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List of Abbreviations

AALCO	Asian-African Legal Consultative Organization
ABGB	Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch)
ALI	American Law Institute
APC RF	Russian Arbitrazh (State Commercial) Procedure Code
ARSIVA	Articles on State Responsibility
BGB	German Civil Code (Bürgerliches Gesetzbuch)
CAATSA	Countering America's Adversaries Through Sanctions Act
CCI RF	Russian Federation Law on Chambers of Commerce
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
CISG	International Sale of Goods
CJEU	Court of Justice of the European Union
CLIP	Conflict of Laws in Intellectual Property
COA	Contract of Affreightment
DARIO	Draft Articles on Responsibility of International Organizations
DRC	Democratic Republic of Congo
ECJ	European Court of Justice
EEC	European Economics Commission
EU	European Union
GATT	General Agreement on Tariffs and Trade
HKICA	Hong Kong International Arbitration Centre
ICAC	International Commercial Arbitration Court
ICC	International Court of Arbitration
ICJ	International Court of Justice
ICL	International Law Commission
INCOTERMS	International Commercion Terms

INSSG	United States Interim National Security Strategic Guidance
LAFICO	Legal Representative office in Malta
MCAs	Monetary Compensatory Amounts
MFN	Most Favourite Nation
NY Convention	New York Convention
OAS	Organization of American States
OFAC	Office of Foreign Assets Control
PKK	Kurdistan Workers Party
SDN	Specially Designated Nationals and Blocked Persons List
SMO	Special Military Operation
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TFEU	Treaty on Functioning of European Union
UCP	Unicorm Customs and Practice
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNGA	United Nations General Assembly
UNIDROIT	International Institute for Unification of Private Law
UNSC	United Nations Security Council
US	United States
WTO	World Trade Organization

Articles

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Key words:
sanctions | Blocking Statute| EU law | arbitration | arbitral award | court settlement | recognition and enforcement | New York Convention | public policy (ordre public) exception | Eco Swiss

Recognition and Enforcement of Judgments and Decisions in the Context of the EU Blocking Statute

Abstract | *The Blocking Statute has been an integral part of EU law for a number of years and serves as an EU "anti-sanctions" instrument. It inherently aims to protect EU natural and legal persons against the extra-territorial application of selected laws enumerated in the Annex to the Blocking Statute.*

The Blocking Statute offers, inter alia, a defence mechanism consisting in special grounds for the refusal of the recognition and enforcement of a decision, introduced in Article 4 of the Blocking Statute. The provision stipulates that no decision giving effect, directly or indirectly, to the laws specified in the Annex to the Blocking Statute shall be recognized or be enforceable in any manner in the territory of the EU. That being said, the European Commission has interpreted this provision as essentially covering all types of decisions, i.e. judgments or decisions of a judicial, administrative, arbitral or any other nature.

But this interpretation is rather controversial, primarily in relation to the enforcement of an arbitral award. The aim of this paper is to offer

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a more detailed analysis of the Blocking Statute in the context of the recognition and enforcement of judgments/decisions, and to highlight any questionable aspects, especially in relation to arbitral awards and court settlements.

I. Introduction

5.01. The States regularly apply sanctions against each other in the international environment, whether for political, business/economic or other reasons. Sanctions are, however, often accompanied by anti-sanctions laws. Such laws are, conversely, aimed at preventing the effects of the sanctions imposed by another State. But the authors of such laws are frequently ignorant of some of the consequences relating to such measures, primarily in the sense of their overlap in private-law relations.

5.02. One such regime has been introduced by the EU Blocking Statute. This Regulation is based on the principle of the identification of "unwanted" legal rules of foreign States and the subsequent blocking of the application thereof, shielded by the argument of protecting natural and legal EU persons. Admittedly, some efforts to prevent the consequences of the application of foreign sanctions regimes could be functional, but their impact on private-law relations could be problematic.

5.03. Although the Blocking Statute entered into force and effect as early as on 29 November 1996, it has been largely ignored by legal practitioners. Hence, this paper aims to analyse the Blocking Statute and to outline the principles of its operation. At the same time, however, this paper highlights some of the controversial aspects associated with the application of the Blocking Statute in relation to the recognition and enforcement of judgments/decisions.

II. Blocking Statute

5.04. The established practice among the States in the international environment is to use sanctions to accomplish their desired objectives. Hand in hand with the introduction of sanctions, the States started to use anti-sanctions laws. One such instrument at the EU level is Council Regulation (EC) No 2271/96, the Blocking Statute. This Regulation aims to "shield" selected EU persons by ensuring protection against the application of

selected legislative instruments enumerated in the Annex to the Regulation. But the Blocking Statute goes even further and itself stipulates special grounds for the refusal to recognise and enforce certain judgments/decisions. The analysis of the refusal to recognise and enforce judgments/decisions in terms of the Blocking Statute requires a detailed clarification of the Blocking Statute itself at the general level. This clarification will help to explain the overall context.

5.05. Article 1 of the Blocking Statute stipulates that the Regulation aims to provide protection (cit.): "*… against and counteracts the effects of the extra-territorial application of the laws specified in the Annex of this Regulation, including regulations and other legislative instruments, and of actions based thereon or resulting therefrom, where such application affects the interests of persons, referred to in Article 11, engaging in international trade and/or the movement of capital and related commercial activities between the Community and third countries.*" The scope *ratione personae* is provided for in Article 11 of the Blocking Statute, which stipulates that the Blocking Statute shall apply to (cit.):

1. any natural person being a resident in the Community[1] and a national of a Member State,
2. any legal person incorporated within the Community,
3. any natural or legal person referred to in Article 1 (2) of Regulation (EEC) No 4055/86,[2]
4. any other natural person being a resident in the Community, unless that person is in the country of which he is a national, and
5. any other natural person within the Community, including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State, acting in a professional capacity.

5.06. It is important to keep in mind that according to Article 1 of the Blocking Statute, the Regulation only applies to defined legal transactions. Indeed, the Blocking Statute aims to provide protection against the application of selected laws only if such application affects the interests of persons referred to in Article 11 (cit.): "*… engaging in international trade and/or the movement of capital and related commercial activities between*

[1] According to the footnote incorporated in Article 11(1) of the Blocking Statute, "being a resident in the Community" means (cit.): "*… being legally established in the Community for a period of at least six months within the 12-month period immediately prior to the date on which, under this Regulation, an obligation arises or a right is exercised.*"

[2] This specifically refers to Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries.

the Community and third countries." This provision is relatively limiting in that not every person referred to in Article 11 is automatically protected against the effects of specified laws in each and every legal transaction. Nevertheless, the definition is sufficiently general to essentially cover all activities performed in international trade. Indeed, the additional requirement of *between the Community and third countries* must be perceived as a merely territorial condition. It should not just cover legal transactions involving the Community [EU] acting directly vis-à-vis a third country. Quite the contrary, the Blocking Statute should target the commercial activities of natural or legal EU persons (more specifically, the persons referred to in Article 11 of the Blocking Statute) vis-à-vis persons from non-EU countries.

