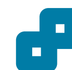

Belgium

Arnaud Nuyts and **Bruno Hardy**

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In summary

This article analyses the current status of the international arbitration field in Belgium and identifies the most recent evolutions as well as the trends of Belgian courts in international arbitration-related matters.

Discussion points

- Outline of Belgian arbitration law
- Institutional developments in arbitration in Belgium
- Presentation of changes to the CEPANI Rules
- Setting-aside proceedings in Belgium
- Recognition and enforcement of awards in Belgium
- Arbitrability of disputes
- Investor–state arbitration

Referenced in this article

- 2013 Arbitration Act
- CEPANI 2023 Rules
- C-SAR Arbitration Rules
- Court of Cassation, 24 April 2023, *Emek İnșaat Ști and WTE Wassertechnik v European Commission* (C.21.0548.F/1)
- Arbitrability of distribution disputes: Court of Cassation, 7 April 2023, *Thibelo v Stölzle-Oberglas* (C.21.0325.N)
- Court of Cassation, 6 April 2023, *M Dawood Rawat v The Republic of Mauritius* (C.22.0012.F/1)
- Brussels Court of First Instance, *Poland v Manchester Securities Corp.*, 18 February 2022

Introduction

International arbitration proceedings seated in Belgium are governed by the Arbitration Act of 24 June 2013 (the 2013 Arbitration Act or the Act),[1] which entered into force on 1 September 2013.[2] The 2013 Arbitration Act is incorporated in Part VI of the Belgian Judicial Code (BJC) (articles 1676 to 1722 BJC).

The 2013 Arbitration Act has modernised the Belgian legislation on arbitration and is very much influenced by the 2006 UNCITRAL Model Law from which it transposed important improvements, including on issues of validity of the arbitration agreements and interim measures.

Although the Act includes provisions typical of modern legislation on international arbitration also inspired by the UNCITRAL Model Law (such as article 1682 recognising the principle of competence-competence), a few key distinctions are worth mentioning.

First, as regards its scope, the Act is not limited to commercial arbitration and is applicable to all types of arbitration, including investor–state arbitrations. Also, no distinction is made between domestic and international arbitration, unless the parties agree otherwise, and subject to mandatory provisions.[3]

Second, when comparing it with legislation of other jurisdictions, the Act includes provisions that appear specific to the Belgian context. An example of this originality is found at article 1709(3) of the BJC, which provides that where a third party wishes to join proceedings, or is called to join, the arbitral tribunal's decision to allow proceedings in respect of this third party requires unanimity of the arbitrators. Majority decisions are therefore not accepted in these circumstances.

Two other provisions of the Act are worth mentioning. First, concerning the award, beyond the traditional formal and substantive requirements,[4] article 1713(3) BJC provides that if there is more than one arbitrator and one of them does not sign, the award may still be valid 'provided that the reason for the omission [of the signature of the others] is mentioned'. Second, with regard to confidentiality, arbitration proceedings are not confidential by default under Belgian law, and confidentiality needs to be expressly agreed upon between the parties (directly or by reference to the rules of an arbitral institution).

1 In 2016, several minor amendments and corrections were made to the Act of 24 June 2013 by an Act of 25 December 2016, which entered into force on 9 January 2017.
2 Act of 24 June 2013 amending Part VI of the Judicial Code relating to arbitration.
3 Article 1676.7 BJC. Article 1676.8 BJC, however, provides that a certain number of provisions of Part VI of the Code are applicable irrespective of both the seat of arbitration and the will of the parties. This is notably the case of the provisions on the recognition and enforcement of awards.
4 For instance, article 1713(4) requires that the award be reasoned, and article 1713(5) provides that the award indicate the date and the place of arbitration.

Belgium is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) but has declared to apply the Convention subject to reciprocity. Belgium is also a signatory to the European Convention on International Commercial Arbitration of 21 April 1961, and the ICSID Convention of 18 March 1965. In principle, these treaties take precedence over Part VI of the BJC (Belgian arbitration law), except where the treaties provide otherwise (article 1721(3) BJC).

