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STUDIO LEGALE PADOVAN

The Increasing Role of Arbitration in the Outer Space Sector

The rapid commercialization of outer space is reshaping a sector that was historically dominated by States. As access to space expands and private actors assume a growing role, legal frameworks are evolving in parallel to address the increasing complexity of space activities. In this context, arbitration is emerging as an increasingly relevant mechanism for the resolution of space-related disputes, offering a flexible and internationally enforceable forum suited to the technical and cross-border nature of the sector.

The Growth of Outer Space Activities

Outer space activities are expanding swiftly. According to the Space Foundation's *Space Report 2025*, the global space economy reached approximately USD 613 billion in 2024. This expansion has prompted increased regulatory attention. In June 2025, the European Commission introduced a proposal for an EU Space Act aimed at establishing a harmonized regulatory framework for space activities across the Union. At the national level, Italy adopted Law No. 89/2025 on the space economy on 13 July 2025, further illustrating the growing legislative focus on the sector.

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Disputes in the Space Sector

As commercial activity in outer space grows, so too does the potential for disputes. These may arise from satellite operations or launch failures. The increasing number of objects placed in orbit – particularly in lower orbital ranges – is also contributing to congestion. This heightens the risk of harmful interference between satellite systems, as well as the need for costly collision-avoidance maneuvers. In addition, because many space technologies have dual-use applications, disputes may also raise export control or regulatory compliance issues, further complicating their resolution.

The Role of Arbitration

Arbitration is widely regarded as a suitable mechanism for resolving many space-related disputes. First, it allows proceedings to remain confidential, thereby protecting commercially sensitive and proprietary technical information that is often central to the space industry. Second, the technical nature of many space disputes requires decision-makers with specialized expertise. Unlike national courts, arbitration allows parties to select arbitrators with relevant experience in the space sector. Consequently, arbitration clauses are increasingly incorporated into agreements governing space activities. For example, the European Space Agency provides for arbitration under Clause 35(2) of its General Clauses and Conditions for ESA Contracts. As commercial activities continue to expand and legal frameworks evolve, arbitration is likely to play an increasingly significant role in the resolution of space-related disputes in the years to come.

Enforcement of Arbitral Awards and EU Restrictive Measures

On 26 February 2026, Advocate General Biondi delivered his Opinion in Case C-802/24, *Reibel*, a preliminary reference from the Swedish Court of Appeal concerning the interaction between commercial arbitration and the restrictive measures against the Russian Federation contained in Reg. (EU) No 833/2014.

Factual Background

The dispute relates to a contract for the sale and supply of dual-use goods in Russia concluded in 2015 between Reibel (a Belgian company) and Stankoimport (a Russian undertaking). The agreement included an arbitration clause in favor of a tribunal seated in Stockholm. Stankoimport made an advance payment under the contract. However, after the Belgian authorities refused export authorisation pursuant to Regulation (EU) No 833/2014, the Russian company terminated the agreement and initiated arbitration seeking restitution of the advance payment. The arbitral tribunal upheld the request, finding it did not amount to a claim under Art. 11 Reg. No 833/2014 providing that no claim related to EU restrictive measures towards Russia shall be satisfied by an EU entity. Reibel then sought to set the award aside before the Swedish Court of Appeal. Under Swedish Law, an award may be set aside where – *inter alia* – the dispute was not arbitrable or the award violates Swedish public policy. The Swedish Court requested the EU Court of Justice whether (i) EU Law provides for limitations on the arbitrability of Art. 11 (and in general of sanctions-related disputes); (ii) Art. 11 falls within the notion of EU public policy and; (iii) Stankoimport's request shall be considered as a claim within Art. 11.

Opinion

First, the Advocate General notes that neither EU law generally nor Article 11 in particular limits the arbitrability of disputes involving EU sanctions. Second, Art. 11 forms part of EU public policy. The provision serves fundamental objectives of the Union by safeguarding Ukraine's territorial integrity and supporting the peaceful resolution of international disputes. In this respect, the sanctions regime gives effect to core Union objectives reflected in Treaty on European Union, notably the promotion of peace and the development of international law under Articles 3 and 21. Finally, Mr Biondi concludes the request cannot be satisfied under the no-claim clause. Art. 11 is indeed worded in very broad terms and it is intended (a) to eliminate the consequences arising from the fact that Reg. No 833/2014 overrides all incompatible contractual provisions and (b) to protect EU economic operators. As a consequence, Stankoimport's requests are a claim and shall not be satisfied pursuant to Art. 11. It remains to be seen whether the Court of Justice will follow the Advocate General's approach in a judgment that is expected to clarify the relationship between EU restrictive measures and international arbitration.