5.07. The scope of the Blocking Statute is determined primarily by the individual legislative instruments specified in the Annex to the Blocking Statute. At present, the Annex to the Blocking Statute only lists US legislative instruments, specifically:

- National Defense Authorization Act for Fiscal Year 1993;[3]
- Cuban Liberty and Democratic Solidarity Act of 1996;[4]
- Iran Sanctions Act of 1996;
- Iran Freedom and Counter-Proliferation Act of 2012;
- National Defense Authorization Act for Fiscal Year 2012;
- Iran Threat Reduction and Syria Human Rights Act of 2012; and
- Iranian Transactions and Sanctions Regulations.

5.08. The above legislative instruments indicate that the Blocking Statute is only activated in a limited number of cases, because the laws specified in the Annex to the Blocking Statute concern relatively narrowly-defined matters. But the general wording of the Blocking Statute indicates that future expansion of the applicability of the provisions of the Blocking Statute to other areas of commercial activities cannot be ruled out. This will always depend on the legislative instruments included in the Annex to the Blocking Statute. The following section of this paper therefore presents a comprehensive analysis of this issue, albeit with due respect for the scope of applicability due to the individual laws included in the Annex to the Blocking Statute as of the day of this paper.

[3] Here specifically in relation to Title XVII – "Cuban Democracy Act 1992", sections 1704 and 1706.
[4] Here specifically in relation to Titles I, III and IV.

5.09. Despite the fact that the application of the Blocking Statute in the context of Article 1 is conceivable primarily in relation to commercial (especially banking) relations, one cannot rule out a broader scope. For instance, the Annex to the Blocking Statute lists the following possible damages to EU interests in relation to the Cuban Liberty and Democratic Solidarity Act of 1996 (cit.): "*Legal proceedings in the USA, based upon liability already accruing, against EU citizens or companies involved in trafficking, leading to judgments/decisions to pay (multiple) compensation to the USA party. Refusal of entry into the USA for persons involved in trafficking, including the spouses, minor children and agents thereof.*" Hence, these legal regulations might eventually result in interventions in other legal areas, even family law. Similarly, the inclusion of the National Defense Authorization Act for Fiscal Year 2012 in the Annex to the Blocking Statute is justified by potential civil and criminal penalties. Consequently, the Blocking Statute cannot be interpreted restrictively, only in relation to issues of commercial law.

III. Refusal of Recognition and Enforcement under the Blocking Statute

5.10. Article 4 of the Blocking Statute stipulates that no judgment of a court or tribunal and no decision of an administrative authority located outside the EU (cit.): "*... giving effect, directly or indirectly, to the laws specified in the Annex or to actions based thereon or resulting there from* (…)", shall be recognized or be enforceable in any manner. Hence, a judgment/decision cannot be recognised or enforced according to the said provision in connection with three potential scenarios, i.e. if the judgment/decision gives effect, directly or indirectly:

(a) to a law specified in the Annex to the Blocking Statute;
(b) to an action based on a law specified in the Annex to the Blocking Statute; or
(c) to an action resulting from a law specified in the Annex to the Blocking Statute.

5.11. The Annex to the Blocking Statute is the key part of the Regulation, because the rules defined by the Blocking Statute only apply to the laws specified in the Annex. The contents of the Annex can be modified, depending on the current situation, by the Commission. The second subparagraph of Article 1 of the Blocking Statute stipulates that the Commission shall be empowered to adopt delegated acts in accordance with Article 11a of the Blocking Statute (cit.): "*… to add to the Annex to this*

Regulation laws, regulations or other legislative instruments of third countries having extraterritorial application and causing adverse effects on the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union, and to delete laws, regulations or other legislative instruments when they no longer have such effects."[5]

5.12. This does not apply to laws (statutes) only. Although Article 4 of the Blocking Statute refers to *laws*, the term must be interpreted in the context of the Blocking Statute as a whole. For instance, the Recitals to the Blocking Statute invoke laws as well as regulations and other legislative instruments.[6] After all, the Annex itself to the Blocking Statute is entitled: "LAWS, REGULATIONS AND OTHER LEGISLATIVE INSTRUMENTS", and the acts listed therein also include "Iranian Transactions and Sanctions Regulations". This suggests that the regime of the Blocking Statute covers legislative instruments of almost any nature. The practice is only concerned about whether or not the legislative instrument is included in the Annex to the Blocking Statute. Likewise, the Blocking Statute prevents the recognition or enforcement of judgments/decisions that directly or indirectly apply actions based on or resulting from the legislative instruments specified in the Annex to the Blocking Statute. The term "*actions*" can probably be interpreted as any statutory instrument (subordinate to statutes), such as delegated regulations.

III.I. Concept of "Judgment" or "Decision" in the Context of the Blocking Statute

5.13. A proper understanding of the refusal to recognise and enforce a judgment/decision under the Blocking Statute requires that we define the concept of "judgment" or "decision" and specify its meaning thereunder. The Blocking Statute itself contains no legal definition of the term. Article 4 of the Blocking Statute simply stipulates that no judgment of a court or tribunal or decision of an administrative authority located outside the EU

[5] More detailed rules concerning the competence entrusted to the Commission as described above are incorporated in Article 11a of the Blocking Statute.

[6] See Recitals to the Blocking Statute (cit.): "*… Whereas a third country has enacted certain* ***laws, regulations, and other legislative instruments*** *which purport to regulate activities of natural and legal persons under the jurisdiction of the Member State; Whereas by their extra-territorial application such* ***laws, regulations and other legislative instruments*** *violate international law and impede the attainment of the aforementioned objectives; Whereas such* ***laws, including regulations and other legislative instruments,*** *and actions based thereon or resulting therefrom affect or are likely to affect the established legal order and have adverse effects on the interests of the Community and the interests of natural and legal persons exercising rights under the Treaty establishing the European Community;* (…)." [Emphasis added by the author].

should be recognised or enforced. Hence, the question arises as to the proper scope of the concept of *judgment/decision* under the Blocking Statute.