Recent institutional developments

Over the past few years, the main arbitral institution in Belgium, the CEPANI, has issued a series of updates to its practices. On 1 January and 1 July 2020, new sets of rules were issued in response to the covid-19 crisis. One of the most distinctive features of these new rules is the recourse to electronic communications as the default rule for communication between the CEPANI, the arbitral tribunal and the parties. Subject to any contrary agreement between the parties, all correspondence can thus be done in electronic format. The CEPANI also uses a secure online platform (BOX) for the exchange of correspondence, submissions, exhibits and procedural decisions, which helps centralise all the relevant documents of the case for the benefit of all stakeholders and contributes to the reduction of paper in international arbitrations.

In 2023, the CEPANI modified its Rules to promote diversity in the nomination of the arbitrators. Article 15 of the Rules, in force from 1 January 2023, states that, when constituting a tribunal, '[t]he Appointments Committee or the President . . . shall take into account, inter alia, the availability, the qualifications and the ability of the arbitrator(s) to conduct the arbitration in accordance with the Rules, and considerations of diversity and inclusion'. Such initiative places the CEPANI among the very few arbitral institutions having explicitly provided for diversity in their Rules.[5]

Another interesting initiative promoted by the CEPANI in 2022 is the implementation of the C-SAR Arbitration Rules – inspired by the CEPANI Rules of Arbitration – to resolve disputes in the field of sport.[6] Sport arbitrations are administered by a specific section of the CEPANI, the Belgian Centre for Sports Arbitration (C-SAR). The C-SAR Arbitration Rules are already available to all sport federations that wish to have recourse to those provisions to solve their disputes. If a sport federation wishes to include a C-SAR arbitration clause in its rules, it has to notify the C-SAR, which will decide whether to grant the request.

5 See https://globalarbitrationreview.com/article/cepani-makes-diversity-rule. The new CEPANI Rules of Arbitration are accessible here: Cepani_Brochure_03_EN-80-web.pdf (lbr.cloud).

6 C-SAR – Arbitration & Mediation (cepani.be). See also Benoît Kohl and Emma Van Campenhoudt, 'L'arbitrage deslitiges en matière sportive: le nouveau règlement du C-SAR (Center for Sports Arbitration)', in Caroline Verbruggen and Maarten Draye (eds), *bArbitra | Belgian Review of Arbitration*, (Wolters Kluwer 2022, Volume 2022 Issue 2) pp. 442–448.

So far, two awards rendered pursuant to the C-SAR Arbitration Rules have been published on the CEPANI website.[7]

Finally, in September 2022, arbitral institutions from Belgium (CEPANI), the Netherlands and Luxembourg signed a cooperation agreement and launched the BeNeLux Arbitration and ADR Group to promote collaboration and to foster the visibility of arbitration inside and outside the Benelux area. The initiative is of particular relevance as those institutions are currently exploring the possibility to implement a uniform legislation for international arbitrations seated in Benelux.[8]

In 2021, a Guide to the CEPANI Arbitration Rules was published, providing useful insight into the interpretation of the Rules and the extent to which practice may differ from other leading institutions.[9] The Guide also provides useful comparisons between the CEPANI Rules 2020 and the old Rules that had been in force since 2013.

The statistics of the CEPANI have been released for the year in review and provide useful insights into the types of cases handled by the centre.[10] The languages used in the proceedings reflect the multilingual character of Belgium and Brussels, as 57 per cent of the proceedings are administered in French, 27 per cent are administered in English, and the remaining 16 per cent of the cases are heard in Dutch. In 84 per cent of the cases, the parties have chosen Brussels as the seat. Regarding the types of disputes administered by the CEPANI, 24 per cent of the cases are related to corporate law (corporate agreements and share purchase agreements), and another 57 per cent concern service agreements. This is a distinctive feature of the CEPANI compared to the ICC, for example, where close to 40 per cent of disputes relate to engineering and construction, and energy disputes.

