

CHRISTOS K. POULIOS

Attorney-at-Law at the Greek Supreme Court (Areios Pagos)
Accredited Mediator from the Greek Ministry of Justice & the C.E.D.R.
M.Sc in Urban and Regional Planning & Regional Development
113 Koutarelia str * 383 33 Volos * E-mail: poulioschristos@gmail.com
Videophone & Fax: 0030-24210-78.278 * Mobile: 0030-6972-44.69.31
Skype: poulios.christos * Twitter: @ PouliosChristos

**ARBITRATION & MEDIATION
NEXT TO THE REGULATORY AUTHORITY FOR ENERGY (R.A.E.)
IN GREECE**

Supervisor: Dr. Theodoros Panagos

PART 1: INTRODUCTION

1.1. Greece has long lost the initiative of regulating on key sectors of its juridical reality. Gasping for air, it strives to keep up with current affairs and demands, taking any major steps only after some "prodding" by the European Union, in the form of some directive or regulation.

1.2. Hence, the country had to acquire a Regulatory Authority for Energy (RAE) and has finally institutionalized a permanent arbitration mechanism within it, issuing just a few months ago its first award.

1.3. Arbitration, as a way to resolve private disputes away from the courts, has existed for a long time, with provisions reaching the hard core of the Code of Civil Procedure (CCP), as well as with permanent mechanisms in other areas of economic and commercial

activity¹, such as the permanent arbitration of the Athens Chamber of Commerce and Industry (ACCI), of the Technical Chamber of Greece and the Trade Chamber of Athens, without however enjoying the same success it has abroad and despite its undisputed benefits². But now, for the first time, there is a specific permanent mechanism for the energy sector and its multidisciplinary³ law, which is arguably where nowadays the greatest mobility and ongoing developments occur.

1.4. Furthermore, our country had to have a legislative framework relating to mediation, another way of resolution of private disputes, characterized by some as "extrajudicial," while by others as "alternative", also taking its first steps but still without any noteworthy results. As far as the energy sector is concerned, one must notice that there hasn't been so far even the slightest theoretical preoccupation, nor any considerable application whatsoever.

2.1. This paper aims to examine the legislative framework of permanent arbitration next to RAE as well as that of mediation and the possibilities it has to offer, like the first, in resolving private disputes in the Greek energy sector.

2.2. In particular, there is an exhaustive presentation on the provisions of laws governing RAE's permanent arbitration mechanism and especially its Regulation of Arbitration and the details of its operations as a whole, focusing on the legal and operational problems and discrepancies that arise, pointing to existing opinions concerning them, when there are any, and contributing my suggestions and solutions for them.

After that, the first and only arbitral award produced by that mechanism is presented, with all the problems that it has and carries with it, along with a useful for the reader annex including the before and after its issuance facts and acts.

As far as mediation is concerned, after a brief presentation of this institution its value for the energy sector is highlighted, in parallel with the necessity for such a permanent mechanism next to RAE, aside the one for arbitration, with my propositions about specific legislative provisions.

Finally, an extensive critical overview of all of the above mentioned items is cited, with lots of proposals for the improvement of the existing situation and for future perspectives, both in legislative and practical terms.

¹ Athens Chamber of Commerce and Industry (ACCI): P.D. 31/1979, Technical Chamber of Greece: P.D. 723/1979, Professional Chamber of Athens: P.D. 841/1980 of 29-8/10-9-1980, Hellenic Chamber of Shipping: M.D. 437/26/6/10-07-1969

² Kaisis Ath., Annulment of Arbitral Awards, 1989, p. 19-40

³ Sinodinos C., Multidisciplinarity of Energy Law, Energy & Law, vol. 1/2004, p. 5-12

3. The European Framework of Regulatory Authorities for Energy

3.1. The European Directives on Regulatory Authorities

Article 23 of Directive 2003/54/EC of the European Parliament and of the Council of 26-6-2003 "concerning common rules for the internal market in electricity and repealing Directive 96/92/EC⁴" and Article 25 Directive 2003/55/EC of the European Parliament and of the Council of 26-6-2003 "concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC⁵", invited member EU countries to establish independent regulatory authorities to ensure impartiality, effective competition and the efficient functioning of the market for electricity and natural gas respectively, thus clearly defining the responsibilities that should the regulatory authorities of its member states should have, so that there is a lowest common denominator⁶.

4. The operational framework of the Greek Regulatory Authority for Energy in Greece

4.1. The Recommendation

As a result of the aforementioned Directives and not because of some constitutional requirement⁷, this authority was created in Greece with L. 2773/1999 "Liberalization of the electricity market - Energy policy issues and other provisions", according to which⁸, the "Regulatory Authority for Energy (RAE)" was established, functioning as an independent administrative authority, with administrative and financial autonomy, supervised by the Minister of development regarding control of the legality of its actions and disciplinary control over its Athens based members.

⁴ Directive 96/92/EC for the liberalization of the electricity market

⁵ Directive 96/92/EC for the liberalization of the gas market

⁶ Decision No. 2003/796/EC of 11-11-2003 of the European Commission, establishing as an institution, the "European Regulators Group for Electricity and Gas" (ACER - the EU Agency for the Cooperation of Energy Regulators), in an advisory role to achieve cooperation and coordination of national regulatory authorities of the Member States, in order to promote the development of the internal markets of electricity and gas and better implemented the relevant EU directives."

⁷ Spiliotopoulos Ep., The Powers of RAE in European and Greek law, Constitutionality Issues, Power & Law, No. 15/2011, p. 1

⁸ Article 1 § § 1 and 2 of Law 2773/1999

4.2. Legal nature, administrative and financial autonomy

As an independent authority, RAE has legal personality and independently attends trials concerning its actions, omissions or legal relations, subject only to parliamentary and judicial control⁹. It has moreover administrative and financial autonomy and its own budget, during the execution of which it enjoys full autonomy¹⁰.

4.3. Responsibilities

By that statute¹¹ and in particular the amendments that followed¹², the latest great supplement being that of L. 4001/2011¹³, RAE was given authority to monitor and control the energy market in all sectors, namely electricity generation from fossil fuels, renewable energy and natural gas, as well as specific responsibilities pertaining to the purchase of petroleum products.

And though originally¹⁴ RAE had mainly advisory powers, in compliance with EU requirements and energy market needs and through a number of other legislative provisions, it was given extensive decision-making powers, enabled through article 1§3 of L. 2773/1999¹⁵, such as the resolution of certain disputes¹⁶ and the creation of a permanent arbitration mechanism¹⁷.

Particularly following L. 4001/2011, RAE acquired all executive powers on energy¹⁸, decides itself and publishes its decisions straight to the OGG (Official Government Gazette) with no need of a ministerial approval/ decision, except in the case of the Supply Code for customers, where it reserves a compulsory advisory jurisdiction, in the sense that it confers its opinion to the Minister, who finally rejects or not the advisement at hand and eventually decides thereon.

⁹ Article 5 of Law 2773/2009

¹⁰ Article 6 of Law 2773/2009

¹¹ Law 2773/1999

¹² As the Law 2837/2000, Law 2941/2001, Law 2992/2002, Law 3054/2003

¹³ Article 4 of Law 4001/2011: " (1) the control, regulation and supervision of energy markets, without prejudice to the powers of the Minister of Environment, Energy and Climate Change, are exercised by RAE, set up by Law 2773/1999 and this is the national regulatory authority on electricity and gas, within the meaning of Directives 2009/72/EC and 2009/73/EC. (2) RAE exercises the powers laid down in Chapter III of Part One and those that are given in addition, according to the provisions of this law."

¹⁴ Article 5 § 1 of Law 2773/1999

¹⁵ Article 5 § 3 of Law 2773/2009: "Through Presidential decrees issued by a proposal of the Minister of Development, RAE can be assigned other advisory functions relating to the generation, transmission, supply and distribution of electricity or any other form of energy. The decrees define the way and the details of the exercise of those powers and the individual administrative acts and regulatory decisions issued after consulting with RAE".

¹⁶ Papantoni M., Energy Law, 2003, pp. 211-212

¹⁷ Fortsakis T., Energy Law, 2009, p. 112

¹⁸ as indicative for production licenses, operation codes and transaction management, natural gas, pricing regulations, etc.

5. Arbitration

5.1. The legal framework of Arbitration in Greece

Alongside the state jurisdictional order, which according to the Greek Constitution¹⁹ awards justice through ordinary courts and judges enjoying operational and personal independence, there is also a sui generis²⁰ juridical institution exercising judicial work, that of arbitration, awarding justice by non-state bodies, the so-called arbitrators, with anything not falling under the first belonging to the second and vice versa²¹.

5.1.a. Domestic Arbitration

Private-law disputes, where no elements of "foreignability" are involved, may be subject to arbitration²², which is then called "domestic", provided that there is an agreement and the parties have the power to dispose of the subject of their dispute. Labor disputes²³ are explicitly excluded.

The conduct of domestic arbitration is regulated in the 7th chapter of the Code of Civil Procedure (Articles 867 through 903).

5.1.b. International Arbitration

Arbitration in cases of disputes arising from international transactions, or which sets in motion the interests of international trade²⁴, or according to the prevailing view in Greece, "contains the element of 'foreignability'" is called "international" and is governed by the provisions of L. 2735/1999 "International Commercial Arbitration", which incorporated, after some changes, the relevant UNCITRAL Model Law.

This law sets out in detail which differences have the required cross border element, for their inclusion in its settings²⁵.

¹⁹ Article 87 § 1 of the Greek Constitution

²⁰ Foustoukos Agg., Arbitration (Studies, Articles, Speeches), 2000, p.15

²¹ Kousoulis St., Law of Arbitration, 2006, p.2

²² under Article 867 Code of Civil Procedure

²³ laid down in Article 663 Code of Civil Procedure

²⁴ Foustoukos Agg., Arbitration (Studies, Articles, Speeches), 2000, pp. 77-78 & 267

²⁵ Article 1 § 1 & 2 of Law 167/1999: "(2) The arbitration is international when: (a) the parties have, at the conclusion of the arbitration agreement, their place in different states, (b) one of the following sites are not located in the country in which the parties have their establishment of business: (aa) the place of arbitration, if determined by the arbitration agreement or arising from it, (bb) any place where an important part of the obligations arising from the business relationship will be fulfilled in or the place in which it is most closely connected to the disputed object or (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more countries. (3) For the purposes of the preceding paragraph: (a) if a party has more than one establishment, the establishment considered is the one that is most closely related to the arbitration agreement, (b) if a party has no establishment, considered will be the habitual residence and in the case of a legal person, the place where he retains an office. (4) Legal provisions that define the disputes not subject to arbitration or impose conditions different from those of this law for the admission of certain disputes to arbitration, still apply.

5.2. The types of arbitration based on the determination of procedural law by the parties.

Both in the domestic²⁶ and international arbitration²⁷, parties may contractually define the procedural law governing their dispute.

The procedural law thus specifies the types of arbitration in practice, which are the following:

5.2.a. Ad hoc Arbitration

In this case the parties define autonomously and with absolute freedom all or what they want out of the procedural aspects of their arbitration²⁸.

Of course the parties in international arbitration may agree to implement the arbitration rules of another country without this being *lex fori* and without rendering the arbitration non-international. Any L. 2735/1999 opposing rules however, whose provisions are law binding, shall not apply.

5.2.b. Institutional Arbitration

In this case the parties contractually resort to some institutional arbitration mechanism (arbitration agency, arbitration center etc.) and its own arbitration rules, which are valid as long as they are not averse to any mandatory *lex arbitri* rules, applicable at the place of arbitration.

For such an agreement a simple reference to the parties' arbitration agreement of the Arbitration Centre²⁹ is sufficient, since those kinds of centers, beyond the arbitration rules that each one has, also provide various support services³⁰.

5.2.c. Permanent Arbitration

Finally, the parties may agree to resolve their dispute through arbitration, in a permanent institutionalized arbitration mechanism, organized within one of the bodies referred to in Article 902 paragraph 1 of the Code of Civil Procedure³¹ and established by Presidential Decree (P.D.), which stipulates the disputes that can be included in this mechanism, as well as the deviations from the provisions for arbitration of CCP³², while any deviations made in excess of this warranty are void³³.

Disputes referred to in Article 663 subpar. 4 of the Code of Civil Procedure are subject to international arbitration in accordance with this law, as long as they are commercial".

²⁶ under Article 886 § 1 subpar. b Code of Civil Procedure

²⁷ pursuant to Article 19 of Law 2735/1999

²⁸ like for example the number of arbitrators, the language of the arbitration, the mode of examination of witnesses, the deadline for the issuance of the decision etc.

²⁹ as is among many the International Chamber of Commerce, the DIS, etc.

³⁰ like secretarial support, catalogue of arbitrators, proceedings offices etc.

³¹ Article 902 paragraph 1 of the Code of Civil Procedure : "(1) In chambers, stock and commodity exchanges, and in professional associations which are professional legal entities, with the prior opinion of their Management Boards, organized permanent arbitration can take place, by decree issued upon the proposal of the Minister Justice and the Minister who has oversight over the chamber of stock exchange or the union".

³² in accordance with Article 902 paragraph 2 of the Code of Civil Procedure

³³ Kousoulis St., Arbitration Law, 2006, pp. 9-10

5.3. Subject to arbitration disputes

5.3.1.a. By the disposal nature of the arbitration agreement, it follows that only private character differences³⁴ may be brought for arbitration and not any kind of disagreement between parties³⁵, provided that the parties have, subjectively moreover, free disposal capacity of such disputes³⁶.

A private law dispute stems from a legal relationship governed by private law and has as its object either the existence or nonexistence of a legal relationship, in addition to its individual manifestations to the subject, the object or content of the right³⁷.

Thus it is now recognized that the arbitration activity can take any form of legal protection, that is including 'orderative' (action for performance), 'recognizitive' (declaratory) and 'formative' (judicial modification of legal relationships) judgments. At this point there is a complete identification between regular and arbitral jurisdiction.

5.3.1.b. A controversy exists as to whether judgments of judicial modification of legal relationships can partake in arbitration, which cannot be obtained by a state court³⁸. The issue relates to the interpretation of article 867 CCP, that is, if the provision is restricted to valid submission to arbitration, in finding that the dispute has private law character, or whether it is required to be also subject to the jurisdiction of the ordinary (state) courts (see article 1a CCP).

Taking the rather prevalent view³⁹, issuing such modifying decisions is only allowed when it is so provided by substantive law (art. 71 CCP), both regular and arbitration courts⁴⁰, through support of the existing constitutional framework of arbitration, since arbitration is an alternative to the state judiciary and its limits cannot exceed the framework of judicial intervention of the pertinent state courts⁴¹.

According to another view⁴², article 71 CCP does not apply in the case of arbitration, and any dispute can be subject to arbitration if the parties have the power to dispose of its object, based upon the more liberal view and the wording of article 867 CCP, which refers to private law disputes and not to disputes falling under the regular state courts, and therefore through the agreement for arbitration granting power to the arbitrator to award justice in all the ways that legal protection can be provided.

5.3.1.c. From the disposal principle arises the obligation of the arbitral tribunal to exercise its jurisdiction within the range set by the arbitration agreement and to provide protection only if and to the extent that it was asked to, by the parties⁴³.

³⁴ Mpeis K., The dialectics of Procedural Law-Volume VI: Contributions to the Interpretation of CCP - Articles 682 to 903, 1999, pp. 319-377

³⁵ Rammos-Koumandos-Mpeis, Opinion, 1975, Trial, p. 302

³⁶ Pappas, The arbitrability of the disputes, 2002, IRP, pp. 684-697 & Mpeis K., Civil Procedure, vol.3, p 521

³⁷ Economopoulos-Mitsopoulos, Opinion, 1975 NoB 1975, p. 1135 & Foustoukos, The validity of the Agreement on Arbitration and its control, 1987, NoB 1987, p. 1367

³⁸ Kerameas, Problems of Greek arbitration law from a comparative perspective, Tribute to George J. Economopoulos, 1981, p. 122

³⁹ Rammos-Koumandos-Mpeis, p. 306

⁴⁰ This is the opinion in favor of a closed number of formative acts and that the object of arbitration may be "the same as that of proceedings before the ordinary courts".

⁴¹ Kaisis Ath., Annulment of Arbitral Awards, 1989, p. 97-98

⁴² Economopoulos-Mitsopoulos, Opinion, Nomiko Vima 1975, p. 1136

⁴³ A.P. 727/1963, Nomiko Vima 1964, p. 468 & A.P. 875/1976, Nomiko Vima 1977, p. 336.

6. The necessity to organize a permanent arbitration mechanism in RAE

The creation of a permanent arbitration mechanism under the auspices of the Regulatory Authority for Energy, serves like everywhere else where it was implemented, the same needs, namely:

A) the need for a speedy resolution of disputes, which is better served with the arbitration process, which is generally faster than the procedure before ordinary (state) courts⁴⁴

B) the need for a mechanism specialized in the field of energy and of disputes that arise from the activities associated with this, which is better served by the existence of a list of specialized arbitrators, selected and included under its auspices

C) the need for a specialized environment, with specific rules, better suited to the nature of disputes and the parties resorting to it, served through a special Regulation for arbitration (RA) of the same authority

D) the need to be possible for the authority, by definition specialized in energy and energy-monitoring, to interfere with its decisions, facilitating and helping resolve particular to energy disputes matters, such as despite any weaknesses⁴⁵ to issue emergency interim measures or advise on specific issues, which are subsequently taken under advisement by the ongoing arbitration serving under its wings

E) the need for a specific, clear, friendly and safe environment for solving these specific disputes of the active in the energy sector parties

F) meet the need to boost trade and the economy, aided by such a mechanism that successfully solves specialized private law disputes through the permanent arbitration mechanism it provides⁴⁶.

7. The initial organization of a Permanent Arbitration in RAE

7.1. The initial provision for organizing and establishing a permanent arbitration and establishing a Regulation of Internal Operation and Management (L2773/1999)

By L. 2773/1999 "Liberalization of the electricity market – Regulation of energy policy issues and other provisions" there was for the first time a provision to organize a permanent arbitration next to RAE, that could be materialized in the Regulation of Internal Organization and Management⁴⁷, which in turn was set to be adopted "by presidential decree issued upon the proposal of the Ministers of Internal Affairs, Public Administration and Decentralization and Development after RAE's opinion"⁴⁸.

⁴⁴ Kaisis Ath., Annulment of Arbitral Awards, 1989, p. 23-40

⁴⁵ Sinodinos H. Contribution of the emerging energy law to the dynamically evolving commercial law, Energy & Law, No. 17/2012, p. 64

⁴⁶ Kaldelis E., Energy & Arbitration: The organization of Permanent Arbitration in the Regulatory Authority for Energy (RAE), Energy & Law, No. 5/2006, p. 43

⁴⁷ in paragraph 2 of Article 8 of Law 2773/1999

⁴⁸ under paragraph 1 of Article 8 of Law 2773/1999

By virtue of this Regulation one would define the nature of disputes subject to it, as well as the details for organizing the arbitration⁴⁹, while principally the provisions of articles 867-900 of the Code of Civil Procedure would apply.

The same Regulation could also account for a series of deviations from these provisions⁵⁰.

7.2. The initial determination of Principles & Procedures governing the Permanent Arbitration next to RAE (Presidential Decree 139/2001)

7.2.a. The executive Presidential Decree 139/2001

In execution of the mandate laid down in L. 2773/1999⁵¹, the Presidential Decree 139/2001 was issued, on "Regulation of Internal Operation and Management of the Regulatory Authority for Energy (RAE)", which among other things determines⁵² the principles and procedures governing the arbitration dispute resolution, declaring that in doing so "a permanent arbitration in RAE is organized"⁵³.

7.2.b. The included disputes

In this arbitration the following were subject⁵⁴ to resolution:

- (a) The disputes between companies operating in the energy sector
- (b) Disputes between "Eligible Customers"⁵⁵ constituting⁵⁶ the individuals who have the right to choose their electricity supplier, which they destine for their own exclusive use and companies active in the energy sector.

7.2.c. The necessary "formation" of the agreement of the parties

It was furthermore specified that a necessary requirement for the submission of disputes to the permanent arbitration mechanism was the "formation of an arbitration agreement between the parties"⁵⁷.

The use of the term "formation" poses an interpretation issue, with the prevailing interpretation of this term being "written", since the document form of the agreement relating

⁴⁹ with an analogous application of paragraph 2 of Article 902 of the Code of Civil Procedure

⁵⁰ Article 8 § 2 subparagraph c: "The same Regulation may also, in deviation from the provisions, state: (a) instead of the court of first instance, to decide in the cases of Articles 878, 880 and 884 paragraph 2 of the Code Civil Procedure, the RAE or the President or a commission of its consultants, (b) the obligation to designate arbitrators and the Chairman of the arbitral tribunal from the list of arbitrators drawn in regular intervals by RAE, (c) the arbitral proceedings, in accordance with the provisions of Article 886 paragraph 2 of the Code of Civil Procedure, (d) the substantive law to be applied by the Chairman and the arbitrators, (e) the information which must contained the arbitral award, albeit with the provisions of Article 892 paragraph 2 Code of Civil Procedure. "

⁵¹ paragraph 1 of Article 8 of Law 2773/1999

⁵² Article 1 of Presidential Decree 139/2001

⁵³ paragraph 1 of Article 24 under the heading "Arbitration Dispute" P.D. 139/2001

⁵⁴ Article 8 § 2 of PD 139/2001

⁵⁵ In contrast to the "Non-Eligible Customers" who are defined in Article 2 of Law 2773/1999 as persons have not the right to choose their electricity supplier and use electricity for their own exclusive use.

