DOI https://doi.org/10.5817/CZ.MUNI.P210-8639-2021-4

The Impact of Brexit on the Arbitration Procedure in Great Britain

Magdalena Wasylkowska-Michór
Faculty of Law and Administration, University of Zielona Góra, Poland

Abstract

The current position of the UK as the most frequently chosen place for international commercial arbitration is the result of long period of growth and development of arbitration proceedings in this country. As of 31 December 2020, the UK ceased to be a member of the EU, the problem arose how would international arbitration in this country look like. The main aim of this contribution is firstly to show how the arbitration procedure in the UK works and what is its legal basis. The paper then focuses on the procedure for the recognition and enforcement of arbitral awards, which is particularly important now in the view of Brexit. Next, the author presents issues that may be problematic in connection with Brexit, i.e., so called anti-suit junctions and public policy.

Keywords

Arbitration; Brexit; Anti-suit Injunction; Public Policy; Arbitration Act 1996; Arbitration Procedure; New York Convention 1958.

1 Introduction

Over the past decades, the United Kingdom ("UK") has become a major, if not the most important, center for the settlement of international disputes - international companies are more likely to choose English law than any other one as the law applicable and on the other hand more likely to settle disputes in English courts than in other courts. The question of how Brexit will affect the legal framework of international disputes' settlement is therefore of crucial importance – both for the UK individuals and companies but also for the European Union ("EU"). There is therefore no doubt that Brexit is one of the greatest legal challenges of recent times.

On 23 June 2016 – the British people voted in a referendum to leave the EU. Subsequently, on 29 March 2017 the UK formally notified[1] the European Council of its intention to withdraw, and a month later the European Council's, at an extraordinary meeting adopted guidelines[2] setting out a framework for negotiations.

UK's withdrawing from the EU relied on the procedure introduced into the Treaty on European Union by the Treaty of Lisbon, i.e., under Art. 50. This article confirms that any Member State may decide, in accordance with its own constitutional requirements, about its withdrawing from the EU. Under the terms of Art. 50 para. 2 of the Treaty on European Union, a Member State which decides to withdraw shall notify the European Council of its intention.

The first withdrawal agreement[3] was negotiated by British Prime Minister Theresa May, but it didn't gain the approval of the British Parliament. It was only on 17 October 2019 that the European Council approved the revised withdrawal agreement and accepted the revised text of the political declaration[4], and on 21 October 2019 the Council adopted Decision (EU) 2019/1750 amending Decision (EU) 2019/274 (5) on the signature of the withdrawal agreement[5].

1 A letter of 29 March 2017 from the Prime Minister of the United Kingdom to the President of the European Council, Cover Note from General Secretariat of the Council to Delegations, XT 20001/17, BXT 1. *Consilium.europa.eu* [online]. [cit. 30. 5. 2021]. Available at: https://data.consilium.europa.eu/doc/document/XT-20001-2017-INIT/en/pdf

2 Guidelines Following the United Kingdom's Notification Under Article 50 TEU, EUCO XT 20004/17. *Consilium.europa.eu* [online]. [cit. 30. 5. 2021]. Available at: https://www.consilium.europa.eu/media/21763/29-euco-art50-guidelinesen.pdf

3 European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 (2018) 33. *European Commission* [online]. [cit. 30. 5. 2021]. Available at: https://ec.europa.eu/info/sites/default/files/draft_withdrawal_agreement.pdf

4 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, (2019/C 384 I/01). *EUR-Lex* [online]. 12. 11. 2019 [cit. 30. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12019W/TXT(02)&from=PL

5 Council Decision (EU) 2019/1750 of 21 October 2019 amending Decision (EU) 2019/274 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, LI 274/1. *EUR-Lex* [online]. 28. 10. 2019 [cit. 30. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019D1750&from=PL

On 9 January 2020 House of Commons approved the Withdrawal Agreement Bill ("WAB")[6]. The Council subsequently adopted in written procedure a decision to conclude, on behalf of the EU, an agreement on the UK's withdrawal from the EU. The Council adopted the decision to conclude the Brexit agreement on behalf of the EU on 30 January 2020, which was equivalent to ratifying the agreement on behalf of the EU. On 1 February 2020, a transitional period commenced and lasted until 31 December 2020. During this time, the UK continued to apply EU law, but was no longer represented in the EU institutions.[7]

From now on, the UK is no longer a Member State of the EU and is therefore treated as a third country. This means that not only EU's primary law (treaties), but also secondary one, (regulations and directives) ceases to apply in the UK. UK also no longer participates in the creation of new EU law, nor it is subject to the case law of the Court of Justice of the European Union ("CJEU"). At the same time, none of the three aforementioned main documents on the UK's withdrawal from the EU, i.e., the first withdrawal agreement negotiated by Theresa May, WAB and finally Withdrawal Agreement refer in any way to arbitration proceedings that are still pending or yet to be initiated in the UK, both during and after the so-called transition period, which started on 1 February 2020 and ended on 31 December 2020.

2 Arbitration Procedure

Arbitration procedure in the UK, which undoubtedly determines its popularity, is characterized by clarity and transparency of rules. According to Art. 1 of the Arbitration Act 1996[8] the purpose of arbitration is to receive a fair settlement of a dispute by an impartial tribunal without undue delay

6 European Union (Withdrawal Agreement) Bill, House of Commons, Committee Stage Briefing, January 2020. *JUSTICE.ORG.UK* [online]. [cit. 30. 5. 2021]. Available at: https://files.justice.org.uk/wp-content/uploads/2020/01/06170033/JUSTICE-WAB-Briefing-Committee-Stage.pdf

7 Brexit: Council adopts decision to conclude the withdrawal agreement. *Consilium.europa.eu* [online]. 30. 1. 2020 [cit. 30. 5. 2021]. Available at: https://www.consilium.europa.eu/pl/press/press-releases/2020/01/30/brexit-council-adopts-decision-to-conclude-the-withdrawal-agreement/

8 Arbitration Act 1996, UK Public General Acts 1996 c. 23. *Legislation.gov.uk* [online]. [cit. 30. 5. 2021]. Available at: https://www.legislation.gov.uk/ukpga/1996/23/contents

or cost.[9] The parties should have freedom to agree on the method of dispute resolution, subject only to such guarantees as are necessary in the public interest, and in matters included in Part I of the Act the court should not intervene, except as provided by this Part.[10]

