Kluwer Arbitration Blog

EU Sanctions and Russia-Related Arbitration: No Reason for Alarm

Anja Ipp (Climate Change Counsel) · Wednesday, December 16th, 2015

by Anja Havedal Ipp, Arbitration Institute of the Stockholm Chamber of Commerce

A year into the sanctions regime, the arbitration community is trying to assess and predict its impact on Russia-related arbitration. Some commentators have drawn somewhat exaggerated conclusions. An October 22 post at the Kluwer Arbitration Blog, for example, talked about Russia's "seismic shift" toward the East, and stated that "European institutions are prohibited from administering cases involving sanctioned companies and persons." Another post suggested that the sanctions had harmed the European institutions' image as neutral, effective, and independent administrative institutions. And a November 3 article on CDR feared that "the good reputation earned by traditional arbitration centres over decades might now be tainted."

In light of these and similar commentaries, what follows are a few observations from the perspective of a European arbitral institution.

First, the scope of EU sanctions is extremely limited, and affects a very small number of individuals and commercial entities. So far in 2015, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) has seen almost 20 new arbitrations involving Russian parties. The administration of these proceedings has not been hindered by the sanctions. The overwhelming majority of Russian businesses are not subject to sanctions, and most Russia-related arbitrations are entirely unaffected. In the rare cases where it is the substance of the dispute that is affected by sanctions—as opposed to the parties involved—the issue will arise irrespective of where the arbitration is seated.

Second, European institutions are not prohibited from administering disputes involving sanctioned parties, and European arbitrators are not prohibited from serving on panels hearing such disputes. As most observers will know, the sanctions regulations that call for the freezing of funds specifically exempt payments associated with the provision of legal services, and the European arbitral institutions have devised administrative procedures to help parties make use of that exemption when necessary. Regardless of sanctions, the traditional European arbitral centers remain neutral, effective, and independent in all disputes, including those involving Russian parties.

Third, and most importantly, the EU sanctions do not result in bias against Russian parties on the part of European institutions or European arbitrators. This is because the sanctions regime is

political, which international arbitration decidedly is not. The history of arbitration shows that its success lies in its neutrality, and in its ability to transcend political differences and thrive across economic systems. Consider the Cold War context in which Russian parties first developed a preference for European arbitral institutions like the SCC; it was an era marked by trade embargoes and East-West hostility. At a time when political distrust was at its peak, international arbitration was the neutral ground upon which trade and commercial relations could be built. This is a proud legacy. To claim now that sanctions tarnish the neutrality of international arbitration is a disservice to that legacy.

The impact of the EU sanctions on Russia-related arbitration has been overstated. The sanctions apply to a small group of entities, and have not resulted in a substantial change in the administration of arbitral proceedings. Russian parties have trusted European arbitral institutions for half a century, and the grounds for that trust remain unchanged. Of course, some Russian businesses may for one reason or another wish to shift their commercial focus to Asia, and that shift may lead them to resolve disputes at Asian arbitral institutions. If so, their choice of arbitral forum will, as always, be guided by business and strategic considerations—not by politics, speculations, or fears of bias.

This entry was posted on Wednesday, December 16th, 2015 at 9:04 am and is filed under Arbitration, Arbitration Proceedings, Russia, Sanctions
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.