⁵⁶ As defined by Article 2 of Law 2773/1999

⁵⁷ Article 8 § 3 of P.D. 139/2001

to arbitration is a prerequisite for the submission of the dispute not only to arbitration, according to the Code of Civil Procedure⁵⁸, but also to International Commercial Arbitration L. 2735/1999, with the same wording more or less⁵⁹.

7.2.d. The applicable provisions

According to the Presidential Decree in question, in this arbitration "applicable are articles 871 to 900 of the Code of Civil Procedure (CCP) with the following exceptions:

(a) In the case of articles 878, 880 paragraph 2 and 884 of CCP, it is the president of RAE who decides, instead of the single-member Court of First Instance.

(b) The Chairman of the arbitral tribunal and the arbitrators shall apply in any case the Greek law."⁶⁰

7.2.e. Other provisions

Finally, the necessary contents of the arbitral award⁶¹ were provided and the cases of refusal to sign were regulated, together with obstacles members of the arbitral tribunal could encounter, also regarding the way of its adoption (majority – minority rule)⁶².

8. The Organization of Permanent Arbitration in its present form

8.1. L. 4001/2011

8.1.a. The decisive step for a more rational⁶³ organization of Permanent Arbitration in RAE, without the problems of previous regulations⁶⁴, was Law 4001/2011 "On the Operation of Electricity and Natural Gas Energy Markets, for Research, Production and Hydrocarbons Distribution Networks, as well as other regulations"; and specifically with the detailed provisions that are listed in article 37 entitled "Arbitration".

8.1.b. Explanatory Report - Report of the General Accounting Office of the State - Report on the Bill of the Greek Parliament

Both in the Explanatory Report⁶⁵, as in the report of the General Accounting Office⁶⁶ (pursuant to article 75, paragraph 1 of the Constitution) one finds the verbatim mention "(today the relative means for the organizing of arbitration is provided by the Regulation of

⁵⁸ Article 869 Code of Civil Procedure

⁵⁹ Article 7 § 3 Law 2735/1999

⁶⁰ Paragraph 4 of P.D. 139/2001

⁶¹ Paragraph 5 of P.D. 139/2001

⁶² Paragraph 6 of P.D. 139/2001

⁶³ Panagos Th., The institutional framework of the Energy Market 2012, p. 66

⁶⁴ Nousia K. & Stamatou M., Substantive and procedural issues in international arbitrations in energy and investment, Energy & Law, No. 15/2011, p 10

⁶⁵ Page 368 Paragraph 8, subparagraph c

⁶⁶ Pages 4-5 paragraph 8, subparagraph c

Internal Operation and Management)", which leads to the conclusion that the aforementioned Regulation, even though claiming to "organize a permanent arbitration," in essence lays down only its principles and procedures.

The Report on the Bill of the Greek Parliament⁶⁷ characterizes the provisions of article 37 of this law draft as provisions that "reorganized the institution of permanent arbitration in RAE" and refers to how the provisions of article 8 § 1 and 2 of L. 2773/1999, and subsequently article 24 § 1 to 6 of P.D. 139/2001 " **are impliedly repealed.**"

8.2. The "Regulation of Arbitration in RAE" (hereinafter RA RAE), which was adopted with Decision No. 261/2012 of RAE

8.2.a. RAE launched a public consultation on a Draft Regulating Arbitration⁶⁸, where various entities⁶⁹ contributed with their positions and finally, through Decision No. 261/30-3-2012 a final text was adopted, constituting now the Regulation of Arbitration governing the mechanism of Permanent Arbitration conducted under its auspices.

8.2.b. This Regulation is detailed, clear and easy to understand, while it is divided into three chapters: a) the Foreword, which sets out the general provisions, b) the second part, relating to domestic arbitration and the third, on international arbitration. It is accompanied by four annexes: a) Annex 1 on the list and qualifications of arbitrators, b) Annex 2 on the costs of arbitration, c) Annex 3, which includes the model "clause for the entry of a Dispute in Arbitration" and d) Annex 4, which includes the "Arbitrator and Chairman of the arbitral tribunal Declaration of Independence" and "Application for participation in the list of Arbitrators and Chairman of the arbitral tribunal organized by RAE".

8.2.c. According to its foreword, the Regulation has supplementary application where there is no provision to the contrary stemming from Articles 867-901 CCP, the provisions of L. 2735/1999 or article 37 of L. 4001/2011, which in all cases will prevail in case of conflict.

The legally binding aspect of the Regulation has a contractual foundation, since once the arbitration agreement assigns the resolution of the dispute in RAE's arbitration, as governed by its Arbitration Regulation, the provisions of RA RAE are incorporated into the arbitration agreement and therefore the Regulation of Arbitration becomes part of a procedural agreement contained in the arbitration agreement, binding the parties during the course of the arbitration proceedings.

To "sensitive issue" here is that although the foreword to the Regulation states that it took into account article 37 of L. 4001/2011, which it merely repeats, since its adoption cannot

⁶⁷ page 8, paragraph 7

⁶⁸ from 07-03-2012 to the 16-03-2012

⁶⁹ These bodies were: (a) DEPA SA which submitted a document entitled "Remarks of DEPA SA on the question raised for public consultation, regarding a Permanent Arbitration Regulation", (b) DEI SA which filed a document entitled "Notes of DEI on the draft of RAE'S Arbitration Regulation (16-3-2012) ", (c) Democritus University of Thrace, which submitted a document entitled " Democritus University of Thrace, 'Public consultation- Arbitration Regulation` (16-03-2012)", and (d) the Mytilineos Group of Companies, which submitted a document entitled " Mytilineos Group of Companies, 'Under Article comments and suggestions on the draft of RAE'S Arbitration Regulation`, (19-03-2012)»

be considered to fall within the scope of article 30§4 of the same Law⁷⁰, as the matter of arbitration does not apply to the "regulatory framework referred to in the operation of energy markets", it is missing the statutory authorization⁷¹ towards RAE for its drafting and approval and therefore, in a sense, it can only be applied only as a circular, internally binding to RAE and not to third parties, thus making appropriate its change of name⁷² !, with RAE itself rejecting this argument on the grounds that its Regulation is not a legally binding document.

9. The included disputes

9.1. Expanding the range of disputes

The range of disputes for resolution by RAE's permanent arbitration is formulated with a considerable breadth and now includes therein:

(a) disputes between "persons" [not just "companies" as set forth by L. 2773/1999], who are active in the energy sector and moreover "by any means". The Regulation clarifies that these may be both natural and legal.

(b) Disputes between "Eligible Customers" as those specified in the same law⁷³ -and not as defined in article 2 of L. 2773/1999- and enterprises engaged in "Energy Activities" rather than simply "of companies active in the energy sector". As Eligible Customer is defined to be "the customer entitled to choose a supplier or who directly buys natural gas or electricity under the present provisions"⁷⁴, while it is determined that Energy Activity is "The Production, Transfer, Distribution and Supply of Electricity or Natural Gas, as well as the Use of Liquefied Natural Gas and the Use of a Natural Gas Storage Facility"⁷⁵.

(c) any dispute arising between the above mentioned persons from the implementation of the relevant existing national and European legislation.

The references are now so broad that they include all the differences between even occasionally involved in the energy sector, either companies or customers, leading to the conclusion that the legislature intended the in rem⁷⁶ inclusion of disputes, that is irrespective of the disputing parties.

The included disputes are according to the explanatory memorandum of "exclusively private law"⁷⁷, as is required by Article 867 CCP, to which explicit reference is made⁷⁸.

⁷⁰ Article 30 § 4 of Law 4001/2011: "4. RAE, with its decision, may issue notices, which are posted on its official web-site, as to how it interprets and applies the current regulatory framework, within the limits of its powers. "

⁷¹ Mytilineos Group of Companies, Per article comments and suggestions on the draft of RAE'S Arbitration Regulation, 19-3-2012, p.1

⁷² Notes by DEI on the draft of RAE'S Arbitration Regulation 16-03-2012

⁷³ In contrast to the "Non-Eligible Customers" who are defined in Article 2 of Law 2773/1999 as persons have not the right to choose their electricity supplier and use electricity for their own exclusive use.

⁷⁴ in the case 19 of article 2 of Law 4001/2011

⁷⁵ in the case 8 Article 2 of Law 4001/2011

⁷⁶ Panagos Th., The institutional framework of the Energy Market, 2012, pp. 66-67

⁷⁷ For public law disputes: Kousoulis St., Law of Arbitration, 2006, pp. 32-33

⁷⁸ Causative Report of Law 4001/2011, pp. 8-9 & Kaldelis Ev., Energy & Arbitration: The organization of Permanent Arbitration in Regulatory Authority for Energy (RAE), Energy & Law, No. 5/2006, p. 38

9.2. Power to dispose of the object of the dispute by the parties

Explicit reference⁷⁹ is made to the power of disposal of the object of the dispute freely by the parties as a condition sine qua non for their submission to such arbitration⁸⁰. This reference however, is "too restrictive, since the issue of arbitrability is deemed by the applicable to this law and not by the parties' agreement, part of which (will) constitutes the Regulation of Arbitration in RAE»⁸¹

Both provisions taking the arbitration agreement as an act of disposal, the property of the dispute to be resolved through arbitration being contingent upon two parameters⁸²:

A) objective, in the sense that the power to dispose refers to the object⁸³ of the arbitration settlement, which must under the provisions of substantive law be freely provided by the disputed parties and

B) subjective, in the sense that the parties should have the power to freely dispose of the dispute by agreement, a condition that refers to the subjects of the dispute and not to the dispute itself.

9.3. The explicitly non-included disputes

The same article prohibits the submission to the permanent arbitration of RAE, of applications for interim relief, revocation requests and reform injunctions, except as provided in article 26 for international arbitration and article 35 of L. 4001/2011 for cases demanding urgent action, for which specific reference will be made below.

10. Organization of the arbitration service

10.1. The "Special Permanent Arbitration Secretariat"

In accordance with established international practice, RAE, as the body that deals with the organization of Permanent arbitration under its patronage and ensures a uniform and seamless operation, also performs a series of tasks that serve it.

Thus, when a request for arbitration is submitted to RAE, it decides to form, staff and operate the "Special Permanent Arbitration Secretariat ", for carrying procedural needs that arise during its conduct⁸⁴ .

Persons who have staffed it are bound by a "duty of discretion and confidentiality," without there being a reference for a "duty of impartiality." Equivalently, by the implementation of Article 44 of L. 4001/2011, it must be accepted that they have the more specific task of "protection of business or other secrets, that members of RAE by the provisions of this law, also have."

⁷⁹ Article 2 of RA RAE

⁸⁰ as is contained in Article 867 para. a Code of Civil Procedure.

⁸¹ Democritus University of Thrace, Public consultation-Arbitration Regulation, 16-03-2012, p. 2

⁸² Kousoulis St., "Law of Arbitration" (2006), pp. 29-32

⁸³ Kaisis Ath., Zur Umsetzung der Elektrizität - und Gasrichtlinie in Griechenland, 2013

10.2. Operating Cost & arbitration expenses

The operating costs are covered by the arbitration expenses as provided for in Annex 2 of the Regulation and shall be borne by the applicant parties, which means that the arbitration mechanism of RAE is self-funded, not burdening its budget and making feasible its viability.

It should be noted that Annex 2, although modeled after the "Administrative fees" of the ICC, makes no provision in its Regulation for offsetting the fee for the filing of the application or a counter claim with RAE's fees, as provided by ICC in its own regulation. As a result, arbitration in RAE, at least as far as the administrative branch is concerned, is more expensive than that of the ICC⁸⁵.

The breakdown of costs in Annex 2 in contrast to the internationally customary provision of allocating in parts depending on the extent of the victory or defeat by the arbitral tribunal, is provisioned to be isomeric, while there is no explicit provision for making it in the manner decided by the parties.

10.3. The "Secretary of the Arbitral Tribunal"

The duties of Secretary of the Arbitral Tribunal shall be exercised by a salaried lawyer of RAE, selected after a decision by RAE's President, upon the recommendation of the plenary session of RAE. Preferably, of course, he or she should be someone of the Chairman of the arbitral tribunal's choice, since they will be directly and constantly cooperating with each other⁸⁶.

The Secretary keeps the minutes of the arbitration, drafts all kinds of arbitration proceedings documents, which he signs, ensures that deadlines are met, cares for the protocol, the book for publishing issued arbitration awards, the archives etc. The Secretary is also responsible for the safekeeping of the documents received and which relate to the arbitration.

All notifications, filings, disclosures, statements, etc. may be conducted by the Special Secretariat for Permanent Arbitration in RAE or by a RAE employee, under the care of the Secretary of the Arbitral Tribunal. To that effect, a report or written acknowledgment of receipt is signed by the employee.

11. The directory of arbitrators

11.1. Mandatory selection from a catalogue

Perhaps the most important aspect of the arbitration success are the arbitrators. Internationally, most institutions that organize arbitration mechanisms provide for in their regulations the constitution of an arbitrator's catalogue from which the applicant parties mandatorily choose their arbitrators and the Chairman of the arbitral tribunal ("closed directory"), although there is a view that wants this option optional ("open directory").

⁸⁴ Article 3 of RA RAE

⁸⁵ Democritus University of Thrace, Public consultation-Arbitration Regulation, 16-03-2012, p. 3

⁸⁶ Democritus University of Thrace, *ibid*, p.3

In the existing arbitration mechanism, there is a clear reference⁸⁷ made, for the prevailing of the closed directory solution; namely, the mandatory selection from a list of RAE arbitrators, which poses according to some a comparative advantage, while by others is viewed as a handicap⁸⁸, compared with other forms of institutional arbitration abroad.

11.2. The drafting of the catalogue

The catalogue is prepared every two years by decision of RAE's President, at the recommendation of RAE's plenary session and includes RAE members, members of technical chambers and bar associations, as well as university professors of higher educational institutions of any tier, with specialized knowledge of the disputes subject to RAE arbitration.

RAE already announced by 07-03-2012 the "Call of RAE for expression of interest for participation in the list of arbitrators and Chairmen of the arbitral tribunal for arbitration organized under its authority" making known beyond the above that:

- a) The list is posted on its website,
- b) The list includes the names, attributes and data of persons who are found to satisfy the conditions
- c) Upon ascertainment of fulfillment of legal requirements, no individual or comparative assessment of natural persons who express an interest takes place
- d) RAE's announcement is not part of any competitive process and as such does not accept objections.

Furthermore, as the Regulation of Arbitration in RAE⁸⁹ provides, the applicants must demonstrate their specialized knowledge in the subjects of disputes subject to arbitration in RAE. Interested applicants submit the corresponding application⁹⁰ to the Authority's Protocol, including a curriculum vitae and a dossier demonstrating their experience and specialized knowledge, as stated by the law⁹¹. In any case, the lack of prior participation in arbitration does not constitute reason for the applicant's exclusion from the list of arbitrators.

Subsequently, a significant number of individuals expressed interested and the two-year active catalogue was drafted, which is posted on the website of RAE⁹² and includes 47 lawyers, 30 engineers and one economist.

12. The applicable procedural framework.

In the above arbitration, apply articles 867 to 900 of the CCP, except as otherwise regulated by the same Article 37⁹³.

⁸⁷ although the article of Law 4001/2011 was not clear, in Article 3 § 3 of the RA RAE it is absolutely clear

⁸⁸ Democritus University of Thrace, *ibid* p.2

⁸⁹ 5st paragraph 1th Annex of RA RAE

⁹⁰ model of which can be found in the Regulation's final Annex

⁹¹ Indicatively, the dossier may contain writings, lawyers' attendances, copies of submitted legal documents, opinions of counseling lawyers, legislation. Also, it is critical to mention the participation in relevant dispute resolution settlement procedures, prior involvement in arbitration and the relevant work experience in a particular subject.

⁹² http://www.rae.gr/site/categories_new/arbitration/arblast.csp

⁹³ Article 37 § 3 of Law 4001/2011

In cases of international commercial arbitration⁹⁴, inclusion under the CCP is possible, so long as there is a relevant explicit agreement between the parties.

In the above context, the parties may determine by agreement the procedural rules or agree to leave it up to the arbitral tribunal⁹⁵. The last also determines if the agreement on the issue is invalid or inexistent.

13. The agreement to submit the dispute to arbitration.

13.1. Agreement of the Parties

Arbitration in RAE is not mandatory, but elective. The parties will choose either voluntarily or prompted by relevant provisions, such as that of article 10 of the Code of Electrical Energy Transactions⁹⁶. Agreement between them is therefore required.

13.2. Document type - Model

Unlike the vague provision of P.D. 139/2001 on "formulation"⁹⁷, paragraph 2 of L. 4001/2011 clearly provided as a condition sine qua non for admission in the arbitration process of one of the above disputes, that the agreement drawn up between the parties for submission of their dispute to RAE's permanent arbitration be "written".

The agreement is considered written:

A) if the document was drawn up by a private agreement between them,

B) and if prepared by an exchange between the parties in accordance with article 869 CCP Signed letters, telegrams, telexes or by signature facsimiles.

In "Appendix 3" of the Regulation there is a model clause in a contract for the submission of the dispute to arbitration⁹⁸.

13.3. Obligatoriness

If the agreement is written and drawn before there was a dispute, this implies the obligatoriness⁹⁹ of litigation if any of the parties resorts to arbitration by RAE, provided that it refers to a specific legal relationship, from which it can be derived, that is laid down in the written agreement¹⁰⁰.

⁹⁴ as defined in paragraph 2 of Article 1 of Law 2735/

⁹⁵ Mplana B., "Procedural issues in domestic and international arbitration - in particular the process of arbitration in RAE", Energy & Law, 2012, vol. 18, p. 60

⁹⁶ Article 10 of the Code for Electrical Power Transactions: "In the event of failure to resolve the dispute through the process of amicably settling disputes, the dispute may be submitted by the parties agreement to arbitration, conducted by RAE, in accordance with the Regulation of Internal Operations and Management by RAE, which alone decides on all issues at stake in the arbitration. The arbitration shall be conducted in the Greek language."

⁹⁷ Article 8 § 3 of Presidential Decree 139/2001

⁹⁸ Annex 3 RA RAE: "The Parties agree and accept that all disputes arising from or related to this contract, are finally resolved in accordance with the Arbitration Rules of the Energy Regulatory Authority, by an arbitration tribunal which is appointed and conducts the arbitration in accordance with the provisions in that Regulation. "

⁹⁹ Panagos Th., The institutional framework of the energy market 2012

¹⁰⁰ pursuant to paragraph 3 of Article 4 of the RA RAE

If, however, when the dispute appeared the parties had not agreed beforehand in writing to submit it to arbitration, this cannot be done prior to a relevant written agreement.

13.3. Remedy in the absence of a written form

The Regulation includes of course a flexible provision of remedying for the lack of compliance with the written form, in the event that the parties appear and unreservedly take part in the arbitration proceedings¹⁰¹.

13.4. Termination

The arbitration agreement shall cease to be valid¹⁰², if not otherwise specified:

1) if the arbitrators or the Chairman of the arbitral tribunal who were appointed by agreement or were afterwards appointed jointly by the parties, die or do not accept within ten (10) days their appointment and no replacements have been designated or the method their replacement

2) if the agreed period of validity within the agreement or the deadline that the President of RAE set for the completion of the process, elapses

3) if the parties agree in writing to abolish the agreement.

14. Convening of the arbitral tribunal

14.1. Three-member composition

The selection of the sole arbitrator has been ruled out.

The arbitration shall be conducted before an arbitral tribunal, to be constituted by two arbitrators and the Chairman of the arbitral tribunal, all selected mandatorily, as already stated, from RAE's catalogue of arbitrators.

14.2. Capacity to contract

Persons who are incapable or of limited capacity to enter into legal transactions, may not be designated as arbitrators, nor those who through a conviction have been denied the exercising of their civil rights¹⁰³, nor legal persons, according to the more thorough formulation of the prohibition by article 871 § 2 CCP.

14.3. Revocation prohibition

The appointment of arbitrators by the parties, as well as the appointment of the Chairman of the arbitral tribunal by the arbitrators, cannot be rescinded¹⁰⁴.

¹⁰¹ Article 4 § 1 para. c of RA RAE

¹⁰² Article by RA RAE

¹⁰³ Article 4 § 2 of RA RAE

¹⁰⁴ Article 4 § 3 of RA RAE

14.4. Non-appointment of arbitrators in the arbitration agreement

In L. 4001/2001 it is provisioned¹⁰⁵ that if the parties fail to appoint an arbitrator or Chairman of the arbitral tribunal, as provided in articles 873 and 874 of the CCP, applicable are the provisions of article 878 CCP; but instead of the Single Judge First Instance Court, it is the President of RAE who decides about it. The President of the RAE also decides in place of the Single Instance Court, in the cases of articles 880 § 2¹⁰⁶ and 884¹⁰⁷ of CCP.

