

# The Belgian Government unveils its plan for the Brussels International Business Court (BIBC)

## Kluwer Arbitration Blog

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## Background

In October 2017, in the wake of Brexit, Belgium was one of the first European jurisdictions to announce its intention to set up a specialised English-speaking court with jurisdiction over international commercial disputes, the Brussels International Business Court (“BIBC”).

The stated aim of this new court is to position Brussels as a new hub for international commercial disputes, in line with its international status as *de facto* capital of the EU and seat of many international companies and institutions (NATO, World Customs Organisation, Benelux, etc.). As discussed in previous posts on this blog, similar projects are ongoing in several jurisdictions throughout the EU, including France, the Netherlands and Germany.

An update version of the bill has been submitted to the Belgian Parliament on 15 May 2018, after that the Government’s initial draft faced criticisms from the High Council of Justice (relating to the BIBC’s independence and impartiality, its source of funding and its impact on the ordinary courts) and was subject to the review of

the *Conseil d'Etat*.

The Belgian Government aims to have the BIBC up and running by 1 January 2020.

## **Jurisdiction**

The BIBC will have jurisdiction over disputes:

- which are international in nature, i.e. where (i) the parties have their establishment in different jurisdictions, (ii) a substantial part of the commercial relationship must be performed in a third country, or (iii) the applicable law to the dispute is a foreign law. In addition, another language than French, Dutch or German (Belgium's official languages, which are already used before ordinary courts) must have been used frequently by the parties during their commercial relationship;
- among "enterprises" (i.e. every entity pursuing an economic purpose, including public enterprises which provide goods and services on a market basis); and
- provided that the parties have agreed to the BIBC's jurisdiction before or after the crystallisation of their dispute.

## **Procedure**

Subject to potential amendments in Parliament, the main procedural hallmarks of the BIBC can be summarised as follows:

- the procedure will be conducted in English (notices and submissions, evidence, hearings, judgments, etc.);
- the procedure will be based on the UNCITRAL Model Law on international arbitration;
- the cases will be heard by *ad hoc* chambers of three judges, one professional and two lay judges (appointed by the president of the BIBC on the basis of a panel of Belgian and international experts in international business law), assisted by the Registrar of the Brussels Court of Appeal;
- the BIBC will be granted the power to issue provisional and protective measures (including upon *ex parte* requests);
- no appeal will be open against the BIBC's decision (with the exception of an *opposition/tierce opposition* before the BIBC for absent parties/interested third parties, and a *pourvoi en cassation* on points of law

before the Supreme Court);

- the BIBC should be self-financing and the court fees are therefore going to be significantly increased (to around € 20,000/case).

### **A potential competitor to commercial arbitration?**

It is clear from the above that the envisaged procedure before the BIBC, based on the UNCITRAL Model Law and drawn up for international commercial disputes, offers many features traditionally associated with arbitration (necessity for the parties to agree on its jurisdiction, specialised judges, absence of appeal, procedural flexibility, etc.), at a much lesser cost.

However, the BIBC will remain a State court. This means, in particular, that its judgments will not benefit from the recognition and enforcement regime of the 1958 New York Convention (although, where the defeating party will have assets within the EU, this consequence will likely be offset by the application of the Brussels I recast regulation). In addition, the BIBC will not offer two procedural hallmarks often perceived by commercial parties as significant advantages of arbitration over State court proceedings: the confidentiality of the hearing and judgment, and the possibility to appoint/nominate the judges who will hear the dispute.

As a result, it remains to be seen whether the BIBC, and similar English-speaking commercial courts which are being established in other jurisdictions, will become a competitor to international arbitration (especially for cases requiring cost-effective proceedings) or if they will merely attract commercial disputes which would have been heard by ordinary courts, potentially from across the Channel. In any case, parties are likely to await the successful completion of a few procedures before trusting these new commercial courts with their more crucial and complex disputes.

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