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Abstract

Energy, as is known, is a good of vital importance for society and the economy both at the level of national states and at the level of associations of states such as the European Union. As far as the European Union is concerned, in the context of the internal market, the energy sector shows intense investment activity, with mergers between companies, with cooperation agreements and with capital intensive investments. At the same time, significant activity is observed in the composition of a regulatory framework for the energy sector, in order to address the concerns and challenges related to the energy markets, ensuring at the same time energy sufficiency, consumer protection and healthy conditions of competition between businesses.

In fact, many times differences arise between companies, active in the energy sector, or between states and private investors, which show strong elements of foreignness. International practice shows that a significant number of such disputes are resolved through the institution of arbitration. Since the mid-1990s, the settlement of disputes based on arbitration clauses has increased significantly. The development of the institution of arbitration is mainly due to the slowness of the courts in resolving a dispute, as the civil courts in particular are charged with adjudicating an excessive volume of private law disputes, and for this reason there is a long delay in resolving disputes. This results in the search for alternative dispute resolution systems, such as arbitration. Arbitration is a contractually selected, binding adjudication of a particular dispute by arbitrators, instead of regular courts.

Organized, institutional - permanent arbitrations exist, already for several years in Greece in the Athens Chamber of Commerce and Industry (ACCI), in the Technical Chamber of Greece (TEE-TCG) and also in the Athens Chamber of Commerce, however, despite the long-standing existence of arbitration in the Greek legal order with the benefits it provides and despite the existence of permanent arbitrations in professional bodies and organizations of Greek economic and commercial activity, the arbitration as a method of resolving disputes has not marked in practice notable results in the Greek area, especially compared to the corresponding course and application of arbitration abroad.

At the international level, two main types of arbitrations are observed: international commercial arbitration (e.g. on arbitration clauses in supply or cooperation contracts)

and investment arbitration (mainly on arbitration clauses in Bilateral Investment Treaties). In these international arbitrations, often with a strong political and geopolitical sign, both established principles of arbitration law, such as the principle of confidentiality of the process, and innovative mechanisms, such as the "Emergency Arbitrator" reflected in the arbitration rules of recognized international institutions, are tested arbitration bodies, such as the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA).

In the present study, both the European and the Greek institutional framework are fully presented. The Greek Law of domestic and international arbitration is extensively analyzed and the particularities of energy arbitration are demonstrated, through the analysis of two ad hoc decisions, which were decided by the arbitration courts in Greece. In the study of these decisions, first of all the legal and then the technical issues that the arbitral tribunals faced during the resolution of energy disputes are clearly demonstrated, while the importance of the general clauses of the law in the awarding of arbitral justice, the diversity of the legal protection as well as the speed of justice.

Special mention is made of the Regulatory Authority for Energy (RAE) and its great contribution to the regulation of the Greek energy market, while the unique arbitral award issued by this court to date is thoroughly analyzed with a corresponding presentation of the comments on the arbitral award.

To conclude, energy disputes, insofar as they are not administrative in nature, are mainly resolved by arbitral tribunals established either ad hoc or within the framework of certain institutional arbitration. These courts promise procedural flexibility, confidentiality, specialized arbitrators, quick and final resolution of the dispute.

CHAPTER 1

1.1 Definition of Arbitration

The complexity of legal issues arising in these types of disputes, requires recourse to methods of dispute resolution, which cannot be resolved by ordinary courts and which serve the needs of speed and simplicity that characterize business activity. One such solution method of disputes is arbitration.

According to René David arbitration is: *"A device whereby the settlement of a question, which is of interest for two or more persons, is entrusted to one or more other persons – the arbitrator or arbitrators – who derive their powers from a private agreement, not from the authorities of a State, and who are to proceed and decide the case on the basis of such an agreement.*[1]*"* In short, arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

One of the most important characteristics is that arbitration is consensual[2], because in order to proceed to arbitration both parties have to agree. In the case of unborn disputes arising under a contract, the parties insert an arbitration clause in the applicable contract. Contrary to mediation, a party cannot unilaterally withdraw from arbitration. The arbitrators, are generally chosen by the parties. Furthermore, parties decide whether the arbitration will be carried out by an international arbitral institution, or will be ad hoc, which means no institution is involved. The rules that apply are the rules of the arbitral institution or other rules chosen by the parties. In addition to choosing the arbitrators and the rules, parties have the opportunity to choose the place of arbitration and the language.

Also, arbitration therefore gives the parties substantial autonomy and control over the process that will be used to resolve their disputes. This is particularly important in international commercial arbitration because parties don't want to be subject to the jurisdiction of the other party's court system. Moreover, the flexibility of being able to

[1] Martin Hunter, Arbitration in International Trade by Professor René David, Arbitration International, Volume 3, Issue 2, 1 April 1987, 5
[2] https://www.wipo.int/amc/en/arbitration/what-is-arb.html

adjust the dispute process to the needs of the parties, and the opportunity to select arbitrators who are knowledgeable in the subject matter of the dispute, make arbitration procedure particularly attractive.

Consequently, the first and most basic characteristic of arbitration is the consensus among parties. The parties consent, also, limits the arbitrator's power because with few exceptions, the arbitrator can only decide issues within the scope of the parties agreement. Arbitrators are also anticipated to apply rules, procedures, and laws chosen by the parties. Secondly, arbitrators are private citizens, and they don't belong to any government hierarchy. For this reason, unlike some judges, arbitrators tend to be very thoughtful of the parties and considerate in their interactions with them, because they are chosen by the parties and of course, they would like to be chosen again. In order to achieve this they have to be even-tempered, thoughtful, fair-minded, and reasonable. Arbitrators do not have to be lawyers. When there are three arbitrators, relatively frequently each party will choose one arbitrator and the third will be the chair and he will be chosen by the two party appointed arbitrators. International arbitrators, however, are all anticipated to be independent and impartial. They can be challenged, either before the arbitral institution or a court, if there is evidence that they are not independent and impartial.

A very important type of arbitration that is directly related to the energy sector is international investment arbitration. Investment arbitration is a process for resolving disputes between foreign investors and host states (also called Investor State Dispute Settlement or ISDS)[3]. The ability of a foreign investor to sue a host state is a guarantee to the foreign investor that, in the event of a dispute, it will have access to independent and specialized arbitrators who will resolve the dispute and render an enforceable award.

This allows the foreign investor to bypass national jurisdictions that could be considered biased or lacking independence, and resolve the dispute in accordance with different protections provided under international treaties. In order for a foreign

[3] Protected investors may include not only a multinational enterprise (MNE) headquartered in a treaty state, but also a subsidiary established in a treaty party, debt or equity investors, intellectual property rights holders, third party financiers investing in companies for to assume ISDS Privileges and other individuals and entities.

investor to be able to initiate an investment arbitration, a host state must have given its consent.

Consent to investment arbitration is usually given by host states through International Investment Agreements (IIAs), including bilateral investment treaties (BIT's) as well as free trade agreements (FTA's) and multilateral agreements, e.g. The Energy Charter Treaty (ECT). Less commonly, consent to investment arbitration may be found in investment agreements concluded directly between a state and a foreign investor, or may be contained in a domestic law of the host state, such as the mining or investment law.

The best-known international arbitration institution that administers investment arbitrations is the International Center for Settlement of Investment Disputes (ICSID), based in Washington[4]. ICSID arbitrations involving parties from Europe or Asia are often held at the World Bank headquarters in Paris.

Distinguishing investment arbitration from both conventional international adjudication and international commercial arbitration underscores the importance of investment arbitration as a governmental arrangement. First, investment arbitration can be distinguished from conventional international adjudication between states because it is based on the authorization of individuals to bring international claims directly. The individualization of international adjudication makes it more likely that international claims will be brought against states and damages awarded to foreign investors. Furthermore, individualization under investment treaties is more extensive than in other international arrangements that authorize individual claims, such as human rights treaties, because investment treaties typically limit the investor's duty to exhaust domestic remedies, adopt damages against the state as a remedy and authorize the immediate enforcement of judgments by national courts in a large number of countries. Also, investment treaties differ from historical claims provisions involving international claims on behalf of individuals because they contain a future - or general - consent of the state to the mandatory arbitration of any future dispute between the state and foreign investors.

[4] https://icsid.worldbank.org/About/ICSID

Investment arbitration should also be distinguished from international commercial arbitration, even though investment treaties are based on a private law adjudication model[5]. In commercial arbitration, when a state agrees by contract to arbitrate a commercial dispute with a private individual, the state is acting in a private capacity. In such cases, the arbitration does not arise from a normative dispute but from a dispute between judicial equals. i.e. between two private parties (of which one happens to be the state) equally capable of having legal rights and obligations. Conversely, when a state generally consents to a treaty on the compulsory arbitration of investment disputes, the state is acting in a sovereign capacity. Only a state can exercise the public power required for general consent. Finally, disputes resolved through investment arbitration arise from the exercise of public authority by the state, while disputes resolved through commercial arbitration arise from the state's involvement in a commercial relationship with another private individual.

Eventually, by the procedure of arbitration, it is issued final and binding award. The decision of arbitration generally can not be appealed. Nevertheless, it is given an opportunity to check the award of arbitration but under most arbitration laws, the only grounds for setting aside an award will be relatively narrow, such as a defect in the procedure or an instance where the arbitrators exceeded their powers and decided an issue that wasn't before them.

For the reasons mentioned, arbitration is an excellent alternative to litigation that provides the parties autonomy, and the proceedings are confidential. Also, the promotion of investments and therefore the economic development of the contracting parties is an intended result of investment protection agreements.[6] The relationship between international investment arbitration and energy arbitration will also be thoroughly analyzed below.

[5] Teubner (1997) (n 4) 7; D Oliver, Common Values and the Public-Private Divide (Butterworths, London, 1999) 1-2

[6] Coop G, Energy Dispute Resolution Investment Protection, Transit and the Energy Charter Treaty, 2011

1.2 Types of Arbitration

Institutional Arbitration

In institutional arbitration, a specialized institution intervenes and takes on the role of administering the arbitration process.[7] Each institution has its unique set of rules that give a frame for the arbitration. Although, there should be attention in the selection process as some institutions may act under rules which aren't adequately shaped. Frequently, the contract between two parties will contain an arbitration clause, which will designate a particular institution as the arbitration administrator. For those who can afford institutional arbitration, the most important advantages are the availability of established rules and procedures that ensure the timely initiation of the arbitration process with administrative assistance from the institution. Institutional arbitration saves the parties and their lawyers from trying to define the arbitration process and draft an arbitration clause, which is provided by the institution. An institutional arbitration is usually composed of arbitrators who are experts from every corner of the world. This allows the parties to choose an arbitrator who has the necessary skills, experience and expertise to provide a speedy and efficient dispute resolution process. An additional benefit of institutional arbitration is that the parties and arbitrators can seek help and advice from the staff of the institution. It is necessary to mention that some institutional rules provide for detailed examination of the draft award before the final award is issued. A party that disagrees with the draft award could then appeal to an arbitral tribunal of second instance which could amend the draft award if it is necessary.

With the increase in the use of arbitration around the world, numerous institutions have been created for international commercial and domestic disputes. Institutional arbitration is contractually undertaken with the arbitration clause inserted to identify the arbitral organization. These institutions have popularized arbitration as an alternative dispute resolution method to such an extent that institutional arbitration clauses have been incorporated as part of standard contract forms.

Most of the parties to an international dispute will refer it to an international arbitration institute. The ICC International Court of Arbitration, the London Court of Arbitration, the International Centre for the Settlement of Investment Disputes and the American Arbitration Association are considered the leading institutions for international

[7] Rolf A. Schütze, Introduction, in INSTITUTIONAL ARBITRATION 1, ¶ 1 (Rolf A. Schütze ed., 2013)

commercial arbitration. [8]In contrast, ad hoc arbitration occurs when the parties refer their dispute to a specific arbitrator who is not subject to the statutory arbitration rules.

The most effective way to deal with international institutional arbitration is to include an arbitration clause in the commercial or investment contract. Undoubtedly, parties to a commercial contract will agree to an institutional arbitration process as part of their commercial contract. Many institutional arbitral tribunals suggest an arbitration clause that could be adopted in the commercial and investment contract. Known arbitration institutions are Singapore International Arbitration Centre, Hong Kong International Arbitration Centre, The Japan Commercial Arbitration Association, China International Economic and Trade Arbitration Commission, Bahrain Chamber for Dispute Resolution in partnership with the American Arbitration Association. The different institutions has their own characteristics and parties should consider the relevant rules and fee structures in addition to investigating the level of administrative support before deciding on a particular institution. Institutional arbitration saves the parties and their lawyers from trying to define the arbitration process and draft an arbitration clause, which is provided by the institution. Once the parties have chosen the institution, all they need to do is incorporate that institution's draft clause into their contract. This expresses their intention to arbitrate in accordance with the institution's rules, which provide for every possible situation that may arise in an international commercial and investment arbitration.

