I. Thus the contours of Recast Brussels I, Recital 12 remain open to debate.

### Anti-suit injunctions in EU arbitration pre-*Gazprom*

Before *Gazprom*, a number of European Court of Justice (ECJ)<sup>3</sup> decisions decreased the availability of anti-suit injunctions in support of arbitration. Most influentially, in the 2009 *West Tankers* decision, the ECJ ruled that Brussels I prohibits courts of EU Member States from granting anti-suit injunctions to restrain a party from commencing or continuing court

<sup>1</sup> *Gazprom v Lietuvos Respublika*, Case C-536/13 [2015] ECLI:EU:C:2015:216.

<sup>2</sup> Council Regulation (EC) No 44/2001 of December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation). The national laws of the Member State will apply when at least one party is not domiciled in the EU.

<sup>3</sup> The CJEU was previously called the European Court of Justice.

proceedings brought in breach of an arbitration agreement. The ECJ reasoned that if the proceedings in a matter fall within the scope of Brussels I, then so do preliminary issues concerning the validity of an arbitration agreement. The *West Tankers* decision was often criticized for extending the scope of Brussels I to arbitration in a way that undermines the effectiveness of arbitration agreements. The decision all but gave parties free rein to ignore arbitration agreements in favor of commencing proceedings in their preferred court to challenge the arbitration agreement's validity and delay arbitration (so-called "torpedo actions").

Partly in reaction to this controversy, changes were made in Recast Brussels I.<sup>4</sup> Recast Brussels I retains the core features of Brussels I but includes Recital 12, which clarifies three key points: (1) Member State courts maintain the authority to examine whether to recognize and enforce an arbitration agreement; (2) Member State court's ruling on the validity or existence of an arbitration agreement falls within the arbitration exception of Recast Brussels I, and only arbitration actions themselves fall outside the scope of Recast Brussels I; and (3) Recast Brussels I does not apply to any ancillary proceedings relating to arbitration or to any action resulting therefrom.

It was expected that once the Recital 12 of Recast Brussels I entered into law it would resolve the confusion on anti-suit injunctions by removing a number of uncertainties and contradictions in the ECJ's case law on arbitration issues, including removing torpedo actions as a serious threat. But, the CJEU refused to address the impact of Recital 12 of Recast Brussels I in the *Gazprom* case, finding that it did not apply in light of the facts.

### **The *Gazprom* case**

The *Gazprom* case concerned an appeal brought by Gazprom against the decision of the Lithuanian Court of Appeal refusing to recognize and enforce an arbitral award. The arbitral award stated that the Respondent (the Ministry of Energy of the Republic of Lithuania) had breached an arbitration clause in a contractual agreement between the two parties, and ordered the Respondent to withdraw or limit some of the claims it had brought in the Regional Court in Vilnius, Lithuania. The Supreme Court of Lithuania determined that the arbitral award was an anti-suit injunction, and referred to the CJEU the question of whether the court of an EU Member State can refuse to recognize and enforce an arbitral award containing an anti-suit injunction on the grounds that it is inconsistent with the Regulation.

The CJEU then proceeded to consider the following question: whether Brussels I precludes a Member State court from recognizing and enforcing arbitral awards that prohibit a party from bringing certain claims before a court of that Member State. The CJEU answered the question in the negative,<sup>5</sup> and declined to consider Recital 12 of Recast Brussels I in its decision.

Although disappointing for litigators and commentators, the CJEU's exclusion of Recast Brussels I from its determination was foreseeable given the case at hand. The *Gazprom* litigation was initiated prior to the Recast Brussels I effective date. Furthermore, the CJEU was asked whether enforcing an arbitral award containing an anti-suit injunction was compatible with Brussels I; not whether a Member State court may generally issue an anti-suit injunction. Accordingly, the CJEU found that an arbitration award prohibiting parties from bringing certain claims before a Member State Court could be enforced. In so holding, the CJEU noted that arbitration was excluded from the scope of Brussels I by virtue of Article 1(2)(d),<sup>6</sup> and that because Brussels I applies only to conflicts of jurisdiction between Member States courts and not arbitral tribunals, Brussels I was not applicable in *Gazprom*.<sup>7</sup>

### **Comment**

The ECJ's judgment in *Gazprom* provides welcome guidance for EU-based arbitrations as there is now a clear statement that it is not incompatible with Brussels I for arbitral tribunals to issue arbitral awards that contain anti-suit injunctions. By barring the application of Brussels I to arbitral anti-suit injunctions, the CJEU highlighted the primacy of the New York

---

<sup>4</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of Dec. 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast).

