LEXONOMICA
Vol. 17, No. 1, pp. 23–37, June 2025

THE IMPERATIVE OF REVISING THE ARBITRATION EXCEPTION IN THE BRUSSELS I BIS REGULATION

Accepted
6. 1. 2025

Revised
26. 2. 2025

Published
30. 6. 2025

MARTINA TIČIĆ
University of Rijeka, Faculty of Law, Rijeka, Croatia, mticic@uniri.hr

CORRESPONDING AUTHOR
mticic@uniri.hr

Abstract Arbitration represents a popular alternative dispute resolution mechanism in the European Union (EU). However, the coexistence of arbitration and court litigation in the EU legal area has been proven to be quite difficult to regulate. At the EU level, the Brussels I bis Regulation, i.e., the main instrument governing jurisdiction and recognition and enforcement of judgments in civil and commercial matters, explicitly states that arbitration does not fall under its scope. This 'arbitration exception' has led to difficulties in practice, many of which have found their way to the Court of Justice of the EU (CJEU). However, as the CJEU case law shows, it only led to new questions. As these issues will keep emerging, a different solution must be found. The perfect moment for such change is now, as the reform of the Brussels I bis Regulation is ongoing. This paper thus presents the intricacies of the 'thorny' interplay of arbitration and court litigation in the EU. In order to remedy the existing problems in practice, two potential solutions are suggested.

Keywords
arbitration exception, Brussels I bis Regulation, arbitration, EU civil procedure, private international law, court litigation

https://doi.org/10.18690/lexonomica.17.1.23-37.2025

University of Maribor Press

1 Introduction

Arbitration, as an alternative dispute resolution mechanism, and court litigation, as the traditional choice for dispute resolution, have long been thought to belong to different worlds (Bermann, 2011: 1193; Van Houtte, 2001: 53-54; Nový, 2017: 536-539). As such, they have been governed by separate legal instruments: New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[1] for arbitration, and, at the level of the European Union (hereinafter: EU), the Brussels I bis Regulation (OJ L 351/1, 2012) and its predecessors, Brussels I Regulation (OJ L 12/1, 2001) and Brussels Convention (OJ L 299, 1972) for court litigation. The provisions of the aforementioned instruments of the Brussels regime all exclude arbitration from its scope of application (Brussels I bis, art 1(2)(d); Brussels I Regulation, art 1(2)(d); Brussels Convention, art 1(2)(4)). Over time, however, it became clear that these two spheres can overlap, which leads to problems that are left unanswered by the existing legislative framework. Such problems include, e.g., the question of the validity of arbitral agreements; parallel arbitral and court proceedings; and subsequent enforcement of awards/judgments which may be considered irreconcilable.

This 'thorny' interplay of arbitration and court proceedings has thus been a hot topic of discussion in the EU. Various potential issues became clear in light of the case law of the Court of Justice of the EU (hereinafter: CJEU), which highlighted many of the problems occurring at the cusp of arbitration and court litigation. What is even more concerning is that the CJEU rulings did not lead to many clarifications; instead, it seems that they often lead to more doubts for both practitioners and the parties. It could be said that these issues culminated in 2022, with the infamous *London Steam-Ship Owners* ruling[2], which once again pointed to some of the legal gaps in the current regulation.

Although the earlier case law on the arbitration exception did not result in significant changes in the Brussels regime, the continuing flow of cases points to the fact that revisions are necessary in order to ensure a clear legal framework for EU citizens. It is thus suggested that, as it stands now, the current legal regime can undermine legal certainty in the EU, and is therefore in need of improvement. Since the reform of

[1] The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958.

