International and Comparative Law Quarterly (2025), 1–17
doi:10.1017/S0020589325100997

British Institute of International and Comparative Law

SHORTER ARTICLE

Anti-Suit Injunctions in Support of Foreign Dispute-Resolution Clauses

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Abstract

Courts in England ordinarily grant anti-suit injunctions when proceedings are (or will soon be) initiated in a foreign court in breach of clauses which subject disputes to the exclusive jurisdiction of courts, or refer them to arbitration, in England. Would they, however, grant such relief in support of foreign dispute-resolution clauses? In *UniCredit Bank v RusChemAlliance*, the Supreme Court of the United Kingdom answered this question in the affirmative, thus expanding the English courts' power to issue anti-suit injunctions. This article seeks to assess the likely extent of this expansion and the future implications it could have for the law on anti-suit injunctions in England. The article also examines the Supreme Court's pronouncements on the other significant issue in the case concerning the law governing arbitration agreements and their potential effect following the enactment of the Arbitration Act 2025.

Keywords: private international law; international commercial arbitration; dispute-resolution clauses; transnational injunctions; anti-suit injunctions; governing law of arbitration agreements

1. Introduction

Transnational injunctions—chiefly, worldwide freezing injunctions (formerly known as *Mareva* injunctions) and anti-suit injunctions—are important measures in cross-border commercial disputes. The gradual, but unmistakable, expansion over the past half a century in the types of situations in which English courts are prepared to issue freezing injunctions has been a major factor in their prominence today.[1] For years after their introduction in 1975,[2] freezing injunctions—which seek to prevent defendants from dissipating their assets, thereby frustrating the claimants' ability to enforce a successful judgment against them—were regarded as being available only with regard to

[1] The terms 'England', 'English courts' and 'English law' are used to signify 'England and Wales', 'courts of England and Wales' and 'the law of England and Wales', respectively.

[2] *Nippon Yusen Kaisha v Karageorgis* [1975] 1 WLR 1093; *Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509.

assets in England,[3] and only where English courts had jurisdiction over the main dispute.[4] By the late 1980s, however, the power to issue freezing injunctions had been extended to assets located outside England.[5] Moreover, following legislative developments in the 1980s and 1990s, the English courts began to issue freezing injunctions in cases where the main proceedings were being heard outside England.[6] More recently, in yet another expansionary step, reversing earlier practice,[7] it has been stated that it is no longer necessary for the cause of action to have arisen for a freezing injunction to be sought.[8]

Although during the same period the English courts have generally not exhibited the same propensity to broaden their power to issue anti-suit injunctions, these measures—which restrain would-be (or actual) litigants from commencing (or continuing) proceedings before foreign courts—are no less significant, with the courts frequently encountering applications to restrain foreign proceedings. Provided that the respondent is amenable to their jurisdiction,[9] English courts have discretion to issue anti-suit injunctions in two main categories of case. The first category is where the applicant can show that the respondent's commencement (or continuation) of foreign litigation amounts to conduct which is 'unconscionable', including 'oppressive or vexatious'.[10] The second category is where English courts issue anti-suit injunctions because they conclude that the commencement (or continuation) of foreign proceedings by the respondent would breach the applicant's legal or equitable rights.[11]

The majority of the reported cases in the second category concern applications brought by parties seeking to uphold agreements to subject disputes to the exclusive jurisdiction of courts, or to refer them to arbitration, in England. In these cases—where injunctions are sought in order to uphold contractual rights—it has long been accepted that English courts would issue orders to restrain foreign proceedings unless the party

[3] See, e.g. *Ashtiani v Kashi* [1987] QB 888.

[4] *Siskina (Owners of Cargo Lately Laden on Board) v Distos Cia Naviera SA* [1979] AC 210.

[5] See, e.g. *Babanaft International Co SA v Bassatne* [1990] Ch 13; *Republic of Haiti v Duvalier* [1990] 1 QB 202; *Derby & Co Ltd v Weldon* [1990] Ch 48; *Derby & Co Ltd v Weldon (Nos 3 & 4)* [1990] Ch 65.

[6] To begin with, by virtue of the Civil Jurisdiction and Judgments Act 1982, section 25(1), which afforded the courts the power to issue freezing injunctions in support of proceedings that fell within the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (adopted for signature 27 September 1968, entered into force 1 February 1973) OJ L299 (Brussels Convention), which were being heard by courts in a Contracting State to the Brussels Convention or another part of the United Kingdom (UK). By the late 1990s, the power to grant freezing injunctions had been extended to all foreign proceedings, regardless of whether they fell within the Brussels Convention, and irrespective of where they were brought: Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997, SI 1997/302.

[7] See, e.g. *Veracruz Transportation Inc v VC Shipping Co Inc (The Veracruz I)* [1992] 1 Lloyd's Rep 353; *Zucker v Tyndall Holdings plc* [1992] 1 WLR 1127.

[8] *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24. See also *Bacci v Green* [2022] EWCA Civ 1393.

[9] See, e.g. Lawrence Collins LJ (as he then was) in *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2008] EWCA Civ 625, para 27 citing *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871, 892 (Lord Goff of Chieveley); *Turner v Grovit* [2001] UKHL 65, para 23 (Lord Hobhouse of Woodborough); *Donohue v Armco Inc* [2001] UKHL 64, para 19 (Lord Bingham of Cornhill).

[10] *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24, 40, 41 (Lord Brandon of Oakbrook).

