Anti-suit injunctions

I. Introduction

An anti-suit injunction is an → injunction restraining a claimant from pursuing foreign proceedings. The object of the remedy is to protect the applicant's right to have the claim determined in the court granting the injunction. Anti-suit injunctions are most commonly granted for one of the following reasons: because the foreign proceedings were commenced in breach of contract, because in breach of an exclusive jurisdiction or arbitration agreement; or because a party to proceedings, typically the defendant, has commenced parallel proceedings in circumstances where those proceedings are oppressive. The direct objectives of such an injunction are to prevent foreign proceedings, and to expose the enjoined party to a penalty for non-compliance, such as an order for contempt of court. Such injunctions have an important role in triggering settlement or capitulation. If prevented by an injunction from suing in its preferred court, or from bringing pressure on the other party by initiating proceedings in a prejudicial forum, a claimant in foreign proceedings is likely to compromise or discontinue.

The role of anti-suit injunctions in cross-border litigation, and their legitimacy in principle, is recognized by the resolution of the Institut de Droit International to the effect that such relief may be granted to enforce an exclusive jurisdiction or arbitration agreement, to prevent 'unreasonable or oppressive conduct by a plaintiff in a foreign jurisdiction', and to protect a court's jurisdiction in such matters as the administration of estates or insolvency, provided that the granting court has 'a reasonable connection with the parties or the measures to be taken' (Institut de Droit International – Session de Bruges (Second Commission), 'Resolution – The Principles for Determining when the Use of the Doctrine of Forum Non Conveniens and Anti-Suit Injunctions is Appropriate' (2003) 5 YbPIL 337).

Normally such relief serves to prevent the continuation of proceedings, but in some systems an anti-enforcement injunction may be granted to prevent proceedings to enforce a foreign judgment obtained in foreign proceedings, as where a judgment is obtained by fraud (*Ellerman Lines Ltd v Read* [1928] 2 KB 144, 158), although arguably the better solution is to raise a defence once enforcement is sought (*Chevron Corp v Camacho Naranjo*, 667 F.3d 232 (2d Cir 2012)). In principle, a court may grant an anti-anti-suit injunction, to prevent foreign proceedings in which a respondent seeks to restrain proceedings in the court granting the injunction (*Ecom Agroindustrial Corp Ltd v Mosharaf Composite Textile Mill Ltd* [2013] EWHC 1276 (Comm), [2013] All ER (Comm) 983). An anti-suit injunction will normally restrain the respondent from (a) pursuing or taking further steps in the foreign proceedings, (b) bringing further proceedings against the applicant in the foreign jurisdiction in relation to the same facts, and (c) bringing any proceedings in that jurisdiction which seek to restrain the applicant from pursuing parallel English proceedings (*Kesabo v African Barrick Gold plc* [2013] EWHC 4045 (QB)).

Although typically sought to prevent civil proceedings, an anti-suit injunction may be obtained to prevent arbitration (Alexander Layton, 'Anti-arbitration Injunctions and Anti-suit Injunctions: An Anglo-European Perspective' in Franco Ferrari (ed), *Forum Shopping in the International Commercial Arbitration Context* (Sellier 2013) 131). Anti-arbitration injunctions are likely to be granted only in exceptional circumstances, especially in relation to arbitrations outside the jurisdiction, and governed by foreign law. The principle of *Kompetenz-Kompetenz* requires that arbitrators

should normally determine their own jurisdiction, in accordance with the law governing the arbitration (*Weissfisch v Julius* [2006] EWCA Civ 218, [2006] 2 All ER (Comm) 504). Such exceptional circumstances might exist, however, where the court granting the injunction has held, before the initiation of arbitral proceedings, that the parties had agreed to the exclusive jurisdiction of that court, and that no arbitration agreement has been concluded (*Claxton Engineering Ltd v TXM Olaj-Es Gazkutato Kft* [2011] EWHC 345 (Comm), [2011] 2 All ER (Comm) 128).

In some legal systems, as in the English system (→ United Kingdom), the form of the injunction is highly flexible. A court may enjoin the foreign claimant from taking specific points in the foreign proceedings, or may make an order on terms (*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871), as where an injunction is refused but the respondent is ordered not to take in the foreign proceedings arguments which are unjustly prejudicial to the applicant. Again, a foreign claimant may avoid an injunction by agreeing voluntarily not to exploit any features of local law which would prejudice the applicant (*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871).

