

Workshop on Recent Developments in EU Energy Law and Policy Successfully Hosted

On the afternoon of Oct 11 2016, the workshop themed “Recent Developments in EU Energy Law and Policy” was successfully hosted by the Beijing Arbitration Commission / Beijing International Arbitration Center (the “BAC”) at the BAC International Conference Hall. Ms. Ana Stanič, Founding Partner of E&A Law and Honorary Lecturer of the University of Dundee, was invited to give a keynote speech. The event was moderated by Mr. Zhang Libin, BAC arbitrator and Partner of Broad & Bright. This workshop was conducted in English and has attracted over 50 professionals including arbitrators of the BAC.



The Workshop

At the beginning of the event, the BAC Deputy Secretary General Dr. Chen Fuyong delivered an opening speech on behalf of the hosting institution. He provided a brief introduction of the BAC’s caseload with respect to foreign related disputes and energy related disputes. By referring to a sample case with huge dispute amount of the BAC as published in the *Global Arbitration Review*, he pointed out that the energy sector was among the most important industries that the BAC has paid close attention to. He also said that the BAC has endeavored to organize various professional seminars, and thereby to establish platforms of exchange for Chinese and foreign experts. He believed that this Workshop would help promote an in-depth exchange among the attendees.



Dr. Chen Fuyong



Mr. Zhang Libin

Thereafter, Ms. Ana Stanič provided an in-depth analysis on seven subtopics including “EU Law on Inter-Governmental Agreements”, “Proposed Amendments to Security of Supply of Gas Regulation”, “EU Law on State Aid”, “Unbundling of TSO”, “Third Party Access (TPA)”, “EU Competition Law” and “EU Law v. International Investment Law”.



Ms. Ana Stanič

Ms. Ana Stanič pointed out that the EU law has taken a strict approach with respect to Inter-Governmental Agreements (the “IGAs”), and all IGAs between EU countries and non-EU countries were to be submitted to the European Commission (the “EC”) for review regarding their compatibility with EU law. In the proposed Amendments to Security of Supply of Gas Regulation, the amendment to the solidarity principle might address on “default” and “expropriation”. Apart from that, any state aid that distorts or damages market competition shall be rejected by the EC, and a clause favoring certain undertakings or the production of certain goods as committed by governments may also be deemed “state aid”. Under the EU law, enterprises are not allowed to exercise control both over a transmission system and over an undertaking supplying or producing gas. The refusal of “Third Party Access” to gas transmission and distribution pipelines shall be under a strict control, and such access may only be refused due to special reason such as lack of technical capacity, sudden crisis and public service obligations. Under the EU Competition Law and Antitrust Law, Art. 101 and Art. 102 of the Treaty on the Functioning of the European Union (the “TFEU”)

prohibit “price discrimination”, and it was for alleged breaches of such provisions that the EC raided the office of Gazprom. Besides, there are signs that the development trend of the EU Energy Law tend to be incompatible with International Investment Law, as evidenced by *Ioan Micula, Viorel Micula, S.G. European Food S.A. et al v. Romania*.



Mr. Yang Weidong



Mr. Andrzej Blach

Mr. Zhang Libin then made a summary of Ms. Stanič’s speech. He spoke high of the content, and pointed out that her interpretation well reflected the EU Law’s strict regulation over the energy industry, which was of significant value of reference to Chinese enterprises’ overseas investment in energy. Comments were provided by Mr. Yang Weidong, BAC arbitrator and Partner of Sunshine Law Firm, Mr. Andrzej Blach, Partner of CMS, Dr. Chen Xi, Post Doctorate of the Institute of Nuclear and New Energy Technology, Tsinghua University, successively. From their respective practice or research experience, the commentators also had an exchange and discussion with Ms. Stanič on the future of EU Energy Law, the influence of Brexit on energy trade, the EU law and the Energy Charter Treaty and other issues.



Prof. Li Xiandong



Dr. Chen Xi

In the subsequent communication section, Mr. Li Xiandong, BAC arbitrator and Professor of China University of Political Science and Law, shared his experience of participation in making the Judicial Interpretation of the Supreme People’s Court on the Mineral Resources Law of the PRC with the combination of the keynote speech, and said that this upcoming Judicial Interpretation has stuck to and highlighted the principles of separation such as the separation of the institution and the validity of civil juristic acts and the separation of *Verpflichtungsgeschäft* and *Verfügungsgeschäft*.



The Workshop

The Workshop came to a successful end with warm applause of all the attendees.

The BAC has for a long time endeavored to promote the sharing of professional expertise and the research in dispute resolution, as well as to provide an exchange platform for experts and practitioners, both domestic and abroad. We sincerely welcome more professionals from various industries to continue to pay attention to, and participate in, the BAC's events. You are also welcome to pay attention to the BAC's website and WeChat platform for updates.