5.14. Generally, the concept of *judgment/decision* certainly applies to court judgments and resolutions, as well as special instruments such as orders for payment,[7] orders for payment concerning bills of exchange, promissory notes and cheques, etc. But the concept of *judgment/decision* in the context of the Blocking Statute is broader. The interpretation of the said concept can be based directly on the Guidance Note[8] issued by the Commission, which perceives the contents of Article 4 of the Blocking Statute as follows (cit.): "*This means that no decision, whether administrative, judicial, arbitral or of any other nature, taken by a third country authority and based on the provisions listed in the Annex to the Blocking Statute or on acts which develop or implement those provisions, will be recognised in the EU.* (…) [Emphasis added by the author]" An extensive interpretation of this provision is also supported by the case-law. For instance, in *Bank Melli Iran* v. *Telekom Deutschland GmbH*, the CJEU held as follows (cit.): "*… in Article 4 and Article 7(d) of the regulation, the word 'decision' [or 'judgment'] is used to refer to judicial and administrative acts, understood as 'orders,' which corroborates the finding that the words 'requirement' and 'prohibition' used in the first paragraph of Article 5 of the same regulation have a wider scope.*"[9] Hence, the generally used term is "instructions", which includes any judgments or decisions of an administrative, arbitral or any other nature.[10]

5.15. Consequently, Article 4 of the Blocking Statute should be able to prevent, at least according to the interpretation supported by the Commission, the recognition of (*inter alia*) arbitral awards[11] and decisions of *any other nature*. Such an extensive interpretation naturally raises many questions, and it is therefore desirable to provide a more detailed analysis of the relationship between

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7 Here in all possible forms of this type of decision, i.e. *initial national order* for payment, electronic order for payment and European order for payment.

8 The Commission. Guidance Note – Questions and Answers: Adoption of update of the Blocking Statute, 07. 08. 2018, OJEU 2018/C 277 I/03.

9 Judgment of the CJEU of 21 December 2021, Case C-124/20, *Bank Melli Iran* v. *Telekom Deutschland GmbH*, ECLI:EU:C:2021:1035, paragraph 47.

10 See Opinion of Advocate General Gerard Hogan delivered on 12 May 2021 in C-124/20, *Bank Melli Iran* v. *Telekom Deutschland GmbH*, ECLI:EU:C:2021:386, paragraph 57 (cit.): "*... Moreover, since Article 4 of the EU blocking statute excludes the possibility that instructions given by an administrative or a judicial authority located outside the Union might produce effects within it, the first paragraph of Article 5 of the EU blocking statute would be devoid of any autonomous scope if that provision required that the persons referred to in Article 11 of that statute have received such instructions before that provision needs to be applied.*"

11 The author assumes that "decision of arbitral nature" must be interpreted as meaning an arbitral award or a procedural order issued in arbitration.

the Blocking Statute, on the one hand, and, *inter alia*, arbitral awards and decisions of *any other nature*, on the other.

IV. Refusal to Recognise and Enforce Arbitral Awards

5.16. Article 1 of the Blocking Statute stipulates that the Regulation provides protection to natural and legal persons (cit.): "*… engaging in international trade and/or the movement of capital and related commercial activities between the Community and third countries*." In view of its applicability in the field of international trade, it is reasonable to assume that the overwhelming majority of such trades will be objectively arbitrable according to most legal orders (jurisdictions). Hence, it is appropriate to separately address the relationship between the Blocking Statute and arbitration, primarily as concerns the issues of the recognition and enforcement of arbitral awards – especially the proper understanding of the official interpretation provided by the Commission, which argues that a judgment/decision under Article 4 of the Blocking Statute also includes a "decision of arbitral nature", i.e. an arbitral award.

5.17. First of all, such an approach can be perceived as logical when viewed from the isolated practical perspective of the EU and the purpose of the Blocking Statute. The Blocking Statute has been adopted in order to provide protection against the adverse effects of laws adopted by third countries, where the application of such legislative instruments, according to the opinion of the EU, violates international law and impedes the attainment of EU objectives.[12] Under these exceptional circumstances, the EU argues that it is (cit.): "*… necessary to take action at Community level to protect the established legal order, the interests of the Community and the interests of the said natural and legal persons, in particular by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned*[.]" These primary objectives are incorporated in Article 1, according to which the Blocking Statute (cit.): "*… provides protection against and counteracts the effects of the extra-territorial application of the laws specified in the Annex of this Regulation, including regulations and other legislative instruments, and of actions based thereon or resulting therefrom, where such application affects the interests of persons, referred to in Article 11, engaging in international trade and/or the*

[12] See Recitals to the Blocking Statute.

movement of capital and related commercial activities between the Community and third countries."

5.18. These objectives would undoubtedly be difficult to accomplish if the EU legislation publicly announced that judgments of courts or tribunals or decisions of administrative authorities will not be recognised and enforced in its territory, but the same standard will not be applied to arbitral awards. The EU would thereby clearly instruct the parties, albeit indirectly, to "circumvent" the Blocking Statute by using, or even abusing arbitration. The interpretation advocated by the Commission, which includes arbitral awards in the scope of Article 4 of the Blocking Statute, is understandable from the EU perspective. But it is legitimate to ask whether, and to what extent, this approach is consistent with the rules regulating the enforcement of arbitral awards, primarily from the perspective of the New York Convention.

5.19. The New York Convention can be globally perceived as the most important legal act relating to the recognition and enforcement of arbitral awards. Grounds for refusal of the recognition and enforcement of foreign arbitral awards are listed in Article V of the New York Convention. This Article by no means suggests that it is an indicative list, allowing for further expansion of the grounds for refusal of recognition and enforcement. Conversely, the wording clearly indicates that the list of grounds in Article V(1) (at the request of a party) and in Article V(2) (of the authority's own motion) of the New York Convention must be interpreted as an exhaustive list.[13] This is also corroborated by the overall concept and objectives of the New York Convention as such. The respective signatories stipulated conditions applicable in their mutual relations, subject to which they will facilitate the recognition and enforcement of foreign arbitral awards. Hence, they clearly did not intend to allow any party to arbitrarily and unilaterally change the agreed grounds for refusal of recognition and enforcement.

