

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

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In October 2017, as already reported in a previous post, the Belgian Government announced its intention to set up a specialised English-speaking court with jurisdiction over international commercial disputes, the Brussels International Business Court (“BIBC”). An update version of the text has finally been submitted to Parliament on 15 May 2018, after the Government’s initial draft faced criticisms from the High Council of Justice (relating to the BIBC’s independence and impartiality, its source of funding and its impact on the ordinary courts) and was subject to the review of the Conseil d’Etat.

In the wake of Brexit, the Belgian Government aims at establishing a specialised business court able to position Brussels as a new hub for international commercial disputes, in line with its international status as *de facto* capital of the EU and seat of many international institutions and companies. Similar projects are ongoing in several jurisdictions throughout the EU, including France, the Netherlands and Germany (see previous post).

The BIBC will have jurisdiction over disputes:

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

- provided that the parties have agreed to the BIBC's jurisdiction before or after the crystallisation of their dispute.

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

- the procedure will be conducted in English (notices and submissions, evidence, hearings, judgments, etc.);
- while the BIBC remains a State court, the procedure will be based on the UNCITRAL Model Law on international arbitration, which means that the parties will be offered greater flexibility and room to organise the conduct of the proceedings;
- the cases will be heard by *ad hoc* chambers of three judges, one professional and two lay judges (appointed by the president of the BIBC on the basis of a panel of Belgian and international experts in international business law), with the assistance of the Registrar of the Brussels Court of Appeal;
- the BIBC will be granted the power to issue provisional and protective measures (including upon request *ex parte* measures);
- no appeal will be open against the BIBC's decision (with the exception of an *opposition/tierce opposition* before the BIBC for absent parties/interested third parties, and a *pourvoi en cassation* on points of law before the Supreme Court);
- the BIBC should be self-financing and the court fees are therefore going to be significantly increased (to around € 20,000/case).

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