Some of the advantages of institutional arbitration are summarized as follows:

1)Availability of predetermined rules and procedures

2)Administrative assistance from institutions providing a secretariat or an arbitral tribunal

3)Lists of qualified arbitrators

4)Appointment of arbitrators by the institution if requested by the parties

5)Physical facilities and support services for arbitration

6)Help to encourage reluctant parties to go to arbitration

[8] https://www.international-arbitration-attorney.com/what-is-international-arbitration/

7)Established format with a proven track record.

The main disadvantages of institutional arbitration are that the administrative fees for services and use of facilities can be high in disputes over large amounts, especially when the fees relate to the amount in dispute. Also, Institutional bureaucracy can lead to additional costs and delays and disputants may be required to respond within unrealistic time frames.

Ad hoc arbitration

Ad Hoc arbitration has been defined as "arbitration where the parties and the arbitral tribunal will conduct the arbitration according to the procedures which will either be previously agreed upon by the parties or in the absence of such agreement be laid down by the arbitral tribunal at the preliminary meeting once the arbitration has begun."

Therefore, the parties should determine all aspects of the arbitration themselves, such as the number of arbitrators, the applicable law and the procedure for conducting the arbitration. As long as the parties approach arbitration collaboratively, ad hoc procedures have the potential to be more flexible, faster and cheaper than institutional procedures. The absence of administrative fees provides an excellent incentive to use the ad hoc procedure. It is infinitely preferable to at least specify the place or seat of the arbitration, as this will have a significant impact on many vital issues such as the procedural laws governing the arbitration and the enforceability of the award. If the parties cannot agree on the details, all outstanding problems and issues related to the application of the arbitration shall be determined by the "seat" or location of the arbitration. An ad hoc arbitration should be more cost-effective, and therefore better suited to smaller claims and less wealthy parties. The ad hoc procedure places more burden on the arbitrator to organize and manage the arbitration. An important advantage of the ad hoc process is its flexibility. However, this will of course require a greater degree of effort, cooperation and expertise from the parties to agree the arbitration rules. The United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, revised in 2010, are among the most appropriate rules for this purpose.[9] Another reason why ad hoc arbitration is less expensive than institutional arbitration is that the parties will only have to pay fees for the arbitrators, lawyers or representatives and the

[9] Pieter Sanders, Commentary on UNCITRAL Arbitration Rules, 2 YEARBOOK COM. ARB. 172, ¶ 2.4 (1977)

costs incurred in conducting the proceedings rather than paying fees to a arbitration institution.

Some options available to parties wishing to proceed ad hoc, which do not need rules set specifically for them, or formal administration and oversight, include:

1)Adapting the rules of an arbitral body, amending provisions on the selection of arbitrators and repealing provisions on the administration of the arbitration by the body

2)Incorporation of statutory procedures such as the United States Federal Arbitration Act (or applicable state law) or the English Arbitration Act 1996

3)Approval of rules created specifically for ad hoc arbitration procedures, such as the UNCITRAL Rules (United Nations Commission on International Trade Law) CPR Rules (International Institute for Conflict Prevention and Resolution), which can be used both in domestic and and in international disputes

4)Adoption of an ad hoc provision copied from another contract. The risks associated with two of the available options are worthy of special attention.

The main features of ad hoc arbitration are:

1. Independent procedures that give the parties maximum flexibility

2. The tribunal is chosen by the parties (although if no agreement is reached, the matter may be referred to an appointing authority)

3. There is no review of the arbitral award by an arbitral institution.

But ad hoc arbitration has certain disadvantages. Parties wishing to include an ad hoc arbitration clause in their underlying contract, or seeking to agree to arbitration terms following a dispute, have the option to negotiate a complete set of rules that meet their needs. However, this approach may require significant time, attention and expense with no guarantee that the terms ultimately agreed will address all contingencies. In ad hoc arbitration, the appointment of arbitrators is generally based on the parties' faith and trust in the arbitrators and not necessarily based on their qualifications and experience. Thus, an incompetent arbitrator may not conduct the process smoothly and this could delay dispute resolution, lead to unwanted litigation and increased costs. Also, institutional staff continuously monitor the arbitration to ensure that the arbitration is completed and a decision is issued within a reasonable time and without undue delay.

As we have seen, bodies such as UNICITRAL have rules specifically designed for ad hoc proceedings.

In conclusion ad hoc procedures need not be completely separated from institutional arbitration. The parties may decide to hire an institutional provider to administer the arbitration at any time. As long as the parties approach arbitration collaboratively, ad hoc procedures have the potential to be more flexible, faster and cheaper than institutional procedures. The absence of administrative fees alone provides an excellent incentive to use the ad hoc arbitration.

With reference to institutional and ad hoc arbitration, it is worth noting that in cases involving complex international commercial and investment disputes, the procedural rules, the administrative support, guidance and supervision of a specialized arbitral body are often key factors supporting the choice of institutional arbitration over ad hoc arbitration. However, it is important to realize, that pre-selection of arbitration rules does not prevent the parties from subsequently agreeing to modify the procedures by agreement as the arbitration proceeds. In the context of international trade and investment disputes, institutional arbitrations may be more appropriate - despite being more expensive, time-consuming and inflexible. The institutional process provides established and up-to-date arbitration rules, support, supervision and monitoring of arbitration, review of awards and enhances the credibility of awards. The particular circumstances of the parties and the nature of the dispute will determine whether ad hoc arbitration or institutional should prevail.

In my view, in the context of international trade and investment disputes, including energy disputes, it could be argued that institutional arbitration is more appropriate, even though it is obviously more expensive, time-consuming and rigid than ad hoc arbitration, considering the fact that it provides established and up-to-date arbitration rules, support, supervision and monitoring of arbitration, review of awards and most importantly, enhances the credibility of awards. In conclusion, it must be said that it is difficult to claim that institutional arbitration is superior to ad hoc procedures or vice versa.

Domestic arbitration

A domestic arbitration is one that deals with purely national or internal issues. This means, broadly speaking, that all aspects of the arbitration process relate to a single

jurisdiction[10]. For example, the nationality of the parties, the applicable law of the contract, the place of performance of the contract and the facts giving rise to the dispute will all relate to the same jurisdiction. So, domestic arbitration is a form of alternative dispute resolution (ADR) where one or more people are appointed to hear a case that takes place within a jurisdiction. The decision is binding and enforceable in court. The parties to a domestic arbitration are usually private individuals. Furthermore, the sums involved on domestic arbitrations are smaller than those involved on international arbitrations, because they concern a relatively small one dispute between individuals. The Model Law introduced the idea that it would be appropriate to have separate rules for domestic arbitrations and for international arbitrations, thereby liberating international arbitration from many of the policy constraints that continue to be thought appropriate for domestic arbitration in many countries. Finally, in domestic arbitrations, the parties may still decide to have non-neutral, party-appointed arbitrators.

International Arbitration

International arbitration is the leading form of international dispute resolution between businesses of different nationalities, as well as between foreign investors and states.[11] It is a consensual, neutral, binding, private and enforceable means of international dispute resolution, which is usually faster and less expensive than domestic court proceedings. It is sometimes called a hybrid form of international dispute resolution, as it combines elements of civil law and common law procedure, while giving the parties the opportunity to design the procedural rules by which their dispute will be resolved.

The word 'international' has at least three different meanings when it comes to international arbitration. The first depends on the nature of the dispute, the second on the nationality of the parties and the third approach, which is that of the Model Law, depends on a blending of the first two, plus a reference to the chosen place of arbitration.

Companies often include international arbitration agreements in their commercial contracts with businesses located in other states so that, if a dispute arises, they are obligated to arbitrate before neutral arbitrators rather than litigate in a foreign court. The parties to an international arbitration are generally, but not always, business or

[10] https://www.lexisnexis.co.uk/legal/guidance/international-arbitration-key-differences-between-international-domestic-arbitration

[11] https://www.lawsenate.com/publications/articles/arbitration-agreement-domestic-international.pdf

financial corporations, states, or state entities, whilst the parties to a domestic arbitration will more usually be private individuals. The sums involved in international arbitrations are generally considerably greater than those involved in domestic arbitrations, which for example may concern a comparatively small dispute between a customer and an agent over a faulty motor car or a package holiday that failed to live up to its advance publicity.

1.3. Energy disputes subject to arbitration

There are two main categories of energy disputes: disputes between states (including state entities) and individuals, and disputes between individuals.

- *Investor-State Disputes*

For years, states and state-owned companies had a monopoly on energy extraction and production. While new opportunities have emerged through privatization programs, states still retain a significant degree of participation in energy projects. The close interaction between the private and public sectors often creates differences, especially in capital-importing countries.[12]

The legal basis for such disputes may differ, as indicated below:

-*Contract disputes:* private companies in the energy sector will often enter into agreements with the state itself or companies owned or controlled by the state. For example, oil and gas contracts will often be entered into with a state or national company regarding the production and distribution of oil and gas. These agreements often contain an arbitration clause that refers future disputes to arbitration. In this respect, arbitrations arising from energy contracts concluded with states are not very different from purely commercial arbitrations between private individuals, unless the contract itself allows for investor-state arbitration.

-*Treaty-based disputes:* In treaty-based arbitration, the consent of the state is said to be given to all present and potential investors who meet the nationality criteria and whose investment is protected by the treaty prior to the dispute. These treaties can take the form of bilateral or multilateral investment treaties, providing for a unilateral offer by

[12] https://unctad.org/system/files/official-document/iteiit20054_en.pdf

sovereign states to arbitrate in certain categories of disputes. In Venezuela Holdings, B.V. (ICSID Case No. ARB/07/27), for example, the claimants brought arbitration under the Netherlands-Venezuela BIT for a breach of fair treatment following the implementation of measures affecting production and export in two energy projects.[13]

An example of a multilateral investment treaty is the Energy Charter Treaty (ECT). The ECT, which entered into force on 16 April 1998, is a multilateral treaty designed to create a stable framework to stimulate economic development and liberalize international investment and trade in the energy sector. The aim is to promote long-term cooperation in the energy sector, based on complementarity and mutual benefits, in accordance with the goals and principles of the Charter. It is the only binding multilateral instrument dealing with intergovernmental cooperation in the energy sector and includes extensive commitments for contracting parties. The ECT includes provisions on investment protection, provisions on trade, energy transit, energy efficiency and environmental protection and dispute settlement. Also, the ECT is the basis for international arbitration. The ECT states that signatory parties to a dispute will, if possible, resolve a dispute amicably. If the dispute is not resolved within three months of either party's request for amicable settlement of a dispute, the investor may choose between (1) the courts or an administrative tribunal of the party to the dispute; (2) any applicable, previously agreed resolution process disputes; or (3) international arbitration or conciliation, as defined in the ECT. This is subject to two possible limitations: parties may exclude their unconditional consent where investors have previously submitted their dispute to the party's courts or pursuant to a previously agreed dispute resolution procedure and the parties may further exclude from their consent disputes arising under the "umbrella clause"[14].

One of the means by which investment treaties can provide for the arbitration of contractual disputes is the inclusion of an "observance of obligations" clause, commonly referred to as an umbrella clause. This clause is not a direct component of States Parties' unilateral offer to settle investment disputes. They are often referred to as "umbrella clauses" because they bring treaty obligations under the protective umbrella of the BIT. They add compliance with investment treaties or other

[13] Ribeir Cl , Investment Arbitration and the Energy Charter Treaty, 2006

[14] CMS Gas Transmission Company v. The Republic of Argentina, ICSID Case No. ARB/01/8, Award, 12 May 2005

commitments of the host state to the substantive standards of the BIT. In this way, a breach of such a contract becomes a breach of the BIT.

- *Domestic disputes based on investment law:* Another legal basis for claims in the energy sector comes from the domestic legislation of the host states. Domestic laws and codes aimed at encouraging foreign investment may provide for the host state's unilateral consent to arbitration. Investors' consent, in turn, can normally be expressed through a written communication addressed to the State or by submitting a request for arbitration. Different from treaty-based disputes, the offer of arbitration in national laws is not always subject to the criterion of nationality.