[11] ibid 40.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

resisting the application can establish 'strong reasons' why the injunction should not be granted.[12] This approach has been developed by the English courts principally to hold the parties to their contractual promise regarding the mode and forum of dispute resolution,[13] but also because anti-suit injunctions are the only appropriate remedies in response to the respondent's breach of contract.[14]

Although the scope of anti-suit injunctions in England has remained largely unchanged over the past five decades, there have nonetheless been some occasions where courts have shown that, in the face of applications brought in novel circumstances, they would be willing to adopt a more expansive approach to granting these measures. For example, the English courts held relatively recently that injunctions can be granted under the second category to uphold what they considered as the applicants' legal rights under statute as employees to be sued only in England,[15] where they were domiciled.[16] The effect of this finding was that an injunction was issued in each case to restrain proceedings in a foreign court that had been designated in the parties' agreement as having exclusive jurisdiction.[17]

One situation in which it has been questioned whether the English courts would be willing to extend their power to grant injunctions in order to uphold contractual rights concerns cases where the chosen forum (be it a court or an arbitral tribunal) is in a foreign jurisdiction, and the proceedings are (or will soon be) brought in another foreign court. In these cases, would the English courts issue anti-suit injunctions in support of foreign dispute-resolution clauses? In *UniCredit Bank GmbH v RusChemAlliance LLC* (*UniCredit v RusChem*),[18] the Supreme Court of the United Kingdom (Supreme Court) was presented with an opportunity to answer this question authoritatively. Prior to this case, courts in England had been all but silent on this matter.[19] The accounts in the academic and practitioner literature, however, mostly indicated a preference for the courts to issue anti-suit injunctions in these cases.[20]

[12] See, e.g. *Donohue* (n 9).

[13] ibid para 24 (Lord Bingham).

[14] See, e.g. *The Angelic Grace* [1995] 1 Lloyd's Rep 87, 96 (Millett LJ), 97 (Neil LJ).

[15] Pursuant to 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 L351/1 (Brussels Ia Regulation) section 5. Following the UK's exit from the European Union (EU), the provisions concerning individual employment contracts, along with those relating to consumer contracts, under Brussels Ia Regulation have been assimilated into domestic law: Civil Jurisdiction and Judgments Act 1982, sections 15A–15E.

[16] *Samengo-Turner v Marsh & McLennan (Services) Ltd* [2007] EWCA Civ 723; *Petter v EMC Europe Ltd* [2015] EWCA Civ 828.

[17] For criticism of this development in the law, see, e.g. A Briggs, 'Who Is Bound by the Brussels Regulation?' [2007] LMCLQ 433; A Dickinson, 'Resurgence of the Anti-Suit Injunction: The Brussels I Regulation as a Source of Civil Obligations?' (2008) 57 ICLQ 465; T Raphael, *The Anti-Suit Injunction* (2nd ed, OUP 2019) paras 4.41–4.46.

[18] *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30 (*UniCredit v RusChem*).

[19] A notable exception are the brief obiter remarks of Longmore LJ in *OT Africa Line Ltd v Magic Sportswear Corporation*, which could be read as suggesting that English courts have the power to issue anti-suit injunctions in support of foreign exclusive jurisdiction clauses: [2005] EWCA Civ 710, para 32.

[20] See, e.g. Lord Collins of Mapesbury and J Harris, *Dicey, Morris & Collins on the Conflict of Laws* (16th edn, Sweet & Maxwell 2022) paras 12R–121; A Briggs, *Private International Law in English Courts* (2nd edn, OUP 2023) 299; A Briggs, *Civil Jurisdiction and Judgments* (7th edn, Routledge 2021) para 28.07; A Briggs,

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

Across the common law world, while some courts have granted anti-suit injunctions in support of foreign dispute-resolution clauses—specifically, in cases involving foreign-seated arbitrations[21]—others have hinted at being much more wary of restraining wrongful foreign proceedings in these circumstances.[22]

In a unanimous decision, the Supreme Court in *UniCredit v RusChem* held that the English courts have the power to issue anti-suit injunctions to uphold foreign dispute-resolution clauses. The ruling is seminal in the area of anti-suit injunctions, since it confirms decisively that this relief can be granted in a new type of case. More broadly, the Supreme Court's judgment is also significant since it highlights that the English courts' tendency to broaden the range of situations in which they are prepared to grant injunctive relief is not limited to cases involving applications for freezing injunctions but can also manifest itself in respect of applications for anti-suit injunctions.

While it is obvious that *UniCredit v RusChem* expands the range of cases in which anti-suit injunctions are available, the precise parameters of this expansion are not entirely clear. The present discussion addresses this important issue in three main sections. It begins, in Section 2, by highlighting the key facts underpinning the dispute in *UniCredit v RusChem* and the outcome of the proceedings in this case at first instance and before the Court of Appeal. The discussion then proceeds, in Section 3, to examine the Supreme Court's reasons for expanding the English courts' power to issue anti-suit injunctions by holding that these measures can be granted in support of foreign dispute-resolution clauses. It also assesses the Supreme Court's ruling on the other significant issue in the case concerning the law governing arbitration agreements, which had a bearing on its decision whether to grant an injunction. In this respect, it is argued that, following the enactment of the Arbitration Act 2025 (2025 Act), it is unlikely that the Supreme Court's pronouncements on the law governing arbitration agreements will have notable long-term ramifications for the law in England.

Finally, in Section 4, the discussion sets out to examine the likely extent of the expansion in the English courts' power to issue anti-suit injunctions following the Supreme Court's ruling in *UniCredit v RusChem*. It is argued that although it is possible to interpret *UniCredit v RusChem* as stating that the same considerations determine the award of anti-suit injunctions regardless of whether the agreed choice of forum is in England or overseas, such a reading of the ruling should be avoided, since it would result in an unduly broad expansion of the English courts' ability to grant injunctive relief. Instead, it is suggested that it is more defensible to view *UniCredit v RusChem* as creating a new subcategory of case, within those where foreign proceedings are restrained in order to uphold contractual rights. In this new subcategory of case,

Agreements on Jurisdiction and Choice of Law (OUP 2008) paras 6.33–6.37. For an opposing view, see Raphael (n 17) paras 7.43–7.50.

[21] See, e.g. *IPOC International Growth Fund Ltd v OAO 'CT-Mobile' LV Finance Group* [2007] CA (Bda) 2 Civ; *Finecroft Ltd v Lamane Trading Corporation* (Caribbean Supreme Court, 6 June 2006).

[22] See, e.g. obiter remarks in Choo Han Teck J's ruling in *People's Insurance Co Ltd v Akai Pty Ltd* [1997] SGHC 165, paras 12–13 (High Court of Singapore) and in the judgment of Judith Prakash J (as she then was) in *R1 International Pte Ltd v Lonstroff AG* [2014] SGHC 69, paras 53–55 (High Court of Singapore) (reversed by the Singapore Court of Appeal, but without making any comments regarding the obiter statements on the availability of anti-suit injunctions in support of foreign dispute-resolution clauses: *R1 International Pte Ltd v Lonstroff AG* [2014] SGCA 56).

