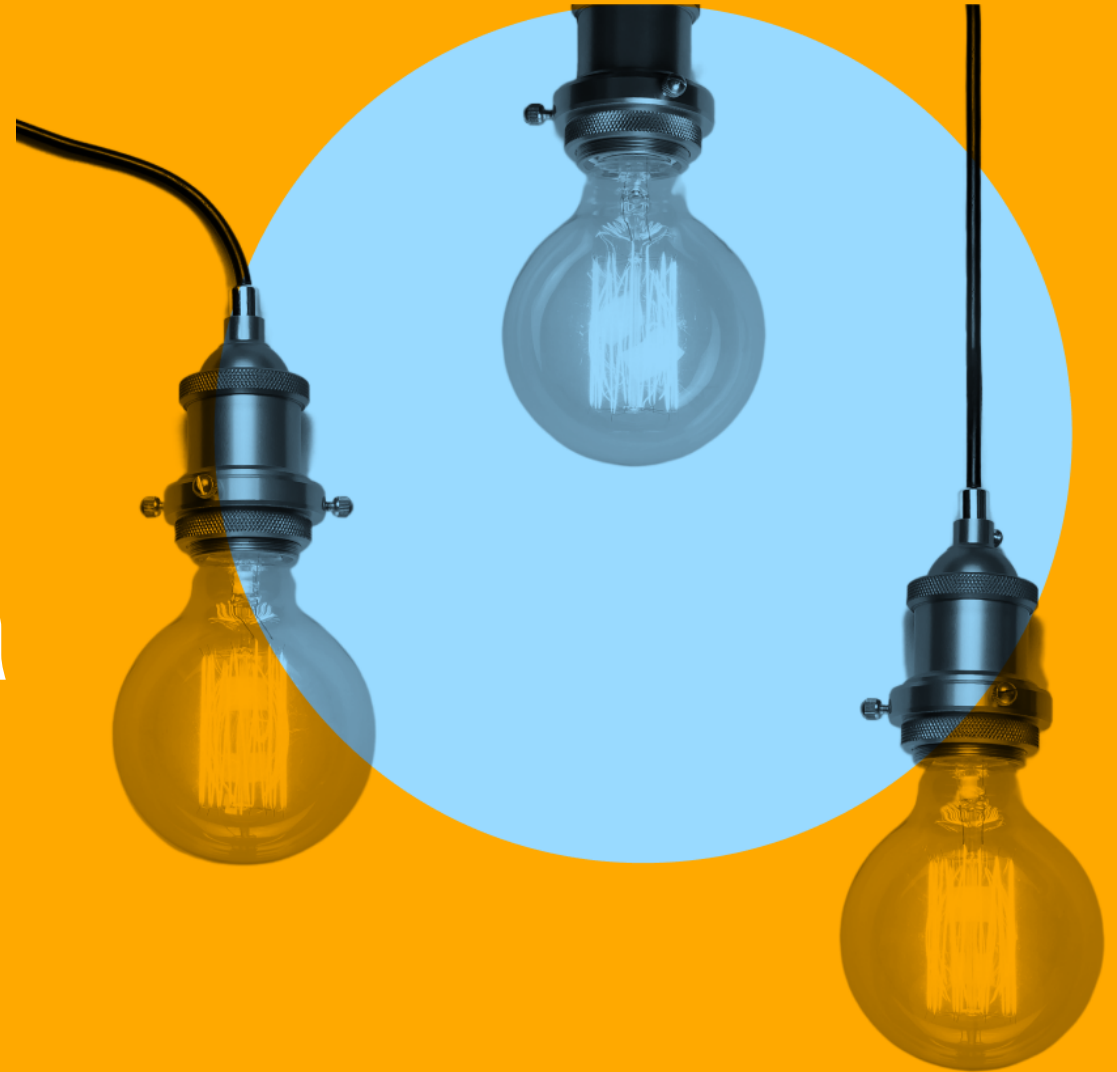


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Energy Arbitration Report

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Lighting the Way: The Arbitral Institution Illuminating Insights

Trends of Energy Disputes at The SCC Arbitration Institute Between 2020 and 2023

The present article analyzes the inflow of energy arbitrations administered by the SCC Arbitration Institute (“SCC”) between 2020 and September 2023. “Energy arbitration” is for this report defined as any dispute arising out of contracts between parties conducting their businesses in the energy sector including but not limited to gas, electricity, oil, renewable energy, waste management and similar other disputes which can be included in the broad framework of the energy sector.

Since 1917, the SCC provides a neutral, independent, and impartial venue for dispute resolution in commercial business around the world. The Institute operates entirely without commercial or political interests as a non-profit and independent entity within the Stockholm Chamber of Commerce. Every year, the SCC resolves around 150 to 200 disputes between parties from more than 40 countries. In 2022, the total value of the disputes amounted to more than EUR 1.6 billion.



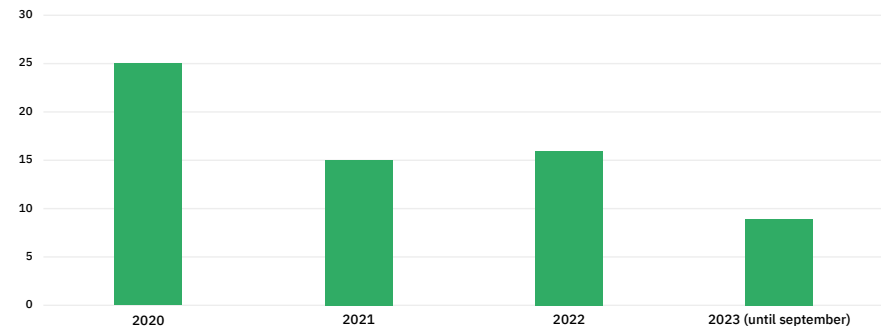
Caroline Falconer
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SCC’s role in energy arbitrations is twofold. First, it administers, each year, energy arbitrations as a result of the parties’ agreements. Second, the Institute is one of the international arbitration institutes that is active in the public debate in relation to energy arbitrations and disputes in the energy sector.