[13] See Article V(1) of the New York Convention, which allows a refusal of recognition or enforcement ***only if*** *that party furnishes to the competent authority where the recognition and enforcement is sought, proof that* (…), to which Article V(2) of the New York Convention adds that … ***may also be*** *refused if the competent authority in the country where recognition and enforcement is sought finds that* (…) [Emphasis added by the author]. The nature of this provision as an exhaustive list is also confirmed by academic literature and case-law. See, e.g., Supreme Court of India, Civil Appeal no. 3185/2020 of 16 September 2020, *Government of India* v. *Vedanta Limited, Ravva Oil (Singapore) PTE LTD, Videocon Industries Limited*, p. 64, with reference to ALBERT VAN DEN BERG, THE NEW YORK ARBITRATION CONVENTION, 1958: TOWARDS A UNIFORM JUDICIAL INTERPRETATION, Kluwer Law International (1981), Fifi Junita, '*Pro Enforcement Bias' Under Article V of The New York Convention in International Commercial Arbitration: Comparative Overview*, 5(2) INDONESIA LAW REVIEW 140-164 (2015), at 142. See also the official website of the New York Convention and the interpretation included therein concerning Article V – UN, New York Convention 1958 Guide, Article V, available online at: https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=730&opac_view=-1.

5.20. If the list of grounds stipulated in Article V of the New York Convention is an exhaustive list, no expansion is allowed *per se*.[14] The status of an international treaty and its precedence in application over national law also exclude the possibility that any national law would expand the grounds for refusal of recognition and enforcement. Such law would inevitably conflict with the New York Convention. However, the issue of mutual precedence is more complicated with respect to the Blocking Statute elaborated on in this paper. Indeed, if one could argue that the Blocking Statute can somehow coexist with Article V of the New York Convention, one could envisage a situation in which the Blocking Statute adds further grounds for refusal of enforcement for the territory of the EU.

5.21. Contrary to other EU laws,[15] the Blocking Statute contains no provision defining its relation to any applicable international treaties. The wording itself of the two instruments therefore does not allow for any conclusions regarding their mutual application. However, the premise relating to Article V of the New York Convention should be the same as it is with respect to national law. The New York Convention would become meaningless if the EU could unilaterally change the commitment undertaken by way of the treaty, vis-à-vis third countries, by expanding the individual grounds for recognition and enforcement.

5.22. After all, EU primary law itself stipulates that it shall not affect any international treaty concluded by a Member State with a third country before its accession to the EU. In particular, the first sentence of Article 351 TFEU stipulates that (cit.): "*The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.*"[16] This principle would mean that the EU could possibly contemplate an expansion of

[14] Naturally, we are leaving aside the possibility of a new agreement of the parties to change an international treaty. This is an alternative that is, especially in relation to Article V of the New York Convention, almost inconceivable.

[15] See, e.g., Article 25 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations, as amended (Rome I), Article 28 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), or Article 71 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended (Brussels I bis Regulation).

[16] Cf. ZDENĚK KUČERA, MONIKA PAUKNEROVÁ, MAGDALENA PFEIFFER, PETR VYBÍRAL, MEZINÁRODNÍ PRÁVO SOUKROMÉ [Title in translation: PRIVATE INTERNATIONAL LAW], 9th edition (2022), at 28, or Ramses A. Wessel, *Reconsidering the Relationship between International and EU Law: Towards a Content-Based Approach?*, in ENZO CANIZZARO, PAOLO PALCHETTI, RAMSES A. Wessel (eds.), INTERNATIONAL LAW AS LAW OF THE EUROPEAN UNION, Boston/Leiden: Martinus Nijhoff Publishers (2011).

the grounds for refusal of the recognition and enforcement of arbitral awards only for its own territory, i.e. among its Member States. But this is irrelevant with respect to the issues analysed here, because the Blocking Statute necessarily applies only to acts adopted in the territory of a third country.[17]

5.23. Nevertheless, one could consider the hypothetical possibility of interconnecting the New York Convention and the Blocking Statute by attempting a more detailed analysis of the admissibility of refusing recognition and enforcement pursuant to Article V of the New York Convention. We shall leave aside the grounds for refusal of recognition and enforcement specified in Article V(1) of the New York Convention, because none of these grounds is relevant for the issues elaborated herein. We shall focus on the more interesting provision of Article V(2) of the New York Convention, which provides the grounds for which the competent authority of the State in which recognition and enforcement is sought must refuse recognition or enforcement of its own motion. One of these grounds is the breach of public policy (*ordre public*) pursuant to Article V(2)(b) of the New York Convention. Hence, it is legitimate to ask whether, in theory, the anti-sanctions legislation could constitute public policy (*ordre public*) of the given State. Conflict with the Blocking Statute would, as a result of the above, be classified as the breach of public policy (*ordre public*). However, this necessarily raises the question of the proper understanding of public policy (ordre public) in the context of Article V of the New York Convention.

5.24. Public policy (*ordre public*) is a vague legal concept that defies any clear and unambiguous definition. Hence, it is only the case-law that usually sheds some light on this concept. However, each legal instrument must be interpreted autonomously. Consequently, it is necessary to limit the requisite considerations to the perception of public policy (*ordre public*) in the context of Article V(2)(b) of the New York Convention.

5.25. First of all, the wording of the provision seems to suggest that it is targeted at the public policy (*ordre public*) of a particular State, i.e. national (domestic) public policy (*ordre public*). This, however, must be subjected to a certain restriction from the perspective of the objectives of the New York Convention. The Guide on the NY Convention provides a generalised observation that public policy is breached in terms of Article V(2)(b) (cit.): "*… when the core values of a legal system have been deviated*

[17] See Article 4 of the Blocking Statute (cit.): *"No judgment of a court or tribunal and no decision of an administrative authority* ***located outside the Community*** *giving effect, directly or indirectly, to the laws specified in the Annex or to actions based thereon or resulting there from, shall be recognized or be enforceable in any manner."* [Emphasis added by the author].

from."[18] Hence, public policy (*ordre public*) in terms of Article V(2)(b) of the New York Convention must be perceived as the public policy (*ordre public*) of that State ("*contrary to the public policy of that country*"), but, at the same time, the concept must be interpreted in a more restrictive manner in order to make sure that a purely national interpretation does not frustrate the objectives of the New York Convention as such. Hence, Article V(2)(b) of the New York Convention refers to international public policy (*ordre public*).

5.26. Returning to the issues analysed herein, one must ask whether the correct interpretation of the concept of public policy (*ordre public*) in the context of the New York Convention could result in classifying anti-sanctions policy as public policy (*ordre public*). The individual approaches to this issue will probably differ.