- *Private Disputes*

The majority of energy disputes involve private companies. Generally, these differences arise from a wide range of transactions. If private disputes can be resolved by arbitration, they will fall within the general domain of contract-based commercial arbitration. With private arbitration, the parties may either select a neutral arbitrator to handle the entire dispute, or they may select an arbitrator and their selected arbitrators may select a neutral to chair an arbitration panel. The advantages are relaxed discovery, relaxed rules of evidence, faster hearings and faster results. Most importantly, the cost to the party is drastically reduced.

1.4 Relationship of International Investment Arbitration and Energy Arbitration

In Greece, foreign investments are absolutely necessary, but there is no attractive investment environment. However, in recent years, international investment arbitration has developed rapidly as a way of resolving disputes arising from the implementation of a foreign investment between the host state of the investment and the foreign investor. The purpose of the ICSID Convention is to resolve disputes between states and foreign investors, but does not clearly define the concept of investment.[15]

As previously mentioned, international investment disputes are disputes between states and foreign investors. More specifically, these are *«legal disputes, which have as their*

[15] Ribeir Cl , Investment Arbitration and the Energy Charter Treaty, 2006

object claims or demands of the parties, which are based on rights, obligations or duties related to, or arising from, a specific investment».

Arbitral tribunals apply national or international law in order to resolve investment disputes between foreign investors and host countries.[16] There is significant interaction between the national and international legal order as well as in the application of relevant legislation in the context of investor-host arbitration, because there is considerable freedom for the disputing parties and the arbitrators to determine the applicable law in the arbitration, but also because of the hybrid nature of the legal relationship between "foreign investors" and investment host states. International investment arbitration is the dominant extrajudicial mechanism for the resolution of international investment disputes that they arise in cases of breach of an investment agreement or international customary law on the part of one of the parties and always mainly between states receiving foreign investments and the foreign investors or their investments themselves.

Energy investment disputes arise mainly between a certain private investor, which is usually a legal entity, and a certain state that is the host state of the investment. Part V and in particular Articles 26-28 of the ECT contain a specific system for the resolution of investment energy disputes. These arrangements are of particular importance because through them the confidence of investors is increased, and they are encouraged to invest the funds them in other states-territories. The purpose is to ensure the predictability required for investors, but also to protect them from the sovereignty of the host state of the investment.

The ECT includes various dispute settlement mechanisms, which are linked to specific objects of the Treaty. More specifically, mechanisms are provided for the resolution of disputes, such as arbitration between investor and state for investment disputes, arbitration between states for non-commercial disputes as well as that provided for in Article 29 thereof ECT method (panel system) for commercial disputes.

The most common in the area of investments in "foreign" states is arbitration between an investor and a state, based on Article 26 of the Treaty. This method shows remarkably positive results in the resolution of energy-investment disputes between

[16] Hege Elizabeth Kjos, Applicable Law in Investor-State Arbitration, The Interplay between National and International Law.

certain investors and host state of the investment. In the context of the investment agreement, which is signed by the parties involved, they act under the auspices of a Bilateral Investment Treaty (BIT) , if of course there is one and which contains all the principles applicable to "investment protection".

Regarding international investment energy arbitration it is noted that if an investor in the energy sector wants to bring a claim against the host state of the investment, through ICSID arbitration, under Article 26 (4) (1) (a) of the ECT, it will have to overcome two cumulative relevant jurisdictional barriers. The arbitral tribunal will need to be satisfied, firstly, that the dispute in question is "entitled" to the protection of the ECT and, secondly, that the particular investment falls within the treaty's jurisdiction ICSID.[17] In this context, the ECT and ICSID, as legal instruments containing dispute settlement mechanisms, are mutually linked when the dispute arises from an investment in the energy sector.

CHAPTER 2

The European and Greek

institutional-legislative framework for energy

2.1 European Law and Regulation of the Energy Market

As is understandable, the energy market is of particular importance to the economy. Activities such as the production of electricity or natural gas, their transport, supply and distribution and other related activities are key aspects of the operation of the energy market, in the context of which energy is, however, not only a commercial, but also a social good. For this reason, the legislator subjects the exercise of energy activities to special supervisory rules with knowledge of the protection of the market and the interests of consumers. The most frequently utilized legal basis for measures in the

[17] Roe T, Happold M., consultant Editor James Dingemans QC, Settlement of Investment Disputes under the Energy Charter Treaty, Cambridge, 2011

energy sector is Articles 114 and 194 of the Treaty on the Functioning of the European Union (TFEU).[18]

During the 1990s, when most national electricity and natural gas markets were still monopolies, the European Union and member states decided to gradually open these markets to competition. The first liberalization directives (First Energy Package) were adopted in 1996 (electricity) and 1998 (gas), to be transposed into Member States' legal systems by 1998 (electricity) and 2000 (gas). The second energy package was adopted in 2003, with its directives to be transposed into national law by Member States by 2004, and some provisions not to enter into force until 2007. Industrial and domestic consumers were now free to choose their own gas and electricity suppliers from a wider range of competitors. In April 2009, a third energy package was adopted which seeks to further liberalize the internal electricity and gas markets, which amends the second package and provides the cornerstone for the implementation of the internal energy market. In June 2019, a Fourth Energy Package consisting of one directive (Electricity Directive 2019/944/EU) and three regulations: the Electricity Regulation (2019/943/EU), the Emergency Preparedness Regulation (2019 /941/EU) and Regulation (2019/942/EU) of the EU Agency for the Cooperation of Energy Regulatory Authorities (ACER). The fourth energy package introduces new rules for the electricity market to meet renewable energy needs and attract investment. It provides incentives to consumers and introduces a new threshold for power stations to be eligible for subsidies as capacity mechanisms. It also requires Member States to prepare contingency plans for possible electricity crises and increases ACER's powers in cross-border regulatory cooperation when there is a risk of national and regional fragmentation. The fifth energy package, "Delivering the European Green Deal", was launched on 14 July 2021 with the aim of aligning the EU's energy targets with the new European climate ambitions for 2030 and 2050. The debate on its energy aspects is ongoing.

According to the definition contained in the European Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market, *"renewable energy sources' shall mean renewable non-fossil energy sources (wind,*

[18] THE ENERGY REGULATION AND MARKETS REVIEW, Editor David L Schwartz, Law Business Research.

solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases)". Likewise, according to the Article 2 par. 2 of Law 3468/2006 *"Renewable energy sources (RES): The non-fossil renewable energy sources as wind energy, solar energy, wave energy, tidal energy, biomass, gases released in sanitary landfills and biological treatment plants, biogases, geothermal energy, and hydraulic energy utilized in hydroelectric stations"*[19].

Through Article 194 TFEU, in fact, the action was upgraded expressis verbis to EU policy'. The EU's energy policy has, in particular, three main objectives, namely the single European internal energy market through competitiveness, security of energy supply and sustainability In addition, the principle of subsidiarity in the context of the EU means that the Union exercises its activity only if the objectives of the intended action cannot be "adequately" achieved by the member states and therefore, if the intended purpose can to be achieved more effectively by the community institutions'. The field of energy, as well as those of the environment, transport, trans-European networks, the internal market and consumer protection, belong to the category of concurrent competences of the Union, with the consequence that, in principle, the possibility of application of the principle of subsidiarity. In this context, the EU "took over" the relevant competence from the public administration of the member states and established, through its secondary legislation, i.e. mainly through Directives, principles and rules of a mandatory nature which defined the general European framework of competences of national regulatory authorities.

The Internal Electricity Market Regulation (Regulation (EU) 2019/943) [20]revises the rules and principles of the internal electricity market to ensure its smooth functioning and competitiveness. It supports the decarbonization of the EU's energy sector, removes barriers to cross-border trade in electricity and enables the EU's clean energy transition, keeping the commitments made in the Paris Agreement.

The Directive on Common Rules for the Internal Market in Electricity (Directive (EU) 2019/944)[21] focuses on Member States and consumers, setting out a set of different

[19] https://www.eea.europa.eu/policy-documents/directive-2001-77-ec-renewable-electricity
[20] Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (see page 54 of this Official Journal
[21] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (see page 125 of this Official Journal)

provisions that put the consumer at the heart of the clean energy transition. Suppliers are free to determine the price at which they supply electricity to customers.

The Risk-Preparedness Regulation (Regulation (EU) 2019/941)[22] strengthens risk preparedness by encouraging cooperation between transmission system operators in the EU and neighboring countries and ACER. It also aims to facilitate the cross-border management of electricity networks in the event of an electricity crisis through the new regional operation centres, which were introduced in the relevant internal electricity market regulation (Regulation (EU) 2019/943). The European Network of Transmission System Operators for Electricity (ENTSO-E) will develop and propose a common risk identification methodology in cooperation with ACER and the Electricity Coordination Group, which will then be approved by ACER. Four sets of measures have been proposed: a) common rules on how to prevent and prepare for electricity crises to ensure cross-border cooperation, b) common rules on crisis management, c) common methods for assessing risks related to security of supply , d) a common framework to better assess and monitor security of electricity supply.

On 14 July 2021, the Commission published the first part of the "Delivering the European Green Deal" package, that aims to achieve greenhouse gas emission reductions of at least 55% and a climate-neutral Europe by 2050. The energy debate aspects of the fifth energy package are underway.

- *Energy market regulation: the EU Agency for the Cooperation of Energy Regulators*

The EU Agency for the Cooperation of Energy Regulators (ACER) has been operational since March 2011 (Regulation (EC) No 713/2009)[23]. ACER is primarily responsible for promoting cooperation between national regulatory authorities at regional and European level and for monitoring the development of the grid and internal electricity and gas markets. It also has the competence to investigate cases of market abuse and to coordinate the application of appropriate sanctions with the Member States.

[22] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0941&rid=2
[23] Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (1)

In June 2019, the Commission adopted the Regulation (2019/942/EU)[24] reforming ACER to recast the legal acts and strengthen its main role as a coordinator of the action of national regulatory authorities, in particular in those areas where national decision-making is fragmented on issues cross-border relevance would lead to problems or inconsistencies for the internal market. ACER's tasks in the field of wholesale market and cross-border infrastructure supervision have been increased in order to give it greater responsibility for the elaboration and submission of the final proposal for a network code to the Commission and for influencing the review of the regional electricity market (bidding zone) review process (laid down in the recast of the Electricity Regulation (2019/943/EU). The ACER Regulation (2019/942/EU) introduces fees as an additional source of funding to cover the costs of REMIT-related activities ("REMIT fees") carried out by ACER. On 15 July 2020, DG Energy and ACER submitted a fee structure proposal. On 17 December 2020, the Commission adopted Decision (EU) 2020/2152 on fees, which aims to cover costs for tasks such as the collection, handling, processing and analysis of information carried out by ACER.

In addition, two regulations were adopted, which create cooperation structures for European Transmission System Operators (ENTSOs), one for electricity (Regulation (EC) No 714/2009)[25] and the other for natural gas (Regulation (EC) No. 715/2009[26]) amended by Commission Decision 2010/685/EU. Regulation (EU) 2016/1952 improves the transparency of gas and electricity prices charged to industrial end-users by obliging Member States to ensure that these prices and the pricing systems used are notified to Eurostat once or twice a year time. In October 2011, the EU adopted Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT) aiming to guarantee fair trading practices on European Energy Markets.

- *Security of the supply of electricity, natural gas and oil*

Regulation (EU) No 2019/941 establishes measures aimed at ensuring the security of electricity supply, to ensure the smooth functioning of the internal electricity market,

[24]https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0942

[25] Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (1)

[26] Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (1)

an adequate level of interconnection between Member States, sufficient generation capacity and a balance between supply and demand. In light of the critical importance of natural gas for the EU's energy supply and in response to the Russian-Ukrainian natural gas crisis during the winter of 2008-2009, Regulation (EU) 2017/1938 on measures to ensure the security of natural gas supply. The regulation aims to strengthen crisis prevention and response mechanisms. In order to ensure a secure oil supply, Directive 2009/119/EC obliges Member States to maintain minimum oil stocks, corresponding to 90 days of average daily net imports or 61 days of average daily domestic consumption, whichever of the two quantities is greater. In response to concerns about the delivery of Russian gas through Ukraine, the Commission published its energy security strategy in May 2014. The strategy aims to ensure a stable and abundant supply of energy for European citizens and the economy. It sets out measures such as increasing energy efficiency, promoting energy production within the EU and completing missing infrastructure links to redirect energy to where it is needed during a crisis.

