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Multicontract Arbitration Under The CEPANI Arbitration Rules (Article 10)

Dirk De Meulemeester (Lexlitis, President CEPANI) · Wednesday, October 23rd, 2013

With regard to multicontract arbitration, the CEPANI Arbitration Rules (“the Rules”) contain a specific provision (Article 10).

Article 10(1) allows the parties to pursue claims arising out of different contracts or in connection with more than one contract in one single arbitration.

This can occur *for example* when parties decide to conclude different contracts with a related subject matter (part of one single economic transaction) or when one contract is the result of another, etc. In case of dispute, problems can arise when not all the contracts contain an arbitration agreement or have conflicting clauses on jurisdiction, or when the arbitration agreements seem incompatible (different time limits to render the award, different provisions on arbitration costs, different majority rules, a different place of arbitration or number of arbitrators, etc.).

Article 10(1) sets two conditions to be fulfilled in order to (automatically) allow one single arbitration procedure: (1) the parties must agree to apply the CEPANI arbitration rules; and (2) all the parties agree to have their claims decided within a single set of proceedings.

If these conditions are met, the CEPANI Secretariat – depending on the outcome of the *prima facie* test (Article 6 of the Rules) – will allow one single arbitration. Note that it is not necessary that all contracts contain a CEPANI arbitration clause. It is sufficient that at least one contract refers to the Rules.

Problems can occur when one party refuses to have the claims decided within a single arbitration proceeding. In such a case, the CEPANI Secretariat will not be able to decide the issue and will refer the matter to the arbitral tribunal (Article 12 of the Rules).

In case a dispute should arise on the matter and in order to fully understand Article 10(1), the Rules contain a few [*Green Flag – Red Flag*] presumptions, in Articles 10(2) and 10(3).

Article 10(2) covers the situation where different contracts are drafted in different languages or where they refer to different Rules of law. According to Article 10(2), in such cases, this would not automatically mean that the claims cannot be decided in one single arbitration.

Article 10(3) covers the situation where the parties conclude different contracts with regard to different transactions which are not related to one another (there is no single economic

transaction). If this is the case, the presumption is that the claims should not be decided in one single arbitration.

In its decision, the tribunal can use the presumptions of Articles 10(2) and (3), but the parties are obviously free to exchange their views and can submit additional elements in order to convince the tribunal in one way or the other.


See also, Dirk De Meulemeester and Herman Verbist, Arbitrage in de Praktijk, Bruylant, Brussel, 2013, 78-81.

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This entry was posted on Wednesday, October 23rd, 2013 at 2:15 pm and is filed under [Arbitration Institutions and Rules](#), [Belgium](#), [Multiple parties](#)

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