CEPANI arbitration proceedings are also becoming more international. While 65 per cent of the disputes still involve only Belgian entities, 35 per cent of the disputes now involve one or both foreign parties, mainly from other European countries but also from the United States. The amounts at stake are also increasing, with 33 per cent of the cases involving amounts higher than €1 million, and about half of those (or 14 per cent of the cases) having amounts in dispute higher than €10 million (compared to 11 per cent in 2021 and only 6 per cent in 2020).

7 C-SAR – Arbitration & Mediation (cepani.be).
8 See https://globalarbitrationreview.com/article/benelux-centres-team-launch-new-group.
9 C-SAR – Arbitration & Mediation (cepani.be).
10 See https://www.cepani.be/wp-content/uploads/2023/05/2022-Statistical-Report.pdf.

Setting aside of arbitral awards

The 2013 Arbitration Act provides for grounds for setting aside arbitral awards similar to the grounds for non-recognition of awards listed in the New York Convention. Among those grounds, three may be raised by a court on its own motion: non-arbitrability, violation of public policy and fraud.

The Act also provides that (1) a party cannot seek to set aside a decision or partial award on jurisdiction, and such an award can only be contested together with the award on the merits (article 1690(4)), and (2) only arbitral awards rendered in proceedings seated in Belgium may be set aside (or annulled) by the Belgian courts (article 1717 BJC). An interesting provision is incorporated in article 1718 BJC, which is one of the few provisions of the Act differentiating between domestic and international arbitration. Indeed, only where none of the parties are Belgian nationals, article 1718 BJC allows the parties to exclude the possibility for setting aside of the award. If the parties agree to such waiver, they will not have any possibility for a recourse against the award.

Finally, article 1716 BJC provides for the possibility that parties include, in their arbitration agreements, an appeal mechanism before another arbitral tribunal. This option is rare in international arbitration-related legislation, and has not attracted users' interest so far.

We will highlight below the most relevant arbitration-related cases brought before the Belgian courts in the context of setting-aside proceedings.

Emek İnșaat Ști and WTE Wassertechnik v European Commission

In a case that opposed the European Commission, on the one hand, and Cypriot (Emek) and German (WTE) companies, on the other hand, the Brussels Court of First Instance rejected the companies' application to set aside an ICC award in favour of the European Commission.[11] Emek and WTE alleged, among others, that the tribunal secretary had exceeded her role, as defined in the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration (the ICC Note) applicable at the time. In a judgment of 17 June 2021,[12] the Brussels Court of First Instance found that the tribunal had not delegated its decision-making power and that the tribunal secretary had not performed tasks that go beyond what the parties had agreed by referring to the ICC Note. In its judgment, the Brussels Court ruled that the writing of 'all or part of the award' by an

11 Brussels Court of First Instance, *Emek İnșaat Ști and WTE Wassertechnik v European Commission*, 17 June 2021, available in French at https://jusmundi.com/en/document/decision/fr-european-commission-v-emek-insaat-sti-and-wte-wassertechnik-jugement-du-tribunal-de-premiere-instance-francophone-de-bruxelles-thursday-17th-june-2021#decision_17055. See also *Global Arbitration Review*, 'Brussels court says tribunal secretaries can draft awards'.

12 See 'Brussels court says tribunal secretaries can draft awards', *Global Arbitration Review*, 30 June 2021, https://globalarbitrationreview.com/brussels-court-says-tribunal-secretaries-can-draft-awards.

administrative secretary did not in itself demonstrate a delegation of arbitrators' decision-making powers, as long as there was a 'review and revision' process by the arbitral tribunal. The Court therefore dismissed the ground for annulment and the request for annulment more generally.