The anti-suit injunction is normally a remedy confined to common law jurisdictions, but this reflects historical and procedural differences between the common law and civil law traditions rather than any objection in civil law systems to the principle of restraining foreign proceedings. In particular, the use of such injunctions in common law systems reflects their conceptual roots in the law of Equity (David W Raack, 'A History of Injunctions in England Before 1700' [1986] 61 Indiana L.J. 539). The courts of civil law systems are prepared, however, to enforce anti-suit injunctions obtained in common law courts (as in France: *Civ 1ère*, 14 October 2009, pourvoi no 08-16.369, *In Zone Brands*), while mechanisms analogous to the anti-suit injunction exist in civil law jurisdictions. In → France a court may order a party to French proceedings to discontinue proceedings abroad, the vehicle for such relief being an order of *astreinte* imposing a financial penalty for each day of that party's default (*Cour de Cassation*, 1re civ, 19 November 2002, Bull civ I, no 275 (Fr.)). Again, in → Germany the victim of abusive foreign proceedings has a substantive cause of action in delict against the claimant, which may entitle the victim to an injunction to prevent the wrongful conduct in support of its substantive right (Higher Regional Court (OLG) of Düsseldorf, 18 July 1997; § 1004 German Civil Code (Bürgerliches Gesetzbuch of 2 January 2002, BGBl. I 42, as amended)).

II. The nature of the court's power

In principle, the power to grant such injunctions may rest on one or more of several conceptual bases: (i) prevention of a breach of contract (as where foreign proceedings infringe an arbitration or jurisdiction agreement); (ii) preserving the procedural rights of a party before the court (as where the foreign proceedings are intended to cause such a party to discontinue proceedings in the granting court); (iii) preventing any injustice perpetrated by a party subject to its jurisdiction, even where no abuse of the granting court's process is involved (as where such a party invokes an exorbitant jurisdiction against the applicant); (iv) preserving the integrity of the granting court's jurisdiction (most obviously where an injunction is sought in a foreign court to restrain proceedings in the granting court, or to prevent re-litigation of a matter previously determined in the granting court); and (v) promoting national considerations of → public policy (which may be understood to include the policy of enforcing dispute-resolution agreements, or ensuring the efficient resolution of the dispute).

Justifications (i), (ii) and (iii) concern the private rights of the applicant, while justifications (iv) and (v) reflect public-interest considerations. In some legal systems there is uncertainty as to whether such relief protects private rights or serves a public interest. In the → USA for example, some courts prize the public-interest considerations involved where foreign proceedings threaten the granting court's jurisdiction or fundamental public policies (*China Trade and Development Corp v MV Choong Yong*, 837 F.2d 33 (2d Cir 1987)). Others address the inequity to the applicant of oppressive foreign proceedings (*Kaepa, Inc v Achilles Corp*, 76 F.3d 624 (5th Cir 1996)). This difference reflects distinct approaches to the principle of → comity, the first, more restrictive view, providing a justification, otherwise lacking, for interference in the foreign court's province (*China Trade and Development Corp v MV Choong Yong*, 837 F.2d 33 (2d Cir 1987)).

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By contrast, other legal systems seek only to vindicate the private rights of the parties to the exclusion of other considerations, an approach followed, for example, in England (*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871), → Canada (*Amchem Products Inc v Workers Compensation Board* (1993) 102 DLR (4th) 96)) and → Australia (*CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 C.L.R. 345). This limitation derives from the origin of the power in such systems in principles of Equity, and the necessity to police unconscionable conduct (David W Raack, 'A History of Injunctions in England Before 1700' [1986] 61 Indiana L.J. 539). In English law, an injunction 'can be granted against a party properly before the court, where it is appropriate to avoid injustice' (*Airbus Industrie GIE v Patel and others* [1999] 1 AC 119, 133) (→ United Kingdom). Such relief is an expression of the general equitable power to prevent injustice by those subject to the court's jurisdiction. Historically, such injunctions were granted by the Court of Chancery until the power was conferred upon all courts, and they remain subject to general equitable principles. Statute now defines the nature of equitable injunctive relief, by section 37 of the Senior Courts Act 1981, which allows a court to grant an injunction 'in all cases in which it appears to the court to be just and convenient to do so'.

