

# GERMAN ARBITRATION DIGEST

<b>GAD No.:</b>	GAD 2026, 5	<b>Decision date:</b>	19 December 2025	<b>Res judicata:</b> - No, complaint pending before the BGH, I ZB 107/25
<b>Court:</b>	Highest Regional Court of Bavaria (Bayerisches Oberstes Landesgericht, BayObLG)			
<b>Case No. :</b>	101 Sch 61/24 e			
<b>Keywords:</b>	Foreign arbitral award, declaration of enforceability, military procurement contract, state immunity, sovereign act (acta iure imperii) vs. private law act (acta iure gestionis), arbitration agreement, estoppel, good faith, ordre public, security for costs			
<b>Key legal provisions:</b>	Section 1061 German Code of Civil Procedure (ZPO) Section 110 ZPO Article V New York Convention (NYC)			

## Highest Regional Court of Bavaria rejects state immunity defence in enforcement proceedings relating to a military procurement contract

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On 19 December 2025, the Highest Regional Court of Bavaria (BayObLG) declared an ICC award enforceable and thereby confirmed the efficient approach of the German courts in enforcing arbitral awards against sovereign states. The BayObLG rejected the respondent state's immunity defence, classifying the underlying military procurement contract as a private legal act and ruling that the respondent's prospective cooperation offices in Germany were not protected against enforcement. Furthermore, the BayObLG held that – despite Brexit – no security for costs was required from the applicant seated in the United Kingdom (UK) due to the continued applicability of the 1960 German-UK Enforcement Convention in the field of arbitration.

### Facts

The UK-based applicant (the seller) and the respondent state (the buyer) entered into a contract for the procurement of tactical communication and information systems for the respondent's army.

A dispute arose between the parties after the applicant terminated the contract following the outbreak of a civil war in the respondent's territory. The applicant claimed damages from the respondent for making an unjustified call on standby letters of credit in an arbitration before the International Chamber of Commerce (ICC). The seat of the arbitration was Geneva.

The arbitral tribunal issued an award, which the applicant sought to enforce by targeting the respondent's property in Germany. During the proceedings to declare the award enforceable, the respondent invoked state immunity, argued that the arbitration agreement was invalid due to missing state-internal approval and requested that the UK-based applicant be ordered to pay security for costs.

The BayObLG dismissed these arguments and declared the award enforceable without ordering security for costs.

The respondent's complaint on points of law is pending before the German Federal Court of Justice (BGH).

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## Key findings

The BayObLG ruled that the respondent could not defend against the enforcement of the award.

First, the court held that the state could not invoke state immunity as a general defence against enforcement. In the absence of international treaties between Germany and the respondent state that regulate state immunity, this question had to be decided according to German law. The BayObLG confirmed the stance taken by the German courts that state immunity only protects sovereign acts (*acta iure imperii*). This classification depends on the nature of the act or legal relationship in question, not its purpose. The court found that, by concluding the contract and calling on the standby letters of credit, the respondent acted like a private party (*acta iure gestionis*) and was not exercising sovereign authority, despite the military end-use of the contract.

Second, the BayObLG held that the respondent's property in Germany was also unprotected by enforcement immunity. The court confirmed the established position of the German courts that a declaration by an authorised representative of the foreign state confirming that the property is intended for protected sovereign use is sufficient for enforcement immunity. However, the BayObLG found that the prospective offices for economic and technical cooperation did not fall within this scope, since they were neither related to diplomatic or consular functions, nor were they comparable to the representation of culture and science abroad.

Third, the BayObLG held that under the principle of good faith, the respondent was precluded from invoking the invalidity of the arbitration agreement due to a lack of state-internal approval. This is because the respondent had not raised this objection during the arbitral proceedings, but instead even filed a counterclaim. This had created a legitimate expectation that the respondent considered the arbitration agreement to be binding.

Fourth, the BayObLG ruled that the UK-based applicant could not be required to provide security for costs since the 1960 German-UK Enforcement Convention remains in force in the area of arbitration, ensuring that a costs order issued in proceedings for the declaration of enforceability of a foreign arbitral award can be enforced against a UK party. This is unrelated to Brexit, because the relevant EU legislation on enforcement in civil and commercial matters (Brussels Convention 1968, Brussels I Regulation, Brussels Ia Regulation) had always excluded arbitration from its scope and therefore never superseded the 1960 Convention in this area.

## Comment

The decision reinforces the efficient approach of German courts in enforcing arbitral awards against sovereign states. It confirms the restrictive application of state immunity, limiting its application to cases where the core of sovereign power is at stake and denying it for acts in connection with a military procurement contract. The decision also affirms the strict application of the principle of good faith by German courts, precluding a respondent from challenging the validity of the arbitration agreement if they failed to do so during the arbitral proceedings and even raised a counterclaim.

As a matter of novelty, the BayObLG clarified that the 1960 German-UK Enforcement Convention remains in force for proceedings for the declaration of enforceability of foreign arbitral awards, exempting UK-based applicants from having to provide security for costs.