With greater clarity the Regulation provides¹⁰⁸ that unless the arbitration agreement stipulates otherwise, the possibility of appointing Arbitrators and Chairman of the arbitral tribunal by RAE's President, upon the recommendation of RAE's plenary session, is activated provided that ten (10) working days after an application for submission to arbitration have elapsed. The request for the appointment of an arbitrator or arbitrators is submitted by any of the parties, while the request for appointment of the Chairman of the arbitral tribunal may also be submitted by the arbitrators. After the initiation of the arbitration procedure, RAE's President decision about the designation of arbitrators or Chairman of the arbitral tribunal cannot be revoked.

14.5. Death, refusal, impediments of arbitrators / Chairman of the arbitral tribunal

If the arbitrators or Chairman of the arbitral tribunal appointed by RAE's President die, or for whatever reason refuse or are unable to conduct the arbitration, they are then replaced by decision of the President of RAE, at the recommendation of RAE's plenary session, following the request of any of the parties¹⁰⁹.

14.6. Non-fulfillment of duties

Whoever is appointed as arbitrator or Chairman of the arbitral tribunal, is not obliged to accept the appointment.

Whoever accepted the appointment of arbitrator or Chairman of the arbitral tribunal may for a "good reason" refuse to fulfill his tasks with the permission of the President of the RAE, at the recommendation of RAE's plenary session. In this case, the parties may appoint a new arbitrator or Chairman of the arbitral tribunal, and if they (the parties) do not make a new appointment within eight (8) working days, then he is appointed by RAE's President, at the recommendation of the plenary session.

¹⁰⁵ Article 37 § 5 of Law 4001/2011

¹⁰⁶ Article 880 § 2 Code of Civil Procedure: "Whoever accepted the appointment as arbitrator or Chairman of the arbitral tribunal may, for a good cause, refuse to fulfill his duties, with the permission of the court. The permission granted by the district court of the place of residence or if there is no house of residence and if there is no residence, by the county court of the capital of the country, upon application on trial of Articles 741 et seq. The decision cannot be challenged in court, not rescinded or reformed. "

¹⁰⁷ Code of Civil Procedure Article 884: "If the conduct of the arbitration or the issuance of the award is delayed and the Agreement does not define a deadline for its issuance, the competitive under Article 878 § 2 jurisdiction court, at the request of one of the parties, sets a reasonable deadline for the above purpose. The application is trialed according to the procedure of Articles 741 et seq. and the decision is not subject to appeal. "

¹⁰⁸ Article 4 § 4 of the RA RAE

15. Declaration of independence and impartiality of arbitrators

15.1. Independence & Impartiality

According to the Regulation each arbitrator must be independent and impartial in relation to the parties partaking in arbitration¹¹⁰. Unfortunately, there is no such explicit reference made about the corresponding obligations of the Chairman of the arbitral tribunal.

Independence has as a concept an objective quality and refers to the relationship between the arbitrator and the parties: in order for the arbitrator to be independent, he should not be related to any of the parties in such a way that his judgment is affected.

Impartiality has as a concept a subjective quality, since it refers to the state of mind and the relation of the arbitrator to the substance of the dispute: in order for the arbitrator to be impartial he should not have a personal relationship with the substance of the dispute, i.e. the substance of the dispute may not have positive or negative effects on his interests and he should therefore not expect any personal gain to come out of the arbitration result.

A useful tool for addressing the concepts of independence and impartiality, particularly in international arbitration is, in my view, the text "IBA Guidelines on Conflicts of Interest in International Arbitration", with the catalogue of cases it contains (Red List, Orange List, Green List).

15.2. Statement

Before his appointment or acceptance, the arbitrator shall sign a "statement of acceptance, availability, impartiality and independence"¹¹¹. Regrettably, there is again no such explicit reference made about the corresponding obligations of the Chairman of the arbitral tribunal¹¹² in RAE'S Regulation of Arbitration.

The Regulation contains of course in Annex 4 a model "Declaration of independence arbitrator Chairman of the arbitral tribunal" but it states only "independence" and "objectivity of opinion."

The arbitrator discloses in writing to the Special Secretariat of the Arbitral tribunal of RAE all facts or circumstances which may bring into question his independence, as well as all conditions which may give rise to reasonable doubts over his impartiality.

The Special Secretariat for the Permanent Arbitration informs accordingly the parties in writing and sets a deadline for the submission of their comments.

¹⁰⁹ Article 4 § 5 of RA RAE

¹¹⁰ Article 6 § 1 of the RA RAE

¹¹¹ Article 6 § 2 of the RA RAE

¹¹² Mytilineos Group of Companies, Article comments and suggestions on the draft of RAE's Arbitration Regulation 03/19/2012

16. Liability for the arbitrators and the Chairman of the arbitral tribunal

The arbitrators and the Chairman of the arbitral tribunal are liable in the fulfillment of their duties only for willful misconduct or gross negligence¹¹³.

17. Deadline for the conduct of arbitration

For the rapid completion of the process, the arbitral tribunal shall ensure that the arbitration process, which is completed upon the adoption of the arbitration award, be completed within six (6) months from the submission of the arbitration appeal application.

In case it is not possible to meet the above deadline, RAE's president, at the request of either party, shall set a reasonable time limit for the completion of the process¹¹⁴.

18. An opinion from RAE

The arbitral tribunal may, by its decision, ask for RAE to issue an opinion on matters related to its regulatory functions and which are critical to resolving the dispute¹¹⁵.

Under certain conditions this opinion can have an expert's opinion role in arbitration and that's why this option should be used sparingly and with caution, especially when a member of RAE participates in the arbitral tribunal¹¹⁶.

¹¹³ Article 7 of RA RAE

¹¹⁴ Article 8 of RA RAE

¹¹⁵ According to the last paragraph of Article 37 of Law 4001/2011

¹¹⁶ Panagos Th., The institutional framework of the Energy Market 2012, p 68 & Telematics alternative forms for resolving disputes in the energy sector. The case of the system operator for transfer of electrical power, Energy & Law, No. 15/2011, pp. 31-32

19. DOMESTIC ARBITRATION

19.1. The arbitral Tribunal

19.1.A. Appointment of Arbitrators and Chairman of the arbitral tribunal

19.1.A.a. Appointment of Arbitrators

The arbitrators and the Chairman of the arbitral tribunal may be appointed with the agreement to include the dispute in RAE's permanent arbitration. If the latter agreement does not define the arbitrators, each party shall appoint an arbitrator.

An agreement, which states that one of the parties, shall appoint an arbitrator also for the other party, or that the parties may appoint an unequal number of arbitrators is void.

For the rest, the appointment of the arbitrators by the parties is regulated by the provisions of Article 873 CCP¹¹⁷.

19.1.A.b. Appointment of Chairman of the arbitral tribunal

The Chairman of the arbitral tribunal may also be appointed with the agreement to include the dispute in RAE's permanent arbitration.

If with the agreement that the dispute be included in RAE's permanent arbitration a Chairman of the arbitral tribunal is not appointed, then he shall be set by the arbitrators in accordance with the provisions of Article 874 CCP¹¹⁸.

19.1.A.c. Death, Refusal, Impediment

In the event of death, refusal or any impediment of the appointed arbitrators or of the Chairman of the arbitral tribunal to conduct the arbitration¹¹⁹, they may be replaced adhering to the provisions of Article 875 CCP¹²⁰. Otherwise applicable is what is set out in paragraphs 3 to 6 of article 5 of the Regulation.

¹¹⁷ Article 10 of RA RAE Article 873 & CPP : "(1) If the arbitrators are not appointed by the arbitration agreement, but either by agreement or under Article 872, the arbitrators are designated by the contracting parties, each is able to invite the other in writing, to designate the arbitrator or arbitrators within at least eight (8) working days and must disclose in the document its own arbitrator or arbitrators. The party receiving the request shall, within the prescribed period, announce to the requesting person the arbitrator or arbitrators it appoints. (2) To each arbitrator are disclosed the names and addresses of the other arbitrator(s)."

¹¹⁸ Article 874 Code of Civil Procedure "If the arbitrators are more and the arbitration agreement does not state otherwise, the arbitrators shall appoint the Chairman within fifteen (15) days from the last, according to Article 873 par.2, notification and notify the parties signing the agreement."

¹¹⁹ Article 10 § 3 of RA RAE

¹²⁰ Article 875 Code of Civil Procedure : "(1) If the arbitrator appointed by one of the parties dies or is for any reason unable or refuses to conduct the arbitration or excluded, the other party may request in writing the party that appointed the arbitrator to appoint another, within eight at least (8) days. The party receiving the request shall, within the defined deadline announce to the requesting person the arbitrator designated by it. (2) If the arbitrator nominated arbitrators dies or for any reason refuses or unable to conduct the arbitration and the arbitrators do not appoint another, each party may request in writing the arbitrators to appoint another arbitrator, within eight (8) days and to notify the parties which concluded the agreement."

19.1.A.d. Fees

In terms of remuneration to the arbitrators and the Chairman of the arbitral tribunal, as well as the costs of the procedure, including the remuneration of the secretary, the Regulation deviates¹²¹ from the provisions of CCP, stating that both parties are obliged to pay half and not just the part that calls for the debate or the other party, only if on its own request, seeks to extend the subject matter of arbitration.

The amount of the advance payment shall be determined by a decision of the arbitral tribunal. The final determination of the fees for the arbitrators and the Chairman of the arbitral tribunal, including the arbitration costs, is made with the arbitration award.

Finally, the regulation provides that "Otherwise, for determining fees and expenses, applicable are the provisions of article 882 CCP", which means that the provisions of the article regulate what the Regulation does not¹²².

19.1.A.e. Recall, Exception

As for the recall and the exception of Arbitrators and the Chairman of the arbitral tribunal¹²³ shall apply the provisions of Article 883 CCP¹²⁴, which refers to article 878 of CCP in deciding which body will decide on the exception.

¹²¹ Article 10 § 3 of the RA RAE

¹²² Article 882 Code of Civil Procedure : "(1) (subpar. b) In each case the amount of the advance, is determined by the arbitral tribunal with those through an Act documented in the request or in the minutes. In exceptional cases, or out of equity, a deposit may by the same Act be limited to an amount less than that specified in the first paragraph, but not less than one-third of the payment. (2) The amount of the total remuneration for arbitrators and mediators is calculated as a percentage of the value of the dispute according to the following table: For worth of up to "1.500 euros 6%. For worth of 1.500,01 euros to 5,900 euros: 5 %. For worth of 5.900,01 euros to 15.000 euros: 4%. For worth of 15.000,01 euros to 29.000 euros: 3%. For worth of 29.000,01 euros to 147.000 euros: 2%. For worth of 147.000,01 and above: 1%. If the subject of the dispute is not financially quantifiable, the payment is determined, by a reasonable assessment of the arbitral tribunal. If the Chairman of the arbitral tribunal is a judge, the payment is regulated by Article 882A and the arbitrators shall receive the two thirds of the payment states in it. The amount of the remuneration for the arbitrator or Chairman of the arbitral tribunal who is not a qualified judicial officer, may not exceed "the forty-four thousand (44,000) euro" unless the arbitration is international (4) In exceptional cases, especially in very simple cases or for reasons of equity, the arbitrators may limit their fees to half. With the arbitral award, the total remuneration is allocated between the arbitrators and the Chairman of the arbitral tribunal. If the parties decide to abort the arbitration, they must notify in writing the arbitrators, who in this case determine the costs and reduced fee, commensurate with the work done by the day of cancellation of arbitration. (5) The award states also, the party that will bear the fees and expenses, by analogy with Articles 176-180, 183-185 and 188. In any case the award may stipulate that the parties are jointly and severally liable to the payment of fees and expenses, in which case the provisions of Articles 480 et seq. of the Civil Code apply. (6) Every interested party has the right to appeal the arbitral award provision that determines the remuneration of the arbitrators and the expenses, or to seek to define them, if they have not already been set. Appeals shall be submitted within three months from issuance under Article 893 par. 2 of the arbitral award and decided by the court of first instance, under the procedure of Articles 678 to 681. (7) The arbitrators and the Chairman of the arbitral tribunal, if not a judicial officer, receive eighty percent cent (80%) of their remuneration. The remaining twenty percent (20%) shall be paid simultaneously to the Judicial Building Fund (TAXDIK). If the object of the dispute is financially quantifiable, its deposit according to the previous subparagraph percentage is a prerequisite for the by Article 893 submission of the award and obtain and the description of its implementation."

¹²³ Article 10 § 5 of RA RAE

¹²⁴ Article 883 CCP "(1) Those who concluded the agreement for arbitration may jointly revoke the arbitrators and the Chairman of the arbitral tribunal. (2) The arbitrators and the Chairman of the arbitral tribunal can suggest their exclusion or to be excluded by those who concluded the arbitration agreement on the grounds mentioned in Article 52 § 1, as well as if they cannot be arbitrators under Article 871 § two. If they were appointed by one of the parties, the exemption can be claimed only for reasons, which have occurred or became known to the person requesting the exemption after the appointment of the arbitrator or Chairman of the arbitral tribunal. For the exemption rules the court with proper jurisdiction under Article 878

So it remains unclear whether it will be the by location appropriate Court, if so provided for in the article at hand, or if it will be RAE's President, upon the recommendation of RAE's plenary session, as is clear in article 902 § 2 p. a' CCP.¹²⁵

19.2. The Conduct of Arbitration

19.2.A. Request for arbitration and reply

19.2.A.a. *Request*

The request for arbitration must contain at least¹²⁶ the following elements:

(a) full name or company name, address and contact information of each of the parties,
(b) full name, address and contact information of the persons representing the claimant in arbitration,

(c) description of the dispute and the real facts upon which the request for arbitration is based and the respective demands are set forth,

(d) the claim in a clear, definite and concise manner, with wherever possible, a monetary valuation of non-pecuniary demands,

(e) reference to the arbitration agreement and, if the demands are based on more than one arbitration agreements, reference to all arbitral agreements on the basis of which each of the demands arises from

(f) any allegation relating to the constitution of the arbitral tribunal, the place of arbitration, as well as the applicable laws. The petition is filed with the Special Secretariat of the Arbitration Court of RAE, which then forwards it to those against whom it is directed, without delay, by registered letter, with acknowledgment of receipt, or in any other appropriate manner and with acknowledgement of receipt.

19.2.A.b. *Reply*

Within 60 days of receipt of the request, the defendant submits a reply, which contains at least¹²⁷ the following elements:

(a) Full name or company name, address and other contact information of the defendant,

(b) Full name, address and contact information of the persons representing him in arbitration

(c) Allegations and comments on the subject of the dispute and in particular about the real facts upon which the request for arbitration is based and the respective claims are set forth

(d) Reply on the request

paragraphs 1 and complying with the provisions of Articles 58 to 60. The decision is not subject to appeal and up to its adoption the arbitrators postpone the hearing of the case."

¹²⁵ Mytilineos Group of Companies, Article comments and suggestions on the draft for RAE's Regulation of Arbitration, 19-03-2012, p.3

¹²⁶ Article 11 § 1 of RA RAE

¹²⁷ Article 11 § 2 of RA RAE

(e) Any allegation and suggestion in relation to the constitution of the arbitral tribunal, the place of arbitration, as well as the applicable laws.

19.2.A.c. Counterclaim

Within this period a counterclaim¹²⁸ can be exercised by the defendant, which must contain the provisions for the request components and is likewise exercised as a request.

19.2.A.d. Notifications

The reply and counter claim of the defendant are filed with the Special Secretariat of the Arbitration Court of RAE, which shall forward it without delay by registered letter, acknowledgment of receipt, or in any other appropriate manner and with acknowledgement of receipt¹²⁹ to the petitioner.

19.2.B. The place of arbitration

The parties have the power to determine the place of arbitration. If there is no agreement, the place of arbitration is determined by the arbitral tribunal, taking into account the circumstances of the case.

If the parties have not agreed otherwise, the arbitral tribunal may, after consultation with the parties, conduct hearings at any place it deems appropriate, in order to deliberate, examine witnesses, experts or the parties, or to perform an autopsy or peruse documents, unless otherwise agreed by the parties.

19.2.C. The arbitration process

19.2.C.a. Constitution

The arbitration process takes place before the arbitrators and the Chairman of the arbitral tribunal, who constitutes the arbitral tribunal and act jointly.

19.2.C.b. Forming a judgment

The arbitrators and the Chairman of the arbitral tribunal call the parties to submit their claims and comments on matters referred to in the request for arbitration, the reply and counter-claim of the defendant, within 30 days after receipt of the notification.

The arbitral tribunal shall have regard only to claims that have been proposed in the context of arbitration proceedings in the manner designated by the parties¹³⁰.

Unless otherwise specified in the arbitration agreement, the case is heard, even if the parties fail to respond and make claims or provide evidence.

For the rest, the arbitrators and the Chairman of the arbitral tribunal arrange the arbitral proceedings at their discretion, unless otherwise specified in the arbitration agreement.

¹²⁸ Article 11 § 3 of RA RAE

¹²⁹ Article 11 § 4 of RA RAE

¹³⁰ A.P. 13/1995 & A.P. 1531/1983, *Elliniki Dikaiosi*, 1984, p. 1160 & A.P. 1304/1997, DEE 1998, pp. 1215-1216

19.2.C.c. The principle of equality

During the arbitration process the principle of equality of the parties¹³¹ is strictly adhered to. They should be invited to attend the discussions, to elaborate on their claims orally or in written form and to present their evidence.

19.2.C.d. Way of conducting the debate

The Chairman conducts the debate. The parties have the right to go through all the procedural acts and to appear in person or together with, or be represented by a lawyer with full power. Failure to abide by this principle may result in the annulment of the arbitral award from the state courts. Thus, increased formality is required, especially when the arbitration goes on with one of the sides not attending, so that there is undisputed evidence that its rights were not violated¹³².

19.2.C.e. Competence competence - Objection

The arbitral tribunal has the power to rule on its jurisdiction¹³³.

After submission of a reply by the person against whom the request for arbitration is directed, there can be no objection about lack of jurisdiction of the arbitral tribunal¹³⁴. This objection cannot be precluded by the fact that the party invoking it appointed an arbitrator or participated in his appointment. An objection that the arbitral tribunal exceeds the bounds of its power is set forth as soon as the relevant matter arises in the arbitration proceedings. In both cases the arbitral tribunal may allow an objection filed at a later time if the delay is deemed justified.

The arbitral tribunal rules on these objections¹³⁵ either with a preliminary judgment, or a judgment on the merits of the dispute. If the arbitral tribunal reaches a preliminary ruling that it indeed has jurisdiction, then the arbitration procedure continues and a judgment on the merits (final award) follows, an integral part of which is considered the preliminary ruling. This preliminary ruling can only be repealed together with the final award in accordance with the conditions and the procedure of the action for annulment.

19.2.C.f. Power of the arbitral tribunal to rule on the existence or validity of the arbitration agreement

The arbitral tribunal shall decide on the existence or validity of arbitration agreements¹³⁶. For this purpose, an arbitration clause contained in a contract is considered to be a separate agreement. Decisions of the tribunal that the contract is void do not necessarily imply invalidity of the arbitration clause.

¹³¹ Article 13 § 2 of RA RAE

¹³² Foustoukos Ang., "The Institution of permanent arbitration and its organization in our country," NoV (1977)

¹³³ Article 13 § 5 of RA RAE

¹³⁴ Article 13 § 6 of RA RAE

¹³⁵ Article 13 § 7 of RA RAE

¹³⁶ Article 13 § 5 of RA RAE

19.2.C.g. Burden of proof

Each party shall bear its own burden of proving the claims¹³⁷ it makes.

The arbitral tribunal can reverse ("allocate differently"¹³⁸) the burden of proof, if it considers that a party justifiably cannot meet the burden of proof to be borne, while at the same time speculates that the evidence held by the other party exerts a material influence on the litigation of the dispute.

This reference is of course vague and could lead in practice to excessive and unjustified requests by the parties to reverse the burden of proof¹³⁹.

19.2.C.h. Request for disclosure of documents

In the case of a request for disclosure of documents and information from one party to another, the arbitral tribunal orders the presenting of documents and information it deems necessary for the fulfilment of the request¹⁴⁰, irrespective of whether these are mentioned specifically in the request, as far as the matter to be proved is specified. In order for the arbitral tribunal to determine the documents and information necessary, it sends a special query to the party against whom the request is directed, in order to establish what documents and records are held by it, in case the opposing party is unable to accurately determine them.

19.2.C.i. Expert's opinion

If the arbitral tribunal considers it appropriate, it may request, either ex officio or at the request of a party, an expert's report from a natural or legal person who has the necessary expertise and specialized knowledge on a specific topic.

Specifically on questions surrounding RAE's regulatory functions and subject matter, which are critical for the diagnosis of the dispute, the opinion of the plenary session of RAE may be requested, which is then freely assessed by the arbitral tribunal. From the relevant meeting abstain members that may have been appointed arbitrators or Chairman of the arbitral tribunal in the particular proceedings. Similarly on issues of RAE's jurisdiction, the latter may be called upon to suggest expert witnesses with the required expertise. Otherwise the evidentiary proceedings are conducted in accordance with the conditions of article 888 CCP.