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unlike the one in which applications are made to English courts to restrain foreign proceedings brought in breach of English dispute-resolution clauses, respect for comity is a key consideration in deciding whether an injunction should be issued. Such a reading of the decision—which would signify a more restrained expansion in the scope of anti-suit injunctions—would represent a more proportionate means of upholding contractual rights in cases such as *UniCredit v RusChem*.

2. The facts and the proceedings in the lower courts

In 2021, RusChem, a Russian energy company, entered into high-value contracts with two German companies for the construction of energy facilities in Russia. RusChem paid the German companies an advance sum of around €2 billion, with the outstanding sum of €8 billion to be paid at various stages. In order to guarantee the German companies' performance of their obligations, the terms of the contracts required them to provide on-demand bonds. Seven such bonds were issued by UniCredit, a German bank. Each bond contained an express English choice-of-law clause and a dispute-resolution clause which stated that all disputes arising out of the bonds should be referred to arbitration in Paris under the International Chamber of Commerce rules.

A few months after the contracts had been signed, Russia invaded Ukraine, prompting the European Union (EU), among other actors, to extend existing (and impose new) sanctions on Russia and designated Russian entities. Following this development, the German companies sought advice from the relevant German authority as to whether they could continue to perform their contractual obligations to RusChem. Although RusChem was not targeted by the sanctions, the German authority nonetheless instructed the companies not to proceed with their obligations under the contract. The German companies duly obliged. RusChem responded by terminating the contracts, seeking the return of the €2 billion advance payment and claiming damages for the companies' failure to fulfil their contractual obligations. RusChem then demanded that UniCredit make payments to it under all seven bonds. UniCredit declined RusChem's demands, stating that EU sanctions prohibited it from making those payments.

Subsequently, RusChem commenced proceedings in Russia before the Arbitrazh Court of the St Petersburg and Leningrad Region, claiming payment under the bonds of a sum approaching €450 million. In doing so, RusChem relied on Article 248.1 of the Arbitrazh Procedural Code. Introduced in 2020, this provision has the effect of granting the Russian Arbitrazh Court exclusive jurisdiction over international sanctions-related disputes between Russian and foreign entities, by treating an agreement providing for arbitration of such disputes outside Russia as being incapable of performance. UniCredit applied to the Arbitrazh Court to dismiss RusChem's claim, pointing to the agreement to refer disputes to arbitration in Paris. Separately, and soon after the commencement of the Russian proceedings, UniCredit applied to the English High Court for an injunction to restrain RusChem from pursuing its claim in Russia. In the Russian proceedings, the court held that, in view of Article 248.1 of the Arbitrazh Procedural Code, the arbitration agreements were inoperative. Nevertheless, the judge ordered a stay of proceedings pending the outcome of the anti-suit injunction application in England.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

Given that anti-suit injunctions are in personam measures, the first hurdle which UniCredit had to overcome in its application was to show that RusChem was amenable to the jurisdiction of the English courts. As RusChem had no presence in England, UniCredit's only means of establishing jurisdiction was by obtaining the English court's permission to serve the injunction application on RusChem outside England.[23] To this end, UniCredit had to show that: first, there was a serious basis for bringing the injunction application; second, the injunction application fell within one of the heads of jurisdiction (or 'gateways') under paragraph 3.1 of Practice Direction 6B of the Civil Procedure Rules (CPR PD 6B);[24] and, third, England was the proper place to determine whether the injunction should be granted. On the facts, the second and third requirements were in contention.

In cases such as *UniCredit v RusChem*, where the injunction application is brought to uphold contractual rights, the party seeking the order can usually satisfy the gateway requirement by showing that the application falls within at least one of the subparagraphs concerning contractual disputes under CPR PD 6B paragraph 3.1(6) (gateway 6). For its application, UniCredit sought to rely on gateway 6(c), which required UniCredit to show that the arbitration agreements were governed by English law.

In order to determine the law governing the arbitration agreement, reference had to be made to the choice-of-law rules outlined by the Supreme Court in *Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb* (*Enka v Chubb*).[25] In that case, the Court held unanimously that where the parties have stipulated a choice of law to apply to the underlying contract, the general presumption is that such law should also govern the arbitration agreement.[26] Where, however, the parties have not designated the law governing the underlying contract (whether expressly or by implication), the Supreme Court held (by a three to two majority) that the law of the seat, as the law of the place which has the most real and substantial connection to the arbitration agreement, should govern it.[27] The Supreme Court was also unanimous in stating that, in certain situations, the general presumption that the law governing the underlying contract also applies to the arbitration agreement is to be displaced by the law of the seat. One such situation was said to be where the law of the seat 'indicates that, where an arbitration is subject to that law, the arbitration agreement will also be treated as governed by that country's law' (the [170(vi)(a)] exception).[28]

[23] Civil Procedure Rules 1998 (CPR) rule 6.36.

[24] CPR Practice Direction (PD) 6B, para 3.1.

[25] *Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb* [2020] UKSC 38 (*Enka v Chubb*).

[26] ibid paras 43–58, 170(iv)–(v) (Lord Hamblen and Lord Leggatt, Lord Kerr concurring (the majority)) paras 231–255, 257(iii) (Lord Burrows), paras 266–275 (Lord Sales).

[27] ibid para 170(viii) (the majority). The minority view was that, regardless of how it is ascertained, the law governing the main contract should generally govern the arbitration agreement: ibid para 257(iii) (Lord Burrows), para 283 (Lord Sales).