The origin of the power in this broad equitable jurisdiction explains the scope and flexibility of the remedy in some legal systems. The overriding purpose of such relief is to prevent injustice to the applicant. The conduct of the claimant in the foreign proceedings must be unconscionable (because equity operates on the conscience). The claimant in the foreign proceedings is enjoined, not the foreign court (because equitable injunctions operate *in personam*). The injunction must not cause injustice to the respondent (because equitable relief depends upon on the balance of equities). The granting court must have jurisdiction over the claimant in foreign proceedings (because equity regulates the conduct only of those subject to a court's jurisdiction).

The principle that such injunctions are granted to police the foreign claimant's improper conduct means that relief will not be granted merely because the granting court is the *forum conveniens* (*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871), nor on public policy grounds (*Turner v Grovit (Reference to ECJ)* [2001] UKHL 65, [2002] ICR 94), nor merely to prevent parallel proceedings (*Airbus Industrie GIE v Patel and others* [1999] 1 AC 119), nor to prevent tactical litigation, except where such litigation is without purpose, or vexatious (*Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14, [40]). Importantly, however, an equitable approach to anti-suit injunctions significantly increases the range of cases in which such relief is granted because the prevention of unconscionable conduct offers a broader justification than narrower public interest considerations.

In principle, however, the power to prevent injustice is qualified by the need to comply with the principle of international comity. In English law, for example, in addition to having personal jurisdiction over the respondent, the court must have subject-matter jurisdiction (→ Jurisdiction, foundations) to grant the injunction – it must have an interest in granting relief (*Airbus Industrie GIE v Patel and others* [1999] 1 AC 119). Again, a court will deny relief where to do so would involve reviewing a decision by the foreign court to exercise jurisdiction founded on principles recognized in English law. The principle of comity is given particular expression in cases subject to the EU jurisdiction regime, comprised in the Brussels I Regulation (Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] OJ L 12/1, and its successor, Brussels I Regulation (recast) (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 (recast), [2012] OJ L 351/1) (→ Brussels I (Convention and Regulation)). In its decision in *Turner v Grovit* (Case C-159/02 *Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA* [2004] ECR I-3565), the CJEU (→ Court of Justice of the European Union) ruled that an injunction may not be granted to restrain proceedings in another Member State because to do so would infringe the principle of mutual trust between EU States.

III. Enforcement

In some cases direct enforcement of an anti-suit injunction is possible in the court where the enjoined party has sued, as where the injunction

enforces an exclusive jurisdiction agreement (as in France: *Civ 1ère*, 14 October 2009, pourvoi no 08-16.369, *In Zone Brands*). In such cases, the injunction may be regarded as a judgment on the parties' substantive rights which does not infringe the enforcing court's sovereignty, and is not contrary to → public policy.

It is unlikely, however, that an injunction obtained on procedural grounds, to prevent abusive foreign proceedings, could easily be enforced against the respondent in a foreign court. In the absence of direct enforcement, such relief may be effective because the respondent is liable to penalties for non-compliance with the order. The court granting the injunction may, for example, award → damages for contempt of court, and seize the respondent's assets in the event of non-payment. In some legal systems, as in English law, contempt of court is a criminal offence, and a court may commit to prison a director of a respondent company who procures the breach of an anti-suit injunction (*Trafigura Pte Ltd v Emirates General Petroleum Corp (EMARAT)* [2010] EWHC 3007(Comm)) (→ United Kingdom). More importantly in practice, non-compliance with the injunction may preclude the respondent from participating in proceedings before the court granting the injunction, exposing it to the risk of a default judgment, and from enforcing a foreign judgment obtained in breach of the injunction (*Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co Ltd (The Hari Bhum) (No.1)* [2003] EWHC 3158 (Comm), [2004] 1 Lloyd's Rep 206). The important effect of these significant legal consequences is that respondents almost invariably comply with orders restraining foreign proceedings, or settle the dispute.

