



SOŁTYSIŃSKI KAWECKI & SZLĘZAK



# INTERNATIONAL COMMERCIAL ARBITRATION

Polish/Ukrainian Twin Conference

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What can one learn about arbitration from  
investment arbitration cases involving  
Central and Eastern European actors?

Legal Advisors

# Arbitration of investment disputes is envisaged in a large number of treaties

УГОДА

МІЖ УРЯДОМ РЕСПУБЛІКИ ПОЛЬЩА ТА УРЯДОМ

УКРАЇНИ ПРО ВЗАЄМНЕ ЗАХОЧЕННЯ ТА

ЗАХИСТ ІНВЕСТИЦІЙ



There can be arbitration without an arbitration clause, but not without consent

## СТАТТЯ 10

СПОРИ МІЖ ДОГОВІРНОЮ СТОРОНОЮ ТА ІНВЕСТОРОМ  
ДЕРЖАВИ ІНШОЇ ДОГОВІРНОЇ СТОРОНИ



## Arbitration may include submissions other than those offered by the disputing parties

- 4.89. As already recited in Part I of this Decision, by its procedural order dated 28 April 2009, the Tribunal granted the European Commission's request to file a submission as a non-disputing party in this arbitration.(...)
- 4.91. At the outset, the Tribunal wishes to record its thanks and appreciation to the European Commission for its Submission, as regard both applicable law and jurisdiction. It is a lengthy, scholarly and important document for these arbitration proceedings; and only part of it is cited in this Decision.

Electrabel s.a. (Claimant) v. The Republic of Hungary (Respondent), ICSID Case no. Arb/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012



# Arbitration is capable of dealing with a multitude of claimants

No reference in the BIT / arbitration rules to collective proceedings:

- “qualified silence”, an intended silence indicating that it does not allow for something that is not provided, or
- a “gap”, unintended and which the Tribunal has the power to fill?



# There can be arbitration without claimant funding the costs

Whilst the representation mechanism implemented by the TFA Mandate Package does impose certain restrictions on Claimants, it should not be forgotten that it also actually entitles Claimants to conduct ICSID arbitration, at the cost and expense of the TFA's member banks. Indeed, it is very unlikely that many of the Claimants would individually be in a position to initiate and conduct ICSID arbitration, if they had to finance the arbitration themselves.

Abaclat and others (Claimants) and The Argentine Republic (Respondent), ICSID case no. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011





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