These principles are reflected in the general duties of the arbitration tribunal. Indeed, under Art. 33 para. 1 of the Arbitration Act 1996, the tribunal shall act fairly and impartially as between the parties, giving each party a reasonable opportunity to present its arguments and to deal with the arguments of the opposite site, and adopt procedures appropriate to the circumstances of the case, avoiding unnecessary delay or costs, so as to provide a fair means of resolving the cases to be decided.[11]

The courts found that the main aim of the Arbitration Act 1996 was to allow the parties to settle disputes through arbitration rather than in court. That is why in fact most commercial disputes can be settled by arbitration (see, e.g., *Fulham Football Club (1987) Ltd vs. J. Sir David Richards et al., [2011] EWCA v 855*). Courts are prepared to interpret arbitration agreements broadly to cover both non-contractual and contractual disputes (*Fiona Trust & Holding Corporation vs. Privalov, [2007] UKHL 40*).[12] Only in very few cases disputes are not subject to arbitration:

a) where the employee can only submit his dispute to adjudication by an employment tribunal (*Clyde & Co LLP v Bates van Winkelhof [2011] EWHC 668*), i.e., where the judicial proceedings are mandatory,
b) insolvency proceedings (which are subject to the statutory regime set out in the Insolvency Act 1986),
c) criminal matters.[13]

The Arbitration Act 1996 concerns the procedure for the settlement of disputes on which an agreement has been concluded that they will

9 Art. 1 letter a) Arbitration Act 1996.
10 Art. 1 letter b) and c) Arbitration Act 1996.
11 Art. 33 para. 1 Arbitration Act 1996.
12 WILLIAMS, J., HAMISH, L., HORNSHAW, R. Arbitration procedures and practice in the UK (England and Wales): overview [online]. *Akin Gump*. p. 4 [cit. 10. 6. 2021]. Available at: https://www.akingump.com/a/web/101415/aokvH/practical-law-arbitration-procedures-and-practice-in-the-uk-.pdf
13 Ibid., pp. 4–5.

be submitted to arbitration. In such a context an 'arbitration agreement'[14] means an agreement submitting to arbitration current or future disputes (whether they arise under contract or not).[15]

Previously indicated articles contain a number of provisions that provide a great freedom of the disputing parties in shaping the arbitration proceedings. This freedom is expressed, *inter alia*, in the possibility of freely:

a) agreeing on the number of arbitrators to be members of the tribunal and whether to appoint a chairman or umpire[16],
b) agreeing on the procedure for the appointment of arbitrators, including the procedure for appointing the chairperson or mediator (conciliator)[17],
c) agreeing on what will happen if the procedure of establishing an arbitral tribunal does not work in proper way[18],
d) agreeing on the functions of the chairman concerning making decisions, issuing orders and awards[19],
e) agreeing under what circumstances the arbitrator's power of attorney may be revoked[20],
f) choosing by party to arbitral proceedings if she or he is represented in the proceedings by a lawyer or another person chosen by her or him[21],
g) agreeing on the powers that the arbitral tribunal may use for the purposes and in connection with the proceedings[22],
h) agreeing on the powers of the tribunal in the event that a party fails to do what is necessary for the proper and efficient conduct of the arbitration proceedings[23],
i) choosing the law applicable to the substance of the dispute[24], or,

14 *"The reference in an agreement to a written form of arbitration clause or to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement."* – Art. 6 para. 2 Arbitration Act 1996.
15 Art. 6 para. 1 Arbitration Act 1996.
16 Art. 15 para. 1 Arbitration Act 1996.
17 Art. 16 para. 1 Arbitration Act 1996.
18 Art. 18 para. 1 Arbitration Act 1996.
19 Art. 20 para. 1 Arbitration Act 1996.
20 Art. 23 para. 1 Arbitration Act 1996.
21 Art. 36 Arbitration Act 1996.
22 Art. 38 para. 1 Arbitration Act 1996.
23 Art. 41 para. 1 Arbitration Act 1996.
24 Art. 46 para. 1 letter a) Arbitration Act 1996.

j) agreeing on the powers of the arbitral tribunal with regard to legal remedies[25],

k) agreeing on the power of the tribunal to grant interest[26],

l) agreeing on the form of an award[27],

m) agreeing on the date on which the award was made[28],

n) agreeing on the requirements as to notification of the result of the arbitration proceedings to the parties[29].

The Arbitration Act 1996 has greatly clarified the relationship between the courts and arbitration tribunals, reducing significantly the power of courts to interfere in the process and supervision of arbitration.[30] In turn, the court should interfere in the procedure for setting up the arbitral tribunal only if there is no agreement between the dispute's parties on the above mentioned subject. These powers of the court are: (a) giving directions for making any necessary appointments, (b) ordering that the tribunal should take into account these appointments (one or more of them), (c) revocating of appointments already made, (d) making the necessary appointments on its own.[31]

The court also has the power to interfere at the stage of dismissal of the arbitrator. According to Art. 24 para. 1, a party to arbitration proceedings may apply to the court for dismissal of the arbitrator.[32] Subsequently, the court's intervention is also possible when it decides on legal issues arising

25 Art. 48 para. 1 Arbitration Act 1996.
26 Art. 49 para. 1 Arbitration Act 1996.
27 Art. 52 para. 1 Arbitration Act 1996.
28 Art. 54 para. 1 Arbitration Act 1996.
29 Art. 55 para. 1 Arbitration Act 1996.
30 SHONE, M. J. Is it Necessary to Register an Award to Enforce it in the United Kingdom? *Arbitration: The Journal of International Arbitration, Meditation, and Dispute Management*, 2005, Vol. 71, no. 1, p. 52.
31 Art. 18 para. 3 Arbitration Act 1996.
32 The catalogue of reasons why an arbitrator can be removed is predetermined. The grounds for removing an arbitrator from his/her position include: (a) circumstances that give rise to justifiable doubts as to his impartiality, (b) lack of the qualifications required by the arbitration agreement, (c) physical or mental incapability of conducting the proceedings or there are justifiable doubts as to his capacity to do so. – Art. 24 para. 1 Arbitration Act 1996; Finally, arbitrator can also be removed on the ground that he has refused or failed: (i) to conduct properly the proceedings, or (ii) to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant. – Art. 24 para. 1 letter d) Arbitration Act 1996.