5.27. If the question were viewed from the perspective of the New York Convention itself, it would be necessary to have regard to the main objectives of the New York Convention. The New York Convention itself aims to ensure the recognition and enforcement of foreign arbitral awards in the respective territories, unhindered by any additional obstacles. Specifically, Article III of the New York Convention directly stipulates (cit.): "*Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.*" At the same time, any international treaty must be resistant to any potential unilateral modifications by the State signatories, while any other alternative would deprive the international treaty of its effects. This principle would probably be, to some extent, encroached upon by an extensive interpretation of Article V(2)(b) of the New York Convention, which could essentially result in a situation in which political reasons and anti-sanctions regimes could serve as grounds for refusal of the recognition and enforcement of arbitral awards pursuant to Article 4 of the Blocking Statute. Hence, the perspective of the New York Convention and of the general practice of the enforcement of arbitral awards should result in a rejection of such approach.

[18] UNCITRAL Secretariat, *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, 1958, 2016 Edition, United Nations Publication (2016), at 240.

5.28. On the other hand, one may ask whether the courts of the Member States would actually approach this issue identically to the above-described consideration of the purpose of the New York Convention itself. In this connection, one must especially highlight the impact of the CJEU's settled case-law, which has significantly influenced and modified the interpretation of the concept of "public policy" (*ordre public*) in the territory of the EU. The interpretation given by the CJEU is, in turn, logically reflected in the case-law of the Member States. The theoretical expansion of Article V(2)(b) of the New York Convention could especially be seen in the CJEU's opinion regarding the existence of a "European public policy". Naturally, it is necessary to keep in mind that the interpretation of public policy (*ordre public*) in EU law must be completely autonomous and uninfluenced by the definitions in the national legal orders.[19] But the Blocking Statute is an EU legislative instrument and, consequently, one must attempt an interpretation in the context of EU law.

5.29. According to the settled case-law of the CJEU, the existence of a European public policy is based on the common and fundamental values of the EU.[20] If this is the case, one could also assume that these fundamental values would be perceived by the CJEU as including the protection of natural and legal persons afforded by the Blocking Statute. This approach would, in turn, theoretically result in the conclusion that the values incorporated in the Blocking Statute represent a component of the public policy (*ordre public*) common to all Member States. Even if it were contrary to the purpose and objective of the New York Convention, a requirement could be posed to prioritise the proper functioning of the Blocking Statute and, consequently, to subsume the Blocking Statute under public policy in terms of Article V(2)(b) of the New York Convention. Indeed, if the values expressed in the New York Convention were common

[19] Cf., e.g., Judgment of the Court of Justice of 18 January 1984, Case C-327/82, *Ekro BV Vee en Vleeshandel* v. *Produktschap voor Vee en Vlees*, ECLI:EU:C:1984:11, paragraph 11, Judgment of the CJEU of 10 August 2017, Case C-270/17 PPU, *Tupikas*, ECLI:EU:C:2017:628, paragraph 65. From academic sources cf., e.g., Alexander J. Bělohlávek, *Institut provozovny při aplikaci evropského insolvenčního nařízení jako autonomní právní konstrukce* [title in translation: *The Concept of Establishment in the Application of the EU Insolvency Regulation as an Autonomous Legal Construct*], 2019(11) SOUKROMÉ PRÁVO 5-16 (2019), at 6, or Tamas Molnár, *The concept of autonomy of EU law from the comparative perspective of international Law and the legal systems of Member States*, HUNGARIAN YEARBOOK OF INTERNATIONAL LAW AND EUROPEAN LAW 2015, The Hague, Eleven International Publishing, 433-459 (2016), at 2.

[20] Concerning public policy (*order public*) in the case-law of the CJEU see, e.g., Judgment of the Court of Justice of 4 December 1974, Case 41/74, *Yvonne van Duyn* v. *Home Office*, ECLI:EU:C:1974:133, paragraph 18, Judgment of the Court of Justice of 27 October 1977, Case 30/77, *Régina* v. *Pierre Bouchereau*, ECLI:EU:C:1977:172, Judgment of the Court of Justice of 28 March 2000, Case C-7/98, *Dieter Krombach* v. *André Bamberski*, ECLI:EU:C:2000:164, paragraph 37, Judgment of the Court of Justice of 14 May 2000, Case C-54/99, *Association Eglise de scientologie de Paris and Scientology International Reserves Trust* v. *The Prime Minister*, ECLI:EU:C:2000:124, paragraph 17. Cf. Catherine Kessedjian, *Public Order in European Union*, 1(1) ERASMUS LAW REVIEW 25-36 (2007).

to all Member States, it would be a component of the national public policy (*ordre public*) of each Member State, i.e. "*the public policy of that country*".

5.30. As concerns its previous case-law, this approach was notably adopted by the CJEU in the well-known case of *Eco Swiss*.[21] In the said case, the CJEU invoked the protection of common EU values and argued that Member States must refuse the recognition and enforcement of arbitral awards that are contrary to EU competition law.[22] The CJEU explicitly ruled that the breach of public policy (*order public*) justifies such refusal, and that a violation of a fundamental EU value constitutes grounds for refusal pursuant to Article V(2)(b) of the New York Convention.[23] It remains to be seen whether the CJEU will adopt the same approach with respect to other areas in the future, for instance, with respect to the area of anti-sanctions legislation. Such a judicial interpretation would indeed ultimately and essentially constitute an implicit "expansion" of the grounds for refusal of the recognition and enforcement of arbitral awards. It would merely be formally preserved as a ground consisting in the breach of public policy (*ordre public*).[24]

[21] Judgment of the CJEU of 1 June 1999, Case C-126/97, *Eco Swiss China Time Ltd* v. *Benetton International NV*, ECLI:EU:C:1999:269.

[22] Judgment of the CJEU of 1 June 1999, Case C-126/97, *Eco Swiss China Time Ltd* v. *Benetton International NV*, ECLI:EU:C:1999:269, paragraph 35 et seq. (cit.): "*Next, it is in the interest of efficient arbitration proceedings that review of arbitration awards should be limited in scope and that annulment of or refusal to recognise an award should be possible only in exceptional circumstances. However, according to Article 3(g) of the EC Treaty (now, after amendment, Article 3(1)(g) EC), Article 81 EC (ex Article 85) constitutes a fundamental provision which is essential for the accomplishment of the tasks entrusted to the Community and, in particular, for the functioning of the internal market. The importance of such a provision led the framers of the Treaty to provide expressly, in Article 81(2) EC (ex Article 85(2)), that any agreements or decisions prohibited pursuant to that article are to be automatically void. It follows that where its domestic rules of procedure require a national court to grant an application for annulment of an arbitration award where such an application is founded on failure to observe national rules of public policy, it must also grant such an application where it is founded on failure to comply with the prohibition laid down in Article 81(1) EC (ex Article 85(1))*."

