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EUROPEAN SANCTIONS AGAINST IRAN PRECLUDE PAYMENT OF INTEREST COMPONENT OF ICC ARBITRATION AWARDS

*Ministry of Defence & Support for Armed Forces of the Islamic Republic of Iran v
International Military Services Ltd [2019] EWHC 1994 (Comm)*

Introduction

By a decision handed down on 24 July 2019 in *Ministry of Defence & Support for Armed Forces of the Islamic Republic of Iran v International Military Services Ltd* [2019] EWHC 1994 (Comm) the English Commercial Court held that EU sanctions against Iran operated to prevent Iran's Ministry of Defence, in enforcement proceedings, from enforcing an arbitration award's interest component as regards a particular period of time when it was subject to the sanctions.

Background

In 1979, contracts under which the defendant (International Military Services Ltd) was to supply military vehicles to the claimant (Iran's Ministry of Defence) were terminated and disputes arose as to payable balances. Both of the parties commenced arbitration proceedings against the other and, in 2001, an arbitral tribunal issued awards dismissing the defendant's claim and finding in favour of the claimant. Under those awards, the defendant was liable to pay a specified monetary sum to the claimant with interest running from 28 July 1984. The claimant sought to enforce the award in the English jurisdiction under Section 101 of the Arbitration Act 1996. Those proceedings were adjourned (with the defendant paying £382,500,000 into court as security) pending the disposal of the defendant's challenge to the award in the Dutch courts. In 2006, the award was partially set aside by the Dutch courts and, as a result the sum held as security in court exceeded the defendant's overall liability.

By the time that decision was upheld on appeal (in 2009) the claimant had been included in a list of entities subject to sanctions imposed against the Islamic Republic of Iran by EU Regulation 1110/2008 (the predecessor to Regulation 267/2012), precluding payment of the sums due to the claimant under the awards. The claimant commenced fresh proceedings

seeking an order for judgment to be entered in terms of the awards and a declaration that the funds held in court as security were held for its benefit.

On a preliminary issue, the defendant submitted that the EU sanctions against Iran prohibited the claimant from enforcing the interest component of the arbitration award for the period in which it was itself subject to the sanctions regime.

Decision

The Commercial Court (Phillips J) determined the preliminary issue in favour of the defendant.

Phillips J held that EU instruments had to be interpreted so as to take into consideration both their language and purpose, as well as to apply the proportionality principle, and to have particular regard to whether any given interpretation would affect any fundamental rights guaranteed under EU law.

Article 38 of Regulation 267/2012 provided that a claim in connection with any contract or transaction, the performance of which had been affected wholly or partially by measures imposed under Regulation 267/2012, was not to be satisfied if it was made by a sanctioned entity. Regulation 267/2012 defined “*claim*” as including a claim for recognition or enforcement of a judgment or arbitration award. The claimant’s application for judgment to be entered in terms of the arbitral award satisfied the definition of a “*claim*” for these purposes. The arbitration award sought to be enforced was itself the relevant “*transaction*” for the purposes of Regulation 267/2012. Thus, what the defendant had to demonstrate (in order to resist enforcement) was that the interest component of the arbitral award had been affected “*in whole or in part*” by the EU sanctions.

Phillips J, examining authorities concerning the predecessor to Regulation 267/2012, considered that the purpose of the introduction of a “*no claims*” clause had been to prevent civil claims being brought against a party as a result of the performance of a contract or transaction being impeded by operation of the sanctions. An application of Article 38 of Regulation 267/2012 so as to prevent the claimant from enforcing the interest component of the arbitral award insofar as it concerned the period of time that it was sanctioned was consistent with that purpose.

Article 42 of Regulation 267/2012 provided that the good faith refusal to make funds or economic resources available on the basis of the regulation did not give rise to a liability. Phillips J held that the purpose of Article 42 of Regulation 267/2012 was to protect persons who had mistakenly frozen funds or refused to make them available in reliance upon the sanctions regime. Phillips J held that Article 42 did not apply in cases such as the instant one in circumstances where the relevant liability arose from a proper application of Regulation 267/2012.

Concluding Remarks

The decision provides the latest important illustration in the English courts of the interplay between European law and international arbitration, and the potential for EU law to have a significant and material impact upon the recognition and enforcement of an international arbitral award.

The English courts have also recently considered the impact of EU laws on state aid on recognition and enforcement of ISDS awards (see [*Micula v Romania*](#)).