19.2.C.g. Interim measures

The arbitral tribunal is not allowed to decide on requests for interim measures, as well as on suspension or changing of injunctions¹⁴¹. In other respects applies the provision of § 2 of article 889 CCP.

19.2.C.ga. Applicable Law

The RA RAE constitutes a substantial novelty in its lack of explicit rules for determining the applicable substantive law¹⁴². The parties may contractually define the applicable

¹³⁷ Article 13 § 8 of RA RAE

¹³⁸ Article 13 § 8 of RA RAE

¹³⁹ Article 13 § 9 of RA RAE

¹⁴⁰ Article 13 § 9 of RA RAE

¹⁴¹ Article 13 § 11 of RA RAE

¹⁴² Report on the bill of the Greek Parliament, p. 9

substantive law that will govern their arbitration and the arbitral tribunal shall apply them provided that the arbitration agreement does not rule out the application of mandatory rules of the law or calls for implementation of rules of law which are contrary to public policy under article 33 Civil Code (CC).

Unless otherwise specified in the arbitration agreement, the arbitrators adjudicate the dispute¹⁴³ on the basis of existing national and European legislation.

19.2.C.gb. An opinion by RAE

The arbitral tribunal may, by decision, ask for RAE to issue an opinion on matters related to its regulatory functions and which are critical to resolving the dispute. RAE's opinion is not binding for the arbitral tribunal¹⁴⁴.

19.2.D. The arbitral award

19.2.D.a Admissibility and Merits of the request

On the admissibility and merits of the request, the arbitrators decide jointly together with the Chairman of the arbitral tribunal. Failing consensus, the decision is made by the arbitrators and the Chairman of the arbitral tribunal based on a majority¹⁴⁵.

19.2.D.b. Drafting & Signing of the Award

The arbitral award shall be drawn up in writing and signed by hand by the arbitrators and the Chairman of the arbitral tribunal. The completion of the arbitration award requires those signatures.

If any of the arbitrators or the Chairman of the arbitral tribunal refuses or is unable to sign, then the award confirms his refusal and the fact of his participation in the arbitration proceedings and the conference. In this case the award is signed by the other members of the arbitral tribunal.

19.2.D.c. The essential elements of the award

The arbitration award shall indicate¹⁴⁶ :

- a) the name and surname of the arbitrators and the Chairman of the arbitral tribunal,
- b) the place and time of its issuance,
- c) the name and surname of those who participated in the arbitration proceedings,
- d) the grounds (reasoning),
- e) the order (enacting/adjudicatory part of the judgment),
- f) the final determination of the payment to the arbitrators and the Chairman of the arbitral tribunal, as well as the costs of the proceedings.

¹⁴³ Article 13 § 12 of RA RAE

¹⁴⁴ Article 13 § 12 of RA RAE

¹⁴⁵ Article 14 § 1 of RA RAE

¹⁴⁶ Article 14 § 3 of RA RAE

The provision of Article 14 § 10 of the Regulation fails to include as an essential element, the arbitration agreement of the parties. However, it provides that through this (the arbitration agreement), it can suffice when the arbitral award just indicates the arbitration agreement and the order!

This provision also fails to include as another essential element that of the individual opinion of any member of the arbitral tribunal, whether he dissents from the majority or not, or a statement of his dissent¹⁴⁷.

19.2.D.d. Filing of an arbitration award in Court & RAE

The Chairman of the arbitral tribunal or with his mandate, one of the arbitrators shall file the original of the arbitral award to the Secretariat of the single-member Court of first instance, in whose district the award was issued. He is also required to submit a copy of the decision to RAE's Special Secretariat for Permanent Arbitration¹⁴⁸.

19.2.D.e. Notification of the arbitral award

A notification of the arbitral award accompanied with acknowledgment of receipt is sent to those who concluded the arbitration agreement and to those who participated in the process.

19.2.D.f. Correction or interpretation of the arbitral award

Correction or interpretation of the award is conducted in terms of article 894 CCP¹⁴⁹.

19.2.D.g. Non-appeal of the arbitral award

The arbitration award is not subject to legal remedies and appealing against it before other arbitrators isn't permissible.

19.2.D.h. The resulting precedent (res judicata)

The arbitral award provides precedent from the filing of the original to the Secretariat of the First Instance Court in the place it was issued. The precedent is circumscribed by articles 322, 324 to 330 and 332 to 334 of CCP.

19.2.D.i. Action for annulment of the arbitral award

The action¹⁵⁰ for annulment of the arbitral award can be sought on the grounds of article 897 CCP, in accordance with the provisions of articles 898 to 900 CCP. The recognition of the absence of an arbitral award may be pursued by action in accordance with the terms of article's 901 CCP provision.

¹⁴⁷ such as in lot of provision concerning some types of international arbitration as this in the article 4 § 4 of ICSID Convention, Regulations & Rules

¹⁴⁸ Article 14 § 5 of RA RAE

¹⁴⁹ Article 894 Code of Civil Procedure: "At the request of one of those who concluded the agreement, which shall be communicated to the others and to the arbitrators, it is possible, in compliance with the provisions of Articles 315 and 316, for a correction or interpretation of the award from those who issued it to be made. Article 320 applies in this case. "

20. INTERNATIONAL ARBITRATION

20.1. International arbitration – Jurisdiction of the arbitral tribunal

20.1.A. International Arbitration

20.1.A.a. *When is arbitration international*

Arbitration is international when¹⁵¹:

- a) the parties, at the conclusion of the arbitration agreement, are located in different countries or
- b) it is not located in the country where the parties are based:
 - (ba) the place of arbitration if determined by the arbitration agreement or resulting therefrom,
 - (bb) any place where they can fulfill an important part of the obligations arising from the business relationship or the place closely linked to the subject matter of the dispute or
- c) the parties have expressly agreed that the subject matter of the arbitration agreement is related to more than one country.

20.1.A.b. *Applicable Procedural Law*

In international arbitration conducted in RAE, the applicable rules of the arbitration proceedings are the rules of domestic law of the "place of arbitration" in the wording of article 15 § 2 subparagraph a' of RA RAE¹⁵².

However, it is possible on the basis of an express agreement of the parties concerned, to apply the rules of articles 867-901 CCP in the case of international arbitration, making it subject to the rules of the domestic arbitration instead of international arbitration Law 2735 / 1999.

This arrangement certainly is problematic, since it is not clear whether in such a case the third section of RA RAE for international arbitration is applicable, leaving open questions about the application of article 26 of the specific Regulation and allowing for interim measures (injunction) by the arbitral tribunal, when *lex arbitri* are the provisions of CCP that do not permit it¹⁵³.

Inclusion in the above rule does not alter the character of arbitration as international.

¹⁵⁰ Article 14 § 9 of RA RAE

¹⁵¹ Article 15 § 1 of RA RAE

¹⁵² Article 15 § 2 of RA RAE

¹⁵³ Democritus University of Thrace, Public consultation-Arbitration Regulation, 16-03-2012, p. 1

20.1.B. Competence competence - Objections

The arbitral tribunal shall decide on its jurisdiction¹⁵⁴.

After submission of the defendant's reply to the request for arbitration, no objection can be raised regarding the lack of jurisdiction of the arbitral tribunal¹⁵⁵. This objection is not precluded by the fact that the party designated an arbitrator or took place in his appointment. The objection that the arbitral tribunal exceeds the bounds of its jurisdiction is brought forth as soon as the matter comes up in the arbitration proceedings. In both cases the arbitral tribunal may allow an objection filed at a later time, if its delayed filing is deemed justified.

The arbitral tribunal decides on these objections either with a preliminary ruling or the ruling on the merits of the dispute. If the arbitral tribunal issues a preliminary ruling that it has the required jurisdiction, then the arbitration procedure continues and a ruling on the merits is issued, an integral part of which is considered the preliminary ruling. The latter can only by repealed together with the final award, in accordance with the conditions and the procedure of the action for annulment.

20.1.C. Power of the arbitral tribunal to rule on the validity of the arbitration agreement.

The arbitral tribunal shall decide on the existence or validity of the arbitration agreement. For this purpose, an arbitration clause in a contract is considered to be a separate agreement. Decisions of the tribunal that the contract is void do not necessarily imply the invalidation of the arbitration clause¹⁵⁶.

20.2. The arbitral tribunal

20.2.A. Designation of Arbitrators and Chairman of the arbitral tribunal and composition of the arbitral tribunal

In designating the arbitrators and the Chairman of the arbitral tribunal, as well as during the composition of the arbitral tribunal, apply articles 5 and 10 of the Regulation, except in the case of international arbitration, where special importance is given in the selection criterion for arbitrators, their experience in international arbitration, foreign languages skills and generally their experience in resolution of international disputes. For the rest applicable are those stated in article 11 L2735/1999¹⁵⁷.

20.2.B. Remuneration for arbitrators and the Chairman of the arbitral tribunal

For the remuneration of arbitrators and the Chairman of the arbitral tribunal apply the same as for domestic arbitration, with the difference that arbitrator pay restrictions

¹⁵⁴ Article 16 § 1 of RA RAE

¹⁵⁵ Article 16 § 2 of RA RAE

¹⁵⁶ Article 16 § 1 of RA RAE

¹⁵⁷ Article 17 § § 1,2,3 of RA RAE

provisioned in CCP do not apply, as far as the arbitration or dispute carry any “foreignability” element, or, directly or indirectly affect international or cross-border transactions¹⁵⁸.

20.3. The arbitration procedure

20.3.A. Request for arbitration and reply¹⁵⁹

20.3.A.a. *The components of the reply and counterclaim*

The request for arbitration contains, at least, the information provided for as minimum for domestic arbitration. It is filed and forwarded in the same manner. The same goes for the details of the reply and counterclaim.

20.3.A.b. *Deadlines*

The deadlines for submission of a reply or counterclaim, which are the same as for domestic arbitration, may be extended upon the defendant’s request, with a decision from the Special Secretariat for Permanent Arbitration.

20.3.A.c. *Counter-Reply*

While this is not foreseen in domestic arbitration, in the case of the international the defendant can submit a rejoinder to each answer within thirty (30) days of receipt of the response by the Special Secretariat for Permanent Arbitration. Before referring the dossier to the Special Secretariat for Permanent Arbitration, the Special Secretariat may extend the deadline for filing a reply.

20.3.A.d. *Notifications*

The Special Secretariat for the Permanent Arbitration shall promptly notify the parties of the documents filed before it.

20.3.B. Applicable substantive law¹⁶⁰

The parties may contractually define the applicable substantive law that will govern their arbitration and the arbitral tribunal will implement them with the commitment that unless explicitly agreed otherwise, a reference to the law or legal system of a country is considered as a direct reference to the substantive law and not the rules of private international law of that country.

If the parties have made no such provisions, the arbitral tribunal shall apply the substantive law determined by the rule of private international law, which the arbitral tribunal considers that it is more appropriate in this case.

The arbitral tribunal judges in an equitable way (as amiable compositeur)¹⁶¹ only if the parties have expressly authorized it to do so.

In any case, the arbitral tribunal shall decide in accordance with the terms of the contract and after taking account of the customs appropriate to the particular matter.

¹⁵⁸ Article 17 § 4 of RA RAE

¹⁵⁹ Article 18 of RA RAE

¹⁶⁰ Article 19 of RA RAE

¹⁶¹ Conciliator

20.3.C. Place of arbitration¹⁶²

The parties have the power to determine the place of arbitration. If there is no agreement, the place of arbitration is determined by the arbitral tribunal, taking into account the circumstances of the case.

If the parties have not agreed otherwise, the arbitral tribunal may, after consultation with the parties, conduct meetings at any place it deems appropriate, in order to deliberate, examine witnesses, experts, the parties, conduct an autopsy or peruse documents, unless otherwise agreed by the parties.

20.3.D. The Language of Arbitration¹⁶³

20.3.D.a. Determining the language

The parties have the power to determine the language or languages used in the arbitration proceedings. If there is no such agreement, the matter is regulated by the arbitral tribunal. Unless otherwise specified by the parties, the above definition applies to any written declaration made by the parties, for the hearings, decisions and notifications of the arbitral tribunal.

20.3.D.b. Translations of documents

The arbitral tribunal may order that the documents be accompanied by a translation into the language or languages agreed by the parties or itself determined.

20.3.E. Conduct of arbitration proceedings¹⁶⁴

The composition of the arbitral tribunal, and the way of conduct is the same as that of domestic arbitration, while here also applies the principle of equality.

20.3.F. Expert's Opinion - Expression of opinion by RAE¹⁶⁵

For an expert opinion report requested by the arbitral tribunal, as well as for an opinion formulated by RAE, applies whatever is true for domestic arbitration.

20.3.G. Burden of proof¹⁶⁶ & disclosure of documents¹⁶⁷

For the allocation of the burden of proof on the parties and the disclosure of documents and information, apply the same regulations as for domestic arbitration.

¹⁶² Article 20 of RA RAE

¹⁶³ Article 21 of RA RAE

¹⁶⁴ Article 22 of RA RAE

¹⁶⁵ Article 23 of RA RAE

¹⁶⁶ Article 24 of RA RAE

¹⁶⁷ Article 25 of RA RAE

20.3.H. Interim measures¹⁶⁸

20.3.H.a. Interim measures taken by the arbitral tribunal

In case of international arbitration, as defined in article 15 of the RA RAE, and unless the parties have agreed otherwise, the arbitral tribunal may, upon a party's request, order any interim measures it considers necessary in relation to the subject of the dispute. The arbitral tribunal may force any part to issue guarantees on these measures. Any such measure shall take the form of a reasoned decision.

20.3.H.b. Interim measures taken by a state court

Before the formation of the arbitral tribunal and, if the required conditions are met, even following its formation and also in the case of international arbitration, the parties may apply for interim measures before the state courts. However, the influence of such a request and in particular whether it constitutes a breach of the arbitration agreement renouncement, is judged according to the law of the place of arbitration. Any request for interim measures and any decision under which interim measures are ordered by a competent judicial authority, shall immediately be reported to the Special Secretariat of the Arbitration Tribunal of RAE, which in turn shall inform the arbitral tribunal.

20.3.H.c. Interim measures taken by the RAE

The implementation of all the above does not exclude recourse to RAE for interim measures pursuant to Article 35 of L. 4001/2011 and even under the conditions as to the extent of RAE's judicial capacity as an independent authority.

In providing for interim measures there is no setting in which it is stated that " if it has already been brought to one of the above bodies which can issue interim measures, submitting the same request to another institution is excluded"¹⁶⁹. But this is not necessary¹⁷⁰ because interim measures concern under article 37 § 3 of L. 4001/2011 only international arbitration, which may not be subject to the CCP unless the parties agree to.

20.4. Arbitral award

20.4.A. *The award*¹⁷¹

For the "Admissibility and merits of the request", the "Drafting & Signature of the Award" and "The essential elements of the award" apply the same as for domestic arbitration.

¹⁶⁸ Article 26 of RA RAE

¹⁶⁹ Mytilineos Group of Companies, Article comments and suggestions on the draft for RAE's Regulation for Arbitration, 19-3-2012, p. 4

¹⁷⁰ Comments & Observations of participants in the public consultation on the draft for RAE's Arbitration Regulation – RAE's Answers & Positions

¹⁷¹ Article 27 of RA RAE

20.4.B. Settlement¹⁷²

If after the commencement of the arbitral proceedings the parties resolve the dispute by settling and as long as they wish to, their settlement is documented by the arbitral tribunal in the form of an arbitral award.

20.4.C. Notification of the arbitral award¹⁷³

Immediately after the arbitral award has been issued, the Secretary of the Arbitration Tribunal of RAE notifies to the parties the text of the award signed by the arbitral tribunal.

20.4.D. Receiving copies of the arbitral award¹⁷⁴

The parties at any time and upon request can obtain certified copies of the arbitration award from the Special Secretariat for Permanent Arbitration in RAE. Third persons are not entitled to receive copies of the decision.

20.4.E. Non-appeal of the arbitral award

By submission of the dispute to arbitration, in accordance with the provisions of RA RAE, the parties undertake to comply without delay with the arbitral award, which in no way can be challenged before other arbitrators.

20.4.F. Correction and interpretation of arbitral awards¹⁷⁵

For the correction and interpretation of arbitral awards apply the provisions of article 33 of L. 2735/1999¹⁷⁶.

20.4.G. Action for annulment of the arbitral award¹⁷⁷ & Final provisions¹⁷⁸

The action for annulment of the arbitral award can be sought on the grounds of article 34 of L. 2735/1999¹⁷⁹. For the rest, apply the relevant provisions of L. 2735/1999.

¹⁷² Article 28 of RA RAE

¹⁷³ Article 28 § 1 of RA RAE

¹⁷⁴ Article 29 § 2 of RA RAE

¹⁷⁵ Article 30 of RA RAE

¹⁷⁶ Article 33 Law 2735/1999: "(1) If the parties have not designated another deadline, either party may within thirty (30) days of notification of the award, request the arbitral tribunal: a) to correct within the award any numerical, graphical or typographical errors or similar, b) to interpret a particular portion of the arbitration award, without changing its effective part. In each case the plead is notified to the other party. The arbitral tribunal considers the request within thirty (30) days of receiving it. (2) The arbitral tribunal may of its own wish (ex officio) to correct any error from those referred to in paragraph 1 case a of this Article within thirty (30) days of the issuance of the arbitration award. (3) The arbitral tribunal may extend the deadline for correction or interpretation of the award provided for in paragraph 1 of this Article. (4) The provisions of Article 31 shall apply in the correction or interpretation of an arbitration award."

¹⁷⁷ Article 31 of RA RAE

¹⁷⁸ Article 32 of RA RAE

¹⁷⁹ Article 34 Law 2735/1999: "(1) Against the arbitral award, there can only be Act to Revoke, in accordance with paragraphs 2 and 3 of this Article. (2) The award may be annulled by the Court of Article 6 § 2 of only if: a) The applicant alleges and proves that: aa) a party to the arbitration agreement of Article 7 was not eligible for that purpose by the law provisions, or that the arbitration agreement is not valid according to the law to which the parties subjugated it, or if neither of these cases applies, according to the Greek Law, or bb) a party was not notified in an adequate manner, for the appointment of an arbitrator or for the arbitration procedure or for other reasons was unintentionally unable to defend its case, or c) the arbitral award concerns a dispute which does not fall within the scope of arbitration agreement or contains provisions that exceed the limits of the agreement. If however the provisions covered by this agreement on arbitration can be separated from those not

21. No. 1/2013 Arbitral Award of RAE's Permanent Arbitral Tribunal (HPPC / DEI vs ALUMINIUM SA)

21.1. Brief Overview

The one and only decision that has so far been produced by RAE's Permanent Arbitration is the No. 1/2013, filed by Chairman of the arbitral tribunal to the Special Secretariat on 31-10-2013. The last, communicated it to the parties, for their information and any legal consequences arising thereof and contains all the information required by RAE's Regulation for Arbitration .

21.1.A. Place and date of issue

This award, as mentioned, was issued in Athens on 31-10-2013.

21.1.B. The parties

The parties, both of which were involved in the process, were on the one side the HELLENIC PUBLIC POWER CORPORATION (Hereinafter referred to as DEI) and on the other side ALUMINIUM OF GREECE SA (Hereinafter ALUMINIUM)

21.1.C. The agreement to refer the dispute to arbitration

It the beginning the award mentions the "between the parties' agreement, to submit the dispute to the Permanent Arbitration of RAE.

21.1.D. The dispute

The dispute, over which the award was issued, is specified in the first clause of the arbitration agreement, according to which: "*The parties have agreed to jointly seek arbitration under article 37 of L. 4001/2011, pursuant the Basic Principles of Pricing High Voltage Clients, such as those made by RAE in decision No. 692/06-06-2012, but taking into account (a) decision No. 798/30-06-2011 of RAE and (b) Judgment No. 8/2010 of the arbitral tribunal, so that RAE updates and adjusts its pricing terms included in the drawn up for implementation, after the between parties agreement of 04-08-2010, drafted contract dated 10-05-2010 and shape within the framework of the above decisions, the 06-06-2011 and onwards supply conditions of the contract between the parties so that they meet the consumption characteristics of ALUMINIUM and they at least cover the DEI costs"*

covered, then only the latter apply for an annulment of the arbitration award, or d) the constitution of the arbitral tribunal or the arbitration procedure was not in accordance with the agreement of the parties, or if there is no agreement, the constitution of the arbitral tribunal or the arbitration procedure was not in accordance with this law. b) The court under jurisdiction for the Act to Revoke has the inherent power to rule if: aa) the subject of the dispute is not subject to arbitration in accordance to the Greek Law, bb) the award is contrary to international public policy, as understood in Article 33 of the Civil Code. (3) The deadline for filing the Act to Revoke is three months and starts from the notification of the arbitral award to the party that exercises or, if an application under Article 33 was submitted, from the notification of the award of the arbitral tribunal to this party."

21.1.E. The Arbitrators, the Chairman of the arbitral tribunal & the Secretary

Each of the parties appointed its own arbitrator¹⁸⁰ with an out-of-court statement, but did not agree on the person of the Chairman of the arbitral tribunal¹⁸¹, who was thus appointed by decision of the President of RAE pursuant to article 5 § 4 of the RA RAE¹⁸². The arbitrators and the Chairman of the arbitral tribunal issued statements of acceptance, independence and impartiality and both parties issued statements accepting them. After its formation, the arbitral tribunal hired a Secretary pursuant to Article 3 § 2 of the RA RAE the designated¹⁸³ by decision of the President of RAE.