[23] Judgment of the CJEU of 1 June 1999, Case C-126/97, *Eco Swiss China Time Ltd* v. *Benetton International NV*, ECLI:EU:C:1999:269, paragraph 39 (cit.): "*For the reasons stated in paragraph 36 above, the provisions of Article 81 EC (ex Article 85) may be regarded as a matter of public policy within the meaning of the New York Convention.*"

[24] Cf. Federal Court of Australia of 23 March 2012, Case NSD 1490 of 2011, *Traxys Europe SA* v. *Balaji Coke Industry PVT Ltd and Booyan Coal PTY Limited*, paragraph 105 (cit.): "*Thus, in my view, the scope of the public policy ground of refusal is that the public policy to be applied is that of the jurisdiction in which enforcement is sought, but it is only those aspects of public policy that go to the fundamental, core questions of morality and justice in that jurisdiction which enliven this particular statutory exception to enforcement. The public policy ground does not reserve to the enforcement court a broad discretion and should not be seen as a catch-all defence of last resort. It should not be used to give effect to parochial and idiosyncratic tendencies of the courts of the enforcement state. This view is consistent with the language of s 8(7), the terms of s 8(7A), the text of Art V(2) of the Convention, the fundamental objects of the Convention and the objects of the IAA. This approach also ensures that due respect is given to Convention-based awards as an aspect of international comity in our interconnected and globalised world which, after all, are the product of freely negotiated arbitration agreements entered into between relatively sophisticated parties.*", or Resolution of the Czech Supreme Court of 13 December 2016, Case No. 20 Cdo 676/2016, here in relation to national public policy (*order public*) (Approximate translation to English, cit.): "T*he enforcement of an arbitral award would be contrary to public policy (order public) if giving effects to the enforceability of the arbitral award*

5.31. For the sake of completeness, it is necessary to highlight the first sentence of Article I(3) of the New York Convention. This provision stipulates that when signing, ratifying or acceding to the New York Convention, or notifying an extension under Article X hereof, any State may declare that it will apply the Convention only on the basis of reciprocity. Such a declaration will have the effect that the respective State will only recognise and enforce pursuant to the New York Convention those awards issued in the territory of another Contracting State (signatory). But all EU Member States are signatories to the New York Convention. Hence, the issue of applicability of the Blocking Statute and the refusal to recognise and enforce an arbitral award is relevant in relation to enforcement anywhere in the territory of the EU.

5.32. At the same time, it is necessary to emphasise that the problem associated with the application of the Blocking Statute to the enforcement of arbitral awards will not arise between EU Member States. The reason is that the Blocking Statute only prohibits the recognition and enforcement of judgments of a court or tribunal or decision of an administrative authority located outside the EU.[25] Hence, the Blocking Statute cannot be applied to the recognition and enforcement of an arbitral award made in the territory of any of the Member States.

V. Decision of any Other Nature – Court Settlement

5.33. It is also legitimate to ask what a "decision of any other nature" means, and what else is blocked by the Blocking Statute in relation to recognition and enforcement. In this connection, it is interesting to analyse the relationship between the Blocking Statute and the recognition and enforcement of a court settlement.

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conflicted with the fundamental principles of the constitutional and legal order, the social order and public policy (order public) *per se, and if the situation involved breach of an interest which must be unambiguously and in every respect insisted on.*" Similarly, see also Resolution of the Czech Constitutional Court of 10 May 2010, Case No. IV. ÚS 189/10 (Approximate translation to English, cit.): "*Subject to the requirements specified in Article V of the New York Convention, the contracting party against whom the arbitral award is invoked may refuse the recognition and enforcement of the award; one of the potential grounds justifying such refusal is breach of public policy* (order public) *of the country where recognition is sought. (…) However, it is necessary to point out, in this connection, that the concept of public policy (*order public*) should be interpreted relatively restrictively; simple differences in the procedural laws of the foreign arbitral tribunal and the state where recognition is sought do not constitute breach of public policy (*order public*); if the court or tribunal of the state of origin proceeded in compliance with its procedural laws, breach of public policy* (order public) *will only be conceivable in most exceptional cases (cf. Vaške, V. Uznání a výkon cizích rozhodnutí v České republice* [Title in translation: Recognition and Enforcement of Foreign Decisions in the Czech Republic]. *C. H. Beck, Prague 2007, at 44*).

[25] See Article 4 of the Blocking Statute.

5.34. The laws regulating settlements and the understanding thereof in the individual States vary. Generally, however, there are two main approaches to the perception of court settlement in judicial proceedings, i.e. (i) *conclusion* of a court settlement whereby the proceedings are closed,[26] or (ii) *approval* of a court settlement by some form of a decision of a judicial authority. This dual approach to court settlements in EU law can be suitably demonstrated by way of the Brussels I bis Regulation, which represents the basic legislative instrument for the recognition and enforcement of decisions in civil and commercial matters in the EU. The Brussels I bis Regulation provides the following definition of a court settlement in Article 2(b) (cit.): "'*court settlement' means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;*" The said provision notably employs varying approaches to the concept of court settlement and, consequently, envisages the alternative of a simple conclusion before a court, as well as the alternative of *approval* by a court. The latter case, i.e. the court approves the court settlement, involves a court decision. But a court settlement approved as described above is still being enforced as a court settlement under the Brussels I bis Regulation, not as a decision whereby the settlement was approved.

5.35. The Commission's opinion is that Article 4 of the Blocking Statute should not allow the recognition and enforcement of any judgment/decision at all. But in the context of the above-described concept of Article 4 of the Blocking Statute, this should lead to the conclusion that, in certain cases, even a settlement concluded by the parties (and approved by a judicial authority) will not be recognised or enforced, as applicable, in the territory of the EU. This necessarily begs the question of the degree to which the prohibition of the recognition and enforcement of a court settlement collides with the autonomy of will of the parties.

V.I. Refusal to Enforce a Court Settlement in Light of the Parties' Autonomy of Will

5.36. The conclusion of a settlement means that the parties have found an amicable solution and entered into a mutual agreement

[26] The author refers to the conclusion of a court settlement before the judicial authority that merely *acknowledges* the conclusion of the settlement without making any formal decision. The author intentionally disregards the possibility of an out-of-court agreement entered into by the parties and the subsequent termination of the court proceedings based on the withdrawal of the claim. The reason is that this situation inherently involves no court settlement and no decision exists or any other order that could subsequently be recognised or enforced.

settling their dispute. Hence, the parties themselves make an agreement, and no authoritative judgment/decision is adopted. At the level of substantive law, a settlement typically represents a settlement that contains newly agreed rights and obligations of the parties. The dispute is resolved and *dissolved*.

