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Five Facts About Recognition and Enforcement of Foreign Awards in Central and Eastern Europe

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Arbitration has become an accepted dispute resolution mechanism in Central and Eastern Europe ("**CEE**") over the last two decades. Over the years, the number of arbitral cases has increased steadily, and local courts have assumed a more favorable attitude to the arbitration process as a whole. Given the diversity of the countries in CEE, arbitral practice in the region is not entirely uniform despite the fact that most CEE countries are parties to international instruments meant to harmonize arbitration standards and court-related procedures. Though CEE's arbitration practice cannot be summarized in a few words, this piece gives a bird's eye view of the region, with a focus on five key facts or figures concerning recognition and enforcement of foreign awards. Hopefully, consideration of these common points can stimulate an in-depth analysis of the local procedures and generate debate among practitioners in the CEE region.

Fact 1: Nearly all CEE countries adhere to two primary international instruments concerning the recognition and enforcement of foreign arbitral awards.

National arbitration laws in CEE generally follow the UNCITRAL Model Law. The countries in the region also signed or ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is known as the New York Convention ("**NYC**"). Of the 149 NYC Contracting States, 19 are from Eastern Europe. Montenegro, which ratified the NYC in 2006, is the region's most recent newcomer. 17 Eastern European countries have also signed or ratified the 1961 European Convention on International Commercial Arbitration, which is known as the Geneva Convention ("**GC**"). Estonia and Lithuania are the only countries from the region that have not yet ratified the GC. The upshot is that most of the CEE countries apply the GC's limitations on the application of NYC Article V(1)(e). Thus, courts in CEE countries which are party to both the GC and the NYC, should generally refuse to recognize and/or enforce an award that has been annulled at the arbitral seat in another CEE state on the specific grounds set forth in GC Article IX(1).

These two international instruments were dormant in CEE for many years due to the comparatively infrequent use of arbitration before the fall of the Iron Curtain in 1989. As international trade

involving private entities was (with a few exceptions) almost non-existent before that time, arbitration was hardly known and rarely practiced in CEE. This explains why in the 1990s local courts had some initial difficulty in understanding and supporting the arbitral process, especially with respect to its finality and the court's limited powers to review the merits of arbitral awards.

Fact 2: Filing requirements for requests for recognition and enforcement are to a certain extent uniform.

Despite their various legal systems, most countries in the CEE region generally follow the conditions established in Article IV NYC for requesting recognition and enforcement of a foreign award. Consequently, the interested party must submit:
(1) the original or a duly certified copy of the arbitration agreement;
(2) the original or a duly certified copy of the award; and
(3) where needed, their translation into the official language of the country where recognition and enforcement are sought.

Courts in some countries nevertheless impose a few additional requirements. For example, Ukrainian courts typically require the applicant to also present proof that the award is final and binding, as well as a valid power of attorney issued to the party representative. Courts in other countries—such as Bulgaria, Croatia, Hungary, and Serbia—request the submission not only of the agreement to arbitrate, but of the entire contract containing the arbitration agreement as well as an adequate translation, in addition to other documents required under Article IV NYC. (See *ICC Guide to National Procedures for Recognition and Enforcement of Awards under the New York Convention*, ICC ICArb Bull, Spec. Suppl., Vol. 23 (2012), at 95, 134, 194, 334.)

Interestingly, even if NYC Article IV explicitly requires the submission of translated copies of the award and of the arbitration agreements, practice in Eastern Europe is not uniform. It is reported, for example, that Czech courts are willing to accept documents either in Czech or Slovak, for historic reasons and due to their linguistic similarities. (See *ICC Guide to National Procedures*, at 138.)

Fact 3: CEE countries do not have uniform procedures for bringing recognition and enforcement proceedings in local courts.

To take but one striking example, the limitations period for bringing recognition or enforcement actions can vary dramatically across the region. Russia and Ukraine are the only CEE countries whose laws explicitly provide a time period for recognition and enforcement of foreign awards, requiring applications to be filed within three years from the moment when the award becomes effective. (See Vladimir Khvalei & Jonas Benedictsson, *Recognition and Enforcement of Foreign Arbitral Awards in the Russian Federation*, 1(1) JEL (2008); see also *ICC Guide to National Procedures*, at 374.) Most CEE laws, however, do not provide for specific time limits within which foreign awards can be recognized and enforced. Courts in these countries must find other ways to fill this gap. For instance, Bulgaria and Serbia will apply the statute of limitations for recognition and enforcement of foreign judgments. (See *ICC Guide to National Procedures*, at 93-94, 332.) Polish courts, on the other hand, allow applications for enforcement within ten years from the date when the award is issued, but impose no time constraints on recognition. (See *ICC Guide to National Procedures*, at 307.) Romanian courts follow a hybrid approach. Like their Bulgarian and Serbian counterparts, Romanian courts generally apply the three-year statute of limitations period applicable to the enforcement of domestic awards to the recognition and enforcement of foreign

awards. However, somewhat like their Polish counterparts, the Romanian courts will apply a ten year statute of limitation period if the award deals with rights in immoveable assets. (See Romanian Code of Civil Procedure Article 705.)

