

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank),</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>The Russian Federation,</p> <p style="text-align: center;">Respondent.</p>	<p>CIVIL ACTION</p> <p>NO. 1:23-cv-00764 (ACR)</p>
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THE RUSSIAN FEDERATION’S NOTICE OF AUTHORITY

At the May 7, 2024 Pre-Motion Conference, the Court asked whether a D.C. Circuit decision *binds* this Court to follow a decision setting aside an arbitration award by the French court exercising primary jurisdiction over the arbitration. *See* Pre-Motion Conference Transcript, Ex. A, at 4-7. While no decision *binds* this Court, our research reveals *Termorio S.A. E.S.P. v. Electranta S.P.*, 487 F.3d 928, 930 (D.C. Cir. 2007) bars recognizing an annulled award unless the court finds the set-aside decision is “repugnant to fundamental notions of what is decent and just.” *Id.*, at 939 (quotations omitted). Based on *Termorio*, which the we hope clarifies the issue, the Court may wish to first hold a hearing on the Motion to Stay, before deciding whether to hear the Motion to Dismiss before French proceedings conclude.

Termorio observed: “Pursuant to [Art. V(1)(e) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards], a secondary Contracting State normally may not enforce an arbitration award that has been lawfully set aside by a ‘competent authority’ in the primary Contracting State.” 487 F.3d at 935.¹ Enforcing an award which has been

¹ Art. V(1)(e) provides: “Recognition and enforcement of the award may be refused ... [if the] award has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.” *See also* 9 U.S.C. §207 (“The court shall confirm the

set aside “would seriously undermine a principal precept of the New York Convention: an arbitration award does not exist to be enforced in other Contracting States if it has been lawfully ‘set aside’ by a competent authority in the State in which the award was made.” *Id.*, at 935.

Termorio warned of the “undesirable consequences” that would follow from enforcement of such an award, stating: “application of domestic arbitral law to foreign awards under the Convention would seriously undermine finality and regularly produce conflicting judgments. If a party whose arbitration award has been vacated at the site of the award can automatically obtain enforcement of the awards under the domestic laws of other nations, a losing party will have every reason to pursue its adversary with enforcement actions from country to country until a court is found, if any, which grants the enforcement.” *Termorio*, 487 F.3d at 936 (quotations omitted). *See Baker Marine, Ltd. v. Chevron, Ltd.*, 191 F.3d 194, 197 n. 2 (2d Cir. 1999) (same).

Termorio thus held that a court may not enforce an award that has been set aside unless it finds the set-aside decision “is unenforceable as against public policy to the extent that it is ‘repugnant to fundamental notions of what is decent and just in the State where enforcement is sought.’” *Id.*, at 938 (quoting *Tahan v. Hodgson*, 662 F.2d 862, 864 (D.C. Cir. 1981)). *See Esso Expl. & Prod. Nigeria Ltd. v. Nigerian Nat’l Petro. Corp.*, 40 F.4th 56, 67 (2d Cir. 2022) (same).

The Russian Federation appreciates the Court’s consideration of this authority.

Dated: May 15, 2024

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award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the ... [New York] Convention.”) This Notice of Authority is without prejudice to the Federation’s position that the New York Convention does not apply to this dispute because there is no “commercial relationship” between the Federation and Oschadbank.