5.37. Any subsequent approval of the parties' settlement by the court cannot be interpreted as an authoritative resolution of the dispute between the parties by the court. Quite the contrary, the parties themselves have resolved the dispute and the court merely approves their agreement. For instance, Czech law does not envisage that the approval of the settlement will involve any decisions of the court in which the court would determine the rights and obligations of the parties and rule on their claims. The court is only called upon to ensure and check that the settlement agreed by the parties is not contrary to the law. If no conflict is found, the court must approve the settlement even if the resolution of the dispute by the parties were inconsistent with the court's decision that would have been adopted by the court itself in the case of an authoritative order.

5.38. Such approach to the approval of a settlement is justified by the court's respect for the parties' autonomy. If the parties themselves choose a new arrangement of their mutual rights and obligations, any authoritative interventions by an uninvolved third party (court) should be minimal. But this approach is significantly different from the Blocking Statute. Indeed, one may envisage the following hypothetical situation. A legal person established in the EU[27] ("Person A") is a party to court proceedings in a non-EU country, because it is sued by a foreign partner ("Person B"). A law specified in the Annex to the Blocking Statute is applied in these proceedings. The dispute inheres in two or more claims of a commercial nature. It is, consequently, rather complicated. However, the parties enter into a court settlement on the basis of which Person A is obliged to pay a particular total amount, and the parties will not make any contractual or other claims in the future against one another that were the subject matter of the proceedings. The settlement is approved by the competent court and both parties are relatively satisfied, because they managed to reach an agreement.

5.39. Let us continue with the hypothetical example and assume that Person A fails to perform in compliance with the agreement. Hence, Person B wishes to enforce the court settlement and seize the assets of Person A. All assets of Person A are located in

[27] Hence, *legal person incorporated within the Community* to which the Blocking Statute applies pursuant to Article 11(2).

the territory of the EU. Person B therefore files for recognition and enforcement in the competent court in an EU country.

5.40. Conditions for the application of the Blocking Statute are fulfilled in the above situation. The court would be forced to refuse enforcement of the settlement, if the corresponding motion were filed, due to Article 4 of the Blocking Statute and its interpretation in terms of the above-mentioned Guidance Note.[28] This would give rise to an absurd situation – it would be impossible to enforce the terms of the agreement that the creditor and the debtor voluntarily entered into in settlement of their dispute.

5.41. Such a conclusion is hardly appropriate. A settlement is necessarily based solely on the autonomy of will of the parties. Hence, application of Article 4 of the Blocking Statute to this situation should be carefully considered. On the other hand, it is necessary to honour the binding force of EU law – if the Commission's interpretation were accepted, recognition and enforcement would automatically have to be refused subject to the terms of Article 4 of the Blocking Statute even with respect to a settlement. It is not possible to identify with any certainty the *correct* approach to this situation. But the example suitably demonstrates the problems associated with the Blocking Statute.

5.42. It is necessary to point out that Article 4 of the Blocking Statute refers to a judgment/decision, not a (court) settlement *per se* and its recognition or enforcement. But one could hardly argue that the Commission's interpretation, which strives to encompass all types of judgments/decisions, would specifically leave out court settlements. Firstly, it would be absurd to distinguish, for the purposes of recognition and enforcement, whether the applicable law requires that the court settlement be approved by the court in the form of a judgment/decision or not. Both cases should be treated equally for the purposes of recognition and enforcement. However, in order to comply with the principle of the autonomy of will of the parties and prevent any logical inconsistencies in the above-described practical example, it would be necessary to accept an interpretation according to which the Blocking Statute does not apply to court settlements at all.

5.43. This would, on the other hand, be unacceptable from the perspective of the objectives of the Blocking Statute. As mentioned above with respect to the issue of arbitral awards, the objectives of the anti-sanctions policy would not be

[28] The Commission, *Guidance Note – Questions and Answers: Adoption of update of the Blocking Statute*, 07 August 2018, OJEU 2018/C 277 I/03.

successfully accomplished if the EU publicly declared that the anti-sanctions law on the refusal of recognition and enforcement can be *circumvented* by using the instrument of court settlement. Hence, instead of an abuse of arbitration, the parties would be offered the dangerous possibility of *pretending* a dispute and subsequently concluding a settlement and thereby *circumventing* the EU regulation.

5.44. However, despite these risks, the interpretation should accept the conclusion that Article 4 of the Blocking Statute should not apply to court settlements, whether concluded or approved. Indeed, application of the refusal of recognition and enforcement would deny the very essence of a court settlement, which is based on the consensus of the parties.

VI. Conclusion

5.45. The Blocking Statute represents a little-known ground for refusal of the recognition and enforcement of judgments/decisions in the territory of the EU. The Commission's Guidance Note[29] states that the values protected by the Blocking Statute are so important that if the Blocking Statute is activated, Article 4 thereof requires that the refusal of recognition or enforcement apply to essentially any judgment/decision. The Guidance Note concerning the interpretation of the Blocking Statute makes no exceptions to this principle. Quite the contrary, it emphasises that the nature of the judgment/decision (judicial, administrative, arbitral or any other) is entirely irrelevant. The Commission argues that no judgment/decision shall be recognised or enforced in the territory of the EU if the conditions for the application of the Blocking Statute are fulfilled.

5.46. Nevertheless, the above analysis highlights at least two exceptions to which the regime introduced by Article 4 of the Blocking Statute should not apply. The first exception is an arbitral award. Adding "new" grounds for refusal of recognition and enforcement pursuant to Article 4 of the Blocking Statute is contrary to Article V of the New York Convention and, as such, should not be allowed. However, the existing case-law of the CJEU suggests that the Court might provide an interpretation in the future according to which the Blocking Statute will be classified as part of the fundamental values of the EU and, consequently, part of public policy (*order public*). Such argumentation could connect Article V of the New York Convention and Article 4 of the Blocking Statute. The public policy (*order public*) exception

[29] The Commission, *Guidance Note – Questions and Answers: Adoption of update of the Blocking Statute*, 07 August 2018, OJEU 2018/C 277 I/03.

would thereby be materially expanded to cover the area of anti-sanctions policy.

5.47. The second exception will probably cover court settlements. A court settlement must inherently be based on the autonomy of will of the parties. Indeed, the conclusion of a court settlement requires the consent of the parties to the proceedings. But the autonomy of will of the parties would be completely denied if the subsequent recognition or enforcement were to be subject to the application of the grounds for refusal pursuant to Article 4 of the Blocking Statute. Hence, court settlements should probably be exempt from the regime of Article 4 of the Blocking Statute. But only time and subsequent case-law concerning the Blocking Statute will tell how Article 4 of the Blocking Statute should be interpreted, and whether the courts will embrace or, conversely, abandon the Commission's Guidance Note.

