

[Recognition and Enforcement of Annulled Foreign Arbitral Awards](#)

An Analysis of the Legal Framework and its Interpretation in Case Law and Literature

Bearbeitet von
Claudia Alfons

1. Auflage 2010. Buch. 216 S. Hardcover
ISBN 978 3 631 60378 9
Format (B x L): 14,8 x 21 cm
Gewicht: 440 g

[Recht > Zivilverfahrensrecht, Berufsrecht, Insolvenzrecht > Zivilverfahrensrecht
allgemein, Gesamtdarstellungen > Internationales Zivilprozessrecht,
Schiedsverfahrensrecht](#)
Zu [Inhaltsverzeichnis](#)

schnell und portofrei erhältlich bei

The logo for beck-shop.de features the text 'beck-shop.de' in a bold, red, sans-serif font. Above the 'i' in 'shop' are three red dots of varying sizes, arranged in a slight arc. Below the main text, the words 'DIE FACHBUCHHANDLUNG' are written in a smaller, red, all-caps, sans-serif font.

beck-shop.de
DIE FACHBUCHHANDLUNG

Die Online-Fachbuchhandlung [beck-shop.de](#) ist spezialisiert auf Fachbücher, insbesondere Recht, Steuern und Wirtschaft. Im Sortiment finden Sie alle Medien (Bücher, Zeitschriften, CDs, eBooks, etc.) aller Verlage. Ergänzt wird das Programm durch Services wie Neuerscheinungsdienst oder Zusammenstellungen von Büchern zu Sonderpreisen. Der Shop führt mehr als 8 Millionen Produkte.

Table of Contents

Foreword	5
List of Abbreviations	13
A. Introduction	15
I. International Arbitration Today	15
II. Need for Free Circulation of Arbitral Awards	16
1. Substance of Recognition and Enforcement	16
a) Scope of Recognition	17
b) Scope of Enforcement	17
2. Relevant Legislation on Recognition and Enforcement	18
3. Moot Case	19
4. Purpose of the Subsequent Examination	20
B. International Jurisdiction on Recognition and Enforcement	21
I. First Conventions on International Arbitration	21
1. Geneva Protocol (1923)	22
2. Geneva Convention (1927)	22
II. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)	23
1. Historical Development	23
2. Core Characteristics	25
3. General Applicability	27
4. Arbitration Agreement	28
5. Arbitral Award	28
a) Identification of Arbitral Awards	29
b) Determination of the Binding Nature	31
c) Preclusion of Révision au Fond	36
d) Ordre Public Exception	37

6. Application for Recognition and Enforcement	43
7. Reasons for Refusal of Enforcement	44
Incapacity of the Parties or Invalidity of the Arbitration Agreement	45
Violation of Due Process	46
c) Non-Compliance with the terms of the Arbitration Agreement	46
Irregularities in the Composition of the Arbitral Tribunal or in the Arbitral Proceeding	47
Non-Binding nature, Setting aside or Suspension of the Award	47
f) Lack of Arbitrability	49
g) Breach of the National Ordre Public	50
h) General Remarks on the Enforcement Defences of Article V	50
8. Effects on National Law	50
9. Intertemporality of the New York Convention	52
10. Appreciation of the New York Convention	52
III. European Convention on Commercial Arbitration, (1961)	53
1. Historical Development	53
2. General Characteristics	55
3. Scope of Provisions	56
4. Reasons to Refuse Recognition and Enforcement	56
a) Incapacity of the Parties or Invalidity of the Arbitration Agreement	57
b) Violation of Due Process	58
c) Non-Compliance with the terms of the Arbitration Agreement	58
d) Irregularities in the Composition of the Arbitral Tribunal or the Arbitral Proceeding	58
e) 'Priority Clause'	59
5. Final Clauses	59
IV. Relation Between New York Convention and European Convention	60
1. Distinct Ambitions of both Conventions	60
2. Coinciding Issue	60
3. Controversial Outcomes	61
4. Question of Priority	62

