Foreign Arbitration vs. Russian Judicial Proceedings under Article 248.1 of the APC

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Dénuo

Article 248.1 of the APC

Article 248.1 was introduced to the Russian Arbitrazh Procedure Code (“APC”) in 2020 under the so-called “Lugovoy Law” (Federal Law dated 8 June 2020 No. 171-FZ).

- It establishes the exclusive jurisdiction of Russian arbitrazh (state commercial) courts over:
  - disputes involving sanctioned persons; and
  - disputes arising out of sanctions against Russia or Russian persons.
- The provisions of Article 248.1 apply, inter alia, if the agreement between the parties, under which a dispute has been referred to the jurisdiction of a foreign court or international commercial arbitration outside Russia, becomes unenforceable due to foreign sanctions against one of the parties, which impede that party's access to justice.

Broad application of Article 248.1

- In 2021, the Russian Supreme Court took the precedential position that the application of sanctions ***per se*** creates obstacles to accessing justice for Russian parties, so their unilateral declaration is sufficient to transfer disputes to Russian courts (*ruling dated 9 December 2021 No. 309-ES21-6955(1-3) in case No. A60-36897/2020*).
- This approach has led to the broad application of Article 248.1 by Russian courts, even in cases where there are no obvious obstacles to accessing justice in a foreign state.
- Between February 2022 and October 2025, Russian courts used Article 248.1 and upheld claims by Russian companies against their foreign counterparts in almost **700** cases.



Difficulty of recognising and enforcing Russian court decisions outside of Russia

- A foreign state court may refuse recognition on the grounds that the Russian court did not have jurisdiction to hear the relevant dispute, which, according to the agreement between the parties, should have been referred to arbitration (e.g., breach of Article II(3) of the 1958 New York Convention – duty of the court to refer the parties to arbitration where there is an arbitration agreement).
- To date, there have been no known successful precedents of such decisions being recognised outside Russia. On the contrary, there are examples where countries have refused to recognise such decisions, including Spain, Kyrgyzstan and Kazakhstan (see, for example, *Google LLC and Google Ireland Limited v. NAO Tsargrad Media and others [2025] EWHC 94, para. 54*).
- The EU has expressly prohibited the recognition and enforcement of Russian court decisions rendered on the basis of Article 248.1 in EU Member States (Article 11c of Council Regulation (EU) No. 833/2014).



EU sanctions risks

As part of its 14th sanctions package, the EU introduced a number of measures aimed at preventing Russian parties from transferring disputes to Russian state courts on the basis of Article 248.1:

Article 5ab(1) of Regulation 833/2014:

"*It shall be prohibited to directly or indirectly engage in any transaction with a legal person, entity or body … that lodged a claim before a Russian court against [an EU person] to obtain an injunction, order, relief, judgment or other Court decision pursuant to or derived from Article 248.1 or Article 248.2 of the APC or equivalent Russian legislation, in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation or under Regulation (EU) No. 269/2014, as listed in Annex XLIII to this Regulation.*"

Article 11a of Regulation 833/2014:

"Any [EU person] shall be entitled to recover, in judicial proceedings before the competent courts of a Member State, any direct or indirect damages, including legal costs, incurred by that person or by a legal person, entity or body that the person owns or controls, as a consequence of claims lodged with courts in third countries … in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, provided that the person concerned does not have effective access to the remedies under the relevant jurisdiction."

Anti-suit and anti-enforcement injunctions

- The submission of claims to Russian courts under Article 248.1 may trigger a mirror response from foreign counterparties, who may seek anti-suit and anti-enforcement injunctions in their own jurisdictions or in third countries. For example:
  - Google entities obtained in English and US courts anti-enforcement injunctive relief to prevent the Russian decisions rendered in favour of sanctioned Russian media companies (Tsargrad, NFPT and TV-Novosti) from being recognised and enforced outside of Russia. They also obtained anti-anti-suit injunctive relief to counteract the risk of the Russian entities obtaining anti-suit injunctions from the Russian courts (*Google LLC and Google Ireland Limited v. NAO Tsargrad Media and others [2025] EWHC 94; Google Ireland Limited v. OOO Google, Case 5:25-cv-00851-EJD, U.S. District Court for the Northern District of California*); and
  - In response to VEB.RF bringing proceedings against Barclays Bank in a Russian court, Barclays Bank obtained an anti-suit and anti-injunctive relief from an English court. As a result, VEB.RF initiated LCIA arbitration and suspended the Russian proceedings (*Barclays Bank plc v VEB.RF [2024] EWHC 1074 (Comm)*).
- Foreign anti-suit and anti-enforcement injunctions typically contain severe penalties for non-compliance, which can be treated as contempt of court. A range of sanctions can be imposed on the violator, including fines, seizure of assets, or even imprisonment of a company's top managers.