in the course of the proceedings. In accordance with Art. 45 para. 1, unless the parties have agreed otherwise, the court may, at the request of a party to the arbitration proceedings (after notifying the other parties), resolve any legal issue arising in the course of the proceedings. The only condition is that the court must be convinced that these legal issues significantly affect the rights of one or more parties.[33] An award given by an arbitral tribunal pursuant to an arbitration agreement may, with the consent of the court, be enforced in the same way as a judgment or court order having the same effect.[34] Unless the parties decide otherwise, the court may, by order, extend any time limit agreed by them with respect to all matters related to the arbitration […] with effect in the event of no such agreement.[35]

Next, the position of both the arbitrator and the arbitral tribunal in the UK also results from the fact that the arbitrator has immunity and the arbitral tribunal can decide all procedural and evidential matters. It results from Art. 29 para. 1, according to which the arbitrator shall not be liable for acts or omissions in the performance or alleged performance of the arbitrator's functions, unless it is proved that the act or omission was in bad faith.[36]

Then, it shall be for the tribunal to decide all procedural and evidential matters.[37] In particular, unless the parties have agreed otherwise, the arbitral tribunal may – (i) appoint experts or legal advisors to report to the tribunal and the parties, or (ii) appoint experts to assist it on technical matters,

33 Art. 45 para. 1 Arbitration Act 1996.
34 Art. 66 para. 1 Arbitration Act 1996.
35 Art. 79 para. 1 Arbitration Act 1996.
36 Art. 29 para. 1 Arbitration Act 1996.
37 *"Procedural and evidential matters include – (a) when and where any part of the proceedings is to be held; (b) the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied; (c) whether any and if so what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended; (d) whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage; (e) whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done; (f) whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented; (g) whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law; (h) whether and to what extent there should be oral or written evidence or submissions."* – Art. 34 para. 2 Arbitration Act 1996.

and may authorize participation of any such expert or legal advisor in the proceedings.[38] The tribunal may order a claimant to lodge a security for the costs of the arbitration proceedings.[39] The tribunal may give directions in respect of any thing which is the subject of the proceedings or in respect of which any question arises in the proceedings, and which is the property of or in the possession of a party to the proceedings – (a) for the inspection, photographing, preservation, custody or detention of the thing by the tribunal, an expert or a party, or (b) by ordering that samples be taken, observations made or experiments made on the thing.[40] Finally, the tribunal may order that a party or a witness be heard under oath or with confirmation, and may, for this purpose, take the necessary oath or receive the necessary confirmation.[41] It can also provide instructions to a party in order to preserve any evidence under its custody or control for the purposes of the proceedings.[42]

Unless otherwise agreed by the parties, the tribunal has the power to make a declaration as to any matter to be determined in the proceedings.[43] *"The tribunal may order the payment of a sum of money, in any currency."*[44] The tribunal has the same powers as the court – (a) to order a party to do or refrain from doing anything; (b) to order specific performance of a contract (other than a real estate one); (c) to order the correction, setting aside or annulment of a notarial deed or any other document.[45]

Unless otherwise agreed by the parties, the award given by the arbitral tribunal pursuant to the arbitration agreement shall be final and binding both on the parties and on all persons claiming through them or on their behalf.[46]

In the course of the arbitration proceedings, parties are obliged to cooperate with the tribunal. This manifests itself primarily in taking all actions that are

38 Art. 37 para. 1 Arbitration Act 1996.
39 Art. 38 para. 3 Arbitration Act 1996.
40 Art. 38 para. 4 Arbitration Act 1996.
41 Art. 38 para. 5 Arbitration Act 1996.
42 Art. 38 para. 6 Arbitration Act 1996.
43 Art. 48 para. 2, 3 Arbitration Act 1996.
44 Art. 48 para. 4 Arbitration Act 1996.
45 Art. 48 para. 5 Arbitration Act 1996.
46 Art. 58 para. 1 Arbitration Act 1996.

necessary for the proper and efficient conduct of the arbitration proceedings. The parties do everything necessary for the proper and efficient conduct of the arbitration proceedings.[47] This includes – (a) complying promptly with any tribunal's orders concerning procedure or evidence matters, as well as with any other orders or instructions from the tribunal, and (b) where appropriate, promptly taking without all necessary steps to obtain a court decision on a preliminary questions concerning jurisdiction or law.[48]

If the tribunal is satisfied that the claimant has suffered an undue and unforgivable delay in the pursuit of his claim and that the delay – (a) causes or may create a significant risk that it is impossible to obtain a fair settlement of the dispute, or (b) has caused or may cause serious damage to the defendant, the tribunal may make an award dismissing the claim.[49] The tribunal may also make an order dismissing the claim if the claimant does not comply with a peremptory order given by the tribunal to provide security for costs.[50]

If a party, without giving sufficient reason, – (a) does not appear or will not be represented at an oral hearing that was duly notified, or (b) in cases to be decided in writing, fails to provide written evidence after due notice or requests in writing, the tribunal may continue the proceedings in the absence of that party and may make an award on the basis of the evidence presented.[51] If a party, without showing sufficient reasons, fails to comply with any order or instruction of the tribunal, the tribunal may make a peremptory order to the same purpose, setting such time for compliance as it deems appropriate.[52]

3 Recognition and Enforcement of Arbitral Awards

The legal status of arbitration proceedings taking place in London remains unchanged. It means that arbitration proceedings' clauses will remain in force, while the awards of the arbitral tribunals will continue

47 Art. 40 para. 1 Arbitration Act 1996.
48 Art. 40 para. 2 Arbitration Act 1996.
49 Art. 41 para. 3 Arbitration Act 1996.
50 Art. 41 para. 6 Arbitration Act 1996.
51 Art. 41 para. 4 Arbitration Act 1996.
52 Art. 41 para. 5 Arbitration Act 1996.

to be enforced on the basis of the United Nations Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").[53]

The UK is a party to the New York Convention and will remain it even after Brexit. All EU Member States are also signatories to the above-mentioned Convention. That's why the UK's withdrawal from EU does not affect the validity of arbitration agreements for which English law is proper one. It also doesn't affect enforcement and recognition of arbitral awards issued in the UK.

