



## **EKOenergy's Arbitration Panel, Rules and Procedure**

18 June 2015

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### **EKOENERGY'S ABITRATION PANEL**

#### **Section I - Election of the permanent members of the Arbitration panel**

1. The EKOenergy Arbitration Panel consists of a President and 2 other Arbitrators. They are nominated by the EKOenergy Advisory Group and appointed by the EKOenergy Board.
2. Both nomination and appointment happen with 3/4 majority (At least 3 times more yes than no).
3. At least one of the Arbitrators is an expert on environmental issues and one is an expert on renewable electricity.

At least one of the Arbitrators has to be a jurist (Master's degree in Law).

4. For each of the Arbitrators, the Board also appoints a replacer. Each replacer is 'linked' to one of the Arbitrators. The replacer has a similar profile (knowledge and background) as the Arbitrator to whom he or she is linked.
5. An appointment is valid for five years, but can be renewed.
6. The EKOenergy Secretariat will actively invite independent experts with relevant experience to be a candidate to become an arbitrator in EKOenergy's Arbitration Panel. Relevant stakeholder groups, such as the electricity sector, the environmental NGOs, consumers,... will get the opportunity to suggest candidates.
7. The Arbitrator shall notify the Board of his acceptance of appointment by e-mail or fax within 1 month of receipt of notice of appointment. Failure or silence of the arbitrator to respond in this time period shall be taken as refusal of the proposed appointment.
8. The decisions about the appointment, confirmation or replacement of an arbitrator

are final.

9. If an Arbitrator is challenged (see section VI,2), if an Arbitrator judges (s)he isn't neutral enough to arbitrate in a specific case, or if the Arbitrator refuses the position at any time or cannot be reached, her/his replacer will instantly and fully replace him as a member of the Arbitration Panel.
10. Whenever a position is vacant, or when the end of the term of the Arbitrators is nearing, the Secretariat will start the procedure to get the position. A position is vacant when the Arbitrator doesn't respond to requests within 1 month, cannot be reached, clearly doesn't implement the procedural rules as described in section IV and following of these rules.

A position should not be vacant for longer than 4 months.

## **Section II - General Provisions about the arbitrators**

1. Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.
2. Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The candidate shall disclose in writing to the EKOenergy Board any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality.
3. By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the present rules.
4. Unless otherwise required by law, the Arbitrators, the EKOenergy Board and all the parties, will maintain the confidentiality of the arbitration.

## **ABOUT THE PROCEDURE**

### **Section III - General**

1. The EKOenergy arbitration rules and procedure are based on the rules of the International Chamber of Commerce, the European Court of Arbitration (CEA), the United Nations Commission of International Trade Law (UNCITRAL) and of the Belgian Center for Arbitration and Mediation (CEPANI).
2. The language of the procedure is English.
3. Proofs and annexes can be submitted in the original language, in which case a short English summary will be added.
4. Parties will never be asked to provide translations made by official and authorized translators. Translations can be informal.
5. All Parties respect the multilingual background of EKOenergy and its partners. The quality of the used language shouldn't have an impact on the decision of the Arbitrators.
6. All communications to the arbitral panel by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time and may be transmitted by any means of communication that provides or allows for a record of its transmission.

### **Section IV - The Request**

1. The following entities can bring a Request to the EKOenergy Arbitration Panel:
  - Members of the EKOenergy network.
  - Companies selling EKOenergy.
  - Electricity producers (or their representatives) in the case of decisions about the eligibility of their production device.
2. A party wishing to have recourse to arbitration shall submit its Request for Arbitration (the "Request") to the EKOenergy Secretariat in Helsinki.
3. The Request shall contain the following information:
  - the name in full, description, address and other contact details of each of the parties;
  - the name in full, address and other contact details of any person(s)

representing the claimant in the arbitration;

- a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;
- all the claims made by the applicant; each claim must clearly state on which grounds it is based
- a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
- any relevant agreements and, in particular, the arbitration agreement(s);

4. The claimant may submit such other documents or information with the Request as it considers appropriate or as may contribute to the efficient resolution of the dispute.
5. In case the formal requirements are not fulfilled, the Board will send it back to the claimant remarking why it can not continue the procedure. The claimant has 15 days to correct it and send it back to the Board.
6. If the claimant remains in silence when the claim has been forwarded back to her/him, it will be considered as a refuse of her/his right of arbitration and the cause will be over.
7. The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.

## **Section V - Start of the proceeding**

1. The EKOenergy Secretariat shall notify the Board, the Arbitrators and any other involved party about the receipt of the Request and the date of such receipt.
2. The EKOenergy Board will appoint 3 of its members to follow up the case and to represent to Board during the proceedings. Confidential information won't be shared with the whole Board, but only with the 3 selected Board members.
3. The EKOenergy Secretariat sends the Request and all its annexes to the three Board members appointed to follow up this issue.
4. The Board shall communicate their statement of defence in writing to the EKOenergy Secretariat within a period of one month. The EKOenergy Secretariat immediately informs the Claimant.
5. The statement of defence should respond to the claim and, as far as possible, be

accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

6. The Claimant gets 30 days to answer to the last information provided by the respondent. This answer is sent to the EKOenergy Secretariat.
7. The EKOenergy Secretariat sends a copy of of all documents to the Arbitrators.