Differences also appear in the availability of appellate review of judicial decisions to grant or deny recognition or enforcement. Depending on the enforcing jurisdiction, the court decision will be typically subject to one regular appeal, followed by an extraordinary appeal on limited grounds at the supreme court level. The expected duration of the recognition and enforcement proceedings thus varies between six months and three years, not counting the time for execution and collection.

Substantively, the CEE arbitration laws generally follow the grounds for denial of recognition and enforcement set forth in NYC Article V. Yet, most countries in the region endorse broad and generally vague definitions for public policy under NYC Article V(2)(b). For example, in Russia, the Presidium of the Supreme Arbitrazh Court (in Russia, the "arbitrazh" court system handles commercial disputes) issued Informational Letter No. 156 of 26 February 2013, which summarizes the local courts' practice on applying "public policy" as a ground for refusal of recognition and enforcement. According to that document, public policy includes the "fundamental principles that are most imperative, universal, have special social and public significance, and that form the basis for the state's economic, political and legal systems." (Vasily Kuznetsov, *Russia*, The European Middle Eastern and African Arbitration Review (GAR 2014), at 123.) In Ukraine, public policy is broadly defined as the fundamental principles of independence, constitutional freedom, rights and guarantees of its citizens. (Vladimir Zakhvataev and Ulyana Bardyn, *Ukraine*, in James H Carter, The International Arbitration Review (Law Business Research Ltd, 2012) 495, 502.) Obviously, the application of such broad principles can give rise to uncertainty for users of arbitration across the CEE region.

CEE countries asked to recognize or enforce a foreign arbitral award will generally stay the proceedings if the award is challenged at the seat of the arbitration. Courts in certain countries, such as Romania, may condition the granting of any stay on the payment of adequate security (See Romanian Civil Procedure Code Article 1029); others forums, such as Slovakia, reportedly do not require such security. (See *ICC Guide to National Procedures*, at 341.) Bulgarian and Lithuanian courts also stay recognition and enforcement pending related proceedings before the European Court of Justice. (See *ICC Guide to National Procedures*, at 96, 247.)

Fact 4: CEE countries also diverge in their treatment of interim and partial awards.

It is not clear how courts in all CEE countries deal with recognition and enforcement of interim and partial awards, as the reported practice remains somewhat limited. In general, it seems that partial awards are recognized and enforced with respect to the matters that they decide. Interim awards present more uncertainty. On the one hand, courts in Croatia, the Czech Republic, and Poland will also recognize and enforce interim awards, and Hungarian courts will likewise do so as long as such awards are sufficiently clear about the nature and the scope of obligation(s) to be performed. (See *ICC Guide to National Procedures*, at 135, 139, 196, 310.) In Romania, however, the High Court of Cassation and Justice held in *Vulcan Petroleum Metals & Equipment (US) v. Industrialexport (Romania)* that the recognition of a so-called interim award (which, in light of the matters decided, appears to have actually been a partial award) was an "intrinsic" and "contingent" condition for the recognition and enforcement of the final award. With this reasoning, in effect, the Romanian High Court conditioned the recognition of the final award upon the recognition of the "interim" award. (Case No. 38617/2/2005, Decision of the Romanian High Court of Justice No.

1834 of 16 May 2007.) The divergence in treatment of interim awards is not surprising, as the NYC is silent on this point.

Fact 5: Impact of new technology

Ending on a positive note, some CEE courts appear to be mindful of the impact of technological developments on international business and international arbitration. While we have not yet reached the point where CEE countries have recognized the validity of an arbitration agreement concluded via Twitter, the Polish Supreme Court held in 2012 that: "[a]n arbitration agreement can be validly concluded through emails or electronic communications." With this reasoning, that court dismissed an application to deny recognition and enforcement for failure to provide original (i.e., a duly signed) arbitration agreement. (V CSK 323/11, Decision of the Polish Supreme Court of 13 September 2012, commented in Bartosz Kru?ewski & Adelina Prokop, *Poland*, in The European, Middle Eastern and African Arbitration Review (GAR 2014), 111.)

Conclusion

The procedures for recognizing and enforcing foreign awards in the CEE region are relatively diverse and sometimes present unique challenges. The practice of arbitration is this area is nevertheless clearly growing, and courts in the region have demonstrated a strong commitment to ensuring that arbitration remains a workable option in an increasingly interconnected world.

References

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