According to Art. 1 para. 1 of the New York Convention, the Convention applies to the recognition and enforcement of arbitral awards[54] rendered in the territory of a State other than that in which recognition and enforcement of such awards are sought and arising from differences between natural or legal persons. It also applies to arbitral awards not recognized as domestic in the State where their recognition and enforcement are sought.[55] Each Contracting State recognizes a written agreement[56] by which the parties undertake to submit to arbitration all or any disagreements which arise or may arise between them in relation to a particular legal relationship,

53 It is worth noticing here that the foreign arbitration award may be enforced not only on the basis of the New York Convention. In fact, such an award, if it is entitled to enforcement at common law, may be enforced in the same manner as domestic award. The party seeking to rely on the award is not restricted to bringing the action on the award. A foreign award may be enforced by obtaining leave to enforce under Art. 66 of the Arbitration Act 1996. – SHONE, M. J. Is it Necessary to Register an Award to Enforce it in the United Kingdom? *Arbitration: The Journal of International Arbitration, Meditation, and Dispute Management*, 2005, Vol. 71, no. 1, p. 53; According to above-mentioned Art. 66, an award given by a tribunal pursuant to an arbitration agreement may, with the consent of the court, be enforced in the same way as a judgment or order having the same effect. – Art. 66 para. 1 Arbitration Act 1996; If permission to participate in the procedure has been granted, a judgment may be issued in accordance with the judgment. – Art. 66 para. 2 Arbitration Act 1996; Permission to enforce the award shall not be granted if or to the extent to which the person against whom the award is sought to be enforced proves that the tribunal lacked substantive jurisdiction to issue the award. – Art. 66 para. 3 Arbitration Act 1996.

54 *"The term 'arbitral awards' shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted."* – Art. 1 para. 2 New York Convention.

55 Art. 1 para. 1 New York Convention.

56 *"The term 'agreement in writing' shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams."* – Art. 2 para. 2 New York Convention.

whether contractual or not, on a matter that may be settled by arbitration.[57] A court of a Contracting State shall, in the event of an action being brought in a matter in respect of which the parties have concluded an agreement within the meaning of this article, at the request of one of the parties, refer the parties to arbitration, unless it finds that the agreement is invalid, ineffective or incapable of being performed.[58] Each Contracting State shall consider arbitral awards to be binding[59] and enforce them in accordance with the procedural rules in force in the territory in which the award is invoked, under the conditions set out in the following articles. No considerably more onerous conditions, fees or charges than those imposed for the recognition or enforcement of domestic arbitral awards may be imposed on the recognition or enforcement of arbitral awards to which this Convention applies.[60]

Recognition and enforcement of an award may be refused upon application by the party against whom recognition and enforcement is sought, only if that party provides the competent authority, where the recognition and enforcement is sought, proof that: (a) the parties to the contract for which recognition and enforcement is sought, referred to in Art. II, were legally incapable under the law applicable to them, or the said contract is invalid under the law to which the parties have subjected it, or, in the absence of any indication to that effect, under the law of the country in which the award was made; or (b) the party against whom the award was invoked was not properly notified of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to make a case; or (c) the award relates to a difference not provided for or not covered by the terms of the submission to arbitration, or contains decisions on matters outside the scope of the submission to arbitration, provided that, if the decisions in the cases submitted to arbitration can be separated from those which have not been submitted to arbitration, that part of the award which contains

57 Art. 2 para. 1 New York Convention.

58 Art. 2 para. 3 New York Convention.

59 *"To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply: (a) the duly authenticated original award or a duly certified copy thereof; (b) the original agreement referred to in article II or a duly certified copy thereof."* – Art. 4 para. 1 New York Convention.

60 Art. 3 New York Convention.

decisions on cases submitted to arbitration may be recognized and enforced; or (d) the composition of the arbitration panel or the arbitration procedure was not in accordance with the agreement of the parties, or, in the absence of such agreement, was not in accordance with the law of the country in which the arbitration took place; or (e) the award has not yet become binding on the parties, or has been revoked or suspended by the competent authority of the country where, or under the law of which, that award was given.[61] Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought determines that: (a) the subject of the disagreement is not capable of settlement by arbitration under the law of that country; or (b) the recognition or enforcement of the award would be contrary to public policy of that country.[62]

Regulations concerning recognition and enforcement of arbitral awards under the New York Convention are contained in the Arbitration Act 1996. Part III of the Act: 'Recognition and Enforcement of Certain Foreign Awards' deals with matters falling within the scope of the New York Convention. According to Art. 100 para. 1 of the Arbitration Act 1996, *"in this Part a 'New York Convention award' means an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention"*.[63] An award made under the New York Convention is deemed binding on the persons between whom it was rendered, and therefore may be relied upon by such persons by way of charge, set-off or otherwise in any court proceedings in England and Wales or Northern Ireland.[64] An award given under the New York Convention may, with the consent of the court, be enforced in the same manner as a judgment or court order having the same effect.[65] Recognition

61 Art. 5 para. 1 New York Convention.
62 Art. 5 para. 2 New York Convention.
63 Art. 101 para. 1 Arbitration Act 1996.
64 Ibid.
65 Art. 101 para. 2 Arbitration Act 1996.

or enforcement of an award given under the New York Convention may not be refused except in the following cases.[66]

Six EU Member States (Cyprus, Denmark, Romania, Slovenia, Hungary, and Poland) have ratified the New York Convention with reservation that it will only apply to arbitral awards in commercial cases. In these countries this excluded from the Convention's scope of application cases that concern, for example, arbitration in sports, family, or employment matters, which are not commercial in nature. Then, as it comes up clearly from the provisions of the New York Convention cited above, arbitration agreement, in order to be recognized and enforced, under this Convention, must be in writing. In practice, this means that if the arbitration agreement is not in writing, any subsequent award rendered in the course of the arbitration proceedings cannot be enforced under the Convention.

4 Anti-suit Injunctions

After Brexit, it is certain that the current prohibition imposed by the CJEU on English courts on issuing so called anti-suit injunctions, no longer applies to UK courts. Anti-suit injunction is an order issued by a court or arbitral tribunal that prevents an opposing party from commencing or continuing a proceeding in another jurisdiction or forum. If the opposing party contravenes such an order issued by a court, a contempt of court order may be issued by the domestic court against that party.[67] Because of the possibility of even indirectly affecting the jurisdiction of another

66 Art. 103 para. 1 Arbitration Act 1996; *"Recognition or enforcement of the award may be refused if the person against whom it is invoked proves: (a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity; (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; (d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4)); (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place; (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made."* – Art. 103 para. 2 Arbitration Act 1996.