## **Section VI - Composition of the panel**

1. The panel which will decide about the case consists of three Arbitrators mentioned in Section I or their replacers, also mentioned in Section I.
2. Parties can challenge the Arbitrators and or their replacers. In the request, in the statement of defense or in any subsequent answer, they have to indicate the circumstances that give rise to justifiable doubts as to impartiality of a specific arbitrator in that specific case.  
If either the Arbitrator or his/her replacer is challenged, the challenged person will not participate in the decision making.  
If both the Arbitrator and the replacer are challenged, the remaining Arbitrators will decide on the validity of the challenge, and on the composition of the Panel in that specific case. No physical meeting is needed to take this decision. The Decision will be be reasoned and communicated in written to all Parties.
3. Each of the parties can appoint 1 extra, temporary Arbitrator. The Claimant has to do so within 1 month after the complaint. If the Claimant makes use of his/her right to appoint a temporary Arbitrator. The other Parties have to do the same within one month after they have been informed about the Claimants appointment.
4. The temporary Arbitrators have exactly the same role as the permanent members of the Arbitration panel and they have to act in accordance of the Code of Good Conduct of Section VIII of these rules. If they get a payment for their role, this cannot be dependent on the outcome of the case.
5. The permanent members of the Panel, and in particular the President of the Panel have the responsibility to make sure that the temporary Arbitrators understand their role and position.

## **Section VII - The decision making and the final decision**

1. Upon receiving the last answers, the youngest of the Arbitrators, but not the President, makes a first estimation. If the claim is clearly without ground, he will suggest to the other Arbitrators to dismiss the claim at once. If the other Arbitrators agree, the decision about the dismissal and its grounds will be communicated to the parties and the EKOenergy Secretariat.
2. In all other cases, the President of the Panel decides whether the weight of the case needs an immediate physical meeting of the Arbitration Panel, or whether there are other ways to prepare the decision: written (e.g. by e-mail) or phone.
3. The place of meetings will by default will be Brussels. Other places can be arranged by the Arbitrators.
4. If the Arbitrators find that they need more information than has been presented by the parties is required to decide the case, they can ask questions, request documents or other evidence, including expert testimony.  
This information can be presented in written, by the date decided by the President of the Arbitration Panel. Respondents get at least 4 weeks to submit texts.  
The Arbitrators can also decide to organize hearings. These can take place by phone, Skype or any other telematic system which allow the instant communication between the arbitrators and the parties and experts. They preferably happen simultaneously with a physical meeting of the Arbitrators
5. When extra information is requested, all parties in the case should get equal opportunities to be heard and to present their case.
6. The President of the Arbitration Panel drafts the decision. The decision lists the reasoning behind the decision, should be clear, and is signed by all the Arbitrators.
7. The Arbitration Panel comes to a final decision within six months after the start of the arbitration process (i.e. the date on which the Request is received by the Secretariat). The deadline can be extended in particularly complex cases. The decision about the extension has to be motivated.
8. The decision of the Arbitration Panel is final.
9. The decision is communicated via e-mail to all partners and to the EKOenergy Secretariat. The EKOenergy Secretariat takes care of the further communication, in as far as needed.

## **Section VIII - Arbitrator's code of conduct**

1. An arbitrator shall immediately disclose in writing to the Board and to the parties any facts or circumstances of a similar nature concerning the arbitrator's impartiality or independence which may arise during the arbitration.
2. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
3. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.
4. An arbitrator should not delegate the duty to decide to any other person.
5. An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.
6. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.
7. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision.
8. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. It is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.
9. Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:
  - Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be established.
  - Communication related to compensation should be made through the institution.
  - Arbitrators should not, absent extraordinary circumstances, request increases in

the basis of their compensation during the course of a proceeding.

10. An arbitrator may engage in advertising or promotion of arbitral services which is truthful and accurate.
11. Arbitrators appointed have a duty to determine and disclose their status and to comply with this rules.

## **COSTS**

### **Section IX - Costs of the Arbitration**

1. The fees of the permanent Arbitrators or their replacers: 350 euro per case for the President and 250 for the Arbitrators. A case which is dismissed upon reception (VI, 1) doesn't count as a case.
2. In case the amount of the dispute is higher than thirty thousand euros (30,000), the fees will be 700 euro for the President and 500 for the Arbitrators.
3. Half of the fees will be paid by the Claimant. This part will be paid back if the Arbitration panel agrees with the Claimant.
4. The EKOenergy Secretariat pays following expenses of the arbitrators: travel to the meeting place (cheapest possible way of transport) and 1 meal.