The new Article 30 of the OHADA Uniform Act on Arbitration sets out two main principles: a very general one for all those who are familiar with international arbitration law and another, more innovative, one aimed at thwarting judicial practices that delay the enforceability of arbitral awards.

Introduction

If the resumption of the provisions of former Article 31 of the Uniform Act of 1999 was not a big surprise, confirming that exequatur is denied to any award obviously in breach of an international public policy rule, it is noteworthy that it is no longer a requirement that such international public policy rule be shared by all OHADA Member States. The removal of this requirement seems appropriate since the extent of the limitation was difficult to understand in practice. Nonetheless the key point in this regard remains jurisprudence, since the consistency of the international public policy issue will be clarified on a case-by-case basis in future judgments ruled by the Abidjan-based OHADA Court (CCJA) on the matter (assuming the court will be seized of such cases much more than it has been so far).

In an innovative way, Article 30 attempts to overcome the difficulties litigants may face when trying to enforce an arbitral award in an OHADA Member State. Indeed, the exequatur procedures are sometimes incredibly and needlessly long and complex, which reduces the effectiveness of the award and could be seen as a State judge taking revenge on an arbitral proceeding that removed the dispute resolution from his jurisdiction. From now on OHADA permits the possibility of a tacit exequatur, which is undoubtedly a novel concept. It would, however, be naive to assume too readily that this will solve the problems of enforceability of arbitral awards.

First, although the recognition of a tacit exequatur meets a legitimate need on the part of litigants, the 15-day timeline over which it is deemed to have been granted by the court is too short, given the objective (dys)functioning of some courts within the OHADA region, and will affect judicial staff as well as litigants. It is common sense that a rule perceived as unreasonable is rarely applied without some resistance. Secondly, the State judge may take time in exercising his discretion to assess whether the conditions are or are not fulfilled for declaring a request for an exequatur admissible, thus delaying the achievement of enforcement. Finally, the issuance of the enforcement formula by the court clerk could prove a new source of delay in case of tacit exequatur, and become a cause of frustration for the parties struggling to enforce an arbitral award.

Indeed, these possible difficulties illustrate a major deficiency in the legal system set up by OHADA, namely the absence of a Uniform Act harmonising the commercial procedures within the Member States. Such an Act would have the merit of unifying the litigation both formally and substantively, and thus allow the CCJA to exercise its full jurisdiction without the result that procedural rules – because they come under national laws – leave national judges with the possibility of indirectly counteracting the effects of the harmonised substantive law.
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