

# English Commercial Court confirms *West Tankers* decision on EU anti-suit injunctions

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Authors: [Edward Attenborough](#), [Mark Sanders](#)

In its judgment in *Nori Holdings Ltd & Ors v Public Joint-Stock Company Bank Otkritie Financial Corporation*,<sup>1</sup> the English Commercial Court reaffirmed the *West Tankers Inc. v Allianz SpA*<sup>2</sup> decision that a court of an EU Member State cannot grant an injunction to restrain proceedings in breach of an arbitration agreement in another EU Member State.

The introduction of Brussels Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “**Recast Brussels Regulation**”) had updated the previous European regulation on the issue of conflicts of jurisdiction between the courts of EU Member States and cast doubt over the continuing validity of the *West Tankers* principle. However, the decision in *Nori Holdings* affirms that *West Tankers* remains good law.

## The Facts

The claimants (companies incorporated in Cyprus and the BVI) entered into pledge agreements with the defendant (a Russian bank), with the claimants pledging company shares as security for a series of loans. Each pledge agreement contained an arbitration clause, which provided for disputes to be resolved by arbitration in London. The defendant commenced court proceedings in both Russia (a non-EU Member State) and Cyprus (an EU Member State) in breach of the agreement to arbitrate, arguing that the claimants had fraudulently terminated the pledge agreements. The claimants applied to the English Commercial Court for an anti-suit injunction, seeking to restrain the Russian and Cypriot court proceedings on the basis that the parties had agreed that any dispute would be resolved by arbitration.

## The Issue

*Nori Holdings* is the first reported decision by the English courts on this issue since the Recast Brussels Regulation came into force. The Recast Brussels Regulation sought to clarify the issue of conflicts of jurisdiction and the recognition and enforcement of judgments between the courts of EU Member States.

<sup>1</sup> *Nori Holdings Ltd & Ors v Public Joint-Stock Company Bank Otkritie Financial Corporation* [2018] EWHC 1343 (Comm).

<sup>2</sup> *West Tankers Inc. v Allianz SpA*<sup>2</sup> (Case C-185/07) [2009] EUECJ C-185/07.

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However, the Recast Brussels Regulation Recital 12 contained ambiguous language on the scope of the arbitration exclusion under the Brussels Regulation, which had cast new doubt on the availability on anti-suit injunctions to restrain proceedings in another EU Member State court in breach of an arbitration agreement.

Subsequently, in his opinion on the European Court of Justice (**ECJ**) case *Proceedings Concerning Gazprom OAO (Case C-536/13)*,<sup>3</sup> Advocate General Wathelet suggested that Recital 12 of the Recast Brussels Regulation (which explains the arbitration exclusion) should be read as permitting EU Member State courts to grant anti-arbitration injunctions to restrain proceedings in other EU Member State courts, introducing uncertainty over the validity of the *West Tankers* principle.

## The Decision

In his decision in *Nori Holdings*, Mr. Justice Males reaffirmed the *West Tankers* decision that EU Member State courts will not issue an anti-suit injunction preventing court proceedings in another EU Member State where an arbitration agreement exists. Mr. Justice Males noted that:

- there was nothing in the Recast Brussels Regulation to cast doubt on the continuing validity of the decision in the *West Tankers* case, which remains an authoritative statement of EU law. Mr. Justice Males referred to and expressly disagreed with the opinion of Advocate General Wathelet in *Gazprom*.
- *Gazprom* concerned an anti-suit injunction from an arbitral tribunal, and did not address anti-suit injunctions between the courts of different EU Member States.
- Mr. Justice Males noted that the Advocate General's opinion expressed in *Gazprom* was not adopted by the ECJ in its final judgment on that case.

The claimant's application for an anti-suit injunction over the Cypriot courts was therefore dismissed. However, the defendant was ordered to discontinue its Russian court proceedings against the claimant (Russia, not being an EU Member State, is not within the scope of the *West Tankers* principle).

## Comment

The decision in *Nori Holdings* has provided welcome clarity following the introduction of the Recast Brussels Regulation and Advocate General Wathelet's comments in *Gazprom*. From the perspective of the courts of England & Wales, *West Tankers* is the authoritative statement of EU law on this issue. Where an arbitral tribunal is constituted, parties seeking to restrain EU court proceedings which breach arbitration clauses may more effectively apply to the arbitral tribunal itself for anti-suit relief.

Absent any successful challenge to the *Nori Holding* decision in a higher English court or the ECJ, the *West Tankers* principle remains good law. The position post-Brexit, however, remains to be determined and will depend on what – if any – civil cooperation regime the UK agrees with Europe as part of the UK's withdrawal from the EU.

White & Case LLP  
5 Old Broad Street  
London EC2N 1DW  
United Kingdom

T +44 20 7532 1000

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<sup>3</sup> Proceedings Concerning Gazprom OAO (Case C-536/13), Opinion of Advocate Generale Wathelet, EU:C:2014:2414.