Key takeaways

The Opinion sketches a model of coexistence: arbitration is preserved as a legitimate dispute resolution mechanism. EU sanctions, where fundamental, are elevated to public policy status. National courts act as guardians of compliance through effective review.

Link: Opinion of Advocate General Biondi, 26 February 2026, C-802/24, *Reibel*

The decision confirms the narrow scope of public policy review in annulment proceedings. A commercial arbitral award enforcing a pre-existing contractual indemnity cannot itself constitute State aid merely because the debtor is a State.

Link: Cour d'appel de Paris, 17 February 2026 (22/17161)

State Aid and Enforcement of Arbitral Awards in Privatisation Disputes

The Paris Court of Appeal recently ruled on the annulment of an arbitral award in the field of State aids. The case stems from the 2004 privatisation of Petrom, Romania's national oil company, acquired by OMV under an agreement that included an environmental indemnity clause covering historical pollution liabilities. After OMV invoked the contractual mechanism, the Romanian Ministry of Environment refused to indemnify the claimed costs, prompting OMV to initiate ICC arbitration in Paris. In its final award, the tribunal ordered Romania to pay approximately EUR 31 million. Romania subsequently sought annulment before the Paris Court of Appeal, arguing that enforcement of the award would breach international public policy by giving effect to unlawful State aid under Article 107 TFEU.

Romania's Arguments.

In particular, Romania argued that all four State aid requirements were satisfied: indeed, payment of the award would be imputable to the State, financed through public resources, conferring a selective economic advantage on OMV and distorting competition in the European energy market by reinforcing OMV's competitive position.

The Court's Reasoning

The Court rejected the annulment request, holding that Romania had failed to demonstrate a manifest breach of international public policy. Relying on CJEU case law, it first distinguished investment arbitration from conventional commercial arbitration, emphasizing that in the latter context an arbitral award itself cannot constitute State aid. At most, State aid concerns could arise from the State's decision to conclude the arbitration agreement under conditions that a market operator would not have accepted, or from an arbitration mechanism used as part of a scheme designed to circumvent EU State aid rules. The Court further recalled that annulment review cannot amount to a reconsideration of the merits of the award. Turning to the substance of the alleged aid, it held that Romania had failed to prove that the privatisation agreement conferred a selective advantage on OMV. In particular, the State had produced no economic analysis of the relevant market and no evidence that the indemnity mechanism affected competition. The Court also noted that the privatisation resulted from a transparent and competitive bidding process and that the environmental indemnity formed part of a standard contractual liability guarantee.

Second Chances in Arbitration: The German Federal Court Clarifies Remittal under §1059(4) ZPO

On 18 December 2025, the Bundesgerichtshof (BGH) delivered a significant ruling (I ZB 42/25) concerning the conditions under which a domestic arbitral award can be remitted back to the arbitral tribunal pursuant to §1059(4) of the German Code of Civil Procedure (ZPO).

Background of the Dispute

The dispute stemmed from a life sciences M&A transaction governed by German law, in which the buyer acquired a biotechnology company for USD 150 million, with additional payments contingent upon achieving certain clinical development milestones. The sellers initiated arbitration seated in Munich, alleging that the buyer had failed to make sufficient efforts to achieve one of the milestones, thereby preventing its occurrence. The arbitral tribunal sided with the sellers, concluding that the buyer had obstructed the milestone event in breach of the duty of good faith under §162(1) ZPO, and ordered payment of USD 46 million plus interest. The buyer subsequently challenged the award before the Bavarian Higher Regional Court, which partially annulled it due to a violation of the right to be heard but nonetheless remitted the case to the arbitral tribunal under §1059(4) ZPO. Both parties then filed appeals with the BGH.

The BGH's Decision

The BGH upheld the remittal. In interpreting §1059(4) ZPO, the Court emphasized that remittal is appropriate whenever the defect that caused the annulment can be remedied through renewed proceedings before the arbitral tribunal. Importantly, the mere fact that an award was set aside on specific grounds – such as a violation of the right to be heard under Article 103(1) of the German Basic Law – does not automatically preclude remittal. The BGH clarified that §1059(4) ZPO is intended as a mechanism of procedural efficiency and should only be denied in cases of serious procedural irregularities that undermine confidence in the tribunal's impartiality or willingness to reconsider the matter. As the circumstances of this case did not meet that threshold, the Court confirmed that the arbitral tribunal could properly address the matter again.

Link: Bundesgerichtshof, 18 December 2025 (I ZB 42/25)

STUDIO LEGALE PADOVAN

Milan – Foro Buonaparte 54
T. +39 02.4814994

Rome – via Sistina 23
T. +39 06.98796392

litigation@studiopadovan.com

Marco Padovan
Partner

Pierluigi Salvati
Counsel

Pietro Campana
Trainee

Gian Marco Ferrarini
Trainee