IV. Requirements

Characteristically, at least in systems where such relief derives from a discretionary power to police unjust conduct, the grant of an → injunction requires, first, that the granting court has jurisdiction to grant relief; second, that a ground for granting relief exists; third, that the court considers in its discretion that relief should be granted.

1. Jurisdiction

In principle, it cannot be a sufficient basis for jurisdiction that the respondent is subject to the granting court's personal jurisdiction, although that will be a necessary requirement for granting relief in systems where the power to grant such → remedies derives from Equity. The principle of comity requires in addition that the granting court has 'a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court which an anti-suit injunction entails' (*Airbus Industrie GIE v Patel and others* [1999] 1 AC 119). This requirement may be described as a requirement that the court has subject-matter jurisdiction to grant relief (*Masri v Consolidated Contractors International Co SAL* [2008] EWCA Civ 625). These requirements are readily satisfied in two situations. Where an injunction is sought to prevent breach of an arbitration or jurisdiction agreement the remedy is substantive and contractual, and the court's jurisdiction derives from its general jurisdiction over contractual claims (→ Jurisdiction, contracts and torts), and in particular from the existence of the agreement (*AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, [2014] 1 All ER 335). Where relief is sought to restrain abusive parallel proceedings jurisdiction derives from the court's procedural power to police its own process (*Masri v Consolidated Contractors International Co SAL* [2008] EWCA Civ 625, [26]). Such jurisdiction extends to cases where substantive proceedings have concluded in the court granting relief, and the respondent is seeking to relitigate the matter before a foreign court (*RBS v Hicks & Gillette* [2010] EWHC 2579 (Ch)), or to retaliate against a party to concluded English proceedings (*Bank of Tokyo Ltd v Karoon* [1987] AC 45). In theory, it is possible that jurisdiction may exceptionally exist, although no proceedings in the same matter are pending or possible in the granting court, if the granting court nonetheless has an 'overwhelming connection' with the parties' dispute (*Midland Bank Plc v Laker Airways Ltd* [1986] QB 689, [1986] 1 All ER 526).

2. Grounds for relief

In principle, a distinction exists between → injunctions restraining a breach of substantive rights, those required by an overriding mandatory rule (→ Overriding mandatory provisions) conferring exclusive jurisdiction on the granting court, and those restraining a breach of procedural rights.

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An applicant's substantive rights in this context are its rights under an exclusive jurisdiction or arbitration agreement (*Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 Lloyd's Rep 425; *Amaprop Ltd v Indiabulls Financial Services Ltd*, 2010 WL 1050988 (SDNY, 23 March 2010)), but arguably not its right to have the substance of any dispute subjected to the law applicable in the granting court (*Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14), unless perhaps that right derives from a contractual term intended to have promissory effect (*Ace Insurance Ltd v Moose Enterprise Pty Ltd* [2009] NSWC 724). The substantive rather than procedural nature of the remedy in such cases is underscored in those systems in which an injunction may be granted to enforce such agreements, although proceedings have neither been commenced, nor are contemplated (*AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, [2014] 1 All ER 335).

In certain cases an injunction is warranted because the granting court has, in effect, exclusive jurisdiction in the absence of contractual agreement. This is so in some jurisdictions in cases involving insolvency (→ Insolvency, jurisdiction and *vis attractiva*) and the administration of companies in which all proceedings against a debtor are prohibited once the insolvency or administration process is engaged, as in US law (11 USC § 362(a); and see, UNCITRAL (ed), Model Law on Cross-Border Insolvency with Guide to Enactment (1997): Model Law on Cross-Border Insolvency of the United Commission on International Trade Law, Resolution 52/158 adopted by the General Assembly, 30 January 1998, No E.99.V.3, General Assembly Resolution 52/158 of 15 December 1997). In some jurisdictions the justification is that an injunction on this basis is necessarily oppressive to a debtor, as in English law (*Harms Offshore AHT Taurus GmbH & Co KG v Bloom* [2009] EWCA Civ 632).

An applicant's procedural rights may be infringed by foreign proceedings, first, where those proceedings are an abuse of the process of the granting court; and, second, where it would be unjust to require the applicant to defend proceedings in the foreign court.

