Prestige of Spanish judgment over the UK arbitral award – not on the principle, but on the conditions to it

This morning, the CJEU has pronounced on the interplay between the Brussels I bis Regulation and arbitration, this time in the context of the recognition in the UK of a judgment given by a Spanish court.

I. Facts

This case C-700/20 results from the event taking place two decades ago. Some of you may recall that in November 2002, the Greek-owned and Bahamas-operated oil tanker Prestige encountered a storm in the seas close to Galicia coast in Spain. Being damaged, the tanker eventually sunk leaving oil spill and causing significant damage to northern coast of Spain and the western coast of France.

The Spanish state and some other parties sought damage compensation, in the context of the criminal proceedings before the Audiencia Provincial de A Coruña commenced against the master, owners, and the London P&I Club, the liability insurer of both the vessel and its owners, in 2003. In 2012, the London P&I Club commenced arbitration proceedings in London seeking a declaration that, pursuant to the arbitration clause in the insurance contract concluded with the owners of the Prestige, the Spanish state was required to pursue its claims in the arbitration proceedings, and that it could not be liable to the Spain in respect of those claims due to the 'pay to be paid' clause.

The arbitration was quicker and the award was made in 2013, upheld the claims also limiting the the London P&I Club's liability up to USD 1 billion. The P&I Club applied to the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court), under Section 66 (1) and (2) of the Arbitration Act 1996, for

leave to enforce the arbitral award in that jurisdiction in the same manner as a judgment or order and for a judgment to be entered in the terms of that award. The leave was granted in 2013 along with a judgment in the terms of the award.

The Spanish proceedings ended in 2018 by the judgment of the Tribunal Supremo whereby it confirmed that the master, ship owners and the P&I Club were liable to over 200 parties, including the Spanish state, subject, in the case of the P&I Club, to the contractual limit of liability of USD 1 billion. In 2019, the Audiencia Provincial de A Coruña issued an order setting out the amounts that each of the claimants was entitled to obtain from the respective defendants, entitling the Spanish State to be paid approximately EUR 2.3 billion, subject in the case of the P&I Club to the limit of EUR 855 million. Soon after, the Spanish state made an application to the High Court of Justice (England & Wales), Queen's Bench Division, on the basis of Article 33 of the Brussels I Regulation, for recognition of the latter enforcement order. Slightly prior to the expiration of the Brexit transition period, the UK court made a reference for preliminary ruling concerning the Brussels I Regulation, Article 1(2)(d) – exclusion of arbitration, and Article 34(1) and (3) – grounds for refusal of recognition and/or enforcement.

II. The Issues

At issue was whether that recognition or enforcement could be refused on the basis of the existence, in the UK, of a judgment entered in the terms of an arbitral award and the effects of which are irreconcilable with those of the abovementioned judicial ruling (first and second question). And, if not, whether recognition or enforcement may be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in the terms of an arbitral award (third question).

III. Decision and Reasoning

Not following the opinion of AG Collins delivered in May this year, the CJEU held that a judgment entered by a court of a MS (in this case, UK) in the terms of an arbitral award cannot prevent the recognition there of a judgment given in another MS (in this case, Spain) where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of the first MS without infringing the provisions and the fundamental objectives of the Brussels I Regulation. In the case at hand, this means that the Spanish

judgment could have been refused recognition and enforcement only if the UK judgment entered by the UK court in the terms of an arbitral award could have been adopted by a UK court without infringing the provisions and the fundamental objectives of that Regulation.
However, the CJEU went on to explain that such fundamental objectives include the principles of free movement of judgments in civil matters, predictability as to the courts having jurisdiction and therefore legal certainty for litigants, sound administration of justice, minimisation of the risk of concurrent proceedings, and mutual trust in the administration of justice (para. 56). It added another requirement –that such judgment should not violate the right to an effective remedy guaranteed in Article 47 of the EU Charter of Fundamental Rights (para. 58).

Turning to the facts of the case, the CJEU concludes that the respective UK judgment could not have been rendered on the basis of the Brussels I Regulation without infringing two fundamental rules of the Regulation: first, the rule on the relative effect of an arbitration clause included in an insurance contract which does not extend to claims against a victim of insured damage who bring a direct action against the insurer, in tort, delict or quasi-delict, before the courts for the place where the harmful event occurred or before the courts for the place where the victim is domiciled and, second, the rule on lis pendens which coordinates parallel proceedings based on the priority principle favouring the court first seised.

In answering the third question, the CJEU has relied on the opinion of the AG Collins, who stated the EU legislature intended to regulate exhaustively the issue of the force of *res judicata* acquired by a judgment given previously and, in particular, the question of the irreconcilability of the judgment to be recognised with that earlier judgment by means of Article 34(3) and (4) of the Brussels I Regulation, thereby excluding the possibility that recourse be had, in that context, to the public-policy exception set out in Article 34(1) of that Regulation. Therefore, *res judicata* cannot be contained in the notion of public policy for the purpose of recognition and enforcement of judgments under Article 34 of the Brussels I Regulation.

Undoubtedly, this judgment will provoke different reactions, but one thing is certain this is a one-hit wonder in UK given that UK is no longer bound by the Brussels regime.

The CJEU judgment has been made availalbe online yet, but the CJEU issued the Press Release.