21.1.F. The interim decisions of the arbitral tribunal

A series of interim decisions of the arbitral tribunal followed, which dealt respectively with issues, listed in detail in the award¹⁸⁴.

¹⁸⁰ DEI appointed Lia Athanasiou: Solicitor to the Supreme Court, Associate Professor of Commercial Law at the Law School of Athens University, No. 1 of the first section (of lawyers) in RAE's arbitrators catalogue, ALUMINIUM appointed George Koutzoukos: Mechanical and Electrical Engineering graduate, President of ADMIE, No. 12 of the second section (of Engineering) in RAE's arbitrators catalogue

¹⁸¹ RAE Decision No. 24/2012, "Because the companies ALUMINIUM SA and DEI SA, with the respective letters with protocol No. Ref RAE I-155422/26.04.2012 and I-155436/27.04.2012, informed RAE that it was not possible to reach an agreement regarding the appointment of a Chairman of the arbitral tribunal and request the application of paragraph 5 of Article 37 of L. 4001/2011 "and further down:" Because the plenary session unanimously recommended to the President to designate as Chairman, RAE member Mr. Michael Thomadakis »

¹⁸² appointed Michael Thomadakis: Mechanical Engineer, Member of RAE No. 8 of the second section (Engineers) in RAE's arbitrators catalogue

¹⁸³ Alexia Trokoudi

¹⁸⁴ MINUTE 1/2012: The arbitral tribunal selected as meeting day the 25th-10-2012, in order for the parties to attend the discussion of procedural issues and setting of the arbitration framework.

MINUTE 2/25-10-2012: At the designated meeting all the parties came and submitted their lawyers' credentials, who said they do not challenge each other's representations and that they recognize the legitimate constitution of the arbitral tribunal and find no reason to exempt any of its members, that they accept and approve the actions of the previously cited, with the Chairman pointing out the obligation for confidentiality the Secretary and members of the RAE Special Permanent Arbitration Secretariat have, who had signed corresponding statements. Furthermore, a deadline was specified for submission of both parties' requests for arbitration, any claims and assertions as to the validity of the agreement, or its subject matter and the jurisdiction of the court. The process for arbitration specified was that of interim measures in conjunction with the provisions of RAE's Arbitration Regulation, however with full proof, without excluding a preliminary ruling on jurisdiction or other matter or an expert, and the consenting parties decided each of them to examine two witnesses and submit two affidavits, and designated a time examination of the first party and which this is, would be determined by a subsequent decision.

MINUTE 3/12-12-2012: Accepted the request of the parties for an extension of the deadline for submission of their requests for arbitration and mutual replies.

MINUTE 4/11-1-2013: Approved the date of submission of opinions and studies, and decided that within 15 days after the examination of the last witness, the parties shall submit an evaluation of the testimonies, affidavits and any expert advice or studies, as well as anything they wish to add, and finally, the day of the oral presentation of claims and of the cross-examination of the first witness on the part of ALUMINIUM SA was set.

MINUTE 5/2013: The remuneration of the members of the arbitral tribunal was specified

MINUTE 7/2013: at the request of the parties it was decided to grant an extension of the deadline for submitting opinions and to postpone the date of the oral presentation of the respective claims of the parties

MINUTE 9/2-4-2013: The attorneys of the parties presented orally their claims, which were documented in that day's report, attached with the examination of the first witness of ALUMINIUM SA, whose testimony was specified to continue at a later time

MINUTE 10/8-4-2013: the examination of the first witness of ALUMINIUM SA continued and finished, was filed in the minutes, while the fees of the court and secretary were redefined

MINUTE 11/24-4-2013: the examination of the first witness of DEI SA started and was included in the MINUTES, while the fees of the court and secretary were redefined

21.1.G. Addressing the objection of DEI

DEI raised the **objection of lack of jurisdiction of the arbitral tribunal** "as a necessary and inescapable consequence and result of the written and persistent denial of ALUMINIUM to recognize the existence and validity of the 04-08-2010 Framework Agreement»¹⁸⁵ that constitutes an implied termination of the arbitration agreement by ALUMINIUM.

The tribunal overruled the objection on the grounds that:

a) "... it is not called to invent ex nihilo the contractual relationship between the parties, but merely to make the update, customization and configuration within the limits set by their arbitration agreement»

b) "when at the first hearing the Chairman of the arbitral tribunal called on both parties to the dispute so that they explicitly confirm that they agree and accept that for an update of the conditions of supply and of the drafted contract, the documents referred to in section 1 of the arbitration agreement will have to be taken into account, both parties responded positively"

c) "... the request for arbitration constitutes in this case a separate contract, independent from the agreement framework. Besides, even if it had been incorporated into the text of the main contract, it would again be considered a separate agreement, as expressly provided in Article 13 § 5 of Regulation for Arbitration (also art. 887 § 2 CCP)".

d) "out of the evidence and documents submitted in this case, arises no contradictory procedural act, as provided in article 116 CCP and article 281 RA, nor an implied termination of the arbitration agreement."

21.1.H. The grounds (reasoning)

Among many other evidence and considerations, what weighed heavily on the arbitral tribunal was the assessment that the consumption profile of ALUMINIUM differs from that of other customers in that its electricity needs constitute 5% of the total national demand and that if ALUMINIUM cease to operate, DEI would be forced to withdraw two lignite-fired units from production, further inflating the problem of unemployment in Western Macedonia and causing further increases in the System's Marginal Price at the expense of consumers.

MINUTE 12/2013: the examination of the first witness of DEI SA continued, and was included in the MINUTES and the date for its continuation was specified

MINUTE 13/9-5-2013: the examination of the first witness of DEI SA was completed and was included in the minutes

MINUTE 14/10-5-2013: the examination of the second witness of ALUMINIUM SA started, was included in the minutes and the date for its continuation was specified

MINUTE 15/30-5-213: the examination of the first witness of ALUMINIUM SA was completed, was included in the minutes and after a common request for an extension of completion of the procedure by 4 months, the request was granted by No. 49/2013 RAE's President decision

MINUTE 16/13-6-2013: the examination of the second witness of DEI SA started, was included in the minutes and the date for its continuation was specified

MINUTE 17/28-6-2013: the examination of the second witness of DEI SA was completed, was included in the minutes The date was set for the parties' respective affidavits, without to that effect need for prior summons, as well as the date of assessment of testimonies. ALUMINIUM SA submitted a power of Attorney of its appointed lawyers.

MINUTE 18/18-10-2013: the method for payment for the overall costs of arbitration was established, as well as a period of 8 days from the notification to the parties, for payment of the balance of the remuneration of the members of the arbitral tribunal and its secretary

¹⁸⁵ With this it was agreed to submit their dispute to arbitration, provided however that the ALUMINIUM would pay DEI what it owed

21.1.I. The final determination of the remuneration for arbitrators and the Chairman of the arbitral tribunal, as well as the costs of the procedure.

The remuneration for the arbitrators, which was set at EUR 44,000 for each member and the secretary's, set at EUR 10,000 through previous proceedings and which was determined that each party had to pay half, had already been paid in advance.

The arbitral tribunal decided in application of articles 882 § 5 subparagraph a', 178 CCP and Article 14 of RAE's Regulation for Arbitration and on the ground that the decision was issued by a minority, to offset the costs in their entirety between parties.

21.1.IA. The order

The arbitral tribunal decided by a majority:

- i. Overrules DEI's main and auxiliary request.
- ii. Partly accepts ALUMINIUM'S request and updates, adapts and configures the supply conditions of 07-01-2010 so that the selling price of electricity for ALUMINIUM SA be set at EUR 40,7/MWh¹⁸⁶.
- iii. Dismisses the remainder of the aforementioned requests by the parties.
- iv. The present notice shall be filed for publication at the Secretariat of the First Instance Court of Athens, from the Chairman of the arbitral tribunal, as defined in article 14 § 5 of RA RAE. Further, the Secretary is mandated to communicate with return receipt the award to the parties. "

21.2. The course of the dispute and the related events until the arbitration and beyond.

To review this award and moreover, do it in a constructive manner, one needs not be consumed by legal arguments, but go beyond to look into the context of the dispute between the parties, the associated events and actions, both before and after the arbitration took place.

To this end, found at the end of this paper, there is an ANNEX containing:

- I. THE BEFORE THE ISSUANCE OF THE ARBITRAL AWARD EVENTS
- II THE AFTER THE ISSUANCE OF THE ARBITRAL AWARD EVENTS

21.3. Remarks on the arbitral award

21.3.A. Problems from the conditional participation of DEI in the agreement to submit the dispute to RAE's arbitration

The decision of the DEI Board, which approved the referral of the dispute between DEI and ALUMINIUM to arbitration, set as an absolute condition, until issuance of the arbitral award, provisional pricing terms from DEI'S side and punctual payment by ALUMINIUM's side,

¹⁸⁶ This price includes the fixed and variable costs of energy, system usage charges, ancillary services, SGI, and charges for State fees for RAE and DESMIE/LAGIE. Charges not included are: Special tax RES / ETMEAR, SCT electricity, DETE and any other charges imposed.

of the power consumption, according to the provisions of the 04-08-2010 Framework Agreement (according to DEI'S Annual Financial Report period from 01-01-2011 to 31-12-2011).

This absolute condition was not respected by ALUMINIUM'S side, which from the day following the agreement signing stopped paying its electricity bills and in any DEI attempt to collect the accumulated debts, it put forth as an argument the existence of the arbitration proceedings, which would ultimately decide on the matter.

It can therefore be argued that the entire following procedure is invalid, since it does not satisfy the conditions under which the authorization was given by the DEI's Board of Directors, and through which authorization DEI participated in the agreement to submit the dispute to RAE'S arbitration.

It can therefore be argued that the entire following procedures are invalid after not complied with the conditions under which it has obtained the authorization by the Board PPC and by this it participated in the agreement for submission of the dispute to RAE'S arbitration.

Indeed, DEI made partial use during the procedure of this problematic element, in the objection for lack of jurisdiction of the arbitral tribunal, put forward based on the non-compliance to this condition from the 08-04-2010 Framework Agreement, which it described "as written and persistent refusal of ALUMINIUM SA to recognize the existence and validity of".

21.3.B. Problems from the separation of the parties' positions about the subject of arbitration in their agreement of submitting their dispute to arbitration by RAE

The parties' agreement on submitting their dispute to RAE'S arbitration suffers since in the relevant co-signed document, ALUMINIUM has expressed objections to what will be the subject of arbitration¹⁸⁷.

In his opinion to DEI, Professor of Civil Procedure at the University of Thrace Mr. **Stylianos Stamatopoulos**, argues that "for this reason, no arbitration agreement has been concluded between DEI and ALUMINIUM", since there can be no arbitration when the two parties have not even agreed on which matter will the arbitral tribunal be asked to adjudicate.

21.3.C. Problems from the applied procedural provisions

The agreement between the parties to submit their dispute to RAE'S permanent arbitration was concluded on 04-08-2010 and by it the parties determined conventionally that it be implicitly conducted according to the existing Arbitration Regulation, i.e. the provisions of P.D. 139/2001 in combination with L. 2773/1999

But RAE'S Regulation for Arbitration, which was eventually applied, was the one to be later conventionally adopted by RAE'S decision No. 261/2012.

The award specifies of course, among other things, that "with the parties' attorneys consenting" the arbitration process would be "RAE'S Regulation for Arbitration", without however explicitly indicating that it was the one approved by RAE'S decision No. 261/2012.

¹⁸⁷ report of the newspaper "I Apopsi" (The Aspect) of 13 to 14 July 2013

21.3.D. Problems from the outside the designated by law deadline for issuance of the arbitral award.

Under article 8 of RA RAE for the prompt completion of the process, the arbitral tribunal shall ensure that the arbitration procedure, which concludes with the issuance of the arbitral award, be completed within six (6) months of the submission of the request for arbitration.

In case the above deadline cannot be met, RAE's President, at the request of either party, on application by any of the parties, sets a reasonable time limit for its completion.

In this instance however, even assuming that the process began when the parties on 14-12-2012 submitted to the arbitral tribunal their requests for arbitration, and that certainly through requests and mutual agreements the arbitral tribunal conceded extensions of deadlines for procedural acts (examinations of witnesses, etc.) and provided that the arbitral award was issued on 31-10-2013, instead of 14-06-2013 when it was supposed to, the set 6 month period of time deadline was exceeded by 4 ½ months, an arguably longer period than reasonably justified, since it tends to stretch by almost double the legal limit. This position is furthermore made stronger, if one assumes as starting point the time of submission of the arbitration agreement, which was 18-11-2011 !

21.3.E. Problems from Selection of the person for Chairman of the arbitral tribunal.

The cornerstone of the arbitration process is the impartiality and independence of arbitrators. Their selection is done very carefully and is preferably achieved through the parties' agreement. Where no such agreement between the parties is possible, a selection mechanism independent of them is provided. In RAE's permanent arbitration it is up to its President to decide, upon the recommendation of RAE's plenary sessions¹⁸⁸. In this case especially, additional caution is advised to avoid the danger of this selection being the parties' constant "complaint".

In this instance, the choice of the person to serve as Chairman of the arbitral tribunal¹⁸⁹ is expected to raise questions regarding the compliance to the requirement for impartiality, since despite the fact that there was a clear statement of "acceptance, independence and impartiality" and the parties have expressly agreed to the selection of this person:

i. he is simultaneously a member of RAE's plenary session, when another person could have been chosen, without any relation to RAE. Before this arbitration, RAE had been involved in many other issues concerning the parties and therefore, the appointed had taken part in these. For many others still, when required, he vote in favor of ALUMINIUM, such as:

- in No. 22/2008 opinion by RAE¹⁹⁰
- in No. 241/2010 opinion by RAE¹⁹¹,

¹⁸⁸ Article 4 § 4 of the RA RAE

¹⁸⁹ who is an engineer, while for many the preferred person for this position would be an economist, since the issue of arbitration is primarily economic

¹⁹⁰ by an affirmative vote in favor of amending the production license of the cogeneration unit of ALUMINIUM, for which the DEI had a strong opposition, which was subsequently approved by the minister responsible

¹⁹¹ by an affirmative vote of the Chairman of the arbitral tribunal, RAE recommended to the minister responsible, to change the legislation so that the cogeneration unit of ALUMINIUM, the license of which had been modified under the prior opinion of RAE, will be recompensed in a guaranteed and even greater price than before, for the

- No 341/2013 decision concerning the "Efficiency Control and Establishment of Operational Conditions for the Allotted Cogeneration Unit (CHP) of ALUMINIUM"¹⁹²

ii. Ruled in issuing the arbitral award against the No. 36/2011 opinion by RAE, where he is a member, according to which the average cost of production and marketing of electricity amounts to EUR 69,78 / MWh, accepting fully ALUMINIUM's views.

21.3.F. Problems from the selection of one of the arbitrators.

Press reports have also questioned the impartiality of the arbitrator designated by ALUMINIUM, and provided that they are proven true, they do indeed create such a problem for the award issued.

The information suggests that the arbitrator designated by aluminum and who ruled in favor of this award is none other than a groomsman of a Senior Director in the Mytilineos Group, who, having passed from various General Manager posts within companies of the Group, now holds the position of Director of Regulatory Affairs, i.e. he is responsible for issues having to do with RAE.

21.3.G. Problems from accepting claims of a witness suspected of non impartiality

ALUMINIUM had proposed an arbitrator¹⁹³ who was not accepted by DEI, but who was subsequently examined as a witness¹⁹⁴ in arbitration proceedings, which certainly raises a question concerning his testament, since this position conflicts with that of the arbitrator for which he was nominated, supposedly fulfilling the prerequisites of an independent and impartial judge.

21.3.H. Problems from the low price set in the arbitral award with the European Union

Given that the European Union in the past had already ruled that the back then price of electricity - which was higher than EUR 42 / MWh, i.e. the temporarily by RAE fixed price in May of 2012 for the supply of electricity by ALUMINIUM – constituted an illegal State aid, referring the country to the European Court of Justice, a second referral is foreshadowed.

Energy it produces, proposing in fact to grant ALUMINIUM rights which by many, where much larger than those demanded by ALUMINIUM itself (in a letter addressed to RAE some months before its opinion, the Mytilineos Group was asking equal treatment for the ALUMINIUM Electricity Unit as with electricity imports, i.e. to be paid the price of the wholesale market)

¹⁹² which was adopted by a majority of a single vote, that of the Chairman of the arbitral tribunal in favor of ALUMINIUM.

¹⁹³ Emmanuel Kakaras: No. 9 of the Engineering section of RAE'S catalogue of arbitrators, Director CERTH / ISFTA, Professor NTUA, School of Mechanical Engineering, Department of Heat, Laboratory Director Steam & Thermal Power Plants

¹⁹⁴ Page 21, No. 1/2013 Decision of the Permanent Arbitration in RAE

21.3.I. Problems from the failure to address the issue of non-payment in line with European Legislation.

From the correspondence exchanged between the European Commission and the Greek Authorities, from the date that the decision came out ruling as illegal state aid, until the recent referral of Greece to the European Court of Justice, follows that according to the EU, when there is a payable amount under dispute before national or Community courts, rather than being paid, the amount can be deposited in an escrow account until a final decision is reached and then the amount can be released in favor of one or the other side.

Therefore, since the vast majority of ALUMINIUM debts generally comes from billings that it unilaterally disputes, reasonably concluded that there has tapped the option of applying both the relevant authorities, and by the arbitral tribunal obligation to be paid by ALUMINIUM the disputed amount in an escrow account.

21.3.J. Problems with the European Legislation from non harmonization of the arbitral awards with market rules.

The arbitral award, even if it is entirely lawful, does not automatically mean that it is correct and indisputable. The price of power supply from a supplier to a customer is not determined by the decision of a court but by the rules of the market, i.e. the cost, supply, demand and the possibility/requirement that all other customers belonging to the same category can enjoy the same benefits.

A good illustration of this is European Commission's decision of illegal State aid to ALUMINIUM, through preferential power supply tariffs from the period from January 2007 to March 2008. Even though these preferential tariffs had been set by decision of the First Instance Court of Athens, that fact did not prevent the EU from classifying them as illegal State aid and eventually bring Greece to the ECJ (according to: a) Press Release of the European Commission of 13-07-2011, and b) notice to the Board of DEI No. 93/19-1-2012).

Under these circumstances, a renewed conviction of Greece for violating article 107 (1) of the Treaty on the Functioning of the EU (TFEU) is for granted, given that to qualify an act as illegal State aid it must: a) be about a State intervention or aid given through state resources (DEI). b) Confer an unfair advantage upon a recipient (which is the case, since the other industrial customers cannot obtain the same price). c) Affect intra-Community trade (valid, since there are other aluminum factories in the EU, which do not benefit from a subsidized power price) d) Distort or threaten to distort competition (which apparently also is the case).

22. The legislative framework

22.1. The European legislative framework

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, specifies the framework¹⁹⁵ for promotion of this institution amongst member states.

22.2. The national legal framework

22.2.1. L. 3898/2010

The decisive step for the adaptation of Greek legislation to the provisions of this Directive of the EP and EC for issues surrounding mediation and mainly to institutionalize national mediation procedures, was taken in Greece by L. 3898/2010 "Mediation in civil and commercial matters"

22.2.2. Associated legislation

What followed was a "rain" of legislations, mainly concerned with the process of recognition of qualifications for accredited mediators, the Mediators' Code of Conduct & penalties to its breaches, the terms and conditions of licensing and operation of their training organizations, the establishment and operation of the Mediators' Certification Commission of the Ministry of Justice and their amendments, as well as the inclusion of provisions relating to mediation into the core of the civil code and procedures, so that there is today an adequate operation framework for this promising institution¹⁹⁶.

23. The types of mediation

23.1. Definition

Mediation¹⁹⁷ is a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator¹⁹⁸.

¹⁹⁵ (a) under Article 1 § 1 the goal set is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial procedures, and (b) under Article 1 § 2 applies to cross-border disputes in civil and commercial matters except as regards rights and obligations which the parties are unable to decide on the basis of applicable law and shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the government for acts or omissions in the exercise of governmental authority ("acta jure imperii").

¹⁹⁶ are listed in full in paragraph 32.7. of the present

¹⁹⁷ Article 4 of Law 3898/2010

¹⁹⁸ By applying the legal definition one draws the following conclusions:

23.2. Types of mediation

The types of mediation are:

23.2.a. Private Mediation

In Private mediation the mediator is not a judge and is accredited after receiving special training and passing the relevant examinations.

In Greece, when domestic disputes are concerned, he can only be a lawyer, while in cross-border disputes not only lawyers qualify (Psychologist, Technical Expert, etc.). In any case, one must meet the accreditation requirements of the country of domicile.

23.2.b. Judicial Mediation

The Judicial Mediation in which the mediator is a Judge¹⁹⁹, currently without special training, without having passed any exams or relevant accreditation²⁰⁰. This type of mediation is not addressed in the present.