In May 2019, the Commission adopted a targeted revision of the 2009 Natural Gas Directive (Directive (EU) 2019/692)[27]. This would make the main provisions of the Gas Directive directly applicable to cross-border gas pipelines with third countries, or more specifically, to those parts of the pipelines on EU territory. This would help ensure that any current, planned and future gas infrastructure projects between a Member State and a third country do not distort the single energy market or weaken security of supply in the EU.

In September 2020, the Commission announced that a new regulatory framework for competitive carbon-free gas markets will be developed in 2021. On 10 February 2021 the Commission launched a public consultation. This initiative is a response to the challenge of decarbonising natural gas networks and proposes revising EU gas rules to facilitate market entry for renewables and low-carbon gases and remove any unjustified regulations obstacles.

[27] https://eur-lex.europa.eu/eli/dir/2019/692/oj

- *Trans-European Networks for Energy (TEN-E)*

The TEN-E is a policy focused on connecting the energy infrastructure of the Member States. As part of the policy, nine priority corridors (four electricity corridors, four gas corridors and one oil corridor) and three priority thematic areas (smart grid development, electricity highways and cross-border carbon dioxide network) have been identified.

Regulation (EU) 347/2013[28] sets guidelines for trans-European energy networks that identify projects of common interest (PCI) and priority projects between the trans-European electricity and natural gas networks. Regulation (EU) 347/2013 sets guidelines for trans-European energy networks that identify projects of common interest (PCI) and priority projects between the trans-European electricity and natural gas networks. On 15 December 2020, the Commission adopted a proposal (COM(2020)0824) to revise the TEN-E Regulation to better support the modernization of Europe's cross-border energy infrastructure and achieve the objectives of the European Green Deal.

Therefore, the current institutional and regulatory framework in the field of energy in the EU member states is significantly shaped by the provisions of primary and secondary European law. In this context, many provisions of laws, presidential decrees and ministerial decisions in Greece were legislated, incorporating European Directives or in order to generally adapt the Greek legal order to provisions of EU law.

At the European level, the main focus of regulatory interest was the gradual liberalization of the energy market', at the same time, however, with the protection of the environment, which is undoubtedly burdened by the exercise of energy activities.

2.2. The Greek legislation for the arbitration in energy disputes

In the Greek legal order as far as the arbitral resolution of energy disputes, Law 4001/2011 applies, pursuant to Article 37 of which, the RAE Arbitration Regulation was issued. In particular, pursuant to Article 37 of Law 4001/2011, it was enacted legislative framework under which permanent arbitration was rationally organized in RAE. The legislation in question is compatible with the relevant ones provisions of the Civil Code, given that, according to the provisions of article 902 § 1 of the Civil Code,

[28] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF

permanent arbitrations may be instituted in agencies. **Article 37 of Law 4001/2011** on permanent arbitration in RAE specifically provides:

1. «With this law, is organized a permanent Arbitration at the RAE, which is subject to resolution:

(a) differences between persons who are active in any way in the energy sector,

(b) differences between Eligible Customers, as defined in provisions of this law and of companies that practice Energy Activities,

(c) any dispute arising between the above persons from the application of the relevant national and European legislation»

2. The subjection to the arbitration procedure of one of the above disputes requires a written Arbitration Agreement between the parties.

3. Articles 867 to 900 of the Civil Code apply to the aforementioned Arbitration, unless otherwise specified in this article.

4. The Arbitration shall be conducted before a three-member arbitration panel, which is composed of persons mentioned in a list of arbitrators and of arbitrators, which is drawn up every two years, by decision of its President RAE. The list includes members of RAE, members of Technical Chambers and Bar Associations, as well as professors of Higher Education Institutions of any rank, with specialized knowledge in the disputes that fall under RAE arbitration.

5. If the parties do not appoint an arbitrator or co-arbitrator, as provided in the articles 873 and 874 of the Civil Code, the provisions of article 878 of the Civil Code apply, but instead of the Single-member Court of First Instance, the President of RAE decides on the matter. The President of RAE also decides, instead of the Single Member Court of First Instance, on cases of articles 880 par. 2 and 884 of the Civil Code.

6. The arbitral tribunal ensures that the procedure until its publication decision to be completed within six (6) months from the initiation of the procedure arbitration.

7. The arbitral tribunal may, by its decision, request from RAE the formulating an opinion on issues related to its regulatory responsibilities and are critical to the resolution of the dispute."

Law 2289/1995 on search, research and exploitation hydrocarbons and other provisions, incorporated its Directive 94/22/EC May 30, 1994, for the conditions for granting and using prospecting permits, exploration and production of hydrocarbons. This law led to the current law 4001/2011, by which the regulatory legal framework for hydrocarbons was modernized, the drilling and research in Greece. Through Law 4001/2011, many provisions of Law 2289/1995 have been replaced and amended. In the context of the application of Law 2289/1995, as amended by Law 4001/2011, contracts are concluded, which concern research and exploitation of hydrocarbons (Article 2 § 10). More specifically, the right of exploration and exploitation of the State is granted by contract lease contract or production distribution contract, in which the research stage and the exploitation stage are foreseen. In article 10 § 12 of Law 2289/1995, as it currently applies, it is provided that disputes arising during the execution of the above contracts are resolved by the Administrative Court of Appeal of Athens, applied in the rest of the provisions of Law 1406/1983.

In the 13th paragraph of the same article, it is defined that: *"Any difference from this, contractual or tortious, is resolved by an arbitration court according to Law 2735/1999 on international trade Arbitration or another internationally recognized Arbitration system, such as (International Chamber of Commerce (ICC), London Court of International Arbitration, Arbitration Institute of the Stockholm Chamber of Commerce, to the exclusion of tactics jurisdiction of the Greek courts. The arbitral tribunal consists of two arbitrators, appointed by the parties, and one arbitrator appointed by them. Athens is defined as the venue of the Arbitration and as the language process the Greek. Applicable law is Greek."* In this case it is a statutory referral to arbitration and especially in international arbitration of contractual or tortious disputes that arise from the activities and contracts regulated in Law 2289/1995, which they concern exploration and exploitation of hydrocarbons, i.e. from contracts leasing or distribution of production. **It is noteworthy that, although this regulation introduced by article 162 § 5 of Law 4001/2011, which also recommended the permanent arbitration of the RAE, the latter is not included in the "arbitration systems", which the regulation in question refers to arbitration resolution of the above disputes[29].**

[29] RAE acquired all executive powers on energy, as indicative for production licenses, operating codes and transaction management, natural gas, pricing regulations, etc.

In application of the authorizing provisions of Law 2289/1995, PD (Presidential Decree) 127/1996 was issued, which regulates the training conditions of lease contracts for the right to explore and exploit of hydrocarbons concluded in accordance with paragraph 10 (a) of article 2 of Law 2289/1995.

RAE was established pursuant to Article 4 of **Law 2773/1999**[30] "Liberalization of the electricity market - Regulation of energy issues policy and other provisions", which was issued for the incorporation into Greek legal order of Community Directive 96/92/EC on the liberalization of the market electric power. In accordance with the provisions of Law 2773/1999, the Electricity System and Transactions Management Code was drawn up, which was approved by YA D5- IL/B/ok./8311/2005. Pursuant to Article 8 § 2 of Law 2773/1999, provided for the first time possibility of organizing permanent arbitration in RAE, while this law is also thoroughly analyzed in Chapter 3.

Law 4001/2011 concerns the operation of energy markets electricity and natural gas, for research, production and transmission networks hydrocarbons and other arrangements. Extremely important is that through Law 4001/2011, the following Directives were incorporated into Greek legislation:

- Directive 2009/72/EC of the European Parliament and of the Council, concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

- Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

- Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators

- Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009, on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003

[30] Spiliotopoulos Ep., The Powers of RAE in European and Greek law, Constitutionality Issues, Power & Law, No. 15/2011, p. 1

- Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

All of the above constitute a European legal framework, known as the "Third Energy Package", which was adopted in 2009 by the European Union. The directive 2013/30/EU[31] of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC[32], also belongs to the European "Energy Legislation". With Directive 2009/72 EC [33]and Directive 2009/73 EC[34], the European legislator aims to create an internal electricity market and encourages member states to unify their national markets and to strengthen the cooperation of energy infrastructure managers, which they are obliged to cooperate at the European level, in order to create an internal electricity market.

In application of laws 2289/1995 and 4001/2011 (articles 145-164), it was issued **the presidential decree no. 14/2012**, by which the anonymous company was established company with the name " Hellenic Hydrocarbons and Energy Resources Management Company S.A. (HEREMA S.A.)" and its articles of association were drawn up. The activities of this company are under the supervision of the state, which is exercised by Minister of Environment, Energy and Climate Change.

Finally, the legislative framework for energy includes several laws that regulate environmental issues, such as the 1982 Convention on the Law of the Sea, laws 1650/1986 and 4042/2012 on environmental protection and law 4014/2011 for the environmental licensing of works and activities, as well as Article 191 of the TFEU. Also included in the "energy legislation" is Law 4135/2013 on the ratification of the First Amending Agreement from 31.10.2012 between the Greek State and the contracting companies "KAVALA OIL S.A. and ENERGEAN OIL & GAS AEGEAN ENERGY EXPLORATION AND PRODUCTION OF HYDROCARBONS S.A.».

Regarding renewable energy sources the basic law, which regulated the production of electricity from RES and is still valid, after several amendments (law 3734/2009, law 3851/2010 and 4546/2018), is law **3468/2006.** Furthermore, in 2016 a new framework

[31] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0030
[32] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0035
[33] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0072
[34] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0073

was instituted for the support of RES (Law 4414/2016), with the aim of harmonizing with the "Guidelines for state aid in the environment and energy sectors (2014-2020)" and the gradual integration and participation of RES and “Combined Heat and Power production”(CHP),in the electricity market in the most cost-effective way for society and the end consumer. Its objectives are, among others:

-The utilization of the domestic power generation potential from RES, as a priority, with the aim of protecting the environment, diversifying the national energy mix, securing the energy supply and strengthening and developing the national economy.

-The achievement of the national energy targets, provided for in Law 3468/2006, as amended by Law 3851/2010, which harmonized Greek legislation with Directive 2009/28/EC, regarding the participation of energy produced by RES in the country's gross final energy consumption by the year 2020.

-The development and implementation of the support regime for the production of electricity from RES in the framework of the European Union's single policy for dealing with climate change, and the achievement of the goal of the participation of RES in the gross final energy consumption.

-The support of the operation of CHP stations, the improvement of energy efficiency and the saving of primary energy, in accordance with the provisions of Law 3734/2009 and Law 4342/2015, with the provisions of which Greek legislation was harmonized with Directives 2004/8/EC and 2012/27/EU, respectively.

Furthermore with Law 4685/2020, entitled: "Modernization of environmental legislation, incorporation into Greek legislation of Directives 2018/844 and 2019/692 of the European Parliament and of the Council and other provisions", the system of attestations for licensing is introduced RES projects.

The aim is, therefore, to adopt a single European electricity market standard, with the aim of operating a wholesale market with a single electricity price, common to all the relevant markets of the member states, which will only be able to change when local congestion problems arise. With the operation of a single electricity market, no one company will have a dominant position in the electricity generation sector and therefore an anti-competitive and affordable price in the retail market will be established.

The necessary specifications of a modern arbitration forum are set by the new **Law 5016/2023 "International Commercial Arbitration - Regulations for the operation of the Court of Auditors and other urgent provisions".**[35] The new law **repeals the previous Law 2735/1999**, **as it was decided that most of the provisions of the law in force until then are outdated and do not correspond to modern legal and international developments in the field of international commercial arbitration.**

Law 5016/2023 modernizes the previously applicable framework, incorporating the rules and amendments introduced by the 2006 United Nations Commission on International Trade Law (UNCITRAL) Model Law on international commercial arbitration, as well as the latest trends in international theory and practice (article 2). The new legislative framework is estimated to make Greece an attractive seat of international arbitration in relation to other EU and OECD states.

In addition, it will help attract foreign investment, since foreign investors generally seek to resolve their disputes through arbitration, without resorting to state courts. In the long term, therefore, it is expected that it will strengthen the extroversion of the Greek economy and stimulate Greek exports.