An appeal in cassation was lodged before the Belgian Court of Cassation by WTE and Emek, alleging that the judgment was contrary to article 11 of the BJC, which provides that 'judges may not delegate their jurisdiction'. The Court of Cassation rejected the appeal by judgment of 24 April 2023.[13] The Court of cassation noted that arbitration proceedings are specifically regulated in a specific part of the law (Part Six of the Belgian Judicial Code) which adapts and incorporates the UNCITRAL Model Law. For this reason, and based on the 'contractual nature' of arbitration proceedings, the Court of Cassation held that the rules of the BJC that sit outside of this specific part of the law, thus including article 11, do not apply to arbitration proceedings. Therefore, the prohibition imposed on judges to delegate their jurisdiction provided by article 11 of the Judicial Code was found not to be applicable, as such, to arbitrators (unless the parties have agreed otherwise).

This is an important judgment for arbitration practice. Due to the incorporation of the legal provisions on arbitration in the BJC, a long-standing debate divided academics and practitioners about the effect of the ordinary rules of civil procedure on arbitration proceedings. By its judgment, the Court of Cassation has, in substance, freed arbitration from the influence of national conceptions of procedural law, and opted to recognise arbitration as a fully self-standing method of international dispute resolution. The holding is a confirmation that, while arbitration rules can, depending on the choices of national legislators, be enacted either in stand-alone statutes or in civil procedure or private international law codes, the important point is to ensure that arbitration is free to harness the diverse legal background of its users so as to provide a flexible, secure and effective method of international dispute resolution.

This is also a welcome development for the attractivity of Brussels as an arbitral seat. International practitioners are now assured that their arbitrations are only governed by the specific legal provisions on arbitration. The Court's ruling could also serve to inspire other Model law countries.

Dawood Rawat v The Republic of Mauritius

Another interesting case relates to setting-aside proceedings opposing Mr Dawood Rawat to the Republic of Mauritius. Mr Rawat (Franco-Mauritian) brought a claim against the Republic of Mauritius before a PCA/UNCITRAL arbitral tribunal on the basis of the France–Mauritius bilateral investment treaty

13 Court of Cassation, 24 April 2023, C.21.0548.F/1.

(BIT). In particular, Mr Rawal's claim in the arbitration amounted to US$1 billion for several alleged breaches to the treaty's investment protection standards committed by the Republic of Mauritius. The arbitral tribunal rendered an award on 6 April 2018 rejecting its jurisdiction on the matter, mainly because of Mr Rawal's double nationality.[14] In brief, the arbitral tribunal decided that the BIT in question did not protect those investors with the nationality of both state signatories.

Mr Rawal applied before the Brussels Court of First Instance to annul the award. The Brussels Court handed down its decision on 30 June 2021,[15] rejecting the application to set aside the award and confirming the arbitral tribunal's decision that dual nationals are excluded from the scope of the BIT. In particular, the Court agreed with the arbitral tribunal's reasoning that the provision of the BIT on 'nationals' should be interpreted having regard to the full context of the treaty. The Court therefore concluded that the reference to the ICSID Convention in a provision of the BIT confirmed that the signatories intended to exclude investors with dual nationality. Moreover, the Brussels Court pointed out that this conclusion was also supported by successive initiatives of France and Mauritius to exclude dual nationals from another bilateral treaty by including an ICSID arbitration clause. Finally, the Brussels Court highlighted the fact that bilateral treaties aim at promoting and increasing economic cooperation between the signatories, and that such goal is doubtfully reached in cases involving dual nationals.

Mr Rawal lodged an appeal in cassation with the Belgian Court of Cassation, arguing that the Brussels Court had erred in its approach to the interpretation of the BIT. The Court of Cassation dismissed the appeal by judgment of 6 April 2023.[16] The Court of Cassation rejected some of Mr Rawat's arguments on the grounds that they required an examination of the arbitral award, which had not been filed in the proceedings. For the rest, the Court upheld the reasoning of the Brussels Court of First Instance, confirming that the provision of the BIT on 'nationals' had to be interpreted with regard to the full context of the treaty, including any other relevant provision of international law applicable between the two contracting states.

14 *Dawood Rawat v The Republic of Mauritius*, PCA Case No. 2016-20. The arbitral tribunal was composed of Lucy Reed, Jean-Christophe Honlet and Vaughan Lowe KC. See 'Dual national fails to revive Mauritius claim', *Global Arbitration Review,* 5 July 2021, https://globalarbitrationreview.com/article/dual-national-fails-revive-mauritius-claim.

