

Energy Dispute Resolution TTIP etc. - Is Arbitration Outdated?

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I. Increasing critique vis-à-vis arbitration

- long and expensive proceedings
- private justice, exercised by a small group of people outside the control of the public
- lack of transparency and accountability
- undue limitation of the sovereignty of states and governments

II. What is arbitration?

- arbitration as one of the mechanisms of dispute resolution
- private dispute resolution, leading to a decision of the dispute by a third party (the arbitrators)
- arbitration process needs to fulfill minimum requirements (equality of parties, right to be heard), otherwise freedom of parties to design their process
- arbitral awards globally enforceable
- investment arbitration: possibility for investors to enforce rights against a host state before a neutral forum

III. Arbitration as an imperfect mechanism of dispute resolution

- proceedings are in principle flexible, to be designed by parties or determined by arbitrators
- arbitration proceedings: compromise between various concepts of dispute resolution
- parties get what they choose: arbitration proceedings are as good as the arbitrators, appointed by the parties
- arbitration requires parties to make their choices and take their responsibilities

IV. Efficient dispute resolution through individual process design

- combination with other ADR techniques (mediation, neutral experts, advanced negotiations techniques)
- individual process design (confidentiality of proceedings, taking of evidence)
- tailor-made proceedings
- appointment of right arbitrators

V. Is Arbitration outdated?

- effective and independent dispute resolution is more important than ever in order to ensure the application of the rule of law
- independence of justice is an ongoing (increasing) concern even within the EU
- dispute resolutions needs to be professionally handled, no midnight clauses, but deliberate design
- international organization can play a major part in the settlement of disputes
- quality of arbitration/arbitrators needs to be further improved
- high quality arbitration as one of the tools to effectively resolute disputes will gain further importance in future

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Karl Pörnbacher is a partner in the Munich office of Hogan Lovells and member of the international Litigation & Arbitration practice. He heads the Arbitration practice in Germany.

He advises and represents clients in national and international arbitration proceedings, commercial litigation and other ADR proceedings (mediation, adjudication). His experience covers disputes in connection with energy (gas, oil and electricity), projects and construction, M&A, insurance and reinsurance and general commercial relationships. He was appointed in more than 50 national and international arbitration proceedings as a counsel and in more than 30 proceedings as an arbitrator (both as chairman/sole arbitrator and co-arbitrator) in particular in ICC, DIS, and ad-hoc-proceedings as well as before the arbitration court of the Polish Chamber of Commerce.

Karl is a member of Hogan Lovells' gas price disputes team and has special expertise concerning energy related disputes, in particular with regard to the gas market where he has acted for clients on all market levels. He is well-versed in the economic particularities of the energy sector, has broad experience and market intelligence regarding the energy sector and market developments in Europe.



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Education

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