<sup>5</sup> *Gazprom v. Lietuvos Respublika*, Case C-536/13 [2015] ECLI:EU:C:2015:216.Para.44

<sup>6</sup> *Ibid.* Para.28.

<sup>7</sup> *Ibid.* Para. 36.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the realm of arbitration.

However, given *Gazprom's* limited holding, it remains to be seen whether the CJEU will reconsider the application of *West Tankers* in light of the changes in Recast Brussels I.

This *GT Alert* was prepared\* by **Ilana Haramati**. Questions about this information can be directed to:

- > Ilana Haramati | +31 (0) 20 301 7348 | [haramatii@eu.gtlaw.com](mailto:haramatii@eu.gtlaw.com)
- > [Hans Urlus](mailto:urlush@eu.gtlaw.com) | +31 (0) 20 301 7324 | [urlush@eu.gtlaw.com](mailto:urlush@eu.gtlaw.com)
- > Or your [Greenberg Traurig](#) attorney

\*Special thanks to *Maxime van den Dijssel*<sup>‡</sup> for her valuable contribution to this *GT Alert*.

<sup>‡</sup>Not admitted to the practice of law.

|  |   |   |  |
|--|---|---|--|
| <b>Albany</b><br>+1 518.689.1400         | <b>Denver</b><br>+1 303.572.6500            | <b>New York</b><br>+1 212.801.9200          | <b>Shanghai</b><br>+86 (21) 6391 6633        |
| <b>Amsterdam</b><br>+ 31 (0) 20 301 7300 | <b>Fort Lauderdale</b><br>+1 954.765.0500   | <b>Northern Virginia</b><br>+1 703.749.1300 | <b>Silicon Valley</b><br>+1 650.328.8500     |
| <b>Atlanta</b><br>+1 678.553.2100        | <b>Houston</b><br>+1 713.374.3500           | <b>Orange County</b><br>+1 949.732.6500     | <b>Tallahassee</b><br>+1 850.222.6891        |
| <b>Austin</b><br>+1 512.320.7200         | <b>Las Vegas</b><br>+1 702.792.3773         | <b>Orlando</b><br>+1 407.420.1000           | <b>Tampa</b><br>+1 813.318.5700              |
| <b>Boca Raton</b><br>+1 561.955.7600     | <b>London*</b><br>+44 (0) 203 349 8700      | <b>Philadelphia</b><br>+1 215.988.7800      | <b>Tel Aviv^</b><br>+972 (0) 3 636 6000      |
| <b>Boston</b><br>+1 617.310.6000         | <b>Los Angeles</b><br>+1 310.586.7700       | <b>Phoenix</b><br>+1 602.445.8000           | <b>Tokyo☒</b><br>+81 (0)3 3216 7211          |
| <b>Chicago</b><br>+1 312.456.8400        | <b>Mexico City+</b><br>+52 (1) 55 5029.0000 | <b>Sacramento</b><br>+1 916.442.1111        | <b>Warsaw~</b><br>+48 22 690 6100            |
| <b>Dallas</b><br>+1 214.665.3600         | <b>Miami</b><br>+1 305.579.0500             | <b>San Francisco</b><br>+1 415.655.1300     | <b>Washington, D.C.</b><br>+1 202.331.3100   |
| <b>Delaware</b><br>+1 302.661.7000       | <b>New Jersey</b><br>+1 973.360.7900        | <b>Seoul∞</b><br>+82 (0) 2 369 1000         | <b>Westchester County</b><br>+1 914.286.2900 |
|  |   |   | <b>West Palm Beach</b><br>+1 561.650.7900    |

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. \*Operates as Greenberg Traurig Maher LLP. \*\*Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ☒Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2015 Greenberg Traurig, LLP. All rights reserved.*