



ALTERNATIVE MODES OF
DISPUTE RESOLUTION IN THE
BELGIAN ENERGY SECTOR

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The Belgian Energy Sector: Introductory Comments

- As in other EU Member States, the Belgian Energy Sector has undergone substantial changes since a decade
- Growing competition on these markets entails the need for specific regulation and dispute resolution mechanisms

Alternative Modes of Resolution and Public Dispute Settlement Bodies in the Belgian Energy Sector

2.1. Alternative Modes of Resolution in the European Electricity and Gas Directives

- Where the Energy Charter provided for ad hoc arbitration, the first Electricity (96/92/EC) and Gas (98/30/EC) directives have initiated the creation of specific dispute settlement authorities for the energy markets
- The second electricity (2003/54/EC) and gas (2003/55/EC) directives have confirmed the need and the role of specific dispute settlement with a focus on consumer protection

Alternative Modes of Resolution and Public Dispute Settlement Bodies in the Belgian Energy Sector

2.2. Alternative Modes of Resolution in the Belgian Energy Sector

2.2.1. Implementing energy specific dispute resolution in the Belgian rule of law

- Institutional framework
- At federal level: CREG
- At regional level: VREG, CWaPE, Brugel

2.2.2. The dispute settlement bodies within the existing energy regulatory Bodies in Belgium

- Within CREG: creation of Chamber of Disputes and Conciliation & Arbitration Service, not into force until today
- Within CWaPE: recent creation of Chamber of Disputes and Regional Conciliation Service for Energy
- Within VREG: Chamber of Appeal and Conciliation & Arbitration Service originally created, abolished since
- Within Brugel: recent creation of Chamber of Appeal and Mediation Service

Alternative Modes of Resolution and Public Dispute Settlement Bodies in the Belgian Energy Sector

2.3. Alternative Modes of Resolution within the federal regulatory body CREG and the federal Ombudsman

2.3.1. The federal law of 27 July 2005

2.3.2. The draft federal law of 26 March 2009

2.3.3. The establishment of a Federal ‘ombudsman’

Dispute Settlement Bodies in the Belgian Energy Sector and traditional arbitration in Belgium

3.1. Introduction

- Recent character of the provisions implementing the dispute resolution of disputes in the Energy Sector
- Effectivity of implementation: quid?
- Tentative qualification of the new dispute settlement bodies in the Belgian Energy Sector as “hybrid authorities with judicial power to settle a dispute”

Dispute Settlement Bodies in the Belgian Energy Sector and traditional arbitration in Belgium

3.2. Procedure before the “hybrid” bodies

- The Belgian Energy Sector specific bodies can be considered as “hybrid” towards traditional Belgian arbitral bodies for at least five reasons

Within the outline of the principle of voluntary arbitration

From an independence and impartiality point of view: still to be demonstrated in practice (art. 1690 Belgian Judicial Code)

Procedural questions (e.g. powers of investigation granted to the arbitrators)

Challenges to awards (cfr. articles 1704 and 1710 of the Belgian Judicial Code)

Questions related to the publicity of the awards

Dispute Settlement Bodies in the Belgian Energy Sector and traditional arbitration in Belgium

3.3. Interaction with other jurisdictions

- Risk of overlapping competences (positive conflict) and/or exclusivity of competence possibly leading to a “negative conflict” of jurisdiction
- Much will depend on the nature (qualification) and the arbitral character of the dispute
- What about the capacity of public legal entities to participate under the specific Belgian Energy Sector arbitral proceedings?

Dispute Settlement Bodies in the Belgian Energy Sector and traditional arbitration in Belgium

3.4. Provisional conclusion

- The specific bodies for dispute resolution in the Belgian Energy Sector cannot, strictly speaking, be considered as organised under voluntary arbitration proceedings
- This “hybrid character” is likely to partially explain the limited referrals in practice until today

International Arbitration in the Belgian Energy Sector: specific examples

4.1. Factual context

- Situated at the crossroads of natural gas and electricity flows in Europe's NW Region, the Belgian Energy Sector is the potential scene of international arbitration - three specific examples

4.2. Natural gas flows at Zeebrugge

4.2.1. General

4.2.2. The Zeebrugge Hub

4.2.3. The LNG Terminal

4.3. Cross-border electricity flows (French and Dutch borders)

4.4. Electricity exchanges at the Belgian power exchange (Belpex)

Conclusive comments

- Amongst the main questions for potential arbitral disputes is how the traditional jurisdictional and arbitration bodies (ICC, LCIA, CEPANI, CEPINA) will interact with the newly created bodies for the Belgian Energy Sector
- Considering the above, it is recommended to (i) anticipatively inform on the existing possibilities for dispute settlement in the Belgian Energy Sector and (ii) be to all possible extent accurate in related contracts

Q & A

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