

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2025, 25	Decision date:	12 June 2025	Res judicata: No (complaint pending – BGH, I ZB 61/25)
Court:	Higher Regional Court of Frankfurt am Main (Oberlandesgericht Frankfurt am Main)			
Case No.:	26 Sch 12/24 Case No.(s) other instances: I ZB 61/25 (German Federal Court of Justice, BGH)			
Keywords:	Enforcement of foreign arbitral award, German public policy, ordre public international, EU sanctions against Russia, Regulation (EU) No 833/2014, révision au fond, unjustified enrichment, breach of a statutory provision			
Key legal provisions:	Sections 1059(2) No 2, 1061(1), (2) German Code of Civil Procedure (ZPO) Article V New York Convention (NYC) Articles 3(k) and 11 Regulation (EU) No. 833/2014 (EU Regulation 833/2014) Section 18(1) No 1a) German Foreign Trade and Payments Act (AWG) Section 817 German Civil Code (BGB)			

Higher Regional Court of Frankfurt am Main refuses enforcement of foreign arbitral award as EU sanctions form part of German public policy

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On 12 June 2025, the Higher Regional Court of Frankfurt am Main (OLG Frankfurt) denied enforcement of an arbitral award rendered by a Russian arbitral tribunal. The court found that enforcement of the award would be contrary to German public policy (ordre public international) because the arbitral award ordering repayment breached EU sanctions against the Russian Federation, which form an integral part of German public policy.

Facts

The applicant was a Russian company and the respondent a German company. The dispute arose from a contract concluded in October 2022 for the supply of polymer alloys to Russia. According to the contract, the applicant was obliged to pay the purchase price in advance, and the respondent undertook to deliver the goods within 21 days of receiving the advance payment. The applicant made an advance payment of over USD 261,010.80, but the respondent failed to deliver the goods.

The sale of polymer alloys for use in Russia is prohibited under Article 3k(1) of Regulation (EU) No 833/2014 (EU Regulation 833/2014) and constitutes a criminal offence under Section 18(1) No 1a) of the German Foreign Trade and Payments Act (AWG). As a result, German authorities had already initiated criminal proceedings against the respondent's management for this violation and had frozen the credit transfer.

Since the respondent did not refund the purchase price paid in advance, the applicant initiated arbitral proceedings before the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation to assert its alleged claims for repayment. The arbitral tribunal ordered the defaulting respondent to repay the advance payment, plus penalties and costs, citing Articles 30 and 81(2) of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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The applicant then applied for enforcement of the Russian arbitral award in Germany. The court dismissed the application as unfounded. The applicant's complaint on points of law is currently pending before the German Federal Court of Justice (BGH).

Key findings

The OLG Frankfurt refused to declare the arbitral award enforceable, holding that its enforcement would be contrary to German public policy.

First, the OLG Frankfurt found that the absence of a final operative provision in the arbitral award did not preclude the admissibility of the application. It is sufficient that the specific payment obligations imposed by the award are clear.

Second, the court held that recognition and enforcement must be refused pursuant to Section 1059(2) No 2(b) ZPO and Article V(1)(b) case 3 and Article V(2) (b) New York Convention (NYC).

According to Article V NYC, recognition and enforcement of an arbitral award may be refused if it would be contrary to the public policy of the enforcing country. In the interests of international trade, the court applied the *ordre public international*, which is less strict than the *ordre public interne*. The arbitral award must therefore suffer from a serious deficiency affecting the foundations of state or economic life.

The court stated that the sale of polymer alloys for use in Russia is prohibited under Article 3k(1) EU Regulation 833/2014. Further it ruled that the repayment of an advance payment made under a contract sanctioned pursuant to Article 3k EU Regulation 833/2014 is itself subject to the prohibition on performance under Article 11(1)(b) EU Regulation 833/2014. The wording of Article 11(1) is deliberately broad and expressly covers "claims for damages and similar claims, such as claims for compensation or warranty claims". The claim for repayment at issue constitutes such a "similar claim" because it is related to a purchase agreement subject to sanctions. The purpose of the EU Regulation 833/2014 is to prevent any transfer of funds to Russian persons, entities or organisations connected to a contract subject to sanctions.

The court further stated that, in proceedings for a declaration of enforceability, there is no *révision au fond* and that incorrect decisions must generally be accepted. However, an exception to this principle applies if the recognition and enforcement of an arbitral award results in an outcome manifestly incompatible with fundamental principles of German law because it violates a norm regulating the foundations of state or economic life or is in unacceptable contradiction with German notions of justice. Given that the sale of polymer alloys is sanctioned under the EU Regulation and constitutes a criminal offence under Section 18(1) No 1a) AWG, such an exception applies in this case.

Finally, the court rejected the applicant's reliance on unjustified enrichment under German law. Pursuant to Section 817 sentence 1 German Civil Code (BGB), a claim for restitution is excluded where the party seeking repayment has itself acted in breach of a statutory prohibition. In the present case, such a breach must be assumed due to the objective violation of Article 3k EU Regulation 833/2014, irrespective of the applicant's knowledge or intent.

Comment

The decision represents one of the rare cases in which a court has refused to enforce a foreign arbitral award on the grounds of a violation of public policy (*ordre public international*) and, exceptionally, has also carried out a *révision au fond*. It confirms that EU sanctions are a mandatory part of German public policy and therefore constitute a significant obstacle to the enforcement of arbitral awards that conflict with these sanctions. Further, the decision clarifies that the repayment of advance payments under sanctioned contracts is itself prohibited under Article 11(1)(b) EU Regulation 833/2014.