



The Energy Community Dispute Resolution Forum, Vienna, 19 September 2019

# Arbitrating High-Stake Energy Disputes in Neutral Jurisdictions

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# Short Background to Energy Disputes

SCIENCE POLICY & FUNDING

News



## World's Heavy Dependence on Fossil Fuels Projected to Continue

The report forecasts a 2.8% annual increase in renewable energy through 2040, making it the world's fastest growing source of energy for electricity generation.



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## Energy security strategy

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The EU imports more than half of all the energy it consumes. Its import dependency is particularly high for crude oil (90%) and natural gas (69%). The total import bill is more than €1 billion per day.

Many countries are also heavily reliant on a single supplier, including some that rely entirely on Russia for their natural gas. This dependence leaves them vulnerable to supply disruptions, whether caused by political or commercial disputes, or infrastructure failure. For instance, a 2009 gas dispute between Russia and transit country Ukraine left many

## Resource nationalism rises in 30 countries

DRC joint highest risk with Venezuela

21 March 2019

### Biggest drop in oil prices in modern history

Between mid-2014 and early 2016, the global economy faced one of the largest oil price declines in modern history. The 70 percent price drop during that period was one of the three biggest declines since World War II, and the longest lasting since the supply-driven collapse of 1986.



Source: World Bank.  
Notes: Real oil prices are calculated as the nominal price deflated by the international manufacturers unit value index, in which 100=2010. World Bank crude oil average. Last observation is November 2017.



## East-West Arbitration Specifics

- ✓ *1975 Helsinki Conference on Security and Co-operation in Europe: call for the participating states to permit arbitration in a third country*
- ✓ *1977 Optional Arbitration Clause for use in US-USSR trade relations*
  - *neutral dispute resolution seat (Stockholm);*
  - *neutral appointing authority (SCC);*
  - *joint panel of presiding arbitrators of neutral nationality;*



## SCC's energy caseload (2001 – 2019)



- ECT (32) and BIT arbitrations (9)
- Concessions/PSA agreements (4)
- Contract-based arbitrations (over 150)

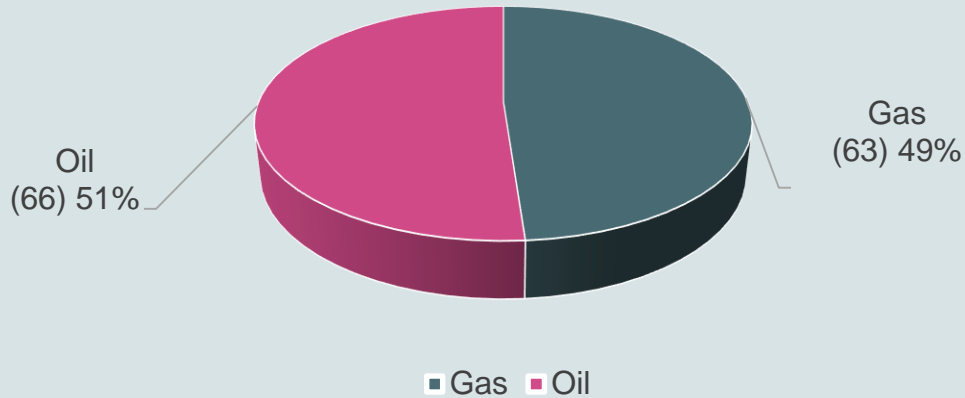
13 out of “top 20” arbitrations concerned energy

Claims between 0,5 to 40 billion EUR

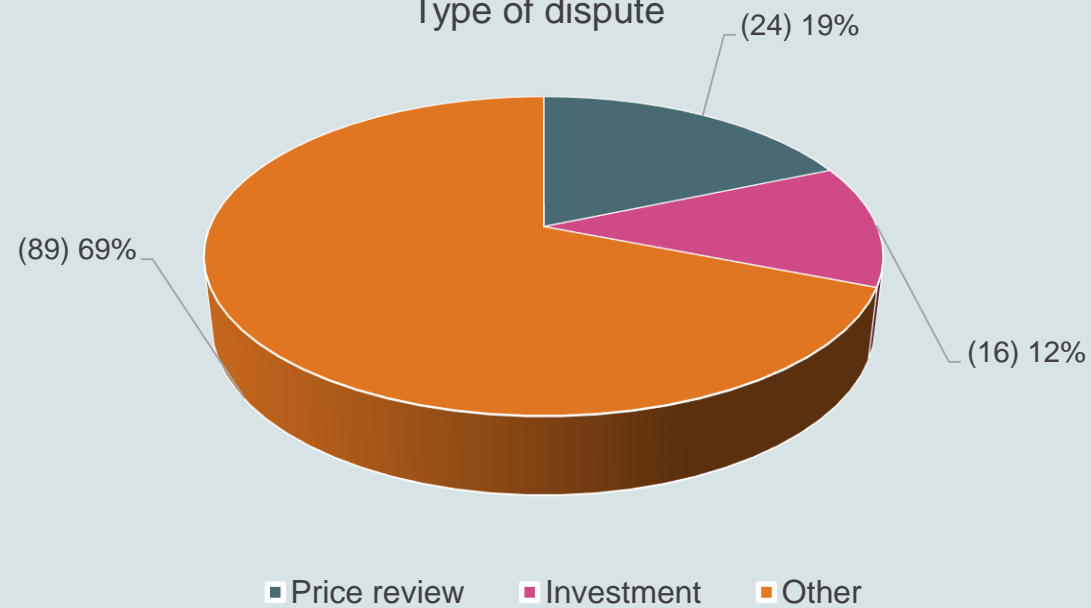
Overwhelming majority involve non-Swedish parties

# Oil & Gas Disputes (2001 – 2019)

Number of disputes



Type of dispute



## Pricing Disputes: typical background



Long-term gas supply contract  
Price-renegotiation clause  
Oil-indexed formula

# SCC case 2013/063

## Long term take-or-pay gas contract

**The Seat of Arbitration:** Stockholm, Sweden

**Number of Experts:** 3

**SCC costs:** EUR 60,000

Issues:

Whether there were changes in a specific gas market that actually affected the value of the gas on that market to a degree that a price review could be triggered and justified.

If the conditions of price review were met, which principles and methods of specific calculations should be applied to adjust the current contract price? Actuals or fair value approach to establish the price?

# Legal costs

	Claimant	Respondent
Legal costs respondent	EUR 1,161,338.71, SEK 20,105,698.60 and GBP 473,672.52	EUR 2,857,455, GBP 18,277.16 and SEK 3,096,365
Disputed amount	EUR 420 000 000.0	0
Who won the case	Won (partially)	
Distribution of costs	2/3	1/3



# Arbitration costs

	<u>Chairman</u>	Co-arbitrator	Co-arbitrator
<u>Fee</u>	EUR 180,750	EUR 108,450	EUR 108,450
<u>Per diem</u>	EUR 5,000	EUR 4,000	

SCC's administrative fee – EUR 60 000

**Total ink VAT 470,557.00**

# Procedural takeaways:

- ✓ Neutrality of jurisdiction, institution, chairperson's nationality
- ✓ Authority of the tribunal to appoint experts
- ✓ Flexible arbitration costs-structure
- ✓ Availability of emergency procedure
- ✓ Overall expeditiousness of arbitral proceedings



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# Energy Disputes at the SCC

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