67 LEVY, L. Anti-suit Injunctions Issued by Arbitrators. In: GAILLARD, E. (ed.). *Anti-Suit Injunctions in International Arbitration*. Berne: Staempfli Verlag AG, 2005, p. 116.

court, anti-suit injunctions are one of the most important and at the same time most controversial remedies international civil procedure.[68] The anti-suit injunction includes a prohibition on commencing or continuing proceedings before a court in another State and, if commenced earlier, an order to terminate them.[69]

Issues concerning arbitration proceedings have been excluded from the scope of many EU instruments on cooperation in civil and commercial matters, regardless of the fact if they are international agreements or strictly EU's law acts such as regulations or directives. According to the wording of Art. 1 point 4 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters ("Brussels Convention"), the Convention shall not apply to arbitration.[70]

Similarly, the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("2007 Lugano Convention") excluded arbitration from its scope by virtue of Art. 1 para. 2 letter d)[71]. Subsequently, under Art. 1 para. 2 letter d) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I bis Regulation")[72], this Regulation shall not apply to arbitration.[73] However, the preamble to the latter regulation explains what it means to exclude arbitration cases from its scope. According to point 12, this Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State which brought

68 AMBROSE, C. Can Anti-Suit Injunctions Survive European Community Law? *The International and Comparative Law Quarterly*, 2003, Vol. 52, no. 2, p. 401.

69 HARTLEY, T. C. Comity and the Use of Antisuit Injunction in International Litigation. *The American Journal of Comparative Law*, 1987, Vol. 35, no. 3, p. 487.

70 Art. 1 point 4 Brussels Convention.

71 *"The Convention shall not apply to arbitration."* – Art. 1 para. 2 letter d) 2007 Lugano Convention.

72 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. *EUR-Lex* [online]. [cit. 30. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215; Similarly, previously applicable Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in its Art. 1 para. 2 letter d) excluded arbitration issues from its scope of application.

73 Art. 1 para. 2 letter d) Brussels I bis Regulation.

the action in the case in which the parties concluded the arbitration agreement from referring the parties to arbitration, suspending or dismissing the proceedings, or from examining whether the arbitration agreement is invalid, inoperative or incapable of being performed in accordance with their national law. A judgment given by a court of a Member State as to the nullity, voidness or impossibility of enforcing an arbitration should not be subject to the rules of recognition and enforcement set out in this Regulation, irrespective of whether the court decided has decided on the matter as the main question or ancillary. On the other hand, where a court of a Member State having jurisdiction under this Regulation or under national law finds that the arbitration agreement is invalid, inoperative or incapable of being performed, this should not prevent recognition or, as the case may be, enforcement of a decision of that court on the merits in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the New York Convention, which takes precedence over this Regulation. This Regulation should not apply to any action or ancillary proceedings relating, in particular, to the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of arbitration proceedings or any other aspect of such proceedings, nor to any action or judgment relating to the annulment, review, appeal, recognition or enforcement of an arbitral award.[74]

In turn, with regard to the Brussels Convention, in February 2021 the UK Government notified the Secretary-General of the EU's Council that it ceased to apply this Convention to the UK and Gibraltar from 1 January 2021.[75]

Nevertheless, despite the exclusions outlined above, the CJEU has referred to the issue of anti-suit injunctions, specifically to the prohibition of their applying. In its Judgment of 10 February 2009, *Allianz SpA, formerly Riunione*

74 Point 12 Preamble Brussels I bis Regulation.

75 The UK's Notification regarding the Brussels Convention 1968 and the 1971 Protocol, including subsequent amendments and accessions, having ceased to apply to the United Kingdom and Gibraltar from 1 January 2021, as a consequence of the United Kingdom ceasing to be a Member State of the European Union and of the end of the Transition Period, 5816/21. *Consilium.europa.eu* [online]. 1. 2. 2021 [cit. 10. 6. 2021]. Available at: https://data.consilium.europa.eu/doc/document/ST-5816-2021-INIT/en/pdf

Adriatica Di Sicurtà SpA, Generali Assicurazioni Generali SpA vs. West Tankers Inc., Case C-185/07[76], CJEU clearly declared that even if the proceedings do not fall within the scope of Regulation No 44/2001, they may nevertheless have effects which undermine its effectiveness, namely to prevent the objectives of harmonizing conflict-of-law rules in civil and commercial matters and the free movement of decisions in those matters. This is the case, *inter alia*, where such proceedings prevent a court of another Member State from exercising the jurisdiction conferred on it by Regulation No 44/2001, (point 24). In that regard, […] if, given the subject-matter of the dispute, that is, the nature of the rights to be protected in proceedings, such as a claim for damages, those proceedings fall within the scope of Regulation No 44/2001, a preliminary question as to the applicability of the clause on an arbitration court, including in particular its validity, also falls within the scope of its

76 In August 2000, Front Comor, a vessel owned by West Tankers and chartered by Erg Petroli SpA ('Erg'), collided in Syracuse (Italy) with a wharf owned by Erg and caused damage. The charter contract was governed by English law and included a clause providing for arbitration in London (United Kingdom), (point 9). Erg claimed damages from its insurers, Allianz and Generali, up to the sum insured, and then commenced arbitration proceedings in London against West Tankers for the payment of the excess. West Tankers denied its liability for the damage caused by the collision, (point 10). After having paid Erg compensation under the insurance policies for the loss suffered, Allianz and Generali brought an action before the Tribunale di Siracusa (Italy) on 30 July 2003 against West Tankers in order to recover the sum paid to Erg. The action was based on their statutory right to claim Erg's claims pursuant to Article 1916 of the Italian Civil Code. West Tankers raised a plea of lack of jurisdiction due to the existence of an arbitration clause, (point 11). In parallel, West Tankers brought an action before the High Court of Justice of England and Wales, Queens Bench Division (Commercial Court) on 10 September 2004, seeking a declaration that the dispute between itself, on the one hand, and Allianz and Generali, on the other hand, should be settled by arbitration in accordance with the arbitration agreement. West Tankers also applied for an order that Allianz and Generali discontinue all proceedings other than the arbitration proceedings and that they be ordered to terminate the proceedings instituted before the Tribunale di Siracusa ('dropout injunction'), (point 12). By judgment of 21 March 2005, the High Court of Justice of England and Wales, Queens Bench Division (Commercial Court), granted West Tankers' claims and issued an anti-suit injunction against Allianz and Generali. The latter appealed against that judgment to the House of Lords. They argued that issuing such an order was contrary to Regulation No 44/2001, (point 13). In those circumstances, the House of Lords decided to stay the proceedings and refer the following question to the Court for a preliminary ruling: 'Is it consistent with Regulation No 44/2001 for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings in another Member State on the ground that such proceedings are in breach of an arbitration agreement?', (point 18). – Judgment of the CJEU of 10 February 2009, Case C-185/07.