[2] Case C-700/20 *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* (2022) EU:C:2022:488.

the Brussels I bis Regulation is currently underway (Brussels I bis, art 79; Hess et al., 2024), this seems to be the perfect opportunity for solving this decades-long issue. Thus, this paper aims to analyse the intricacies of the interaction between arbitration and court litigation in the EU by focusing specifically on the arbitration exception in the Brussels I bis Regulation. The analysis will be done particularly in light of the CJEU case law, which provided some guidance on how the exception shall be interpreted, as well as by relying on traditional doctrinal sources such as legislature and academic literature. As a result of such analysis, it will be proven that the current legislative framework is inadequate to deal with the aforementioned issues and fails at filling the legal gaps highlighted in the case law, thus leading to legal uncertainty for the parties. In order to deal with these issues, it is suggested that the EU should aim to reform the arbitration exception in the recast of the Brussels I bis Regulation. Thus, two potential pathways that the EU legislator may take in the future development of the relevant legal instruments on this issue will be presented and elaborated.

2 Arbitration and court litigation: Emerging difficulties of the thorny interplay

2.1 Histroical overview

Traditionally, arbitration has remained outside the scope of the relevant EU legislation. This was first visible from a simple provision in Brussels Convention from 1968, which stated that "The Convention shall not apply to: (…) arbitration" (Brussels Convention, art 1(2)(4)). The reason for such choice lied in the fact that it was thought that the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, whose acceptance rate is almost universal (Radicati di Brozolo, 2012: 1-2), already successfully regulated the issue of recognition and enforcement of arbitral awards. This reasoning is reflected in both the Jenard Report of 1968 (Jenard Report, OJ C59, 1979) and the Schlosser Report of 1978 (Schlosser Report, OJ C59, 1979). Indeed, the New York Convention can be viewed as a 'success story' (Kronke, 2010: 2), and was previously described as a convention which 'perhaps could lay claim to be the most effective instance of international legislation in the entire history of commercial law' (Redfern, Hunter, 2004: 523). Because of this, the reasoning for the exclusion of arbitration from the Brussels regime may be completely acceptable; however, further developments soon showed that the potential overlap with court proceedings seems to have been overlooked.

Since the time of the Brussels Convention, multiple concerns have been raised over the years as to the suitability and effects of the arbitration exception. Additionally, different suggestions have been raised in view of reforming the arbitration exception in the regulations of the Brussels regime that followed (Heidelberg report - Report (JLS/2004/C4/03); Van Houtte, 2005). However, despite such concern and suggestions for improvement, the relevant provision remained unaffected in the subsequent Brussels I Regulation and Brussels I bis Regulation (Brussels I Regulation, art 1(2)(d); Brussels I bis, art 1(2)(d)). The problems that remained included issues of validity of arbitration agreements, interim measures, parallel proceedings, and potential irreconcilable decisions (See Rogerson and Mankowski, 2023: 72-73).

2.2 Evolution of the CJEU case law

As problems started to emerge over the years, the interpretation of the arbitration exception quickly came into the spotlight. This is most visible from the emerging case law of the CJEU. However, while some of the abovementioned issues have been touched upon, the CJEU case law seem to have opened more questions than it had resolved. The remainder of this chapter will thus present the evolution of the CJEU case law in order to detect the rules of the interpretation of the arbitration exception that were provided, as well as additional questions that may have been raised after the relevant rulings.

The first preliminary question on the interpretation of arbitration exception in the Brussels Convention came before CJEU in 1991, in *Marc Rich* case.[3] The case concerned an arbitration agreement between Marc Rich and Co. AG (registered in Switzerland) and Società Italiana Impianti PA (registered in Italy). The latter disputed the validity of the relevant agreement and sued for a negative declaration before Italian courts, while the former contested the jurisdiction of said court. Additionally, Società Italiana Impianti PA contested the validity of the arbitration agreement before the English court which ultimately referred the preliminary question to the CJEU. When asked whether the arbitration exception of the Brussels Convention extends to any litigation or judgments, specifically to litigation or judgments where the initial existence of an arbitration agreement is in issue, the CJEU responded that Article 1(4) of the Brussels Convention, i.e., the arbitration exception, 'must be interpreted as meaning that the exclusion provided for therein extends to litigation

[3] Case C-190/89 *Marc Rich & Co. AG v Società Italiana Impianti PA* [1991] ECR I-3855.

pending before a national court concerning the appointment of an arbitrator, even if the existence or validity of an arbitration agreement is a preliminary issue in that litigation' (*Marc Rich*, para 29). Thus, the ruling kept the scope of the exception unaffected, since it confirmed that the arbitration exception extends to litigation pending before a national court concerning the appointment of an arbitrator, even if the existence or validity of an agreement is a preliminary issue in the relevant litigation. Thus, a wide exclusion of arbitration was accepted (Rogerson and Mankowski, 2023: 72).