[28] ibid para 170(vi)(a) (the majority), para 257(iii) (Lord Burrows). The other situation where the general presumption was said to be rebuttable is where there is 'a serious risk' that, under the law governing the underlying contract, the arbitration agreement would be ineffective, while it would be valid under the law of the seat of arbitration: para 170(vi)(b) (the majority), para 257(iv) (Lord Burrows), para 277 (Lord Sales). This ground for rebutting the general presumption was not in contention in *UniCredit v RusChem.*

UniCredit argued that the choice of English law as the bonds' governing law meant that, by virtue of the general presumption in *Enka v Chubb*, English law also governed the Paris arbitration agreement, resulting in the injunction application falling within gateway 6(c). RusChem, however, contended that this was a case in which the general presumption in *Enka v Chubb* could be displaced by the [170(vi)(a)] exception because, under the law of the seat of arbitration—i.e. France—the arbitration agreements were to be governed by the French rules of international arbitration. As for the requirement that England was the proper place for the injunction application, UniCredit contended that the court in France did not issue anti-suit injunctions (or similar measures), and that the English court was the only place which would uphold the Paris arbitration agreements by issuing an injunction. RusChem, however, submitted that the French court was the proper forum because, as the court of the seat of the arbitration, it had been afforded supervisory jurisdiction by the parties to determine whether the Russian proceedings amounted to a breach of the arbitration agreements.

At first instance,[29] the court held that it lacked jurisdiction to issue an injunction, and chose not to state whether it would have granted the relief had it had the competence to do so. On appeal by UniCredit, the Court of Appeal reversed the first-instance ruling, thus concluding that RusChem was amenable to the English court's jurisdiction for the purpose of UniCredit's anti-suit injunction application.[30] Lord Justice Males, who delivered the only reasoned judgment,[31] then proceeded to examine whether, on the facts, an injunction should be granted.[32] On this issue, his Lordship found that, in cases such as *UniCredit v RusChem*, English courts should ordinarily grant injunctions to uphold arbitrations which have their seats outside England, provided that the relief sought would not be seen by the court in the foreign jurisdiction, where the arbitration is to have its seat, as amounting to an 'unwarranted interference' with its jurisdiction.[33]

In support of this pronouncement, Lord Justice Males drew on, among other authorities, *IPOC v CT-Mobile*.[34] In that case, the Court of Appeal for Bermuda upheld the judge's decision at first instance to restrain the defendants from pursuing court proceedings in Russia, in breach of existing agreements between the parties to refer disputes to arbitration in Switzerland and Sweden. The court rejected the appellant's argument that, because the seat of the arbitration was outside Bermuda, the Bermudian courts lacked sufficient interest to grant an injunction. Having decided that the court in Bermuda had jurisdiction to grant the injunction on the basis of the defendant being domiciled there, the court decided to order the relief to stop the defendants from continuing with the proceedings in Russia. In view of his finding that RusChem was subject to the English court's jurisdiction, and that granting an injunction would not interfere with the French court's supervisory jurisdiction over any arbitration in France, Lord Justice Males ordered RusChem to stop pursuing its claim

[29] *G v R* [2023] EWHC 2365 (Comm).

[30] *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] EWCA Civ 64, paras 42–70 (finding that English law governed the arbitration agreement, meaning that UniCredit's claim fell within gateway 6(c)) and paras 71–78 (concluding that England was the proper place for the injunction application to be brought).

[31] Bean LJ and Lewis LJ concurring.

[32] *UniCredit* (n 30) paras 79–85.

[33] ibid paras 82–83.

[34] *IPOC v CT-Mobile* (n 21).

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

against UniCredit in Russia.[35] Subsequently, RusChem appealed the Court of Appeal's decision to the Supreme Court.

3. The Supreme Court's decision and reasoning

The key issue before the Supreme Court was whether the English court had in personam jurisdiction over RusChem to grant an injunction. To address this issue, the Court had to examine the same two sub-issues which had been in contention in the proceedings before the lower courts:[36] first, were the arbitration agreements between UniCredit and RusChem governed by English law, meaning that the injunction application fell within the scope of gateway 6(c); and, second, was England the proper place for hearing the injunction application?

3.1. Which law governed the arbitration agreement?

Lord Leggatt delivered the Supreme Court's judgment on these matters.[37] His Lordship rejected RusChem's submission that, by virtue of the [170(vi)(a)] exception in *Enka v Chubb*, French law as the law of the seat should displace the general presumption that the arbitration agreements are governed by English law, which the parties had chosen to govern the underlying contract. In this context, Lord Leggatt devoted a large part of the judgment to examining the English High Court's decision in *Carpatsky Petroleum Corpn v PJSC Ukrnafta* (*Carpatsky*),[38] which had provided the basis for RusChem's arguments before the Supreme Court.[39] Indeed, as his Lordship explained,[40] the reference to *Carpatsky* in the course of the submissions in the appeal before the Supreme Court in *Enka v Chubb* had led to the articulation of the [170(vi)(a)] exception.

In *Carpatsky*, the question of the governing law of the arbitration agreement arose in the context of the enforcement of a Swedish arbitral award. The award debtor, who sought to resist the enforcement of the award, argued that the arbitration agreement was governed by Ukrainian law, under which the arbitration agreement was invalid; the award creditor, however, claimed that Swedish law governed the arbitration agreement, which validated the arbitration agreement. The parties had not chosen a law to govern the arbitration agreement, or indeed a law to govern the underlying contract. On the facts, the only reference to a governing law in the agreement was one which stated that the 'law of substance of Ukraine' was to apply 'on examination of disputes', which Mr Justice Butcher interpreted as meaning that Ukrainian law governed the substantive issues in the dispute.[41] The judge, however, was not persuaded that the parties' choice of Ukrainian law as the law governing the substance of the dispute meant that it also governed the arbitration agreement. Thus, Mr Justice Butcher proceeded to examine

[35] *UniCredit* (n 30) para 88.
[36] *UniCredit* (n 18) para 15.
[37] Lord Reed, Lord Sales, Lord Burrows and Lady Rose concurring. The Supreme Court's judgment was published in September 2024, with the decision on the appeal having been announced in April 2024.
[38] *Carpatsky Petroleum Corpn v PJSC Ukrnafta* [2020] EWHC 769 (Comm).
[39] *UniCredit* (n 18) paras 43–60.
[40] ibid paras 48–49.
[41] *Carpatsky* (n 38) para 67.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

whether the law governing the arbitration agreement could be implied from the law of Sweden, where the arbitration had its seat. For this purpose, Mr Justice Butcher referred to Section 48 of the Swedish Arbitration Act,[42] which stated that, in the absence of an express choice of law governing the arbitration agreement, the applicable law shall be the law of the seat.[43] In view of the Swedish provision, the judge stated that regardless of whether the question of the law governing the arbitration agreement is being examined in Sweden or elsewhere, 'by failing to make an express choice of law for the arbitration agreement, and by providing for a Swedish venue', the parties should be taken as having chosen Swedish law as the law of the arbitration agreement.[44]