The purpose of Law 5016/2023 is to consolidate international arbitration in the Greek legal order as a product of the autonomy of the parties, so that the parties can freely: a) decide whether to refer their disputes to arbitration, b) choose the arbitrators, c) to shape the arbitration process and d) to choose the applicable law for the resolution of their dispute (Article 1). The principle of party autonomy is repeated in several individual provisions of the new law (see in particular article 3 par. 2 letter c', the article 4 par. e' for the definition of "arbitration agreement", article 16 par. 1 for the appointment of an arbitrator, article 19 par. 1' regarding the arbitrator exclusion procedure agreement, article 28 par. 1 and article 30 par. 1 regarding the free determination by the parties of the place and language of the arbitration respectively, article 29 par. 1 regarding the possibility of the parties to decide and articles 31 et seq. regarding other issues of the

[35] **Arbitrations that began before the entry into force of Law 5016/2023 are still governed by Law 2735/1999.** Permanent arbitrations regulated by article 902 of the Code of Civil Procedure and articles 131 and 132 of Law 4194/2013 (A' 208) are still governed by the relevant provisions (see transitional provision of article 48 of Law 5016/2023). Regarding the article-by-article interpretation of the provisions of Law 2735/1999, which is approached interpretatively and in the light of the Rome I and II regulations (Laws 593/2008 and 864/2007), see Καλαβρό, Διεθνής Εμπορική Διαιτησία, τόμ. 1, 2019.

procedure that can be regulated differently from the , in principle, applicable regulations of Law 5016/2023).

A key innovation of Law 5016/2023 is the legislative provision that an arbitration agreement can also be recorded in an "electronic record", which is expressly equated with a "document" (Article 10 par. 2). Regarding the validity of the arbitration agreement, Article 11 paragraph 1 introduces the following innovation in relation to the previous regime: it contains a rule of conflict, according to which the substantive validity of the arbitration agreement, beyond the formal one regulated in Article 10, is judged according to the law: a) to which the parties submitted it or b) of the place of arbitration or c) of the place governing the substantive agreement of the parties. A further innovation of Law 5016/2023 is the presumption of "arbitrability", according to which, in principle, any private and public law dispute is amenable to international "commercial" arbitration (according to the explanatory statement), unless prohibited by law (Article 3 para. 4).

Furthermore, article 22 of Law 5016/2023 is a new (special) provision that is not included in the Model Law and expressly defines fraud and gross negligence as a measure of arbitrators' liability. The provision 24 of the new law, which addresses for the first time in the Greek legal order the issue of defining the conditions of multilateral arbitrations, is also an international original. Subsequently, article 25 of Law 5016/2023 provides for the authority of the court to order the necessary injunctive measures, in any appropriate way, without being bound by the relevant requests of the parties.

Also, article 43 of Law 5016/2023 provides for the reasons for annulment of the arbitral award and changes are made compared to article 34 of the previous Law 2735/1999. Article 44 par. 2 sub. c' of Law 5016/2023 introduces a new regulation, which is not provided for in the Model Law and stipulates that the arbitration decision acts against third parties, only if these persons are bound by the arbitration agreement. Finally, the provision of article 45 of Law 5016/2023 is particularly important, which establishes the New York Convention of 1958[36] as the applicable legal regime for the recognition and enforcement of foreign arbitral awards, i.e. even in those cases where the

[36] Καλαβρός/Μπαμπινιώτης, Η Σύμβαση της Νέας Υόρκης του 1958 (Sakkoulas- online) κατ' άρθρο ερμηνεία, Μπαμπινιώτη, Θετικές προϋποθέσεις αναγνώρισης και εκτέλεσης αλλοδαπών διαιτητικών αποφάσεων, 2022.

recognized foreign arbitral award does not fall within the scope of the New York Convention.

With regard to the establishment of institutional arbitration organizations, a series of minimum conditions and requirements are established, as the mandatory announcement is established with a simple declaration of their opening to the Ministry of Justice, transparency criteria are established in their operation and their subsequent subjection to repressive control is established by the Administration (article 46). In this way, a safety and quality net is established for these organizations, without, however, any state involvement in their management.

With Law 5016/2023 the scope of articles 903 and 906 of the Code of Civil Procedure has been completely limited in its essential part and in fact these provisions are kept in force only in the part that determine the procedure to be followed for the recognition and execution of foreign arbitral awards in Greece.

In conclusion, Law 5016/2023 establishes a new, modern, unified legal framework for the conduct of international arbitrations. Along with the incorporation of almost all the amendments of the Model Law (UNCITRAL), additional pioneering provisions are introduced, even at the international level, in order to create a stable and modern framework for the arbitration of disputes, in such a way that attract foreign investors.

CHAPTER 3

Regulatory Authority for Energy (RAE)

3.1 The establishment of RAE

The Hellenic Regulatory Authority for Energy (RAE) is an independent administrative authority, which enjoys, in accordance with the provisions of its founding law, financial and administrative independence. RAE was established based on the provisions of Law 2773/1999, which was issued in the context of the harmonization of the Greek Law with the provisions of Directive 96/92/EC on the liberalization of the electricity market.[37] The foundation of an Independent Authority (RAE), with statutory provisions

[37] Αδαμαντίδου Έλσα: «Απελευθέρωση της αγοράς ηλεκτρικής ενέργειας: Η Οδηγία 96/92/ΕΚ και η ενσωμάτωσή της στην ελληνική έννομη τάξη» στο «Απελευθέρωση της αγοράς ηλεκτρικής ενέργειας» Πρακτικά ημερίδας, Εκδόσεις: Αντ. Ν. Σάκκουλα, Αθήνα, 2001

responsibilities according to article 4 of Law 2773/1999 constituted a section for the Greek data in the operation of the electricity market[38].

The transition of the electricity market from conditions monopoly in conditions of free competition had as result, the attraction of private sector entities, with questionable technical suitability and financial adequacy. It was necessary to have an organ, an authority that would objectively and impartially provide them with guarantees of evaluation and control of the interested parties, without at the same time preventing their entry into the specific market and that would also have specialized knowledge in energy issues.

RAE was established as an independent administrative body principle, which is not easily classified in the triple scheme of exercise of functions of the State according to article 4 of Law 2773/1999, while in the second paragraph of the same article expressly provides for the existence of administrative and financial autonomy of the Authority and the simple exercise of supervision by the Minister of Development, who had the exclusive right to check the legality of its actions and initiate disciplinary control against of its members.

RAE in its institutionally established Internal Regulation of Operation is committed to the implementation of best administrative practices and procedures. However, reservations are expressed mainly about the simple and non-detailed way in which these operating procedures are described in the relevant legislative texts, as well as the absence of regulation regarding important contact procedures of the Authority with third parties, such as that of public consultation and facilitation complaints. Therefore, an institutional gap is found regarding the explicit and specialized provision of the above issues.

3.2 Operation and Responsibilities of RAE under Law N.2773/1999

According to article 4 par. 3 of Law 2773/1999 RAE was appointed by five-member Council whose members had excellent scientific knowledge specialization and training with similar experience to what they are active in. These members were chosen by the Minister of Development, who also appointed the President and the Vice-President

[38] Σιούτη Γλ.: «Η επιβολή κυρώσεων από τη Ρυθμιστική Αρχή Ενέργειας», στο «Ενέργεια και Δίκαιο, τεύχος 1ο, 2004.

following the opinion of the competent Committee of the Parliament. Their tenure was five years and could be renewed only once, while they were enjoying complete functional and personal independence.

The powers granted according to article 5 par. 1 sec. a', b', c' and par. 4 of Law 2773/1999 in RAE are in principle auditable and concern monitoring and energy market supervision. [39]Therefore, RAE has the general responsibility to monitor and control the operation of the energy market in all its sectors and to make recommendations to the competent bodies to take the necessary measures to comply with competition rules and consumer protection.

Also, RAE controls the licensing procedures and in accordance with article 24 par. 4 of Law 2773/1999 with RAE's decision published in the Permits Regulation, states that compliance with the conditions for exemption from the obligation to obtain a permit and its duration is determined.

In addition, RAE has advisory powers, as it issues opinions on the granting of any type of license for activities in the energy sector. According to article 5 par. 3 of the same Law, RAE is assigned other advisory powers in the fields of electricity production, transmission, supply and distribution by presidential decrees issued at the proposal of the Minister of Development. Finally, with Law 2773/1999 the sanctioning powers of the RAE were established, enabling RAE to impose fines on violators of the provisions of this Law.[40]

In summary, the main feature of the new law is the institutional elimination of monopolies in production of electricity and the even partial, gradually increasing, opening of it electricity supply. However, Law 2773/1999 does not seem to have freed her electricity market, as well it was more involved in the wholesale market.

3.3 Operation and Responsibilities of RAE under other Laws (Second Energy Package)

With Law 2941/2001 it was foreseen that RAE acquires further and the authority to approve the implementation details of the basics Operating codes of the electricity

[39] See article 4 par. 8 of Law 2773/1999 on operational and personal independence.
[40] See article 5 par. 1 sec. d of Law 2773/1999

market, i.e. the Code Management of the Electricity Transmission System and the Code of Electricity Transactions.

Subsequently, with Law 3054/2002, RAE was assigned limited powers in the field of petroleum products, such as the advisory authority to the Minister of Development for the issuance of the relevant License Regulation, as well as the opinion on the issuance of a decision by which maximum prices are imposed for sale to consumers. Law 3175/2003 granted for the first time to RAE the right to choose a natural gas supplier for license holders of production of electrical power.

Extremely important is Law 3426/2005 which sealed the strengthening of the role of RAE and concerns the acceleration of the process for the liberalization of the electricity market as well as for the liberalization of the natural gas market gas. Pursued by this law, the incorporation into the Greek legal order of the rules of the Directives 2003/54/EC and 2003/55/EC, in order to form a uniform regulatory framework for the entire internal energy market.[41] With the new legislative framework, the number of RAE members increases to seven.[42] The members are selected after a notice published in at least four daily newspapers of Pan-Hellenic circulation. With article 3 of Law 3426/2005 the financial independence of RAE is strengthened and is now structured as follows: *"For the exercise of its powers, the RAE collects as its resources: a) Remunerative fees imposed to energy sector businesses and b) Subsidies, grants, financing of research programs and revenues from European Union and International Organizations."*

Article 2 of Law 3426/2005 provides for the issuance of an opinion from RAE to the Minister of Development *"for receiving the necessary measures concerning compliance with competition rules and consumer protection"*. In particular, it supervises the conditions, the conditions and tariffs for connecting new producers and customers electricity in order to ensure objectivity, transparency and impartiality. In the same article, a new advisory competence is established RAE for defining the terms and conditions of access to the system transmission and the distribution network, as well as the approval of the methodologies for the pricing of these services. Paragraph 5 of article 2 of the same Law states that *"RAE, taking into account its elements Competition*

[41] See article 23 of Directive 2003/54/EC and article 25 of Directive 2003/55/EC
[42] Article 27 of Law 3377/2005

Commission is required to submit to the European Commission report on holding a dominant position in the market and with behaviors that go against the rules of freedom competition."

Article 19 of Law 3426/2005 on electricity and article 9 of Law 3428/2005 on natural gas is of major importance as well *"the tariffs for access to the system, at distribution network and in the Non-Interconnected Islands are drawn up accordingly with a methodology approved by the RAE, as provided in corresponding codes. These invoices are approved by the Minister Development after the recommendation of the responsible administrator and* ***the agreement RAE's opinion.****"* We therefore conclude that the Minister of Development must issue the relevant Codes after receiving an opinion from RAE.

With article 28 par.2, "*RAE undertakes to give an opinion on the definition of the methodology for calculating the compensation due for the fulfillment of the obligations of the holders of licenses to provide public services. The amount of the consideration is approved annually by the decision of the Minister of Development after the approval of the RAE."* In article 22 of Law 3426/2005, the imposition of sanctions by the RAE is foreseen.

Finally, Law 3438/2006 in article 7 par.1 states: *" RAE has the ability to appear independently in any type of trial that has as its object its acts or omissions or the legal relationships that concern it",* giving it a special legal personality.

3.4 Operation and Responsibilities of RAE under Law 4001/2011 (Third Energy Package)

With Law 4001/2011, the national legislation is adapted to the Third Energy Package[43] and the electricity and natural gas market is fully regulated. With the first part of Law 4001/2011, the provisions of articles 3 to 8 of Law 2773/1999 are repealed and the role of RAE is institutionally upgraded, which is entrusted with the day-to-day regulatory supervision of energy markets. More specifically, Article 3 of Law 4001/2011 defines that the exercise of Energy Activities is under the supervision of the State, which is exercised by the Minister of Environment, Energy and Climate Change and RAE in the

[43] Directive 2009/72/EC "on common rules for the internal market of electricity" and Directive 2009/73/EC "on the common rules for the internal gas market."

context of their responsibilities and the long-term energy planning of the country. The difference, therefore, appears in the supervisory role of RAE which is strengthened in relation to that of the competent Ministry.

