

Belgian Parliament Amends Bill Establishing Brussels International Business Court



On 10 December 2018, the Commission for Justice of the Belgian Parliament published [a second draft bill](#) (the **Bill**) for the creation of the Brussels International Business Court (the **BIBC**). The Belgian government had already approved [a first draft in October 2017 and submitted it to Parliament in May 2018](#). The Bill now aims to reflect the opinions expressed by the Belgian Council of State and of the High Council of Justice (*Hoge Raad voor de Justitie/Conseil supérieur de la Justice*), as well as the amendments suggested by various members of the Parliament. This being said, the key features of the BIBC remain largely unchanged.

The BIBC will have jurisdiction to hear international disputes arising between enterprises and for which other courts do not have exclusive jurisdiction. The jurisdiction of the BIBC will be based on the mutual consent of all parties. This consent will materialise either in a contract or in a jurisdiction clause in a contract whereby the parties agree to submit all or some disputes in connection with a particular legal relationship – contractual or not – to the BIBC. Consent may also be found in a judgment issued by another Belgian, foreign

or international court – including an arbitral tribunal – referring the dispute to the BIBC. According to the Bill, a dispute will be considered as “*international*” if (i) the parties to the dispute are established or have their usual residence in different States; or if (ii) a substantial part of the obligations arising out of the commercial relationship between the parties in dispute, or the place with which the dispute has the closest relationship, are not in the same State as the establishments or the usual residences of the parties; or (iii) elements of foreign law are necessary to determine the dispute.

However, while the original Bill included a provision according to which the parties would have been able to agree that their dispute possessed links with more than one State (which would have been sufficient to trigger the jurisdiction of the BIBC), that provision has now been deleted. This deletion follows the Council of State’s remarks that such a dispute would not be objectively international. In addition, the Bill formerly obliged the parties to demonstrate that a language other than French, Dutch or German was commonly used in the context of the relationship which gave rise to the dispute. This condition has now also been removed.

The BIBC’s rules of procedure will be based, *mutatis mutandis*, on the UNCITRAL Model Law. By way of illustration, the BIBC may order interim measures and issue preliminary injunctions under conditions inspired by those provided for in the UNCITRAL Model Law. However, unlike the latter, the Bill does not impose that the parties’ agreement submitting their disputes to the jurisdiction of the BIBC be in writing. Interestingly, the Bill also borrows foundational notions of international arbitration law. It distinguishes the seat of the BIBC (*i.e.*, Brussels) from the actual location of the proceedings, including the deliberation, the hearing of witnesses, experts and/or parties, as well as the inspection of evidence or merchandise (*i.e.*, any place that is deemed

appropriate by the members of the BIBC). The Bill also allows the BIBC to rule on its jurisdiction (*i.e.*, *kompetenz/kompetenz* principle) and also introduces the principle of separability (*i.e.*, the principle according to which a jurisdictional clause in a contract is independent from the main contract and can thus be enforced notwithstanding the unenforceability or invalidity of the underlying contract).

The working language of the BIBC will be English. However, appeals on points of law to the Belgian Supreme Court (see below) and requests for preliminary rulings to the Constitutional Court will be made in either Dutch or French. In addition, third-party interventions may be made in either Dutch, French or German. In such a case, the submissions and pleadings will be translated into English.

Decisions issued by the BIBC will not be subject to appeal – with the exception of appeals on points of law before the Belgian Supreme Court.

Finally, the BIBC will be staffed by both professional judges and legal experts from domestic and foreign jurisdictions.

The BIBC is still set to open its doors on 1 January 2020.

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