application, (point 26). This statement is confirmed in point 35 of the Report on the accession of the Hellenic Republic to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36) ('the Brussels Convention'), presented by Messrs *Evrigenis* and *Kerameus* (OJ 1986 C 298, p. 1). This point provides that the verification, as an incidental issue, of the validity of an arbitration clause invoked by a litigant to challenge the jurisdiction of the court before which it was defendant under the Brussels Convention should be regarded as falling within the scope of that Convention, (point 26). Consequently, the use of an order against the defendant to prevent a court of a Member State, which normally has jurisdiction to settle a dispute under Art. 5 para. 3 of Regulation No 44/2001, from ruling, in accordance with Art. 1 para. 2 letter d) of that Regulation, as regards the mere application of the regulation to the dispute pending before it, deprives that court of jurisdiction to rule on its own jurisdiction under Regulation No 44/2001, (point 28). It follows, first, […] that an injunction, such as that in the main proceedings, is contrary to the general rule which follows from the case-law of the CJEU on the Brussels Convention, that each court seized itself determines, in accordance with the provisions applicable to him, whether he is competent to resolve the dispute before him […]. In that regard, it should be recalled that Regulation No 44/2001, with a few limited exceptions which are not relevant to the main proceedings, does not allow the jurisdiction of a court of a Member State to be reviewed by a court of another Member State. This jurisdiction is determined directly by the rules established by that regulation, including those relating to its scope. Thus, in no event is a court of one Member State better able to determine whether the court of another Member State has jurisdiction, (point 29). Moreover, by making it difficult for a court of another Member State to exercise the powers conferred on it by Regulation No 44/2001, namely, to rule on the basis of the provisions defining the material scope of that regulation, including Art. 1 para. 2 letter d) whether that regulation is applicable, such an injunction against action is also contrary to the trust that Member States place in each other's legal systems and judicial institutions and on which the system of jurisdiction provided for in Regulation No 44/2001 is based (point 30). Consequently,

an order against the action, such as that in the main proceedings, does not comply with Regulation No 44/2001, (point 32).[77]

This above mentioned CJEU decision has been hailed because it maintains the principle of mutual trust among EU Member States courts as it ensures that no Member State court can interfere with the judical sovereignty of other Member States courts by determining jurisdiction or reviewing a decision of the other Member State court as this is not in line with the principles of the Brussels Regulation. In this way therefore it can be argued that the CJEU decision puts EU law and more importantly judical sovereignty above commercial interest. However, the CJEU decision is problematic as it creates a situation in which an opportunistic potential defendant can commence tactical proceedings in a Member State court to have the effect of delaying the resolution of the substantive dispute. On the one hand, there are the members of the House of Lords who state that the ability to issue anti-suit injunctions is one of the advantages that London offers as an 'important and valuable weapon' in the hands of the English courts to exercise their supervisory role over arbitration. On the other hand, there is a view of Advocate General, preparing opinion to the above-mentioned judgment, who dismisses these arguments as being of a 'purely economic nature' and therefore they cannot justify infringements of Community law.[78]

Therefore, in the absence of being bound by EU legislation and, above all, by the case-law of the CJEU, the UK courts will be free to issue anti-suit injunctions, particularly as they appear to emphasize the role of that remedy.[79] According to point 17 of the *Judgment C-185/07*, cited above, the House of Lords has already made it clear that the UK courts have been granting anti-suit injunctions for many years. This practice is, in his opinion, a valuable tool for the court in the place of arbitration, exercising its supervisory jurisdiction over the arbitration, as it promotes legal certainty

77 Judgment of the CJEU of 10 February 2009, Case C-185/07.

78 NDOLO, D. and M. LIU. Does the Will of the Parties Supersede the Sovereignty of the State? Anti-suit Injunctions in the UK Post-Brexit. *Arbitration: The Journal of International Arbitration, Meditation, and Dispute Management*, 2017, Vol. 83, no. 3, pp. 260–261.

79 Anti-suit injunctions are frequently issued by the UK courts, for example in *C vs. D, ([2007] 2 Lloyd's Rep 367), Atlas Power Ltd & Ors vs. National Transmission and Despatch Co Ltd ([2018] EWHC 1052*) cases.

and reduces the possibility of a conflict between an arbitration award and a national court judgment. Moreover, the adoption of this practice by courts in other Member States would increase the competitiveness of the European Community vis-à-vis international arbitration centers such as New York, Bermuda, and Singapore.[80]

5 Public Policy of the EU

According to Art. 5 para. 2 letter b) of the New York Convention, *"recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that the recognition or enforcement of the award would be contrary to the public policy of that country"*.[81]

Although different jurisdictions define public policy differently, there is a tendency to refer to a public policy basis for refusing recognition and enforcement of an award under Art. 5 para. 2 letter b) of the New York Convention when the core values of a legal system have been deviated from. Public policy is generally interpreted to mean those fundamental rules of the State where recognition and enforcement of an award is sought from which no derogation can be allowed. Invoking the public policy exception is a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundaments on which it is based.[82] It is widely accepted that public policy within the meaning of above-mentioned Article refers to the public policy of the forum State. Indeed, Art. 5 para. 2 letter b) explicitly refers to 'the public policy of that country', in reference to the country

80 Judgment of the CJEU of 10 February 2009, Case C-185/07, para. 17.

81 Art. 5 para. 2 letter b) New York Convention.

82 It is not disputed that certain mandatory rules meet the standard of the public policy defence to recognition and enforcement of awards. – VILLIERS, L. Breaking in the "Unruly Horse": The Status of Mandatory Rules of Law as a Public Policy Basis for the Non-Enforcement of Arbitral Awards. *Australian International Law Journal*, 2011, Vol. 18, pp. 179–180; Constitutional principles may also interact with the public policy exception to the recognition and enforcement of foreign arbitral awards under the New York Convention. – UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958). *United Nations UNCITRAL* [online]. P. 247 [cit. 10. 6. 2021]. Available at: https://newyorkconvention1958.org/pdf/guide/2016_Guide_on_the_NY_Convention.pdf

where recognition and enforcement is sought. However, in relation to the assessment of the international or domestic character of public policy, most jurisdictions recognize that a mere violation of domestic law is unlikely to amount to a ground to refuse recognition or enforcement on the basis of public policy.[83]

For example, in the field of competition law, the CJEU held that Art. 101 of the Treaty on the Functioning of the European Union ("TFEU"), which renders automatically void certain anti-competitive agreements or decisions, constitutes *"a fundamental provision which is essential for the accomplishment of the tasks entrusted to the [Union] and, in particular, for the functioning of the internal market"*.[84] The CJEU held that for this reason it should be regarded as a matter of public policy within the meaning of Art. 5 para. 2 letter b) of the New York Convention. It has thus imposed on the courts of the EU Member States the obligation to refuse recognition and enforcement to all awards which conflict with Art. 101 TFEU.[85] It therefore follows that the notion of public policy may be interpreted by taking into account EU values. Now that the UK has left the EU, this may change, as it is no longer bound by either EU law or the case-law of the CJEU.

