

Kluwer Arbitration Blog

Recognition and Enforcement of Foreign Arbitration Awards in Luxembourg

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In Luxembourg, international arbitration awards are enforced pursuant to the New York Convention of 10 June 1958 (the ‘Convention’), or, where that Convention does not apply, pursuant to the provisions of the Luxembourg New Civil Procedure Code. Indeed, provisions of Luxembourg law are applicable alternatively, so that the Convention is exclusively applicable when the award is subject to the aforementioned Convention and a Luxembourg judge is not required, or even entitled, to take into account Luxembourg law provisions (Court of Appeal, 25 June 2015, *Pasicrisie luxembourgeoise* 37, p. 383). The Convention does however not apply to awards rendered in Luxembourg, in which case only Luxembourg law provisions apply (Court of Appeal, 26 July 2005, *Pasicrisie Luxembourgeoise* 33, p. 117).

Traditionally, Luxembourg courts, like the French courts, have adopted a liberal regime in favour of the recognition and enforcement of foreign arbitral awards.

In its landmark case dated 28 January 1999, the Luxembourg Court of Appeal ruled that the fact that an award could be set aside in the seat of arbitration does not prevent the jurisdiction where the recognition and enforcement is sought from enforcing the award (Court of Appeal, 28 January 1999, *Pasicrisie Luxembourgeoise* 31, p. 95). It did so, not on the basis of the Convention, but on the basis of Article 1251 of the Luxembourg New Code of Procedure which lists the grounds for refusal of the recognition of a foreign arbitration award. By opting out of the Convention through Article VII – the so-called more-favourable-right provision – the Court allowed the party seeking recognition and enforcement to rely on the rules that are more favorable to enforcement than those of the Convention, i.e. those rules that can lead to recognition and enforcement where the Convention would not. As Article 1251 of the Luxembourg New Code of Procedure does not provide for the annulment of an award in the seat of arbitration as a ground of refusal, the Court concluded that it could not adjourn its judgment. The Court further ruled that the aforementioned article does not impose an obligation on the courts to adjourn the enforcement proceedings, but only foresees the possibility to do so if it considers it proper. As the objective of the Court has explicitly been to declare enforceable as many awards as possible, thereby explicitly referring to French case-law and doctrine, the Court refused to grant an adjournment.

However, this liberal position was recently challenged when the Court of Appeal handed down a judgment ruling that the enforcement of an award can be refused if it has been set aside in the state of the seat of arbitration – even if the annulment of an award in its state of origin does not constitute grounds for refusal of enforcement pursuant to Article 1251 of the New Code of Civil

Procedure. In its judgement of 25 June 2015, the Court ignores Article VII entirely and instead refers to Articles V and VI of the Convention. Pursuant to these articles, the recognition and enforcement of an award may be refused or adjourned, at the request of the party against whom it is invoked, if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the state of origin.

In sum, while the Luxembourg courts have traditionally taken a very liberal approach as to the enforcement of foreign arbitral awards, the recent decision of the Court of Appeal breaks with this position through the application of Articles V and VI of the Convention. However, it remains to be seen whether the court ruling of 25 June 2015 does indeed entail a shift in the approach of the Luxembourg courts. Indeed, as a consequence of the discretion provided for under Article V of the Convention, each court may decide to refuse enforcement but may also decide to accept the enforcement.

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