Advantages of arbitration

- Referring a dispute to arbitration does not have the above disadvantages:
  - It cannot be grounds for the imposition of sanctions; and
  - An arbitral award may be recognised and enforced in 172 states that are parties to the 1958 New York Convention.
- Russian parties, including those under sanctions, continue to actively use popular Western arbitral institutions:
  - Annual reports published by the LCIA and SCC show that Russian parties were among the top five international users in 2024; and
  - According to the ICC's annual report, it administered 19 cases involving Russian parties in 2024. Russian parties were claimants in 12 of these cases.
- This clearly shows that Russian parties still have access to arbitration in Western countries.



Enforcement of arbitral awards involving Russian parties

In the absence of sanctions restrictions, courts in “unfriendly” jurisdictions generally continue to recognise and enforce awards made in favour of Russian persons:

In 2023, the Supreme Court of the Czech Republic recognised and enforced an ICAC award made in favour of PJSC Rosneft (*resolution of the Supreme Court of the Czech Republic dated 17 July 2023, 20 Cdo 136/2023-362*)

In 2023, the Brescia Court of Appeal (Italy) recognised and enforced an ICAC award made in favour of a Russian company (*decision of the Brescia Court of Appeal dated 25 September 2023 in case No. 336/2023 V.G.*)

In 2024, the Ontario Superior Court (Canada) recognised and enforced an ICAC award made in favour of JSC Chukotka Mining (*Medivolve Inc. v. JSC Chukotka Mining and Geological Company, 2024 ONSC 2200*)

In 2025, the Commercial Court of Zagreb (Croatia) recognised and enforced an award of the Arbitration Centre at the RSPP made in favour of JSC AtomStroyExport (*resolution of the Commercial Court of Zagreb dated 22 January 2025, R1-222/2024-8*)

Enforcement of arbitral awards involving Russian parties

- When sanctions are involved in a dispute (for example, if the claimant has been sanctioned or if sanctions restrictions apply to the legal relationship between the parties), the recognition and enforcement of an arbitral award in “unfriendly” jurisdictions may be refused:

> In 2023, the Court of Appeal of Lithuania refused to recognise or enforce an ICAC award made in favour of PJSC Rosneft, stating that it contradicts “*the public order, as enshrined in the Lithuanian Constitution, the principles of democracy, the rule of law … since Rosneft and persons associated with it are included in the list of Russian legal entities subject to EU sanctions.*”

- However, in 2024, the Higher Regional Court of Cologne (Germany) ruled that an SCC arbitral award made in favour of a Russian company was recognisable, but not enforceable (*decision of the Higher Regional Court of Cologne dated 24 May 2024, 19 Sch 26/23*). The court also noted that a voluntary payment that does not infringe EU sanctions can be made to a frozen account, in accordance with Article 7 of Regulation 269/2014.
- Article 7 states that the prohibition on providing funds or economic resources to sanctioned persons “*shall not apply to the addition to frozen accounts of … payments due under arbitral decisions rendered in a Member State or enforceable in a Member State*.”

Factors to consider

When a dispute is complicated by sanctions, a number of factors must be taken into account when assessing the appropriateness and prospects of arbitration, in particular:

- The law applicable to the contract/legal relationship – will it prevent the claims from being satisfied?
- The seat of arbitration – will the arbitral award be set aside by a state court?
- The choice of arbitrators – will they be biased and/or bound by their national law containing sanctions restrictions?
- Location of the respondent's assets that may be subject to enforcement – are they located exclusively in "unfriendly jurisdictions" where recognition and enforcement of the arbitral award may currently be impossible?