24. When can the parties seek recourse to mediation

The parties may seek recourse to mediation:

24.1. Prior lis pendens

Before filing for action, in which case recourse to mediation temporarily and until its completion excludes any court proceedings.

24.2. After the lis pendens

After filing for action:

- a) **By voluntary agreement**, i.e. if the parties voluntarily and willingly decide to do so
- b) **By a court referral** and with the agreement of the parties, so the court must postpone the hearing, deferring the case to trial after three months and not more than six months.
- c) **By mandatory mediation:**
 - If mediation is ordered by a court of another Member State of the EU
 - If mandatory necessary by law²⁰¹

A) that this process has its own peculiarities and requires a specially trained and experienced mediator who knows to work under its flexible structure,

B) it does not guarantee a positive result

C) the parties participate voluntarily and not by obligation

D) the parties themselves make the final decision on the dispute and not someone else for them

E) The mediator facilitates the parties to decide and doesn't decide himself.

Mediation isn't the attempt for conciliation made by the magistrate or the court during a trial, in accordance with Articles 208 et seq. and 233 paragraph 2 CCP.

¹⁹⁹ Article 214A of CCP

²⁰⁰ it does not work as expected because: (a) usually judges, due to a lack of time and increased pressure, are bad listeners and mediation under those case requires time, (b) they have acquired the hard to get rid of habit of constantly assessing people and situations, while the role of the mediator is mainly the facilitation of the parties in a neutral and impartial manner and (c) it is contrary to the principles of mediation and there is suggestion by the 'Consultative Council of European Judges' for judges not to decide in cases subject to mediation

25. Qualifying Disputes

Subject to mediation are the following:

25.1. Private law disputes where the parties:

a) Agree and their agreement is evidenced by a document, or the court minutes in the case the last suggested it and the parties agreed, governed by the provisions of the substantive law of contracts.

B) They have the power to dispose over the subject of the dispute, which concerns civil²⁰² and commercial²⁰³ cases

25.2. Cross-border private law disputes²⁰⁴

Private law cross-border disputes, are those where:

I. At least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

aa) the parties agree to use mediation after the dispute has arisen;

bb) mediation is ordered by a court in a member state;

cc) an obligation to use mediation arises under national law, or

dd) a court suggested it and the parties agreed

II. judicial proceedings or arbitration commence, following mediation between the parties in a Member State other than that of permanent or habitual residence²⁰⁵ of the parties, during the specified in the above mentioned cases (elements aa, bb, cc, dd) date .

26. The mediator

26.1. Definition of the term²⁰⁶

A mediator is a:

* third person (in relation of the parties)

* asked to undertake mediation

* in an appropriate, effective and impartial manner,

* regardless of how he was appointed or asked to undertake mediation.

26.2. The necessary obligations of a mediator

Mediators must abide by the following obligations:

²⁰¹ at present no such compliance requirement exists in domestic provisions, but in other countries and notably Italy, there are mandatory provisions for mediation

²⁰² ex. A) Family law (NOT remove or restrict the compulsory portion of an inheritance), b) rental disputes, c) Labor Law, d) Construction Disputes, e) Sports Disputes, etc.

²⁰³ ex. a) Marks, b) Patents, c) Corporate, etc.

²⁰⁴ Article 4 of Law 3898/2010

²⁰⁵ The concept of domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

²⁰⁶ Article 4 of Law 3898/2010

A] Independence

A mediator may refuse to initiate, or continue, any mediation whenever circumstances arise that might affect the mediator's impartiality or could generate a **conflict of interest**. The obligation to disclose such circumstances apply in perpetuity and throughout the course of the mediation.

Circumstances related to the property of independence include:

- a) any personal or professional relationship with a party
- b) any financial or other interest, direct or indirect, in the result of the mediation; or
- c) any past act in favor of any party by the mediator or any member of its company or business organization

If any of the above circumstances shall be applicable at any moment before or during the mediation, the mediator may only accept the role of mediator, or continue it, if the mediator assures the parties that he or she is able to mediate with full independence and neutrality in order to ensure complete impartiality, and the parties expressly provide their consent.

B] Impartiality

A mediator acts preserving impartiality and must always give that impression, also towards a third party and takes care for the equitable treatment of all parties involved in mediation.

C] Neutrality

A mediator a) does not direct, b) does not misrepresent the parties' will, and c) does not discriminate. He or she facilitates²⁰⁷ the parties by acting as a catalyst in the process.

D] Fairness

The mediator shall:

- A) ensure that all parties have adequate opportunity to participate in the process.
- B) If appropriate, inform the parties to a dispute and terminate conciliatory mediation if
 - a) an amicable agreement, which may be reached by the parties to the dispute, is, in the mediator's opinion, unenforceable or illegal, having regard to the circumstances of the case or
 - b) the mediator considers that continuing the mediation is unlikely to result in a settlement.

26.3. Required by law qualifications for mediators

The mediator must by law have the following qualifications:

A] Lawyer

Be a lawyer, with the exception of cross-border disputes²⁰⁸

B] Basic Education

Have received a basic training of 40 hours:

²⁰⁷ There are of course mediation "schools", mainly the American, in which the intermediary has a more interventionist role, like for example suggesting solutions

²⁰⁸ Article 4 of Law 3898/2010

- a) From institutions abroad
- b) From domestic institutions
- c) From Domestic Certification Bodies, which are non-profit organization involving at least one Bar Association and a Chamber²⁰⁹

C] Successful examination before the Special Committee

Have passed a written and oral examination before the Examination Committee of the Ministry of Justice²¹⁰

D] Accreditation

Have been accredited by the Department of Legal Profession & Bailiffs of the Directorate-General for the Administration of Justice of the Ministry of Justice, Transparency and Human Rights²¹¹

R] Registry List of Accredited Mediators

Have registered in the List of Accredited Mediators of the Ministry of Justice, which is uploaded and constantly updated on the Ministry website

F] Adherence to the Code of Accredited Mediators

Comply with the provisions of the Code of Accredited Mediators. Failure to do so is subject to sanctions by a Special Committee (temporary or permanent revocation of accreditation)

Z] Retraining

Update their knowledge and skills through a 10-hour training every two years²¹².

27. The cornerstones of mediation

A] Optional participation

Mediation is a voluntary process. The parties come to this because they want to and not because they are forced to do

B] Confidentiality/Secrecy

Mediators shall keep confidential all information that have resulted from the mediation, or in connection with it, including the fact that it is to be held or has been conducted, unless compelled to do otherwise due to a provision of the law or for reasons of public order²¹³

²⁰⁹ already up and running, by date of establishment: a) in Piraeus (KEDIP), in Thessaloniki(IKDTH), in Athens (PROMETHEUS) and Larissa (KEDIL)

²¹⁰ Article 6 § 3 of Law 3898/2010

²¹¹ Article 7 § 1 of Law 3898/2010

²¹² Article 4 of PD 123/2011

C] Privacy

The mediation must be conducted in a manner that respects privacy, unless the parties agree otherwise²¹⁴.

D] Flexibility

Although mediation is a "structured process", its "structure" is decided freely and may be altered depending on the needs of mediation²¹⁵.

E] The parties themselves decide

A mediator is not the judge, referee or legal advisor of the parties. The parties themselves decide on their dispute

F] Non-binding

The parties may terminate the mediation process at any time²¹⁶, without reason²¹⁷.

28. Mediation in energy sector disputes under RAE's permanent arbitration, in the current legislative framework

28.1. It is obvious that the disputes resolved through the mechanism of RAE's permanent arbitration could also be resolved as private disputes of which the parties have the disposal capacity, with mediation.

There is therefore nothing preventing those having such disputes to try to resolve them seeking recourse to the corresponding with mediation abovementioned provisions.

28.2. The problem arising here though, is attributed to the highly specific nature of these disputes. Dispute resolution in the energy sector requires people who have specialized knowledge of both the specific and simultaneously multidisciplinary laws that "strive" to regulate it, as well as in other specialized technical and technological issues and terminology, which as a whole tends to become another "language" of communicating, which is not held by the vast majority of ordinary mediators, who meet only the aforementioned conditions (see 26.3. hereof)

This peculiarity, combined with the critical nature of the disputes and the need for a speedy resolution, were the main causes for the creation of the institution of RAE's permanent arbitration and the existence of a list of the list of qualified arbitrators, which is one of the institution's great advantages.

²¹³ Articles 4 & 5 Code of Accredited Mediators

²¹⁴ Article 10 of Law 3898/2010

²¹⁵ There are tried and tested ways, but eventually the ways as many as the number of mediators

²¹⁶ Article 8 § 3 Law 3898/2010

²¹⁷ Article 3 § 3 Code Accredited Mediators

28.3. Yet, RAE's in detail exposed legislative framework and the institution of RAE's permanent arbitration do not contain the slightest reference to mediation, let alone a specific provision of a mechanism similar to that of arbitration or its inclusion in the already existing one. Therefore, no choice or assistance is provided to anyone who would even consider exploring the possibility of attempting to resolve a dispute through mediation, outside of a special mechanism that would provide security on a series of main issues and especially that of selecting a qualified mediator.

28.4. Consequently, under the existing framework and despite its many advantages, mediation does not have a promising future in dealing with these specific disputes.

29. Need for measures to promote mediation in the energy sector disputes

It should be recognized that the disputes, which are within the scope of arbitration to RAE, would gain from mediation because it allows for the following:

- a] a more prompt resolution of a dispute than arbitration
- b] a much lower cost than that of arbitration
- c] confidentiality, since parties do not have to divulge the fact that they attempted to solve or resolved their dispute through mediation and, as it is well known, energy is a sensitive sector where the interests at stake are huge and the curiosity by the public and the media is insatiable
- d] greater flexibility, since parties are not subject to a long series of procedural types
- e] a non binding process, where a party can stop it and leave at any time
- f] a dynamic participation in the resolution process, with the parties reaching their own decisions, and not a third party doing it for them
- g] the right to choose other ways to resolve their dispute, if mediation does not work
- h] rather than maintaining a limited view of proper positions and typical rights, the parties can shift their focus to their real interests
- i] an easier communication between the parties in restoring, maintaining and even advancing their business relationship, through the prospect of future synergies and partnerships
- j] agreements which are perceived as fair, or win-win are reached, which in turn are more readily accepted (especially by Boards & shareholders), and the main thing, they are more practical and sustainable in the long run.

30. Need for a revised or new framework for RAE

All of the above (§ 28 & 29) lead to the conclusion that a revised or novel framework to promote and operate the institution of mediation in the context of RAE is needed.

In my opinion this new legislative intervention should provide for:

A) The progression of the mechanism for "Permanent Arbitration in RAE" into the mechanism for "Permanent Arbitration & Mediation in RAE". Alternatively, a new and autonomous mechanism could be created, named "Permanent Mediation in RAE", which would handle the disputes now subject to permanent arbitration in RAE. Subsequently, the revision or creation of a new, corresponding Regulation would also be required.

B) Adopting an explicit provision in which the parties **may** resort to mediation before resorting to arbitration, or even during the latter, which would be suspended for as long as the mediation is in progress.

I am not suggesting a mandatorily procedural in nature mediation, in the sense of introducing a provision that would require the parties to resort to mediation before resorting to arbitration, because it is in contrast to its voluntary and optional character and would add cost in terms of money, but also time, to parties who did not wish to seek refuge to mediation. This in turn, would be detrimental to the Permanent mechanism in RAE, making it less competitive and less attractive.

C) I am however suggesting a provision that would make it mandatory to inform the parties about the institution of mediation, how it functions in practice and its benefits, in the course of an hourly session. This seems to be the best way for parties to be informed properly by a mediator of this institution, increasing awareness of its utility and need for existence, before the parties proceed to arbitration by a qualified arbitrator, who as I mention below, as a procedural prerequisite for the commencement and validity of the arbitration.

D) The creation of a special "closed" catalogue, with specialized on topics surrounding the energy sector mediators, along the lines of the catalogue for arbitrators, where they would be entitled to join through a similar process, those who meet the general requirements of the law (§ 25.3. hereof). They would additionally need to prove to RAE their specific academic or professional proximity, involvement or knowledge, as well as substantial experience in the field of energy law and its problem areas.

E) A specific provision allowing for the parties who have opted for "Mediation in RAE" and do not reach an agreement, to continue their efforts to resolve their dispute through "Arbitration in RAE", following the alternative model of ADR called **MED-ARB**²¹⁸, but under the restriction that a mediator serving in the initial case (selected from RAE's catalogue of mediators) cannot be a member of the arbitral tribunal, as the parties would have in all

²¹⁸ **MED-ARB or MEDIATION ARBITRATION:** begins as mediation. If the parties fail to come to agreement, the process transforms into arbitration with the former mediator assuming the role of decision-maker. The process may be modified so that parties may elect out of the process at the close of the mediation component, or the parties may select another arbitrator for their dispute.

likelihood already revealed positions, events or confidential documents that they may not have wanted him to know as an arbitrator, who has already formed an opinion.

A specific provision allowing for the parties who are already in "Arbitration in RAE", to be able to opt for "Mediation in RAE", which would suspend the arbitration procedure for as long as the mediation is in progress, following the alternative model of ADR called **ARB-MED**²¹⁹, but under the restriction that the mediator is not one of the members of the arbitral tribunal which was suspended. The grounds for this restriction lie in that if the mediation fails and the arbitration resumes, the parties will have in all likelihood already revealed positions, events or confidential documents that they may not have wanted him to know as an arbitrator, who has already formed an opinion. Or, thinking in advance about this possibility, the parties might not divulge crucial information, thus sabotaging in a way the mediation process.

²¹⁹ **ARB-MED or ARBITRATION-MEDIATION:** *n Arb-Med*, the neutral first acts as arbitrator, writing up an award and placing it in a sealed envelope. The neutral then proceeds to a mediation stage, and if the case is settled in mediation, the envelope is never opened.

31. About the present permanent arbitration mechanism

Arbitration next to RAE has already taken its first legislative steps.

The legislative framework, its gaps and discrepancies that create problems, should quickly be addressed. Apart from the observations made above specific to each issue, I think it is essential:

I] To quickly solve the issue of RAE's legislative delegation for creating the Regulation of Arbitration and, perhaps on occasion of its amendment by law, to abolish the existing and to authorize RAE to create a new one, which will be in force without this problem

II] That there be an explicit provision for an opt-out requirement for arbitrators on the catalogue who have participated in any way in RAE decisions involving any of the parties participating in the resolution of a dispute

III] To incorporate in the current provisions on impartiality, the respective ones by I.B.A., for clarification purposes and assisting the arbitrators and parties in the adjudication, to determine the existence or not of these properties

IV] To give special attention to RAE's conducts on issues of expert opinion, prohibiting such an assignment in the event that any member of the tribunal is also a RAE member, or prohibiting the participation of that member in the conduct of such proceedings.

V] Allow in cases with limited financial scope, the ability to use a sole arbitrator.

VI] The mechanism for arbitration should become more attractive, providing for buildings and infrastructure modeled after the respective arbitration centers abroad and being more cost efficient.

32. About the 1st arbitral award

The first arbitral award was not the best start in terms of the mechanism's jurisprudence. I rather think it left it wounded, at a time when it needed impetus and inspiration.

The "product", i.e. the results of the mechanism for permanent arbitration in RAE, is also its best "advocate" and needs special attention, both in terms of Authority, by avoiding incompatible decisions during procedural matters (appointed Chairman of the arbitral tribunal, expert opinions) relating to any dispute, but also in terms of the catalogue of arbitrators. On suspicion that despite the parties' stated agreement, there are still concerns that the reputation of the institution might be endangered; arbitrators should take the necessary steps in a timely manner in order to protect it (opt-out, non-acceptance of appointment, resignation).

33. About Mediation

Mediation is a real chance for RAE. It can enrich its mechanism through a new service or even constitute a completely new structure, next to the already existing, adopting the provisions mentioned above.

This will give to the existing mechanism a new dynamic, rendering it more attractive for players in the energy sector, as it will address the indisputable need for the newly established in our country, institution of mediation.

Combined of course with services, organization and infrastructure modeled after the standards of the respective major centers abroad:

a) the provided free (at least for the first years) service of an hourly information session for the interesting parties with a RAE mediator, about the institution of mediation, its benefits and the provided services of RAE's mediation mechanism and its mediators.

b) the corresponding infrastructure, since (3) separate rooms for sessions are required (one big room for common sessions and the other two for the separate sessions of the mediator with the parties), as well as a recreation space for breaks between sessions and modern telecommunication facilities such as a teleconference, fax, etc.

c) the appropriate administrative support, including set up of a special secretariat for relevant information about RAE's Mediation Mechanism, for the more effective communication between the parties and the selected mediator or mediators, and for any other necessary administrative support

d) the provision for the creation of a catalogue of the mechanism's mediators and its upload to RAE's website

e) additional facilities such as those of a Translation Centre for documents and for the live communication between the parties when it is necessary

f) handling of the sensitive matter of fees and advances of the fees for mediator services and for RAE's mediation mechanism administrative costs.

34. About the "bigger picture"

34.1 If all of the above are implemented, Greece will be able to have a more reputable and effective mechanism of "PERMANENT ARBITRATION & MEDIATION" next to RAE for private disputes in the energy sector, which given the lack of similar ones in the Balkans, will be a pole of attraction for neighboring countries and the players active in this sector.

34.2. Of course a more ambitious target is or will be the routing of a bigger mechanism, including as many alternative dispute resolution models as possible, such as:

- Organized negotiation²²⁰
- Dispute Review Board²²¹
- Conciliation²²²
- Settlement conferences²²³

²²⁰ Voluntary and usually informal process directly between the parties or through their representatives intended to reach agreement for the future (transactional negotiation) or to resolve a past dispute (dispute negotiation). The desired objective is an agreement, which is typically, but not always, enforceable under law.

²²¹ Voluntary and informal process directly between the parties or through their representatives in front of a three-member panel with expertise, which recommends solutions to the parties. The desired objective is an agreement, which is enforceable under other processes.

²²² Typically consists of independent communications with parties in their separate contexts (their home or work environment), either to improve relations or pave the way for some other process, e.g., mediation.

²²³ A meeting in which a person assigned to the case presides over the process. The purpose of the settlement conference is to try to settle a case before the hearing or trial. Settlement conferencing is similar to mediation in

- MED-REG or Mediation Recommendation²²⁴
- Mini-Trial²²⁵
- Summary Jury Trial²²⁶
- Early Court Evaluation²²⁷ :
- Commission of crisis management operations
- Dialogue between interest groups

These perspectives on RAE's permanent mechanism are by far the best for the future.

that a third party neutral assists the parties in exploring settlement options. Settlement conferences are different from mediation in that settlement conferences are usually shorter and typically have fewer roles for participation of the parties or for consideration of non – legal interests.

²²⁴ Begins as mediation, but, if the parties do not come to agreement, the mediator makes a recommendation to the court or other decision- maker as to a recommended resolution.

²²⁵ Usually include the abbreviated presentation of evidence to one or more expert neutral facilitator(s) and the presence of executives or others with decision-making authority. Following the summarized presentation of evidence and a questioning period, the decision-makers and facilitator will meet for confidential settlement discussions.

²²⁶ Another type of mock trial using one or more advisory juries. Summary jury trials usually include the abbreviated presentation of complex litigation to advisory juries who then render one or more advisory verdicts for executives with decision-making authority to consider in their settlement discussions, again typically facilitated by an expert advisor or facilitator.

²²⁷ A process that may take place soon after a case has been filed in court. The case is referred to an expert, who is asked to provide a balanced and unbiased evaluation of the dispute. The parties either submit written comments or meet in person with the expert. The expert identifies each side's strengths and weaknesses and provides an evaluation of the likely out- come of a trial. This evaluation can assist the parties in assessing their case and may propel them towards a settlement.