According to article 4 of Law 4001/2011, RAE now becomes the sole competent body for control, regulation and the supervision of the energy market, subject to competence of the Minister of Environment, Energy and Climate Change with an explicit requirement of articles 35 par. 1 of Directive 2009/72/EC and 39 par. 1 of Directive 2009/73/EC[44]. With this law, RAE becomes the competent body for issuing legislation concerning specialized energy issues.

Regarding the legal nature of RAE, the current regime is regulated by article 5, according to which RAE is an independent regulator authority based in Athens, has legal personality and is represented independently in proceedings which have as their object acts or omissions or legal relations concerning it. RAE is subject only to parliamentary and judicial control[45].

Also, an important regulation enshrining and protecting the guarantees of independence of the regulatory authority is reflected in Article 6 and concerns the strengthening of its financial independence. As expected in article 35 par. 5 sec. a' of Directive 2009/72/EC and in article 39 par.5 section a' of Directive 20009/73/EC, RAE acquires full autonomy in the preparation and execution of its budget, i.e. it neither requests nor receives instructions from another body. However, since RAE also has an obligation to comply with the rules of the national tax legislation, its budget is attached to the budget of the Ministry of Finance and is monitored by the Accounting and General Committee of the State and the control of the execution of the State's Budget. Finally, RAE is obliged to submit an annual report of its activities including its account, taking into account the way in which it spent its resources.

In paragraph 3 of article 7 it is stated that *" The term of office of RAE members is five years. No RAE member may serve for more than two (2) terms. During the term, RAE members are not recalled "*, thus providing important guarantees of personal and operational independence of the Authority. Article 8 refers to the composition and operation rules of the RAE and for the first time in paragraph 2 an increased majority

[44] Third Energy Package
[45] See the very interesting Council of State 4563/2015

is provided for when the Authority decides on the imposition of sanctions. In paragraph 3 of the same article, an exception is legislated for maintaining the presumption of innocence, according to which in case of a tie, the opinion of the President or the Presiding Vice-President prevails in the decisions to impose administrative sanctions.

According to article 10 of Law 4001/2011, the legal status of RAE members is still governed by the principles of independence, impartiality and transparency. More specifically, its members enjoy full personal and operational independence, are obliged to act independently of any financial interest, and operate impartially as also stipulated in article 35 par.4 sec. b' of Directive 2009/72/EC and article 39 par.4 sec. b' of the Directive 2009/73/EC on impartiality and independence of members.

Law 4001/2011 established, also, the subjection of RAE members to direct disciplinary control by a specialist disciplinary board. The provisions of disciplinary control provided for in article 11 are extremely important, because in case of disciplinary control by Central Administration bodies, there would be interference with the independence of the members of the Authority and circumvention of the European Directives of the Third Energy Package. According to paragraph 2 of article 11, the disciplinary control of members must be carried out by a body composed of judicial officers and university professors, thus providing the required guarantees of independence. In paragraphs 4, 5, 6, 7 and 8 the disciplinary procedure is established, in paragraph 9 the penalties that may be imposed on the members of the RAE are imposed, in paragraph 10 the cases of automatic disqualification of the members of the Authority and finally in paragraph 11 cases of suspension membership.

RAE's responsibilities are institutionalized in articles 12 to 26 of Law 4001/2011. RAE has the responsibility to monitor the security of energy planning and to prepare a report every two years for the electricity sector and every year for the natural gas sector with its observations It is also possible to monitor the implementation of safeguard measures in cases of crisis in the energy market or in other extraordinary cases. In paragraph 3 of article 12, RAE is defined as *"the Competent Authority for ensuring the implementation of the measures defined in the Security Regulation of Natural Gas Supply 994/2010 of the European Parliament and of the Council of October 20, 2010 "*

By order of the European Directives it was stipulated in article 13 that RAE is the only competent Authority for the granting, modification and revocation of licenses for

companies active in the field of electricity, energy and natural gas. RAE determines the procedure for granting, amending and revoking licenses, as well as the terms and conditions for exercising energy activities. Finally, RAE monitors and controls the way the rights are exercised and the compliance with the obligations of the license holders.

Article 15 enshrines the principles of impartiality, independence and transparency in the definition of Non-Competitive Activities to ensure non-discrimination and the real cost of the services provided. According to Directives 2009/72/EC and 2009/73/EC, the effective separation of networks from production and supply activities is the most appropriate means of liberalizing the energy market, by promoting non-discriminatory infrastructure investments, fair access of new entrants to the networks and transparency in the operation of the market.

Section of Law 4001/2011 is the competence of RAE in accordance with article 19 to certify the businesses that operate as Transmission System Operators for the electricity market and natural gas and to check their compliance with specific criteria. RAE may *«request any information and data from the Transmission System Operators and businesses that carry out any of the activities production or supply of electricity and Natural Gas, while at the same time, a filling control procedure can be initiated at any time of the certification criteria.»*

According to article 21, RAE establishes, monitors and supervises the application of the rules of access to the Connections, able to ask the Transmission System Operators for any information relevant to the performance of their duties while for the fulfillment of in addition to its duties, it cooperates with the competent authorities of the States - members, the Participants in the Energy Community, the neighboring countries, as well as with institutions operating within the framework of the European Union, the Energy Community, and the Euro-Mediterranean Cooperation.

Article 22 gives the RAE the authority to prepare studies, draw up, publish and submit reports, make recommendations and decide or recommend to the competent bodies the taking of the necessary measures, including the issuance of regulatory and individual acts. In any case, its action complies with Directives 2009/72/EC and 2009/73/EC, according to which the number of participants and market liquidity should increase and therefore the upgrade is necessary of the regulatory supervision of the companies operating in energy sector (electricity, natural gas).

Particularly important is article 23 according to which RAE can impose on energy companies sector measures and conditions, which are deemed necessary and appropriate to ensure healthy competition and smooth operation of the market. It is characteristic that for the achievement of these objectives, RAE has the authority to conduct investigations and cooperates with the Competition Commission.

Article 25 provides for the possibility of RAE to cooperate with European and international organizations or other bodies provided for by international agreements and conditions and of course with the regulatory authorities of its member States European Union, the Black Sea and the Mediterranean, as well as with the Organization for the Cooperation of Energy Regulatory Authorities in the contexts of Regulation EC 713/2009.

Article 26 provides for the cooperation of RAE with the Competition Commission and are distributed the responsibilities of the two authorities, with the aim of strengthening competition in internal energy market.

Finally, articles 27 to 32 legislate the means of exercising the powers assigned to RAE.

3.5 Agency for the Cooperation of Energy Regulators (ACER)

ACER was founded with the aim of integrating the Energy market and is a community body with legal personality. ACER's missions and tasks are defined in directives and the regulations of the third energy package and in particular the regulation (EC) no. 713/2009 by which the Organization was established. In 2011, pursuant to Regulation (EU) no. 1227/2011 on integrity and wholesale energy market transparency (REMIT) and in 2013, pursuant to Regulation (EU) no. 347/2013 on the guidelines for trans-European energy infrastructures, ACER was charged with additional tasks. [46]

Mission of the Agency, as defined in its founder regulation, is to assist and coordinate the actions of national regulatory authorities for energy (RAE) at EU level and to work towards the completion of the single European energy market for electricity and natural gas. ACER plays a central role in the development of a European-wide network of market rules aimed at enhancing competition. The Agency coordinates regional and interregional initiatives that contribute to market integration. It monitors the work of the European networks of transmission system operators and in particular their

[46] http://www.acer.europa.eu

programs for the development of the trans-European network. Finally, ACER monitors the general functioning of the physical markets gas and electricity, but also in particular the operation of wholesale energy trading.

By decision of the member states on 7-12-2009 (L 322/39/9-12-2009) Ljubljana, Slovenia, was determined as the seat of the Organization. The agreement was signed on 26-11-2010 in Ljubljana between Minister of Foreign Affairs of Slovenia and the Director of ACER.

CHAPTER 4

Arbitration Award

4.1 The arbitral award in the permanent arbitration of RAE

In general, the arbitral award is not appealable. With the arbitration agreement, an appeal against the arbitral award may be allowed to other arbitrators, the conditions, the deadline and the procedure for its exercise and adjudication should, however, be defined at the same time. [47]The arbitral award produces res judicata from its issuance, subject of course to the conditions in article 896 Code of Civil Procedure. The arbitration award is also equipped with enforceability. However, for the observance of the basic jurisdictional guarantees on the part of the arbitral tribunal and its compliance with the basic requirements of the legal order, the regular courts remain the guardian through the control of the arbitration award.[48]

Article 14 of the Arbitration Regulation of RAE refers to the arbitration decision on internal arbitration. The decision is made jointly between the arbitrators and the co-arbitrator both for the admissibility and the merits of the application. If there is no unanimity, the decision is made by the arbitrators and the co-arbitrator by majority vote. The arbitral award shall be drawn up in writing and personally signed by the arbitrators and the co-arbitrator. If one of the arbitrators or the co-arbitrator refuses or is unable to sign, then his refusal is confirmed in the decision and the decision is signed by the other members of the arbitral tribunal.

[47] Article 895 of the Code of Civil Procedure.
[48] Σπηλιωτόπουλος Επαμεινώνδας: «Αρμοδιότητες της ΡΑΕ κατά το ευρωπαϊκό και ελληνικό δίκαιο. Θέματα συνταγματικότητας», στο «Ενέργεια και Δίκαιο, τεύχος 15

The mandatory content of the arbitration decision includes: a) the name and surname of the arbitrators and the co-arbitrator, b) the place and time of its issuance, c) the name and surname of those who participated in the arbitration procedure[49], d) the reasons, e) the rules and f) the final determination of the remuneration of the arbitrators and the co-arbitrator, as well as the costs of the procedure. In order for the arbitral decision to be considered complete, it must be signed by the arbitrators and the co-arbitrator in accordance with Article 14 § 2 of the Arbitration Regulation. Then, the arbitrator, or by his order, one of the arbitrators is obliged to file the original of the arbitral decision with the registry of the Single Member Court of First Instance, in whose district the decision was issued. In addition, he is required to file a copy of the decision and to the Special Secretariat of Permanent Arbitration of the RAE. A copy of the arbitral award is also communicated to those who signed the arbitration agreement and to those who participated in the procedure.[50]

The arbitral award is not challenged by legal means, nor is it allowed to appeal against it, before other arbitrators. Against the arbitral award on energy disputes in the permanent arbitration of RAE, an annulment action can be brought, if the grounds of article 897 of the Code of Civil Procedure are met, and in accordance with the provisions of articles 898 to 900 of the Code of Civil Procedure.

By submitting the dispute to arbitration, in accordance with the provisions of the Arbitration Regulation, the parties undertake to comply without delay with the arbitration decision, which they cannot in any way challenge before other arbitrators, except of course the possibility of challenging with the remedies provided for in Law 2735/1999. In any case, it is possible, after the start of the arbitration process, that the parties will settle their dispute amicably. In this case, Article 28 of the Arbitration Regulation provides that the settlement is recorded by the arbitral tribunal in the form of an arbitral award.

With reference to the correction and interpretation of the arbitration award, Article 33 of Law 2735/1999 applies here. An analogous application of Law 2735/1999 (Article 34) also applies to the issue of annulment of the arbitral award.

[49] But without referring to the Regulation, which persons does he mean, such as e.g. the lawyers of the parties or the witnesses.

[50] Α. Πλεύρη, Παρουσίαση διαιτητικών αποφάσεων επί ενεργειακών διαφορών κρίσιμα νομικά ζητήματα–πορίσματα, σε: Ενέργεια & Δίκαιο 26/2017

4.2 Presentation and evaluation of the first arbitral award of the RAE

The first and so far only arbitration award of the permanent arbitration of RAE was awaited with great interest. The arbitral decision numbered 1/2013 issued in Athens in the permanent arbitration of RAE on a dispute between PPC and the company «ALUMINIUM OF GREECE S.A.», was filed by the president of the arbitral tribunal in the Special Arbitration Secretariat of RAE on 31.10 .2013, which also communicated it to the parties for their knowledge and the occurrence of the relevant legal consequences.