On the one hand as long as EU-derived law remains on the UK register of laws, it is essential that there is a common understanding of the meaning of the law and the Government believes that this can be best achieved by ensuring continuity in the way it is interpreted before and after the exit day. Therefore, in order to maximize certainty, the [Great Repeal] Bill will foresee that any questions regarding the meaning of EU secondary law will be decided in the UK courts by referring to the CJEU case law as it stood on the date of leaving the EU (point 2.14). On the other hand, insofar as the case law concerns an aspect of EU law which is not converted into UK law, this element of case law will not need to be applied by the UK courts, (point 2.14). What's more, the British Parliament remains sovereign, and parliamentary

83 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958). *United Nations UNCITRAL* [online]. Pp. 240–247 [cit. 10. 6. 2021]. Available at: https://newyorkconvention1958.org/pdf/guide/2016_Guide_on_the_NY_Convention.pdf

84 Ibid., p. 245.

85 Ibid.

sovereignty is the cornerstone of the British Constitution and EU law has supremacy only for as long as the UK is a member state, (point 2.18). Therefore, in the event of a conflict between EU secondary law and the new primary law passed by Parliament after the UK leaves the EU, the newer law will take precedence over EU secondary law. In this way, the Great Repeal Bill will put an end to the general supremacy of EU law, (point 2.19). In fact, after Brexit, EU law will be applied only if a conflict arises between two pre-departure laws, one of which is EU-derived law and the other is not, then the EU-derived law will take precedence over the other law in force before leaving the EU. Any other approach would result in a change of law and would create uncertainty as to its meaning, (point 2.20).[86] It follows, therefore, that after Brexit EU law will be applied in the UK to a very limited extent, namely only to facts which occurred before the UK's withdrawal from the EU. It is also obvious that in view of the withdrawal from the EU, the UK's courts will no longer interpret the concept of public policy in the spirit of the EU. If the *acquis communautaire* is not treated as part of the UK legal order, arbitration tribunals' awards will not be challenged in the proceedings set out in Art. 66–69 of the Arbitration Act 1996.

6 Conclusions

The place of conducting arbitration proceedings influences the efficiency and effectiveness of this proceedings. Also, the availability and transparency of judicial instruments supporting arbitration, including the possibility of challenging and enforcing awards of arbitration tribunal, are of great importance. It is therefore not surprising that the choice of arbitration proceedings' place is crucial to its further success.

It is a commonly known fact that the UK in general, and London in particular, have for many years been popular places to conduct arbitration proceedings, even though neither the parties nor the subject matter of the arbitration have any connection to the UK. This seems to be influenced by the stability

86 The Repeal Bill: White Paper. Policy paper. Legislating for the United Kingdom's withdrawal from the European Union. *GOV.UK* [online]. 15. 5. 2017 [cit. 10. 6. 2021]. Available at: https://www.gov.uk/government/publications/the-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union

of UK law, as well as the condition of the UK judiciary, which is considered to be efficient and impartial. Moreover, there is no doubt that, also because of the country's colonial past, both arbitral tribunals and common courts in the UK, have experience in resolving international disputes concerning multiple jurisdictions. Moreover, many years of experience in arbitration have also resulted in a highly qualified staff of who can act not only as arbitrators, but also as legal advisors in the arbitration procedure.[87]

The Arbitration Act 1996 gives arbitral tribunals wide discretion in procedural matters, subject to the parties' right to agree otherwise. It also allows (limited) intervention by the courts to assist arbitration, including, *inter alia*, to require a party to comply with the tribunal's procedural orders, to issue injunctions, to compel witnesses to give evidence and to secure it. Such procedural measures can be important for the smooth running of the arbitration, especially when a party attempts to delay and disrupt the process.

Taking above into account, Brexit does not appear to have had a significant impact on the popularity of UK arbitration. What's more, the first agreement concerning the UK's withdrawal from the EU was negotiated by Theresa May's government. According to Art. 62 of that agreement, entitled Applicable law in contractual and non-contractual matters, *"the following acts shall apply as follows: (a) Regulation (EC) No 593/2008 of the European Parliament and of the Council shall apply in respect of contracts concluded before the end of the transition period"*.[88] The same provision is repeated in final version of the UK's Withdrawal Agreement from the EU.[89] According to its Art. 66, *"in the United Kingdom, the following acts shall apply as follows: (a) Regulation (EC) No 593/2008 of the European Parliament and of the Council (71)*

87 For example, the International Arbitration Centre in the City of London.

88 Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. *European Commission* [online]. [cit. 10. 6. 2021]. Available at: https://ec.europa.eu/info/sites/default/files/draft_withdrawal_agreement.pdf

89 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01). *EUR-Lex* [online]. 12. 11. 2019 [cit. 30. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29

shall apply in respect of contracts concluded before the end of the transition period".[90] At the end of the transitional period, (23.00 London time, 31 December 2020) an instrument called The Law Applicable to Contractual and Non-Contractual Obligations (Amendment etc.), (UK Exit) Regulations 2019, came into force. It deals with the continued application of the Rome II Regulation as domestic law in all parts of the UK.[91]

As the UK has retained the application of the Rome I Regulation on the law applicable to contractual obligations, parties to a contract will still, even after Brexit, be able to choose English law[92] as the law applicable to their contractual relationship. In turn choice of English law will further encourage to submit disputes arising out of that contractual relationship to the UK's arbitration tribunals.

What's the most important, the UK has also retained its binding effect of the New York Convention. In view of the fact that there is currently uncertainty as to what legal regime will be applied between the EU and the UK on the recognition and enforcement of judgments, arbitration appears to be a much more attractive solution.