15 Brussels Court of First Instance, *M Dawood Rawat v The Republic of Mauritius*, 30 June 2020.

16 Court of Cassation, 6 April 2023, C.22.0012.F/1. Reported in *Global Arbitration Review*: https://globalarbitrationreview.com/article/mauritius-seals-win-in-treaty-dispute-dual-national.

Poland v Manchester Securities Corp

Another important judgment was handed down in 2022 in annulment proceedings over an investment treaty award.

In this case, the Republic of Poland applied for the annulment of such award rendered in favour of the US hedge fund Manchester Securities Corporation. In a judgment of February 2022,[17] the Brussels Court of First Instance annulled the award on the basis that the award violated public policy. The judgment constitutes a landmark case because it is considered to be the first ever investment treaty award annulled in Belgium, and also because of the ground on which the Court annulled the award. Defining the test of denial of justice under international law, the Belgian Court found that the tribunal could not have reasonably considered that the Polish Supreme Court had adopted a manifestly discriminatory attitude towards the investor which would justify Poland's liability for a denial of justice. The investor has filed an appeal before the Court of Cassation, and a final judgment is expected.

Other cases

In a judgment of 10 February 2023 (in the case *Euler Hermes nv v AGFA Finance nv*), the Belgian Court of Cassation has confirmed that, pursuant to article 1705 BJC, an award can be partially annulled only if the part that is sought to be annulled can be dissociated from the rest of the award.[18] As a consequence of this, the Court of Cassation has reversed the 2020 judgment of the Court of Appeal annulling an award as a whole because it did not examine whether the decision against which the ground for annulment was raised was dissociated from the other decisions taken by the arbitral tribunal. The Court of Cassation has concluded that, for this reason, the Court of Appeal's judgment violated article 1705 BJC.

Enforcement of arbitral awards

As explained earlier, Belgium is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards but has declared to apply the Convention subject to reciprocity. The grounds for the non-recognition of an award are similar to the grounds for the setting aside of an award and are listed in article 1721 BJC.

17 Brussels Court of First Instance, *Poland v Manchester Securities Corp.*, 18 February 2022. See also 'Poland overturns denial of justice award' *Global Arbitration Review*, 1 March 2022, https://globalarbitrationreview.com/poland-overturns-denial-of-justice-award.

18 Court of Cassation, 10 February 2023, C.21.0273.N.

In recent times, Belgian courts have been faced with high-profile enforcement proceedings of arbitral awards in investor–state arbitrations. The latest landmark cases will be highlighted.

A number of foreign investors have been seeking to enforce their investment treaty award by attaching monies owed to states or state-controlled entities by the Brussels-based European Organisation for the Safety of Air Navigation (EUROCONTROL).[19]

In November 2021, it was reported that Egypt had successfully attached monies held by EUROCONTROL after which the case settled.[20] In at least one other reported case pending before the Belgian courts investors also attached monies held by EUROCONTROL (*Becchetti v Albania* (ICSID Case No. ARB/15/28)[21]). In that case, the Brussels Court of First Instance rendered a judgment on 23 March 2022, deciding, inter alia, that the airline fees due by EUROCONTROL did not enjoy immunity from execution contrary to what was alleged by Albania. The Brussels Court decided that the award creditor (Becchetti) was authorised to attach those fees in order to enforce the ICSID award of 2019 ordering Albania to pay approximately €120 million for the violation of the provisions of the applicable BIT.[22] In May 2023, the Brussels Court of Appeal dismissed an appeal by EUROCONTROL to overturn the attachment orders.[23]

Arbitrability of disputes

In the landmark *Thibelo* judgment of 7 April 2023,[24] the Belgian Court of Cassation reversed its long-standing case law to hold that disputes concerning the termination of exclusive distribution agreements may be settled by arbitration – even when governed by a foreign law chosen by the parties – when the Rome I Regulation is applicable to such agreements.