Having subjected Mr Justice Butcher's ruling in *Carpatsky* to much greater scrutiny in *UniCredit v RusChem* than it had received in *Enka v Chubb*, Lord Leggatt reached the view that the rule endorsed in *Carpatsky* 'which treats the arbitration agreement as governed by whatever law the courts of the seat would treat as the law which governs it would in fact be a very unsatisfactory rule for any legal system to adopt'.[45] Indeed, such was Lord Leggatt's disapproval of the reasoning in *Carpatsky* that, upon this closer inspection, his Lordship proceeded to jettison the [170(vi)(a)] exception from the choice-of-law rules outlined in *Enka v Chubb*, stating that 'no inference can be properly drawn from a choice of seat which is capable of displacing' the general presumption in *Enka v Chubb*.[46] Therefore, applying the general presumption in *Enka v Chubb*, it was held that English law, as the law governing the underlying bonds, also governed the arbitration agreements included within them. Accordingly, the Court of Appeal's finding that UniCredit's injunction application fell within gateway 6(c) was upheld.[47]

The Supreme Court's decision in *UniCredit v RusChem* to abandon the [170(vi)(a)] exception is bound to be regarded as a remarkable volte-face. After all, it was only four years earlier that the exception had been endorsed, as part of the choice-of-law rules for determining the law governing arbitration agreements, by all Justices of the Supreme Court in *Enka v Chubb*, including Lord Leggatt himself. Nevertheless, it is difficult to gainsay the jettisoning of the exception. The effect of the [170(vi)(a)] exception was that, by choosing Paris as the seat of the arbitration, the parties in *UniCredit v RusChem* should be taken as having intended that the arbitration agreements were to be governed by whatever law the French courts considered as being applicable to it. However, the Supreme Court considered that it was not reasonable or realistic to attribute this supposed intention to the parties or their representatives through the application of the exception.[48] As Lord Leggatt pointed out, where it is not possible to ascertain the intention of the parties in their contract regarding the governing law of the arbitration, 'the court should not strain artificially to find one by attributing to the parties an

[42] The Swedish Code of Statutes (SFS) 1999:116, updated as per SFS 2018:1954.
[43] *Carpatsky* (n 38) para 70.
[44] ibid.
[45] *UniCredit* (n 18) para 56.
[46] ibid para 59.
[47] ibid para 63.
[48] ibid paras 57–58.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

unrealistic process of reasoning'.[49] It was for these reasons that the exception was removed from the choice-of-law rules in *Enka v Chubb*.

The decision to renounce the [170(vi)(a)] exception was made against the backdrop of statutory reform of arbitration law, in particular, the principles for determining the law governing arbitration agreements. During its review of the Arbitration Act 1996 (1996 Act), the Law Commission of England and Wales (Law Commission) observed that the choice-of-law rules in *Enka v Chubb* were 'complex and unpredictable'.[50] In response, it proposed for those rules to be replaced by a new choice-of-law regime.[51] The Law Commission's proposed choice-of-law rules were subsequently incorporated into the 2025 Act, which was enacted a few months after the ruling in *UniCredit v RusChem*. The 2025 Act makes specific amendments to the 1996 Act, meaning that the recently-introduced provisions have been written into the 1996 Act. The new choice-of-law rules under the 2025 Act, which are to apply regardless of where the seat of the arbitration is, have been incorporated into the 1996 Act under section 6A. They state that '[t]he law applicable to an arbitration agreement is (a) the law that the parties expressly agree applies to the arbitration agreement, or (b) where no such agreement is made, the law of the seat of the arbitration in question'.[52]

While discussing the incoming changes to the law, which finally came into force on 1 August 2025, Lord Leggatt appeared to leave the door ajar for the choice-of-law rules in *Enka v Chubb* to continue to have a role: '[d]epending on what the word "expressly" is taken to add to the word "agree", this would not by itself alter the law as stated in *Enka*'.[53] However, the relevant discussions in the Law Commission's report[54] highlight that no role has been envisaged for the choice-of-law rules in *Enka v Chubb* now that section 6A has taken effect, meaning that the new statutory choice-of-law rules have supplanted those stated in *Enka v Chubb*. Therefore it is argued that, following the enactment of the 2025 Act, it is unlikely that the Court's decision to abandon the [170(vi)(a)] exception will have notable long-term ramifications for the law in England.

3.2. Was England the proper place?

On the second sub-issue of whether England was the proper place for entertaining the injunction application, Lord Leggatt began his reasoning by stating that both parties had been wrong to assume in their submissions that the question had to be determined by reference to the *forum non conveniens* doctrine.[55] In his Lordship's view, it was not:

[49] ibid para 58.

[50] Law Commission of England and Wales (Law Commission), *Review of the Arbitration Act 1996: Final report and Bill* (Law Com No 413, 2023) para 12.20.

[51] ibid para 12.77. Interestingly, in order to justify its decision to adopt the law the of the seat as the default law to govern arbitration agreements, in the absence of the parties' express stipulation, the Law Commission drew (albeit partially) on the [170(vi)(a)] exception: ibid para 12.31.

[52] For a criticism of the new choice-of-law regime, see A Briggs, 'Restoring Order to International Arbitration (For the Time Being)' [2025] LMCLQ 6, 8–9.

[53] *UniCredit* (n 18) para 28.

[54] Law Commission (n 50) paras 12.32–12.53.