PART 7: BIBLIOGRAPHY

35. Arbitration**35.1. Books**

- a. Kaisis Athanasios, Cancel Arbitral Awards, 1989
- b. Kaisis Athanasios, International commercial arbitration and the Brussels Convention, 1995
- c. Kaisis Athanasios, Spaces of public policy on the recognition and enforcement of foreign judgments and arbitral awards, 2003
- d. Kalavros Constantinos, The power crisis of Arbitrators, 1988
- e. Kalavros Constantinos, Law of Arbitration - I. Internal arbitration, issue I, Introduction, 1993
- f. Kerameas, Problems of Greek Law of arbitration comparative perspective in Tribute to John George Economopoulos, 1981
- g. Kousoulis Stelios, Arbitration - Interpretation under Article, 2004
- h. Kousoulis Stelios, Law of Arbitration, 2006
- i. Kousoulis Stelios, Arbitration
- j. Beys Kostas, The dialectics of Procedural Law - Volume VI: Contributions to the Interpretation of the Code - Articles 682 to 903, 1999
- k. Panagos Theodoros, The institutional framework of the energy market, 2012
- l. Papantoni Maria, The Law of Energy, 2003
- m. Fortsakis Theodoros, Energy Law, 2009
- n. Foustoukos Angelos, Preliminary Observations on Articles 867-903 CCP, reprint of the book of the Potter / Kondyli / Nika, Interpretation of the Code, 2000
- o. Foustoukos Angelos, Arbitration (Studies, Articles, Speeches), 2000

35.2. Articles

- a. Kaisis Athanasios, Zur Umsetzung der Elektrizitäts - und gasrichtlinie in griechenland, 2012, Europäische und Internationale Dimension des Rechts, 2011
- b. Kaisis Athanasios, Zur Umsetzung der Elektrizitäts - und gasrichtlinie in griechenland, 2013
- c. Delis George, Judicial review of the sanction function of independent authorities, Diki, 2013
- d. Kaldelis Evangelos, Energy & Arbitration: The organization Permanent Arbitration Regulatory Authority for Energy (RAE), Energy & Law, issue 5, 2006
- e. Metaxas Antonios, RAE Arbitration Mechanism - A breakthrough
- f. Mpeis Kostas, Civil Procedure, 3rd Volume
- g. Mplana Vicki, Procedural issues in domestic and international arbitration - in particular the process of arbitration RAE, Energy & Law, issue 18, 2012

- h. Moraiti Athina, The settlement of disputes by the Regulatory Authority of France (CRE)", Energy & Law, issue 8, 2007
- i. Nousia Kyriaki & Stamati Marcela, Substantive and procedural issues in international arbitrations in the energy and investment, Energy & Law, issue 15, 2011
- j. Economopoulos - Mitsopoulos , Opinion, Nomiko Vima, 1975
- k. Panagos Theodoros, Telematics alternative for resolving disputes in the energy sector. The case manager's electricity transmission system, Energy & Law, issue 15, 2011
- l. Panopoulos Giorgos, Dimitrakopoulos & Sophia, on the constitutional limits of power of the Energy Regulatory Authority as an administrative body - Thoughts on the No. 324/2012 decision, Energy & Law, issue 18, 2012
- m. Pappas, The diaititefsimo differences, WEU, 2002
- n. esp. Rammos - Koumandos - Mpeis , Opinion, Diki, 1975
- o. Sismanidou Joanna, Forms of alternative dispute resolution mechanisms, Workshop D.N.Y.
- p. Spiliotopoulos Epaminondas, Responsibilities of RAE in European and Greek law. Topics constitutionality, Eneresia & Law, issue 15, 2011
- q. Sinodinos Harris, multidisciplinary law Energy, Energy & Law, issue 1, 2004
- r. Sinodinos Harris, Contribution of the emerging energy law in dynamically evolving commercial law, Energy & Law, issue 17, 2012
- s. Foustoukos Angelos, The Institution of the permanent arbitration and organization in our country, Nomiko Vima, 1977
- t. Mr Foustoukos Angelos, The validity of the arbitration agreement and its control, Nomiko Vima, 1987

36. Mediation

36.1. Books

- a. Greek Arbitration & Mediation Centre, curated Anastasopoulou Joanna, The Mediation in Civil and Commercial Disputes, 2011
- b. Skordaki Bassilici, Mediation through Law 3898/2010, 2012
- c. Chamilothis John, ADR, 2000

36.2. Articles

- a. Anastasopoulou Ioanna, Mediation : Justice without recourse to the courts ? 2006, Counsel, vol. 58, p. 52
- b. Anthimos Apostolos, Court redress - Greek Law and Community developments, 2006, Press Association SA & Ltd., insert pages Mediation, p. 408
- c. Gesiou-Faltsi Pelagia, Mediation in the light of new evolutionary trends Dikaonomikou Civil Law, 2010, Bull Association Inc. & Ltd., inserted pages Mediation, p. 45

- d. Gravias Georgios, Mediation in Greece, 2007, Press Association SA & Ltd., insert pages Mediation, p. 49
- e. Dragios Athanasios, The institution of mediation in Greece - The challenge for a new alternative way of resolving civil and commercial matters (2013), Enterprise, v. 3, p. 221 et seq
- f. Iliakopoulos Elias, The new institution of mediation in civil and commercial matters, 2008, p. 21
- g. Kanellopoulos Nicolas, Applied acceleration solutions of justice in France, 2004, Counsel, vol. 47, p. 72
- h. Kanellopoulos Nicolas, Stratinaki Anna, Katsaouni Ada, Voutsas Nikos, A modern way to resolve disputes, 2007, Dikeorama, vol. 11, p. 14
- i. Karabatzos Anthonios, Alternative Dispute Resolution, 2008, Press Association SA & Ltd., insert pages Mediation, p. 49
- j. Klamaris Nicholaos, The mediation. I scientific fashion or real solution ?, 2008, v. 17, p. 8
- k. Komnios Komninos, Introduction to the Law of mediation - The proposal for a Directive on certain aspects of mediation in civil and commercial matters, www.kostasbeys.gr
- l. Markowetz Klaus, Does the combination of arbitration and mediation satisfactory strategy for resolving private disputes, 2008, Dike International, t. 39, p. 767
- m. Matthias Stefanos, Extrajudicial settlement of private disputes, 2006, Press Association SA & Ltd., insert pages Mediation, p. 360
- n. Orphanides George, alternative dispute resolution - mediation and Reconciliation, 2006, Press Association SA & Ltd. , insert pages Mediation, p. 453
- o. Pampoukis Harris, Rules of international organizations for Mediation, 2007, Dikaiorama, vol. 11, p. 12
- p. Pikrammenos Takis, Resolving disputes without litigation, 2007, Press Association SA & Ltd., insert pages Mediation, p. 44
- q. Rizos Constantinos, Answers to justifiable doubts about the application of mediation to resolve disputes between businesses, 2008, Press Association SA & Ltd., insert pages Mediation, p. 25
- r. Chamilothis John, The Mediation in Greece, 2007, Bull Association Inc. & Ltd., insert pages Mediation, p. 213

36.3. Articles in the press

- a. Reding Viviane, Pillar to develop effective justice, I Kathimerini, 01-07-2012., p. 15
- b. Damoulianou Christina, Mediation and Arbitration came to Greece, I Kathimerini, 08-05-2011, p. 8

37. Arbitration

37.1. Legislative Texts (in chronological order)

37.1.i. European

- a. Directive 2003/54/EC of the European Parliament and of the Council of 26 - 6-2003 " concerning common rules for the internal market in electricity and repealing Directive 96/92/EC "
- b. Directive 2003/55/EC of the European Parliament and of the Council of 26 - 6-2003 " concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC "
- c. Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II")
- d. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
- d. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 11 June 2008 on the law applicable to contractual obligations ("Rome I")
- e. Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC
- f. Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning the rules for the internal market in natural gas and repealing Directive 2003/55/EC

37.1.ii. General

- a. Code of Civil Procedure, Articles 867 to 903, 116, 178, 322, 324
- b. Law 2735/1999 "International Commercial Arbitration "
- c. Civil Code, Articles 181, 281, 371

37.1.iii. Special

- a. Law 2773/1999 "Liberalization of the Electricity Market - Energy policy issues and other provisions"
- b. P.D. 139/2001 " Regulations and Power Management Regulatory Authority (R.A.E.)»
- c. Decision of the Minister of Development 4524/2001 "Code Notice to customers"
- d. Decision of the Minister No. D5/IL/V/F29/23860/2007 "Increasing tariffs for electricity ' PPC ' December 2007 and Amended Notice of Code »

- e. Decision of the Minister of Development No. D6/F1/oik.1725/2007" Determination of the type and scope of sale of electricity produced from Renewable Energy Sources and Cogeneration of Heat and Power High Performance Network Non Interconnected Islands in accordance with the Article 12 , paragraph 3 of Law 3468/2006 "
- f. Law 3889/2010 "Financing Environmental Interventions, Green Fund, Ratification forest maps and other provisions . "
- g. Decision of the Minister of Environment, Energy and Climate Change No. A.Y/F1/oik.17149/2010 " Form and content of contracts for electricity produced from Renewable Energy Sources and Cogeneration of Heat and Power High Performance Network non Interconnected Islands in accordance with the provisions of Article 12 paragraph 3 of Law 3468/2006 , as applicable. Except thermal and hybrid power plants '
- h. Decision of the Minister of Environment, Energy and Climate Change No. D5IL/G/F1/oik.23278/2012 " Additional Provisions for units Cogeneration High Efficiency, type and content of Complementary Agents Energy Transactions Dispatchable Unit and Technical Appendix CHP units CHP Records of RES and CHP / CHP '
- i. Law No. 4001/2011 "on the operation of Energy electricity and natural gas for Research , Production and Transfer Network Hydrocarbons and other settings "
 - Explanatory Memorandum on the Draft Law
 - Report on the bill of the Greek Parliament / B ' Directorate of Scientific Research / Department legal vetting plans and proposals Laws
 - Report from the General Accounting Office (Article 75, para 1 of the Constitution)
- J. Law 4038/2012 (Medium Term)
- k. Code for Electricity Transactions
- l. Manual Power Exchange Code of functioning electricity market (LAGIE)

37.1.iv. R.A.E.

- a. RAE's Decision No. 692/2011
- b. RAE's Decision No. 798/2011
- c. President's of RAE Decision No. 24/2012 ' Set Referee pursuant to paragraph 4 of Article 5 of the Rules of Arbitration RAE, regarding the difference between PPC S.A. and ALUMINIUM S.A., in the terms of pricing power, which was subject to the arbitration of the RAE within the meaning of Article 37 of Law 4001/2011"
- d. RAE's Decision No. 57/2012 "Adoption of Code of Management of Greek Transmission System of measures"
- e. RAE's Decision No. 126/2012 "Approval of Contracts for Gas and LNG facility users received by D.E.S.F.A."
- f. RAE's Decision No. 261/2012 "Adoption Rules Arbitration 9KD) R.A.E."
 - Remarks D.E.P.A. S.A. on the question raised in the public consultation Standing Rules of Arbitration (without chronology pension)
 - Notes PPC the draft Rules of Arbitration R.A.E. (16-3-2012)
 - Democritus University of Thrace, "Public consultation - Arbitration Rules " (16-3-2012)

- Mytilneos Group of Companies, "In Article comments and suggestions on the draft Regulation Arbitration RAE " (19-03-2012)

- Comments & Observations of participants in the public consultation on the draft RAE Arbitration Rules - The Answers & Theses R.A.E.

g. From 03-07-2012 Announcement of R.A.E. "Call for expressions of interest for participation in the list of arbitrators and mediators for arbitration organized the Regulatory Authority for Energy (R.A.E.)"

37. Jurisprudence

a. No. 1/2013 Decision of the Permanent Arbitration next to RAE (Number of incoming RAE : R.A.E./D1/1-215/31-10-2013)

b. A.P. 727/1963 , Nomiko Vima (1964)

c. A.P. 875/1976 , Nomiko Vima (1977)

38. Mediation

38.1. Legislative Texts (in chronological order)

38.1.i. European

a. Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters

b. European Code of Conduct for Mediators

c. Proposal COM (2011) 793 of the EC Directive on alternative dispute resolution for consumer disputes

d. EP resolution of 13-9-2011 on the application by Member States of the Mediation Directive

38.2.ii. General

a. Code of Civil Procedure, Article 214b

38.2.iii. Special

a. Law 3898/2010 "Mediation in civil and commercial matters'

b. P.D. 123/2011 "Defining terms & conditions for authorization and operation of training organizations mediators in civil and commercial matters'

- c. UNHCR 109088 oik/12-12-2011 "Recognition Procedure for accreditation of mediators - Adopt Code of Ethics Accredited Mediators & Fixing Penalties for violations of this "
- d. M.D. 109087/2011 "Formation Commission Certification of Mediators"
- e. M.D. 34801/2012 & 34802/2012 "Operator of the Certification Committee of Mediators & determination process control training organizations accredited mediators and facilitators"
- f. M.D. 85485/2012 "Determination parabolic mediation"
- g. M.D. 1460 oik/13-2-2012 "Determination of Fee Broker"
- i. Law 4055/2012 "Fair Trial & during this " Article 7 " Judicial Mediation"
- j. Legislative Act No. GG 237/5-12-2012 Article 16 § 9
- k. M.D. 107309 oik/21-12-2012 "Modification of No. 109088 oik/12-1-2011 MD"
- l. The No. 894/2013 Ministerial Decision (Official Gazette B ; 43/15-1-2013) concerning the authorization of the Agency Training Piraeus.
- m. Law 4111/2013 (Government Gazette 18A), and in particular paragraph 9 of Article 40.

PART 9: OTHER DATA SOURCES

39. Arbitration

39.1. Journalistic reports

- a. Newspaper "I Apopsi "
- Sheet No. 511, (25-26.2.2012), pp. 1, 16, 33
 - Sheet No. 514, (17-18.3.2012), pp. 1, 8, 9
 - Sheet No. 516, (31.3-1.4.2012), p.6
 - Sheet No. 518, (13-14.4.2012), pp. 30, 31
 - Sheet No. 514, (17-18.3.2012), pp. 1, 8, 9
 - Sheet No. 524 (26-27.5.2012), pp. 1, 28, 29
 - Sheet No. 540, (15-16.9.2012), pp. 1, 23
 - Sheet No. 545, (20-21.10.2012), pp. 1, 23
 - Sheet No. 566, (15-17.3.2013), pp. 1, 38, 39
 - Sheet No. 567, (23-24.3.2013), pp. 1, 13, 14, 35
 - Sheet No. 569, (6-7.4.2013), pp. 1, 39
 - Sheet No. 571, (20-21.4.2013), pp. 1, 13
 - Sheet No. 576, (25-26.5.2013), pp. 1, 36
 - Sheet No. 577 (1-2.6.2013), pp. 1, 12, 37
 - Sheet No. 583, (13-14.7.2013), pp. 1, 12, 37
 - Sheet No. 584 (20-21.7.2013), pp. 1, 12, 37
 - Sheet No. 585, (27-28.7.2013), pp. 1, 38
 - Sheet No. 586, (3-4.8.2013), pp. 1, 12
 - Sheet No. 591, (7-8.9.2013), pp. 1, 12
 - Sheet No. 594, (28-29.9.2013), pp. 1, 40
 - Sheet No. 596, (12-13.10.2013), pp. 1, 18, 31, 32
 - Sheet No. 599, (2-3.11.2013), pp. 1, 40
 - Sheet No. 600, (9-10.11.2013), pp. 1, 45, 46 , 47
 - Sheet No. 601, (16-17.11.2013), pp. 1, 12, 45
 - Sheet No. 602, (23-24.11.2013), pp. 1, 38, 39
 - Sheet No. 603, (30.11-1.12.2013), pp. 1, 12, 37, 38
 - Sheet No. 604, (7-8.12.2013), pp. 1, 12, 37
 - Sheet No. 605, (14-15.12.2013), pp. 1, 37
 - Sheet No. 606, (21-22.12.2013), pp. 39
 - Sheet No. 610, (18-19.1.2013), pp. 1, 19, 37
 - Sheet No. 611 (25-26.1.2013), pp. 1, 48
- b. Newspaper " Express"
- Leaf 12is.4.2012
- c. Journal "Daily "
- Sheet 21is.5.2012

- Sheet 2-3 - .11.2013

d. Newspaper " I Kathimerini"
- Sheet of 13 - 7-2013
- Sheet 5 - 11-2013

e. Newspaper «Real News»
- Sheet of 10-11-2013

39.2. Websites

- a. www.rae.gr
- b. www.energeia.gr
- c. www.dei.gr
- d. www.alhellas.gr

40. M e d i a t i o n

40.1. Websites

- a. www.hellenic-mediation.gr
- b. www.diamesolavisi.com
- c. www.diamesolavisi.net
- d. www.odee.gr
- e. www.kedip.gr
- f. www.dsth.gr/kdth
- g. www.akked.gr
- h. www.dslar.gr

ANNEX

Most of those listed here have been transferred intact or after processing, by news reports of the publications listed in the chapter on references, having been checked to the extent possible, from sources related to the subject and documents that were brought to my knowledge.

I. THE BEFORE THE ISSUANCE OF THE ARBITRAL AWARD EVENTS

25-07-1960: The Convention of Pechiney (1960-2006)

On 25-07-1960 the French Pechiney had procure a contract with DEI, for the low pricing of electricity to the energy intensive industry of the first, which ended in 1992.

1993: Extension of contract-pricing

In 1993 it was agreed that the contract and hence, also the pricing, remain active until 31-05-2006, provided that DEI will denounce it through an extrajudicial statement, two years before it expires.

26-02-2004: Termination of contract by DEI

On 26-02-2004 DEI terminated the contract, which meant that after 31-05-2006 there would no longer exist a privileged tariff for electricity.

March 2005: Acquisition by Mytileneos Group of Companies

In March 2005 the Mytileneos Group of Companies acquires the company under the name ALUMINIUM OF GREECE SA from a Canadian multinational company, which had previous ownership.

31-03-2006: The new pricing by DEI after expiry of the contract

On 31-03-2006 DEI began to price electricity to ALUMINIUM, like any other high-voltage energy-intensive companies.

2007: ALUMINIUM's reaction

ALUMINIUM took action against DEI, asking the court that the original status of contract (25-07-1960) is also kept after 31.03.2006.

01-05-2007: Temporary Suspension of the contract termination

ALUMINIUM's request is granted and the decision issued on 01.05.2007 by the First Instance Court of Athens temporarily suspends the termination of the contract, so DEI started anew pricing according to the contract of 1960.

2007: ALUMINIUM receives a subsidy for building a power plant to cover its electricity needs

ALUMINIUM, in order to cover its electricity needs and lower the cost of production, built a power plant on its site in Agios Nikolaos-Viotia. The funds were received, in accordance with European legislation, through a direct subsidy of 15.8 million euros. An additional 17 million euros in indirect funding was feasible through L4955/2006, which changed the relevant legislation, allowing the cost of the company's gas pipeline to the plant to be ultimately borne by its customers. Finally, the company had acquired a special permit, the first private company to do so, allowing for direct cooling of its plant through seawater.

ALUMINIUM had the obligation to repay the grant of € 15,8 million which was received in 2008, but was not consistent with its payments. It was offered an extension until the end of 2012 and without interest.

03-06-2008: Judgment of the Athens Multi Member first instance Court in favor of DEI

Before subjecting the dispute DEI - ALUMINIUM to arbitration, DEI had been vindicated by the decision of the Multi Member first instance Court of Athens, published on 06-03-2008.

Easter 2008: Change of the power plant into a combined heat and power plant

During Easter of 2008, at the request of ALUMINIUM SA, the license of the power unit changed and it could now produce current, through technology that utilizes heat to produce steam, bringing efficiency up to 85%!. This allowed the company to not only meet its own needs, but also sell power to DEI SA., as a co-producer of electricity. Specifically, the wholesale price to DEI was € 55 / MWh²²⁸, while ALUMINIUM was purchasing its own current for € 41 / MWh.

June 2008: Signing of contract between DEI & ALUMINIUM

In **June 2008**, while the tariffs that would apply from 1 July had already been made public (issued by Ministerial decree in December 2007 and after official presentation of the imposed 10% increase, effective 01-07-2008), ALUMINIUM signed a power supply contract with DEI, like all other High Voltage (HV) customers.

July 2008: ALUMINIUM stops paying the tariff it agreed on

One month after signing the contract, ALUMINIUM refuses to pay the effective price of 01-07-2008 and unilaterally decides to pay 10% less (the only one between HV customers), and from February 2009 completely stops paying its bills

01-07-2008: Liberalization of HV Invoices

On 1-7-2008 High Voltage invoices were liberalized after a Ministerial Decision, which states that pricing should be determined by negotiations between the customer and DEI, in accordance with the decisions of RAE, taking in account the size and especially the consumption profile of each customer.

2009 : New change to high-efficiency cogeneration power unit

In 2009 a new change took place and the power plant joined the "High Efficiency Cogeneration Units" in order to be taken advantage of the beneficial provisions of Law 3734/2009 ensuring greater subsidies.

It should be noted that the high-efficiency cogeneration units promoted by the European Union because they save fuel and reduce the emissions of carbon dioxide, encountered in favorable way and one part of the power that they produce enters with priority into the system with a subsidized price, i.e. much higher than the "limit price" of the system contemplated until 35 MW as renewable sources of energy (such as photovoltaics, wind turbines, etc). This status was initially planned for small units of hospitals and private clinics, which have great needs and they operate on a 24hour basis²²⁹.

²²⁸ megawatt per hour

²²⁹ E.g. Naval Hospital of Athens, Mitera (mother) maternity hospital, etc.

Even if the unit runs on natural gas the guaranteed price is higher than those of wind farms and associated with the international price of natural gas, which increases the subsidy through time.

July 2009: Payment of certain accounts by ALUMINIUM

In June 2009, ALUMINIUM paid to the P.P.C. the bills from February - March - April - May which had become due.

That gesture persuaded the PPC to agree with ALUMINIUM to refer their pricing dispute concerning the increase by 10 % to arbitration even though the contract between them provided to solve their disputes through ordinary courts rather than through arbitration.

But at the next day of their agreement the ALUMINIUM stopped again to pay its bills in total and not only to the controversial increase of +10 %.

October 2009: Lawsuit & interim measures of PPC against ALUMINIUM

In October 2009 PPC resorted to legal action and interim measures to ensure the debts of ALUMINIUM in PPC until then.