The Belgian Code of Economic Law (BCEL) provides for a specific protective regime of exclusive distributors whose agreement is terminated unilaterally by or for the fault of the supplier. These protective rules on the unilateral termination of exclusive distribution agreements of undetermined term (contained in articles X.35 to X.40 of the BCEL) are mandatory under Belgian law. Article X.39

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19 See 'Belgian court seeks guidance from ECJ on Micula award', *Global Arbitration Review*, 28 March 2019, https://globalarbitrationreview.com/belgian-court-seeks-guidance-ecj-micula-award; and 'Albania creditors freeze aviation funds', *Global Arbitration Review*, 8 January 2021, https://globalarbitrationreview.com/albania-creditors-freeze-aviation-funds.

20 See the latest reports on the case: 'Egypt settles with Finnish iron investor', *Global Arbitration Review*, 9 December 2021, https://globalarbitrationreview.com/egypt-settles-finnish-iron-investor.

21 *Hydro Srl and others v Republic of Albania*, ICSID Case No. ARB/15/28, Decision on annulment, 2 April 2021, https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/28.

22 Brussels Court of First Instance, *Francesco Becchetti and others v Albania*, 23 March 2022.

23 See 'Brussels court maintains Albanian asset freeze', *Global Arbitration Review*, 23 May 2023, https://globalarbitrationreview.com/article/brussels-court-maintains-albanian-asset-freeze.

24 Court of Cassation, *Thibelo v Stölzle-Oberglas*, 7 April 2023, C.21.0325.N.

of the BCEL also provides that the aggrieved distributor may, in any case, sue its supplier in Belgium, and that in the event that the dispute is brought before the Belgian courts, the latter shall exclusively apply Belgian law.

For almost 50 years, the Court of Cassation had held that a dispute concerning the unilateral termination of an exclusive distribution agreement could only be submitted to arbitration if the arbitral tribunal was to apply Belgian law or any other law providing for similar protection of the distributor. Otherwise, the arbitration agreement was unenforceable before the Belgian court seised of the case, which was bound to hear the case and apply Belgian law. This gave rise to a large volume of disputes whereby Belgian distributors sued their former suppliers before the Belgian courts in the event of termination, despite their distribution agreement containing a foreign choice of law clause or an arbitration clause, or both.

In the case at hand, a Belgian distributor and an Austrian supplier were parties to an exclusive distribution agreement of undetermined term. The contract was governed by Austrian law and contained an arbitration clause designating Vienna as the seat of arbitration. Following the supplier's unilateral termination of the agreement, the distributor brought proceedings before the Belgian courts to seek damages under the Belgian protective regime. Both the court of first instance and the court of appeal upheld the supplier's challenge to the jurisdiction of Belgian courts based on the arbitration clause. The Belgian distributor lodged an appeal before the Court of Cassation, arguing that the arbitration clause was invalid and had to be set aside since the arbitral tribunal would have to apply Austrian law, which does not offer an equivalent level of protection as Belgian law.

Overturning its previous case law, the Court of Cassation held that, despite the wording of article X.39 of the BCEL, a Belgian court hearing a dispute concerning the termination of an exclusive distribution agreement cannot set aside the foreign law chosen by the parties and apply Belgian law instead. Consequently, Belgian courts cannot make the arbitrability of such a dispute conditional on the arbitral tribunal applying Belgian distribution law or a foreign law offering an equivalent level of protection. The new ruling is said to be based on the Rome I Regulation with respect to the law application to contractual obligations, which takes precedence over domestic (Belgian) law. In particular, the Court ruled that provisions of Belgian distribution law are not 'overriding mandatory provisions' within the meaning of article 9(1) of the Rome I Regulation because they mainly protect private (and not public) interests. This interpretation is said to be based on the case law of the European Court of Justice (ECJ), in particular the *Unamar* judgment of 17 October 2013 of the ECJ.[25]

25 Case C-184/12.

Investor–state arbitrations involving the Kingdom of Belgium and political initiatives in the field

Belgium is a signatory to the ICSID Convention, as well as to more than 60 bilateral investment treaties (BITs), which it negotiated and concluded together with the Grand Duchy of Luxembourg as the 'Belgo-Luxembourg Economic Union'. Despite not having published an official model BIT, certain tendencies are followed in the treaty negotiations, such as the wish to include clauses protecting environment, social and human rights. Belgium is also a party to the Energy Charter Treaty (ECT).