Relief in the first class of case might in principle by granted in the following cases: where foreign proceedings are brought in retaliation for the applicant's participation in English proceedings (*Bank of Tokyo Ltd v Karoon* [1987] AC 45); where the respondent seeks to relitigate in a foreign court a matter decided in the granting court (*Royal Bank of Scotland Plc v Hicks* [2010] EWHC 2579 (Ch)); where the object of the foreign proceedings is to prevent the granting court from considering its jurisdiction (*Tonicstar Ltd (t/a Lloyds Syndicate 1861) v American Home Assurance Co* [2004] EWHC 1234 (Comm)); where the foreign proceedings constitute improper interference in the management of an insolvent debtor's affairs by an individual's trustees in bankruptcy, or a company's court-appointed administrators (*Harms Offshore AHT Taurus GmbH & Co KG v Bloom* [2009] EWCA Civ 632); where a party in English proceedings initiates illegitimate parallel proceedings. This last category might embrace cases where the foreign proceedings interfere in the applicant's prosecution of proceedings in the granting court (as where their effect is to force the applicant to desist or settle; *Turner v Grovit* [2000] QB 345, [1999] 3 All ER 616), and those where the foreign proceedings defeat the applicant's legitimate expectation that the dispute should be resolved in the granting court (as where the foreign claimant seeks to extricate itself from proceedings in which it has freely participated; *Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14).

The second class of case, in which it would be unjust to require the applicant to defend proceedings in the foreign court, may include, for example, those where the procedures of the foreign court would deny the applicant access to justice, and (perhaps) those where the foreign court's jurisdiction is exorbitant. The characteristic of cases in this category is that they do not involve protecting an applicant's interest in proceedings in the granting court, but preventing an injustice flowing directly from proceedings abroad. It may be unjust for example to require the applicant to defend foreign proceedings in which it is unable to join as co-defendant a third party whom it alleges is wholly liable (*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871). Again, it is possible an injunction might on this basis restrain foreign proceedings which involve the exercise of an exorbitant jurisdiction by the foreign court (*Midland Bank Plc v Laker Airways Ltd* [1986] QB 689, [1986] 1 All ER 526).

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3. Discretion

In systems where the power to grant anti-suit injunctions derives from general equitable principles a court has discretion whether to grant relief notwithstanding that jurisdiction and a ground for relief are established (*Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14). Relief may be denied in three situations. First, the applicant's conduct may disentitle it to relief, as where the applicant does not have 'clean hands', or if the application was not timely (thereby prejudicing the respondent if relief is granted). Second, relief may be denied if the respondent would not have an equivalent remedy (→ Remedies) in another court, at least where the respondent's conduct is not inherently wrongful, because motivated by bad faith (*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871). Third, it may be denied if on the facts relief would infringe → comity, as where it remains open to the foreign court to address the applicant's allegations (*Amoco (UK) Exploration Co v British American Offshore Ltd (Service of Process)* [1999] 2 Lloyd's Rep 772).

V. Limitations

The grant of anti-suit injunctions may be constrained by two considerations. Such relief may in some circumstances be regarded as an infringement of the principle of comity, because an interference in the province of a foreign court, and it may involve a denial of the foreign claimant's access to justice. Legal systems in which relief is common, as in English law (→ United Kingdom), guard against these risks, by conferring discretion on a court to refuse relief if comity would be infringed, or if the respondent would be significantly prejudiced (*Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14). Comity may require that relief is refused where, for example, the foreign court has already accepted jurisdiction by applying principles similar to those applied by the granting court (*Akai Pty Ltd v People's Insurance Co Ltd* [1998] 1 Lloyd's Rep 90), or if the foreign court has the power to prevent the prejudice alleged by the applicant (*Amoco (UK) Exploration Co v British American Offshore Ltd (Service of Process)* [1999] 2 Lloyd's Rep 772). Again, justice to the respondent may justify denying relief where the respondent would be denied a legal advantage available in the foreign court in circumstances where this would amount to a denial of access to justice (*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871).

