

# Russian Supreme Court overturns order enforcing foreign arbitration award, declaring presumption that arbitrators from "unfriendly" states lack impartiality and objectivity

by *Practical Law Arbitration*, with *Kulkov, Kolotilov & Partners*

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In *Case No A45-19015/2023*, the Russian Supreme Court set aside a lower court judgment recognising and enforcing a Federation of Oils, Seeds and Fats Associations (FOSFA) arbitral award. The court ruled that the Russian party to the FOSFA proceedings was prejudiced in its access to justice due to the overseas venue of the arbitration and the "unfriendly" citizenship of the arbitrators.

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The Russian Supreme Court (SC) has set aside a lower court judgment recognising and enforcing a Federation of Oils, Seeds and Fats Associations (FOSFA) arbitral award.

The dispute arose from the failure of a Russian company, Novosibirskhleboprodukt JSC (Seller), to fulfil the terms of certain supply contracts with its German counterparty S Thywissen GmbH (Buyer). The Buyer initiated arbitration under the FOSFA arbitration rules and, on 16 November 2022, the tribunal rendered the award in favour of the Buyer, granting damages in the amount of USD600,000. The Buyer then applied to have the award recognised and enforced in Russia.

On 30 August 2023, the Commercial Court of the Novosibirsk Region in Russia granted an order to recognise and enforce the award.

On appeal by the Seller, the SC overturned the lower court's decision.

First, the SC held that where an arbitral tribunal comprises nationals of "unfriendly states", a Russian court will presume that the tribunal lacked impartiality and objectivity as regards a Russian party to the arbitration, until proven otherwise. The FOSFA tribunal in this case comprised citizens of Ukraine, the UK and Denmark, which are all included in the list of "unfriendly states" that is approved by the Russian government.

Second, the SC found it highly likely that obstacles in hiring legal consultants from "unfriendly countries" and paying their fees, as well as the arbitration fees and costs, are grounds for refusing the enforcement.

This decision, and the grounds on which it was made, has created a legal framework in which it will be extremely difficult, if not impossible, to enforce the overwhelming majority of foreign arbitral awards in Russia. As to the first ground, it is uncertain what arguments or evidence could be used to rebut the presumption of a lack of impartiality and objectivity where the arbitrators are from one or more "unfriendly countries" on the Russian government's list, which currently consists of 49 countries. Regarding the second ground, at present many Russian individuals do experience some difficulties with making payments overseas.

Case: *Case No #45-19015/2023 (26 July 2024)*.

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