Belgium has been involved in only two investor–state arbitrations so far. The first came to an end in 2015 with an award in which the arbitral tribunal ruled in favour of Belgium and declined its jurisdiction.[26] The second case is currently pending before an ICSID arbitral tribunal and was initiated by the UAE-based port operator DP World.[27] On 10 April 2021, the arbitral tribunal rendered a decision on jurisdiction and liability in favour of the claimant.[28]

Belgium has also taken important political initiatives in the field of investor–state disputes.

Like other EU Member States, Belgium has decided to terminate all its intra-EU BITs following the movement that swept Europe after the *Achmea* decision of the ECJ.[29] To this purpose, on 23 February 2022, Belgium passed a law[30] on the approval of the 29 May 2020 Agreement for the Termination of BITs between the EU Member States.[31]

In addition, given the uncertainty of the status of the arbitration provisions of the ECT for intra-EU claims following *Achmea*, in 2020 Belgium submitted a request to the ECJ Union for an opinion regarding the compatibility with EU law

26 *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v Kingdom of Belgium*, ICSID Case No. ARB/12/29, Award, 30 April 2015, https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/29.

27 *DP World PLC v Kingdom of Belgium*, ICSID Case No. ARB/17/21, Decision on jurisdiction and liability, 10 April 2021, https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/21. The authors' firm acts as co-counsel for DP World, and the information reproduced here is thus limited to the information available online.

28 *DP World PLC v Kingdom of Belgium*, ICSID Case No. ARB/17/21, Decision on Jurisdiction and Liability, Partial Dissenting Opinion of Brigitte Stern', *Jus Mundi*, 10 April 2021, https://jusmundi.com/en/document/opinion/en-dp-world-limited-v-kingdom-of-belgium-partial-dissenting-opinion-of-brigitte-stern-saturday-10th-april-2021#opinion_2747; and 'DP World v Belgium', *Investment Arbitration Reporter*, https://www.iareporter.com/arbitration-cases/dp-world-v-belgium/. The arbitral tribunal is composed of composed of Juan Fernandez-Armesto, Stanimir A Alexandrov and Brigitte Stern.

29 'EU states sign treaty to cancel intra-EU BITs' *Global Arbitration Review*, 6 May 2020, https://globalarbitrationreview.com/achmea/eu-states-sign-treaty-cancel-intra-eu-bits.

30 Act of 23 February 2022 adopting the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, available online at https://www.stradalex.com/fr/sl_src_publ_leg_be_moniteur/toc/leg_be_moniteur_fr_22082022_1/doc/mb2022020788.

31 Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union of 29 May 2020, available online at EUR-Lex - 22020A0529(01) - EN - EUR-Lex (europa.eu).

of the draft article 26 (governing the arbitration between foreign investors and the states) of the modernised ECT in the context of the application within the EU (Request for an opinion submitted by the Kingdom of Belgium pursuant to article 218(11) TFEU (Opinion 1/20)). Together with this announcement, the Belgian government explained that it was putting the question to the court 'in a neutral manner' without taking a stand on the issue, with the aim 'to provide clarity and legal certainty'.[32] The request only concerned 'the draft modernised Energy Charter Treaty, in view of the fact that this mechanism could be interpreted as allowing its application intra-European Union, i.e. between an investor who is a national of an EU Member State only and an EU Member State'.[33] On 16 June 2022, the ECJ rendered its Opinion and declared the Kingdom of Belgium's request inadmissible. In particular, the ECJ considered that it did not dispose of sufficient information on the amended text of article 26 of the ECT and its possible modifications subject to the ongoing negotiations. As such, the ECJ qualified the request as premature and inadmissible.

