

# Belgian Court Dismisses Russia's Attempt to Block Yukos Awards Enforcement Proceedings



Despite the fact that I had initially told myself that I would not write about the *Yukos* (**Yukos**) case before 2017, my wish has evaporated after the Brussels Court of First Instance handed down its judgment on the matter earlier than expected (click [here](#), for an analysis of the background of the case).

In short, in its judgment of 9 December 2016, the Brussels Court of First Instance found that Russia's attempt to block the enforcement of *Yukos Universal Ltd (YUL)*'s award was inadmissible. Unfortunately (for the sake of the debate) the court therefore didn't examine the merits of the case.

As I had reported [earlier](#), the Belgian *exequatur* of the award rendered in YUL's favour had initially been granted by the Brussels Court of First Instance on 24 June 2015. However, this had been done through an *ex parte* procedure which did not allow Russia to take part in the proceedings and to make itself heard. Subsequently, Russia filed a third-party opposition against this order for *exequatur* with the effect

that the parties were brought back before the same court for a new hearing and new deliberations.

However, during this new hearing, YUL argued that Russia's third party opposition was inadmissible. In order to substantiate its argument, YUL relied on the fact that the arbitral tribunal had been seated in the Netherlands and therefore a 1925 bilateral convention between Belgium and the Netherlands on (among other things) the recognition and enforcement of arbitral awards (the **Belgium-Netherlands Convention**) applied to the enforcement of the award in Belgium. According to YUL, this Belgium-Netherlands Convention explicitly provided that an order granting *exequatur* of an arbitral award was only subject to appeal and not to third-party proceedings like the one initiated by Russia.

Against this position, the Russian Federation put forward four arguments. All of those arguments, however, were dismissed by the Brussels Court of First Instance. [Although those arguments have already been discussed before](#), I have briefly summarized them below and will give a short explanation of the Court of First Instance's response.

Firstly, Russia had argued that YUL had explicitly opted to have the arbitral award enforced under Belgian law as it had – in its initial unilateral motion seeking *exequatur* – opted for an application of Article III of the New York Convention. Thereby, Russia argued that YUL had waived the possibility (under Article VII of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**)) to invoke the application of the Belgium-Netherland Convention.

The Court of First Instance dismissed this argument and found that the New York Convention did not provide for any exclusive application of either Article III or Article VII of the New York Convention. The Court found on the contrary that both provisions had to be read in relationship with one another.

Furthermore, quite logically, the Court of First Instance found that the Belgium-Netherlands Convention preempted the application of Belgian law because of the supremacy of international law.

Secondly, Russia also argued that the Belgium-Netherlands Convention was not applicable to the case at hand because it only applied to cases of a civil and commercial nature while this case was first and foremost a tax and expropriation case.

The Court of First Instance dismissed the argument finding that the issue of admissibility in cases of recognition and enforcement of foreign arbitral awards was different from the issue regarding the merits of the case. While the discussion on the alleged tax and expropriation nature of the case could have been analysed if the merits of the case had been examined, this debate did not apply in the discussions on the admissibility of Russia's third-party opposition.

Thirdly, Russia had argued that the Belgium-Netherlands Convention was only applicable to adversarial proceedings and did not apply to *ex parte* proceedings as initiated by YUL in 2015. There was, therefore, nothing to prevent Russia from filing a third-party opposition instead of an appeal against the order of 24 June 2015.

The Court of First Instance refused to follow the argument and found that the Belgium-Netherlands Convention only made adversarial proceedings mandatory in cases regarding the recognition of foreign judgments and not in cases regarding the recognition of arbitral awards.

Fourthly and finally, Russia argued that the Belgium-Netherlands Convention had fallen into disuse. Relying on the Vienna Convention on the Law of Treaties as well as case-law from Belgian jurisdictions (which still applied the Belgium-Netherlands Convention), the Court of First Instance ruled that this argument could not be followed as nothing suggested

that Belgium had ever attempted to revoke the application of the Belgium-Netherlands Convention in Belgian law. Therefore the Belgium-Netherlands Convention was still fully in force and applicable.

All in all, this judgment is definitely a landmark episode in the enforcement of YUL's award in Belgium. While it remains to be seen which steps will now be taken by Russia, it will be interesting to see the implications that this judgment will have on the other proceedings (pending before another Chamber of the Brussels Court of First Instance) in which Russia is challenging the legality of the seizures conducted by YUL. Stay posted...

In the meantime, let me wish you a Merry Christmas and a Happy New Year.

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