[55] *UniCredit* (n 18) paras 73, 75.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

> right to accept that there is only one court (at most) which can properly exercise jurisdiction over a party for the purpose of preventing that party from breaking its contract to arbitrate a dispute, so that the English court should automatically decline to grant relief unless satisfied that it is clearly the most suitable tribunal to do so.[56]

Instead, for Lord Leggatt, the issue was whether England was, on the facts, the proper place 'to enforce the parties' agreement'.[57] For this purpose, Lord Leggatt relied on the House of Lords' ruling in *Airbus Industrie GIE v Patel* (*Airbus*)[58] and *IPOC v CT-Mobile*,[59] a decision of the Court of Appeal for Bermuda.[60] Although in *Airbus* the injunction application had concerned restraining foreign proceedings on the basis that they were vexatious and oppressive, Lord Leggatt nonetheless regarded it as a helpful illustration that:

> where the English court is asked to grant an anti-suit injunction to restrain proceedings in another forum because a third forum is the appropriate forum for the resolution of the substantive dispute, the test for determining whether the English court should exercise jurisdiction is not whether the English court is the most suitable forum for granting anti-suit relief. It is whether the intervention of the English court is consistent with comity.[61]

Put differently, Lord Leggatt read the ruling in *Airbus* as signifying that, in a case such as *UniCredit v RusChem*, a key consideration in deciding if England is the proper place for granting the injunction is whether the issuing of the measure would give rise to issues of comity. On the facts, his Lordship observed that restraining the Russian proceedings would not raise issues of comity as regards the courts in Russia and France, which are both Contracting States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).[62] In the case of the Russian courts, although by means of Article 248.1 Arbitrazh Procedural Code the Arbitrazh Courts no longer comply with their obligations under the New York Convention to uphold the parties' agreement to refer their disputes to arbitration,[63] 'there can be no violation of comity in the English court granting an injunction to restrain RusChem'.[64] As for the French courts, Lord Leggatt relied on the fact that 'the evidence of French law positively confirms that the French courts would have no objection to the grant of an anti-suit injunction by the English court', thus

[56] ibid para 75. For a criticism of Lord Leggatt's conclusion on this point, see A Giannakopoulos, 'Anti-Suit Injunctions Untethered' (2025) 141 LQR 196, 200–02.

[57] *UniCredit* (n 18) para 74.

[58] *Airbus Industrie GIE v Patel* [1999] 1 AC 119 (*Airbus*).

[59] *IPOC v CT-Mobile* (n 21).

[60] *UniCredit* (n 18) paras 76–78 (*Airbus*), paras 81–83 (*IPOC v CT-Mobile*).

[61] ibid para 77.

[62] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

[63] By virtue of the New York Convention ibid art II(3), which states that: 'The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.'

[64] *UniCredit* (n 18) para 80.

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concluding that restraining the Russian proceedings in this case would not result in any breach of comity.[65]

IPOC v CT-Mobile was the second case which Lord Leggatt drew on in determining the proper place for enforcing the parties' agreement to refer their disputes to arbitration in Paris. As discussed in Section 2, the ruling in this case had influenced Lord Justice Males' judgment in the Court of Appeal. Lord Leggatt relied on *IPOC v CT-Mobile* in observing that, given that RusChem was amenable to the English court's jurisdiction, in view of the court's finding that the arbitration agreements in the bonds were governed by English law, 'there was substantial connection with England and Wales in the fact that the contractual rights which UniCredit is seeking to enforce are rights governed by English law'.[66]

As part of his analysis of whether England was the proper forum, Lord Leggatt also referred to various sources[67] in explaining why the fact that the seat of the arbitration was outside England did not, on its own, prohibit the English courts from issuing anti-suit injunctions to uphold the arbitration agreements.[68] Significantly, his Lordship rowed back from previous pronouncements in English cases,[69] including one which he and Lord Hamblen had made in *Enka v Chubb*,[70] that restraining foreign proceedings brought in breach of an English arbitration agreement fell within the English court's supervisory jurisdiction over the arbitration.[71] In his view, 'the power to grant [an anti-suit injunction] is not an aspect of either the supervisory or the supporting jurisdiction of the English court'.[72] Instead, Lord Leggatt cited with approval Sir Murray Stuart-Smith JA's observations in *IPOC v CT-Mobile*, in which he had stated that '[t]he role of the courts of the seat of arbitration is to supervise the arbitration itself. They are not the only courts that can prevent a party breaking his contract to arbitrate'.[73] Lord Leggatt therefore concluded that 'the supervisory jurisdiction of the French courts is not itself a reason why an English court cannot or should not uphold the parties' bargain by restraining a breach of the arbitration agreement'.[74]

Lord Leggatt referred to evidence prepared by an expert on French law for a case on materially similar facts[75] but which had been admitted into evidence in *UniCredit v RusChem*, which made clear that, even though the parties had agreed to arbitration in France, French courts would not be able to grant injunctions (or similar relief) to

[65] ibid.

[66] ibid para 83.

[67] See, e.g. United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, art 9, read together with UNICTRAL, Text of the Model Law (amended in 2006): Explanatory Note (1985) para 22; International Chamber of Commerce Rules of Arbitration (2021) art 28(2); *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, 365 (Lord Mustill); Arbitration Act 1996, section 2(3).

[68] *UniCredit* (n 18) paras 84–93.

[69] See, e.g. *West Tankers Inc v Ras Riunione Adriatica di Sicurtà SpA (The Front Comor)* [2007] UKHL 4, para 21 (Lord Hoffmann), para 31 (Lord Mance).

[70] *Enka* (n 25) para 174 (the majority).

[71] *UniCredit* (n 18) para 95.

[72] ibid para 96.

[73] *IPOC v CT-Mobile* (n 21) para 35.

[74] *UniCredit* (n 18) para 100.

[75] *Commerzbank AG v RusChemAlliance LLC* [2023] EWHC 2510 (Comm).

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

uphold that agreement. This evidence prompted his Lordship to conclude that 'the French courts would not have jurisdiction to entertain a claim by UniCredit to enforce the arbitration agreements in the bonds'.[76] Lord Leggatt also rejected RusChem's alternative case—namely, that the proper place in which the anti-suit injunction application should be brought is arbitration in Paris.[77] According to his Lordship:

> the more fundamental reason why substantial justice could not be obtained through arbitration proceedings [in Paris] is that any award or order made by an arbitrator has no coercive force. It is not backed by the powers available to a court to enforce performance of its orders, which include sanctions for contempt of court. An order made by an arbitrator creates only a contractual obligation. RusChem is already under a contractual obligation not to bring proceedings against UniCredit in the Russian courts. That obligation did not deter it from doing so. There is no reason to think that adding a further contractual obligation not to bring such proceedings would have any greater effect. RusChem's conduct demonstrates that it would not.[78]

In short, in Lord Leggatt's view, 'neither the French courts nor arbitration proceedings are a forum in which UniCredit could obtain any, or any effective, remedy for RusChem's breach (and threatened further breach) of the arbitration agreements'.[79] For these reasons, RusChem's appeal was dismissed, with the Supreme Court upholding the Court of Appeal's decision to restrain the continuation of proceedings in Russia which had been initiated in breach of the prior agreement between the parties to refer disputes to arbitration in Paris.