Another issue arose in 1998 in *Van Uden*.[4] The case concerned the availability of provisional measures in cases where arbitration had been agreed upon. In its ruling, the CJEU made a distinction between ancillary and parallel proceedings, stating that provisional measures are not in principle ancillary to arbitration proceedings but are ordered in parallel, and do not concern arbitration as such. Thus, in a situation where the subject matter of an application for provisional measure relates to a question falling within the scope *ratione materiae* of the Brussels Convention, that Convention remains applicable and the courts may grant provisional measures even when the proceedings have already been commenced before arbitrators. In other words – while ancillary proceedings do fall within the arbitration exception, parallel proceedings do not. In broader terms, the ruling points to the fact that the arbitration exception in the Brussels I bis regulation (then, the Brussels Convention) applies solely where arbitration is the substance of the dispute in question, while in cases where arbitration is secondary to the main issue at hand, the exception does not apply (Savin, 2010: 78). Although this distinction may be useful, and was indeed a step forward in terms of clarifying the exact scope of the arbitration exception, it was still somewhat imprecise. Thus, there is plenty of space left for potential interpretational confusions to arise. This ruling was also the first instance of diminishing the scope of the arbitration exception (Savin, 2010: 74-78) – while arbitration remained out of the scope of the Brussels regime, some procedures relating to arbitration could still fall under it.

In 2009 came the infamous *West Tankers* ruling,[5] which once again turned the focus on the issues arising out of arbitration exception. The question that was referred to the CJEU seemed simple: can anti-suit injunctions be compatible with the Brussels I Regulation? Here, it may be highlighted that a similar question previously arose in

[4] Case C-391/95 *Van Uden Maritime BV, trading as Van Uden Africa Line v Kommanditgesellschaft in Firma Deco-Line and Another* [1998] ECR I-7091.

[5] Case C-185/07 *Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc.* [2009] ECR I-663.

Turner,[6] where the CJEU was asked whether an anti-suit injunction may be raised to prevent a party from continuing proceedings in another Member State. The CJEU answered in negative. Thus, it may not come as a surprise that in the *West Tankers*, the CJEU once again answered in negative, stating that such injunctions are contrary to the general principle that every court itself determines whether it has jurisdiction to resolve the dispute before it. Additionally, the CJEU claimed that anti-suit injunctions undermine the mutual trust between the Member States, which is the basis for the free movement of judgments in the EU (See more on mutual trust in, e.g., Brouwer and Gerard, 2016; Leanerts, 2017: 805; Cambien, 2017: 1; Zilinsky, 2017: 115; Storskrubb, 2018: 179). Although the decision could have been expected, this ruling was met with much dissatisfaction as it had a direct effect on arbitral proceedings. Before *West Tankers*, anti-suit injunctions could have been used in order to restrain a party from commencing court proceedings when such proceedings would be contrary to an arbitral agreement. Thus, after *West Tankers*, an important instrument for securing arbitration proceedings and avoiding parallel court proceedings was deemed as incompatible with the Brussels regime. This ruling thereby resulted in the possibility of a rising number of parallel proceedings before arbitral tribunals and courts.

This prompted the discussion on the potential revision of the Brussels I Regulation in terms of arbitration exception. As the development of the CJEU case law gave rise to uncertainty of the proper interpretation of arbitration exception (Hietanen-Kunwald, Koulu and Turunen, 2017: 93-101), new suggestions for potential reform of the exception had been presented by different stakeholders. Perhaps the most prominent proposal was given in the Heidelberg Report. In short, the Report suggested that adding supporting provisions in the Brussels I bis Regulation would not undermine the arbitration regime. Instead, it was suggested that this would help resolve the remaining interpretational difficulties (Heidelberg report - Report (JLS/2004/C4/03), 49-67). However, the Commission ultimately decided to take the safer route due to diverging opinions of different stakeholders. This compromise ultimately led to no significant changes. Some clarifications were provided in Recital 12 of the new Brussels I bis Regulation. The recital, among other, points to the fact that 'nothing prevents the courts of a Member State, when seized of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative

[6] Case C-159/02 *Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA* [2004] ECR I-3565.

or incapable of being performed, in accordance with their national law.' Moreover, the recital confirms that a ruling by a court of a Member State on the validity of arbitration agreements is not subject to the rules of recognition and enforcement in the Regulation, as well as that the Regulation does not apply to ancillary proceedings relating to arbitration. Additionally, the precedence of the New York Convention was affirmed in Article 73(2), which states that the regulation does not affect the application of the New York Convention (See more in Leandro, 2015: 188). In other words, this provision emphasises the precedence of the New Your Convention whenever it is applicable (Hietanen-Kunwald, Koulu and Turunen, 2017: 106). The introduction of Recital 12 thus confirms certain points, such as that the Brussels I bis Regulation does not apply to ancillary proceedings; that courts may always refer the parties to arbitration, stay or dismiss proceedings, or assess the validity of an arbitration agreement based on national law; and that the New York Convention have precedence over the Brussels I bis Regulation, whenever applicable. Regardless, it is visible that, despite some efforts to clarify the scope of the arbitration exceptions, some of the most glaring issues were left unaddressed. In other words, the old *status quo* was still preserved.

Thus, the problems have continued to be brought up before the CJEU. In 2015, another issue arose in *Gazprom*.[7] The case concerned the question of whether the Brussels I Regulation precludes a court of a Member State from recognising and enforcing an arbitral award prohibiting a party from bringing certain claims before a court of that Member State. In other words, the issue of anti-suit injunctions rose again – this time, the issue was whether recognition and enforcement of such injunctions is compatible with the Brussels regime. Understandably, the CJEU ruled that the Brussels I Regulation does not preclude recognition and enforcement as it does not govern recognition and enforcement of arbitral awards – this matter is regulated by the New York Convention, as noted above. While the ruling was widely discussed by different authors, specifically in terms of interpreting the relation between *Gazprom* and *West Tankers* ruling (see, e.g., Sattler, 2016; Hartley, 2014; González-Bueno and Lozano, 2015; Bermann, 2015; Sundaram, 2015; Farah and Hourani, 2018), it seems that this ruling does not have much effect on the previous CJEU case law on the interpretation of the arbitration exception. Although seemingly similar, *West Tankers* and *Gazprom* rulings must be clearly differentiated. While in the former, the issue at question is recognition and enforcement of an anti-suit injunction issued by a court, in the latter, the issue at question is the recognition

[7] Case C-536/13 *"Gazprom" OAO v Lietuvos Respublika* [2015] EU:C:2015:316.

and enforcement of an arbitral award, which is regulated by the New York Convention. Thus, *Gazprom* does not overturn the *West Tankers* ruling in any way, neither does it provide any clarification on the prohibition of anti-suit injunctions (Hietanen-Kunwald, Koulu and Turunen, 2017: 109).

Finally, the recent *London Steam-Ship Owners* ruling from 2022 may perhaps be viewed as the most controversial one yet. This ruling was a culmination of the long procedural saga that followed after the sinking of the *Prestige* oil tanker in Spain, which happened in 2002. The circumstances of the case were as follows. The Spanish court delivered a judgment while the English arbitral tribunal delivered an arbitral award, both on the issue of liability of the liability insurer, *i.e.*, the London P&I Club. Subsequently, the English court handed down a judgment in terms of the award. When the Spanish judgment was submitted for recognition in England, the question of the irreconcilability of the two judgments arose. As irreconcilability with another judgment forms one of the possible refusal grounds under the Brussels I Regulation, the question arose as to whether the English judgment entered in terms of the award actually falls under the notion of 'judgment' as understood in the Brussels I Regulation, i.e., its article 34(3). Discarding the opinion of the Advocate General,[8] the CJEU ruled that:

[A] judgment entered by a court of a Member State in terms of an arbitral award does not constitute a 'judgment', within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that regulation, in particular as regards the relative effect of an arbitration clause included in the insurance contract in question and the rules on *lis pendens* contained in Article 27 of that regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State. (*London Steam-Ship Owners*, para 73)

Understandably, such ruling was highly criticised (see, e.g., Briggs, 2022; Cuniberti, 2022). Essentially, the ruling creates unforeseeable requirements for arbitral awards to be included under the notion of 'judgment' for the sake of potential refusal based on irreconcilability (See more in Tičić, 2024: 588-590). The assertion that the fundamental rules of the Brussels regime, such as the relative effect of an arbitration clause included in the insurance contract in question and the rules on *lis pendens*,

[8] Case C-700/20 *The London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* [2022] EU:C:2021:1026, Opinion of Advocate General Collins.

should be respected in arbitration, *i.e.*, an area explicitly excluded from that same regime, is highly questionable. Not only does this significantly diminish the scope of the arbitration exception, but it also forces the rules of Brussels I bis Regulation onto arbitration. Otherwise, arbitral awards will be wilfully ignored when assessing potential refusal of recognition and enforcement of a judgment, a solution which clearly favours court litigation over arbitration. It goes without saying that such a stance by the EU may greatly harm the attractiveness of arbitration as an alternative dispute resolution mechanism in the EU.

Following the ruling, the English court actually declined to follow it, stating that the CJEU exceeded its competences.[9] This legal entanglement thus remained unsolved and will surely result in many more preliminary questions on the interplay of arbitration and court litigation for the CJEU. What may be concluded from the general overview given above is that the CJEU is currently the main actor which forms the rules of the relevant interplay of arbitration and court litigation in the EU. Its argumentation, however, may be highly questionable at times. Additionally, some problems in governing the interplay of arbitration and court litigation still remain unsolved.

3 Upcoming reform of the Brussels I bis Regulation: A moment for change

The analysis of the CJEU case law and the developments in the understanding of the scope and effects of arbitration exception shows that this issue is far from resolved. This points to a need for reassessment of the arbitration exception, in order to preserve international arbitration as a valuable option for litigants. With the reform of the Brussels I bis Regulation currently underway, this is the ideal opportunity to address these issues, as it is the most suitable instrument for resolving them. It may be noted here that there is a possibility of creating dedicated instruments regulating arbitration at the EU level. However, this may be unnecessary due to the prevalence and longevity of the New York Convention, as already mentioned above.

While so far, only slight changes have been made in view of Recital 12 of the Brussels I bis Regulation, it is clear that additional guidance is needed. Given the complexities of the interplay between arbitration and court litigation in the EU that were presented above, and in view of extremely diverging opinions of the relevant

[9] [2023] England and Wales High Court 2473 (Comm).

stakeholders, it is understandable that the decision to act on reforming the arbitration exception in the Brussels I bis Regulation is not an easy one to make. However, given the remaining problems and recurring questions, it is necessary that the EU legislator takes a more definitive stance and introduces certain changes to the relevant provisions of the Brussels I bis regulation. In that vein, two potential pathways may be taken: either the arbitration is to be completely excluded from the scope of the Brussels regime, or additional provisions explaining the extent of the arbitration exception are to be added.

If opting for the former, it may be advisable to reassess the possibility of overturning the rulings in *West Tankers* and *London Steam-Ship*. This is so because these rulings address the interplay between arbitration and court litigation in such a way that leads to the conclusion that arbitration is not completely excluded from the Brussels regime after all. The CJEU directly affected the proper functioning of arbitral proceedings and the effects of subsequent arbitral awards in a way that court litigation, i.e., provisions of the Brussels regime, are put before the rules of arbitration. Moreover, the rulings have a direct effect on raising the possibility of parallel proceedings and irreconcilable judgments. In order to return these two ways of dispute resolution to an equal starting point, and in order to avoid the potential of parallel proceedings and irreconcilable judgments, these rulings could thus potentially be overturned. In practice, this would allow arbitral tribunals to issue anti-suit injunctions when parties agreed to arbitration, and it would not impose additional rules in order for an arbitral award (or a judgment entered in terms of an arbitral award) to have effects in a different Member State. Additionally, the notion of 'judgment' in Article 45(1)(c) and (d) should be given a more precise definition in order to avoid similar issues in the future (See more in Tičić, 2024: 582-590). These solutions would clearly separate arbitration and court litigation in the EU, while simultaneously diminishing the possibility of parallel proceedings and irreconcilable judgments. While there are certain issues that may be raised, such as, e.g., the question of effectiveness of Brussels I bis Regulation and the effects on the functioning of the principle of mutual trust among the Member States, it would be for the benefit of solving some of the most glaring problems in terms of the interplay of arbitration and court litigation.