90 Ibid., Art. 66.

91 The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019. *Legislation.gov.uk* [online]. [cit. 10. 6. 2021]. Available at: https://www.legislation.gov.uk/uksi/2019/834

92 Until now, English law has most often been chosen as the law applicable to commercial matters.–2010 International Arbitration Survey: Choices in International Arbitration. *Queen Mary University of London* [online]. [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2010_InternationalArbitrationSurveyReport.pdf; With 94% of its cases in 2017 seated in London, the London Court of International Arbitration's ("LCIA") statistics are reflective of arbitration activity in London. It is therefore also noteworthy that the LCIA reported for 2017 a steady and diverse caseload, with non-UK parties accounting for more than 80% of its users. The LCIA also saw an increase in claims of US $ 20 million or more (now accounting for 31% of disputes), with trending industries including Energy and natural resources (accounting for 24% of disputes). – WILLIAMS, J., L. HAMISH and R. HORNSHAW. Arbitration procedures and practice in the UK (England and Wales): overview. *Akin Gump* [online]. P. 1 [cit. 10. 6. 2021]. Available at: https://www.akingump.com/a/web/101415/aokvH/practical-law-arbitration-procedures-and-practice-in-the-uk-.pdf

Literature

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, (2019/C 384 I/01). *EUR-Lex* [online]. 12. 11. 2019 [cit. 30. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12019W/TXT(02)&from=PL

A letter of 29 March 2017 from the Prime Minister of the United Kingdom to the President of the European Council, Cover Note from General Secretariat of the Council to Delegations, XT 20001/17, BXT 1. *Consilium.europa.eu* [online]. [cit. 30. 5. 2021]. Available at: https://data.consilium.europa.eu/doc/document/XT-20001-2017-INIT/en/pdf

AMBROSE, C. Can Anti-Suit Injunctions Survive European Community Law? *The International and Comparative Law Quarterly*, 2003, Vol. 52, no. 2, pp. 401–424. DOI https://doi.org/10.1093/iclq/52.2.401

Brexit: Council adopts decision to conclude the withdrawal agreement. *Consilium.europa.eu* [online]. 30. 1. 2020 [cit. 30. 5. 2021]. Available at: https://www.consilium.europa.eu/pl/press/press-releases/2020/01/30/brexit-council-adopts-decision-to-conclude-the-withdrawal-agreement/

Council Decision (EU) 2019/1750 of 21 October 2019 amending Decision (EU) 2019/274 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, LI 274/1. *EUR-Lex* [online]. 28. 10. 2019 [cit. 30. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019D1750&from=PL

Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. *European Commission* [online]. [cit 10. 6. 2021]. Available at: https://ec.europa.eu/info/sites/default/files/draft_withdrawal_agreement.pdf

European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 (2018) 33. *European Commission* [online]. [cit. 30. 5. 2021]. Available at: https://ec.europa.eu/info/sites/default/files/draft_withdrawal_agreement.pdf

European Union (Withdrawal Agreement) Bill, House of Commons, Committee Stage Briefing, January 2020. *JUSTICE.ORG.UK* [online]. [cit. 30. 5. 2021]. Available at: https://files.justice.org.uk/wp-content/uploads/2020/01/06170033/JUSTICE-WAB-Briefing-Committee-Stage.pdf

Guidelines Following the United Kingdom's Notification Under Article 50 TEU, EUCO XT 20004/17. *Consilium.europa.eu* [online]. [cit. 30. 5. 2021]. Available at: https://www.consilium.europa.eu/media/21763/29-euco-art50-guidelinesen.pdf

HARTLEY, T. C. Comity and the Use of Antisuit Injunction in International Litigation. *The American Journal of Comparative Law*, 1987, Vol. 35, no. 3, pp. 487–511. DOI https://doi.org/10.2307/840479

LEVY, L. Anti-suit Injunctions Issued by Arbitrators. In: GAILLARD, E. (ed.). *Anti-Suit Injunctions in International Arbitration*. Berne: Staempfli Verlag AG, 2005, pp. 115–129.

NDOLO, D. and M. LIU. Does the Will of the Parties Supersede the Sovereignty of the State? Anti-suit Injunctions in the UK Post-Brexit. *Arbitration: The Journal of International Arbitration, Meditation, and Dispute Management*, 2017, Vol. 83, no. 3, pp. 254–266.

SHONE, M. J. Is it Necessary to Register an Award to Enforce it in the United Kingdom? *Arbitration: The Journal of International Arbitration, Meditation, and Dispute Management*, 2005, Vol. 71, no. 1, pp. 46–63.

The Repeal Bill: White Paper. Policy paper. Legislating for the United Kingdom's withdrawal from the European Union. *GOV.UK* [online]. 15. 5. 2017 [cit. 10. 6. 2021]. Available at: https://www.gov.uk/government/publications/the-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union

The UK's Notification regarding the Brussels Convention 1968 and the 1971 Protocol, including subsequent amendments and accessions, having ceased to apply to the United Kingdom and Gibraltar from 1 January 2021, as a consequence of the United Kingdom ceasing to be a Member State of the European Union and of the end of the Transition Period, 5816/21. *Consilium.europa.eu* [online]. 1. 2. 2021 [cit. 10. 6. 2021]. Available at: https://data.consilium.europa.eu/doc/document/ST-5816-2021-INIT/en/pdf

UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958). *United Nations UNCITRAL* [online]. 335 p. [cit. 10. 6. 2021]. Available at: https://newyorkconvention1958.org/pdf/guide/2016_Guide_on_the_NY_Convention.pdf

VILLIERS, L. Breaking in the "Unruly Horse": The Status of Mandatory Rules of Law as a Public Policy Basis for the Non-Enforcement of Arbitral Awards. *Australian International Law Journal*, 2011, Vol. 18, pp. 155–180.

WILLIAMS, J., L. HAMISH and R. HORNSHAW. Arbitration procedures and practice in the UK (England and Wales): overview. *Akin Gump* [online]. Pp. 1–29 [cit. 10. 6. 2021]. Available at: https://www.akingump.com/a/web/101415/aokvH/practical-law-arbitration-procedures-and-practice-in-the-uk-.pdf

2010 International Arbitration Survey: Choices in International Arbitration. *Queen Mary University of London* [online]. [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2010_InternationalArbitrationSurveyReport.pdf

Contact – e-mail

m.wasylkowska-michor@wpa.uz.zgora.pl

ORCID

0000-0002-5810-9186