Not long after the publication of the Supreme Court's reasons for its decision to award the injunction, RusChem sought an order from the Arbitrazh Court of the St Petersburg and Leningrad Region which, among other things, required UniCredit to 'take all measures within its control' to cancel the anti-suit injunction granted by the English court, or instead face a €250 million fine for failing to comply with the Russian court's order. After concluding that contempt-of-court proceedings in England against RusChem for flouting the English anti-suit injunction were unlikely to be effective—because the Russian company had no assets outside of Russia—UniCredit applied to the Court of Appeal to revoke or vary the final anti-suit injunction that it had fought so hard to obtain.[80] The Court of Appeal ruled to remove the injunctive parts from the original order. A number of factors combined to persuade the court to arrive at this conclusion. One important consideration was that, in the Court of Appeal's view, the risk that the €250 million penalty would be imposed on UniCredit was real.[81] Moreover, the Court of Appeal found that it was possible for the English court to revoke or vary final anti-suit injunctions[82] and that, in the case of UniCredit's latest application, there were no public

[76] *UniCredit* (n 18) para 104.
[77] ibid paras 105–112.
[78] ibid para 108.
[79] ibid para 112.
[80] *UniCredit Bank GmbH v RusChemAlliance LLC* [2025] EWCA Civ 99. UniCredit made this fresh application under CPR (n 23) part 3.1(7) and the court's inherent jurisdiction.
[81] ibid paras 15–17.
[82] ibid paras 18–27.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

policy reasons against allowing it.[83] Finally, the Court of Appeal concluded that the fact that UniCredit had been coerced into making the application was not, in the circumstances, sufficiently significant to militate against altering the original application.[84]

4. *UniCredit v RusChem*: expanding the scope of anti-suit injunctions

From a broad perspective, the Supreme Court's decision in *UniCredit v RusChem* is significant since it highlights that the English courts' propensity to expand the range of situations in which they are prepared to grant injunctive orders is not limited to freezing injunctions but can indeed manifest itself with respect to applications for anti-suit injunctions in new types of situations. The wide statutory power afforded to courts to grant transnational injunctions,[85] and the fact that these measures can be issued as long as the court has in personam jurisdiction over the defendant, are said to be particularly influential in enabling the courts to expand their injunctive powers.[86] What is more, English courts routinely attract a wide variety of cross-border private disputes, meaning that opportunities for applicants to test the courts' willingness to expand the scope of transnational injunctions to new situations arise frequently.[87] As touched on in Section 1, over the past half a century this expansionary tendency has been predominantly evident in relation to applications for freezing injunctions. However, there have also been some (albeit more isolated) instances where courts have shown an inclination to broaden the scope of their power to grant anti-suit injunctions. The Supreme Court ruling in *UniCredit v RusChem* represents one of the most notable of such instances.

While there can be little doubt that *UniCredit v RusChem* has expanded the English courts' power to grant anti-suit injunctions, the likely extent of this expansion—and the future implications it could have for the law on anti-suit injunctions in England—is not entirely clear. The judgment could be regarded as stating that foreign dispute-resolution clauses are to be upheld as readily as English jurisdiction or arbitration agreements by means of anti-suit injunctions. Based on this reading of the case, the same considerations would determine the award of anti-suit injunctions, regardless of whether the agreed choice of forum is in England or overseas. Some may favour this reading of the ruling because, in stating that injunctions can be issued in support of foreign jurisdiction or arbitration agreements, Lord Leggatt drew heavily on cases in which English courts had granted these measures to uphold English dispute-resolution clauses. Moreover, his Lordship placed particular reliance on the decision of the Court of Appeal of Bermuda in *IPOC v CT-Mobile*—a judgment which can be interpreted as stating that the same considerations apply to granting injunctions to uphold contractual rights, irrespective of the location of the chosen forum. However, it is argued that such an interpretation of the judgment in *UniCredit v RusChem* in future cases would be

[83] ibid paras 32–41.

[84] ibid paras 42–44.

[85] Pursuant to section 37(1) of the Superior Courts Act 1981, which states that '[t]he High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.'

[86] R Fentiman, 'The Scope of Transnational Injunctions' (2013) 11 NZJPIL 323, 328.

[87] ibid.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

liable to result in an unduly broad expansion in the English courts' power to grant injunctions, thus opening the English courts to the charge of acting as 'an international policeman' in this context.[88] Its adoption would be, therefore, an unwelcome development which should be avoided.

Instead, a more defensible reading of the judgment—which would avoid an unrestrained expansion of the courts' power to grant anti-suit injunctions in cases such as *UniCredit v RusChem*—is that, while English courts can grant anti-suit injunctions in support of foreign jurisdiction or arbitration agreements, they should be cautious so as to ensure that granting the measure would not result in a breach of comity. That is to say, respect for comity is a key consideration in granting anti-suit injunctions in support of foreign jurisdiction or arbitration agreements. This is unlike the situation where injunction applications are made to English courts to uphold English jurisdiction or arbitration agreements—where it has long been accepted that comity considerations have no part to play.[89] Seen in this light, the decision in *UniCredit v RusChem* should be regarded as having effected a more modest expansion of the English courts' power to issue anti-suit injunctions by creating a new subcategory of cases within those where contractual rights are upheld by restraining foreign proceedings.