a) Appreciation of the European Convention	62
b) Appreciation of the New York Convention	62
c) Basic Principles of Law	64
5. Dogmatic Evaluation	64
V. More Favourable National Arbitration Laws	65
1. Belgian and Swiss Arbitration Law	66
2. French Arbitration Law	67
3. Swedish Arbitration Law	69
4. Comment	69
a) The rule of “maximum efficacy”	70
b) The rule of “specificity”	70
c) The rule of “lex posterior derogat legi priori”	71
d) General Considerations	71
C. Recognition and Enforcement of Nullified Awards	73
I. Local Standard Annulment	73
II. The Quality of Guidance Provided by the New York Convention ...	74
1. Lack of Clarity	74
2. Comparative Analysis of the Authentic Convention Texts	75
3. General Considerations	78
III. The Quality of Guidance Provided by the European Convention ..	81
IV. Distinct National Case Law and Approaches	82
1. French Case Law	83
a) <i>Société Berardi v. Société Clair</i> (1980)	84
b) <i>Société Pabalk Trcaret v. Société Norsolor</i> (1984)	84
c) <i>Société Polish Ocean Line v. Société Jolasry</i> (1993)	85
d) <i>Société Hilmarton Ltd. v. Société OTV</i> (1994)	86
e) <i>S.A. Lesbats et Fils v. Esterer WD GmbH</i> (Dr. Volker Grub) (2007)	88
<i>Société PT Putrabali Adyamulia v.</i> <i>Société Rena Holding</i> (2007)	89
g) Conclusions on the French Approach	91
2. U.S. Case Law	93
a) <i>Chromalloy Aeroservices Inc. v.</i> <i>Arab Republic of Egypt</i> (1996)	93
b) <i>Yusuf Ahmed Alghanim & Sons v.</i> <i>Toys “R” Us and TRU (HK) Ltd.</i> (1997)	96
c) <i>Baker Marine (Nig.) Ltd. v.</i> <i>Chevron (Nig.) Ltd.</i> , 191 F.3d 194 (1999)	97
d) <i>Martin Spier v. Calzaturificio Technica, S.p.A.</i> (1999)	99

e) Pertamina Minyak Dan Gas Bumi Negara (Petramina) v. Karaha Bodas Company, L.L.C. (KBC) (2004)	100
f) TermoRio & LeasCo Group S.A. E.S.P. v. Electranta S.P., et. al. (2007)	102
g) Conclusions on the U.S Approach	104
3. Austrian Case Law	104
a) Do Zdravilisce Radenska v. Kajo-Erzeugnisse Essenzen GmbH (1993)	105
b) The Austrian Supreme Court (2005)	107
c) Conclusions on the Austrian Approach	108
4. German Case Law	108
a) Do Zdravilisce Radenska v. Kajo-Erzeugnisse Essenzen GmbH (1995)	108
b) Higher Regional Court of Rostock (1999)	109
c) Higher Regional Court of Berlin (2006)	112
d) Higher Regional Court of Dresden (2007)	113
e) Conclusions on the German approach	115
5. Dutch Case Law	116
6. Belgian Case Law	118
V. Conclusion on the Inconsistent Case Laws	119
VI. The Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (2001)	126
1. Historical Development	126
a) Brussels Convention (1968)	127
b) Brussels I Regulation (2001)	128
2. Core Provisions	129
3. Exceptions	129
a) Reasoning for the Exception	129
b) Grievance of such Exclusion	130
c) Classification of the Scope of Exclusion	130
4. European Court of Justice in the matter of „Marc Rich“	131
5. The Applicability of the Brussels I Regulation on Judgments on the Recognition and Enforcement of Arbitral Awards	133
6. Applicability of the Brussels I Regulation on Annulment Decisions	133
7. Conclusions on the Impact of the Brussels I Regulation	134
VII. Interim-Conclusion De Lege Lata	135

D. Basic Concepts on Control Exercised in International Arbitration	137
I. Territorial Notion	138
1. Principal Notions of ‘International Arbitration’	139
2. Role of the Arbitrator	140
3. Role of the Seat of the Arbitration	140
4. Appreciation of Enforcement of Annulled Awards	143
II. Delocalised Notion	144
1. Principal Notions of ‘International Arbitration’	144
2. Role of the Arbitrator	145
3. Role of the Seat of the Arbitration	147
4. Role of the Enforcing State	150
5. Appreciation of Enforcement of Annulled Awards	152
III. Conclusions on the Distinct Approaches	154
1. Considerations on the territorial and delocalised approach	154
2. Conciliating Approach	155
3. National Approaches De Lege Lata	157
III. Exercise of Enforcement Discretion	158
E. Conclusion	161
F. Recommendations	165
I. Recommendations De Lege Ferenda	165
1. Harmonisation of National Laws	166
2. Specifications on Annulment Decisions	166
a) Definition of Annulment Standard	167
b) Allocation of Exclusive Jurisdiction	170
3. Definition of Enforcement Discretion	172
4. Legal Framework	174
a) Brussels I Regulation	174
b) European Convention	175
c) New York Convention	175
II. Recommendations De Lege Lata	178
1. Choice of Seat	178
2. Waiver of Review	178
3. Courts of Enforcement	180
4. Concluding Remarks	180

Appendices	183
United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)	183
European Convention on International Commercial Arbitration	189
Bibliography	199
Zusammenfassung	215