If opting for the latter solution, the arbitration exception must undergo substantial changes. It should not be included as only one of the grounds excluded from the scope of application in the Brussels I bis Regulation; instead, it would be more beneficial to form a separate article regulating the interplay with arbitration. Multiple points should be addressed, especially the differentiation between ancillary and

parallel proceedings and potential irreconcilable decisions. There are also options to add specific rules on jurisdiction, *lis pendens*, etc. Thus, this option would require a significant amount of additional work and hurdles that will have to be overcome. The result, however, would help to reduce the legal uncertainty that currently exists in this area. The effect that it would have on the attractiveness of arbitration as an alternative dispute resolution method in the EU would depend on the particular rules adopted.

It must be highlighted that, regardless of the path that is taken, the EU legislator will surely face certain opposition and disagreements. Furthermore, some of the governing principles of the EU civil litigation, such as the principle of mutual trust, may be affected and their effects limited. Given the numerous difficulties of the relevant interplay, such conclusion is obvious. However, the current solution seems like the EU legislator is standing in the middle of two opposing sides, those being the side of the advocates of arbitration and the side of the proponents of court litigation in the EU, while not making any definitive choices, and ultimately disappointing both. The most glaring issue is that the legal certainty in the EU is affected as long as the current gaps in regulation remain. Thus, it is submitted that it is better to take a definitive stance and go into the direction of one of the two proposed paths, than to leave the current regulation as it is solely because there is no solution that would be appealing to all subjects, and that would solve all of the potential problems in an ideal manner.

4 Conclusion

Despite the initial belief that arbitration and court litigation belong to separate worlds, it is now clear that the interplay and potential clash of the two is at times inevitable. As the analysis of this paper clearly shows, there are multiple points in which these two dispute resolution methods overlap, and subsequently create difficulties for everyone involved. It is no wonder that this interplay has been exceptionally difficult to regulate – after all, there is no clear solution which would make all stakeholders pleased, as arbitration and the Brussels regime operate on different, oftentimes clashing, principles. However, if the existing interplay is left unaddressed, this will lead to more and more problems for the parties, as proven by the continuous flow of the CJEU case law. Moreover, with the developments in the EU so far, it seems that the result of preserving the *status quo* would result in a diminished appeal of arbitration in the EU. This is surely not the EU's aim, as is visible from other instruments which encourage alternative dispute resolution

methods.[10] Thus, the existing legal framework on the interplay of arbitration and court litigation should be amended as soon as possible.

The reform of the Brussels I bis Regulation provides a perfect incentive for making such changes happen. Given that the arbitration exception has been one of the most discussed provisions of both the Brussels I bis Regulation and its predecessor, Brussels I Regulation, it is time for substantive changes in this area. In that vein, it is submitted that the EU legislator should decide between taking two different paths in the future development of the EU legislative framework on arbitration and court litigation. Two potential options are presented – either completely excluding arbitration from the Brussels regime, or adding provisions in the Brussels I bis Regulation which would regulate all potential issues resulting from the interplay in detail. Whichever option is taken will surely pose some difficult challenges; however, both solutions would undoubtedly bring more legal certainty for the parties, which should be the primary goal of the EU in these matters.

References

Bermann, George. (2015) "The *Gazprom* Case." *Maastricht Journal of European and Comparative Law* 22(6): 888-907.

Bermann, George. (2011) "Reconciling European Union Law Demands with the Demands of International Arbitration." *Fordham International Law Journal* 34(5): 1193-1216.

