

# GERMAN ARBITRATION DIGEST

<b>GAD No.:</b>	GAD 2025, 23	<b>Decision date:</b>	13 May 2025	<b>Res judicata:</b> No, appeal pending before the BGH (Case No.: I ZB 53/25)
<b>Court:</b>	Higher Regional Court of Stuttgart (Oberlandesgericht Stuttgart, OLG Stuttgart)			
<b>Case No. :</b>	1 Sch 3/24			
<b>Keywords:</b>	Foreign arbitral award, declaration of enforceability, public policy, sanctions, MKAS			
<b>Key legal provisions:</b>	Section 1061 German Code of Civil Procedure (ZPO) Article V New York Convention Articles 3k and 11 Regulation (EU) No. 833/2014 (EU Regulation 833/2014)			

## Higher Regional Court of Stuttgart holds that an arbitral award mandating payment prohibited by EU sanctions currently violates German public policy

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On 13 May 2025, the Higher Regional Court of Stuttgart (OLG Stuttgart) held that an arbitral award issued under the rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (MKAS) was currently unenforceable. The court determined that fulfilling the award would currently constitute a violation of the EU sanctions regime against Russia. Thus, recognition and enforcement of the award would be contrary to German public policy.

### Facts

The dispute arose from a contract between a Russian buyer, the applicant, and a German seller, the respondent. The parties entered into the contract before the Russian war against Ukraine commenced. The contract governed the purchase of industrial machines and ancillary equipment, also usable for the coating of bullet casings. By 31 December 2021, the respondent had delivered goods worth EUR 2.485.800. By August 2022, the applicant had paid EUR 2.672.235. However, following the war on Ukraine in February 2022, the respondent halted further deliveries, citing potential violations of EU sanctions. The applicant rescinded from the contract and demanded repayment.

The applicant initiated an arbitration under the Rules of the MKAS, with Moscow as the seat of arbitration, and the proceedings conducted solely in Russian. The respondent did not participate in the arbitration, despite receiving all the relevant correspondence (in Russian only). The arbitral tribunal ordered the respondent to pay EUR 186.435 plus interest to the applicant.

The OLG Stuttgart held that the award was currently unenforceable. Recognition and enforcement of the award would violate EU sanctions law and, consequently, German public policy. However, the court dismissed a (counter-)application of the respondent to determine that the award is not recognisable in Germany.

## Key findings

The court dismissed various formal arguments raised by the respondent.

The respondent alleged that it was not given proper notice of the arbitration proceedings because the request for arbitration was only in Russian. The OLG Stuttgart dismissed the argument. The arbitration clause did not foresee a language for the arbitration. Therefore, documents in Russian only were sufficient under Article 22(1) of the MKAS arbitration rules (MKAS Rules).

The respondent also challenged the arbitrators' impartiality, noting one arbitrator's role in another case for the applicant and another arbitrator's MKAS executive committee membership. The court also dismissed these arguments. The respondent was precluded from raising such arguments. Under Article 17(3) MKAS Rules, a challenge to an arbitrator must be raised within 15 days of notification of the tribunal's composition or awareness of grounds for challenge. If this deadline is not met, the right to challenge is considered to be waived according to Article 44 MKAS Rules. According to the OLG Stuttgart, the respondent was notified of the composition of the tribunal, but did not challenge it.

Lastly, the OLG Stuttgart turned to issues of public policy. It dismissed a variety of the respondent's arguments because the respondent did not participate in the arbitration. Inter alia, the court held that it was unable to determine whether non-Russian parties would experience an unfair arbitration proceeding in Russia, as alleged by the respondent, because the respondent did not participate.

However, the court held that enforcing the award would currently violate public policy because the payment ordered under the award was prohibited by the sanctions imposed by the EU against Russia:

An award violates public policy if it requires a party to perform an act prohibited under German law. According to Article 3(k)(1) of Regulation (EU) No. 833/2014 (EU Regulation), it is prohibited to sell, supply, transfer, or export goods as listed in Annex XXIII which could contribute to the enhancement of Russian industrial capacities. The machines the respondent had to deliver could be used for the casing of bullets, which was undisputed. As such, the court concluded that they could be used to strengthen Russia's industrial capacities. According to Article 11(1)(b) EU Regulation, no claims in connection with any contract or transaction whose performance has been affected by the measures imposed under the EU Regulation should be satisfied if such claims are made by any Russian entity. Thus, the court concluded that Article 11 EU Regulation prohibits the payment under the award. In addition, the court cited the Q&A published on the website of the German Ministry of Economic Affairs and Energy regarding the EU sanctions regime. There, it was stated that, under sanctions law, the repayment of an advance payment was also prohibited.

Lastly, the court dismissed respondent's counterclaim. The respondent asked the court to declare the arbitral award unrecognizable and unenforceable in Germany. The court held that the counterclaim was inadmissible. Claims such as brought forward by the respondent were only admissible prior to the initiation of proceedings to recognize a foreign arbitral award.

## Comment

The court issued an important decision for foreign arbitral awards in the context of EU sanctions. So far, it is the first of its kind. However, it is in line with another decision of the Higher Regional Court of Cologne (decision dated 24 May 2024, 19 Sch 26/23). There, the court held that enforcement of an award would violate fundamental legal principles if it compelled the respondent to choose between the risk of asset

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seizure through enforcement or making a voluntary payment and thereby exposing itself to potential criminal liability for breaching the EU sanctions regime. However, in the case before the OLG Cologne, the court held that making the payment would not violate the EU sanctions regime.