

# Dow AgroSciences Vertriebsgesellschaft m.b.H. v. Medkraft LLC, Commercial Court of the Oblast of Sumy, 8 October 2012

Yaroslav Petrov, Asters

*Ukrainian commercial court declined enforcement of an arbitration agreement due to the reference to non-existing arbitration rules.*

On January 15, 2010, Dow AgroSciences (claimant) entered into the Contract No. 15/01/10-A3X with Agrozaxyst-Sxid (respondent) for the delivery of plant protection products. The contract price was USD 232,320. The claimant fulfilled its contractual obligations and executed delivery in March – April 2010, after which invoices were issued.

On August 2, 2011, Dow AgroSciences filed a claim against Medkraft LLC (a successor of Agrozaxyst-Sxid) before an Ukrainian commercial court. As of the date of the submission of the claim USD 138,868.49 remained unpaid by the respondent. The contract provided for penalties in the case of late payment, and the claimant was seeking USD 11,109.48 in penalties. The total outstanding sum amounted to USD 149,977.97.

The contract included a pathological arbitration clause. It states that all disputes shall be resolved "... in accordance with the Provisions on Arbitration of the Paris International Chamber of Commerce and Industry".

The court concluded that the arbitration agreement did not make reference to an arbitration institution empowered to administer dispute resolution. Moreover, it was not possible to identify what was meant by "Provisions on Arbitration of the Paris International Chamber of Commerce and Industry". According to the legal opinion of the Paris office of DLA Piper UK LLP from 26 July 2012, there was no arbitration institution with such name. Pursuant to Art. 8 of the Law of Ukraine "On International Commercial Arbitration", if the arbitration clause cannot be enforced, the court shall entertain the action. The court decided that the claimant had resorted rightfully to the Ukrainian commercial court.

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## Author

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## Jurisdiction

- **Ukraine**

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## Court

Commercial Court of the Oblast of Sumy

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## Arbitrators/Judges

- Levchenko , Judge

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## Case date

- 8 October 2012

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## Case number

- 5021/1294/12

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## Parties

- Claimant, Dow AgroSciences Vertriebsgesellschaft m.b.H. (Austria)
- Defendant, Medkraft LLC (Ukraine)

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## Key words

- arbitration agreement, enforcement
- pathological arbitration clause

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## Applicable legislation

- CISG, Ukrainian national law

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The summary of the case file and full text of summarized court decision are available on:

<http://www.kluwerarbitration.com/CommonUI/document.aspx?id=KLI-KA-1315753>