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Summaries

DEU [***Anerkennung und Vollstreckung von Entscheidungen in dem Kontext der EU-Blocking-Verordnung***]

Bereits seit mehreren Jahren finden wir in dem EU-Recht die sog. Blocking-Verordnung, die als „Anti-Sanktions-Instrument" der EU zu wirken hat. Im Wesentlichen schützt diese Verordnung die in der EU ansässigen natürlichen und juristischen Personen vor der außerterritorialen Anwendung bestimmter Gesetzesvorschriften, die in der Anlage zu der entsprechenden Verordnung im Einzelnen aufgelistet sind.

Einer der in der Blocking-Verordnung zur Verfügung stehenden Schutzmechanismen besteht in der Einführung eines besonderen Grundes für die Verweigerung der Anerkennung und Vollstreckung von Entscheidungen in Art. 4 der Blocking-Verordnung. Gemäß der genannten Bestimmung ist in der EU Anerkennung sowie Vollstreckung unzulässig, die direkt oder indirekt auf den in der Anlage zur Blocking-Verordnung genannten Gesetzesvorschriften beruht. Diese Bestimmung wird seitens der Europäischen Kommission in dem Sinne ausgelegt, dass sie im Prinzip für sämtliche Arten von Entscheidungen anzuwenden ist, seien es gerichtliche oder behördliche Entscheidungen, Schiedssprüche oder Entscheidungen anderer Art.

Allerdings erscheint diese Auslegung insbesondere in Bezug auf die Vollstreckung von Schiedssprüchen problematisch. Von

daher setzt sich der vorliegende Artikel zum Ziel, die Blocking-Verordnung im Kontext der Anerkennung und Vollstreckung von Entscheidungen näher zu analysieren und auf problematische Aspekte insbesondere in Bezug auf Schiedssprüche und gerichtlich genehmigte Vergleiche hinzuweisen.

CZE **[*Uznání a výkon rozhodnutí v kontextu blokovacího nařízení EU*]**

Již řadu let je součástí právního řádu EU tzv. blokovací nařízení, které slouží jako "antisankční" nástroj EU. Svou podstatou toto nařízení chrání fyzické a právnické osoby EU před extrateritoriální aplikací vybraných právních předpisů, které jsou vyčteny v příloze blokovacího nařízení.

Jedním z mechanismů ochrany, které blokovací nařízení poskytuje, je zavedení speciálního důvodu pro odepření uznání a výkonu rozhodnutí podle čl. 4 blokovacího nařízení. Podle tohoto ustanovení nelze na území EU uznat ani vykonat rozhodnutí, které přímo nebo nepřímo uplatňuje právní předpisy uvedené v příloze blokovacího nařízení. Evropská komise přitom interpretuje toto ustanovení tak, že se má vztahovat na v podstatě všechny druhy rozhodnutí, a to ať již soudní, administrativní, rozhodčí nebo jiné povahy.

Zejména ve vztahu k výkonu rozhodčímu nálezu však takový výklad působí problematicky. Tento článek má proto za cíl blíže analyzovat blokovací nařízení v kontextu uznání a výkonu rozhodnutí a poukázat na problematické aspekty ve vztahu zejména k rozhodčímu nálezu a soudnímu smíru.

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POL **[*Uznawanie i wykonywanie orzeczeń w świetle unijnego statusu blokującego*]**

Unijny porządek prawny od lat obejmuje tzw. status blokujący, będący unijnym instrumentem „anty-sankcyjnym". W myśl art. 4 rozporządzenia wprowadzającego status blokujący, sądy nie powinny uznawać i wykonywać orzeczeń w związku z eksterytorialnym stosowaniem zagranicznych mechanizmów sankcyjnych. Zastosowanie takiej przesłanki dla odmowy uznania może być jednak problematyczne, zwłaszcza ze względu na szeroką wykładnię wspomnianych przepisów, wprowadzonych przez Komisję Europejską. Niniejszy artykuł analizuje odmowę uznania i wykonania w świetle statusu blokującego, ze szczególnym uwzględnieniem orzeczeń arbitrażowych i ugód sądowych.

FRA [***La reconnaissance et l'exécution des décisions dans le contexte du règlement de blocage de l'UE***]

Le règlement de blocage, qui depuis un certain nombre d'années fait partie du système juridique de l'UE, fait office d'instrument « anti-sanctions » de l'Union. L'article 4 dudit règlement impose aux juridictions l'obligation de refuser la reconnaissance et l'exécution de décisions lorsqu'il est question d'application extraterritoriale de régimes de sanctions étrangers. Un tel motif de refus peut cependant s'avérer problématique, en particulier au vu de l'interprétation large de ladite disposition par la Commission européenne. Ainsi, le présent article se propose d'analyser le refus de la reconnaissance et de l'exécution dans le contexte du règlement de blocage, en portant une attention particulière aux sentences arbitrales et aux transactions judiciaires.

RUS [***Признание и приведение в исполнение решений в контексте регламента ЕС о блокировке***]

В течение многих лет так называемый регламент о блокировке является частью правопорядка ЕС и представляет собой «антисанкционный» инструмент ЕС. На основании ст. 4 регламента о блокировке суды обязаны отказать в признании и приведении в исполнение решений в связи с экстерриториальным применением иностранных санкционных режимов. Однако такое основание для отказа может быть проблематичным, особенно с учетом широкого толкования соответствующего положения Европейской комиссией. Поэтому в данной статье анализируется отказ в признании и приведении в исполнение в контексте регламента о блокировке, особое внимание уделяется арбитражным решениям и судебным урегулированиям.

ESP [***Reconocimiento y ejecución de las resoluciones en el contexto del Reglamento de bloqueo de la UE***]

Desde hace varios años, el llamado Reglamento de bloqueo forma parte del ordenamiento jurídico de la UE, sirviendo de instrumento «antisanciones» de la UE. En virtud del artículo 4 del Reglamento de bloqueo, se ordena a los tribunales que denieguen el reconocimiento y la ejecución de resoluciones en relación con la aplicación extraterritorial de sanciones extranjeras. Sin embargo, este motivo puede resultar problemático, en particular, a la luz de la interpretación amplia de la normativa por parte de la Comisión Europea. Por tanto, este artículo analiza la denegación del reconocimiento y la ejecución en el contexto del Reglamento

de bloqueo, centrándose especialmente en los laudos arbitrales y las transacciones judiciales.

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