The arbitration agreement stated that: "The parties have jointly agreed to resort to arbitration, pursuant to Article 37 of Law 4001/2011, in accordance with the Basic Pricing Principles High Voltage Customers, as determined by RAE in its decision, with number 692/06-06-2012, but taking into account (a) decision number 798/30-06-2011 of RAE and (b) decision number 8/2010 of the arbitration court, so that RAE updates and regulates its pricing conditions, which are included in the implementation plan, after the agreement between the parties dated 04-08-2010, the draft contract dated 10-05-2010 formulated within the framework of the above decisions, the terms of supply from 06-06-2011 and contract between the parties, so that they meet the consumption characteristics of «ALUMINIUM OF GREECE S.A.» and cover at least PPC's expenses".

- *Objection of lack of jurisdiction of the arbitral tribunal*

PPC submitted an objection to the lack of jurisdiction of the arbitration court "as a necessary and inevitable consequence and result of ALUMINIUM's written and persistent refusal to recognize the existence and validity of the Framework Agreement from 04-08-2010". The arbitral tribunal rejected the said objection accepting that: a) That it is not required to invent from scratch the contractual relationship between the parties, but simply to shape it within the limits set by the arbitration agreement, b) When during the first debate the president of arbitral tribunal invited both parties to expressly confirm that they agree and accept the revision of the terms of supply and generally the terms of the contract and both parties they responded positively, c) That the request for arbitration constitutes in this case a separate contract, independent of the framework-

agreement, d) That from submitted evidence and documents, no procedural abuse occurs.

- *Appointment of arbitrators*

Each of the parties appointed its own arbitrator by its extrajudicial declaration. By decision, of President of RAE, in accordance with the provisions of article 5 § 4 of the Arbitration Regulation of RAE was appointed the co-arbitrator[51]. All members of the arbitral tribunal signed declarations of acceptance of their appointment as well as declarations of independence and impartiality and both parties signed declarations of acceptance. After its establishment, the arbitral tribunal "appointed" a secretary, in accordance with Article 3 § 2 of the RAE Arbitration Regulation.

With the minutes numbered 2/25.10.2012, the parties submitted the credentials of their lawyers and declared that they recognize the legal constitution of the arbitral tribunal, without submitting reasons for exception of its members[52]. The procedure of injunctive measures was agreed upon in combination with the prescribed one in the RAE arbitration regulation, but with full proof, and with the possibility of issuing a preliminary ruling on the jurisdiction of the court or other special issues and with the agreement of the parties to consider two witnesses on each side and two affidavits be filed.

- *The operative part of the arbitration award*

The main argument was that ALUMINIUM's electricity needs constitute 5% of the country's total needs and that if this company were to close, PPC would be forced to withdraw two lignite production units, thus exacerbating the problem of unemployment in Western Macedonia, but also with negative consequences for consumers due to price increases[53].

According to the decision of the arbitral tribunal court decided by a majority to reject PPC's requests, partially accepting its request ALUMINIUM and the review,

[51] RAE decision number 24/2012.
[52] The remuneration of the members of the arbitral tribunal was specifically determined by the 5/2013 minutes of the arbitral tribunal.
[53] http://www.kathimerini.gr/504548/article/oikonomia/ellhnikh-oikonomia/h-diaithsiadeh---aloyminioy-elyse-to-la8os-provlhma

readjustment and adjustment of the terms of supply from 07.01.2010, so that the selling price of electricity for «ALUMINIUM OF GREECE S.A.» to be Euro 40.7/MWh.

RAE requested with no. prot. RAE O-56263/17.10.2013 letter to the arbitral tribunal to be officially notified of the result of the arbitration, in order to take any actions related to the arbitral tribunal's decision and the decision 346/2012 of the RAE for the determination of a temporary price.

- *Remuneration of members of the arbitral tribunal and determination of costs*

The remuneration of the arbitrators was set at 44,000 euros for each arbitrator and 10,000 euros for the secretary. Each party was appointed to pay half of these, and these sums were advanced. In this case, the arbitral tribunal decided on the application of Article 14 of the RAE's Regulation and Articles 178 and 882 § 5 of the Code of Civil Procedure.

4.3. Comments on the arbitral award

The decision of the Board of Directors of PPC according to which it was referred to arbitration had set as an "absolute condition" until the issuance of the arbitration decision, conditions of temporary pricing on the part of PPC and consistent payment on the part of «ALUMINIUM OF GREECE S.A.» for electricity consumption, according to provisions of the 04.08.2010 framework agreement. This condition was not applied by «ALUMINIUM OF GREECE S.A.», which from the day of signing the above agreement stopped paying the debtors electricity bills to PPC, putting forward the argument of the existence of an arbitration procedure, which would decide on the issue, resulting in the accumulation of debts to PPC in violation of the agreed terms.

Therefore, it could be argued that dietary procedure suffered as a whole from invalidity, because the conditions under which the authorization was given by the administrative board of PPC, and which accepted the referral of the dispute to the permanent adjudication of RAE under this condition and only under the condition that the terms of the agreement would be respected. So, there is a valid reason for invalidity, specifically due to the non-compliance with the conditions under which PPC's board of directors authorized PPC's participation in the dietary process. In fact, following the above, PPC submitted it objection of lack of jurisdiction of the arbitral tribunal, but

only on the basis of non-compliance by the other party regarding the terms of the 08.04.2010 framework agreement, which interpreted as "a written and persistent refusal of «ALUMINIUM OF GREECE S.A.» to recognize its existence and validity".

Also, there was an issue separation of the positions of the contracting parties regarding the very subject of the dispute that was referred to the RAE arbitration. «ALUMINIUM OF GREECE S.A.» expressed objections as to what the subject matter of the arbitration would be, and thus one could reasonably argue that there can be no arbitration when the two parties have not even agreed on the matter on which the arbitral tribunal will be called upon to rule.

From a procedural point of view, it is noteworthy that the agreement of the parties to submit their dispute to the permanent arbitration of RAE was concluded on 4.08.2010. By the said agreement, it was implicitly decided that the procedure would was carried out in accordance with the current arbitration regulation, i.e. the provisions of Presidential Decree 139/2001 combined with Law 2773/1999. However, the arbitral award specifies, among other things, that "with the consent of the parties" the arbitration procedure will be conducted in accordance with the Arbitration Regulation of the RAE.

Also, the question of the deadline for the issuance of the arbitral award is of interest, and this because in this case the six-month period provided for in the RAE arbitration regulation exceeded by four and a half months. More specifically, according to article 8 of the RAE arbitration regulation, *the arbitration court ensures the timely completion of the procedure, so that it is concluded, with the issuance of an arbitral decision, within six months of the submission of the application for arbitration. In the event that the above deadline cannot be met, the President of RAE, at the request of any of the parties, sets a reasonable deadline for the completion of the arbitration.* In this case, even if it were assumed that the arbitration proceedings started in December 2012, when the parties submitted their applications for arbitration to the arbitral tribunal, and not when the arbitration agreement was submitted to the 18.11.2011, as well as given that the dietary court granted extensions to the cut-off dates, the arbitral award was issued on 31.10.2013, instead of 14.06.2014, as it should be, and therefore we have exceeded the six-month deadline approximately equal to doubling the legal deadline.

Issues also arose during selection of the president of the arbitral tribunal. The person chosen to preside over the arbitral tribunal was expected to raises questions about its

impartiality despite the fact that there was, on his part, a clear statement acceptance, independence and impartiality and even though the parties expressly agreed on the selection of the person in question, and this because this person was at the same time a member of the RAE Plenary. The problem was that before the commencement of the arbitration in question, the RAE had dealt with various matters concerning the parties and therefore, the chairman-elect had taken part in them as well. In fact, in some of these issues he had voted, when a vote was required, in favor of «ALUMINIUM OF GREECE S.A.». In addition, the elected president of the arbitral tribunal court ruled on the issuance of an arbitral award against the 36/2011 opinion of RAE, of which it is a member, according to which the average cost of electricity production and trading amounts to Euro 69.78/MWh, fully accepting the opinions of «ALUMINIUM OF GREECE S.A.».

Furthermore, there were also issues in the selection of arbitrators, specifically press reports, questioned the impartiality of the arbitrator who was appointed by «ALUMINIUM OF GREECE S.A.», because according to them the arbitrator appointed by the company, who ruled in its favor during the extradition of the arbitration decision, is none other than the "groomsman" of a director in the Mytileneos Group, who, in fact, served in the position director of regulatory affairs, i.e. this person was responsible for issues related to RAE. In addition, «ALUMINIUM OF GREECE S.A.» had proposed, as an arbitrator, one person who was not accepted by PPC, but subsequently this person was examined as a witness in the arbitral proceedings, as a result of which questions were raised regarding the reliability of the testimony of this person.

Very important is the fact that in addition to the various issues, the decision numbered 1/2013 of the arbitration court of the permanent arbitration of RAE also created issues with the EU, regarding low price it set for the supply of electricity. In particular, the EU had in the past already ruled that the then price of electricity, which was already higher than 42 euros/MWh, i.e price temporarily determined by RAE (fixed price) for the supply of electricity from «ALUMINIUM OF GREECE S.A.», in May 2012, it constituted illegal state aid, referring the country to European Court of Justice, regarding this matter.

Also, as expressly provided, and given that the vast majority of debts of «ALUMINIUM OF GREECE S.A.» comes from charges that it disputes unilaterally, it is concluded that the possibility to address the competent authorities and the arbitral tribunal to pay it the relevant amount in an escrow account.

Finally, important problems regarding European legislation, arise from the non-harmonization of the arbitration decision with market rules. Particularly, the price of the supply of electricity from a supplier to a customer is not determined by a court decision but by its rules specific energy market, e.g. based on cost, demand and the possibility that customers belonging to the same category can enjoy the same benefits. In the relevant discussion, a characteristic example is offered by the decision of the European Commission in in connection with illegal state aid to «ALUMINIUM OF GREECE S.A.» via preferential electricity supply tariffs for the period from in January 2007 to March 2008. Although the tariffs in question were set by a decision of the Single Member Court of First Instance of Athens, this did not prevent the EU from considering them illegal state aid and thus "bringing" Greece before the Court of Justice of the European Union. Therefore, an additional conviction of Greece for breaching Article 107 TFEU must be taken for granted, and to constitute illegal State aid, it must, a) be state intervention or aid granted through a state channel, as here PPC, b) to be awarded unfair advantage to the recipient, as in this case, as other industrial customers cannot achieve the same price, c) affect the intra-community trade, a term that occurs here as there are other aluminum plants in the EU, which do not benefit from the price in question validity, d) to threaten or distort competition, which also applies here.

In conclusion, the object of the arbitration trial was in fact at what price PPC should to sell each MWh to «ALUMINIUM OF GREECE S.A.» and not if it will be its provider. PPC, therefore, invoicing «ALUMINIUM OF GREECE S.A.» based on the cost of cheap lignite production, it was effectively selling to it at a loss, because that cost is significantly lower than its marginal cost. Much more, especially, when the supply price from PPC, which was determined by the arbitration, does not represent the full cost of its lignite production, but only the variable cost, i.e. practically only the cost of fuel and not other costs, such as payroll, maintenance costs, etc. Since the production of aluminum requires significant amounts of electricity consumption, aluminum producers, internationally, practice unbearable pressures for low prices so they can be competitive. For example, from the amount of 36.7 euros that was decided by a majority

arbitration court that PPC should be paid for each MWh it sells in «ALUMINIUM OF GREECE S.A.» compared to the 50-55 MWh it sells to its other industrial customers of a similar order of size, there is a difference approximately 13-18 euros, which is equivalent to an additional subsidy from PPC to «ALUMINIUM OF GREECE S.A.».

CHAPTER 5

Two cases adjudicated by Greek arbitration courts

This section will analyze some issues of procedural and substantive law that occupied the arbitral tribunals that were called upon to resolve the energy disputes in question. More specifically, issues related to:

5.1) Decision of the Three-member Arbitration Court of 5.6.2002

Type of Arbitration : It was an ad hoc, internal arbitration, where the provisions of articles 867 et seq. of the Civil Code were applied.

Existence of Arbitration Clause or Co-Promisor: The arbitration clause was contained as a contractual term and among other things contained the condition that the arbitrators are free from any procedural or substantive provision of law, that they apply the rules of good faith and leniency and that they alone determine the arbitration procedure and can extend the deadlines.