Brand, Ronald. (2014) *Transaction Planning Using Rules on Jurisdiction and the Recognition and Enforcement of Judgments*. Hague Academy of International Law.

Briggs, Adrian. (2022) "Humpty-Dumpty, Arbitration, and the Brussels Regulation: A View from Oxford." EAPIL. https://eapil.org/2022/06/23/humpty-dumpty-arbitration-and-the-brussels-regulation-a-view-from-oxford/ (Accessed on 26th February 2025).

Brouwer, Evelien and Gerard, Damien, eds. (2016) *Mapping Mutual Trust: Understanding and Framing the Role of Mutual Trust in EU Law*. EUI Working Papers MWP.

Cambien, Nathan. (2017) "Mutual Recognition and Mutual Trust in the Internal Market." *European Papers* 2(1): 93-115.

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2001) OJ L 12/1.

Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (1972) OJ L 299.

Cuniberti, Gilles. (2022) "London Steam-Ship Owners: Extending Lis Pendens to Arbitral Tribunals?" EAPIL. https://eapil.org/2022/06/23/london-steam-ship-owners-extending-lis-pendens-to-arbitral-tribunals/ (Accessed on 26th February 2025).

[10] See, e.g., Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L 136/3.

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L 136/3.

Farah, Youseph and Hourani, Sara. (2018) "Recasting West Tankers in the Deep Water: How *Gazprom* and Recast Brussels I Reconcile Brussels I with International Arbitration" *Journal of Private International Law* 14(1): 96-129.

González-Bueno, Carlos and Lozano, Laura. (2015) "Anti-suit Injunction: Where Does *Gazprom* Leave Us?" *Iurgium [previously Spain Arbitration Review]* 24: 91-103.

Hartley, Trevor. (2014) "Antisuit Injunctions in Support of Arbitration: *West Tankers* Still Afloat." *International and Comparative Law Quarterly* 64(4): 965-975.

Heidelberg report - Report (JLS/2004/C4/03) on the application of the Brussels I Regulation in the Member States presented by B. Hess, T. Pfeiffer and P. Schlosser, Study JLS/C4/2005/03, Final version September 2007, Ruprecht-Karls-Universität Heidelberg.

Hess, Burkhard et al. (2024) "The Reform of the Brussels Ibis Regulation - Additional Proposals." *Vienna Research Paper* 1-48.

Hietanen-Kunwald, Petra, Koulu, Riikka, Turunen, Santtu. (2017) "The New Brussels I Regime and Arbitration – Finding an Interface." *LeXonomica* 8(2): 93-114.

Kronke, Herbert. (2010) "The New York Convention Fifty Years on: Overview and Assessment." In *Recognition and Enforcement of Foreign Arbitral Awards. A Global Commentary on the New York Convention*, edited by Herbert Kronke, Patricia Nacimiento, Dirk Otto and Nicola Christine Port. Kluwer Law International.

Kruger, Thalia. (2010) "Civil Jurisdiction and the Issue of Legislating for the EU." *Journal of Private International Law* 6(2): 499-518.

Kruger, Thalia. (2004) "The Anti-Suit Injunction in the European Judicial Space: *Turner v Grovit*." *International and Comparative Law Quarterly* 53(4): 1030-1040.

Leandro, Antonio. (2015) "Towards a New Interface Between Brussels I and Arbitration?" *Journal of International Dispute Settlement* 6(1): 188-201.

Lenaerts, Koen. (2017) "La Vie Apres L'Avis: Exploring the Principle of Mutual (Yet Not Blind) Trust." *Common Market Law Review* 54(3): 805-840.

Nový, Zdenek. (2017) "Lis pendens between international investments tribunals and national courts." *Czech Society of International Law* 8: 536-549.

Radicati di Brozolo, Luca. (2012) "The Relation between Courts and Arbitration: Support or Hostility." *Opinio Juris in Comparatione* 1: 1-12.

Redfern, Alan and Hunter, Martin. (2004) *Law and Practice of International Commercial Arbitration*. 4th ed. Sweet & Maxwell.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgments in civil and commercial matters (recast) (2012) OJ L 351/1.

