

Yukos Awards Enforcement Proceedings – The Belgian Aspects (Part 2 – YUL’s Inadmissibility Objection Against Russia’s Third-Party Opposition)



As mentioned in my previous post (see [here](#)), legal proceedings are currently under way in Belgium where *Yukos Universal Ltd (YUL)* – one of the former shareholders of the Russian oil company *Yukos (Yukos)* – seeks the enforcement of one of the three arbitral awards which were rendered in July 2014. As explained in my previous post, those three awards cumulatively ordered Russia to pay USD 50 billion for breach of the Energy Charter Treaty when it sought to nationalise Yukos’s assets in the early 2000’s.

The Belgian *exequatur* of the award rendered in YUL’s favour was initially granted by the Brussels Court of First Instance on 24 June 2015. However, this had been done through a unilateral process which did not allow Russia to take part in the proceedings and to make itself heard. Subsequently, Russia

filed a third-party opposition against the order of the Court of First Instance which had granted the *exequatur* of the award. This third-party opposition had the effect of bringing the parties back before the Brussels Court of First Instance for a new hearing and new debates.

During this new hearing (which took place on 24 and 25 November 2016), YUL raised an inadmissibility objection against the third-party opposition filed by the Russian Federation. This inadmissibility objection is the topic of this post while the merits and the substance of the issue (*i.e.* whether the arbitral award rendered for the benefit of YUL should receive *exequatur* under Belgian law?) will be examined in the next post.

In its inadmissibility objection, YUL relied on the fact that – because the contested award was rendered by an arbitral tribunal sitting in the Hague (the Netherlands) – 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 this case.

According to YUL, the procedural aspects regarding the recognition and enforcement of the contested award are regulated by this Belgium-Netherlands Convention rather than by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the ***New York Convention***) which is silent on procedural questions.

Therefore, according to YUL, the recognition and enforcement of the award had to be recognised and enforced on the ground of the Belgium-Netherlands Convention. Article 18 of the Belgium-Netherlands Convention explicitly provides that a judgment granting *exequatur* of an arbitral award is not subject to third-party proceedings but only to appeals. YUL relied on this provision to raise the objection that Russia should have appealed the *exequatur* order rendered by the

Brussels Court of First Instance on 24 June 2015 instead of filing a third-party opposition.

In opposing this position, the Russian Federation advanced four main arguments.

Firstly, Russia 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 which states that “[e]ach 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”. On this basis, Russia argued that because YUL had initially opted to have the arbitral award enforced under Belgian law, it could not now seek the enforcement of the award under the Belgium-Netherlands Convention.

Secondly, Russia argued that the Belgium-Netherlands Convention was not applicable to the case at hand because this case is first and foremost a tax and expropriation case (given that Russia initially nationalised Yukos after Yukos had engaged in a series of tax-avoidance schemes). However, the Belgium-Netherlands Convention only applies to cases of a civil and commercial nature.

Thirdly, Russia argued that Article 18 of the Belgium-Netherlands Convention was only applicable to adversarial proceedings and did not apply to unilateral 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.

Fourthly and finally, Russia argued that the Netherlands had tacitly withdrawn from and abrogated the Belgium-Netherlands Convention when it adopted its new Arbitration Act. According to the Russian Federation, the fact that the new Arbitration Act now grants the Courts of Appeal in the Netherlands with

the exclusive jurisdiction to hear similar disputes demonstrated that the Netherlands had withdrawn from the Belgium-Netherlands Convention because this would otherwise have the unintended effect of granting the Courts of Appeal the jurisdiction to hear cases at first instance and appeals levels.

In light of those elements (with some arguments being better than others), it will be interesting to see what the Brussels Court of First Instance will have to say. It is expected to render its judgment on those issues – as well as on the substance and merits of the case (which will be discussed in the next post) – in early 2017. The International Litigation Blog will of course keep you posted of any further developments.

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