Composition of the arbitral tribunal: The arbitration court had a three- member composition. Both the two arbitrators and the third arbitrator, that was president of the court, were university professors. The president of the Swiss Federal Court appointed, in accordance with the provisions of the arbitration clause and after the failure of the parties to agree, the third arbitrator and president of the arbitration court. A lawyer was appointed secretary of the arbitral tribunal.

Matters of Procedure and Duration of Arbitration: The arbitral tribunal was constituted in June 2000 and the arbitral decision was issued in June 2002, i.e. the said arbitration lasted 2 years. Prior to the commencement of said arbitration proceedings,

four other arbitrations had been held between the parties, with a similar subject matter and corresponding arbitral awards had been issued. Further, prior to the said arbitration, four meetings had taken place with discussions, regarding the determination of the price of electricity from 1.1.1999, but the parties did not reach an agreement. The arbitration request concerned the determination of the base price, which is made up of four individual specific data (capital cost, operating costs, transport costs and fuel costs) and the renegotiation of the contract from 06.25.1960. In said arbitration, documents were filed by the parties under the headings for: "arbitration request", "answering memorandum", "rebuttal" and "replying memorandum". Requests for production of documents were also submitted to the arbitration court, witnesses were examined and purchases were made, while special legal expertise was brought in.

Subject of the dispute: With the electricity supply contract of 25.06.1960, the supplier producer company undertook the obligation to provide the necessary electricity for the operation of an alumina and aluminum factory, belonging to S.A. The dispute, which arose between the electricity producer- seller- (arbitration claimant) and the buyer (arbitration defendant), concerned the supply price of electricity and more specifically its determination and updating. Therefore, the request of the arbitration proceedings was the formation of the legal relationship.

Procedural Issues of Arbitration: In this arbitration, the arbitrators appointed by the parties found it impossible to agree both on the subject of the seat of the arbitration and on the person of the president of the arbitration court and these were appointed, in perfectly, according to the provisions of the arbitration clause by the President of the Federal Court of Switzerland.

Matters of substantive law that concerned the arbitral tribunal court: Important issues, which concerned the arbitration court, were the updating of the electricity supply price, the TOP clause contained in the arbitration contract and its non- contradiction to the article 82 EC. In addition, issues of the application of rules 81 and 82 EC and the possibility of discriminatory treatment, issues of state aid (existing aid at the time of entry into force of the EU Treaty in Greece and Regulation 659/1999) as well as issues of the application of European competition law were examined, but also whether there is competence of the arbitral tribunal to judge a state aid. Regarding Articles 81 and 82 EC, the court accepted that Article 81 EC does not apply in the present case, for the

reason that Article 82 EC applies. In relation to the TOP clause, the court accepted that it did not infringe Article 82 EC because, there is no decision of the European Commission or the CJEU or national courts declaring a similar clause invalid as contrary Article 82 EC. In fact, the compatibility of the TOP clause with the provision in question already emerges from its purpose, according to which large consumers of electricity must be sure that they have the necessary amount of electricity, especially when, as in in the present case, the production of the defendant's factories could not be interrupted at any time. But even under the version that the clause in question was characterized as a full coverage clause, it would not be invalid, as it follows from the jurisprudence that even if such a clause does not constitute abuse per se, it is prohibited only if it develops a " foreclosure effect", i.e. if it constitutes a barrier that prevents competitors of the plaintiff electricity producer from entering the market and supplying the defendant (buyer). Such a foreclosure effect can exist even when there is no actual competition (as in the present case), but it is sufficient that there is potential competition. In addition, the court accepted that differentiated prices, depending on the different circumstances of each customer, are not prohibited.

In addition, the possibility of applying the rules of good faith and changing the calculation of the price was decided by the arbitral tribunal. In particular, regarding the adaptation of the Convention to the change in conditions, the arbitral tribunal accepted that Articles 288 and 388 of the Civil Code do not apply. In leniency, however, the court decided that part of the formula used to calculate the price should be slightly changed.

Purchase Charge based on the contractual term "Take or Pay": A detailed reference is made in the arbitration decision to the charges based on the contractual term TOP (purchase charge regardless of gas receipt) and in particular to the relevant contractual conditions, to the corresponding legislative provisions (articles 24 5 3 of Law 3175/2003 and 28 § 4 of Law 3428/2005), but also in the relevant competence of RAE, given that the plaintiff had sent a complaint to RAE in relation to the TOP contractual clause. RAE requested complete relevant documentation from the natural gas supply company and, after completing on its part, the control of the calculations and charges related to the TOP clause, informed the plaintiff by letter. As to the vagueness regarding the charges for natural gas quantities received, the court accepted that there was none, according to the forms and provisions of the contract.

5.2 Decision of the Three- member Arbitration Court of 10.10.2012

Type of Arbitration: This was an ad hoc, internal arbitration, where the provisions of articles 867 et seq. of the Civil Code were applied.

Composition of the arbitral tribunal: The arbitration court had a three- member composition, consisting of two law professors, as arbitrators appointed by the parties, and by the Honorary President of the Supreme Court, as co-arbitrator, who was appointed by the two arbitrators. The arbitral tribunal appointed a retired judicial officer as secretary.

Matters of Procedure and Duration of Arbitration: "A" (seller) appealed to arbitration with an "appeal request" on 19.01.2011. The arbitral action came along with two requests. The first related to monetary claims in relation to an annual charge for transmission capacity and the second in relation to a charge for annual shortfall quantities, i.e. claims from a "Take or Pay" (TOP) clause, which, however, the defendant refused as he claimed force majeure. The arbitrators were appointed in accordance with Article 872 of the Civil Code, ie each party appointed one arbitrator. Additionally, the arbitral tribunal, defined rules and principles for the conduct of the arbitral proceedings, such as the principle of equality and hearing the parties on both sides, in accordance with the law provisions of article 886 of the Civil Code, clarified procedural issues of the arbitration and determined the time schedule of the arbitral trial. It is noteworthy that, in terms of the arbitration procedure, the court determined that it will apply the provisions of Law 2735/1999 on international commercial arbitration in parallel with the Civil Code. The court, also, chose the procedure of injunctive measures, but with full proof and without excluding the issuance of a preliminary ruling or expert opinion, if this is necessary. In accordance with the definitions of the arbitral tribunal, the parties filed written pleadings and then developed their claims orally. The defendant counterclaimed with her proposals, with a request for amounts of charges which she had paid, due to reserved transport capacity and which she requested to be returned to her, based on the provisions of the Convention and the provisions of unjust enrichment, as she argued that did not owe them, due to force majeure. The arbitral tribunal issued a preliminary ruling in relation to the production of documents, partially granting the relevant request and rejecting the counterclaim.

The minutes were taped and the parties produced and relied on technical and financial reports as to the issues in evidence. The court also evaluated affidavits, court documents and procedural agreements. Also worth mentioning is the fact that, in this case, a request was submitted to postpone the scheduled discussion, due to the participation of the attorneys in the abstention. The arbitral process in general had distinct features of procedural flexibility, such as, for example, the examination of witnesses started in one court hearing and continued in the next. The arbitral award was issued on 11.09.2012 and it partially accepted the claim and counterclaim, while it was notified to the parties through the secretary of the arbitral tribunal. The duration of the arbitral trial amounted to 21 months.

Subject of the dispute: The dispute was created between the natural gas supplier company (seller) and an anonymous company (buyer) and it was about claims from a Contract for the supply, sale and delivery of natural gas at the at the station of the purchasing company, which was signed in the year 2008. In this Agreement, a trial period was foreseen and was concluded after a long negotiation. In addition, there were claims under the TOP clause, i.e. in relation to annual shortfall charges. The bill for the sale of natural gas included a transmission capacity charge and a power charge. The contractual selling price of natural gas was calculated according to a certain formula, as usually happens in contracts of this kind.

Purchase Charge based on the contractual term "Take or Pay": The defendant, also raised an objection of abusive exercise of rights (281 Civil Code). The court dealt with the formula for calculating the contractual price of natural gas, the method of charging the disputed tariffs and the application of specific Ministerial Decisions, the declaration of annual transmission capacity, as well as the provisions of the Natural Gas Management Code regarding the exemption from financial obligations. The court also dealt with the legal nature and interpretation of the TOP clause in long- term gas supply contracts, in the context of Articles 24 § 3 of Law 3175/2003 and 28 § 4 of Law 3428/2005.

In addition, the court analyzed the concept of force majeure, taking into account the relevant theory, and jurisprudence of national courts and the CJEU and examined its possible assistance in the disputed case, due to a rare event of damage to machinery, assessing the provisions of the contract for exemption from liability due to force

majeure and the observance or not of the relevant notification formalities, as a condition for this. The court applied articles 288 and 388 of the Civil Code and examined the possible violation of the obligations imposed by these provisions on the transactional behavior of the parties. In conclusion, the court accepted that there was a case of force majeure for exemption from some claims and made use of the corrective intervention and operation of good faith.

CHAPTER 6

6.1 Conclusions

In recent years we have seen radical and highly decisive changes in the energy sector both at national and European level. In particular, the Third Energy Package played a decisive role, which it tried to secure energy as a social good, in the midst of the biggest financial crisis of the world economy, thus attempting energy security.

Based on the cases that were extensively analyzed in this thesis and which were decided by the Greek arbitration courts as well as in most of the cases in which the Greek arbitration courts took charge, we notice that our internal legislation is influenced and adapted to international legislation, a fact which is worthy of concern. It is obvious that the great importance of the energy regulatory authorities is connected with the central imperative of the European Union and its member states for sustainable development with respect for citizens and the environment. The energy sector has always been a key sector of the international economy, which nowadays is considered to be particularly developing.

Within this context, RAE, from the time of its foundation, was institutionalized as a result more of our need to comply with the Community Right, rather than as an autonomous choice of the Greek legislator. The EU set new national authorities in each EU country, commonly known as "energy regulatory authorities", which ensure fair competition. These authorities supervise the system and ensure that energy companies comply with the rules. They have extensive powers so to be able to impose sanctions in cases of anti-competitive practices and to assist them consumers to make the best possible choice. The claim on the establishment of RAE as a necessity for our compliance with the Right of European Union, it is reinforced by regulators' reluctance to disengage from government tutelage and their institutional shielding from electorally changing policies in their respective economic areas of regulation, as analyzed in this thesis.

The political independence of regulatory authorities is a contentious issue. In order to achieve the independence of the regulatory authorities, it is important to decouple the term of office of the members of the authorities from the elections, as well as to confer

substantial regulatory powers, as is rightly provided for in national legislation today. Also, the cross-party type of appointment and termination of their members would strengthen the independence of the authorities, a fact that governments are reluctant to follow.

RAE's action is undoubtedly important, however, until 2011, while its goal was to ensure the required independence, in reality this was not achieved. In 2011, however, with the integration of Third Energy Package, substantial changes to the powers, action and legal characteristics of the authority were legislated, thus demonstrating the value of substantial independence of the national regulatory authority.

Also of particular interest is the relationship between energy arbitration and international investment arbitration. In relation to energy and investment arbitrations, in cases involving expropriation or long-term claims, claims can run into the hundreds of millions. In such cases the arbitration procedure is distinguished for its speed and efficiency. In this context, the agreement must comply with both the requirements of the European Union and the international market for the protection of foreign investments, with the aim of improving conditions and market liberalization. Finally, fair and equitable treatment of investments should be ensured, following due process, with the aim of non-discrimination and prompt, adequate and effective compensation according to the fair market value of the expropriated investment compared to international investments in case of raising such claims.

Therefore, in order to resolve investment energy disputes between foreign investors and host states, arbitral tribunals apply national and international law. The freedom of the disputing parties and the arbitrators to determine the applicable law in the arbitration, but also the hybrid nature of the legal relationship between "foreign investors" and investment host states, has as a consequence the significant interaction between the national and international legal order as and the application of relevant legislative regulations in the context of arbitration between an investor and the host state of the investment.

To conclude, we note that the penetration of the institution of arbitration in Greece is small and this is partly due to the mistrust and insecurity of the involved parties regarding the arbitration process especially when the interests that are affected, are in conflict with each other and the economic figures are in a great imbalance, while the

institution of definitive justice in the first and last instance increases the degree of mistrust and legal certainty of the parties. In Greece, the will of the State for comprehensive institutional shielding which will lead to the complete independence of the RAE is limping, and more so the role of the RAE is harmonized with the European will and international rules. In Europe, the role of regulatory authorities is strengthened through the establishment of a new model of European energy cooperation. For this purpose, the Agency for the Cooperation of Energy Regulators (ACER) was established, which leads to communication and coordination with the aim of completing the single European energy market.

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