Report by Mr P. Jenard on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters. 1979. OJ C 59: 1-65.

Rogerson, Pippa and Mankowski, Peter. (2023) "Article 1." In *European Commentaries on Private International Law (Commentary): Brussels Ibis Regulation*, edited by Ulrich Magnus and Peter Mankowski. Verlag Dr. Otto Schmidt KG.

Sattler, Maximilian. (2016) "Abandon Ship? West Tankers, Gazprom, and Anti-Suit Injunctions under 'Brussels Ia.'" *ASA Bulletin* 34(2): 342-354.

Savin, Andrej. (2010) "The Arbitration Exception and Protection of Arbitration Agreements in the EU." *Pravni zapisi* 1: 74-96.

Schlosser, Peter. 1979. Report on the Convention on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice. OJ C 59/72.

Storskrubb, Eva. (2018) "Mutual Trust and the Dark Horse of Civil Justice." *Cambridge Yearbook of European Legal Studies* 20: 179-201.

Sundaram, Jae. (2015) "Does the Judgment of the CJEU in *Gazprom* Bring about Clarity on the Grant of Anti-Suit Injunctions under the Brussels I Regulation." *Denning Law Journal* 27: 303-322.

The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958.

Tičić, Martina. (2024) "The Notion of "Judgment" in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?" *European Papers* 9(2): 557-592.

Van Houtte, Hans. (2005) "Why Not Include Arbitration in the Brussels Jurisdiction Regulation?" *Arbitration International* 21(4): 509-522.

Van Houtte, Hans. (2001) "Parallel proceedings before state courts and arbitration tribunals. - Is there a transnational *lis alibi pendens* - exception in arbitration or jurisdiction conventions?" '*Arbitral Tribunals or State Courts. Who must defer to whom?' ASA Special Series* 15: 35-54.

Zilinsky, Marek. (2017) "Mutual Trust and Cross-Border Enforcement of Judgments in Civil Matters in the EU: Does the Step-by-Step Approach Work?" *Netherlands International Law Review* 64: 115-139.

Case-law

[2023] England and Wales High Court 2473 (Comm).

Case C-700/20, *The London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* (2022) EU:C:2021:1026, Opinion of Advocate General Collins.

Case C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* (2022) EU:C:2022:488.

Case C-536/13, *"Gazprom" OAO v Lietuvos Respublika* (2015) EU:C:2015:316.

Case C-185/07, *Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc.* (2009) ECR I-663.

Case C-159/02, *Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA* (2004) ECR I-3565.

Case C-391/95, *Van Uden Maritime BV, trading as Van Uden Africa Line v Kommanditgesellschaft in Firma Deco-Line and Another* (1998) ECR I-7091.

Case C-190/89, *Marc Rich & Co. AG v Società Italiana Impianti PA* (1991) ECR I-3855.

Povzetek članka v slovenskem jeziku (abstract in Slovene language):

Arbitraža je v Evropski uniji (EU) priljubljen mehanizem alternativnega reševanja sporov. Vendar se je izkazalo, da je soobstoj arbitraže in sodnih postopkov na pravnem področju EU precej težko urediti. Na ravni EU je v uredbi Bruselj I bis, tj.

glavnem instrumentu, ki ureja pristojnost ter priznavanje in izvrševanje sodnih odločb v civilnih in gospodarskih zadevah, izrecno navedeno, da arbitraža ne spada na njeno področje uporabe. Zaradi te „arbitražne izjeme“ so se v praksi pojavile težave, od katerih jih je veliko prišlo do Sodišča EU (SEU). Vendar je, kot kaže sodna praksa Sodišča EU, privedla le do novih vprašanj. Ker se bodo ta vprašanja še naprej pojavljala, je treba najti drugačno rešitev. Idealen trenutek za takšno spremembo je zdaj, ko poteka reforma uredbe Bruselj I bis. V tem prispevku so tako predstavljene zapletene podrobnosti „kočljivega“ prepletanja arbitraže in sodnih postopkov v EU. Za odpravo obstoječih težav v praksi sta predlagani dve možni rešitvi.