February 2010: Arbitration award for negotiation

In February 2010, an arbitration award issued that there must be negotiation between the parties on the growth rate of the invoice, only upon the range of 0 % to 10 % of what applied to on 30-6-2008. The negotiations actually started, even though ALUMINIUM continued not to pay its bills, even without the increase of +10 %, which was the only thing being negotiated, leaving debts to PPC in May 2010 to exceed € 130 million.

4-8-2010: Compromise determination of the total debt of ALUMINIUM to PPC (debt "haircut")

On 4-8-2010, the PPC Board approved the agreement which reached at the negotiations and which was summarized as follows:

1] Reduction (i.e. "haircut") by € 26 million of debt that had accumulated for consumption of ALUMINIUM during the period from 01-07-2008 to 30-6-2010²³⁰ determined in total of € 82,5 million.

2] conclusion of a new contract for the period 1-7-2010 to 31-12-2013, throughout ALUMINIUM will buy electrical power from PPC only at current times of low demand (where the PPC tariff for electricity is very cheap) and the remaining hours will cover the ALUMINIUM itself otherwise, but with the premise for a short transitional period of six months PPC to cover these hours, pricing based on the respective average monthly price of wholesale market power for these hours.

3] Payment of ALUMINIUM's debt to PPC for the period from 1-7-2008 to 30-6-2010, which after its reduction amounted to about € 82,6 million, with particularly favorable

²³⁰ The clipping of debt AAOYMINION calculation with smaller interest, reduce the debt from 107.6 million euro to 82.6 million euro, which corresponds to the full charge of the industrial tariff without the increase imposed unilaterally by the PPC.

conditions for ALUMINIUM : specifically with just € 20 million deposit and the rest in 60 monthly installments, at low (subsidized) rate EURIBOR 1 month +1% (at the time in which for other PPC counterparties the spread was then +6%, and which today it is +8%).

Despite the above favorable agreement, ALUMINIUM continued not to comply with the agreed terms, initially not even paying the deposit and installments, and subsequently pretended excuses not to pay the full amount of the new monthly consumption.

July 2011: Abolition of the limit of 35 MW for the MSYA

In July 2011 the limitation of 35 MW repealed and ALUMINIUM benefited since the electricity price was calculated with the tariff of wind energy plus the gas clause, which raises the price.

27-07-2011: The European Union's decision to return the subsidy from ALUMINIUM

In 27-7-2011 notified in PPC the no. E (2011) 4916 / 13-7-2011 European Commission Decision, after its investigation for the existence of State aid (C2/2010) in favor of "ALUMINIUM OF GREECE S.A." and its successor "ALUMINIUM SA", addressed to the Greek Republic, by which the Commission decided that there is State aid of € 17.4 million in favor of ALUMINIUM. According to this decision, the Greek Republic was required to ensure the recovery of that amount within four (4) months from the publication of the decision. The State aid, according to the decision, took place through reduced electricity tariffs granted by the state-owned electricity PPC to ALUMINIUM during the period 01/2007-03/2008, and which were offered undue advantage in ALUMINIUM, in violation of the European Union Regulations in the field of State subsidies.

ALUMINIUM, although made the projected from the EC appeal within four months of the issue of the decision against it, was not exercise its projected by Articles 242-243 of the Treaty (in the same period) right to apply for interim measures in front of Community Court, an omission which made the decision of the Commission immediately enforceable and the Greek Courts unauthorized to deal in any way with the case.

10-10-2011: Reservations of ALUMINIUM

In accordance with the Decision of 10-10-2011 of its Board of Directors, ALUMINIUM made the following reservations - objections:

A. It does not agree that the No. 80/2010 Arbitration Award must be taken into account in a way that limits the judgment of the Arbitral Tribunal for the shaping of the final supply terms and the updating of the draft agreement, which should only be based on the number 692/2011 and 798/2011 Decisions of R.A.E.

B. it does not agree that the updated from the Arbitral Tribunal contract should be applied from 06-06-2011, but from 07-01-2010 as it had agreed in the draft agreement.

18-11-2011: Arbitration agreement (contract) between PPC & ALUMINIUM for referral to arbitration

In November 2011, PPC and ALUMINIUM sign contract for new referral to arbitration of their difference about the electricity tariff, provided that until the issuance of the arbitral

award, ALUMINIUM will be pay off normally its accounts for the electric power, which gets from PPC with the interim provisional value.

The object of arbitration was to determine the final price in the contract for the supply of electricity, under the framework agreement, which had done PPC and ALUMINIUM in August 2010.

December 2011: ALUMINIUM stops payments

But, as soon as it signed the arbitration agreement, once again ALUMINIUM stopped paying its bills, which led to the PPC threatened to terminate their contract.

06-03-2012: ALUMINIUM requests interim measures from RAE for temporary price determination

So, until the issuance of the arbitral tribunal's final award, ALUMINIUM with the 06-03-2012 "complaint – request for interim measures from R.A.E., " asked from the RAE to determine the provisional value for the current electricity consumes, arguing that the charges imposed by the PPC are very high, reaching € 82 / MWh, while the average term for worldwide intensive power consumption industries does not exceed under € 28,85 / MWh, which means that raises a question of its survival as a company .

May 2012: RAE defines temporary price

In May 2012, the R.A.E., recognizing the specific characteristics which ALUMINIUM has as consumer of electricity (such as: 24 hours constant loads, which represent up to 10 % of the total burden of the country at night, potential cuts, when the system is facing tight due to a lack of validity etc.), issued a decision, in the operative part of which ruled that:

<< 1. " on the interim measures request determines as temporary price, according to the general pricing principles, the price of € 42 / MWh, plus projected charges SGI, RES duties, transport system usage duties, and other taxes²³¹ .

2. The application of this temporary price would be for the total hours of operation of the applicant, given the single-layer charge throughout the day, which enforced by the consumer profile of ALUMINIUM.

3. The above temporary price will apply until the issuance of the Authority's decision on the complaint of the applicant, or of the issuance of the award of the competent arbitral tribunal or possibly thrive if earlier negotiations between the parties, which the RAE calls to continue in good faith and in keeping with business ethics above. In any case, the action that the applicant would obtain from the defendant in that temporary price will finally cleared according to the value set above. >>

PPC issued a statement, disputing the correctness of this decision stating inter alia that:

"The decision overturns the legal framework of compulsory daily electricity market, which has been established at the proposal of the RAE itself, especially considering that the

²³¹ While at the same time the PPC's cost is of the range of € 60/MWh and for the electricity which ALUMINIUM sells to PPC from its power plant remunerate with € 102 / MWh.

ALUMINIUM is not to be allocated to that attributable costs arising from the operation of the Market." And that "It is obvious that this decision penalizes PPC, forcing it to sell below cost and therefore PPC intends to pursue all legal means against of this R.A.E.'s Decision before any authority, national or European." Blamed directly R.A.E. that "ignores completely the documented positions of PPC on the subject", argued that between them, the last years, are in constant negotiations, something which RAE ignored and called ALUMINIUM, if it was not satisfied, to find other suppliers or import electricity.

Then the PPC did appeal to the European Commission denouncing price as State-aid (subsidy).

04-07-2012: Payment Order of PPC against ALUMINIUM

After fruitless performance "extrajudicial statement-call-disturbance" of PPC to ALUMINIUM for payment until 02-11-2011 amounting € 21,6 million, issued, at the request of the PPC, the no. 1360/04-07-2012 Payment Order of the Single Judge First Instance Court of Athens, which ALUMINIUM ordered to pay to PPC the amount of state subsidy (€ 17.375.849,48), plus interest of € 3,041,126.93 and €1,692.22 on total amount of subsidy and on compound interest, for each elapsing day, which (Payment Order) take to ALUMINIUM on 09-07-2012 .

July 2012: The European Commission concludes that the low price constitutes State aid

In July 2012 the European Commission intervened and ruled that the practice of selling electricity form ALUMINIUM to PPC of the price of € 55 / KWh and purchase from PPC to the price of € 41 / KWh, constitutes state financial aid which is contrary to the rules of free competition.

11-07-2012: Writ of supersedes & the Request for stay proceedings from ALUMINIUM

On 11-07-2012 ALUMINIUM exercised writ against the payment order and request suspension with simultaneous request for a temporary injunction, citing reasons of sustainability, which has been accepted, raising acting issue (in the opinion of many) of the judge who issued "ultra vires", particularly after what was identified by the European Commission on 31-10-2012 letter of it, by the Head of Unit Barbara Brandtner²³².

²³² "The ECJ has ruled that the aid (subsidy) recipient, who undoubtedly had the right to challenge the Commission's recovery decision under Article 230 of the EC Treaty, before the Community Courts can no longer challenge its legality before the national courts on the grounds that the decision was illegal. A corollary of this decision is that the aid recipient, who could have asked for an injunction by the Community Courts under Articles 242 and 243 of the EC Treaty and has not done so, it may request the suspension of the measures taken by national authorities for the implementation of this decision for reasons relating to the validity of the decision. This issue is an exclusive competence of the Community Courts. "

12-09-2012: Prosecution for felony

On 12-09-2012 the Economic Public Prosecutor²³³ gave to the Athens First Instance Court Prosecutor order to exercise felony prosecution for infidelity and inciting against officials of PPC and ALUMINIUM.

17-07-2013: Referral of Greece to the European Court of Justice

On 17-07-2013, announced the referral of Greece to the ECJ for failure to recover for nearly two years of unlawful State aid in favor of ALUMINIUM, in the form of electricity supply at lower prices than what the applicable tariffs.

In a letter of the EU, which is dated 31-10-2012 and signed by the Head of Unit Mrs. Barbara Brandtner, recommended to Greece to take immediate measures since the period, that it had, has expired.

23-01-2013: Actionable of ALUMINIUM's litigation and request for suspension

On 23-01-2013 designated hearing to hear both the application and suspension of the opposition against the payment order. The Court, issued : a) No. 857/2013 decision, which suspended the execution of the order, and b) No. 860/2013 decision, which ordered the suspension of the debate on opposition to the adoption by the decision of the General Court of the European Union on the appeal of ALUMINIUM.

Early Spring 2013: ALUMINIUM takes license of commercial operation of its unit

In the early spring of 2013, ALUMINIUM got the license of commercial operation of its unit and therefore can cover itself the same needs for the hours under the Agreement of August 2010.

2013: New Appraising

The Corruption Crimes Prosecutor sent prosecution order to PPC underlining that: " Within the preliminary examination conducted especially for the offense of Abuse of the service, the subject of which has a total value of more than € 120.000 (Art. 256 par. c, subpar. b and 263 a case of the Penal Code) on request for non-recovery of PPC debt of € 13.900.000 which " ALUMINIUM SA "owed to this company.

30-07-2013: The new pricing policy of PPC

At the meeting of the Board of PPC on 30-07-2013, presented oral instead of written provided, suggestion of PPC's services on its new pricing policy from 01-01-2014 to High Voltage (HV) and Medium Voltage (MV) customers, i.e. for large industrial and commercial customers.

Proposed new tariffs with provision providing 20% discount on HV or 15 % in LV, if someone set the previous debts and pays hereinafter normally its bills, i.e. when simply observes its implicit obligations.

233 Grigorios Peponis

II. THE AFTER THE ISSUANCE OF THE ARBITRAL AWARD EVENTS

* **PPC's statement in relation to the arbitral award issued**

After the issuance of the arbitral award PPC issued a statement regarding the outcome, which inter alia stated that:

" It is now evident the huge differential in the price of € 36,6 / MWh which the majority (2 to 1) of the Arbitration Court adjudicated in relation to the actual cost.

Even in the extreme case in which it wanted to justified the ALUMINIUM's undue claim to only be supplied from the cheapest lignite production (shifting to other consumers the cost of more expensive sources of energy, including power plant Gas of Mytilineos Group of companies), the price which awarded the majority of the arbitral tribunal is at least € 20 / MWh far from the actual cost.

The two members of the majority of the arbitral tribunal chose absolutely unjustified and arbitrary to:

- A) ignore the costs lodged by PwC,
- B) ignore the costs of electricity generated from the published financial statements for the reporting period of the arbitration and
- C) ultimately rely almost exclusively on manifestly arbitrary and incorrect calculations of an ALUMINIUM's member regarding the internal PPC's costs .

We note once again that selling at a loss under the cost directly violates not only the general rules of the National and Community law but specifically the national law governing the electricity market, such as the Electricity Supply Code specified explicitly that the tariffs for electricity must: 1) to reflect the actual cost of electricity, 2) do not discriminate between consumers of the same Class, 3) do not distort competition.

There can be no arbitration decision is contrary to the national and Community legislation. The PPC will exhaust all legal means to protect its interests and the interests of its shareholders and consumers. "

* **Interim measures of PPC**

On 04-11-2013 adjudicated the PPC's application for interim measures, before the 6th division of the First Instance of Athens, to revoke a previous decision of the same Court which postponed the payment of the amount of € 17,4 million (which until then had surpassed plus interest € 21 million) from ALUMINIUM, which the European Energy Commission had considered through its decision as illegal State aid from PPC to ALUMINIUM on the grounds that this decision was taken by an incompetent court.

During the trial, except all the parties, appeared for the first time, and the Greek Government which according to the jurisprudence represented by a representative of the Legal Council of State, but it was not attended by a representative of the Ministry of Finance, although the case involved illegal subsidy funds, but a representative of the Ministry of Environment, Energy & Climate Change and even without the responsible representative of this ministry to the Legal Council of State, but one assistant of him.

*** MYTILINEOS's Announcement on the Stock Exchange**

On 05-11-2013, MYTILINEOS Group of Companies announced on the Athens Stock Exchange that the benefit of the award of RAE's Permanent Arbitration for the supply of electricity of its subsidiary ALUMINIUM SA from PPC stands at € 35,2 million.

*** Breach of contract by the PPC**

On 18-11-2013 the PPC's Board of Directors decided to immediately terminate its relationship with ALUMINIUM releasing a statement - complaint, in which referring the following:

" Following the recent decision (no. 1/2013) of the majority of the arbitral tribunal in RAE, which awarded the selling price of electricity in ALUMINIUM SA obviously below cost, causing heavy financial burden back to PPC, the Board of Directors of the Company approved the immediate termination of the contractual relationship with ALUMINIUM SA with effect from 18-11-2013 and sent today statement - complaint.

The decision of the Board of Directors of PPC unanimously taken to protect the best interests of the Company, taking into account that:

- In the majority decision of the arbitral tribunal (2 to 1) PPC must supply electricity to ALUMINIUM at a price below cost for loss of the Company.
- The PPC should take any initiative to prevent loss of its shareholders, including the Greek government as a major shareholder.
- The supply of electricity from PPC selectively to the ALUMINIUM at a price below cost constitutes a distortion of fair competition.
- PPC is obliged to do whatever is needed in order not to grant State aid prohibited under National and Community law.

For these reasons, in addition to the financial burden incurred to date of compliance with the decision of the majority of the arbitral tribunal, the PPC should limit the extent of possible damage to the hereafter, and to exhaust every possibility that the legislation provides for the annulment of that award, which ultimately works against the whole of society. "

Market players/insiders believe that PPC decided to hardened its attitude as line of defense against the initiatives that are expected to take other energy-intensive industries mainly in high voltage, after the award, which result in cost factors that could utilize to their advantage²³⁴.

²³⁴ The supporting PPC's act reports underline that: "PPC is not the sole electricity provider in Greece, and that the electrical system allows the self-supply. Also that the market allows the self-supply, the supply from the pool (wholesale market with limit value) as well as the energy imports." While the friendly to ALUMINIUM reports underline that with PPC statements concerning the issued award and with its attitude "in substance, rejects the principles of good pricing established by the RAE and must be followed by electricity suppliers and ignores all the decisions that have been issued to date and justify DEI's customers against arbitrary fees imposed by DEI. In particular, it ignores the role as super-dominant company and as sole exploiter of the non-renewable national resource called lignite, the benefits of which should be passed to the benefit of the economy and society, as is the case in most countries of Europe, where the electricity prices for the industry is much lower than in Greece".

*** New proposal from ALUMINIUM to PPC**

While PPC has canceled the contract for the supply to ALUMINIUM the latter sent a letter to PPC offered to it a contract extension until 31-12-2025, i.e. for another 12 years, at the same price of € 40,7 / MWh which provides the 1/2013 arbitral award of RAE and through which PPC has already lost at least € 109.000.000. ALUMINIUM stated that it intends to explore in collaboration with PPC for the benefit of both parties additional introduction of a formula that will increase or decrease the above baseline under current international market price of aluminum and said that according to its initial calculations (of ALUMINIUM), the price would be considerably higher than the price which sets the RAE's arbitration. It pointed also that for a reasonable period of at least 3 months would keep the negotiations of the two parties, the PPC will continue to supply power to the ALUMINIUM at the "temporary" price value of arbitration, which will ultimately cleared through its final value that will agreed by the parties.

The proposal was not accepted by the PPC, as it had already argued that the value of arbitration harming tens of millions of euro every year and it was inappropriate to accept it as the basis of negotiation with formulas and calculations will be done in the future, a new agreement, and with negotiating period which would apply.

*** The announcement of Mytilineos Group of Companies**

Upon oral question from Securities Commission, Mytilineos Group of Companies made the following announcement:

"ALUMINIUM and PPC chosen jointly to resort to the Permanent RAE's Arbitration (Article 37 of Law 4001/2011) in order to formulate the terms of the contract for the supply of electricity to ALUMINIUM from the PPC. According to their arbitration agreement signed by the two companies the subject of arbitration was to update the terms of the contractual relationship and the determination of a fair and reasonable price, which not only meet the consumption characteristics of ALUMINIUM and the other to cover at least the PPC's cost. The arbitrators and the chairman of the arbitral tribunal defined with absolute agreement between the two companies on the basis of the scientific prestige and expertise in the subject.

After a process that lasted over 18 months, during which produced studies and opinions from academics and international prestigious consulting firms, the arbitral tribunal for the first time considered the real cost of electricity to serve the load consumption of ALUMINIUM and decided documental that PPC is obliged to supply power to ALUMINIUM at a price of € 40,7 / MWh for the total annual consumption of ALUMINIUM, not including the special tax RES / ETMEAR, excise tax and DETE . This price is valid for the period from 01-07-2010 to 31-12-2013.

The failure of the PPC to comply to the above arbitral award, especially given its super-dominant position in the domestic electricity market, and a fortiori the termination of the contract, directly violates the arbitration award, the Electricity Supply Code to Clients, catalyzes the constitutional legitimacy and institutions and can not be tolerated in the rule of law. "

*** Registration of the complaint of PPC's Graduate Engineering to the Corruption Prosecutor**

The Association of Graduate Engineering TE PPC filed a written complaint to the Corruption prosecutor²³⁵, on the occasion of the arbitral award and requested the investigation for criminal responsibility.

*** Requests from other industries to have the same tariffs with ALUMINIUM**

Following the outcome of the arbitration award reports said about requests to the PPC of most companies that consume high voltage electricity to buy power at a price identical to that of ALUMINIUM, which is below the cost of production.

*** PPC gets a loan of € 450 million.**

PPC in order to meet its needs got a loan of € 450 million, at 6% interest.

*** The head of the Athens First Instance Court prosecutor asks for criminal responsibilities in arbitral proceedings and arbitral award**

After the noise has been erupting for the ruling against PPC, which determined the buying cost of power from ALUMINIUM under the DEI's cost of production of it, Head Prosecutor²³⁶ of the Court of Athens, based on the elements have become aware of, ordered the urgent investigation of the case to determine whether criminal offenses committed in the process of the issuance of the decision of two arbitrators and the umpire, and from all the involved: RAE, ALUMINIUM and PPC.

*** ERNST & YOUNG's electricity cost findings**

With PPC press release announced that commissioned the find of the cost of producing power to the company ERNST YOUNG, which concluded that the ranging selling price for the years 2009, 2010, 2011, 2012 should range from € 61,8 / MWh to € 71,3 / MWh, and therefore prices have a huge difference on the award identified in which the price of € 36,6 / MWh, accepting calculations of ALUMINIUM. These findings verified the calculations of PPC and the data was hosted by the international advisory London firm PWC in arbitral tribunal, but the latter do not take into consideration.

*** The sending of the arbitral award by the RAE to the Competition Commission**

RAE sent the award to the Competition Commission.

Complaint of ALUMINIUM to the Competition Commission for abuse of dominant position by PPC's side

ALUMINIUM issue a complaint to the Competition Commission for abuse of dominant position by PPC which emphasizes, inter alia, that:

- It is the largest private electromotive company.

²³⁵ Eleni Raikou

²³⁶ Panagiota Fakou

- The unit of cogeneration power in Boeotia is the largest of its kind in Greece and the largest in Europe

- In this unit the product is needed is the heat and the electricity produced is essentially a by-product that does not need

- Controls and operates three natural gas plants total capacity 1.200 MW, i.e. four times the size of what the needs of the plant

- Through the company's M & M Gas competes DEPA in the field of gas supply.

*** Action of PPC**

Already heard on 04-12-2013 in front of the Multi-member First Instance Court of Athens the PPC 's appeal against the decision to suspend the decision to recover the amount of € 17.4 million, which was awarded by the European Energy Commission against ALUMINIUM, so the money be returned to PPC.

*** Request for Cancellation of PPC**

PPC has said that preparing to file an Act to Revoke to the competent Court of Appeals in order to succeed overturns the arbitration award.