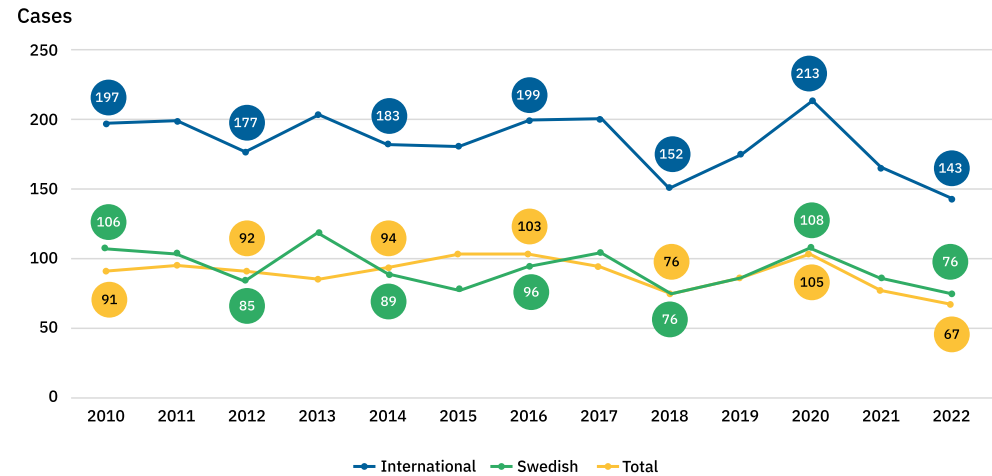
Between 2020 and September 2023, 65 energy arbitrations were commenced at the SCC.



Number of Energy Arbitrations commenced at the SCC



These numbers can be compared to the SCC's total caseload:



In 2020, disputes within the gas industry formed a major part of the Institute's energy arbitrations, counting for 44% of the energy arbitrations commenced at the SCC that year. This was followed by disputes related to the electricity sector and the renewables sector. The remaining disputes for the year 2020 were in relation to oil and waste management.

However, in 2021, the SCC saw a rise in the number of disputes related to the electricity sector and the renewables sector wherein 60% of the energy arbitrations received by the Institute in 2021 came from those two sectors (within and outside of [Sweden](#)). Other energy arbitrations that year related to the oil and gas industry.

In 2022, disputes related to the gas sector stood for 43% of the SCC energy arbitrations. Also, this year, disputes from the electricity sector and the renewables sector formed a large part of the energy arbitrations under its purview, holding 38%.

A majority of the SCC energy arbitrations relate to breach of supply contracts and payments arising out of it as their main cause of action.

Further, a clear trend in 2022 and 2023 (up until September) has been that the SCC has received several requests for arbitration in disputes which have directly or indirectly resulted from the [Russian](#) invasion of [Ukraine](#).

Following the invasion of Ukraine in 2022, the SCC witnessed a majority of cases where the underlying cause of action in these energy disputes is rooted in the unfulfillment of contractual obligations due to the invasion (including [force majeure](#) as a defense). For instance, in 2023, 4 out of the 9 disputes filed by entities in the energy sector had their roots in the aftermath of the conflict. In one of the disputes involving the delivery of electricity, the parties agreed to use the [SCC Expedited Rules](#) instead of the [SCC Arbitration Rules](#) referred to in the contract for a faster resolution of the dispute. Under the SCC Expedited Rules, the deadlines are shorter and there is a limit to the number of petitions that a party can submit which result in a faster and more cost-efficient way of resolving disputes between the parties.

Offering quick and cost-efficient methods for resolving disputes lies at the heart of the SCC, being the birthplace for expedited arbitration, [emergency arbitration](#), and the SCC Express. At the Institute, we know that these faster services are essential for the ever-growing energy sector.

A number of energy arbitrations at the SCC has been a result of disputes under investment treaties. The SCC is one of the preferred international forums for the resolution of investment treaty disputes. For example, under Article 26 of the [Energy Charter Treaty](#) (“ECT”), investors can choose to submit disputes to the SCC and the SCC has administered more than 30 disputes arising out of the ECT.

Much has been previously said about the [Achmea](#) and the [Komstroy](#) decision of the Court of Justice of the European Union (“CJEU”). These cases have had a direct impact on arbitration proceedings within the EU. After these decisions were rendered, energy arbitrations arising out of Intra EU Bilateral Investment Treaties and out of the ECT have been on a decline at the SCC.

ABOUT THE AUTHORS

Caroline Falconer is the Secretary General of [SCC Arbitration Institute](#). She holds a Swedish LL.M. degree from Stockholm University as well as a LL.M. degree in international dispute resolution from King’s College, London University. She was Senior Legal Counsel at a major European energy company between 2015 and 2022 and has spent almost 10 years at three different Swedish law firms specializing in dispute resolution and has worked at the Stockholm District Court. Caroline is co-founder of SWAN (Swedish Women in Arbitration Network) and a member of the jury for the Swedish prize “The Company Lawyer of the Year”.

Gaurav Majumdar is an intern at the [SCC Arbitration Institute](#) and holds a LL.M. degree in Investment Treaty Arbitration from Uppsala University, Sweden. He is an India qualified lawyer where he has practiced for two years with a focus on energy disputes and domestic arbitrations. He is also currently pursuing his second master’s degree in International and European Law and Business from Uppsala University, Sweden.



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