This is the second time that Belgium has pushed for an opinion from the EU on investment treaty dispute systems, as Belgium already requested, in September 2017, the opinion of the highest court in the EU in relation to the Investment Court System of the Comprehensive Economic and Trade Agreement between the EU and Canada.

While other EU member states have announced withdrawals from the ECT (including Italy, France, Spain, Germany, the Netherlands and Poland) and the European Commission is pushing for a coordinated withdrawal of all EU member states to weaken the effects of the ECT sunset clause (article 47), the Belgian Climate and Environment Minister also advocated to leave the ECT.

Outlook and conclusions

As noted above, several positive factors are converging and play a pivotal role to allow Belgium to increase its already important role in the context of international arbitration. The modernity of the Arbitration Act, the recent review of the CEPANI Arbitration Rules, the familiarity of the judges with the international arbitration-related issues and the selection of Brussels as the place of arbitration by parties, institutions and arbitral tribunals in high-profile disputes show this positive trend. One must also not forget that, in light of the current discussions on investor–state arbitration and the increasingly important

32 'Belgium requests an opinion on the intra-European application of the arbitration provisions of the future modernised Energy Charter Treaty', Kingdom of Belgium Foreign Affairs, Foreign Trade and Development and Cooperation, 3 December 2020, https://diplomatie.belgium.be/en/belgium-requests-opinion-intra-european-application-arbitration-provisions-future-modernised-energy. See also: 'Belgium seeks ECJ opinion on revamped ECT', *Global Arbitration Review*, 3 December 2020, https://globalarbitrationreview.com/achmea/belgium-seeks-ecj-opinion-revamped-ect.

33 id.

role of the EU institutions in these discussions and in shaping the new system, Brussels will most likely become an important hub for the settlement of international investment disputes, before arbitral tribunals seated in Brussels or before the new bodies that will be established in the near future.

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Liedekerke

Bruno is a counsel in Liedekerke's international arbitration practice. He represents clients worldwide in international arbitration proceedings related to engineering and construction projects, corporate and shareholder disputes,

and disputes arising from international commercial contracts. He has acted in disputes spanning all continents under the rules of the ICC, LCIA, SIAC, ICSID, and UNCITRAL, among others.

In addition to his work in international arbitration proceedings, Bruno also represents companies, states and international organisations in arbitration-related court proceedings, especially enforcement and setting-aside proceedings, and often works with the firm's other practices to advise both public and private clients on international investment protection. He obtained an LLM from Columbia Law School in New York and taught private international law in Belgium for four years. In parallel to his arbitration practice, he is now also pursuing a PhD at the KU Leuven University to study the conditions under which states may pursue claims based on their own public laws before foreign courts or tribunals.

Liedekerke is one of the largest independent law firms in Belgium. With more than 120 lawyers, the firm has offices in Brussels and London, as well as in Kinshasa, DRC, and in Kigali, Rwanda.

The lawyers of our international arbitration and dispute resolution practice represent clients in international arbitration proceedings governed by a wide range of applicable laws, both civil law and common law, and the team has been consistently ranked in the *GAR 100*.

Beyond Europe, Liedekerke has an in-depth knowledge of francophone Africa and the Great Lakes Region as well as of the Middle East and handles arbitrations for various companies and governments in these regions. The team specifically handles mining arbitrations in francophone Africa and assists clients in large engineering and construction disputes in the Middle East, as well as distribution and M&A disputes. Our lawyers have expertise in the local laws of the various regions, including OHADA, the laws of the DRC, Rwanda and Burundi, and the civil laws of Egypt, Lebanon, Qatar, Kuwait and the UAE.

Liedekerke has also been involved in some of the largest multi-jurisdiction enforcement proceedings in Belgium and abroad, in relation to both investor–state and commercial arbitration, representing sovereign states and foreign investors alike, and the team is widely recognised for its expertise in the coordination of cross-border proceedings.

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