Support for this interpretation of the decision in *UniCredit v RusChem* can be found in Lord Leggatt's reasoning. For example, as already mentioned in Section 3.2, when examining whether England was, on the facts, the proper place for issuing the injunction, Lord Leggatt relied on the House of Lords' decision in *Airbus* in observing that a key consideration in deciding if England was the proper place for granting the injunction was whether the granting of the relief would give rise to issues of comity.[90] Indeed, the fact that the English court's granting of an anti-suit injunction resulted in 'no violation of comity' as regards Russian or French courts was one of the main reasons for concluding that England was the proper place for upholding the arbitration agreements.[91] Elsewhere, when Lord Leggatt explained why the French court's supervisory jurisdiction over the arbitration does not prohibit the English courts from granting an anti-suit injunction to uphold the Paris arbitration agreement, he observed that:

> Had arbitration proceedings been commenced in which an issue had been raised about whether the arbitral tribunal had jurisdiction to decide whether UniCredit is liable to pay the sums claimed by RusChem under the bonds, it might be said that for the English court to decide that issue would encroach on the role of the court with supervisory responsibility. But that is not the situation here.[92]

This passage describes one situation where, owing to considerations of comity, it would not be appropriate for English courts to grant an injunction in support of foreign

[88] This expression was used by Sir Sydney Kentridge KC in his submissions, and Lord Goff in his speech, in *Airbus*, a case where the injunction application had been brought on the basis that foreign proceedings are vexatious and oppressive: *Airbus* (n 58) 121, 131.

[89] See, e.g. Collins and Harris (n 20) para 12–127.

[90] *UniCredit* (n 18) para 77.

[91] ibid para 80.

[92] ibid para 98.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

dispute-resolution clauses. Later in the judgment, Lord Leggatt pointed to another example where granting an anti-suit injunction could give rise to issues of comity, which should thus be avoided:

> [t]his is not a case where the French court is already, or is likely to be, seized of the matter, nor where the exercise by the English court of its power to grant an anti-suit injunction would or might produce a clash with any exercise of jurisdiction by the French courts so as to give rise to any issue of comity. There is in fact no possibility that the French courts could be seized of the matter. Not only, as is agreed, do the French courts have no power to grant anti-suit injunctions, but uncontradicted evidence which was before the judge shows that the French courts would not have jurisdiction to determine a claim of any kind brought by UniCredit complaining of a breach by RusChem of the arbitration agreements in the bonds.[93]

In other words, according to Lord Leggatt, to the extent that granting an anti-suit injunction is shown to encroach upon the supervisory jurisdiction of the court of the seat of arbitration—i.e. giving rise to issues of comity—an anti-suit injunction should not be granted in support of a foreign arbitration agreement. It is noteworthy that, in the course of his judgment in the Court of Appeal, Lord Justice Males also emphasised the need for the courts to act with care to ensure that granting anti-suit injunctions would not amount to a breach of comity:

> Where the seat is abroad, the English court will need to be more cautious, as the court in the country of the seat has primary responsibility for supervising any arbitration. It may be, therefore, that in such a case it would not be appropriate to grant an anti-suit injunction if, for example, the court of the seat would regard that as an unwarranted interference with its own jurisdiction.[94]

All these pronouncements, it is argued, highlight that a key hurdle which must be overcome before the English courts decide to restrain foreign proceedings in support of foreign jurisdiction or arbitration agreements is that granting the measure would not give rise to issues of comity. Of course, the list of situations where comity issues could arise is not closed. What is more, whether comity issues arise is fact dependent. Indeed, it is arguable that, had the French courts been able to grant anti-suit injunctions (or similar relief) to uphold the Paris arbitration agreement, the English court may have considered that, while it had the power, it would not be appropriate to exercise it to restrain the Russian proceedings.

5. Conclusion

Until the Supreme Court's ruling in *UniCredit v RusChem* it was not clear whether the English courts' power to issue anti-suit injunctions to uphold contractual rights extended to cases in which foreign proceedings are brought in breach of an agreement to subject disputes to the exclusive jurisdiction of courts, or to refer them to arbitration, outside England. The decision has finally answered this question by stating that such orders can be made in support of foreign dispute-resolution clauses. In

[93] ibid para 101.
[94] *UniCredit* (n 30) para 82.

https://doi.org/10.1017/S0020589325100997 Published online by Cambridge University Press

doing so, the Supreme Court has expanded the scope of anti-suit injunctions, thus illustrating that the English courts' propensity to broaden the range of circumstances in which they may grant injunctive relief is not confined to freezing injunctions. In a surprising (albeit defensible) volte-face, the Supreme Court also decided to recast the choice-of-law rules in *Enka v Chubb*, less than four years after they had been articulated, by abandoning the [170(vi)(a)] exception.

In view of the recent introduction of the choice-of-law rules for determining the governing law of arbitration agreements under the 2025 Act, the renunciation of the [170(vi)(a)] exception is unlikely to have notable long-term consequences for this area of law in England. However, the Supreme Court's decision to confirm that English courts have the power to grant injunctions in support of foreign dispute-resolution clauses is destined to have greater repercussions. Nevertheless, the likely extent of these consequences—which turns on precisely how far the decision in *UniCredit v RusChem* has expanded the scope of anti-suit injunctions—remains open to discussion.

In this respect, it is argued that the judgment should not be read as stating that the same considerations determine the award of anti-suit injunctions, regardless of whether the agreed choice of forum is in England or overseas. Such an interpretation of the ruling would result in an unduly broad expansion in the English courts' power to grant injunctions. Rather, it is suggested that the decision in *UniCredit v RusChem* should be regarded as creating a new subcategory of case, within those where foreign proceedings are restrained in order to uphold contractual rights. In this new subcategory of case, unlike the one in which applications are made to English courts to restrain foreign proceedings brought in breach of English dispute-resolution clauses, respect for comity is a key consideration in deciding whether an injunction should be granted. It is argued that this is a more attractive reading of the judgment—and one which would represent a more proportionate approach to upholding contractual rights in cases such as *UniCredit v RusChem.*

Acknowledgments. I am grateful to Professor Harry McVea for his very helpful and constructive comments on an earlier draft of this article. I would also like to thank the anonymous reviewers, the Editor-in-Chief, as well as the Managing and Assistant Editors of the journal for their valuable feedback and suggestions for improving this article. The views expressed and any shortcomings that remain in this article are my own.

Cite this article: A Arzandeh, 'Anti-Suit Injunctions in Support of Foreign Dispute-Resolution Clauses' (2025) ICLQ 1–17. https://doi.org/10.1017/S0020589325100997