VI. Issues of principle

The power to grant anti-suit injunctions may be challenged on two substantial grounds. Such relief may be said to infringe the principle of comity, and it may be seen as a denial of access to justice. This depends, however, on how these concepts are understood. It is possible to take comity in a strong sense, so that any remedy which prevents a foreign court from exercising its powers is illegitimate, save perhaps where the foreign court has exercised an exorbitant jurisdiction, a position adopted in → Canada (*Amchem Products Inc v Workers Compensation Board* (1993) 102 DLR (4th) 96). The concept may also be viewed in an intermediate sense, as in those US jurisdictions (→ USA) in which relief is confined to preventing interference in the granting court's jurisdiction, and the protection of strong → public policies (*China Trade and Development Corp v MV Choong Yong*, 837 F.2d 33 (2d Cir 1987)). Again, access to justice might be understood in an absolute sense, so that a claimant has a right to bring proceedings in any court of competent jurisdiction.

In legal systems where anti-suit injunctions are readily available such issues of principle are matters of concern, but they are necessarily understood in a qualified form. In English law, for example, the traditional view is that comity is of reduced significance in cases where an injunction is sought to enforce an exclusive jurisdiction or arbitration agreement (*Aggeliki Charis Compania Maritima SA v Pagnan SpA (The Angelic Grace)* [1995] 1 Lloyd's Rep 87; cf *Civ. 1ère*, 14 October 2009, pourvoi no 08-16.369, *In Zone Brands*). In such cases, an injunction merely enforces the applicant's substantive rights, and at least where an exclusive jurisdiction agreement is relied upon, the court has exclusive jurisdiction. More recent authority suggests that the foreign court's right to determine the agreement's effect should be respected, but relief may be granted nonetheless where the foreign court regards the agreement as invalid for reasons unknown to English law (*Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP* [2013] UKSC 35). In other cases, → comity

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is not perceived as creating a general bar to granting relief, but a court is required to establish that comity would not be infringed on the facts of particular cases (*Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14). It is assumed, however, that the foreign court has primacy in deciding whether a case should be heard in foreign proceedings (*Harms Offshore AHT Taurus GmbH & Co KG v Bloom* [2009] EWCA Civ 632). Again, in English law, access to justice is an objection to such relief only where the respondent has no alternative access to justice in England (*OT Africa Line Ltd v Hijazy (The Kribi) (No.1)* [2001] 1 Lloyd's Rep 76), and arguably not where the respondent's conduct is inherently wrongful.

VII. Anti-suit injunctions in EU law

It has been held that a court in one EU Member State may not restrain by injunction proceedings in another such State (Case C-159/02 *Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA* [2004] ECR I-3565). This prohibition derives from the distinctive EU law principle requiring mutual respect between Member States, and is explained because such an injunction would subvert the *effet utile* of the EU jurisdiction regime by preventing an EU national court from asserting jurisdiction pursuant to that regime. The prohibition does not extend to injunctions restraining proceedings in non-EU states (*AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, [2014] 1 All ER 335), or in other EU States where jurisdiction in those proceedings is beyond the scope of that regime (*Claxton Engineering Ltd v TXM Olaj-Es Gazkutato Kft* [2011] EWHC 345 (Comm), [2011] 2 All ER (Comm) 128).

Controversially, the CJEU (→ Court of Justice of the European Union) has held that the prohibition extends to injunctions sought to enforce arbitration agreements, notwithstanding that arbitration is a matter excluded from the scope of the Brussels I Regulation (→ Brussels I (Convention and Regulation)), because the *effet utile* of the EU jurisdiction rules would be impaired (Case C-185/07 *Allianz SpA und Generali Assicurazioni Generali SpA v West Tankers Inc* [2009] ECR I-663). Injunctions in support of arbitration agreements may again be possible, however, under the Regulation's successor, Brussels I Regulation (recast) (suggested by Fentiman, *International Commercial Litigation* (2nd edn, OUP 2015) [16–142]–[16–149], and by AG Wathelet, Case C-536/13 *Gazprom* (Opinion) (13 May 2015), paras 125–133). The possibility, not addressed by the CJEU in *Gazprom*, arises because the Brussels I Regulation (recast) apparently removes the conceptual assumption on which the *West Tankers* decision rests, namely that the issue of whether civil proceedings should be stayed in the light of an arbitration agreement is a matter within the Regulation, with the effect that an injunction to prevent a court from addressing that issue is an interference in a matter subject to the Regulation (Brussels I Regulation (recast), Recital (12)).

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